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COMMONWEALTH COURT STRIKES DOWN AGE 22 EXTENSION, PDE APPEALS DECISION

*Pennsylvania School Boards Association, Inc. School District of Pittsburgh, Central Bucks School District, and Upper Darby School District (Petitioners)
v. Dr. Khalid N. Mumin, Secretary of Education of the Pennsylvania Department of Education,
and the Pennsylvania Department of Education Respondents*

This month, the Commonwealth Court of Pennsylvania struck down a Pennsylvania Department of Education (PDE) directive to extend special education eligibility until a student reaches age 22. However, the directive remains in place, as the PDE has moved to appeal the decision, effectively deferring resolution of the issue likely well into the next school term.

Background

The Pennsylvania Public School Code guarantees children the right to public education between the ages of 6 and 21. In 2002, the Pennsylvania General Assembly amended the code to allow students who turned 21 during the school year to remain in school through the conclusion of the term. In 2022, special education eligibility was again extended for students with disabilities, this time only temporarily, to address learning losses stemming from the COVID-19 pandemic. Students with disabilities who turned 21 during the 2021-22 school year thus were permitted to enroll for the following term, 2022-23.

Federal Class Action

Last year, the family of a 21-year-old student with disabilities filed a federal class action lawsuit alleging that the Individuals with Disabilities Education Act (IDEA), contrary to Pennsylvania law, requires that students with disabilities receive a “free appropriate public education” (FAPE) through their twenty-second birthdays. The student in question has multiple disabilities and works with personal care assistants, receiving occupational therapy, speech therapy, and services in preparation to transition to adulthood. He turns 21 in February 2025, which means his right to public education in the commonwealth would end at the conclusion of the 2025-2026 school term, rather than in February of 2026, when he attains age 22.

On August 30, 2023, the PDE settled the class action suit by agreeing to a new age-out plan at 22. Students would be accommodated until their 22nd birthday and then exit the system. PDE posted a “Frequently Asked Questions” page on their website and sent letters to eligible families. The agency then directed local education agencies to contact families and develop a plan for student re-entry.

Challenge to the Requirement

The Pennsylvania School Boards Association (PSBA) and three other districts filed a lawsuit to challenge the new rule. The districts alleged that the PDE did not have the authority under state law to mandate the change, that the preparation time given to districts was insufficient, and that the unfunded mandate required a substantial investment after school districts had already set their budgets for the school year. PSBA also contended that the action of PDE was not required by the IDEA, as PDE insisted was the case. PDE attempted to skirt liability for the age 22 rule by arguing that school districts were not required to implement the rule, as there would be no enforcement, but noted that the failure of districts to comply with the new rule would violate federal law.

A unanimous Pennsylvania Commonwealth Court rejected as disingenuous the contention that the age 22 rule was merely “guidance” and concluded that, because PDE had adopted a clearly binding rule affecting the interests and liabilities of public schools, and that it did so without following proper regulatory process and with little concern for the cost and burden the policy was causing public schools. Although the court struck down the rule, PDE quickly appealed, claiming that its appeal “stays” the order of the Pennsylvania Commonwealth Court.

Schools are now left with a hard decision: graduate students with disabilities at age 21 (or the end of the school term during which they attain that age) or stick with the age 22 rule until the Supreme Court of Pennsylvania resolves PDE’s appeal sometime next year. Although PDE claimed and continues to claim that it does not intend to enforce the age 22 rule, its actions in the days since it appealed the Pennsylvania Commonwealth Court’s decision suggest otherwise.

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.

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