IN THE INTEREST OF S.D.	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: S.D.	No. 2492 EDA 2011

Appeal from the Dispositional Order of July 27, 2011
In the Court of Common Pleas of Lehigh County
Criminal Division at No.: CP-39-JV-0000519-2011

BEFORE: BENDER, P.J., GANTMAN, J., PANELLA, J., DONOHUE, J., SHOGAN, J., LAZARUS, J., MUNDY, J., OTT, J., and WECHT, J.

DISSENTING MEMORANDUM BY WECHT, J.:

I agree with the learned Majority that S.D.'s challenge has been mooted because S.D.'s supervision was terminated without the probation department having notified S.D.'s university. However, for the reasons that follow, I would find that an exception to the mootness doctrine applies. Consequently, I would reach the merits of S.D.'s challenge, and I would conclude that the notification provision codified at 42 Pa.C.S.A. § 6341(b.1) is inapplicable to S.D. Because the Majority holds otherwise, I respectfully dissent.

This Court will decide moot issues only when one of the exceptions to the mootness doctrine applies. ***In re D.A.***, 801 A.2d 614, 616 (Pa. Super. 2002). One such exception applies when "the question presented is capable of repetition and apt to elude appellate review." ***Id.*** We have explained the essential elements of this exception as follows:

> [A] case is "capable of repetition, yet evading review" when (1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again.

Commonwealth v. Buehl, 462 A.2d 1316, 1319 (Pa. Super. 1983) (citation and quotation marks omitted). We have expanded the applicability of this exception to cases in which the likely repetition would apply not to the same party but to similarly situated parties. ***See In re S.H.***, 71 A.3d 973, 976 (Pa. Super. 2013), *appeal denied*, 80 A.3d 778 (Pa. 2013). We have invoked the exception in situations in which time constraints would limit the ability to obtain "full appellate review." ***Commonwealth v. Nava***, 966 A.2d 630, 633 (Pa. Super. 2009) (applying exception to issue of state court jurisdiction in cases with short-term incarceration); ***see Ferko-Fox v. Fox***, 68 A.3d 917, 920 (Pa. Super. 2013) (applying exception to temporary protection from abuse orders).

There is no question that a situation such as S.D.'s is capable of repetition. Other juveniles who have been adjudicated delinquent will attend college, and supervision can last until (and, indeed, while) a juvenile is attending a post-secondary institution. The question is whether such a situation is apt to elude review. There is a relatively short window of time within which such an appeal may be taken and decided. Many juveniles who would be implicated in a case like this likely would have committed a delinquent act shortly before turning eighteen, the usual age at which one begins college. Supervision may extend until the age of twenty-one, ***see***

237 Pa.Code § 630, although it may be terminated earlier, which is what occurred in S.D.'s case. While we have applied the exception to shorter time periods, it would be difficult to obtain review from this Court and seek further review by the Pennsylvania Supreme Court within such a time frame. This case is illustrative: it would elude review if not for the exception to the mootness doctrine, and it is likely that similar cases regularly would be unable to obtain full appellate review before supervision ends. Hence, I would find that this exception to the mootness doctrine applies, and I would reach the merits of S.D.'s appeal.

As part of S.D.'s disposition, the juvenile court ordered the probation department to notify S.D.'s college of his adjudication. The court stayed the notification because S.D. indicated that he intended to appeal that aspect of his disposition. The notification statute at issue provides as follows:

> **(b.1) School notification.--**
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> (1) Upon finding a child to be a delinquent child, the court shall, through the juvenile probation department, provide the following information to the building principal or his or her designee of any public, private or parochial school in which the child is enrolled:
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> (i) Name and address of the child.
>
> (ii) The delinquent act or acts which the child was found to have committed.
>
> (iii) A brief description of the delinquent act or acts.
>
> (iv) The disposition of the case.
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> (2) If the child is adjudicated delinquent for an act or acts which if committed by an adult would be classified as a felony, the court, through the juvenile probation department shall

> additionally provide to the building principal or his or her designee relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child.
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> (3) Notwithstanding any provision set forth herein, the court or juvenile probation department shall have the authority to share any additional information regarding the delinquent child under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision or rehabilitation of the delinquent child.
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> (4) Information provided under this subsection is for the limited purposes of protecting school personnel and students from danger from the delinquent child and of arranging appropriate counseling and education for the delinquent child. The building principal or his or her designee shall inform the child's teacher of all information received under this subsection. Information obtained under this subsection may not be used for admissions or disciplinary decisions concerning the delinquent child unless the act or acts surrounding the adjudication took place on or within 1,500 feet of the school property.
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> (5) Any information provided to and maintained by the building principal or his or her designee under this subsection shall be transferred to the building principal or his or her designee of any public, private or parochial school to which the child transfers enrollment.
>
> (6) Any information provided to the building principal or his or her designee under this subsection shall be maintained separately from the child's official school record. Such information shall be secured and disseminated by the building principal or his or her designee only as appropriate in paragraphs (4) and (5).

42 Pa.C.S.A. § 6341(b.1). The Juvenile Act defines "child" as "[a]n individual who: . . . (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years." 42 Pa.C.S.A. § 6302. The Act does not define school, principal, or teacher.

