

*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: M.C.

Date of Birth: [redacted]

ODR No. 2509-1112AS

### CLOSED HEARING

Parties to the Hearing:

Parents

Wissahickon School District  
601 Knight Road  
Ambler, PA 19002

Representative:

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Dates of Hearing: 2/23/12, 5/2/12, 8/7/12, 8/9/12, 8/20/12, 8/27/12,  
10/12/12, 11/19/12

Record Closed: December 21, 2012

Date of Decision: January 6, 2013

Hearing Officer: Brian Jason Ford

## **Introduction**

The Student attended the District from kindergarten nearly until the end of the Student's eleventh grade year. At that time, the Student attended a series of residential placements. The Parents demand reimbursement for those placements, compensatory education, and reimbursement for an IEE.

## **Issues**

1. Are the Parents entitled to tuition reimbursement for private placements from November 9, 2009 through June of 2010?
2. Is the Student entitled to compensatory education from June of 2010 through July of 2012?
3. Are the Parents entitled to reimbursement for an independent educational evaluation (IEE)?

## **Findings of Fact**

1. M.C. (Student) began attending the Wissahickon School District (District) during the kindergarten (1997-98) school year. N.T. 582.
2. For reference
  - 2003-2004 - 6th Grade
  - 2004-2005 - 7th Grade
  - 2005-2006 - 8th Grade
  - 2006-2007 - 9th Grade
  - 2007-2008 - 10th Grade
  - 2008-2009 - 11th Grade
  - 2009-2010 - 12th Grade
3. It is not disputed that the Student's parents (Parents) were residents of the District from the Student's enrollment through the present.
4. The District evaluated Student for potential IDEA eligibility on June 7, 2001, August 29, 2005, and November 29, 2007. Through these evaluations, the District concluded that the Student had an IDEA-recognized disability (specifically, ADHD) but was not in need of special education. The Student received a Chapter 15/Section 504 Service Agreement (Service Agreement) in May of 2005. N.T. 69-77, 295-97; S-51.
5. The November 2007 evaluation was conducted by a District-employed Certified School Psychologist. S-50.
6. The District conducted the November 2007 evaluation pursuant to the Parents' request. S-36 at 3; see *also* P-2. At that time, the Parents were concerned about the Student's emotional wellbeing and academic performance. Credible testimony

reveals that the Student was oppositional and defiant to the Parents at home. N.T. at 585-588.

7. At the time of the November 2007 evaluation, the Student would occasionally engage in inappropriate behaviors in school, which could be easily redirected by teachers.<sup>1</sup> These behaviors were infrequent and inconsistent *in school* throughout the 2006-07 and 2007-08 school years. S-42, S-50; NT 214, 262, 264, 274, 393-395, 1240-1242.
8. At the time of the November 2007 evaluation, the Student was earning two As, three Bs and two Cs.<sup>2</sup> S-50.
9. The November 2007 evaluation included standardized, normative ability and achievement testing. These tests revealed that the Student has a high-average IQ and could perform academic work above grade-level expectations consistent with cognitive abilities. The evaluation report notes that the Student's academic performance was achieved without special education interventions. S-50.
10. The November 2007 evaluation also included emotional assessments. On a self reporting form, the only "at risk" area for the Student was "relationship with parents." *Id.*
11. The November 2007 evaluation concluded that the Student was not IDEA-eligible, but recommended a continuation of the Service Agreement. *Id.*
12. During the 2006-07 school year, the Student was absent five times and tardy six times. NT 423; S-52. During the 2007-08 school year, the Student was never absent and tardy four times. *Id.*
13. The Student started the 2007-08 (10th grade) school year without an IEP but with a Service Agreement. During the 2007-08 school year, the Student's GPA went up from a 1.86 to a 2.55 (weighted 1.91 to a 2.6).
14. Over the course of the 2007-08 school year, the Student received one A, six Bs, and one D. S-52 at 5. Testimony reveals that the Student performed worse both academically and behaviorally in classes taught by teachers that the Student did not get along with.
15. The Student started the 2008-09 (11th grade) school year without an IEP but with a Service Agreement. S-51.
16. The Student took the PSATs in the fall of 2008 without special education supports and earned the following scores: Reading (54; 74th percentile); Math (61; 83rd

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<sup>1</sup> The Student received one suspension during the 2006-2007 school year for inappropriate conduct. S-50 at 3.

