



EDUCATION PRACTICE

ALERT

KINDERGARTEN AT PENNSYLVANIA CHARTER SCHOOLS

On Wednesday, November 23, 2011, the Pennsylvania Supreme Court issued its decision on whether a school district has to pay for a student to attend a charter or cyber charter school's kindergarten program when the student is too young to attend the district's program.

The answer in *Slippery Rock ASD v. PA Cyber Charter School* was a clear and unambiguous "no."

The facts of the case were that the Slippery Rock school district set its kindergarten age at five but the student who enrolled in the cyber-charter kindergarten program was only four. When the school district refused to pay for the program, PDE deducted the cost from the district's subsidy and the district filed a "contest" to the deduction. The secretary upheld the Department's prior decision and so did the Commonwealth Court.

However, the Pennsylvania Supreme Court unanimously disagreed and reversed those prior decisions.

Specifically, the Justices (with one concurring in the outcome but writing separately) found that, while there was some ambiguity in the way the various statutes worked together, in the end the authority to set the minimum age for kindergarten students was reserved solely to the local school board. Moreover, it found that to determine otherwise would have required ignoring the plain meaning of both the applicable statutes and regulations.

What does this mean?

Essentially, it will likely stop charter and cyber charter schools from taking students prior to the age set by each student's local school board for admission to kindergarten. Why? Because the Charter School Law also states that, to the extent anyone will fund a student's attendance at a charter school, it shall be the local school district and not the residents (see 24 P.S. §17-1725-A). Therefore, if a school district does not have to pay for the student to attend the program, it is likely that no one else can, either.

For now, both school districts and charter schools should determine if there are any students attending below the district's minimum age – districts should do this to avoid paying tuition where it is not required and charters should do this to be aware of where their funding may be cut. Where such kids are found, districts should notify charters that they will no longer fund those students. If PDE has already submitted notification that it has deducted the money from the District's subsidy, the district will have to file its contest as soon as possible—hopefully within the statutory thirty days.

It is not clear if school districts can recoup payments already made to the schools or PDE deductions that were not contested within the statutory thirty days.

If you have any questions about this Alert, please contact Kyle Berman at 610.397.7980 or aberman@foxrothschild.com, or any member of Fox Rothschild's Education Law Group.