

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Barnstable Public Schools

BSEA #11-1387C

RULING ON MOTION TO ORDER COMPLIANCE WITH DECISION

On September 7, 2012 the BSEA issued a final decision (*Decision*) in the case that is the subject of this *Ruling, In Re: Barnstable Public Schools*, BSEA No. 11-1387. The *Conclusion and Order* in the *Decision* is reproduced verbatim, below:

Upon receipt from Parents of appropriate documentation of expenditures, Barnstable shall reimburse Parents for their out-of-pocket tuition and related expenditures for Student's placement at Franklin Academy for the 2010-2011 and 2011-2012 school years.

Decision at p. 11, Parents' Exhibit 2 (P-2)

In June 2013, Parents filed a *Motion to Order Compliance with Decision*, pursuant to Rule XV of the BSEA *Hearing Rules*. Parents allege that Barnstable Public Schools (Barnstable or School) has failed to fully comply with the above-quoted *Order* because it has failed or refused to reimburse Parents for non-tuition expenses totaling \$76,460.57 which Parents claim are related to Student's placement at Franklin Academy during the school years referred to above. As will be discussed in more detail in this *Ruling*, Parents assert that they are owed reimbursement for a variety of expenditures ranging from school intersession travel experiences for Student, electronic devices, bedding and personal supplies, parent and family lodging and meal expenses, and incidental costs associated with litigating the underlying BSEA matter. Parents also allege that they are entitled to be paid interest on the balance of unreimbursed expenses from the time Student began attending Franklin Academy through November 2014. The School filed an *Opposition* to the Parents' *Motion* in which it conceded that it owed Parents a portion of the transportation reimbursement requested, but disputed the remainder of Parents' claims and asserted that it had fully complied with the underlying *Decision*.

After several postponements requested by the parties and granted for good cause, a hearing was held on November 3, 2014 at the office of the BSEA in Boston, MA. At the request of the parties, the matter was postponed to December 12, 2014 for submission of written closing arguments. Closing arguments were received on December 10, 2014 and the record closed on that day.

The record consists of Parents' Exhibits P-1 through P-10;¹ School's Exhibits S-1 through S-4, as well as the transcript of the hearing created by the certified court reporter.

Those present for all or part of the proceeding were:

Parents

Jane Jezard	Special Education Director, Barnstable Public Schools
Seymore Hays	Education Director, Franklin Academy (Testified by speaker phone)
Michael Turner, Esq.	Attorney for Parents
William Butler, Esq.	Attorney for Barnstable Public Schools
Sara Berman	BSEA Hearing Officer
Carol Kusinitz	Court Reporter

ISSUE PRESENTED

The sole issue hearing in this matter is whether Barnstable has complied with the underlying *Decision and Order* in this matter or whether Barnstable is required to reimburse the Parent for some or all of the \$76,460.57 claimed by Parents.

POSITION OF PARENTS

The *Order* in this matter is broad and inclusive, and must be interpreted to encompass any and all expenses borne by Parents in their unilateral placement of Student at Franklin Academy. All of the expenses claimed are related to Student's placement and to supports and services that were necessary to provide Student with a free, appropriate public education (FAPE). Moreover, equitable considerations support awarding Parents all reimbursement sought in light of Barnstable's having unduly delayed reimbursement of the Franklin Academy tuition. Finally, Barnstable has not disputed the existence of any of the expenses claimed by Parents.

POSITION OF SCHOOL

To comply with the *Order* in the underlying *Decision*, Barnstable is required to reimburse Parents only for expenses necessary to ensure Student's access to or benefit from his placement at Franklin Academy. With the exception of a portion of the Parents' claimed transportation costs, none of the expenses for which Parents seek reimbursement meet these criteria. Further, Parents would have incurred many of these expenses even if Student had remained at home during the period at issue. Finally, Parents cannot prevail on their claim for interest because they did not actually incur out-of-pocket interest expenses (*i.e.*, from a loan).

¹ P-4 contains the same information as P-3 but has been reformatted.

