Collins, Loughran & Peloquin, P.C.

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Student Residency Does Not Rest On Pillow Count

In Ames v. Town of Wayland, a superior court judge determined that a student living part time with his father was still a resident of Wayland for educational purposes, despite the fact that he slept more nights at his mother's house in Framingham.

The plaintiff father filed for a preliminary injunction after the Town of Wayland refused to enroll his 8th grade son based on its "pillow count" policy, which measured residency by the number of nights per week the child sleeps within the borders of the Town. Under its policy, Wayland required a child to spend at least 3 of 5 school nights with the in-Town parent. Ames' child failed to meet this requirement, as he only spent 3 of 10 school nights with his father pursuant to the custody agreement.

In granting a preliminary injunction, the court considered but did not resolve the question of whether M.G.L. c. 76, §5 requires the identification of a single town of residence. The court noted that reading the statute to permit dual residency would foster the interests of children and would be in harmony with the education statutes and cases interpreting shared custody agreements.

The court also considered the standard advanced by the school district, requiring determination of which of the two towns could claim to be the "the principal location of the child's domestic, social, and civil life." The court ruled that the pillow count was not dispositive on the question, and instead considered factors such as which district would be a better fit for the student educationally and socially.

The grant of the injunction requires Wayland to enroll the student for the 2014-2015 school year, with a trial on the merits to follow later this year.

Special education regulations already provide, in some cases, for splitting out of district costs between towns when divorced parents reside in different towns. The best approach is to honor the dual residence recognized by the courts in custody matters, and allow the child to attend if they have a legitimate claim to residing with either parent. If you have questions or concerns about residency matters, contact counsel before they develop into costly litigation.

Expanded analysis of this case available in our Education Blog at www.collinslabor.com.

Courts Come Down Strong on Civil Service Commission Emphasizing That Power To Impose Discipline Belongs To The Employer

In the May 2014 Advisor, we reported on Town of Maynard v. Civil Service Commission, a case in which the superior court overturned the Commission's modification of a police officer's termination to a 22 month suspension. Following in Town of Maynard's footsteps, the superior court has issued two new decisions this month which continue to underscore the Commission's limited authority in modifying discipline.

In New Bedford Airport Commission v. Civil Service Commission, (Sept. 22, 2014) the employee was terminated for a host of reasons, including; rule violations, substandard work, insubordination, falsifying work logs, and for creating a hostile work environment. The employee appealed the City's decision to the Civil Service Commission. Although the Commission found that the City proved almost all of the charges, it voted 3-2 to reduce the employee's termination to a suspension of one year and nine months. In overturning the Commission's decision, the court held that the Commission's record and findings clearly supported a determination that the termination was for just cause. The court further noted that "the Commission should not provide a safe harbor for [the employee] or any other individuals who continuously engage in behavior that tarnishes the image of public service."

Similarly, in Boston Police Department v. Tinker, (Sept. 30, 2014) the Department suspended a sergeant for improperly disposing of evidence and for encouraging a subordinate witness to ignore his actions. The sergeant admitted the general facts and allegations. Still, the Commission concluded that the Department had just cause to impose "some discipline," but not a five day suspension, and replaced the suspension with a written reprimand. In reinstating the sergeant's five day suspension, the court found that the Commission impermissibly substituted its own judgment for that of the Department, and that the suspension was a valid exercise of the Department's discretion.

These cases serve as a reminder that employers, and not the Commission, have the power to impose discipline for employee misconduct. Employers should scrutinize all cases where the Commission agrees with the facts found by the employer and acknowledges just cause for the discipline, but then modifies the employer's disciplinary decision.

For further discussion on these decisions, visit our blog at www.collinslabor.com or review our Civil Service Commission commentary, published in the Landlaw Civil Service Reporter.

School Regulations Update

Over the summer, the DESE revised its Physical Restraint Regulations, 603 CMR 46.00, and restraint-related provisions in Regulations Governing Program and Safety Standards for Approved Public or Private Day and Residential Special Education School Programs, 603 CMR 18.00. The proposed amendments are available on DESE's website. The Board of Elementary and Secondary Education is accepting public comment on the proposed amendments through November 3, 2014, and final action is expected by the end of November.

Reach Us By Email

Philip Collins
pcollins@collinslabor.com

Michael C. Loughran
mloughran@collinslabor.com

Leo J. Peloquin
lpeloquin@collinslabor.com

Tim D. Norris
tnorris@collinslabor.com

Joshua R. Coleman
jcoleman@collinslabor.com

Melissa R. Murray
mmurray@collinslabor.com

Stephanie M. Merabet
smerabet@collinslabor.com

320 Norwood Park South
Norwood, MA 02062
(781) 762-2229
(781) 762-1803 (fax)
www.collinslabor.com