



EDUCATION PRACTICE

ALERT

PENNSYLVANIA'S COMMONWEALTH COURT GIVES HELPFUL DIRECTION TO SCHOOL DISTRICTS ON PROGRAMMING FOR GIFTED EDUCATION STUDENTS

By Timothy E. Gilsbach

In the area of gifted education, there is often contention between parents and school districts but very little litigation. The lack of litigation gives courts only limited opportunities to provide guidance. However, this past fall, the Pennsylvania Commonwealth Court issued two different opinions on gifted education, both of which are helpful to school districts.

In both cases, *C.N. v. Neshannock Township School District* and *Abington School District v. B.G.*, the Commonwealth Court reiterated a well-established but often forgotten principle of gifted education: programming does not require “individual tutors or exclusive individual programs outside or beyond the district’s existing, regular and special education curriculum offerings.” Put another way, “a school district may not be required to become a Harvard or a Princeton to all who have IQs over 130.” The simple lesson is a school district does not have to send a student outside of what the district offers to meet its obligations to gifted students.

In addition, the *B.G.* court noted parents who attended the Gifted Individualized Education Program (GIEP) meetings, agreed with the GIEP and knew what was going on at the time, cannot complain later the GIEP was insufficient in terms of goals, objectives and measuring tools. Such an approach clearly puts the burden on parents to raise issues at the time of the GIEP meeting, not after the fact.

Finally, the *C.N.* court ruled even if a school district fails to provide appropriate gifted education programming, the nature of relief available to parents and students is somewhat limited. More specifically, the court explained when a hearing officer awards compensatory education for the failure to provide gifted programming, the district is not required to pay for programming outside of its existing offerings unless it agrees to do so. In other words, the district can require the student to come and receive compensatory education hours from the district. Moreover, the court noted such relief does not need to be based on hour-for-hour of services but rather on the needs of the student. The court also explained if the student makes appropriate progress, even despite the lack of appropriate gifted programming, the student may not be entitled to any compensatory education at all.

Accordingly, in both cases the court made it clear gifted obligations on the part of school districts are more limited than many parents suggest, and even when a district does not provide appropriate gifted education, the relief available may still be somewhat limited.

If you have any questions about this issue or need guidance regarding the content of this alert, please contact Timothy Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild’s [Education Practice Group](#).

Attorney Advertisement

© 2010 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.