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EDUCATION PRACTICE

# ALERT

## PENNSYLVANIA COMMONWEALTH COURT PROVIDES DIRECTION IN RESIDENCY HEARINGS

By Timothy E. Gilsbach and A. Kyle Berman

In the recent case of *Behm v. Wilmington Area School District*, the Pennsylvania Commonwealth Court provided some clarity on the due process rights of parents involved in a residency dispute with a school district. Significantly, the case reiterates the right to a residency hearing, and that the roles of prosecuting and judging residency must be done by separate people on behalf of a school district at the hearing.

In *Behm*, the parents complained it was a violation of their due process rights that the attorney who represented the board at the residency hearing also played a small role in the investigation of the residency issue for the administration. While the court rejected the parents' claims under the facts of the case, it did make clear there must be separation between the role of the prosecutor of a residency dispute and those sitting with or for the board to adjudicate the matter.

As a practical matter, this is meant to ensure the school board, not the administrators, makes the final call on whether a student is or is not a resident of the district when the parents demand a hearing. Clearly, the administration may still investigate the matter, meet with the parents to discuss the case and even make initial findings, but once the parents demand a hearing to "appeal" the administration's decision, a hearing before the board, a committee of the board or a hearing officer sitting for the board (with the committee or hearing officer's findings later approved by the full board) must be provided.

If you should need help with these procedures or have any questions about them, please feel free to contact Timothy Gilsbach at 610.397.6511 or [tgilsbach@foxrothschild.com](mailto:tgilsbach@foxrothschild.com), or Kyle Berman at 610.397.7980 or [aberman@foxrothschild.com](mailto:aberman@foxrothschild.com) or any member of Fox Rothschild's Education Practice Group.



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