IN THE COURT OF COMMON PLEAS OF **PHILADELPHIA COUNTY**

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

VISIONQUEST,	:	JUNE TERM, 2000
Plaintiff	:	No. 2096
v.	:	COMMERCE CASE PROGRAM
THE SCHOOL DISTRICT OF PHILADELPHIA BOARD OF EDUCATION and DAVID HORNBECK, in his capacity as Superintendent,	:	
Defendants	:	

ORDER

AND NOW, this 11 day of April 2002, upon consideration of plaintiff's Complaint against defendant, defendant's Answer, all other matters of record, and a full bench trial in this matter, and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that **Judgment is awarded in favor of plaintiff, VisionQuest, and against defendant, School District of Philadelphia, in the amount of $753,960.84.**

It is further **ORDERED** that David Hornbeck is **Dismissed** from the case.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION IN SUPPORT OF THIS COURT'S ADJUDICATION IN FAVOR OF PLAINTIFF

Albert W. Sheppard, Jr., J. ..... April 11, 2002

This matter arises from a dispute over payments owed for educational services provided by plaintiff, (VisionQuest") through its day-treatment program to Philadelphia school students, referred by the Family Division, Juvenile Branch, of the Court of Common Pleas of Philadelphia. These school students had been adjudicated delinquent or were awaiting adjudication.

The educational services were provided pursuant to contract(s) for the years 1998-1999 and 1999-2000, previous courses of dealing, and promises by representatives of the School District of Philadelphia that VisionQuest would be paid despite the fact that the number of students exceeded the actual number specified in the contract(s).

This court finds that plaintiff is entitled to payments for educational services rendered for the benefit of District. Accordingly, judgment for plaintiff will be awarded in the amount of $753,960.84, comprising $728,705.84 for services rendered in excess of the stated contract amounts, plus $25,255.00 interest applied to the liquidated contract amounts until paid.

FINDINGS OF FACT

1. Plaintiff, VisionQuest, is a private, non-profit Arizona corporation, registered to conduct business in the Commonwealth of Pennsylvania, with its principle place of business in Pennsylvania at 1822 Strasburg Road, Administration Building # 1, Coatesville, Pennsylvania 19320. Compl. & Answer, ¶ 1.

2. VisionQuest is licensed by the Commonwealth of Pennsylvania Department of Public Welfare[1] to provide educational and day treatment services for alleged and adjudicated juvenile delinquents or dependent children. Compl. & Answer, ¶ 2. See also 11//7/01 N.T.19;[2] Exhibits P-11 & P-13.[3]

3. VisionQuest has been in operation for almost thirty years. N.T. 17.

4. Defendant, the School District of Philadelphia ("School District"), is a public school district of the first class and corporate body organized pursuant to § 2-211 of the Public School Code Act of 1949, codified at 24 P.S. §§ 1-101 et seq. ("Public School Code"). Compl. & Answer, ¶ 4.

5. The School District operates a public school system in Philadelphia County and provides public

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[1]Specifically, VisionQuest's program is licenced by the Department of Public Welfare of the Commonwealth of Pennsylvania as a "Day Treatment Facility" pursuant to 55 Pa. Code Ch. 3680. Compl. & Answer, ¶ 8.

[2]"N.T." refers to the notes of testimony taken at the trial concluded on November 7, 2001.

[3]"Exhibits" refers to those exhibits presented at the trial.

school education to children residing within the jurisdictional limits of the Philadelphia School District. Compl. & Answer, ¶¶ 5-6.

6. From September 1, 1993 through June 30, 2000, VisionQuest provided educational services to Philadelphia school children at the Rob Wilson High School, an educational and day treatment facility operated by VisionQuest, pursuant to seven annual written contract agreements with the School District. N.T. 18, 155. See also, Compl. & Answer, ¶ 7.

7. In this action, VisionQuest seeks reimbursement from the School District for unpaid educational services provided during the following two contract years: July 1, 1998 through June 30, 1998 ("the 1998-1999 Contract") and July 1, 1999 through June 30, 2000 ("the 1999-2000 Contract"). N.T. 156.

8. School children are placed into VisionQuest's day treatment and educational programs where these children had been placed in in-home detention and were awaiting adjudication or were adjudicated delinquent, truant or dependent by the Family Division, Juvenile Branch, of the Court of Common Pleas of Philadelphia ("Juvenile Court"). N.T. 156-57;[4] Compl. & Answer, ¶ 3.

9. Students were assigned to the VisionQuest program, pursuant to orders by Juvenile Court Judges or Masters, based on public safety concerns, as well as educational and detention management needs. N.T. 20, 125-30, 157-58, 223-24.

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[4]During trial, plaintiff's counsel offered a stipulation of certain matters between VisionQuest and Denise Baker, who had been counsel for the School District and an authorized agent to agree to the stipulation. See N.T. 153-162. Testimony was also presented which reiterated some matters covered by the stipulation.

10. VisionQuest could not return a child to public school without further order from the Juvenile Court after a hearing to determine the child's suitability to return to public school. N.T. 131-32, 161.