When construing a statute, we are bound by the rules of statutory construction. Our primary goal is "to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). "Every statute shall be construed, if possible, to give effect to all its provisions." ***Id.*** However, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." ***Id.*** § 1921(b). "Words and phrases shall be construed according to rules of grammar and according to their common and approved usage." ***Id.*** § 1903(a). If a term is clear and unambiguous, we may not assign a meaning to that term that differs from its common everyday usage for the purpose of effectuating the legislature's intent.

With these principles in mind, it is plain that S.D. is subject to the statute only if that conclusion comports with the clear language utilized by the General Assembly, or if the terms "school" and "principal" are ambiguous. ***See*** 1 Pa.C.S. § 1921(b). We must decide whether the terms, by their common and approved usage, encompass colleges and their staffs, or whether those terms are ambiguous such that this Court may assign a meaning that comports with the General Assembly's apparent intent. For the reasons that follow, I would hold that the terms are not ambiguous, and that their common and approved usage does not include the situation at bar.

"School" is defined principally as "[a]n institution for the instruction of children or people *under college age*."[1] American Heritage College Dictionary 1242 (4th Ed. 2002) (emphasis added). "Principal" is defined a "[o]ne who holds a position of presiding rank, [especially] the head of a school." ***Id.*** at 1107. The use of "school" and "principal" in conjunction with "child" and "teacher" in the context of the Juvenile Act expresses the General Assembly's intent to employ the terms in their plain, everyday meaning: the principal is the leading administrator at an elementary or secondary school. "Child" is defined in the statute as one who commits a delinquent act and is under the age of eighteen at the time. Typically, someone who meets this definition has not moved on to post-secondary education.

Further, the statute permits the principal to inform the child's teacher. "Teacher" is commonly used to refer to instructors at the primary or secondary school level. "Teacher" is less commonly used in the post-secondary context, where "professor" is the common term. "Principal" is not a term used in collegiate settings. There, "dean," "provost," or "president" are the terms used for the administrators who would fulfill roles similar to a school principal. The statute also makes use of the term "building principal."

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[1] The American Heritage Dictionary's tertiary definition of "school" does include a college or university. American Heritage College Dictionary 1242 (4th Ed. 2002).

This recognizes that, in many school districts, each elementary, middle, and high school building has its own principal. There is no equivalent whatsoever at the collegiate level. These terms have plain, ordinary meanings, and cannot be construed as ambiguous individually or collectively.

The General Assembly used specific language in drafting the notification statute. In its common usage, all of the language indicates an intent to limit the notification to primary or secondary schools. Because supervision can extend until the age of twenty-one, it was certainly foreseeable that supervised persons would attend a college, university, or other post-secondary institution. If the legislature intended to expand the notification to encompass post-secondary institutions, it could (and, we may presume, would) have expressly included colleges, universities, and deans in the statute or used broader, more inclusive language. Based upon the language codified and that language's ordinary meaning, the statute cannot be interpreted reasonably to include notification to post-secondary institutions.

It may seem tempting to expand the definition of "school" and "principal" under the circumstances of this case. However, such expansion is not a role assigned to this Court. "[W]here the language of a statute is clear and unambiguous, a court may not add matters the legislature saw fit not to include under the guise of construction. Any legislative oversight is for the General Assembly to fill, not the courts." ***Mohamed v. Com., Dep't of Transp., Bureau of Motor Vehicles***, 40 A.3d 1186, 1194-95 (Pa. 2012)

(citations omitted). We may not judicially "improve" upon the work done by the legislature. Had the General Assembly intended subsection 6341(b.1) to be read broadly, it could have stated as much within the statutory language. The General Assembly did not do so.

Further, allowing notification to colleges or universities undermines the purpose of the Juvenile Act. The Act is designed to provide "supervision, care and rehabilitation" for delinquent children and to allow for "the development of competencies to enable children to become responsible and productive members of the community." 42 Pa.C.S.A. § 6301(b)(2). To routinely provide notification to colleges or universities would hamper the child's rehabilitation and thwart his or her ability to become a productive member of society should the post-secondary institution withdraw its offer of admission. The United States Supreme Court has recognized that "juveniles have diminished culpability and greater prospects for reform." ***Miller v. Alabama***, 132 S.Ct. 2455, 2464 (U.S. 2012). Because of that, our juvenile system was designed to be rehabilitative, rather than punitive. ***In Interest of J.F.***, 714 A.2d 467, 473 (Pa. Super. 1998); ***see In re J.B.***, 39 A.3d 421, 427 (Pa. Super. 2012) ("The purpose of juvenile proceedings is to seek treatment, reformation and rehabilitation, and not to punish."). Interfering with a young adult's unqualifiedly positive pursuit of a college education would disserve these important goals and frustrate the will of the General Assembly.

The language of the notification statute does not include post-secondary institutions. To provide such notification would defeat the purposes of the Juvenile Act. I would find that the notification statute does not apply in this case.

Because the matter before us falls within the exception to the mootness doctrine and the statute is not applicable to S.D.'s situation, I would vacate that portion of the dispositional order. Thus, I respectfully dissent.