

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

Due Process Hearing

AC (#7122/06-07 AS)
Date of Birth: xx/xx/xx
Date of Hearing: December 13, 2006
Open Hearing

Parties to the Hearing

Parent
Mrs.

Representative
pro se

Transcript Received
December 16, 2006

Date of Decision
December 22, 2006

School District
Pittsburgh

Representative
Jocelyn Perry, Esq.

Hearing Officer
David Y. K. Lee

II. BACKGROUND

Student is a xx-year-old student who resides in the Pittsburgh School District (hereafter District). He is currently attending the PA Cyber Charter School (hereafter Cyber School) after withdrawing from the public school. Subsequent to a previous request for a due process hearing, a Settlement Agreement (hereafter Agreement) was signed by the parties awarding Student an amount of compensatory education funds (hereafter funds). The parent was displeased with the way funds were expended and requested another due process hearing.

III. FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, resides in the District. (N.T. 16.)
2. An initial Individualized Education Program (hereafter IEP), dated on September 25, 2006, was developed with behavioral goals and opportunities for academic advancement. (N.T. 21, 46-47. S.D. #6.)
3. In lieu of proceeding to a hearing, an Agreement was signed by the parties on October 4, 2006. (N.T. 19-20. S.D. #3 @ 5.)
4. The School Board approved the Agreement on October 24, 2006. (S.D. #3 @ 5.)
5. The main point of the Agreement was the provision of one thousand seven hundred and ninety-two (1792) hours of compensatory education for Student which was translated into a monetary amount of \$41,789.44. (S.D. #3 @ 2.)
6. On November 1, 2006, the District was provided with a list of items that Student would like to purchase under the Agreement. (N.T. 29-31. S.D. #5.)

7. The District did not agree to all of the items requested. (N.T. 32-34.)

8. The parent requested, by letter to the District, a due process hearing on November 6, 2006, opining that the District did not implement the Agreement properly. (S.D. #1 @ 5.)

9. The due process hearing request was received in the Office for Dispute Resolution on November 9, 2006. (ODR file.)

10. A due process hearing was held on December 13, 2006.¹

IV. ISSUE

1. What constitutes an appropriate expenditure of funds? (N.T. 6-7.)

V. DISCUSSION AND CONCLUSIONS OF LAW

Defining the issue

A parent or a public agency may file a due process complaint on any matters described in 300.503(a)(10 and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

34 CFR §300.507(a)(1)

¹ The hearing was initially scheduled for December 14, 2006. Subsequently, Mrs. was scheduled to appear in another matter. The parties agreed to move up one day instead of postponing.

Since the parent appeared *pro se*, adjustments were made in the procedural formality to facilitate the clarification of issues and testimony. (N.T. 34.) A pre-hearing conference was held prior to opening the record. It was ascertained that the parent was not satisfied with the manner in which items were purchased from the funds for Student, such as, items were charged on District employee's charge card; who accompanied Student to shop; the availability of the original receipt; denial of request not in writing. The parent was informed that these concerns were not hearable under the IDEA. (N.T. 4-5.)²

The parties also had an ongoing disagreement as to what is appropriate to purchase with the funds. Since compensatory education is an in-kind remedy for the provision of FAPE, the issue of the appropriateness of certain expenditure requests is hearable under the umbrella of FAPE.

Compensatory education

² An Agreement is 'enforceable in any State court of competent jurisdiction or in a district court of the United States...'. 34 CFR §300.510(d)(2).

Compensatory education is an in-kind remedy for past denial of due process rights or educational programming that Student should have received.³ The amount of compensatory award is memorialized in the Agreement. (F.F. #2.) “Examples of permissible use of the compensatory education funds may include the following: any individual tutoring or behavior interventions, counseling, assistive technology, educational materials (including educational videos and/or computer programs), software or other supports related to Student’s education, camps, classes or activities outside of school that support Student’s educational program, and any other use that is approved by the School District as being related to Student’s education.” (N.T. 19-20. S.D. #3 @ 3.) Although there is an absence of controlling authority for determining how, when and where compensatory education must be provided, applicable case law and Pennsylvania Appeals Panels Opinions provide some rationale and guidance on the ‘reasonableness’ of awards granted.⁴

³ See M.C. ex rel. J.C. v. Central Regional School District, 81 F.3d 389, 108 (3d Cir. 1996). Lester H. V. Gilhool, 916 F. 2d 865 (3d Cir. 1990), cert. denied, 499 U.S. 923, 111 S. Ct. 317 (1991).

⁴ See Pennsylvania Appeals Panels Opinions #1102 (2001) and #1499A (2005).