FINDINGS OF FACT

1. The entire *Decision* of September 7, 2012 in is adopted and incorporated by reference in this *Ruling*.
2. Student attended Franklin Academy in East Haddam, CT as a residential student for the 2010 – 2011 and 2011 – 2012 school years. (P-2)
3. Between 5/24/2010 and 3/25/2011, Parents made payments to Franklin Academy in a total amount of \$155,675.00. These payments covered Student's tuition at Franklin Academy for the 2010-2011 and 2011-2012 school years. (P-4)
4. In December 2012 or January 2013, Parent provided Barnstable with an accounting of their expenditures associated with Student's placement at Franklin Academy.
5. On or about May 14, 2013 Barnstable issued a check payable to the Parents in the amount of \$150,737.000 in partial reimbursement for tuition paid by Parents to Franklin Academy. On January 17, 2014, Barnstable paid Parents an additional \$5000.00, which constituted the balance of the tuition plus a \$60.00 overpayment. (P-4) Parents do not assert that they are owed any additional tuition reimbursement.
6. During Student's period of attendance, the Franklin Academy schedule included several vacation breaks as follows: one week in mid-fall, ten days at Thanksgiving, three weeks over the Christmas holiday, two weeks during the second half of February, and two weeks during the second half of April. (S-4, Mother) (Tr. 48)
7. During each of the two school years at issue, Student made approximately seven round trips between his home and Franklin Academy. Additionally, during 2010-2011 Student came home on one weekend to attend his brother's wedding and for about one week when he was ill and Franklin asked Parents to take him home to recover. (P-2, Mother, Tr. 35)
8. On some occasions, Parents drove Student to and from Franklin Academy. At other times, Student traveled by Amtrak train from Providence to Connecticut, where Franklin Academy staff picked him up. When Student took the train, Parents drove him to Providence. (Mother)
9. The driving distance between Student's home in Barnstable and Franklin Academy in East Haddam, CT is 152 miles one way or 304 miles round trip. (Father, S-3) The round trip distance between Student's home and the Providence Amtrak station is 155 miles.²

² I will rely on these mileage numbers, which were offered by the School in their closing argument, for calculating mileage costs in this Ruling because the parties do not dispute them, even though the Parents' reported odometer readings were usually slightly higher and sometimes slightly lower than the 304 miles and 155 miles listed above.

10. Parents and Student paid a total of \$621.00 in Amtrak fares (plus one cab fare from Old Saybrook, CT to Franklin Academy) for Student's travel between Providence and Franklin Academy from October 2010 to May 2012. (P-4)
11. During the 2010-2011 school year, Parents accumulated a total driving mileage of approximately 3669 miles between their home in Barnstable and either Providence or Franklin Academy. Of these miles, 459 are attributable to travel for the family wedding referred to above, and 310 miles were accumulated for summer intersession. (P-4)
12. For the 2011-2012 school year Parents accumulated approximately 2760 miles of travel between home and either Franklin Academy or Providence. (P-4)
13. Between August 2010 and May 2011, Parents spent and approximately \$1066.00 in various dormitory furnishings including bedding, towels, rug, lamp, fan, food storage containers, and similar items, as well as in postage for sending items to Student. They seek reimbursement for these expenditures in the amount of \$1066.00 (Mother, P-4)
14. Parents seek to recover approximately \$5702.00 for expenditures made for electronic equipment that Student used at Franklin Academy, including an Apple laptop computer, an iPad, iPhone4S, Audio Book, and various accessories, as well as for data plans, software, apps, phone fees, and the like. Parents testified that these items were necessary and/or helpful for Student to do his schoolwork and to accommodate Student's decoding problems. (Mother, Father). Franklin Academy required students to have Apple laptop computers with four basic built-in programs (e.g., for word processing) and an Internet browser. Franklin Academy does not require students to have cell phones or other mobile or hand-held devices. (Hays)
15. Parents had purchased an Apple laptop computer for Student in 2009, before he had enrolled in Franklin Academy. Of the \$5702.00 spent on electronic equipment and support expenses for which Parents seek reimbursement, approximately \$3640.00 was incurred prior to August 2010, when Student had not yet started attending Franklin Academy. The equipment and supplies purchased with this \$3460.00 was not bought specifically for use at Franklin Academy. (P-4, Father)
16. Of the remaining \$2062.00 in technology expenses incurred after August 1, 2010, approximately \$866.00 appears to be associated with items other than the laptop, such as the iPhone or iPad. This leaves approximately \$1196.00 associated with the laptop, including a monthly data plan (which Parents list without contradiction as "Required by Franklin"), software, and small accessories such as USB cable. (P-4)
17. During the winter and spring breaks, Franklin offers "intersession" programming which entails approximately two weeks of intensive study on a particular subject and may involve travel. Franklin Academy has found that for many of its students, who struggle with rigidity and poor social skills, travel provides "real world" opportunities to practice flexibility and social interaction. (Hays) Franklin Academy "strongly"

