
COMMONWEALTH OF PENNSYLVANIA



A SPECIAL INVESTIGATION OF
SCHUYLKILL HAVEN AREA SCHOOL DISTRICT,
SCHUYLKILL COUNTY

Non-resident Students

JULY 2008

JACK WAGNER, AUDITOR GENERAL
PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL



July 28, 2008

Mr. Scott R. Jacoby
President
Board of School Directors
SCHUYLKILL HAVEN AREA SCHOOL DISTRICT
202 McKinley Street
Schuylkill Haven, Pennsylvania 17972

Dear Mr. Jacoby:

In May 2007, just after the release of the Department of the Auditor General's ("Department") cyclical audit report pertaining to the Schuylkill Haven Area School District ("SHASD" or "District"), the Department received an allegation that 32 named students who did not actually reside in the District were attending SHASD schools without paying tuition. It was further alleged that as many as 30 additional non-resident students, whose names were unknown to the complainant, were also attending SHASD schools without paying tuition.

Because this complaint was received after the 2006-07 school year had ended, the Department's Office of Special Investigations ("OSI") began its investigation of these allegations at the beginning of the 2007-08 school year. This report contains the results of our investigation.

We found that, due to the District's failure to adequately investigate suspicious claims of residency and residency with a guardian:

- As many as 31 students may have attended District schools in the 2007-08 school year without paying tuition, resulting in a cost to the District of as much as \$237,793; and
- As many as 48 students may have attended District schools in the 2006-07 school year without paying tuition, resulting in a cost to the District of as much as \$340,201.

Because we classified the residency claims of the same 30 students as suspicious in both years, the number of individual students whose residency was deemed suspicious over the two-year period was 49.

These findings are troubling because Section 1302 of the Public School Code of 1949, as amended, was clearly intended to prevent the taxpayers who actually reside in, and therefore financially support, the District from effectively being forced to subsidize the education of non-resident students, whose parents do not financially support the District and yet want their children to attend SHASD schools tuition-free. Moreover, based upon the tuition rates in effect, the total two-year cost of the District's laxity in addressing spurious claims of residency and residency with a guardian could have been as much as \$577,994.

We acknowledge that the District has recently implemented changes to its policy on non-resident students, which may explain the significant reduction in the number of non-resident students between the 2006-07 and 2007-08 school years. Nonetheless, we urge SHASD to implement all of the recommendations made in this report in order to address the findings stated above. The Department of the Auditor General will follow up at the appropriate time to determine whether our recommendations have been implemented.

As explained in the report, we are also forwarding copies of this report to the Pennsylvania Department of Education, the Pennsylvania Department of State's Bureau of Commissions, Elections and Legislation (Division of Commissions, Legislation and Notaries), and the District Attorney of Schuylkill County for their review and whatever further action they may deem appropriate.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department's website, www.auditorgen.state.pa.us.

Sincerely,

/S/

JACK WAGNER
Auditor General

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EXECUTIVE SUMMARY

FINDINGS	RECOMMENDATIONS
<p><u>FINDING I:</u> Due to the District’s failure to adequately investigate suspicious claims of residency and residency with a guardian, as many as 31 students may have attended District schools in the 2007-08 school year without paying tuition, resulting in a cost to the District of as much as \$237,793.</p>	<p>We recommend that SHASD:</p> <ul style="list-style-type: none">• Direct its solicitor to pursue all legal remedies available to the District to collect the tuition that is due and owing to it, including, but not limited to, the remedies set forth in Section 1302 of the Public School Code of 1949, as amended, (“Public School Code”) with respect to all persons who provided false information to the District;• Amend SHASD’s policies and procedures to adopt additional methods for verifying compliance with Section 1302, including a policy that includes the following provision: SHASD has the responsibility and right to use legal means available to ensure that the students enrolled within SHASD schools are legal residents meeting the standards of residency as defined by the Public School Code and the Pennsylvania Department of Education. SHASD and/or other entities will utilize standard investigation procedures and methods, including home visits, surveillance of students, and verification of information with third parties, social agencies, schools and governmental organizations and agencies, when deemed appropriate and necessary, as a means to substantiate actual residency status of students;

