

## Are Compensatory Damages Available Under The IDEA?

*By Jennifer Donaldson*

The IDEA explicitly permits a court reviewing an administrative decision to grant such relief as it determines appropriate. For years this language raised the question as to whether “appropriate” relief included compensatory damages (money for pain, mental suffering, medical expenses and the like). Congress never envisioned the IDEA to serve as a means to compensatory damages. Rather it was created solely to provide remedies intended to make a student whole *educationally*, via relief such as an injunctive order implementing a particular educational program, compensatory education and/or tuition reimbursement. In fact, numerous courts across the Country have held that compensatory damages are not available under the IDEA. However, none of those courts were within the Third Circuit’s jurisdiction, leaving the question unanswered for Pennsylvania school districts – until recently.

On July 25, 2007, in the case of *Brandon V. v. Chichester School District*, the federal district court in the Eastern District of Pennsylvania held that the IDEA did not permit compensatory damages. The court refused to recognize compensatory damages as an available form of relief under the IDEA in light of overwhelming weight of authority of federal courts in other jurisdictions. Previously, in May of 2007, in *A.W. v. Jersey City Public Schools*, the U.S. Court of Appeals for the Third Circuit eliminated the possibility of compensatory damages brought under a Section 1983 claim premised upon an IDEA violation. Now, the *Brandon V.* decision has answered the lingering question of whether compensatory damages are available directly under the IDEA, and the answer is no. Since *Brandon V.*, numerous courts in Pennsylvania have agreed that compensatory damages are not available under the IDEA. Thus, this issue is now clearly resolved.

While such decisions have narrowed school districts’ potential liability for IDEA violations, they appear to still permit compensatory damages as a form of available relief for claims brought under Section 504 of the Rehabilitation Act. It is likely that this issue will be the subject of continued debate.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to contact our firm at 215-345-9111.