

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

Record of Proceedings
FSGB Case No. 2015-017

And

March 28, 2016

Department of State

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Cheryl M. Long

Board Members:

Bernadette M. Allen

William B. Nance

Special Assistant

Katherine D. Kaetzer-Hodson

Representative for the Grievant:

Pro se

Representative for the Department:

Daniel M. Creekman
Attorney Adviser, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

Held – The grievant failed to carry her burden of proving that the Department of State (agency or Department) erred when it denied her reimbursement for her son’s recreational therapy expenses under the authorization for a Special Needs Education Allowance (SNEA). Her appeal is denied.

Summary – In July 2012, at the grievant’s then-post of assignment (in [REDACTED] her son was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). On July 1, 2013, the Department authorized a SNEA for the grievant’s son, covering the 2013-2014 school year. On April 23, 2014, the psychologist in [REDACTED] who was working with the grievant’s son recommended that his treatment plan include three hours per week of recreational therapy (therapeutic recreation). The grievant subsequently enrolled her son in keyboard classes, dance classes, and horseback riding lessons for one hour each per week. The post Financial Management Officer (FMO) denied reimbursement for these expenses and requested that the Department review whether such costs were reimbursable under the SNEA. The Department’s Office of Medical Services Child and Family Program Unit (OMS/CFP) determined that the grievant’s son’s costs of these particular forms of recreational therapy were not allowable expenses under the Department of State Standardized Regulations (DSSR) criteria. They were disallowed under the rubric that “...the U.S. School Districts do not provide under occupational therapy piano/music lessons, dancing, horseback riding, etc. within the schools.”

The grievant challenged the denial of reimbursement by filing this grievance, arguing that these three recreational activities qualify as therapeutic recreation and a “related service” under the Individuals with Disabilities Education Act (IDEA). Accordingly, their costs are reimbursable under the SNEA. She contended that a November 2014 psycho-educational evaluation conducted by a psychologist in the United States (ordered by the Department) also included recreational therapy in a treatment plan for her son.

The agency denied the grievance because none of the medical practitioners who evaluated the grievant’s son included clinical documentation to establish that this recreational therapy was “required” for her son to access or benefit from his education.

This Board concluded that the grievant’s payment requests are not in conformity with the DSSR and that grievant failed to carry her burden of proving that the grievance was meritorious.

DECISION

I. THE GRIEVANCE

Grievant, an FS-02 Foreign Service Officer, appeals the denial of her agency-level grievance. She seeks reimbursement for recreational therapy expenses incurred for her son from November 2013 to June 2015, specifically keyboard lessons, dance lessons, and horseback riding expenses, and approval for prospective continuation of such reimbursements. Grievant's son was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).¹ She contends there is no basis to deny reimbursement for her son's recreational therapy in the Department's regulations.

II. BACKGROUND

The issues in this appeal are best understood in light of the factual chain of events and the regulatory framework in which the reimbursement dispute arose. As a platform for summarizing the positions of the parties and our ultimate analysis, we set forth the requirements of the Department's regulations and the important facts to which those regulations were applied.

A. *Regulatory Framework.*

A Foreign Service Officer with a child, who is physically, emotionally, developmentally, or mentally disabled, may apply to the Department for payment of the costs of medically-prescribed schooling and related services. Such financial benefits are known as a Special Needs Education Allowance (SNEA). The Department grants or denies an application for a SNEA pursuant to the Department of State Standard Regulations (DSSR). These benefits are available

¹ The Mayo Clinic definition. Attention deficit hyperactivity disorder (ADHD) is a chronic condition that affects millions of children.... ADHD includes a combination of problems, such as difficulty sustaining attention, hyperactivity and impulsive behavior. Children with ADHD also struggle with low self-esteem, troubled relationships and poor performance in school.

to officers while they are serving abroad, to afford them the same cost-free educational services that would be available if they were serving domestically. *See* DSSR 271(a)-(b).

