

Commonwealth Court Reverses Hearing Officer's Exclusion Based On Parent's Alleged Non-Residency

Articles October 22, 2018

Whitacker-Reid v. Pottsgrove School District, 168 A. 3d 905 (Pa. Cmwlth. 2017) The Pennsylvania Commonwealth Court reverses the Pottsgrove School District's exclusion of students based on parent's alleged non-residency, holding that the exclusion was not supported by substantial evidence.

BACKGROUND

Marleitta Whitacker-Reid ("Mother") enrolled her two children ("Children") in the Pottsgrove School District (the "District") using an address ("District Address") that was her grandmother's residence. The District was contacted by a resident concerning the Children's attendance in the District which caused the District to investigate the Children's residency in the District. Following an investigation by District employees and a private investigator, the District concluded that the Mother and Children did not reside in the District and notified the Mother that a hearing before a hearing officer would be held to determine residency.

At the hearing, the District offered testimony from the attendance secretary concerning anecdotal observations and attendance patterns that suggested a "residency concern." The District also offered testimony from two social workers who surveilled the District Address on several occasions about the time the Children would be getting on the bus to go to school; however, they did not observe Mother at the District Address. An employee of a private investigation firm testified that he went to the District Address on multiple occasions at various times and, on one occasion, he observed Mother drive up to the District Address in a red car and enter the home at a time after the Children had left for school. The car was registered to another person at an address on Charlotte Street located outside the District. Although the investigator observed the red car parked at the Charlotte Street address, he never saw Mother at that address. The investigator also testified that a search through several "investigative web sites" identified five potential addresses for Mother, which included the District Address but did not include the Charlotte Street address.

As evidence of her residency, Mother offered her public assistance documentation, bank statements, W-2 forms and a Pennsylvania Identification Card which all listed the District Address as Mother's address. Mother also testified that she has lived at the District Address for three years, that she does not drive and has never driven so it was not her driving the red car and that she has no connection to the Charlotte Street address.

At the conclusion of the hearing, the Hearing Officer issued a proposed adjudication in which he found that Mother did not present "adequate evidence to demonstrate proof of residence." Based on the anecdotal observations of the attendance secretary, the testimony of the social workers and the testimony of the investigator, the Hearing Officer found that Mother did not reside at the District Address and instead resided at the Charlotte Street address and therefore removal of the Children from the District's schools was the appropriate remedy. The School Board passed a resolution adopting the Hearing Officer's proposed adjudication. Mother appealed to Court of Common Pleas which affirmed the adjudication. Mother appealed to the Commonwealth Court which reversed the Hearing officer and the Common Pleas Court.

DISCUSSION

School Code Section 1302(a) sets forth the residency requirements for free attendance at public schools and states, in pertinent part, "[a] child shall be considered a resident of the school district in which his parents or the guardian of his person resides." For purposes of School Code Section 1302(a) "residence" means "a factual place of abode evidenced by

a person's physical presence." The purpose of a residency hearing is to ensure that substantial evidence exists to support a school district's determination that a student's parents are not residents of the school district. Substantial evidence is "evidence that a reasonable mind might accept as sufficient to support a conclusion."

The initial burden of proof with respect to residency rests with the parent(s) to present evidence that would be sufficient to satisfy the requirements for enrolling the child in the first instance. Where the school district has enrolled a student, that initial burden has been satisfied. The burden then shifts to the school district to present evidence to substantiate its determination that the student's parents are not residents of the school district.

The Commonwealth Court reviewed the Hearing Officer's findings of fact and concluded that they were not supported by substantial evidence. The series of anecdotes and attendance issues observed by the attendance secretary simply suggested or speculated that there could be a residency concern or issue. The testimony of the District's social workers that they did not observe Mother at the District Address did not constitute substantial evidence on non-residency because they surveilled the District Address on a limited number of occasions and only around the time busses came to pick up or drop off students. The Court also concluded that there was no evidence to support the Hearing Officer's conclusion that the Mother resided at the Charlotte Street address as she was never observed at that address and that this address was not one of the addresses identified by the investigator by a potential residence of Mother in his internet search. To the contrary, the Commonwealth Court noted that the evidence established that the Children had been consistently seen at the District Address and that the only address where Mother had been observed was the District Address. Thus, the Commonwealth Court held that the District failed to meet its burden of producing substantial evidence of Mother's non-residency.

PRACTICAL ADVICE

Where a school district seeks to exclude children from attendance at its schools based on the parents' alleged non-residency, the school district must produce substantial evidence of the parents non-residency. When a school district suspects that the parents of children enrolled in the district are not district residents, the school district bears the burden of proving non-residency. Surveillance of the alleged district residence can be helpful to establish that the address is not an actual place of abode. However, the absence of the parents' physical presence at the alleged residence during the times surveilled likely is not itself sufficient to establish non-residency. As the Court noted, where school districts have successfully established parents' non residency, an integral part of the proof has been to establish that the parents have an actual place of abode outside of the district.

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