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NEW RESIDENCY/ENROLLMENT RELATED LEGISLATION: SB 200 AND AB 1101

In response to the actions of a school district serving a small, wealthy town, two bills were enacted this year: SB 200 and AB 1101. The occasion which precipitated the new legislation involved a seven-year-old Latina child who lived with her mother in the home of her mother's employer where she worked as a housekeeper. However, on the weekends, they lived with and cared for the child's grandmother in a town 20 miles away.

The child and her mother had applied for the free school lunch program which, in this wealthy community, was an interesting anomaly especially since the address given for residence purposes was a large upper-middle class property. Consequently, the school district endeavored to verify whether or not the child and her mother were actually residents of the school district. As been done on other occasions, a private investigator was retained by the school district for this purpose. Curiously, when the private investigator asked the mother where she lived, she did not give her employer's address rather, she provided the out of town address. She was seeking a domestic violence protective order against the girl's father and was apparently worried that the private investigator was actually working for the father, from whom they were trying to hide. Therefore, she misled the school's private investigator.

Anyway, with the information that was provided, the school district mistakenly determined that the child was not a resident of the school district, and informed them of the school district which served the out of town address she provided and directed the mother to enroll her child in the out of town school district. The mother was given a deadline for dis-enrolling her child from the school district.

As a result of this event, the school district received a large measure of adverse publicity, a public records act request directed at the legal and investigative costs associated with the matter, a litigation threat, and the school district was accused of targeting the child for removal from the school district on account that she is Latina. In a short time, the school district realized their mistake and allowed her to remain enrolled.

SB 200 revises Education Code section 48204(a) by making pupils residents of the local school district in circumstances where a parent or legal guardian resides outside the school district but is employed and lives with the pupil at the place of employment, within district boundaries, for at least three days during the school week.

Citing the author of SB 200, State Senator Ricardo Lara, the legislature advised that the revision was necessary because “across the state caregivers, nannies and other workers whose jobs require them to stay overnight are faced with major obstacles to enrolling their children in school.”

AB 1101 revises the Education Code by adding Section 48204.2. The new legislation requires that before a school district may investigate whether or not a particular pupil meets the residency requirements for enrollment, the governing board, in a public meeting, must first adopt a policy authorizing such investigations.

Such a policy must:

- (i) identify the circumstances under which the school district may initiate an investigation;
- (ii) require, at a minimum, that a school district employee be able to identify specific, articulable facts supporting the belief that the parent or legal guardian of the pupil has provided false or unreliable evidence of residency;
- (iii) describe the investigatory methods that may be used, including whether the school district may employ the services of a private investigator;
- (iv) require that before hiring a private investigator, the school district must first make its own reasonable efforts to determine whether the pupil resides in the school district;
- (v) prohibit the surreptitious photographing or video recording of pupils who are being investigated;
- (vi) require that employees and contractors of the school district who are engaged in the investigation must identify themselves truthfully to anyone contacted or interviewed during the course of the investigation;
- (vii) specify the factual and legal basis for determining that the pupil is not a resident; and
- (viii) provide the pupil an appeals process.

Citing the author of AB 1101, State Assembly Member Susan Bonilla, the legislature advised that the new legislation is needed because pupils need protection from investigatory tactics that are not entirely aboveboard such as when investigators misrepresent their identity and purpose or when taking surreptitious photographs.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Alan B. Harris

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