recommends the intersession travel experience for many students, and recommended it for Student. Intersession travel is not a requirement, however. Franklin Academy's tuition does not include the cost of intersession travel. (Hays)

18. During the approximately two-week spring break in April 2011, Student participated in an intersession trip to the Grand Canyon for which Parents paid a total of \$3605.94. This amount appears to include both payment for the trip itself (including expenses and gratuities for guides) and incidental expenses such as airport meals and snacks. (P-4)
19. In June 2011, Student attended an intersession trip to Hawaii for which parents listed expenditures of \$4403.86 for travel and incidental expenses. (P-4)
20. Prior to graduation, Franklin Academy offers seniors a "Capstone" experience involving community service. Student participated in a Capstone trip to Washington D.C. and Philadelphia to work in soup kitchens. Parents incurred \$464.00 in costs for this experience. Parent testified that the Capstone trip was a requirement. Mr. Hays, Education Director of Franklin Academy, testified generally that the Capstone experience was important for the senior class. Mr. Hays did not testify as to whether the Capstone program was mandatory. (Hays) Because there was no testimony to counter Parents' claim to this effect, I find that it was mandatory.
21. Parents felt that Student's travel experiences were "transformative," and made major contributions to his progress. In particular, Parents testified that in adapting to the requirements of group travel Student learned to overcome or reduce much of his rigidity and also developed skills in social interaction and leadership. (Parents, Hays)
22. In addition to the expenses discussed above, Parents seek reimbursement for a field trip organized by Student to see a play in New York, lodging and meals for Parents when they attended on-site parent training sessions at Franklin Academy, as well as family members' hotel and meal costs for Student's graduation ceremony. Parents seek to recover a total of \$2596.59 for these expenses. (Parents, P-4)
23. Franklin Academy may recommend the parent counseling sessions for some families but the program is not mandatory. (Hays)
24. In addition to the expenses discussed above, Parents seek reimbursement in the total amount of \$1427.29 for the following: (Father, P-4)
 - Mileage, parking, meals, photocopying and postage associated with BSEA proceedings in this matter between August 2010 and May 2012: \$362.21
 - Costs associated with various private school applications³ including cost of SSAT, meals, driving miles for tours, and the co-payment for Student's pre-enrollment physical at Franklin Academy: \$763.26.

³ Before enrolling at Franklin Academy, Student applied to several non-special education private schools. (Parents)

- Insurance co-payment and mileage for Student's private counseling between January and October 2010: \$302.02

25. Finally, Parents seek payment of \$51,904.33 in interest on the amounts which they had advanced to pay tuition to Franklin Academy and make the various other payments referred to above for the period from February 28, 2010 through November 30, 2014. Parents calculated an annual interest rate of 9% on unreimbursed expenditures based on their estimate of the return they would have realized on personal funds from investment accounts that they used to pay for Student's educational expenses. (Father, P-4)

26. The total amount of reimbursement that Parents seek is approximately \$76,460.57.

FINDINGS AND CONCLUSIONS

Rule XV of the BSEA *Hearing Rules* provides an avenue for relief for a party who believes that a BSEA decision is not being implemented as follows:

A party contending that the Hearing Officer's decision is not being implemented may file a motion requesting the BSEA to order compliance with the decision.

