



Victory for vulnerable families in school disenrollment case

Many poor families struggle to establish residency in order to attend school. They may be living with different family members and do not have a utility bill in their name. While they contribute towards rent, they may lack a formal rental agreement. And many don't have a driver's license reflecting their home address. As a result, the children in these families are vulnerable to being excluded from school.

Like many of our families, the children in *Whitaker-Reid, M. v Pottsgrove SD* (371 CD 2016) faced an uphill battle during a residency hearing where they proceeded *pro se* against the school district's counsel. While the District provided multiple witnesses, the family called no witnesses and assumed their documents would be sufficient to prove residency. Notably, the hearing officer instructed the family that they had the burden of proving residency. Despite submitting ample documentary evidence demonstrating that Ms. Whitaker and her children resided in the District, the school board expelled the children from school – leaving them with nowhere to turn. Their mother filed a *pro se* appeal with the Court of Common Pleas but that court merely affirmed the School Board's decision.

On appeal, the Commonwealth Court carefully scrutinized the fact record and reversed that the lower court's order holding, concluding that it was not supported by substantial evidence – including the fact that the District failed to establish any alternative address for the parent.

This ruling instructs school districts for the first time that a parent's burden of proof in the residency context is to provide the same documentary evidence that would have been sufficient to enroll the student in the first instance (*e.g.*, utility bill, official government correspondence etc.). Thereafter, the ***burden of proof shifts to the school district*** to establish “non-residency.” The case is also significant because it provides an evaluation of the level of “substantial evidence” required to demonstrate non-residency. In this case, the Hearing Officer and Board relied in part on a “fact” referenced but never proven during the hearing, uncorroborated hearsay testimony, and vague references to behavior the raised “residency concerns.” This was insufficient to support the Board's decision to disenroll the students.

While the [opinion](#) was originally unreported, the Commonwealth Court subsequently granted ELC's motion to publish the decision.