<sup>2</sup> After the evaluation was completed, the Student failed a Japanese class at the end of the 2006-2007 school year. P-3.

percentile); Writing Skills (52; 68th percentile), Selection Index (167; 78th percentile). S-52 at 20.

17. The Student did not remain in the District for the entire 2008-09 school year. For the period of time that the Student attended the District, the Student earned six Bs, two Cs, one D and one F. S-52 at 5. As in the past, the Student's standout poor grades were in classes in which the Student did not like the teacher. NT 1386.
18. The Parents testified credibly that that homework posed a difficult and frustrating problem during the 2008-09 school year, and that disciplinary consequences at home were ineffective. NT 613-615.
19. During the 2008-09 school year, the Student had one disciplinary referral for using a cell phone in school and another for disruptive behavior. S-84 at 38-46. Progressive discipline was imposed for one of these incidents when the Student failed to attend a weekend detention.
20. Outside of school, the Student began to experience significant problems. The Student started smoking marijuana on a regular basis, staying out past curfew, stealing from parents, running away from home and shoplifting. See, e.g. NT 627, 857, 862-863, 998-1003; S-57 at 2. Some testimony suggests that the function of the stealing from parents was to purchase marijuana. No evidence suggests that these behaviors manifest in school, or that the Student was anything but sober during the school day.<sup>3</sup> See *id*
21. The Parents became aware of the Student's marijuana habit, imposed discipline, and made significant efforts to prohibit the Student's access to marijuana or funds to purchase the same. The Student reacted poorly to the Parent's efforts, resulting in increasing discipline at home and a deteriorating relationship between the Student and Parents. See, e.g. NT at 865-868.
22. The Student's out-of-school behaviors led to involvement with law enforcement and the juvenile justice system. The Student was arrested for shoplifting and, while on probation for shoplifting, was arrested for trespass [redacted]. See S-63.
23. The arrest for trespass occurred on May 18, 2009. A detention hearing then convened on May 20, 2009. During that hearing, the Student was adjudicated delinquent by Judge [Name Redacted] of the [Redacted] County Juvenile Court. S-63.
24. Immediately after the hearing, the Student was detained in the [Redacted] Youth Center. S-63 at 6.
25. Handwritten "Judge's Notes" on court documents say that the disposition of the juvenile proceedings were "delayed until kid completes program." S-63 at 7.

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<sup>3</sup> The IEE for which the Parents seek reimbursement notes that the noted behaviors occurred in the home environment. See S-57.