The motion shall set out the specific areas of alleged non-compliance. The Hearing Officer may convene a hearing on the motion at which the scope of inquiry will be limited to facts bearing on the issue of compliance, facts of such nature to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief and/or refer the matter to the Legal Office of the Commonwealth of Massachusetts Department of Elementary and Secondary Education for enforcement. *Id.*

Based on the testimony and documents presented at the compliance hearing conducted pursuant to the above-quoted Rule, I conclude that with a few minor exceptions, Barnstable has complied with the *Order* contained in the *Decision* issued in September 2012. My reasoning follows.

There are a small number of BSEA decisions which address the scope of expenses that might be subject to payment or reimbursement by school districts. One leading decision, relied on by the School, is *In Re Quinlan and Agawam Public Schools* (hereafter, "Agawam"), BSEA No. 04-0557 (Byrne, 2004). In that case, the Agawam Public Schools had issued an IEP calling for the student's placement in a private residential school in New York State. Parent sought reimbursement from Agawam for a variety of expenditures, including long distance phone calls, laundry and dry cleaning services, school clothing that conformed to the private school dress code (not uniforms),

a laptop computer that was not required by the school, and parental transportation to visits with the child at the private school, which visits were not mandated by the child's IEP. (*Id.*)

The parent in that case argued that the items at issue were components of “special education” and/or “related services,” and, therefore, must be provided at no cost to the parent. After an exhaustive analysis of the then-current provisions of the federal and state special education statutes and regulations⁴, Hearing Officer Byrne determined that Agawam was not responsible for reimbursing the parent for any of the expenses listed above because none qualified as “related services.” More specifically, none of the listed items were necessary to ensure the student's access to his program of specialized instruction, to benefit from that instruction, or to implement the student's IEP. *Id.*

A second, more recent case is *In Re: Quincy Public Schools*, BSEA Nos. 1307468 and 1403404 (Crane, 2014). In that case, the hearing officer ordered Quincy to reimburse a parent for certain documented out-of-pocket housing expenses for herself and the student (*i.e.* the cost of a relatively inexpensive hotel room in the town where the student's “stay put” private school program was located⁵ along with certain transportation expenses. The Hearing Officer ordered this reimbursement because the parent actually had incurred the costs at issue at the time of the hearing, the expenses undisputedly were “necessary for purposes of supporting Student at [private school]” (because the student could not otherwise attend), and were “reasonable with respect to nature [of expense] and amount.” *Id.* In so concluding, the Hearing Officer noted that reimbursement is “discretionary equitable relief,” warranting consideration of “all relevant factors,” including “the reasonableness of the parties' conduct” *Id.* at p. 18, citing *Union School Union No. 37 v. Ms. C.*, 518 F.3d 31, 34 (1st Cir. 2008); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006) and *C.G. ex. rel. A.S. v. Five Town Community School District* 513 F.3d 279, 288 (1st Cir. 2006).

Here, the parties agree that Barnstable has reimbursed Parents in full for tuition payments that they made to Franklin Academy.⁶ The parties also agree that Barnstable owes Parents reimbursement for transportation, although they disagree over the amount owed. The only significant dispute is over the “related expenses” referred to in the *Order*. Parents argue that the term “related expenses” should be given a “broad and inclusive” interpretation to encompass any and all expenses that might be associated with the Student's placement, or that might have provided him with an educational benefit.

⁴ Subsequent amendments to the federal and state law have not affected the pertinent provisions.

⁵ The situation in *Quincy* was factually unusual. The private school was located several hours away from the family home, and the child had been attending the private school as a residential student. At the time of the hearing, the private school had closed down its residential component. The only way that the child could continue to attend the day school portion that constituted her “stay put” placement was if one of her parents obtained temporary housing within commuting distance of the private school.

⁶ Parents contend that Barnstable unduly delayed reimbursing Parents for tuition expenses. I disagree. The Decision was issued in September 2012. Parents presented Barnstable with evidence of tuition payment in December 2012 or January 2013. Barnstable sent Parents a check for over \$150,000.00 in May 2013. This is not an unreasonable interval under the circumstances.