As a practical matter, the Department’s regulations on this subject are the operational rules that replicate the way in which states implement the federal statute known as the Individuals with Disabilities Education Act (IDEA or the Act), 20 U.S.C. § 1400 *et seq.* Under this statute, the federal government provides grants to states to support educational programs for children with disabilities. To qualify for such funding, participating states and local school districts must make a “free appropriate public education” available to every child with a disability. *Id.* at § 1412(a) (1). As defined by the Act, a “free appropriate public education” means “special education and related services.” *Id.* at § 1401(9). “Related services,” under the Act, include, among other things, “transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, [and] counseling services . . .) as may be required to assist a child with a disability to benefit from special education . . .” *Id.* at § 1401(26) (A) (emphasis added).²

The fundamentals of the Department’s reimbursement requirements are set forth in DSSR 276.8. In pertinent part, it states:

There must be a formal Individual Education Plan (IEP) or equivalent prepared by a professional medical or educational expert which delineates the educational services required to provide for the child’s special needs. Reimbursement may only be for those services provided for in the IEP which are actually required, as

² There are certain exceptions that are not relevant here. We will not pause to discuss them.

opposed to those services which a parent or school may recommend as desirable. DSSR 276.8(a) (2) (emphasis added).

B. Pertinent Facts.

In July, 2012, while the grievant was assigned in [REDACTED] her son was diagnosed with ADHD. In a cable issued on July 1, 2013, the Department authorized a SNEA for the grievant's son for the 2013-14 school year.³ The cable included the following language in the authorization:

For services covered, please refer to DSSR 276.8 items A through C. This authorization specifically covers the following services and any other services outlined in the child's IEP or equivalent or recommended by a provider: developmental pediatric evaluation, psycho-educational evaluation or neuropsychological evaluation, occupational therapy, physical therapy, speech therapy, shadow, pre-school, summer instruction if recommended by the school, home schooling, tutoring, school supplies/materials, psychotherapy counseling, and initial psychiatric evaluation.

Subsequent to the issuance of the authorization, grievant's son was evaluated by four professionals in [REDACTED] a psychologist, a child psychiatrist, a speech therapist, and an occupational therapist. Jointly, they wrote and provided to grievant a one-page document entitled, "Treatment Plan for [L.M.], dated April 23, 2014."⁴ In its entirety (minus signature blocks), it states the following:

[L.M.] requires the following services to provide for his special needs. He has been diagnosed with Attention Deficit Hyperactivity Disorder, Auditory Processing Disorder and a Language Disorder. In addition, he has impaired fine and gross motor coordination. He requires all of the following services to perform adequately in school and to address his special needs.

1. Speech Therapy for one hour per week for auditory processing training and to treat his language disorder.
2. Occupational Therapy for one hour per week to improve concentration and fine motor skills and to improve his social skills.
3. Psychological Therapy for one hour per week to improve his social skills and improve his concentration.

³ A copy of the cable is attached to grievant's Appeal Submission as Appendix A.

⁴ We use initials in place of the son's name.

4. Recreational Therapy for three hours per week, in the form of therapeutic recreation in the community or at school, to improve concentration, socialization and fine and gross motor coordination.
5. Medication monitoring on a monthly basis by a child psychiatrist.⁵

The post FMO denied payment for the grievant's recreational therapy expenses, pending confirmation from the Department that these particular activities were allowable expenses under the SNEA. The Department's Office of Medical Services Child and Family Program Unit (OMS/CFP) reviewed the grievant's request for payment and determined that the "recommended" recreational therapy was not reimbursable because the therapy was not "required" as defined in DSSR 276.8(a) (2).

The denial of the request for reimbursement was made in a January 15, 2014, email to grievant. The basis for the denial was that such reimbursement would not have been approved if grievant had been posted domestically. OMS/CFP decided,

Thank you, Ms. [grievant's surname], for the report from the OT. However, even if she recommends these services as an additional support to the OT services, these are not allowable expenses under the SNEA.

The SNEA allowance is designed to assist an employee in meeting the financial obligations incurred while serving in a foreign area, not otherwise compensated for in providing adequate academic education to dependent children. This allowance allows the child to continue with the same special educational support as afforded in the United States. Dance and music lessons, sports, and any other activity as such, will not be cover [sic] by a US school district funding as part of their special needs program. Generally, these are expenses that are defray [sic] by the parents. This is the reason why these expenses by regulation are not allowable even if recommended by a provider. (Emphasis in original).⁶

For several months thereafter, a robust exchange of emails ensued.⁷ In those emails, grievant essentially argued that she was entitled to reimbursement for the costs of all three recreational activities simply because they were "recommended by a provider," *i.e.* the

⁵ A copy of this Treatment Plan is attached to grievant's Appeal Submission as Appendix J.