11. The contracts between VisionQuest and the School District incorporated § 13-1310(b) of the Public School Code, which provided that prior to purchasing educational services from an approved private agency, the board of school directors must document that a child being placed in a day treatment program must not be able to receive educational services in a regular classroom setting because of behavioral or psychological reasons.[5] Exhibits P-1 & P-17, ¶ 1.

12. Despite that VisionQuest and the School District entered into yearly contracts over a seven-year period for which the term was to commence in July of the relevant year, VisionQuest did not have a signed contract at the beginning of any term. However, VisionQuest would still accept students referred by the Juvenile Court. N.T. 31-36; Exhibit P-41.

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[5]Section 13-1310 reads as follows:

> Notwithstanding anything to the contrary stated within the law, the board of school directors of any school district, in which a day treatment program operated under approval from the Department of Public Welfare by a private children and youth agency is located, may in its discretion purchase educational services for children referred, pursuant to a proceeding under 42 Pa. C. S. Ch. 63 (relating to juvenile matters), to such an agency. Before the board of school directors purchases educational services from the agency for a specific child, it must document that the child cannot receive appropriate
> educational services in a regular classroom setting because of behavioral or psychological reasons: Provided, However, That nothing contained in this section shall be construed to alter or limit the educational rights of exceptional children.

24 P.S. § 13-1310(b).

13. The manner in which contract negotiations occurred was that VisionQuest would receive a dated contract for its signature and then would return it to the School District some months thereafter for the School District's signature. N.T. 35-39.

14. Beth Ann Rosica, Ph.D. ("Dr. Rosica"), the National Director of Education for VisionQuest, had primary responsibility for negotiating and administering the contracts between VisionQuest and the School District. N.T. 14-15.

15. Dr. Rosica first worked directly with Richard Glean of the School District and then worked mainly with Dr. Ronald S. Farkus ("Dr. Farkus"), the Advisor for the School District's Family Resource Network, in the negotiations and administration of the contracts with the School District. N.T. 27-31, 94.

16. Through his tenure, Dr. Farkus was the direct contact person for the VisionQuest program with the School District. N.T. 193-94.

17. Dr. Rosica testified that Dr. Farkus was the representative from the School District with whom she worked and that she understood he had the authority to enter into negotiations on behalf of the School District and the authority to enter into contracts with VisionQuest. N.T. 53.

18. Prior to entering into the 1998-1999 and 1999-2000 Contracts, Dr. Rosica had discussions with Dr. Farkus regarding the potential number of students anticipated to be assigned by the Juvenile Court and serviced under the contracts. N.T. 28.

19. The number of students actually specified in each of the contracts merely reflected an estimate of the number of students based on the prior year's attendance or anticipation of what the Juvenile Court would send to VisionQuest, but the number was not certain and could be more or less than

the number specified in the contracts. N.T. 27.

20. In the 1994-1995 contract, the specified number of students was twenty-five and the stated compensation amount was $125,000. Exhibit P-45; N.T. 41-42.

21. However, during the 1994-1995 contract year, VisionQuest provided educational services for a greater number of students than were specified in the contract and the School District paid $75,000.00 in addition to the contract amount. N.T. 42-43, 162.

22. During the 1998-1999 contract year, Dr. Rosica and Dr. Farkus had on-going discussions regarding Dr. Rosica's anticipation that the number of students being placed in the VisionQuest program was exceeding the original estimates and the number specified in the contract. N.T. 30, 46-48.

23. In a memorandum to Dr. Farkus from Dr. Rosica, dated January 29, 1999, Dr. Rosica provided an estimate of the costs for providing services to 100 students. Exhibit P-19.

24. Even within the 1998-1999 contract, the original number of students specified in the contract was seventy-five and that number was changed to 105 by Dr. Rosica who was advised by Dr. Farkus to make that change. N.T. 50; Exhibit P-17 at 1.

25. Dr. Rosica advised Dr. Farkus that the number may exceed 105 and Dr. Farkus repeatedly assured Dr. Rosica that the number of students would be increased to match the number of students assigned by the Juvenile Court and for whom VisionQuest was providing services and that VisionQuest would be paid for any students educated in excess of the contract amounts. N.T. 50-52, 58.

26. During the 1998-1999 contract year, Dr. Rosica testified that VisionQuest actually provided educational services for approximately 120 to 130 full-time students. N.T. 55.

27. The reason the 1998-1999 Contract did not reflect the actual number of students whom VisionQuest were serving was because the School District needed to get the contract pushed through and approved. N.T. 50.

28. VisionQuest did not receive a signed copy of the 1998-1999 Contract until after April 12, 1999. N.T. 29-30, 35, 49. See also, Exhibit P-17.

29. The 1998-1999 Contract authorized services to be provided for 105 full-time students at a compensation rate of $424,000. Exhibit P-1, at 1-2 and Board Resolution C-8.

