

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL C., a Minor, By and Through	:	CIVIL ACTION
His Parents, GEORGE C. and NANCY	:	
C. AMBLER, PA 19002; GEORGE C., and	:	
NANCY C., Adults, Individually and on	:	
Their Own Behalf, All of Ambler, PA 19002	:	
Plaintiffs,	:	NO. 05-3377
	:	
vs.	:	
	:	
THE WISSAHICKON SCHOOL	:	
DISTRICT,	:	
Defendant.	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 21st of October, 2005, upon consideration of Plaintiffs' Motion for a Preliminary Remand to the Pennsylvania Administrative Process (Document No. 2, filed June 30, 2005), and Defendant's Answer to Plaintiffs' Motion for Preliminary Remand to the Pennsylvania Administrative Process (Document No. 7, filed September 19, 2005), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Plaintiffs' Motion for a Preliminary Remand to the Pennsylvania Administrative Process is **GRANTED**.

IT IS FURTHER ORDERED that the state Administrative Process shall consider all relevant evidence on the issue of compensatory education without limitation to a one-year period, subject only to the rules of evidence applicable to Pennsylvania special education due process proceedings, and make a determination of the compensatory education due to the plaintiff child under such evidence.

The Clerk of the Court shall **MARK** this case **CLOSED** for **STATISTICAL PURPOSES**.

MEMORANDUM

This action is brought by Michael C., an eighteen year-old student with learning disabilities, and by his parents under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et. seq., and Section 504 of the Rehabilitation Act, against the Wissahickon School District (the “District”). Plaintiffs, who are seeking compensatory education, sought review through the state administrative process, which limited the award of compensatory education to one year. Plaintiffs have appealed that decision to this court, and, by Motion for a Preliminary Remand to the Pennsylvania Administrative Process, are seeking to have the case remanded to the administrative process for determination of their entitlement to compensatory education without the one-year limitation on the award. For the reasons below, plaintiffs’ motion is granted.

I. BACKGROUND

Michael C. was first evaluated by the District for special education services in January 1992. Complaint ¶ 16. He was reevaluated on a yearly basis, and began receiving special education services in 1994, when he was in second grade. Id. ¶ 20. Despite receiving supplementary education services, Michael’s parents felt that he was not demonstrating progress in his learning. Id. ¶ 33. In 2003, Michael’s parents sought an independent educational evaluation, which demonstrated that Michael had a “unique” learning profile that had not been addressed by the services provided by the School District. Id. ¶ 18. A reading assessment test conducted in 2004, Michael’s twelfth-grade year, showed that his reading rate had declined, and

his English teacher testified that he was only reading on a ninth-grade level. Id. ¶ 48.

On November 15, 2004, Michael’s parents requested a due process hearing under the IDEA. Id. ¶ 50. After several hearings in early 2005, the Pennsylvania Special Education Due Process Hearing Officer (“Hearing Officer”) concluded that Michael was entitled to compensatory education to ameliorate the effects of his inadequate education, but only for the one-year period prior to his parents’ request for the due process hearing and not for the 1995-2004 period his parents requested.¹ Id. ¶ 51, 53. The Hearing Officer ruled that she was bound by Montour School Dist. v. S.T., 805 A.2d 29 (Pa. Commw. Ct. 2002), which created a one-year “statute of limitations” on IDEA actions seeking compensatory education.² Id. ¶ 52-53.

Michael’s parents appealed the Hearing Officer’s decision to Pennsylvania Special Education Appeals Panel, which upheld the one-year time period. Id. ¶ 57. This action was filed shortly thereafter.

II. DISCUSSION

The issue before the Court is whether to uphold the Hearing Officer’s application of a one-year equitable time limit on compensatory education for Michael, or to remand the case to the administrative process for a determination without an equitable time limit. The Hearing

¹ In order to receive funding under the IDEA, a state must provide disabled children with a “free appropriate public education.” 20 U.S.C. § 1412(a)(1). Through individualized education programs (IEPs) this education is tailored to meet the child’s specific needs. Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999). If a disabled child does not receive an appropriate IEP, he is entitled to compensatory education. M.C. v. Central Regional School Dist., 81 F.3d 389 (3d Cir. 1996).

² While the Montour court used the term “statute of limitations,” Montour School Dist. v. S.T., 805 A.2d 29, 40 (Pa. Commw. Ct. 2002), this Court believes the issue is better characterized as an equitable limit on compensatory education. See Amanda A. v. Coatesville Area School Dist., 2005 WL 426090, at *1 n.1 (E.D. Pa. Feb. 23, 2005).

Officer applied the one-year limit based on the decision of the Pennsylvania Commonwealth Court in Montour School Dist. v. S.T., 805 A.2d 29 (Pa. Commw. Ct. 2002). In determining whether there should be a limit on awards of compensatory education the Montour court looked to the Third Circuit opinion of Bernardsville Bd. of Educ. v. J.H., 42 F.3d 149 (3d Cir. 1994). The plaintiffs in Bernardsville were the parents of a disabled child who had been placed in a private school after the public school failed to meet his needs. Id. at 152. More than two years after the placement the parents sought reimbursement for the private school tuition, and the school district argued that the delay made them ineligible for reimbursement. Id. at 156. The Court of Appeals concluded that the parents could seek tuition reimbursement if their child's IEP was insufficient, but that the amount of reimbursement would depend on whether the parents gave the school district an opportunity to modify the IEP. Id. at 157.

