

## A New Approach To Calculating Compensatory Education Awards

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On August 15, 2006, in *B.C., by and through his parent and natural guardian, J.C. v. Penn Manor School District*, the Commonwealth Court of Pennsylvania adopted a new approach, commonly referred to as the qualitative approach, for calculating compensatory education awards in special education cases and rejected the mechanical time-for-time approach which had been the long standing practice within Pennsylvania and the federal Third Circuit.

Prior to *B.C. v. Penn Manor*, the mechanical approach, by which compensatory education is calculated as being equal to the period of time of the deprivation of a free appropriate public education, was employed in Pennsylvania and the Third Circuit. The mechanical approach first was articulated in the Third Circuit in *M.C. v. Central Regional School District* as follows:

[a] school district that knows or should know that a child has an inappropriate Individualized Education Program (IEP) or is not receiving more than a de minimis educational benefit must, of course, correct the situation. We hold that, if it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, excluding only the time reasonably required for the school district to rectify the problem.

The *M.C.* court considered this formula to harmonize the interests of the child, who is entitled to a free appropriate education under the IDEA, with those of the school district, for which special education and compensatory education are quite costly.

However, the Ninth and District of Columbia Circuit Courts have found the mechanical approach to be “cookie-cutter” and in contravention of the IDEA’s emphasis on the individualized needs of each student. For example, in *Parents of Student W. v. Puyallup School District*, the Ninth Circuit described compensatory education as an equitable remedy, not a contractual remedy for time missed; thus, it rejected the argument that compensatory education must be awarded in an amount of time equal to the time that a free appropriate public education was not provided. Similarly, in *Reid v. Dist. of Columbia*, the District of Columbia Circuit noted that an IEP is to focus on a disabled student’s individual needs, and reasoned that, likewise, a compensatory education award should have a qualitative focus on assessments of the student’s individual needs, rather than be a purely mechanical calculation of time. Now, in *B.C. v. Penn Manor*, the Commonwealth Court of Pennsylvania has joined the Ninth and District Columbia Circuit Courts in rejecting *M.C.*’s mechanical approach to calculating compensatory education and embraced the qualitative approach.

The qualitative approach to calculating compensatory education is a less rigid calculation based upon consideration of the individual needs of a student, rather than the time period of a deprivation of a free appropriate public education. According to *B.C. v. Penn Manor*, applying the qualitative approach requires that when there is a finding that a student is denied a free appropriate public education and compensatory education is an appropriate remedy, the student is entitled to an amount of compensatory education reasonably calculated to bring the student to

the position that he or she would have occupied but for the failure of the district to provide a free appropriate public education. This requires a fact-specific inquiry, and, thus, will produce different results in different cases depending on a student's needs.

For example, in assessing the appropriate amount of compensatory education to award, a student's specific needs, the conduct of the parents and the district, and whether the student suffered a compensable loss are factors that may be considered. Additionally, the reasonable time required for the school district to rectify the problem still is a factor to be considered. By employing the qualitative approach, it is possible that some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies, while others may need extended programs, perhaps even exceeding the calculation under the mechanical time-for-time approach.

The determination of compensatory education under this new approach is delegated to the hearing officer's discretion, requiring the decision to be specific as to what type and amount of services are to be awarded, if any, to best correct the student's deficits from the denial of a free appropriate public education. As such, there must be a sufficient record for a hearing officer to assess in order to determine the appropriate award of compensatory education. Therefore, it is important that a district introduce such evidence at the due process hearing.

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