30. The contract also explicitly provided that "[t]he cost of these services will be based on the SCHOOL DISTRICT's prior year approved tuition rate and will be reconciled at the end of CONTRACTOR's fiscal year." Exhibit P-17 at ¶ 3(a).

31. It is undisputed that the reconciled daily tuition rate for the 1998-1999 contract year was $30.34 per student x 180 days. N.T. 160.

32. After receipt of the signed contract, Dr. Farkus again assured Dr. Rosica that VisionQuest would be compensated in the event that the number of students assigned by the Juvenile Court exceeded the 105 number. N.T. 50-52.

33. Payment for the 1998-1999 Contract in the amount of $424,000.00 was authorized by a resolution passed by the Board of Education. This resolution was attached to the contract. Exhibit P-17, Board Resolution C-8 (dated April 12, 1999).

34. For every student placed by court order into the VisionQuest program, VisionQuest would send to the School District a Pennsylvania Department of Education Form 4605 ("Form 4605) to acknowledge that the child resided in Philadelphia and to authorize payment for the educational services provided. N.T. 21-24, 54-55, 90-91; Exhibit P-40-A.

35. Each Form 4605 would be signed by the "School Board Secretary," acknowledging or disclaiming the child's residency. Exhibit P-40-A

36. In this instance, David W. Hornbeck ("Hornbeck"), the former Superintendent for the School District, signed the Form 4605s for the years in question.[6] Exhibit P-40-A; N.T. 25-26.

37. Dr. Gary Ledebur ("Dr. Ledebur"),[7] admitted on cross-examination that the Form 4605 is to "certify that a student educated outside of public schools is in fact a bona fide resident of Philadelphia and thus authorizing [the School District] to pay for that student's education in Philadelphia." N.T. 190.

38. Dr. Ledebur also admitted that the Form 4605s were used to track the number of children that were going into the VisionQuest program. N.T. 202.

39. In addition to and conjunction with the signed Form 4605s, VisionQuest would send invoices to the School District. N.T. 23-24, 56-57.

40. The invoices reflected the number of students for whom services were provided, consistent with

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[6]Though Mr. Hornbeck is a named defendant in this action, no evidence nor argument was presented that would implicate any personal liability on his part or that he acted outside of the scope of his duties. Therefore, Mr. Hornbeck is dismissed from this case.

[7]In 1998, Dr. Ledebur was the Executive Director of the Family Resource Network, which is a cabinet position. N.T. 166. He is also one of the signatories of the 1998-1999 Contract. N.T. 167; Exhibit P-17.

the Form 4605s, regardless of the stated contract number. Exhibits P-16 & P-12.

41. Specifically, on July 27, 1999, VisionQuest sent the first of a series of invoices for the 1998-1999 Contract to the School District in the amount of $553,613.98. This invoice was accompanied by copies of the previously completed Form 4605s. Exhibit P-16; N.T. 57.

42. In reliance on the course of dealings with Dr. Farkus, Dr. Farkus's promises and the acknowledged Form 4605s, VisionQuest continued to accept students assigned by the Juvenile Court and did not return any students to the public school system for the 1998-1999 contract year. N.T. 61, 102; Exhibit P-40-A.

43. Dr. Farkus left his employ with the School District during the summer of 1999. N.T. 57.

44. In August 1999, VisionQuest had a meeting with Dr. Ledebur and Naomi Gubernick ("Ms. Gubernick")[8] and other representatives of the School District, concerning the unpaid invoices for the 1998-1999 contract year and to discuss the contract for the new school year. N.T. 59-61.

45. During that meeting, Dr. Rosica advised Dr. Ledebur and Ms. Gubernick about the conversations with Dr. Farkus and the history of the course of dealings between VisionQuest and the School District. N.T. 60.

46. The response was that the School District was not going to honor any agreements made by Dr. Farkus with regard to the 1998-1999 Contract.[9] N.T. 60.

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[8]Naomi Gubernick replaced Dr. Farkus. N.T. 57.

[9]Dr. Ledebur also testified with regard to the August, 1999 meeting but he could not recall for certain whether the 1998-1999 contract was discussed. N.T. 169. Rather, his testimony was that "I was probably there and I probably said what [Dr. Rosica] said I said which was that we had a contract." N.T. 170. In light of this uncertainty, this Court cannot rely on Dr. Ledebur's testimony for the substance of the August, 1999 meeting. Instead, the court finds credible and relies on Dr. Rosica's

47. The explanation given to VisionQuest was that the School District had no way of reconciling the number of the students with the compensation to be paid to VisionQuest because the fiscal year was over and had ended on June 30, 1999. N.T. 64-65.

48. At that time, VisionQuest had already provided the educational services for more than 105 students and VisionQuest had submitted the Form 4605s for the 1998-1999 contract year. N.T. 60.

49. During that same meeting, VisionQuest advised the School District that the number of students for the 1999-2000 contract year could reach as high as 170. N.T. 61-62.

50. Dr. Ledebur's response was that VisionQuest would have to wait until January to go back to the Board of Education to try to increase the amount of the contract to reflect an anticipated 170 students to be serviced during the 1999-2000 contract year because of an impending mayoral election. N.T. 61-62; Exhibit D-1.

