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Supreme Court Holds that Revenue Loss is a Sufficient Reason to Deny Petition for Territory Transfer

The Ohio Supreme Court in *Spitznagel v. State Board of Education*, 2010 WL 2430984 (June 17, 2010) held that the State Board of Education may consider a loss of revenue as a sufficient reason to deny a proposed transfer of school territory.

In *Spitznagel*, more than 75% of the registered voters in the Village of Walton Hills, a community served by the Bedford City School District ("Bedford"), signed a petition requesting the State Board of Education to transfer the Village from Bedford to Cuyahoga Heights Local School District. Both school districts submitted the required answers to questions from ODE per O.A.C. 3301-89-02, and the State Board appointed a referee to decide the petition.

After a hearing, the referee denied the proposed transfer. The referee focused on the financial detriment to Bedford as the main factor against the transfer - noting evidence presented by Bedford that it would lose at least \$4 million annually from real estate taxes in Walton Hills. The referee held that it was "wholly foreseeable that the loss of the Walton Hills tax monies would cause the closing of facilities, reduced educational programming, staff and faculty cutbacks, and other curtailments."

After receiving the referee's report, the State Board remanded the matter back to the referee to consider what effect H.B. 66, a personal property tax measure, would have on the transfer. Following a hearing, and post-hearing briefs on S.B. 321 (a bill designed, in part, to mitigate the losses that school districts in territory transfers would suffer as a result of H.B. 66), the referee again denied the transfer. The State Board adopted the referee's findings.

The residents of Walton Hills appealed the State Board's decision to the Franklin County Court of Common Pleas, which affirmed the State Board's decision. On appeal, the Franklin County Court of Appeals also affirmed the trial court. The Ohio Supreme Court accepted the residents' further appeal.

The Ohio Supreme Court held that the State Board may consider a loss of revenue to be a sufficient demonstration of a financial or educational detriment to the transferring school district to prevent a territory transfer to another school district. However, the Court held that the question of whether, or how much, it should weigh against the transfer is dependent upon the facts and evidence in each case. The Court referenced the testimony of Bedford's treasurer, who explained the District's financial reports and discussed the impact that a loss of revenue would have on programs such as summer school, extracurricular activities, transportation, special education, and teacher retention. The Court found this to be persuasive evidence of the significant revenue loss and corresponding detrimental effects to the programs and activities of Bedford, sufficient to support the State Board's denial of the proposed transfer.

[Lessons Learned](#)

The Court in this case sought to create a balance between giving deference to the State Board and giving territory transfer petitions fair consideration upon appeal. The Court emphasized that a loss of revenue is merely one factor among many to be considered in a territory transfer. However, it appears that a substantial loss in revenue, combined with a corresponding loss of curricular and extracurricular programming, will be considered persuasive evidence against a potential transfer of school territory.

OHSAA Issues Guidance on Transfer Bylaws

OHSAA recently issued a guidance publication for high school principals and athletic administrators on its transfer bylaws for the 2010-2011 school year. OHSAA Bylaw 4-7-2 generally provides that a student who transfers high schools at any time after establishing eligibility as a ninth grader (either by attending school for five days or playing in a fall sport prior to the beginning of school) is ineligible to participate in athletics at the new high school for one year from the date of enrollment. However, OHSAA has adopted 12 exceptions to this Bylaw.

This article focuses on exception #2 to Bylaw 4-7-2, which allows a student to regain eligibility if there has been a change of legal custody. OHSAA interprets this Bylaw to apply when a court of proper jurisdiction or a government agency such as Children's Services places a student into the care of an individual or agency that shall have the care and custody of that child. If such a change in custody results in the student's change of school districts, the student may be ruled eligible at the school located in the district of residence of the new custodian.

School administrators are required to submit a copy of the court order changing custodianship signed by either a judge or magistrate, and a cover letter verifying: (1) the parents of the student live in Ohio; (2) the person named in the custody document is a bona fide resident of the new public school district in which the student has transferred; and (3) the student will live with the custodian full-time for a minimum of one calendar year.