26. Additional handwritten notes dated May 23, 2009 say that the Student was “released to parents at 4 AM to attend privately funded placement as previously ordered by Judge [Name Redacted].” S-63 at 7.
27. Nearly identical language is found typed into a “Juvenile Court Order - Disposition” dated May 22, 2009 (“The above juvenile [the Student] is to be released from the [Redacted] Youth Center on May 23, 2009 at 4:00 am to ... parents as previously ordered by Judge [Name Redacted] to attend privately funded placement.”). S-63 at 17.
28. The foregoing language is consistent with the Parents’ testimony regarding their own course of action following the Student’s arrest. The Parents hired an educational consultant and discussed options with the consultant and the Student’s private psychologist. Based on those contestations, the Parents decided to send the Student to a wilderness program. During the Juvenile Court proceedings, upon questioning from Judge [Name Redacted], the Parents divulged their plan to send the Student to a wilderness program. NT at 629-632, 928-929.
29. The Student was in fact released from the [Redacted] Youth Center on May 23, 2009 at 4:00 a.m. and was immediately transported to the [Redacted] Wilderness Program in [another state] at the Parent’s expense. NT at 47, 48, 854-856, 1007-1009, 1171-1172; S-54, S-63. The Parents had decided on [the wilderness program] because it had a strong physical component. NT at 635-636.
30. At [the wilderness program], the Student received weekly therapy and weekly family therapy by phone. NT at 639. During this time, the Student was in the wilderness almost constantly. The purpose of the program was to build the Student’s self esteem, confidence and self-sufficiency. NT at 640-644. Academically, the Student earned an A- on an “Earth Sciences Packet,” a B+ on a “Language Arts Packet,” an A in “Outdoor Living Skills,” an A in “Physical Education,” and an A in “Social and Mental Health.” P-11.
31. The District was initially unaware of the juvenile proceedings and marked the Student as absent for 10 days after the Student’s arrest. The Student was marked absent for a total of 17 days during the 2008-09 school year. S-45, S-52.
32. On May 25, 2009, the Parents sent an email to the District. The email reads as follows: “[Student] has been sent to a therapeutic wilderness program for approximately 8 weeks due to progressively difficult behavior. Therefore, [Student] will not be in school for the remainder of the academic year. Please advise on how [Student] can get partial credit for what [Student] did this year; we are exploring options for a therapeutic boarding school for next year.” P-6. The email says nothing about the juvenile proceedings, does not discuss the behaviors in question and does not name either the wilderness program or boarding school under consideration.
33. On June 2, 2009, the District sent its Home and School Visitor to the Parents’ home with withdraw forms for the Parents to sign. The Student’s father signed the forms,

withdrawing the Student from the District. S-54. The Parents listed [the wilderness program] on the form as the Student's new school. *Id.*

34. The Student was enrolled in [the wilderness program] from May 23, 2009 through graduation from the [wilderness] program on August 6, 2009. S-54 at 3. From [the wilderness program], the Student was enrolled in and immediately transported to the [Name Redacted] Residential Treatment Center and Boarding School in [another state (RTC)]. S-54 at 3.
35. As with enrollment in [the wilderness program], the District took no part in planning, recommending or enrolling the Student in [RTC]. Rather, the Parents decided to place the Student at [RTC] based upon a psychological evaluation of July 28, 2009, conducted by a Ph.D. level clinical psychologist licensed and practicing in [another state], and upon consultation with a private educational consultant. NT at 875-877, 928, 932, 1096-97; S-66.
36. The July 2009 psychological evaluation report recommends placement in a residential treatment facility to address the Student's ODD, ADHD, Anxiety Disorder, NOS, Parent-Child Relationship Problem, and Cannabis Abuse (all diagnoses found by the evaluator). S-66.
37. On August 31, 2009, the Parents notified the District by a letter that the Student would attend [RTC] for the 2009-10 school year. S-55. The letter asks the District to "support" the placement so that the Student would receive an "appropriate program" that would meet the Student's "complete educational needs." *Id.* The letter does not explicitly ask the District to fund [RTC]. *Id.*
38. The Student attended [RTC] from August of 2009 through February of 2010. There, the Student would wake up at 6:00 a.m., do chores and have breakfast. Then, the Student received academic instruction from 8:00 a.m. through 3:00 p.m. with an hour lunch break. Dinner was served at 5:30 p.m. and was followed by various activities. Bedtime was 10:00 p.m. NT at 760-761, 1559-1560.
39. Therapeutic supports were imbedded throughout the school day. The Student was constantly with the same peer group, and two counselors were always present. This enabled the group to stop all activity to address any student's problem as a group on the spot. NT at 658-660. Each team included a team therapist, as well as the clinical director and an academic person. NT at 1552.
40. All students at [RTC] attended to address various psychological conditions. Not all students had a history of drug abuse, and the [RTC] was not a drug rehabilitation or treatment facility.
41. The Student returned home during a break in January of 2010. During that time, the Student was evaluated by an independent Developmental Neuropsychologist who is also a Licensed Psychologist and a Certified School Psychologist. S-57. The resulting evaluation report is the IEE for which the Parents seek reimbursement. The IEE recommended the Student's continuation in a residential, therapeutic boarding

school. *Id.* The evaluation report also recommends that the Student should be qualified as IDEA-eligible under category Other Health Impairment (OHI) because the evaluator concluded that the Student's ADHD and ODD are significantly impeding [the Student's] adaptive skills and ability to learn and succeed in school. This conclusory statement is not consistent with the results of standardized, normative testing that the evaluator performed, all of which concluded that the Student's intellectual abilities and achievement were all in the average to high average range. S-57.