51. Dr. Ledebur did not inform VisionQuest that the School Board had approved funding for the 1999-2000 Contract for only 105 full time students. N.T. 75-76.

52. On November 8, 1999, VisionQuest sent the School District a second invoice in the amount of $85,528.46 and a third invoice in the amount of $74,970.14, which were in addition to the previous invoice sent on July 27, 1999. Exhibit P-12; N.T. 66-68.

53. An additional meeting took place in November 1999 to resolve the on-going dispute. N.T. 69, 75, 98, 170.

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testimony.

54. VisionQuest was again informed that the School District could not reconcile the previous year, but that the School District would try to go to the Board of Education in January to try to increase the current year's contract to avoid the same problem. N.T. 69.

55. Prior to that meeting, Dr. Ledebur's office asked VisionQuest to hold off pursuing payment until after the mayoral election. N.T. 110.

56. It is not disputed that $424,000.00, the stated compensation amounts in the 1998-1999 Contract was paid to VisionQuest on October 1, 1999. Exhibit P-44.

57. As for the 1999-2000 Contract, VisionQuest did not receive a copy of the agreement for its review until mid-January, 2000. N.T. 77; Exhibit P-41.

58. The 1999-2000 Contract provided for only 105 full time students at a compensation rate of $467,000.00, notwithstanding that VisionQuest estimated and advised the School District that the number of students may reach 170. Exhibit P-1 at 1; N.T. 61-62.

59. Payment of the 1999-2000 Contract was authorized by a resolution passed by the Board of Education. The resolution was attached to the contract. Exhibit P-1, Board Resolution C-28 (dated August 23, 1999).

60. VisionQuest signed the 1999-2000 Contract after March 21, 2000 and sent it back to the School District. N.T. 77-79; Exhibit D-9.

61. VisionQuest did not receive a fully-executed copy of the 1999-2000 Contract until May 2001. Exhibit P-1.

62. Based on the acknowledged Form 4605s and the meetings of August 1999 and November 1999, at which VisionQuest was advised that representatives of the School District would go back to the Board of Education in January 2000, VisionQuest continued to accept students assigned by the Juvenile Court in excess of the stated contract amount for the 1999-2000 Contract. N.T. 21-24, 75

63. On March 1, 2000, the School District formally advised VisionQuest that it would not be paying anything in addition to the stated contract amount for the 1998-1999 Contract. Exhibit P-50.

64. In a letter, dated March 21, 2000, counsel for VisionQuest informed counsel for the School District that if it was unwilling to "clarify its position or is unwilling to modify the [1999-2000] agreement so that it accurately covers the services that are actually being provided, VisionQuest will be referring youths back to the School District for educational programming beginning April 1, 2000." Exhibit D-9.

65. On April 3, 2000, Dr. Ledebur sent a letter to Dr. Rosica informing VisionQuest that the School District is not able to expand or increase the 1999-2000 contract and advising that VisionQuest would not be compensated for services provided to students in excess of the contract amounts. Exhibit P-7.

66. According to Dr. Rosica's testimony, this letter was the first time that VisionQuest was specifically advised in writing that the School District would not consider paying more than the stated contract amount for the 1999-2000 contract year. N.T. 83-84.

67. Dr. Ledebur testified that over the life of both contracts, he never asked the Board of Education to amend the resolutions to authorize a higher number of students. N.T. 172.

68. VisionQuest could not simply return children back to public schools in April 2000 since the school year was almost at an end, such action would require a hearing before the Juvenile Court, and the Juvenile Court was not keen on sending the students back. N.T. 84-85, 131-32.

69. In the spring of 2000, a meeting did take place with representatives of the School District and Administrative Judge Paul Panepinto of the Juvenile Court, at which the School District informed Judge Panepinto that it did not want to send any more students to VisionQuest's program and could not authorize additional monies for additional students in excess of the number specified in the contract with VisionQuest. N.T. 104-05, 175-76.

70. VisionQuest was not present at that meeting. N.T. 176.

71. The main purpose of that meeting was to advise Judge Panepinto that the contract with VisionQuest would not be renewed for the 2000-2001 school year. N.T. 177-78.

72. Judge Panepinto did attempt negotiations with the School District and VisionQuest for the 2000-2001 school year, but the Judge made no changes in the procedure. N.T. 223-24.

73. Since the meeting with Judge Panepinto took place toward the end of the 2000 school year, it has no real bearing on the dispute between VisionQuest and the School District as to the unpaid educational services rendered by VisionQuest for the benefit of the School District.

74. On May 7, 2001, the School District did pay $467,000.00 to VisionQuest, which reflected the stated compensation rate in the 1999-2000 Contract. Exhibit P-43.

75. For the 1998-1999 contract year, VisionQuest billed the School District a total of $714,112.58,[10] reflecting the total educational services provided to Philadelphia school children who were acknowledged on the Form 4605s. Exhibit P-42.