Further, Parents argue that they are entitled to interest payments to make them whole for unreimbursed expenditures.

Barnstable, on the other hand, contends that applicable case law restricts its reimbursement obligations to tuition and transportation, since none of the other expenses at issue were required to enable Student's to attend Franklin Academy or to benefit from the curriculum and specialized instruction provided there. Further, Barnstable argues that many of these expenses are simply part of the cost of raising and supporting a child or teenager, regardless of whether or not that child attends a residential school.

The appropriate inquiry is whether the expenses for which Parents seek reimbursement meet the criteria articulated in *Agawam* and *Quincy*, and the statutory and case laws incorporated in those decisions. In other words, reimbursement is only available for expenses that were necessary to ensure Student's access to or benefit from his program of instruction at Franklin Academy. Moreover, the expenses must have been actually incurred by the Parents and must have been reasonable in nature and amount. I will examine each of the expenses claimed by the Parents in turn in light of these standards.

Categories in Which Reimbursement is Denied

Intersession Travel

There is no dispute that Student's intersession trips to the Grand Canyon and Hawaii were beneficial to Student and enhanced his experience at Franklin Academy. This travel was not mandatory, however. While Franklin Academy staff strongly recommended the intersession travel, the school did not make it a requirement for attendance or graduation. Moreover, Parents presented no evaluations or other evidence to demonstrate that intersession travel was necessary for Student to derive meaningful educational benefit from the Franklin Academy placement. Reimbursement for the intersession trips is DENIED.

Parents' Lodging and Meals for Parent Training Sessions, Graduation Ceremony and Student Field Trip

The Parent training and counseling sessions at issue were not mandatory. Parents presented no evidence that the sessions were necessary for Student to have access to or benefit from his educational placement at Franklin Academy. Reimbursement for Parents' lodging and meal costs associated with the parent training sessions is DENIED. For the same reasons, reimbursement for the field trip organized by Student to see a play as well as for the hotel and meal expenses associated with Student's family's attendance at graduation is DENIED.

Dormitory Furnishings and Household Items

Parents customarily provide bedding and small household items for their minor children, irrespective of disability status. That Parents happen not to keep extra bedding on hand at their home does not make Barnstable responsible for supplying these items to Student. Reimbursement for expenses in this category is DENIED.

Costs Associated with Litigation

Reimbursement for the costs of travel, parking and meals associated with the BSEA appeal in this matter are DENIED. The BSEA has no authority to award such costs under federal or state law.

Counseling Costs

Reimbursement for copayments and mileage for Student's private counseling, most of which predated Student's enrollment at Franklin Academy is DENIED. Parents have presented no proof that such pre-enrollment counseling was necessary to provide Student with access to or benefit from his special education placement at Franklin Academy.

Interest

Parents have claimed that they are entitled to an award of \$51,904.33 in interest on sums they advanced when they placed Student unilaterally. Parents have provided no legal authority for the BSEA to award interest on unreimbursed expenses. Moreover, Parents have failed to provide a legal or factual basis for the interest rate or amount sought. Parents' estimate of interest that they would have earned on investment accounts but for their having advanced funds for Student's placement is speculative. Finally, Parents did not actually incur interest expenses; they did not take out a loan to make the unilateral placement, and are not entitled to treat the expenditures incurred as, in effect, a loan to Barnstable for which they attempt to charge interest. Parents' request for interest is DENIED.

Categories in which Reimbursement is Granted In Part

Capstone Experience

It is not clear from the record whether the Capstone travel experience was a graduation requirement. Mother testified that it was required. Mr. Hays testified as to the importance and benefits of the experience but did not state whether it was mandatory. Since Mother's testimony was not disputed, and the cost involved was only \$464.00, reimbursement of this amount is GRANTED.