	<ul style="list-style-type: none"> • Require the District’s Special Programs Officer (“SPO”) to investigate each VRG Student¹ application and to make a positive determination of whether the claim of eligibility is valid, and authorize the SPO to use the additional investigative methods described above; • Require that a purported guardian provide additional supporting documentation to show that the VRG Student is residing with the guardian year-round and is being fully supported by the guardian; • Require that the student’s VRG file, in addition to the residency form, contain a more detailed questionnaire that would supplement information contained on the residency form; • Work with the Pennsylvania Department of Education (“PDE”) to determine and repay the amount of state subsidy that had been overpaid to SHASD for the 2007-08 school year and any other school years; • Require any notary employed by the District to be familiar with the requirements of the Public School Code, and, when called upon to notarize guardianship and non-resident student forms, to call the signer’s attention to the penalties for submitting false information, and to administer the oath and require the signer of said forms to swear or affirm that the facts set forth therein are true and correct; • Take whatever additional steps it deems appropriate and necessary to ensure compliance with the requirements of the Public School Code; and
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¹ As explained in this report, if a student’s residency is not clearly established based on the permanent residency of the student’s parents, then the student’s parent(s) or guardian(s) must submit proof that the student is eligible for a free education under one of the exceptions. The application for such status is referred to as a “Verification of Residency/Guardianship,” and such students are referred to as “VRG Students.”

	<ul style="list-style-type: none"> • Utilize its SPO to thoroughly investigate all situations involving apartment leases by parents or guardians with permanent residences located outside of the District and those that involve below-market rental rates. <p>We are also forwarding copies of this report to the Pennsylvania Department of Education, the Pennsylvania Department of State’s Bureau of Commissions, Elections and Legislation (Division of Commissions, Legislation and Notaries), and the District Attorney of Schuylkill County for their review and whatever further action they may deem appropriate.</p>
<p><u>FINDING II:</u> Due to the District’s failure to adequately investigate suspicious claims of residency and residency with a guardian, as many as 48 students may have attended District schools in the 2006-07 school year without paying tuition, resulting in a cost to the District of as much as \$340,201.</p>	<p>Because this finding is largely the same as Finding I, except that it pertains to a prior school year, the same recommendations for corrective action as are set forth in Finding I also pertain to Finding II.</p>

BACKGROUND AND INTRODUCTION

The Schuylkill Haven Area School District (“SHASD” or “District”) is located in Schuylkill County and encompasses an area of approximately 55 square miles. It has a population of 8,202, according to the 2000 federal census. The District’s administrative offices are located at 120 Haven Street in Schuylkill Haven, Pennsylvania. According to the District’s *Strategic Plan*,² the District has a student population of approximately 1,440, with 580 students in grades eight through twelve, 305 in grades five through seven, and 555 in grades kindergarten through four.

In May 2007, just after the release by the Department of the Auditor General’s (“Department”) Bureau of School Audits of the cyclical performance audit report pertaining to the District, the Department received an allegation that 32 named students who did not actually reside in the District were attending SHASD schools without paying tuition. It was further alleged that as many as 30 additional non-resident students, whose names were unknown to the informant, were also attending SHASD schools without paying tuition. The complainant’s letter contained the following additional allegations:

- There are many ways to skirt the residency requirement, including the following:
 - Getting a relative or a friend who resides in the District to sign a guardianship form.
 - Using an address of a property owned by a non-resident that is located within the District, but is not used as the main residence by the person living outside the District.
 - Falsely listing a rental property located in the District as a main residence.
- The District collects no real estate taxes, no earned income taxes, and no per capital taxes from the parents of non-resident students.
- Members of the District’s administration and faculty are not only ignoring this issue, but are participating in it and becoming part of the problem.

Because this complaint was received by the Department after the 2006-07 school year had ended, the Department’s the Office of Special Investigations (“OSI”) began its investigation of these allegations in August 2007 at the beginning of the 2007-08 school year. We did not investigate the particular motivation of families in wanting non-resident

² This document is available on the District’s website, www.haven.k12.pa.us (accessed on July 18, 2008).

students to attend District schools, but we do note that the original allegations expressed concern that non-resident students could displace resident students from receiving academic honors and starting on school athletic teams.

