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AGE OF MAJORITY IN PENNSYLVANIA—HOW ARE ELIGIBLE STUDENTS AFFECTED?

A question that periodically surfaces for school districts concerns the educational rights of eligible students who have reached the age of 18, particularly where that student appears to have become emancipated from his or her parents, or where some other significant ambiguity exists regarding the parents' or other guardians' role with the student. School districts must be aware that irrespective of how independent or self-sufficient an eligible student may appear to be, unless a student can actually demonstrate emancipation, an eligible student in Pennsylvania cannot legally provide informed consent for his or her own educational programming, as the "age of majority" for special education purposes is 21, not 18.

In general, the confusion for school districts lies in the fact that in several areas of the law, the age of 18 is considered adulthood. For example, under the Family Educational Rights and Privacy Act (FERPA), although parents have primary control over a student's records for most of the student's educational life, a student becomes "eligible" to consent to the disclosure of his or her educational records by either attending a post-secondary institution or turning 18. Likewise, in Pennsylvania, assuming that a person is competent, an individual who has attained the age of 18 has the ability to file a lawsuit on his or her own behalf.

However, under Pennsylvania law, unless a State statute or regulation clearly indicates otherwise – as it does, for example, with respect to the ability to file lawsuits – the age of majority is presumed to be 21. Therefore, although the Individuals with Disabilities Education Act (IDEA) provides for a transfer of educational rights at the "age of majority" for all eligible students, because the IDEA does not mandate what is that age, and instead leaves the decision up to individual States, the age of majority in Pennsylvania for school purposes is 21 years of age. As such, even where an eligible student is 18 years of age or older, *unless emancipated*, he or she cannot validly provide approval or consent for any special education documentation or programming.

Unfortunately, the definition of the term "emancipation" varies depending upon the factual circumstances in which it arises. However, courts universally have held that emancipation may not arise merely by the abandonment of a child by her or his parent(s), nor as the result of any conduct by a child alone. More typically, emancipation arises from a judicial act, or other conduct of the parent by which the extinguishment of parental rights may be inferred.

While the factual distinction between abandonment of a child and the extinguishment of parental rights may be difficult to ascertain, the Pennsylvania Department of Education has defined an "emancipated minor" in its regulations as "a person below the age of 21 who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated." 22 Pa. Code § 11.11. Although Pennsylvania acknowledges that students may become emancipated, it generally is presumed that all children who are enrolled in public schools are still within the custody and control of their parents/guardians. Therefore, a school district should presume that all enrolled students are not emancipated absent (1) a request by a student to be considered emancipated for school purposes; and (2) that student provides satisfactory evidence that she or he meets the legal definition of an "emancipated minor" as set forth in 22 Pa. Code § 11.11.

Barring emancipation, an eligible student generally will be unable to provide informed consent relative to educational programming regardless of his or her age. Given this, if emancipation cannot be established, and if

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after investigation it is unclear what adult bears responsibility for the student, a school district should consider providing a “surrogate parent” for the student.

Specifically, under the rather broad definition of “parent” contained in the IDEA, surrogate parents are recognized as individuals who may represent a child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free and appropriate public education to a child. In other words, a surrogate parent can legally make the educational decisions that an eligible student may not.

Although there currently are no specific Pennsylvania requirements pertaining to the selection of surrogate parents, federal regulations mandate among other things that a surrogate parent 1) shall not be an employee of the SEA, LEA or any other agency involved in the education or care of the child; 2) may have no interest that conflicts with the interests of the child; and 3) must have knowledge and skills that ensure adequate representation of the child. Intermediate units are a good source of information needed to find an appropriate surrogate parent so that not only are the student’s rights protected, but the school district’s procedural obligations are met as well.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

1. Eligibility under FERPA is not related to eligibility under the IDEA.