⁶ This decision is in an email included within Appendix 1B to grievant's Appeal Submission.

⁷ The email trail is reproduced in the attachments to grievant's Appeal Submission in Appendix B, Appendix C, and Appendix D.

occupational therapist who joined in the Treatment Plan. In short, OMS/CFP declined to change its decision.

The grievant filed an agency-level grievance on June 27, 2014, to request reimbursement for the costs of the three recreational activities that she had selected for her son.

While the grievance was pending and while grievant was back in the United States, but before the Department rendered a decision, the Department referred grievant and her son for a more thorough evaluation of his clinical needs. The Department referred them to Georgetown Psychology Associates. The practitioners there performed in-depth tests and evaluations of grievant's son in November 2014. On December 8, 2014, the psychologist in charge of this process issued a "Comprehensive Psychoeducational Evaluation."⁸ The twenty-page psycho-educational assessment prepared in the United States listed in the treatment plan sixteen recommendations for the family, including one that suggested the grievant's son "would benefit from engaging in extracurricular activities that encourage appropriate interpersonal relationships and sustained attention." The same assessment listed nine recommendations for his school. The Department took into account this additional information about the child, before ruling on the grievance.

The agency denied the grievance in a letter dated April 10, 2015, because it concluded there was no clinical documentation in the record that "required" recreational therapy for the grievant's son to access or benefit from his education.⁹

Grievant appealed the agency's decision to this Board on May 28, 2015. The agency responded with its final submission on September 18, 2015, to which the grievant filed a final rebuttal on October 30. The Record of Proceedings was closed on November 12, 2015.

⁸ A copy of this report is in the record as Attachment 3 to grievant's Appeal Submission.

⁹ A copy of the denial letter is in the Record of Proceedings as Attachment 2 to grievant's Appeal Submission.

III. POSITIONS OF THE PARTIES

GRIEVANT

At every step in this grievance process, including her appeal, grievant has claimed reimbursement for educational and related expenses for her son, while in █████ based on the services recommended by an on-site provider. Moreover, she argues that the SNEA covers any type of therapeutic recreation because the IDEA generally allows “related services” to be provided to children with disabilities.

Grievant emphasizes the importance of the evaluation produced by Georgetown Psychology Associates, after the Department referred her there for another opinion. The sixteen recommendations for the family included, but were not limited to speech-language therapy and tutoring. In her Appeal Submission, grievant argues, “There is, however, ample evidence in the report that [the author] recognized the value of the various aspects of the recreational therapy that [L.] has been receiving in █████ In support of this statement, grievant quotes the following passage from the section of the report on “Social-Emotional Functioning,”

As for his social functioning, there were concerns about his ability to engage in age appropriate play and group activities when [L.M.] was in preschool in █████ However, [grievant] has seen a significant improvement in [L.M.’s] social skills since moving to █████ She attributed these gains to participation in social skills therapy and participation in extracurricular activities that boost his self-confidence (i.e. horseback riding).¹⁰

To further illustrate why the child’s recreational activities should be reimbursable, grievant cites the following observation that was also in the Georgetown report: “Involvement in community activities or vocational clubs that focus on his interests can help promote his success in developing healthy social interactions as well as build self-confidence.”¹¹

¹⁰ Appeal Submission at 4-5.

¹¹ Grievant’s Rebuttal at 2 (quoting from the Georgetown evaluation).

Grievant attached to her Rebuttal a half-page letter from the author of the Georgetown evaluation, addressed, “To Whom Ever [sic] this May Concern,” dated October 14, 2015. Therein, the psychologist elaborated briefly on what she meant to convey by the recommendation that grievant’s son be involved in “extracurricular activities.” To the passage highlighted by grievant, the psychologist added one sentence: “This recommendation was intended to cover recreational therapies, including recreational therapies within the community.”