76. The $714,112.58 figure indicates that VisionQuest provided services for 130 students for the 1998-1999 contract year. This figure is calculated as follows: $30.34 (the undisputed daily tuition rate) x number of students x 180 days = $714, 112.58. Applying basic algebra to this equation, the number of students equals 130.761.

77. Since the School District paid VisionQuest the sum of $424,000.00 for the 1998-1999 contract year on October 1, 1999, the remaining unpaid balance is $290,112.58 for that year. N.T. 158; Exhibits P-42 & P-44.

78. For the 1999-2000 Contract, VisionQuest billed the School District $905,593.26 and was paid $467,000.00, leaving an unpaid balance of $438,593.26 for that year. N.T. 158; Exhibits P-42 & P-43.

79. The reconciled daily tuition rate for the 1999-2000 contract year was $32.89 per student. Exhibit P-15.

80. The $905,593.26 figure indicates that VisionQuest provided services for 153 students for the 1999-2000 contract year. This figure is calculated as follows: $32.89 (the daily tuition rate) x number of students x 180 days = $905,593.26. Applying basic algebra to this equation, the

[10]This figure incorporates the invoice, dated July 27, 1999, for $553,613.84 (Exhibit P-16) and the second and third invoices, dated November 8, 1999, for $85,528.46 and $74,970.14 (Exhibit P-12).

number of students equals 152.96.

81. Neither the 1998-1999 Contract nor the 1999-2000 Contract were ever formally amended in writing by an affirmative vote of a majority of the Board of Education.

82. The Form 4605s, which were attached to the invoices, did authorize payment by the School District to VisionQuest for educational services provided to Philadelphia school children who were assigned to the VisionQuest program. N.T. 190

83. The School District did not challenge the accuracy of the invoices introduced at trial nor did it dispute the authenticity of the Form 4605s.

84. The School District also did not dispute that the educational services were provided as reflected in the invoices.

85. The total billing over the contract amount for both years which remains unpaid is $728,705.84.

86. VisionQuest is only entitled to prejudgment interest for stated contract amounts over the period for which payment was owed and withheld by the School District.

87. Interest on the 1998-1999 Contract is applied to the stated contract amount of $424,000 at a rate of six percent (6%) per annum from August 1, 1999 (the date owed) until October 1, 1999 (the date paid).

88. Interest on the 1998-1999 Contract is owed in the amount of $4240.

89. Interest on the 1999-2000 Contract is applied to the stated contract amount of $467,000.00 at a rate of six percent (6%) per annum from August 7, 2000 (the date owed) until May 7, 2001 (the date paid).

90. Interest on the 1999-2000 Contract is owed in the amount of $21,015.

91. Total prejudgment interest due on the liquidated contract amounts is $25,255.

92. VisionQuest is owed a total of $753,960.84 from the School District.

DISCUSSION

In this action, VisionQuest seeks judgment in the amount of $728,705.84 as reimbursement for educational services rendered to Philadelphia school children who were assigned by the Juvenile Court to VisionQuest's program operated at the Rob Wilson High School during the years 1998-1999 and 1999-2000, even though the number of school children and the amount of payments owed exceed the stated contract amounts. VisionQuest also seeks prejudgment interest in the amount of $82,445.79, which reflects the statutory six percent (6%), accruing from November 30, 1999 and November 30, 2000 for the respective contract years, for a total judgment of $811,151.60.[11]

VisionQuest presents primarily two theories which, alternatively, it asserts provide grounds for relief: (1) that the 1998-1999 Contract and 1999-2000 Contract were amended and/or modified by the acknowledged Form 4605s and certain sections of the Public School Code of 1949[12] which supersede any limitation on the number of students and obligate the School District to pay for services rendered by VisionQuest; or (2) that principles of quantum meruit and promissory or equitable estoppel, together with VisionQuest's reasonable reliance, entitle it to recover against the School District.

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[11]VisionQuest also seeks attorney fees, pursuant to 42 Pa. C.S.A. § 2503, for purportedly obdurate, vexatious and bad faith conduct by the School District during the pendency of this action. However, the record does not demonstrate that VisionQuest is entitled to attorney fees.

Further, the court does not agree with VisionQuest's interest due figures. This court believes that interest should not be applied to the unpaid reimbursement fees where those fees exceed the stated contract amounts.

[12]Specifically, VisionQuest relies on 24 P.S. § 13-1310(b) and 24 P.S. § 337(c) of the Public School Code.

On the present record, this court concludes that VisionQuest is entitled to recover on theories of quantum meruit and promissory estoppel based on courses of dealing, promises of Dr. Farkus, the acknowledged Form 4605s, and the fact that educational services were actually provided in excess of the stated contract amounts. Application of these quasi-contractual doctrines are also necessary to prevent a fundamental injustice to VisionQuest.

First, certain provisions of the Public School Code must be addressed. Section 508 of the Public School Code requires an affirmative vote of a majority of all members of the board of school directors in every school district to enter into contracts of any kind which exceed one hundred dollars ($100). 24 P.S. § 5-508. "Failure to comply with provisions of this section shall render such acts of the board of school directors void and unenforcible [*sic*]." Id.