[T]he right of review contains a corresponding parental duty to unequivocally place in issue the appropriateness of an IEP. This is accomplished through the initiation of review proceedings within a reasonable time of the unilateral placement for which reimbursement is sought. We think more than two years, indeed, more than one year, without mitigating excuse, is an unreasonable delay.

Id. at 158.

The Commonwealth Court in Montour applied the Bernardsville limit on tuition reimbursement to claims for compensatory education. “[W]e hold that the limitation period set forth in Bernardsville is applicable—generally, initiation of a request for a due process hearing must occur within one year, or two years at the outside (if the mitigating circumstances show that

the equities in the case warrant such a delay), of the date upon which a parent accept accepts a proposed IEP.” Montour, 805 A.2d at 40. Therefore the plaintiffs in Montour, who were seeking three years of compensatory education, could only seek one to two years of compensatory education. Id.³

There is a significant difference between the issue in Bernardsville—the right of a parent to receive tuition reimbursement—and the right asserted in this case—the right of Michael C. to obtain compensatory education. The right to compensatory education belongs to the child, not to his parents. See Collinsgru v. Palmyra Bd. of Educ., 161 F.3d 225, 227 (3d Cir. 1998) (“Congress’ decision to endow parents with these procedural rights [under the IDEA] should not be read, under the language of th IDEA, to imply that parents also possess the same underlying substantive rights that their children possess.”). As the Third Circuit has declared, “a child’s entitlement to special education should not depend on the vigilance of the parents.” M.C. v. Central Regional School Dist., 81 F.3d 389, 397 (3d Cir. 1996). It is this reasoning which has led the Court of Appeals to reject arguments of an equitable limitation on compensatory education. In determining the standard for granting compensatory education, the Court of Appeals has held that

[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation.

³ The Montour opinion has been followed by at least one other Pennsylvania state appellate court. Carlynton School District v. D.S., 815 A.2d 666, 669 (Pa. Commw. Ct. 2003).

Id. (emphasis added). The Court noted it had previously upheld an award of compensatory education of two-and-one-half years. Id. at 396, citing Lester H. v. Gilhool, 916 F.2d 865, 873 (3d Cir. 1990).

The Court of Appeals extended its M.C. holding in Ridgewood Board of Educ. v. N.E., 172 F.3d 238, 250 (3d Cir. 1999), where it ruled that “a disabled student’s right to compensatory education accrues when the school knows or should know that the student is receiving an inappropriate education.” The parents in Ridgewood had first noticed their child’s learning difficulties in 1988 and asked the school district to evaluate him, but alleged that the district failed to appropriately respond until 1996, when the parents sought a due process hearing. Id. at 243-45. The Court rejected the school district’s argument that all compensatory education claims more than two years old were barred by a statute of limitations, noting that any statute of limitations on IDEA actions began running once the state administrative review process was complete. Id. at 250 (citing Jeremy H. v. Mount Lebanon School Dist., 95 F.3d 272, 280 (3d Cir. 1996)). On remand the Court ordered the District Court to determine whether the child received an appropriate education for each school year between 1988 and 1996. Id. at 251.

Montour distinguished Ridgewood as inapplicable because the limitation issue in Ridgewood was the time within which a parent may file a civil suit under the IDEA, and the limitation at issue in Montour was the time within which a parent must seek a due process hearing. Montour, 805 A.2d at 38. This Court does not find this narrow distinction persuasive in light of the Third Circuit’s sweeping language about a child’s right to compensatory education. A federal court is not bound to follow a state court’s interpretation of federal law. “It is a recognized principle that a federal court is not bound by a state court’s interpretation of federal

laws.” United States v. Bedford, 519 F.2d 650, 653 n.3 (3d Cir. 1975); see also RAR Inc. v. Turner Diesel, Ltd., 107 F.3d 1272, 1276 (7th Cir. 1997) (“Although state court precedent is binding upon us regarding issues of state law, it is only persuasive authority on matters of federal law.”); Grantham v. Avondale Industries, Inc., 964 F.2d 471, 473 (5th Cir. 1992) (“It is beyond cavil that we are not bound by a state court's interpretation of federal law regardless of whether our jurisdiction is based on diversity of citizenship or a federal question.”).

The Court concludes that there is no equitable limitation on compensatory education. See Amanda A. v. Coatesville Area School Dist., 2005 WL 46090, at *6 (E.D. Pa. Feb. 23, 2005) (“[T]here is no limitations period, whether equitable or legal, on a disabled child’s claim for compensatory education pursuant to the IDEA.”); Jonathan T. v. Lackawanna Trail School Dist., 2004 WL 384906, at *2 (M.D. Pa. Feb. 26, 2004) (applying Ridgewood over Bernardsville and refusing to apply time limit on requests for compensatory education); Kristi H. v. Tri-Valley School Dist., 107 F. Supp.2d 628, 633-34 (M.D. Pa. 2000) (same). To hold otherwise would be to deny Michael C. the free and appropriate public education to which he is entitled.

III. CONCLUSION

For all of the foregoing reasons, Plaintiffs’ Motion for Preliminary Remand to the Pennsylvania Administrative Process is granted.

BY THE COURT:

/s/ Jan E. DuBois
JAN E. DUBOIS, J.