



EDUCATION LAW GROUP

ALERT

RESIDENCY ISSUES

As the result of a May 19, 2008, Commonwealth Court decision, it is important to review the rule of “support gratis” as it relates to non-resident students living in the home of a district resident. Pursuant to §13-1302 of the Pennsylvania School Code, a resident is entitled to enroll a non-resident student in the school district if the resident is continuously, and not just through the school year:

- keeping the student in the resident's home
- responsible for the educational needs of the student
- supporting the student gratis

In *Velazquez v. East Stroudsburg Area School District*, No. 1530 C.D. 2007 (Pa. Cmwlth. Ct., filed May 19, 2008) the Commonwealth Court re-examined the requirement of “support gratis.” The East Stroudsburg Area School District decided that the resident, who was the student's grandmother, was not supporting the student gratis because she received occasional court-ordered child support payments. The Commonwealth Court disagreed with the school district's determination.

The court pointed out that the grandmother was the student's sole caregiver, had been the sole caregiver for many years, and that neither the mother nor the father had any hand in caring for the boy. As for the child support payments, the court stated that court-ordered child support payments, by themselves, are not sufficient reason to determine that a resident is not supporting a student gratis. The court defined the term “support gratis” as meaning that a resident could not be paid for his or her efforts but could still receive payments for the support of the child. In *Velazquez*, the court pointed out that the payments ordered by the support court were

defined (in the Domestic Relations Code) as support for the child rather than compensation for the caregiver.

The court also pointed out that the overall reason for the statute and regulations is to prevent “school shopping.” In that regard, the receipt of child-support payments does not, by itself, tend to show that a person is school shopping in contravention of the law.

This opinion not only directly addressed court-ordered child support, but also implies that any time a resident is receiving money solely for the support of the child and not as compensation to the resident, the child should be eligible to attend the district's schools. However, the decision does not take away the school district's role in critically examining affidavits submitted under §1302. Such an examination should include a determination that if a resident receives direct non-court-ordered child support payments from the child's parents, that such funds only support the child and do not provide compensation to the resident.

There remain many areas for which a school district may challenge the enrollment of a non-resident student who is living with a district resident. The *Velazquez* case, however, makes it a point that a school district should not try to assert that the receipt of court-ordered child support payments in any way undermines the resident's claim of supporting the student gratis.

For more information about this issue, contact a representative of our Education Law Group or visit us on the web at www.foxrothschild.com.