It is true, as the School District argues, that Pennsylvania courts have found Section 508 to be mandatory and must be followed in order to have the contract deemed enforceable. See Yoder v. Sch. Dist. of Luzerne Twp., Fayette Cty., 399 Pa. 425, 429, 160 A.2d 419, 421 (1960)(noting that Section 508 is mandatory and the public policy behind it and other provisions is to protect the school district from collusion and dishonesty and to insure that material, supplies or services are purchased at the best possible price); Hazelton Area Sch. Dist. v. Krasnoff, 672 A.2d 858, 862 (Pa. Commw. Ct. 1996)(holding that Section 508 is mandatory, applies even to modifications of a contract, and that without "solid proof" of approval by an affirmative vote of the majority of the board, recovery may not be had against the school district even in quantum meruit); Sch. Dist. of Philadelphia v. Framlau Corp., 15 Pa. Commw. 621, 628, 328 A.2d 866, 870 (1974)(noting that "[i]n the absence of a compliance with the applicable statutory provisions pertaining to the mode by which a board of school directors may make a contract, no

enforceable contract will result."). But see, Mullen v. Bd. of Sch. Directors of Dubois Area Sch. Dist., 436 Pa. 211, 217, 259 A.2d 877, 880-81 (1969)(holding that school board was not entitled to assert that teacher's contract was not valid because there was no recorded vote of the board approving the contract and that compliance with the statute rests with the board and the teacher was without fault)("[the board] must not be permitted to advantage themselves of their own failures to the detriment of their employees.").

Section 13-1310(b) of the Public School Code requires the board of school directors of any school district, in which a day treatment program is operated by an agency approved by the Department of Public Welfare, to document that a child cannot receive educational services in a regular classroom setting because of behavioral or psychological reasons. 24 P.S. § 13-1310(b). The school district of the child's residence is also supposed to bear the costs of educating the child in the day treatment program, unless residency cannot be determined, at which point, the Department of Education shall bear the costs. Id., § 13-1310(c). Under this section, the school district in which the day treatment center is located bears the initial responsibility of either schooling the children or purchasing educational services from an approved agency and reimbursing the home district in the event that it has no day treatment center. Community Service Foundation, Inc. v. Bethlehem Area Sch. Dist., 706 A.2d 882, 886 (Pa. Commw. Ct. 1998).

VisionQuest asserts that Section 13-1310(b), which was incorporated in both the 1998-1999 and the 1999-2000 Contracts, supersedes any specific limit on the number of students for whom payment of educational services was to be made. Under the clear language of Section 13-1310(b) and Community Service Foundation, it is true that this section imposes a duty upon the school district to either educate children who reside within it or to purchase educational services for these children by an approved day treatment agency. However, it is not necessarily true that this section supersedes the contractual limits on

the number of students who may receive services. Nevertheless, this point is not dispositive.

Rather, 24 P.S. § 337c is more helpful to VisionQuest's position. Section 337c of the Public School Code provides that:

> When any board of school directors has heretofore contracted for labor, materials and supplies for the school district, the purchase of which by contract is authorized under the provisions of the school laws of the Commonwealth, and the board of school directors has actually received the labor, materials and supplies and they are being used by the school district, if the contract does not evidence any fraud or conspiracy to violate the provisions of the school laws of the Commonwealth and the school district has not suffered any pecuniary loss as the result of the contract, then the contract shall be valid and binding on the school district and payment for the labor, materials and supplies by the school district is hereby authorized, or if payment has been made, it is hereby ratified, notwithstanding the fact that the contract was legally void by reason of the failure to advertise for bids or by reason of defect in the advertising, or by reason of any other defect in compliance with, or in the failure or omission to comply with, the school laws of this Commonwealth regulating the award of contracts for labor, materials and supplies. No board of school directors nor any member thereof shall be surcharged for any payment made on any such contract.

24 P.S. § 337c (emphasis added). VisionQuest argues that this section independently authorizes payment for extra educational services performed by VisionQuest even if the number of students exceeded the specific limit set forth in the contracts. The clear language of this section does authorize payment for labor if the school district actually received such labor even if the contract did not comply with the school laws of the Commonwealth. Therefore, failure to get approval of a majority of the board of school directors, as required by 24 P.S. § 5-508, is not necessarily fatal to VisionQuest's recovery.

Even if Section 337c did not support VisionQuest's position, the doctrines of equitable estoppel and quantum meruit should apply here. A claim for quantum meruit or unjust enrichment requires the plaintiff to establish the following: (1) benefits conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it

would be inequitable for defendant to retain the benefit without payment of value. Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa.Super.Ct. 1999), appeal denied, 561 Pa. 700, 751 A.2d 193 (2000).