DEPARTMENT

The core of the Department’s position is that a reimbursement request must comply with the standard in DSSR 276.8(a) (2). The Department does not quibble with the fact that recreational therapy, broadly speaking, falls within the scope of “related services.” However, the Department emphasizes that a recommendation must establish that such services are necessary for the child to access or benefit from his/her special educational program, as opposed to “necessary or beneficial for the child in general.”¹² The Department acknowledged the therapist in [REDACTED] recommended several types of therapy (recreation among them) that were required for grievant’s son “to perform adequately in school and to address his special needs.” Nevertheless, the Department rejected that recommendation as one made “summarily,” *i.e.* in a conclusory fashion devoid of underlying clinical support. Moreover, referring to the assessment performed by Georgetown Psychology Associates, the Department noted that “none of the evaluations indicated that [grievant’s] son required recreational therapy to access or benefit from his education.”¹³

The agency pointed out that recreational therapy authorized in the SNEA should be scrutinized differently from other “related services,” such as tutoring and individual therapy,

¹² Response to Appeal Submission at 4.

¹³ *Id.* at 3.

because “they have a self-evident nexus to her son’s ability to access or benefit from his education.”¹⁴

IV. DISCUSSION AND FINDINGS

Under the provisions of the Board’s regulations concerning grievances not involving disciplinary actions, the burden rests with the grievant to establish by a preponderance of the evidence that the grievance is meritorious. 22 CFR § 905.1.

Based upon the following analysis of the applicable law and the pertinent facts of record, the Board concludes that grievant failed to meet her burden of proof. In determining the correct standard for adjudicating a reimbursement request, we look to the key federal statute that is the foundation for this financial benefit, the Department’s regulations implementing the statute, as well as relevant federal case law.

The Federal Statute and Controlling Case Law. To whatever extent the Department affords to its employees any benefits for the “special education” of their minor children, the Department’s exercise of its discretion must be consistent with the purpose and intent of the federal statute. This is so, because the SNEA comes within the DSSR’s definition of what is considered to be an “adequate school.” The Board interprets this to include the “providing of an educational curriculum and services reasonably comparable to those normally provided without charge in the public schools in the U.S.” DSSR 271(b). Thus, in determining whether the Department is obligated to reimburse an officer for the costs of “related services,” the Board looks to the plain words of the federal statute as well as the interpretation of the law made by federal courts. Based upon the statute and relevant federal court decisions, it is clear that the Department lawfully denied grievant’s reimbursement claim. The salient question is what the term “related services” really means.

¹⁴ *Id.* at 4.

First, there is no doubt that “recreation therapy,” as the parties have used that phrase, is within the scope of “related services” that must be provided pursuant to the Act, if identified as “necessary” based upon the statutory definition. Here, the definition in the DSSR comports with the statutory definition.

Second, on two occasions, the Supreme Court has addressed the meaning of “related services.” The Court initially interpreted that phrase to include “services that enable the child to reach, enter, or exit the school” as well as “[s]ervices . . . that permit a child to remain at school during the day.” *Irving Independent School District v. Tatro*, 468 U.S. 883, 891 (1984). The Supreme Court subsequently reaffirmed that interpretation, observing, “As a general matter, services that enable a disabled child to remain in school during the day provide the student with ‘the meaningful access to education that Congress envisioned.’” *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66, 73 (1999) (citation omitted) (emphasis added).

Significantly, the Supreme Court has declined to interpret the Act to require schools to “maximize the potential of handicapped children ‘commensurate with the opportunity provided to other children. . . . [but only to provide] a basic floor of opportunity.’” *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*, 458 U.S. 176, 189-200 (1982). In other words, the legal obligation of a school district (and thus the Department) is not to pay for anything that might generally enhance a child’s social skills or quality of daily life. Rather, as a matter of law, the financial obligation is linked only to what the child needs to get to school, to function at school, or to benefit from whatever special education program has been prescribed for that child. Thus, the nature of this nexus between “related services” and the child’s education is unmistakable.

Application of the Facts to the Correct Legal Standard. The Supreme Court precedents, combined with the relevant provisions of the DSSR make it clear that the Department properly denied the grievance. We reach this conclusion for two different reasons. One, grievant has failed to carry her burden of proving that the recreational therapy was legally compensable, based upon the necessary linkage to compensability granted by public schools in the United States. Two, the medical evidence of record does not establish that the recreational therapy was necessary for her son to remain in school during the day and to have meaningful access to his special education curriculum. We address each issue separately below.