OHSAA will not accept a Grandparent Power of Attorney as an exception to Bylaw 4-7-2. Per R.C. 3313.64, a child who is in the legal custody of his/her parent, but who resides with a grandparent pursuant to the Grandparent Caretaker Laws, is entitled to attend the schools of the district where the child's grandparent resides. A Grandparent Power of Attorney is executed because of certain hardship circumstances, including but not limited to a parent becoming seriously ill, homeless, incarcerated, or otherwise unable to care for his/her child because of a physical or mental condition. These are also many of the same reasons why a child may be considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431-11435 ("McKinney-Vento").

If a student shares the housing of a relative (i.e. a grandparent) due to a loss of housing or other hardship circumstance, such child may be considered homeless and eligible for protections under McKinney-Vento. The Act requires the state and its school districts to eliminate barriers to school enrollment and retention for children and youth experiencing homelessness. "Enrollment" is defined under McKinney-Vento as attending school and participating fully in school activities. 42 U.S.C. 11434(A)(1). Sports and other extra-curricular activities are school activities.

In order for McKinney-Vento to have bearing on OHSAA, it would likely need to be deemed a state actor. Judicial decisions on whether OHSAA is a state actor in other types of actions have varied. Nonetheless, if a child moves in with a grandparent under circumstances that qualify the child as homeless under McKinney-Vento, then OHSAA's denial of athletic eligibility to students who transfer via a Grandparent Power of Attorney may be subject to legal challenge. However, this issue has yet to be decided by a state or federal court having jurisdiction over Ohio. Therefore, building administrators and athletic directors should be advised that a high school student who transfers from another high school via a Grandparent Power of

Attorney may likely be ruled ineligible to participate in athletics by OHSAA.

Please consult an attorney in Dinsmore & Shohl's education law practice group should you have any questions on OHSAA Bylaws or student attendance.

*****LAST CHANCE TO REGISTER*****

Please don't miss your opportunity to attend Dinsmore & Shohl's **HR & Employment Law Workshop for School Administrators** to be held as follows:

August 5, 2010

Great Oaks Career Campuses
Scarlet Oaks East Wing - Room 200, Entry Door #3
3254 East Kemper Road
Cincinnati, Ohio 45241-1548

August 9, 2010

ESC of Central Ohio
2080 Citygate Drive
Columbus, Ohio 43219

August 11, 2010

Montgomery County Educational Service Center
200 South Keowee Street
Dayton, Ohio 45402-2242

-AGENDA FOR ALL LOCATIONS-

8:00 a.m. Registration and continental breakfast

8:30 a.m. Managing medical leaves and disability accommodation requests

This presentation will focus on the latest developments in the Family & Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA) and Workers' Compensation leave. Sample scenarios involving medical leave and disability accommodation requests that schools frequently encounter will be presented and proposed responses will be discussed.

9:15 a.m. Workers' compensation

The first part of this presentation will focus on winning strategies a school district should follow to maximize its chance of success in hearings held before the Industrial Commission. The second part will shift focus on managing the impact and controlling the costs of temporary total disability and other lost time claims.

10:00 a.m. Break

10:15 a.m. Employee evaluation and discipline

Steps to improve the performance of marginal employees and procedures to non-renew or discharge chronically under-performing employees is the focus of this presentation. Learn the latest developments in the law governing the employment, evaluation and discipline of certificated and classified employees.

11:00 a.m. Harassment and misconduct investigations

Complaints of sexual harassment, retaliation, discrimination and employee misconduct have the potential to damage a school district's finances and reputation. Learn the best practices to investigate and resolve such complaints and to avoid future liability.

11:45 a.m. Adjourn

The cost for this Workshop is \$40 per person. Written materials will be provided and Local Professional Development Committee certificates of attendance will be issued to all Workshop attendees.

To register for the Workshop, please [click here](#).