Generally speaking, the Public School Code of 1949, as amended, (“Public School Code”)³ provides that a student whose parents maintain their principal residence within a school district is entitled to a free education in district schools. In the frequently encountered situation in which one parent resides within the district and the other parent resides outside of the district, the district in which the custodial parent (the parent who is the guardian of the person of the student) resides is the district in which the student is entitled to a free education. Less frequently, but not uncommonly, a student may be in the custody of a legal guardian who is not a parent and, if such a guardian resides within the school district, the student is entitled to a free education. Even where a formal legal guardianship has not been established, the Public School Code provides that a student who is, in fact, permanently residing with and being fully supported by someone other than a parent may also be entitled to receive a free education, provided that all statutory criteria are met.

On the other hand, if none of the statutory exceptions applies, a non-resident student may only attend a district school upon payment of tuition to the school district at a rate calculated in accordance with the Public School Code and Pennsylvania Department of Education (“PDE”) guidelines. If a student’s residency is not clearly established based on the permanent residency of the student’s parents, then the student’s parent(s) or guardian(s) must submit proof that the student is eligible for a free education under one of the exceptions. The application for such status is referred to as a “Verification of Residency/Guardianship,” and such students are referred to as “VRG Students.”

OSI’s investigative actions relative to this matter included the following:⁴

- Interviewed SHASD Superintendent Richard J. Rada (“Rada”); the secretary for the SHASD high school principal, who also served as the District’s notary (“secretary/notary”); and the District’s Special Programs Officer (“SPO”).
- Reviewed the SHASD policy titled, “Eligibility of Non-resident Students,” which was adopted on July 12, 2006, and revised on June 20, 2007. The pertinent parts of this policy are as follows:
 - “The Board shall operate district schools for the benefit of students residing in this district who are eligible for attendance.”

³ See discussion of applicable provisions of law under Finding I.

⁴ No other investigative actions, such as surveillance, parental interviews, or guardian interviews, were conducted during the course of this investigation. As our findings and recommendations make clear, it is the responsibility of the school district’s administration to undertake these additional investigative steps to make a determination of the legitimacy of such claims of residency/guardianship.

- “The Board may permit the admission of non-resident students in accordance with Board policy. The parents/guardians of all such non-resident students shall pay tuition in accordance with Pennsylvania law, unless exempted from such payment in accordance with the requirements set forth herein.”
- “The Board shall require that appropriate legal documentation showing dependency or guardianship or a sworn statement of full residential support be filed with the Board Secretary or his/her designee before an eligible non-resident student may be accepted as a student in district schools. The Board shall provide appropriate forms for completion and signing by the parents/guardians of such non-resident student. The Board may require the parents/guardians to submit additional, reasonable information to substantiate or supplement a sworn statement, in accordance with guidelines issued by the Department of Education.”
- “Tuition rates shall be determined in accordance with statute. Tuition shall be charged monthly, in advance of attendance.”
- Identified all VRG Students attending SHASD during the 2006-07 and 2007-08 school years. The total number of VRG Students identified was 97 (39 for 2006-07, and 58 for the 2007-08 school year).
- Reviewed and analyzed information from the Permanent Student Record folders for the 97 VRG Students.

FINDINGS AND RECOMMENDATIONS

FINDING I: Due to the District’s failure to adequately investigate suspicious claims of residency and residency with a guardian, as many as 31 students may have attended District schools in the 2007-08 school year without paying tuition, resulting in a cost to the District of as much as \$237,793.

Based on a review of the Permanent Student Record folders for the 58 VRG Students attending Schuylkill Haven Area School District schools in the 2007-08 school year, and based upon interviews of SHASD officials, OSI identified 38 claims of residency or residency with a guardian as suspicious. However, 7 of these VRG Students transferred out of the District prior to or early in the 2007-08 school year, leaving 31 suspicious cases.