Here, it is undisputed that VisionQuest provided educational services for more students than specified in both the 1998-1999 Contract and the 1999-2000 Contract. In doing so, VisionQuest conferred a benefit on the School District who is obligated, pursuant to 24 P.S. § 1310(b), to either educate children who reside in Philadelphia or to purchase educational services from an approved day-treatment facility. Failure to pay VisionQuest for educational services rendered on behalf of the School District would be inequitable and unconscionable.

Moreover, the Pennsylvania Supreme Court recognizes that the doctrine of equitable estoppel may be asserted against the Commonwealth and its political subdivisions even where to do so would violate a statute or ordinance. Chester Extended Care Center v. Commonwealth, Dept. of Public Welfare, 526 Pa. 350, 355, 586 A.2d 379, 382 (1991). See also, Lobolito v. North Pocono Sch. Dist., 562 Pa. 380, 389, 755 A.2d 1287, 1292 (2000)(upholding developer's claim of promissory estoppel asserted against successor school board based on predecessor's promises of payment); Cameron Manor, Inc. v. Dept. of Public Welfare, 681 A.2d 836, 839-40 (Pa. Commw. Ct. 1996)(holding that DPW was equitably estopped from denying full Medical Assistance reimbursement where services were provided to MA patients and assurances of payment had been made and plaintiff relied on those assurances).

As listed in Chester Extended Care Center, "the elements of estoppel are 1) misleading words, conduct, or silence by the party against whom the estoppel is asserted; 2) unambiguous proof of reasonable reliance upon the misrepresentation by the party asserting the estoppel; and 3) the lack of a duty to inquire

on the party asserting the estoppel." 526 Pa. at 355, 586 A.2d at 382. In that case, a nursing facility sought to recover approximately $250,000.00 in payments for the care of Medical Assistance ("MA") patients belonging to the Medicare program, where the facility's participation in the MA program had been terminated by the United States Department of Health and Human Services ("HHS") and the facility's license was initially revoked by the Pennsylvania Department of Health ("DOH"). Id. at 352, 586 A.2d at 380. The MA program was administered by the Pennsylvania Department of Public Welfare ("DPW"). Id.

The Pennsylvania Supreme Court determined that equitable estoppel applied because the DPW had misled the nursing facility into believing that it was still eligible to participate in the MA program by continuing to make MA payments, never making any effort to remove MA patients from the facility and continuing to send additional MA patients to the facility. Id. at 356, 586 A.2d at 382. Further, the DOH never informed the nursing facility that HHS considered its termination to be irrevocable and the facility fully complied with a settlement agreement and the conditions to bring it into compliance with the law. Id. The court held that the DPW and DOH lulled the facility into believing that its participation in the MA program was not in jeopardy so long as it continued to comply with the terms of the settlement reached between itself and the DOH. Id. at 357, 586 A.2d at 382. The court also held that it would be unconscionable to require the nursing facility to pay back the funds that were provided for MA patients. Id. at 357, 586 A.2d at 383. The court also stated:

> Although it is the general rule that estoppel against the government will not lie where the acts of its agents are in violation of positive law, Central Storage & Transfer Co. v. Kaplan, 487 Pa. 485, 410 A.2d 292 (1979), this rule cannot be slavishly applied where doing so would result in fundamental injustice. It would clearly be a fundamental injustice to hold appellant herein responsible for the cost of caring for its Medical Assistance

> patients. The agencies that administer the welfare programs in this Commonwealth have a duty to deal fairly and justly with those who assume the task of caring for our indigent citizens. . . .

Id. See also, Cameron Manor, 681 A.2d at 840 (finding that any wrongdoing by the plaintiff is not sufficiently related to the MA reimbursement claim and does not negate a finding of fundamental injustice if payment were not made). But see, Carroll v. City of Philadelphia, Bd. of Pensions and Retirement Municipal Pension Fund, 735 A.2d 141, 145-46 (Pa. Commw. Ct. 1999)(holding that equitable estoppel did not apply in order to override city ordinance, requiring employees hired as of a certain date to belong to a less generous pension plan, and the record did not support a finding of fundamental injustice because a simple clerical error was made and employee who was re-hired was placed in the preceding more generous plan and the city finance department tried to remedy the error in good faith); Finnegan v. Public School Employees' Retirement Bd., 126 Pa.Cmmw. 584, 586, 560 A.2d 848, 850 (1989)(holding that erroneous statements of pension fund representatives could not override the statute, limiting employees to purchase a maximum of twelve years of service when retiring early, even though plaintiff met all the elements for equitable estoppel).