42. The Parents did not share the report with the District until April of 2010.
43. The Student continued at [RTF] until February of 2010 when the school closed for financial reasons. At that time, the Student transferred to [another school in another state (other school)]. NT at 664, 1461, 1525. Both schools were operated by the same parent company under the same therapeutic model. Although both schools were separate legal entities, credible testimony reveals that [RTC] and [other school] were virtually identical in substance, their locations notwithstanding. See *id.*
44. Although terminology differs between Pennsylvania and [the other state], the Student was not considered to be in need of special education while attending [RTF or other school]. NT 1509.
45. The Student received academic credits from the [other state] while at [other school], passing all classes. S-68, S-69, S-87.
46. The Student and [other school] staff expected the Student to graduate on May 27, 2010. The Student had earned enough credits to do so, and was practicing for the graduation ceremony. Two days before the graduation ceremony, the Parents unilaterally withdrew the Student from the school. The Student did not participate in the graduation ceremony and the Parents convinced the [other school] to hold the Student's diploma.
47. The [other school] diploma identifies the Student's graduation date as May 27, 2010. S-87 at 1-2.
48. The Parents' testimony concerning these issues was not credible. I find that the sole purpose of the Parents' efforts to postpone the Student's graduation was to extend potential entitlement for IDEA services from the District at a point in time when the Student was about to be exited from a residential program by virtue of graduating.<sup>4</sup> See NT 506-509, 767-768, 677-678, 828-829, 835-836, 837-838, 846-848, 945-947, 949-949, 152-1521; S-87; P-12.

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<sup>4</sup> It is particularly telling that the Parents immediately secured the Student's diploma when doing so was necessary for the Student's admission to a post-secondary program. NT at 578-579, 718-719, 840-842, 844-846, 953-955, 956-959; S-87. Even more directly, in a subsequent juvenile proceeding, the Parents explained that they rejected the [other school] diploma so that the District would be obligated to pay for the Student's ongoing education.

49. The Student returned to the Parent's home in July of 2010 and, at first, secured two part-time jobs. Later, the Student enrolled in [Redacted] Community College and earned a course credit there. The Student ultimately left the Parents' home due to repeated confrontations with the Parents and took up residence in a local motel (which the Parents supported and funded).
50. The Student returned to Juvenile Court in [Redacted] County in February of 2011 as follow-up to the prior Juvenile proceedings. S-89. Immediately after those proceedings, the Student moved to [another state] and established a residency there. The Student has not lived within the District since then, although the Student has visited the Parents on some occasions.
51. The District evaluated the Student on May 27, 2011. This evaluation was conducted pursuant to a settlement agreement between the parties that resolved a prior due process complaint filed in December of 2010. The Student came from [the other state] to Pennsylvania for the evaluation. Although the Parents failed to complete some assessments, the evaluation report concludes that the Student is not IDEA-eligible. S-83.

## Legal Principles

### The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the party seeking relief and must bear the burden of persuasion.

### Free Appropriate Public Education (FAPE)

As stated succinctly by former Hearing Officer Myers in *Student v. Chester County Community Charter School*, ODR No. 8960-0708KE (2009):

Students with disabilities are entitled to FAPE under both federal and state law. 34 C.F.R. §§300.1-300.818; 22 Pa. Code §§14.101-14 FAPE does not require IEPs that provide the maximum possible benefit or that maximize a student's potential, but rather FAPE requires IEPs that are reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or *de minimis* educational benefit. 20 U.S.C. §1412; *Board of Education v. Rowley*, 458

U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); *Ridgewood Board of Education v. M.E. ex. rel. M.E.*, 172 F.3d 238 (3d Cir. 1999); *Stroudsburg Area School District v. Jared N.*, 712 A.2d 807 (Pa. Cmwlth. 1998); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988) *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031 (3d Cir. 1993); *Daniel G. v. Delaware Valley School District*, 813 A.2d 36 (Pa. Cmwlth. 2002)

The essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer a meaningful educational benefit to the Student in the least restrictive environment.

