

BEFORE THE ARKANSAS DEPARTMENT OF EDUCATION

**CAMDEN-FAIRVIEW SCHOOL DISTRICT
NO. 16 OF OUACHITA COUNTY**

APPEALING DISTRICT

AND

**SMACKOVER SCHOOL DISTRICT OF
OUACHITA AND UNION COUNTIES**

RESPONDING DISTRICT

**IN THE MATTER OF THE STUDENT RESIDENCY OF [REDACTED]
(CASE NO. 2010-02)**

WHEREFORE, on November 19, 2010, at the Arkansas Department of Education in Little Rock, Pulaski County, Arkansas, I, Mr. Danny Reed, conducted a hearing concerning the student residency of [REDACTED], minor child of [REDACTED]. In accordance with Ark. Code Ann. § 6-18-202 and the Arkansas Department of Education Rules Governing Appeals Involving Student Residency Disputes Between School Districts, I hereby issue the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. [REDACTED], age 5, began attending kindergarten at Smackover Elementary School in the Smackover School District in mid-August 2010.
2. [REDACTED] is the child of [REDACTED], and the grandchild of [REDACTED].
3. [REDACTED] and [REDACTED] all reside in the Camden-Fairview School District.
4. [REDACTED] is a full time employee of the Smackover School District.
5. [REDACTED] resides with his grandfather, [REDACTED], for four or more nights per week for a primary purpose other than school attendance and has done so since the age of approximately twenty (20) months.

6. [REDACTED] was appointed legal guardian of [REDACTED] by Ouachita County Probate Judge Hamilton H. Singleton on August 9, 2010, approximately seven (7) to ten (10) days prior to [REDACTED]'s first day of attendance at Smackover Elementary School.

7. [REDACTED] was appointed legal guardian of [REDACTED] solely for educational needs or school attendance purposes.

CONCLUSIONS OF LAW

1. Other than the contested reasons supporting the appointment of [REDACTED] as legal guardian of [REDACTED], the facts of this case are largely uncontested. This matter primarily concerns the seeming friction between two Arkansas statutes, Ark. Code Ann. § 6-18-202 and Ark. Code Ann. § 6-18-203. Counsel for the appealing district contends that the statutes should be read together. Counsel for the responding district contends that Ark. Code Ann. § 6-18-203 provides a separate and entirely independent statutory basis for [REDACTED], as guardian of [REDACTED] and a full-time employee of the Smackover School District, to enroll [REDACTED] in the Smackover School District.

2. Ark. Code Ann. § 6-18-203 is a narrow statute dealing with specific circumstances in which a parent or guardian is an employee of a school district or educational cooperative. It states:

“A child or ward of a person who on or after April 1, 2009, is at least a full-time employee of a public school in one (1) school district or an educational service cooperative and is a resident of another school district in this state shall be entitled to enroll in and attend school in:

(A) The school district in which the parent or guardian resides;

(B) The school district in which the parent or guardian is a full-time employee of the public school;

(C) Any school district located in the county where the main office of the educational service cooperative is located.”

3. Ark. Code Ann. § 6-18-202(b)(2) generally addresses the residence requirement for attending public schools and states:

“For the purposes of this section, a student may use the residential address of a legal guardian, person having legal, lawful control of the student under order of a court, or person standing in loco parentis only if the student resides at the same residential address and if the guardianship or other legal authority is not granted solely for educational or school attendance purposes.”

4. Rules of statutory interpretation apply in determining whether the requirements of Ark Code Ann § 6-18-202(b)(2), that a ward must reside with his guardian and that the guardianship must not be granted solely for educational purposes, apply to Ark. Code Ann. § 6-18-203(b)(2), which allows guardians to send their wards to the district in which they work.

5. The Arkansas Supreme Court has long held that “the basic rule of statutory interpretation to which all other interpretive guides must yield is to give effect to the intent of the legislature.” *Doe v. Baum*, 348 Ark. at 274, 72 S.W.3d at 484 (citations omitted). Repeal by implication is not favored and is never allowed except where there is such an invincible repugnancy between the provisions that both cannot stand. *Id at 274-75* (citations omitted).

6. Instead, courts will seek to reconcile statutory provisions to make them consistent, harmonious, and sensible. *See Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179 (2009). Finally, courts will not engage in statutory construction that defies common sense or produces absurd results. *See Alcoa World Alumina, L.L.C. v. Weiss*, 2010 Ark. 94, ___ S.W.3d ___ (2010) (citation omitted).

7. When reading Ark. Code Ann. §§ 6-18-202 and 6-18-203 together, some legislative intent is found in § 6-18-203(b)(4) which notes that the enactment allowing employees of school districts or educational service cooperatives to send their children or wards to the district in

which they are employed rather than where they reside “affects such a limited class of students that desegregation will not be impeded.” Although the present case is not related to desegregation, the legislative intent that § 6-18-203 only affect a limited number of students is important. If the legislature had intended to read § 6-18-203 in isolation, not requiring some legitimacy to guardianships otherwise approved solely for educational needs or school attendance purposes, then the statute could potentially affect a large number of students. Employees of school districts or educational cooperatives could seek guardianships for any purpose for any number of children and lawfully send any ward to the district or county in which they are employed.

8. To reconcile Ark. Code Ann. § 6-18-202 and § 6-18-203, the term guardian in § 6-18-203 must be read in concert with § 6-18-202(b)(2) which requires that in order for a student to use the address of a guardian, the student must reside at the same residential address and the guardianship must not be granted solely for educational needs or school attendance purposes. To read the statutes otherwise would allow school districts to recruit students for academic, athletic, or other purposes simply by having employees named as guardians. The wards could live wherever they wanted and the guardians would not have any further obligation other than being appointed as guardian. This result would defy common sense and could lead to absurd results.

9. To read Ark Code Ann. § 6-18-203 alone would lead to repeal by implication of § 6-202(b)(2) which is not allowed in the absence of an “invincible repugnancy.”

10. Although Ark. Code Ann. § 6-18-202(b)(2) includes the phrase “[f]or the purposes of this section,” to read this section in isolation defies the aforementioned rules of statutory interpretation.

11. Therefore, in order for a ward of a person who resides in one district and who is a full time employee of a another public school district to attend school in the district in which his or her guardian is employed, that student must reside at the same residential address as his or her guardian and the guardianship must not be granted solely for educational needs or school attendance purposes.

12. While [REDACTED] resides with his grandfather and guardian [REDACTED], the guardianship was granted solely for school attendance purposes. [REDACTED] cannot rely on the provisions of Ark. Code Ann. § 6-18-203 to enroll [REDACTED] in the Smackover School District without meeting the requirements of § 6-18-202(b)(2). [REDACTED]'s district of attendance must therefore be the Camden-Fairview School District.

ORDER

WHEREFORE, upon consideration of the briefs, exhibits and oral testimony made to me by all parties, I hereby find as follows:

The proper school district of residence for [REDACTED], minor child of [REDACTED] is the Camden-Fairview School District.

IT IS SO ORDERED.

Mr. Danny F. Reed, Hearing Officer
Arkansas Department of Education

Date: _____