WBK Weiss Burkardt Kramer LLC
Education & Municipal Law

In Brief: School Law Update

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PA Supreme Court Rules on Transportation Responsibilities

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In the September 2014 edition of In Brief, an article entitled "Transportation Hot Topics" advised you of the Commonwealth Court's ruling in Watts v. Manheim Township School District. 84 A.3d 378 (2014). The Court found that a child can have more than one legal residence under the School Code and that where a child has two legal residences within a school district, the school district must provide transportation services that accommodate both residences. Id. at 386. Earlier this month, the Pennsylvania Supreme Court affirmed that decision.

As a reminder, in Watts, a custody court order provided that C.W., a student in the Manheim Township School District, would spend alternating weeks with each parent. Both parents resided in the District but lived on different bus routes. Although the District provided transportation to and from both parents' homes prior, it advised the parents of C.W. at the start of the 2012-13 school year that it would no longer provide transportation to and from both homes. C.W.'s father filed suit, asking that the court require the school district to provide transportation to and from both parents' homes. The trial court granted a preliminary and then permanent injunction, ordering the school district to resume transportation to and from both homes. The Commonwealth Court affirmed this decision.

Because the Pennsylvania Supreme Court was determining whether the trial court committed an error of law by granting the permanent injunction, the case involved a matter of statutory interpretation and the Court's opinion set forth various interpretations of School Code provisions. The Court first examined 24 P.S. §13-1361(1), which addresses free transportation to resident students, and concluded that "when a school district elects to provide transportation pursuant to Section 1361(1), the origination and termination point for the transportation is the student's residence." Watts v. Manheim Township School District (No. 112 MAP 2014, August 26, 2015) __ A.3d__ (Pa. 2015).

Next, the Court sought to determine whether a student may have more than one residence for transportation purposes. The Court determined that because Section 11.11(a)(1) establishes that when parents reside

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School Voucher Case Decided

By Lisa M. Colautti, Esq.

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Although the issue of school choice or school vouchers has not been a top priority in the Pennsylvania legislature in recent years, judicial review of school voucher programs remains active in other states across the country and provides guidance to those interested in following this important school law issue. In school voucher cases, Courts are asked to review whether the use of taxpayer funds to support students who attend sectarian or religious schools violates state constitutional provisions and the First Amendment of the U.S. Constitution, which bar public support of religious institutions. Some states have had their school voucher programs upheld and other have not.

In a recent decision, the Colorado Supreme Court struck down a scholarship program because it used taxpayer funds to support students' attendance at primarily religious or sectarian schools. In **Taxpayers for Public Education v. Douglas County School District, 351 P.3d 461 (Colo. 2015),** the Colorado Supreme Court held that the taxpayer advocacy group did not have standing to sue under the Public School Funding Act because the injury did not pertain to a legally-protected interest; since petitioners lacked standing, the court did not consider whether the scholarship program, known as the CSP, in fact failed to comply with the Act. However, the court ultimately invalidated the district's scholarship program, which used taxpayer funds to offset tuition at private schools, because it violated the Colorado Constitution and remanded the case so that the trial court could reinstate its order permanently enjoining the program.

The Choice Scholarship Pilot Program (CSP), which was approved by the school board in 2011, set aside taxpayer money for scholarships for qualifying elementary, middle, and high school students. Interested students applied to the district for these scholarships and also for admittance to a participating private school. These private schools were permitted to make enrollment decisions based on religious beliefs. Once a private school accepted a scholarship recipient, the private school of choice received scholarship money for the student from the district. In theory, the CSP operated as a tuition offset. In practice, there was no safeguard in place to restrict the private

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school from raising its tuition to the voucher limit. Sixteen of the twenty-three participating private schools where scholarship recipients had been accepted were religious schools and about 93% of recipients enrolled in one of the religious schools.

The Colorado Supreme Court held that the CSP violated Section 7 of Article IX of the Colorado Constitution which states that "neither the general assembly, nor any county, city, town, township, school district…shall ever make any appropriation or pay from any public fund or money whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school…controlled by any church or sectarian denomination whatsoever…" The court held that the CSP indeed aided religious schools, in direct violation of the constitution, by teaming with such schools and encouraging students to attend these schools with the scholarship incentive. The court found the argument that the CSP does not require recipients to enroll in a religious school to be unpersuasive, because the fact remained that the CSP awarded public money to students who then were able to use that money for religious education. Also, the program's lack of safeguards bolstered the court's conclusion; the CSP did not forbid the partnering private school from raising tuition in the amount of the scholarship. Finally, the court concluded that invalidating the CSP did not violate the First Amendment of the U.S. Constitution.

As of September 2015, the Taxpayers for Public Education group petitioned the U.S. Supreme Court for further review of this matter, but the Court has not decided whether to accept the case for review.

Similar to Colorado's Constitution, Article III, Section 15 of Pennsylvania's Constitution provides, "No money raised for the support of public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school." Any efforts to enact a school voucher program in the Commonwealth will have to pass Constitutional muster, as the law is interpreted and refined by case law decisions from across the country, including the recent Colorado decision.

Hobart J. Webster Joins WBK


Hobart J. Webster

Hobart J. "Hobie" Webster has recently joined Weiss Burkardt Kramer, LLC as an associate, bringing with him legal experience from across the public sector.

Hobie's career includes a tenure as an Assistant Consumer Advocate in the Pennsylvania Office of Attorney General. He also served as Special Assistant to the Chief of Staff & Legislative Correspondent in the office of the late U.S. Sen. Frank R. Lautenberg of New Jersey.

Hobie received his Juris Doctorate from the University of Pittsburgh School of Law and graduated cum laude from Northern Michigan University where he received a Bachelor of Science in Political Science and served as student body president. He is admitted to practice law in the Commonwealth of Pennsylvania.

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in different school district and have joint custody where time is evenly divided a student may be enrolled in either district, a student can have two residences for enrollment purposes. Reading Section 11.11 (a)(1) together with the compulsory attendance provisions, the Court determined that the purpose behind school-provided transportation is to facilitate students' attendance and as such, "the legislature and the Department of Education intended for the School District to provide transportation to both residences in order to further the goal of compulsory attendance."

Despite the ruling, several questions still remain. For instance, what transportation is a district required to provide when there is a custody arrangement between parents that is not equal? What transportation is required when parents live in the same district but within different neighborhoods? Is a school district required to bus a student to two different neighborhood schools? These questions notwithstanding, under the ruling in Watts, school districts are, at a minimum, required to transport a student to and from two different legal residences within the same school district where parents have equal, joint custody of the student. The Watts decision does not require school districts to transport to a secondary address if it is not located within the district or an address that is not a legal residence.

Please do not hesitate to contact WBK if you have any questions regarding the decision in Watts or how it applies to students within your district.

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