### **Compensatory Education**

Hearing Officer Skidmore has provided the best distillation of current compensatory education jurisprudence in Pennsylvania:

It is well settled that compensatory education is an appropriate remedy where a [LEA] knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the [LEA] fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Such an award compensates the child for the period of deprivation of special education services, excluding the time reasonably required for an [LEA] to correct the deficiency. *Id.* In addition to this "hour for hour" approach, some courts have endorsed an approach that awards the "amount of compensatory education reasonably calculated to bring [a student] to the position that [he or she] would have occupied but for the [LEA's] failure to provide a FAPE." *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006)(awarding compensatory education in a case involving a gifted student); *see also Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)(explaining that compensatory education "should aim to place disabled children in the same position that they would have occupied but for the school district's violations of the IDEA.")) Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990)

*M.J. v. West Chester Area Sch. District*, ODR No. 01634-1011AS (Skidmore, 2011)

### **Tuition Reimbursement**

To determine whether parents are entitled to reimbursement from their school district for special education services provided to an eligible child at their own expense, a three part test is applied based upon *Burlington School Committee v. Department of Education of Massachusetts*. *Burlington School Committee v. Department of Education*

*of Massachusetts*, 471 U.S. 359 (1985) and *Florence County School District v. Carter*, 510 U.S. 7 (1993).

The first step is to determine whether the program and placement offered by the District is appropriate for the child. Only if that issue is resolved against the District are the second and third steps considered, *i.e.*, is the program proposed by Parents appropriate for the child and, if so, whether there are equitable considerations that counsel against reimbursement or affect the amount thereof. *See also, Lauren W. v. DeFlaminis*, 480 F.3d 259 (3rd Cir. 2007).

### **The Right to an IEE at Public Expense**

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. § 300.502(b)(1). "If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either— (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense..." 34 C.F.R. § 300.502(b)(2)(i)-(ii).

The term "public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent..." 34 C.F.R. § 300.502(a)(3)(ii). As applied, the "public agency" is the Student's LEA – the District OR Charter in this case.

As a threshold matter, the Parents actually disagree with an evaluation conducted by the District. *See A.G. v. Lower Merion Sch. Dist.*, ODR No. 1143-1011AS; *see also D. Z. v Bethlehem Area Sch. Dist.*, 2 A.3d 712 (Pa. Cmwlth. 2010), *G.J. v. Muscogee County Sch. Dist.*, Case No. 10-12556 (11th Cir. January 31, 2012); *Sheboygan Area Sch. Dist.*, 46 IDELR 204 (WI. 2006); *College Elementary Sch. Dist.*, 43 IDELR 103 (CA. 2005); *Lincoln Unified Sch. Dist.*, 42 IDELR 278 (CA 2004); *Northview Pub. Sch.*, 21 IDELR 694 (MI. 1994).

It should be noted that parents always have the right to obtain an IEE, even when an LEA is not obligated to fund it. *See* 34 C.F.R. § 300.502(b)(3).

### **Discussion**

I disagree with the District's argument that [RTF and other school] should be treated as separate placements for purposes of tuition reimbursement. Although there were some differences, the placements were substantively the same and one was a continuation of the other. Therefore, I will apply the *Burlington-Carter* test (described above) to the [RTF and other school] placement as if it was a single placement.

The District argues that the initial out-of-state placement at [wilderness program] was in response to the Juvenile proceedings, not in reaction to any failure to provide FAPE. I readily agree with the District's assessment, but that is not the correct analysis. Even if the Parents had other motives, the first step of the *Burlington-Carter* test is to determine if the District had offered a FAPE to the Student prior to the unilateral parental placement.

