

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

ROBERT R., et al.,	:	CIVIL ACTION
	:	NO. 05-1282
Plaintiffs,	:	
	:	
v.	:	
	:	
THE MARPLE NEWTOWN SCHOOL	:	
DISTRICT,	:	
	:	
Defendant.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

NOVEMBER 8, 2005

Plaintiffs, Robert R. (a 19-year-old adult male) and his parents Vincent R. and Arlene R., brought this action against the Marple Newtown School District (the "District") in March 2005, alleging violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and Section 1983 of the Civil Rights Act of 1964, 42 U.S.C. § 1983. Plaintiffs allege that the District failed to provide Robert R. a Free Appropriate Public Education ("FAPE"), as is required under the IDEA, and they seek compensatory education for Robert R.<sup>1</sup>

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<sup>1</sup> In order to receive funding under the IDEA, a state must provide disabled children with a "free appropriate public education." 20 U.S.C.A. § 1412(a)(1). An award of compensatory education allows a disabled student to continue her education beyond age twenty-one in order to make up for the earlier deprivation of a free appropriate public education. See M.C. v. Central Reg'l Sch. Dist., 81 F.3d 389, 395 (3d Cir. 1996).

Before the Court is plaintiffs' motion to remand to the Pennsylvania Special Education Appeals Review Panel (the "Appeals Panel").

Plaintiffs contend they are entitled to a remand because the state administrative process only considered evidence concerning Robert R.'s entitlement to compensatory education for one year prior to June 11, 2003, the date on which Robert R.'s parents requested he received a due process hearing pursuant to the IDEA.<sup>2</sup> Plaintiffs argue that the application of this limitations period is contrary to federal law.

The existence of such a limitations period under the IDEA has been a subject of much litigation, and, effective July 2005, Congress amended the IDEA to address this issue by adding a new two-year limitation for parents to request a hearing under the IDEA for compensatory education. 20 U.S.C.A. § 1415(f) (2005). The only cases in which this issue will arise, therefore, are those brought before July 2005. Within the last calendar year, six judges in the Eastern District of Pennsylvania, presiding over factually similar suits to that of Robert R. and his parents, all brought before July 2005, have

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<sup>2</sup> Under the IDEA, "[w]henver a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency." 20 U.S.C. § 1415(f).

granted remands. Informed by the clear trend indicated by these cases, and by the fact that this issue has now been resolved by Congress, the Court will grant the motion to remand for the reasons that follow.

## I. BACKGROUND

Robert R. first enrolled in the District for the 1991-92 school year as a kindergartner. In September 1992, Robert R. was identified as a child in need of special education services.<sup>3</sup> Beginning on June 16, 1998 and continuing through March 20, 2003 the District developed several Independent Education Programs ("IEPs") in an attempt to evaluate Robert R.'s developmental needs and address them to facilitate his educational progress. Plaintiffs contend these IEPs failed to adequately address Robert R.'s special needs.

On June 11, 2003, approximately five years after the District developed and implemented the allegedly inadequate IEPs for Robert R., plaintiffs requested a special education due process hearing, pursuant to the IDEA and the Rehabilitation Act, seeking compensatory education for Robert R. from 1998 through 2003. Specifically, plaintiffs sought additional special education to compensate Robert R. for (1) the District's failure

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<sup>3</sup> Plaintiffs report that Robert R. has been diagnosed with "Specific Learning Disabilities, a pronounced speech impairment, Attention Deficit Hyperactivity Disorder, and emotional needs." Compl. ¶ 1.

to provide an appropriate IEP for Robert R. from 1998-2003 and (2) the District's failure to address alleged harassment (by classmates) against Robert R. Hearing sessions were held on August 19, 2003 and August 29, 2003. The Hearing Officer rendered a decision on January 12, 2004, concluding that the District failed to provide Robert R. with an appropriate IEP from June 2002 to June 2003, and awarded compensatory education.

The Hearing Officer refused, however, to consider evidence concerning Robert R.'s entitlement to compensatory education for alleged acts or omissions of the District that occurred prior to June 2002. The Hearing Officer reasoned that Montour School District v. S.T., 805 A.2d 29 (Pa. Commw. 2002), established a one-year statute of limitations, barring plaintiffs' claims that arose from alleged acts or omissions occurring prior to June 2002.

Both parties appealed the Hearing Officer's decision to the Special Education Appeals Panel.<sup>4</sup> On March 5, 2004, the

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<sup>4</sup> Under the IDEA,

(1) If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. . . .

