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May 15, 2015

Via Electronic Mail

Council on Local Mandates
135 West Hanover Street
Trenton, New Jersey 08625-0627

Re: In the Matter of a Complaint Filed by the Rockaway Township
Board of Education - New Jersey Department of Education
Gifted and Talented Program
Docket No.

Dear Council:

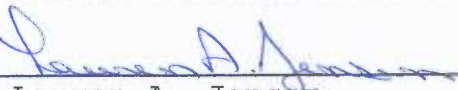
Enclosed for filing, please find an Answer to be filed in regard to the above-referenced matter.

Thank you for your attention to this matter.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____


Lauren A. Jensen
Deputy Attorney General

C: Hon. John A. Sweeney, A.J.S.C. (Ret.) (via electronic mail)
Nathanya G. Simon, Esq. (via electronic mail)
Kyle J. Trent, Esq. (via electronic mail)



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IN THE MATTER OF A COMPLAINT	:	BEFORE THE COUNCIL ON LOCAL
FILED BY THE ROCKAWAY TOWNSHIP	:	MANDATES
BOARD OF EDUCATION - NEW	:	Docket No.
JERSEY DEPARTMENT OF EDUCATION	:	
GIFTED AND TALENTED PROGRAM	:	
REGULATION	:	<u>ANSWER</u>
	:	

Respondent, Commissioner of the New Jersey Department of Education, by way of Answer to the Complaint filed by Claimant, Rockaway Township Board of Education, states:

1. The allegations in paragraph II(1) constitute conclusions of law to which no response is required. Moreover, it is specifically denied that N.J.A.C. 6A:8-3.1 is unconstitutional.

2. To the extent the allegations in paragraph II(2) contain only the effective dates of the regulation at issue in this case, no response is required. The regulation and administrative record speak for themselves.

3. The allegations in paragraph II(3) constitute conclusions of law to which no response is required. To the

extent paragraph II(3) contains factual allegations, same are denied. Moreover, it is specifically denied that N.J.A.C. 6A:8-3.1 is unconstitutional.

4. The allegations in paragraph II(4) are denied. Moreover, it is specifically denied that N.J.A.C. 6A:8-3.1 is unconstitutional.

Pleading Summary

Respondent denies that the gifted and talented provisions of N.J.A.C. 6A:8-3.1 constitute an unfunded mandate. Pursuant to N.J.A.C. 6A:8-3.1(a), each school district "shall ensure that appropriate instructional adaptations are designed and delivered . . . for students who are gifted and talented." In that vein, each district "shall be responsible for identifying gifted and talented students" using "multiple measures," N.J.A.C. 6A:8-3.1(a)(5), which can include, but is not limited to, "achievement test scores; grades; student performance or products; intelligence testing; parent, student, and/or teacher recommendation; and other appropriate measures," N.J. Dep't of Educ. FAQ, Gifted & Talented Programs, available at <http://www.state.nj.us/education/genfo/faq/faq_gandt.htm> ("G&T FAQ"). The school district must provide appropriate educational services and "shall develop appropriate curricular and instructional modifications," N.J.A.C. 6A:8-3.1(a)(5)(ii)-(iii),

which "might include, but are not limited to, pull-out programs, classroom-based differentiated instruction, acceleration, flexible pacing, compacted curricula, distance learning, advanced classes, or individualized programs." (G&T FAQ).

The requirement that local school districts establish a gifted and talented program was a part of the regulations prior to July 1, 1996, and the Council therefore cannot consider this matter. Further, the amendments to N.J.A.C. 6A:8-3.1 that became effective on July 5, 2005, simply revised an existing requirement and the regulation is therefore not an unfunded mandate pursuant to the New Jersey Constitution and N.J.S.A. 52:13H-3.

Moreover, requiring school districts to identify and provide appropriate educational services for gifted and talented students does not require direct expenditures to be incurred; rather, any cost will be contingent on decisions made by the local school district. Finally, to the extent there are any costs associated with the identification of and services for gifted and talented students, the district receives state aid and has the discretion to utilize that state aid to support those costs. Accordingly, the regulation cannot be an unfunded mandate.

WHEREFORE, Respondent requests that the Council on Local Mandates dismiss Claimant's Complaint.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Lauren A. Jensen
Deputy Attorney General

Dated: May 15, 2015