In this case, the Student did not have an IEP prior to the placement at [wilderness program]. The District argues that the Student is not and has never been IDEA-eligible. This conclusion is supported by the November 2007 evaluation, which I find to be appropriate, and by the Student's actual school performance (both academically and behaviorally). Prior to the placement at [wilderness program], the Student had a few behavioral incidents – certainly nothing that would constitute a pattern. Similarly, the Student was making academic progress despite two notable failures. I note that the Student's actual academic performance was lower might be expected based on the Student's normative testing but, overall, the Student was making academic progress without special education supports. At the time of the [wilderness program] placement, the District's Section 504/Chapter 15 Service Agreement was appropriate.

After the initial placement at [wilderness program] ended, the Student moved on to [RTF/other school]. The Student made academic progress in both of these locations. Granted, the Student received a very high level of emotional support. However, the evidences overwhelmingly supports the conclusion that the function of the emotional support was not to enable academic progress. In fact, no evidence suggests that the emotional support was in any way provided to ensure the provision of FAPE to the Student (particularly in light of the fact that the Student was considered a regular education student by [RTF/other school]). Further, excluding two notable outliers, the provision of intense emotional support did not yield a dramatic improvement in the Student's grades. It is clear that the services and supports that [RTF/other school] provided were to address the Student's very serious emotional and behavioral needs which manifested almost entirely outside of the school environment.

I have little doubt that [RTF/other school] was a good fit for the Student. The Parents showed wisdom in securing the help that the Student needed when the Parent-Student relationship became unmanageable and potentially dangerous. Even so, the facts of this case present the rather uncommon situation in which a student is able to attend school and perform academically even while the Student's out-of-school situation is deteriorating. Yet even as I commend the Parents for the efforts, I must find that the first prong of the *Burlington-Carter* test is not met in this case.

Similarly, I find that the Student should have graduated on May 27, 2010. The Student had completed the [other school] program and had earned enough academic credits to graduate. A diploma was actually printed. It would be inequitable to allow the Parents to extend the District's potential liability by simply declining a well-deserved diploma – particularly when extending the District's potential liability was (in part) the Parents' goal. Some courts have found it proper to extend a school district's IDEA eligibility post-

graduation. See, e.g. *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712 (3d Cir. 2010). In such cases, the students are unambiguously IDEA-eligible. In this case, neither the District nor any of the private placements selected by the Parents determined that the Student was IDEA-eligible, or regarded the services that the Student actually received to be special education. I find, therefore, that the District's obligations to the Student ended on May 27, 2010 and deny the demand for compensatory education on that basis.

I note as *dicta* that I would deny compensatory education even if the District's potential liability extended past May 27, 2010. When the Student returned to Pennsylvania, neither the Student nor the Parents sought any educational services from any educational agency that is bound by the IDEA. Instead, the Student secured employment and took some classes from a community college. Nothing in the record persuades me that the Student would have returned to the District for programming during the 2009-10 school year. The Student had completed 12th grade, had earned a diploma, and had started two part-time jobs.

Regarding reimbursement for the IEE, I find that the above-described legal standard is not met. From 2007 onward, the Parents turned directly to private evaluators for whatever evaluations they felt were necessary. At the time that the Parents secured the IEE, no District evaluation was in dispute.

### **Conclusion**

The Parents are not entitled to the tuition reimbursement because the first prong of the *Burlington-Carter* test is not satisfied. The Student is not entitled to compensatory education because the Student graduated on May 27, 2010. The Parents are not entitled to reimbursement for an IEE because no District evaluation was in dispute when the IEE was secured.

An order consistent with the foregoing follows.

## ORDER

And now, January 6, 2013, it is hereby ordered as follows:

1. The Parents' demands for tuition reimbursement are denied.
2. The Parents' demands for compensatory education are denied.
3. The Parents' demand for reimbursement for an IEE is denied.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford  
HEARING OFFICER