Proof of Compensability in Domestic Public Schools. As part of grievant's burden of proof on appeal, she is required to prove by a preponderance of the evidence that the recreational therapy recommended by the therapist in [REDACTED] was of the type that is normally reimbursed by domestic school systems. Grievant has failed to offer any such evidence to the Board. Indeed, she did not include in her grievance any argument that the Department's compensability ruling was erroneous. In both her grievance and her filings with the Board, she focused solely on the question of what the medical assessments had or had not established. It is useful to recapitulate what the Department told her, after denying her request, because the Department flagged the compensability problem several times.

Once, after receiving the January 15, 2014 denial of her reimbursement request, grievant pressed the Department about the recommendation from the therapist in [REDACTED]. She argued that anything recommended by that therapist should be reimbursable. In response to grievant's request for information about recreational therapy as it related to the Fairfax County Public

School District,¹⁵ OMS/CFP made it clear that the recreational therapy was not an allowable expense, writing on March 26, 2014:

There is no link to Recreational Therapy under the Special Needs instruction page in the Fairfax County Public School District webpage. I could not find any reference to it. I called them and I was told that those services are not offered within their schools.

Let me know when you return from vacation and we could set up a phone call. These SNEA expenses are subject to post-audits and the OIG reviews those annually.¹⁶

Grievant then questioned whether Fairfax County Public Schools would have “the option” to decline to reimburse a parent for anything recommended in the child’s IEP when the school district does not already offer such services. In response, as to the dance classes and piano lessons, OMS/CFP reiterated in an email of April 10, 2014, in pertinent part:

These are not allowable expenses under the SNEA even if they were recommended by the Occupational Therapist. These expenses are not reimbursable under the SNEA as your FMO indicated to you.

Any further questions related to the Fairfax County Schools Special Needs Program, please address them directly to their POC. It is my understanding that your child does not have an IEP from a US school. The evaluation report from his therapist serves for now as the equivalent of an IEP for the purpose of SNEA eligibility.

Let me know if you have any further questions related to the SNEA process and/or any new development in [your son’s] progress at school or through his therapies.¹⁷

Again, grievant did not accept this ruling. Instead, she complained in another email of May 27, 2014, that the FMO at post (who originally had told her that these costs were not reimbursable) had not acted “independently.” The Department’s response on the same day stated that the FMO had been correct and that the expenses were not reimbursable. The grievant and

¹⁵ We infer that this school district normally would have been the jurisdiction of her child’s schooling when grievant was not posted abroad.

¹⁶ This email is reproduced in Appendix G, attached to grievant’s Appeal Submission.

¹⁷ This email is in the record in Appendix H, attached to grievant’s Appeal Submission.

OMS/CFP thereafter continued to communicate on unrelated details concerning the child's treatment plan.

For purposes of our analysis of the record, it is useful to recall the multiple times the Department reinforced its ruling based on the compensability issue – before the Georgetown Associates report highlighted the other issue of the sufficiency of the medical evidence. Grievant was on clear notice of the importance of the compensability problem. She has had a clear opportunity to gather evidence, if it exists, that Fairfax County Public Schools would actually reimburse parents for the recreational therapies that are the subject of this appeal. Whether or not she ever pursued the matter with the County, and whether she received a positive or negative answer, she has failed to provide anything further to the Board.

It is clear to us that the OMS/CFP regarded the comparability of public school compensability to be a threshold element to be satisfied, without regard to whether the therapies otherwise would be justified on medical grounds. We discern nothing irrational in this approach. The fact that grievant chose not to discuss this factor in her agency-level grievance and in this appeal does not mean that the issue disappeared. We cannot conscientiously ignore it. It is still a legal requirement in light of the clear intent of Congress, as reflected in the appellate law that we cite. DSSR 271(b) establishes the comparability standard in compliance with the intent of Congress.¹⁸

Necessity for Access to the Child's Special Education Program. The other important issue in this appeal boils down to whether the recreational activities selected by grievant for her son were actually required for him to access his prescribed special education program. For

¹⁸ The deciding official also did not ignore the compensability issue, even though she focused her decision on the sole issue raised by grievant (the sufficiency of the medical evidence). Yet, she commenced her analysis by reiterating that the SNEA applies to children of Foreign Service Officers “who, if residing in the United states, would be entitled to additional educational resources under the Individuals with Disabilities Act (IDEA).” Decision Letter, page two.

several reasons, the Board finds that grievant presented no proof of this. We discuss those reasons as follows.