Electronic Equipment

The only item in this category that was required by Franklin Academy was Student's laptop computer and associated data plan. Student already owned the required Apple laptop computer before he enrolled there, and is not entitled to reimbursement for the purchase of this item. Although Student may have benefited from his iPhone, iPad, audiobooks, apps, accessories, etc., Parents have presented no evaluations, IEP or similar evidence that these items were necessary for Student to access or benefit from his educational program.

Parents are entitled to reimbursement for the data plan required by Franklin, as well as the software and small accessories for the laptop computer in the total amount of \$1196.00. Reimbursement for all other electronic equipment referred to in Paragraph 16 is DENIED.

Mileage and Travel Costs

Barnstable does not dispute that Parents are entitled to reimbursement for transportation of Student to and from Franklin Academy during scheduled vacation breaks, and cites an amount of \$1808.80 for the two school years at issue. Barnstable calculated this amount by (1) multiplying the round trip driving distance (304 miles) between Student's home and Franklin Academy by seven round trips per school year for a total of 2128 miles per school year, and then (2) multiplying the total mileage by the then-prevailing state employee mileage reimbursement rate as stated in 603 CMR 28.07(6). For the 2010-2011 school year, this rate was \$0.40 per mile, yielding a total of \$851.20 for the seven round trips involved. For the 2011-2012, the rate had gone up to \$0.45 per mile, resulting in a total of \$957.50. Barnstable asserts that it is responsible for reimbursing Parents the sum of these two figures for a total of \$1808.80.

In fact, on many if not most occasions, Parents drove Student to Providence and Student took the Amtrak train for the remainder of the trip. The total cost of Amtrak tickets for the two school years involved was \$621.00. In 2010-2011, the total driving mileage accumulated by Parents was 3669 miles between their home in Barnstable and either Providence or Franklin Academy. Of these miles, 459 are attributable to travel for the family wedding referred to above, and 310 miles were accumulated for summer intersession. (P-4) For the 2011-2012 school year Parents accumulated approximately 2760 miles of travel between home and either Franklin Academy or Providence. (P-4) The total mileage, less 769 miles attributable to the wedding and summer intersession, is 2900 (for 2010-2011) plus 2760 for 2011-2012. At the state reimbursement rate for 2010-2011 of \$0.40 per mile, the total mileage amount that year would be \$1160.00. At \$0.45 per mile the total mileage amount for 2011-2012 would be \$1242.00. The sum of these two figures plus train fare is \$3023.00, which is \$1214.20 more than the figure estimated by Barnstable.

Upon closer examination, it appears that in working from the assumption that Parents would be required to make seven driving round trips per school year, Barnstable

did not account for the fact that five of the seven assumed round trips (vacations during the school year) actually entailed two round trips. In other words, if Parents were driving Student on all of his trips between home and Franklin Academy, for each vacation period Parents would have to drive to Franklin Academy to pick up Student, drive back home with him, and then, at the end of vacation, drive Student back to school and drive home themselves. Thus, Parents would have made a total of ten round trips during each school year, plus an additional two round trips at the start and end of each school year. This would result in a total of twelve round trips per school year for a total yearly mileage of 3648 miles. In 2010-2011, the reimbursement figure would be \$1459.20. For 2011-2012 the amount would be \$1626.60. The total for the two years would be \$3085.80. This figure is much closer to the Parents' figure of \$3023.00.

As an equitable matter, I will split the negligible difference of approximately \$63.00 between the two figures. Parents are entitled to reimbursement for transportation in the amount of \$3055.00 (\$3023.00 plus \$32.00).

ORDER

Based on the foregoing, no later than 120 days from the date of this *Ruling*, Barnstable shall reimburse Parents as follows:

For Capstone Experience:	\$ 464.00
For electronic equipment and supplies	\$1196.00
For transportation expenses	\$3055.00
 TOTAL:	 \$4715.00

Upon payment to Parents of the above listed amount of \$4715.00 (four thousand, seven hundred fifteen dollars and no cents), Barnstable will have complied fully with the *Decision and Order* in BSEA No. 11-1387.

All other requests for reimbursement or payment contained in Parents' *Motion* are DENIED with prejudice.

By the Hearing Officer:

Sara Berman

Date: January 20, 2015