(2) The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

20 U.S.C. § 1415(g).

Appeals Panel affirmed the Hearing Officer's application of Montour, but reversed the Hearing Officer's award of compensatory education. Plaintiffs have now filed suit in this Court, effectively appealing the Panel's decision.<sup>5</sup> Plaintiffs contend, inter alia, that the Appeals Panel was wrong to apply Montour. In essence, plaintiffs have asked the Court to direct the Hearing Officer to consider evidence relating to Robert R.'s entitlement to compensatory education from 1998 to June 2002.

## II. DISCUSSION

Plaintiff's motion implicates the issue whether there existed an equitable limitations period for claims seeking compensatory education before July 2005.<sup>6</sup> This issue has caused

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<sup>5</sup> The IDEA permits such an "appeal":

Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

20 U.S.C. § 1415(i)(2).

<sup>6</sup> The phrase "limitations period" used herein refers to a limit on the time frame within which a parent must seek a due process hearing (the administrative stage), as opposed to the time frame within which a plaintiff must file a civil action to effectuate an appeal of the state agency's decision (the judicial stage).

some confusion. The confusion stems from courts' differing interpretations regarding the collective import of the Third Circuits' decisions in Bernardsville Board of Education v. J.H., 42 F.3d 149 (3d Cir. 1994) and Ridgewood Board of Education v. N.E., 172 F.3d 238, 250 (3d Cir. 1999). Bernardsville created a limitations period on claims seeking tuition reimbursement:<sup>7</sup>

[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.

42 F.3d at 158. In contrast, Ridgewood declined to apply a similar limitations period to claims for compensatory education:

[F]ailure to object to M.E.'s placement does not deprive him of the right to an appropriate education. . . . [A] child's entitlement to special education should not depend upon the vigilance of the parents. . . . On remand, the District Court should determine whether M.E. received an appropriate education in each school year [i.e., from 1988 to 1997, or the nine years prior to plaintiff's request for a

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<sup>7</sup> The two main remedies under the IDEA are tuition reimbursement and compensatory education. See, e.g., Perry A. Zirkel, The Statute of Limitations with Disabilities Education Act: Is Montour Myopic?, 12 Widener L.J. 1 (2003). "[W]hen [a] public school fails to provide an appropriate IEP, tuition reimbursement may be [awarded] to students placed in private schools that specialize in educating students with learning disabilities." Warren G. by & Through Tom G. v. Cumberland County Sch. Dist., 190 F.3d 80, 84 (3d Cir. 1999).

due process hearing] and, if it concludes he did not, determine when Ridgewood knew or should have known of that fact.

172 F.3d at 250 (citation and internal quotation marks omitted).

Thus, in regards to a limitations period for requesting a due process hearing, the decisions in Bernardsville and Ridgewood indicated that claims for tuition reimbursement and compensatory education should be treated differently.

After Ridgewood, the Commonwealth Court of Pennsylvania and federal district courts in Pennsylvania disagreed on the question whether an equitable limitations period applied to claims for compensatory education.<sup>8</sup> Compare Montour, 805 A.2d at 39-40 ("Contrary to the Panel's decision, which deemed Ridgewood applicable, we 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

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<sup>8</sup> In 1998, prior to Ridgewood, at least one federal court in Pennsylvania applied an equitable limitations period to a compensatory education claim. In David P. by Dianne R. v. Lower Merion School District, Judge Bartle reasoned that the right to compensatory education, like the right to tuition reimbursement, "contains a corresponding parental duty to unequivocally place in issue the appropriateness of an IEP." Civ.A.No. 98-1856, 1998 U.S. Dist. LEXIS 15160, at \*13 (E.D. Pa. Sept. 18, 1998) (quoting Bernardsville, 42 F.3d at 158). Therefore, Judge Bartle concluded that "the principles and one year time limitation discussed in Bernardsville concerning tuition reimbursement should . . . apply to compensatory education as well." Id.

which a parent accepts a proposed IEP." ), with Amanda A. v. Coatesville Area Sch. Dist., Civ.A.No. 04-4184, 2005 U.S. Dist. LEXIS 2637, at \*19 (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. The Court further holds that Montour does not apply to limit Amanda's entitlement to compensatory education. Indeed, imposing an equitable limitation on Amanda's claim for compensatory education for the years in which she did not receive a FAPE, but during which her parents chose to work with the School District rather than request a due process hearing, would effectively punish her for her parents' lack of vigilance, a result expressly forbidden by both M.C.[ v. Central Regional Sch. Dist., 81 F.3d 389 (3d Cir. 1996)] and Ridgewood.").

