Fox Rothschild LLP
ATTORNEYS AT LAW

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EDUCATION PRACTICE

ALERT

DOCUMENTS, DOCUMENTS EVERYWHERE!

DEFENSES TO PARENTAL DOCUMENT REQUESTS UNDER THE IDEA

There has been an increasing trend in special education Due Process hearings under the Individuals with Disabilities Education Act (IDEA) to litigate not only the issue of special education programming for students, but also the documents related to the same. In fact, there has recently been a number of cases in which parents have filed Due Process Complaints solely on the issue of whether the local school entity provided, in response to a document request, all of the documents to which a parent is entitled under the IDEA.

While the IDEA does entitle parents to review and, under certain circumstances, to obtain copies of educational records maintained by the local school entity about their child, that right is not unlimited. Moreover, that right does not include an entitlement to every piece of paper anywhere in the school district related to the student. Two recent cases now give school districts a one-two punch in fighting these cases.

First, in *Red Lion Area School District*, a Pennsylvania Special Education Hearing Officer faulted parents who had filed a Due Process Complaint only seeking records, finding that the parents "seemed to have misunderstood the difference between obtaining educational records for litigation purposes, and obtaining data they need to be contributors to the IEP team discussion." The Hearing Officer implied that the purpose of the right to documents under the IDEA is for the later. The Hearing Officer further noted, citing a number of cases, that e-mails not kept in the student's permanent file, tally sheets, student writing samples, written assignments and worksheets are not student records under the IDEA and, thus, parents may not be entitled to copies of these documents.

Next, in *Pubic Law Center of Philadelphia v. Pocono Mountain School District*, a parent who won an order stating that some records were student records under the IDEA, was denied prevailing party attorney fees because even though the parent won the case, he received no real relief. Interestingly, an order was entered that found certain records were educational records and would be required to be produced, but were not produced, presumably either because they did not exist or had already been produced. Thus, the court found that the parent won a hollow victory and, accordingly, it was not appropriate to award prevailing party attorney's fees.

These two cases should be helpful to school entities as they fight the ever increasing demand for student records and litigation related to such claims by limiting the nature of what are educational records as well as making parents gamble that they may win an order that records need to be provided, but not be able to obtain prevailing party fees in the event that the records ordered to be produced do not exist or in fact have already been produced.

If you should have any questions about the information contained in this Alert, please contact Timothy Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild's Education Law Group.