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Building Relationships Between Families and Schools

Compensatory Education

"Compensatory education" is generally defined as educational services above and beyond that normally due a student under his state's education law. While compensatory education is not a remedy expressly identified in the IDEA, courts, have awarded it in appropriate circumstances by exercising their authority under 20 U.S.C. § 1415(2)(B)(ii) to 'grant such relief as the court determines appropriate." Generally speaking, compensatory education may be an appropriate remedy when a student has been denied FAPE in the past.

Compensatory education as a remedy under the IDEA was heralded by the decision of the Supreme Court in Burlington School Committee v. Massachusetts Department of Education, 1984-85 EHLR 556-389 (1985). In that case, the Supreme Court recognized the authority of the courts to grant retroactive reimbursement of private school tuition, another remedy that at that time was not expressly identified in the IDEA. The question in Burlington was whether parents should be reimbursed for a private school in which they had placed their child because they believed he was not receiving an appropriate education in the public schools. Although most courts had limited relief under the IDEA to injunctive relief, the Court found that reimbursement was also a proper remedy, it "merely requiring [the school district] to belatedly pay expenses that [it] should have paid all along." 1984-85 EHLR at 556:394.

After the Burlington decision, lower courts began to view compensatory education in a new perspective as the flip side of reimbursement. When a parent could afford to pay for an appropriate private education during the course of administrative and judicial proceedings, then reimbursement was a proper remedy. But when a parent could not afford to pay for a private education during that time, the student would instead be entitled to compensatory education. As the Eighth Circuit Court of Appeals expressed in Miener v. State of Missouri, 1986-87 EHLR 558-123 (8th Circuit 1986), the right of the child with a disability to receive FAPE should not turn on the fortuity of his parents' having adequate financial means.

> Like the retroactive reimbursement in Burlington, imposing liability for compensatory educational services on the defendants "merely requires [them] to belatedly pay expenses that [they] should have paid all along." . . . Here, as in Burlington, recovery is necessary to secure to secure the child's right to a free appropriate public education . . . We are confident

> that Congress did not intend the child's entitlement to a free education turn upon her parent's ability to "front" the costs.
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> 1986-87 EHLR at 558:126.

Since the Eight Circuit's decision in Miener, published judicial decisions recognizing compensatory education as an available remedy under the IDEA include: Pihl v. Massachusetts Department of Education, 20 IDELR 668 (1st Cir. 1993); Burr v. Ambach, 1988-89 EHLR 441:3412 (2cd Cir. 1988); Lester H. by Octavia P. v. Gilhool, 16 EHLR 1354 (3d Cir. 1990) Hall v. Knott County Board of Education, 18 IDELR 192 (6th Cir. 1991); Parents of Students W v. Puyallop School District No. 3, 21 IDELR 723 (9th Cir. 1994); and Jefferson County Board of Education v. Breen, 1987-88 EHLR 559:144 (N.D. Ala. 1987); Harris v. District of Columbia, 19 IDELR 105 (D.D.C. 1992); and McManus v. Wilmette Sch. Dist. 39 Bd. Of Educ., 19 IDELR 485 (N.D. III. 1992).

OSEP also recognized compensatory education as a permissible remedy under the IDEA in Letter to Margaret Kohn, 17 EHLR 522 (OSEP 1990).