Since Amanda A. was decided, five additional courts in the Eastern District of Pennsylvania have adopted Judge Padova's reasoning, and granted remands in similar cases. See Anthony C., et al. v. Neshaminy Sch. Dist., Civ.A.No. 05-3383 (E.D. Pa. Oct. 27, 2005); Michael C., et al. v. Wissahickon Sch. Dist., Civ.A.No. 05-3377, 2005 WL 2739418 (E.D. Pa. Oct. 21, 2005); S., et al. v. Wissahickon Sch. Dist., Civ.A.No. 05-1284 (E.D. Pa. Oct. 5, 2005); Curtis B., et al. v. Owen J. Roberts Sch. Dist., Civ.A.No. 05-3380 (E.D. Pa. Sept. 20, 2005); M., et al. v. North Penn Sch. Dist., Civ.A.No. 05-3382 (E.D. Pa. Sept. 16, 2005); see



also Jonathan T. v. Lackawanna Trail Sch. Dist., Civ.A.No. 03-522, 2004 U.S. Dist. LEXIS 2915, at \*8 (M.D. Pa. Feb. 24, 2004) (disagreeing "with the school district's position that an equitable statute of limitations applies to [the plaintiff's] claim for compensatory education" and instead following Ridgewood); Kristi H. v. Tri-Valley Sch. Dist., 107 F. Supp. 2d 628, 634 (M.D. Pa. 2000) ("Defendant maintains that because both tuition reimbursement and compensatory education are equitable remedies, the same limitations period which applies to tuition reimbursement should also apply to compensatory education. While the defendant may be correct in claiming that both are equitable remedies, the Third Circuit treats the two remedies differently.") (referencing Bernardsville and Ridgewood).

The cases listed above demonstrate that federal courts in Pennsylvania, faced with the potentially conflicting instructions of Bernardsville and Ridgewood, have largely accepted Ridgewood's promulgation that "a child's entitlement to special education should not depend upon the vigilance of the parents," along with its result - a remand to determine nine years of the child's entitlement to compensatory education - as the most compelling direction the Third Circuit had provided for determining whether an equitable limitations period applies to claims for compensatory education. This Court also accepts Ridgewood as the controlling authority that this Court is bound

to apply to the instant case.

Additionally, Ridgewood's broad approach to a child's entitlement to compensatory education is supported by the legislative history of the amendment to the IDEA that added the two-year limitations period to compensatory education claims. The Committee on Health, Education, Labor, and Pensions reported the following regarding the amendment:

This new provision is not intended to alter the principle under IDEA that children may receive compensatory education services ... First, the statute of limitations will bar consideration of claims where: (1) the allegation relates to conduct or services that are more than two years prior to the commencement of due process on the basis of that conduct or those services, or upon the unilateral placement of the child in a private school or with a private service provider, and (2) during that two year period, either (a) the services are not alleged to have been at cost or inappropriate, or (b) the conduct is not alleged to have been appropriate. In essence, where the issue giving rise to the claim is more than two years old and not ongoing, the claim is barred; where the conduct or services at issue are ongoing to the previous two years, the claim for compensatory education services may be made on the basis of the most recent conduct or services and the conduct or services that were more than two years old at the time of due process or the private placement.

S. Rep. No. 108-185, at 1 (2003). This report shows that the limitations period placed on claims for compensatory education by the 2005 amendment to the IDEA was not meant to limit the period which the hearing officer could consider when a due process hearing was timely brought.

Applying Ridgewood here, the Court concludes that the

Hearing Officer erred in refusing to consider evidence concerning Robert R.'s entitlement to compensatory education prior to June 2002. Robert R.'s parents requested a hearing in June 2003, and the hearing officer should have considered the entire period that Robert R. was receiving IEP's from the school, as envisioned by the drafters of the July 2005 amendment to the IDEA. That Robert R.'s parent's did not request a due process hearing earlier concerning the alleged inadequacy of Robert R.'s IEPs "does not deprive [Robert R.] of the right to an appropriate education." Ridgewood, 172 F.3d at 250. Therefore, the matter will be remanded to the Hearing Officer to determine the entitlement, if any, of Robert R. to compensatory education prior to June 2002, as well as the nature and amount of any such compensatory education award.

### III. CONCLUSION

In view of the foregoing discussion, plaintiffs' motion to remand will be granted. An appropriate order follows.

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O R D E R

**AND NOW**, this **8th** day of **November 2005**, upon consideration of Plaintiffs' Motion to Remand to Pennsylvania Administrative Process (doc. no. 10), it is hereby **ORDERED** that the Motion is **GRANTED**.

It is **FURTHER ORDERED** as follows:

1. This matter is **REMANDED** to the Pennsylvania Administrative Process to determine the entitlement, if any, of Robert R. to compensatory education prior to June 2002, as well as the nature and amount of any such compensatory education award;
2. The defendant's motion to dismiss (doc. no. 6) is **DENIED as moot**; and
3. This action shall be marked **CLOSED** for statistical purposes.

**AND IT IS SO ORDERED.**

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**EDUARDO C. ROBRENO, J.**