Table 1 illustrates OSI’s calculation that SHASD should have received as much as an additional \$237,793 in tuition during the 2007-08 school year, based on 5 elementary student violations and 26 secondary student violations:

Table 1
2007-08 School Year SHASD Tuition Amounts Uncollected

Grade Level	Number of Violations	Annual Tuition⁵	Uncollected Tuition
Elementary (K-6)	5 Students	@ \$6,455.83	\$32,279.15
Secondary (7-12)	26 Students	@ \$7,904.41	\$205,514.70
Total	31 Students		\$237,793.85

For the 2007-08 school year, the process for applying for verification of residency/guardianship in SHASD was initiated by the filing of a form titled “Parents’ Declaration and Authorization For Admission of Non-Resident Student.”⁶ This process

⁵ The Commonwealth of Pennsylvania’s Labor, Education and Community Services Comptroller’s Office, School Finance Division, calculates, certifies and issues elementary and secondary tuition rates on the PDE-2061 Form annually. The rates are calculated using financial information reported by each district. The tuition rates used in this calculation were obtained from the Excel Spreadsheet titled “School District Tuition Rates, Based on the 2006 – 2007 School Year Operations, For Use During the 2007 – 2008 Fiscal Year, Certified: April 2008.” This spreadsheet is available on the Pennsylvania Department of Education website, www.pde.state.pa.us/school_acct/lib/school_acct/tuitionrate0708use.xls (accessed on May 15, 2008). The uncollected tuition calculation assumes that all suspicious VRG Students are found to be ineligible and that all attended SHASD schools for the entire school year. Note that these calculations do not reflect special education adjustments, if any, which generally result in higher tuition amounts.

⁶ The form in use in prior years did not have a title, but was in the form of an affidavit and was referred to generally as the “VRG [verification of residency/guardianship] form.”

is mandated by Section 1302 of the Public School Code, which provides, in pertinent part, as follows:

Section 1302. Residence and right to free school privileges.

(a) A child shall be considered a resident of the school district in which his parent or the guardian of his person resides. . . . When a resident of any school district keeps in his home a child of school age, not his own, supporting the child gratis as if it were his own, such child shall be entitled to all free school privileges accorded to resident school children of the district, including the right to attend the public high school maintained in such district in the same manner as though such child were in fact a resident school child of the district, and shall be subject to all the requirements placed upon resident school children of the district. Before such child may be accepted as a pupil, such resident shall file with the secretary of the board:

(1) appropriate legal documentation to show dependency or guardianship; or

(2) a sworn statement that he is a resident of the district, that he is supporting the child gratis, that he will assume all personal obligations for the child relative to school requirements, and that he intends to so keep and support the child continuously and not merely through the school term. The school board, pursuant to guidelines issued by the Department of Education, may require other reasonable information to be submitted by the resident to substantiate the sworn statement. The form containing the sworn statement shall include notice in large print of penalty for providing false information in the sworn statement.

(b) If it is found that information contained in the sworn statement is false, the child must be removed from the school after notice of an opportunity to appeal the removal pursuant to the appropriate grievance policy of the school district.

(c) Notwithstanding any other provision of law to the contrary, a person who knowingly provides false information in the sworn statement for the purpose of enrolling a child in a school district for which the child is not eligible commits a summary offense and shall, upon conviction for such violation, be sentenced to pay a fine of no more than three hundred dollars (\$300) for the benefit of the school district in which the person resides or perform up to two hundred forty (240) hours of community service, or both. In addition, the person shall pay all court costs and shall be liable to the school district for an amount equal to the cost of tuition calculated in accordance with section 2561 during the period of enrollment.⁷

⁷ Act of March 10, 1949, P.L. 30, No. 14, § 1302, *as amended*, 24 P.S. § 13-1302 (Public School Code of 1949).

Additionally, the School Services Unit of the Pennsylvania Department of Education issues *Basic Education Circulars* (“BEC”) that provide Pennsylvania school districts with further information and guidance on specific sections of the Public School Code, as well as changes, updates, and amendments.

