

April 12, 2010

Dear Client,

As part of our commitment to provide you with a legal resource that can offer cogent day-to-day advice and clear strategies for a secure future, we offer our pledge to also be your partner in information. We recognize the need for you to be immediately responsive to the changing requirements of the law, government regulations, and community needs. As such, our office will prepare *Action Papers* in response to the ever-changing laws and regulations affecting public education. Receipt of an Action Paper is an indication that your School District may want to consider changing a practice or policy. It also may indicate that your District is required by law to initiate or discontinue a practice or policy.

IN RE: HOMELESS CHILDREN

Recently a settlement was reached in a lawsuit filed against Carlynton School District by the Education Law Center and the National Law Center on Homelessness and Poverty. As a result of the settlement, homeless children in Pennsylvania may attend school in any school district in which the student's family has a "substantial connection".

The case was based upon the federal McKinney-Vento Homeless Education Assistance Act ("McKinney-Vento"). Pursuant to McKinney-Vento, schools must ensure that homeless children have equal access to the same free, appropriate, public education as provided to other children. The definition of homeless student is very broad and includes children who reside in shelters, hotels, motels, cars, tents, children who are temporarily doubled up with a resident family because of a lack of housing and children who lack a fixed regular and adequate nighttime residence. Homeless children are entitled to immediate enrollment without having to prove residence.

Homeless children also include "unaccompanied homeless youth" and is defined as any child who is not in the physical custody of a parent or guardian. It includes students who have run away from home, been thrown out of their home or have been abandoned or separated from their parents or guardians. Unaccompanied homeless youth may enroll without documents and without the help of an adult.

Also included in the definition of homeless children are "youth awaiting foster care placement". This includes those children who are placed in emergency, interim or respite foster care; kinship care; evaluation or diagnostic centers or placements for the sole purpose of evaluation.

Action Paper

In the Carlynton School District case, the Education Law Center and the National Law Center on Homeless and Poverty became involved after Carlynton took the position based on the Department of Education's guidance that it was not responsible for educating four homeless children. The children and their family received assistance at the Interfaith Hospitality Network of the South Hills which operates a shelter in Crafton, which is part of the Carlynton School District. The family received social services at the shelter and kept some possessions at the shelter. The family also used the shelter as an address. Overnight, the family stayed for a week at a time in one of eight churches, only one of which was located within the school district.

As part of the settlement, the Department of Education issued a new Basic Education Circular (BEC) - Education for Homeless Youth. The BEC provides that homeless children are entitled to attend school in any school district where a parent, guardian, an adult caring for them, or where an unaccompanied child spends the greatest percentage of his or her time or has a substantial connection such as where he or she is (1) regularly receiving day shelter or other services for individuals who are homeless; (2) conducting daily activities or (3) staying overnight on a recurring basis.

Student residency issues facing school districts are always a complicated matter. With the settlement in the Carlynton School District case, school districts may find themselves with a situation where a student does not meet the district's regular residency requirements but would still be entitled to educational services based upon the student being considered "homeless".

The settlement reached in the Carlynton case together with the new BEC issued by the Pennsylvania Department of Education and the language of the McKinney-Vento Act, shows that defining a student as "homeless" will be given a very broad interpretation. School Districts should be very cautious about refusing to provide an education to a student who may be considered homeless. If you are in doubt about a student's status as "homeless", please contact us for consultation. Schools should be aware that Courts will not interpret the statute in such a way as to prevent a child from attending school.

As always, we remain ready to provide advice and assistance regarding these issues.

Best regards,

ANDREWS & PRICE