First, irrespective of the exhaustive evaluation performed by Georgetown Psychology Associates, the original recommendation of the psychologist and the related experts in ██████ did not effectively relate these three recreational activities to the child's ability to access his school or school program. Indeed, that terse report never gave examples of what would constitute "therapeutic" recreation. When the therapist wrote that the child "requires" the enumerated therapies "to perform adequately in school and to address his special needs," she made this statement concerning her entire package of recommendations. Notably, she included in her report a specification as to the role of each of the four recommended therapies. As to all of them except the recreational therapy, her description of the nexus between the therapy and the educational regimen was obvious. For example, as to the speech therapy, she wrote that it would provide "auditory processing training and . . . treat his language disorder." Clearly, listening and speaking is a key part of learning and a key part of participating in the classroom. For the sake of brevity, we will not repeat all of the others, as we have quoted them already. The salient point is, as the Department argues, the recreational therapy is the only "recommended" treatment covered under the SNEA whose nexus to accessing the academic regimen is not "self-evident."¹⁹ We agree with this characterization.

The Board recognizes that the therapist in ██████ did state that the recreational therapy would help the child with "concentration" and both "fine and gross motor coordination." However, she also specified that the recreational therapy could take place "in the community or at school" This optional approach did not apply to anything else the therapist recommended.

¹⁹ Department's Response to Grievance Appeal at 4.

Taking her words at face value, the therapist did not think it was important that the recreation might take place entirely outside of school. Consequently, we would need expert input in order to make a factual finding that this particular therapy was critical to the child's ability to access his educational program. As we note further herein, the medical evidence of record does not yield such input.²⁰

Second, we are impressed that the exhaustive evaluations performed by Georgetown Psychology Associates also did not contain any conclusion that "therapeutic recreation" was required for the grievant's child to benefit from his special education program. This was not an accidental omission, because the professional who wrote the report noted specifically (in a section on background information), "[L.M.] enjoys horseback riding, soccer, dance, listening to music, swimming and playing on computers." The evaluator was well aware of the child's activities, but chose not to inflate their clinical value. To be clear, the report from Georgetown Psychology Associates did contain a recommendation that the child "would benefit from engaging in extracurricular activities that encourage appropriate interpersonal relationships and sustained attention [and that] community activities or vocational clubs . . . can help promote his success in developing health social interactions as well as build self-confidence." Even with this statement, however, there was no conclusion that such activity was "required" for him to benefit from his school program.

Lastly, during this appeal process, grievant made an additional argument in an effort to justify the reimbursement request. We must reject it. As an attachment to her Rebuttal, she presented a letter of October 14, 2015, from the psychologist who authored the evaluation issued

²⁰Likewise, even with clear medical evidence that recreational therapy (as a service category) was properly linked to the child's educational needs, grievant would still need to provide the Board with expert opinion to establish that horseback riding and piano lessons would qualify as "therapeutic" for this particular child. Those activities were the personal choices of the grievant and were not specifically dictated or recommended by any therapist.

by Georgetown Psychology Associates. Quoting the report's observation that the child would benefit from "extracurricular activities," the psychologist added in pertinent part, "This recommendation was intended to cover recreational therapies, including recreational therapies within the community." Merely invoking or intoning the term "recreational therapies" does not cure the problem of insufficient medical evidence. As a label alone, it is not tantamount to a documented medical conclusion that the particular services for which grievant seeks reimbursement are required for accessing the child's special education program. We have looked closely at the passages quoted by grievant from the Georgetown report, relating to recreation and extra-curricular activities. We find that all of them are correlated to the child's social and emotional well-being and are not linked in any way to his classroom performance or helping him to benefit from his special education curriculum.

When we consider how the DSSR operates to implement federal law, it is clear that public school comparability and the requirement of a nexus to accessing special education are two independent reimbursement requirements. Satisfying one will not neutralize the failure to satisfy the other.

In conclusion, the record is clear that the reimbursement request was outside the authorization of the SNEA, and grievant has not sustained her burden of proof on appeal.

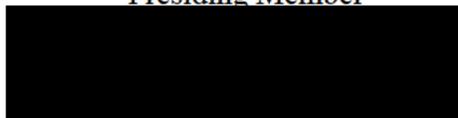
V. DECISION

Grievant's appeal is denied.

For the Foreign Service Grievance Board:



Cheryl M. Long
Presiding Member



Bernadette M. Allen
Member



William B. Nance
Member