Even though general categories of compensatory items and activities are so delineated in the Agreement, the parties are in dispute regarding specific items to be purchased. (N.T. 6.) The items brought before this Hearing Officer are listed in the exhibits with additional requests presented by the parent on the record. (N.T. 8-13. S.D. #4 & #5.) Exhibit #4 contains a listing of eleven (11) items dated September 25, 2006. The District either purchased or approved all of the items with the exception of number eleven. (N.T. 23-28, 36, 45.) Number eleven refers to allowing, and paying \$15,000.00 for, Student to attend the prom at, specifically, [redacted] High School (hereafter High School) presumably at the end of the current school year. The District denied the request opining that it is not related to Student's IEP. (N.T. 28.) This Hearing Officer notes that Student's initial IEP had an implementation date of September 26, 2006.⁵ (S.D. #6 @ 1.) Student, however, was withdrawn from the District on September 8, 2006, and enrolled in Cyber School on October 11, 2006. (N.T. 15, 16.) Nevertheless, attending the prom at High School was not a goal in his IEP.⁶ Even if it was, \$15,000.00 for a High School Junior (N.T. 46.) to attend a school prom does seem to be beyond the realm of 'reasonableness' in the expenditure of funds.

⁵ In dicta, the District is to be cognizant that the NOREP was dated before the IEP implementation date. (S.D. #6 @ 1.)

⁶ The appropriateness of Student's IEP is not an issue before this Hearing Officer.

Subsequent to the approval of the Agreement by the School Board, a number of items were requested on November 1, 2006. (N.T. 29. S.D. #5.) The District essentially denied this particular list of items. (N.T. 30.) An analysis of the items requested shows that they can generally be grouped into two categories - sporting goods and electronic equipment. There is no evidence presented that Student is in need of specialized or adaptive equipment in order to engage in physical activities. Student has a membership at the YMCA. (N.T. 45.) He, therefore, has the opportunity to participate in organized physical and sporting activities. Furthermore, there is also the added benefit of socialization at the YMCA as opposed to, e.g., shooting baskets at home. (N.T. 46.) The funds in question are not meant to equip Student with all kinds of sporting equipment or to furnish his house with multiple electronic items. It borders on absurdity to even think of using the funds for 'a large outside swimming pool', 'five (5) television sets' (one 50 inch and one 32 inch flat screen), 'two (2) play stations', 'two (2) projectors'. (S.D. #5.)

The parent made additional requests on the record, such as personal clothing, transportation, insurance, travel to other cities. (N.T. 8-9, 11.) It is indeed a stretch to consider using funds to purchase items of everyday clothing or any personal items such as school ring, insurance, and household furniture such as a Craftmatic bed. Transportation, however, for Student to attend the Explorers Program does seem to be an appropriate expenditure of funds. (N.T. 11.) Student's IEP does reference his advanced academic skills. (S.D. #6 @ 7.) Transportation may be in the form of bus passes or reimbursement for cab fares. The District is not required to create a special school bus run. This is not to be construed as an endorsement for Student to travel around the country with all expenses paid such as air fare to Baltimore together with lodging and meals. (N.T. 10.) This Hearing Officer is confident that there are a number of opportunities in the greater Pittsburgh area for Student to be enriched.⁷ There are summer institutes and educational camps in which Student may be interested. Fees for such participation would 'reasonably' fall under the terms of the Agreement.

⁷ The parent mentioned specifically Student's musical interest and computer literacy. (N.T. 12-14.)

It is not the purpose of a due process hearing to answer or resolve on-going questions regarding purchased items and/or how they are being purchased. Public resources are not unlimited. It is not in the public interest nor is it in the interest of Student's educational progress to have ongoing hearings. The Agreement provides a framework for the provision of compensatory educational activities. It is not possible to develop an exhaustive list of items for purchase at one sitting. (N.T. 42.) This Hearing Officer offers the following observations with the intent of easing matters for the remainder of the time before Student graduates. The focus needs to be in providing for Student's educational needs from the funds already agreed upon. The goal is not to go on spending sprees in order to exhaust the funds before Student graduates. (N.T. 46.) In the interest of simplicity, it is suggested that the parent present to the District a specific list of items deemed appropriate with the name of the stores or vendors and the cost for each item. Upon approval, the District shall purchase, under their regular procedural guidelines for expenditures, those items that are approved, and shall deliver them to Student. Accounting will be in the form of a list of items and associated costs. Should, for whatever reason, an item need to be returned or exchanged, it shall be returned to, and exchanged by, the District. There will not be a question of receipts, or any actual exchange of money.⁸

VI. ORDER

The LEA is ordered to take the following actions:

⁸ These suggestions are not in contradiction to the language contained in the Agreement. (S.D. #3 @ 2.)

1. The District is to purchase items and/or pay for services (including transportation as discussed) with funds under the categories memorialized in the Agreement.

2. The District is not to purchase with funds, consistent with the Discussion section of this Decision, categorically all items requested such as, but not exclusive of, personal and household items.

December 22, 2006

Date

David Y. K. Lee

David Y. K. Lee
Hearing Office