Here, the record shows that Dr. Farkus repeatedly assured VisionQuest that it would be paid in the event that the number of students exceeded the number specified in both the 1998-1999 and the 1999-2000 Contracts. The record also shows that VisionQuest reasonably relied on those assurances. The numbers specified in the contracts were merely estimates and could not account with exactitude how many students would be sent to the VisionQuest program by the Juvenile Court. Also, in the 1994-1995 contract year, the number of students serviced exceeded the number specified in the contract and VisionQuest was in fact paid for those students. In addition, through the Form 4605s, the School District implicitly

acknowledged that more students would be assigned to the VisionQuest program than those specified in the contracts. Even after Dr. Farkus left in the School District's employment, Dr. Ledebur and other representatives of the School District, in both the August 1999 and the November 1999 meetings, appeared to have misled VisionQuest into believing that the number of students in the 1999-2000 Contract could be increased in January 2000, after the mayoral election, when he and others went to the Board of Education. Further, VisionQuest was not formally informed in writing that the School District would not be authorizing payment for services provided in excess of the contract numbers until March 2000. Moreover, the Juvenile Court continued to send students to the VisionQuest program through both the 1998-1999 and the 1999-2000 Contracts. VisionQuest could not send students back to the public school system without a hearing before the Juvenile Court, which was reluctant to put those students back in the system because of public safety reasons.

Even though Section 508 of the Public School Code requires approval by the majority of the Board of Education to have a contract be deemed enforceable, 24 P.S. § 508, this case falls within the parameters of Chester Extended Care Center and Cameron Manor, Inc. and outside of the realm of mere clerical error by public employees. Once the Form 4605s were acknowledged, VisionQuest was repeatedly assured it would be paid, in light of previous courses of dealing, and the fact that the Juvenile Court continued to send the students to the VisionQuest program, VisionQuest had little choice but to accept students into its program and to educate them. To not compensate it for services rendered would create a fundamental injustice even though the mandates of Section 508 were not followed. Therefore, VisionQuest is entitled to the $728,705.84, representing the amount unpaid for the 1998-1999 and the 1999-2000 Contracts.

VisionQuest is also entitled to a certain amount of prejudgment interest. The decision to award prejudgment interest is discretionary and allowed in order to prevent unjust enrichment or where payment of interest is required to avoid injustice. In re Estate of Lydia Alexander, 758 A.3d 182, 190 (Pa. Super. Ct. 2000)("prejudgment interest may be awarded 'when a defendant holds money or property which belongs in good conscience to the plaintiff and the objective of the court is to force disgorgement of his unjust enrichment'.") (citations omitted). See also, Sack v. Feinman, 495 Pa. 100, 103 n.2, 432 A.2d 971, 972 n. 2 (1981). The right to interest upon money owing upon a contract begins at the time payment is withheld after it has been the duty of the debtor to make such payment. Spang & Co. v. USX Corp., 410 Pa. Super. 254, 265, 5999 A.2d 978, 984 (1991). The legal rate of interest, without specification of the applicable rate in the contract, is six percent (6%) per annum. 41 P.S. § 202.

Applying these principles, VisionQuest is entitled only to interest on the amounts actually specified in the contracts when those amounts were due but remained unpaid. The School District owed at least $424,000.00 on the 1998-1999 Contract after it was invoiced in excess of this amount on July 27, 1999 and not paid this amount until October 1, 1999. Therefore, interest on the 1998-1999 Contract is owed in the amount of $4240. Further, the School District owed at least the stated 1999-2000 contract amount of $467,000.00 by August 7, 2000 and it did not pay VisionQuest until May 7, 2001. Therefore, interest on the 1999-2000 Contract is owed in the amount of $21,015. Total prejudgment interest due on the liquidated contract amounts is $25,255. Added to the amount left unpaid, $728,705.84, VisionQuest is entitled to judgment of $753,960.84 against the School District.

CONCLUSIONS OF LAW

1. Pursuant to 24 P.S. § 1310(b), the School District is obligated to either educate children residing within Philadelphia or to purchase educational services from an approved day-treatment program.

2. This statutory obligation is incorporated into the 1998-1999 and the 1999-2000 Contracts.

3. Section 337c of the Public School Code, 24 P.S. § 337c authorizes payment by the School District for extra labor, material or supplies where such labor materials or supplies has actually been received even where the contract fails to meet other requirements of the Public School Code.

4. VisionQuest has established the requirements for quantum meruit where educational services have been provided for the benefit of the School District, who appreciated these services and failure to pay VisionQuest would unjustly enrich the School District.

5. VisionQuest has met the requirements for equitable estoppel where assurances of payment were made by Dr. Farkus notwithstanding the contractual limits, other representatives of the School District misled VisionQuest into believing the contractual numbers would be increased, previous courses of dealing in which VisionQuest was paid in excess of the contractual limits led VisionQuest to reasonably believe it would be paid for the years in question, and the acknowledged Form 4605s show that VisionQuest reasonably relied on these assurances.

6. Notwithstanding 24 P.S. § 508, requiring approval by a majority to the board of education to have a valid, enforceable contract, equitable estoppel may be asserted were failure to apply the doctrine gives rise to fundamental injustice.

7. The circumstances of this case demonstrate that a failure to apply equitable estoppel would work a fundamental injustice upon VisionQuest.

8. VisionQuest is entitled to prejudgment interest at the applicable statutory rate for the stated amounts in the contract which were due until paid.

For the reasons discussed and the present record, this court will issue a contemporaneous Order awarding judgment for VisionQuest and against the School District in the amount of $753,960.84.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.