The BEC that pertains to Section 1302 of the Public School Code is dated December 7, 2001, and is titled “Education of Children Residing With an Adult Other Than Natural Parent.”⁸ The Section 1302 BEC⁹ provides, in pertinent part, as follows:

This BEC alerts you to your responsibilities and obligations under the state statute which addresses the provision of a free education to a child residing with an adult other than the natural parents [footnote deleted]. The statute governing a school district’s obligation to provide free school privileges to a child residing within its boundaries is found at [Section] 1302 of the Pennsylvania School Code of 1949.

Any child who meets the minimum requirements of this statute is entitled to attend public school in the resident district of the adult who is supporting him or her gratis. An adult residing in the school district is required to file either appropriate legal documentation to show dependency or guardianship or a sworn statement that the adult is a resident of the school district, that he or she is supporting the child gratis, will assume all personal obligations for the child relative to school requirements, and intends to keep and support the child continuously and not merely through the school term. The school district may, pursuant to the attached guidelines, require other reasonable information to be submitted by the resident to substantiate the sworn statement. Upon such filing, the school entity must enroll the child in question.

⁸This *Basic Education Circular* is accessible on PDE’s website, www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=54253 (accessed on May 15, 2008). We will refer to this BEC as the “Section 1302 BEC” for the purpose of this report.

⁹ In addition to Section 1302 of the Public School Code, the Section 1302 BEC references the State Board of Education’s regulation found at 22 Pa Code § 11.19, which provides, in pertinent part, as follows:

§ 11.19. Non-resident child living with a district resident

(a) A non-resident child is entitled to attend the district’s public schools if that child is fully maintained and supported in the home of a district resident as if the child were the resident’s own child and if the resident receives no personal compensation for maintaining the student in the district. Before accepting the child as a student, the board of school directors of the district shall require the resident to file with the secretary of the board of school directors either appropriate legal documentation to show dependency or guardianship or a sworn statement that the child is a resident of the district, the child is supported fully without personal compensation or gain and that the resident will assume all personal obligations for the child relative to school requirements and intends to so keep and fully support the child continuously and not merely through the school term. * * * The school board may require other reasonable information to be submitted by the resident to substantiate the sworn statement in accordance with guidelines established by the Department [of Education], as authorized by section 1302[(a)](2) of the Public School Code of 1949 (24 P.S. [§] 13-1302[(a)](2)). . . .

Students residing with an adult other than the natural parent shall be enrolled and placement made the next scheduled school day following receipt of documents from the resident, that are required by Pennsylvania Law and one of the following:

- Verification that student resides at a Federal installation Appropriate legal documentation (court order) to show dependency or guardianship
- Sworn statement (notarized) indicating that signer is a resident of the district, is supporting the child gratis (without personal compensation or gain), will assume all personal obligations for the child relative to school requirements, intends to so keep and support the child continuously and not merely through the school term, and, when required, any reasonable information submitted by the resident to substantiate the sworn statement.

Investigative Actions and Results

OSI conducted its first meeting with District Superintendent Richard J. Rada on September 13, 2007, during which he provided the following information:

- He also holds the position of SHASD Business Manager.
- SHASD has 37 or 38 Verification of Residence/Guardianship (“VRG”) forms on file for the 2007-08 school year, which was lower than the number of forms on file for the 2006-07 school year.
- SHASD implemented the use of a new VRG form for the current school year, and this form does contain information about the penalties for providing false information on this form.¹⁰
- SHASD employs an In School Supervisor Monitor¹¹ whose duties include making home visits to enforce compliance with the District’s residency requirements.

OSI briefly met with Superintendent Rada again, on February 7, 2008, before and after conducting interviews of other SHASD officials. During this meeting, OSI discussed the following regulations and guidelines relative to guardianship and residency issues with the Superintendent:

- Section 1302 of the Public School Code and the Section 1302 BEC.
- *Guidelines for Reasonable Information to Substantiate Sworn Statements by Resident under 24 P.S. § 13-1302* (“Section 1302 Guidelines”), which is an attachment to the Section 1302 BEC.
- Investigative techniques and procedures that can be used to verify residency or residency with a guardian, using the policies of Springfield Township School District (Montgomery County) as an example.¹²

¹⁰ The new form for the 2007-08 school year is titled “Parents’ Declaration and Authentication For Admission of Non-Resident Student.”

¹¹ For the 2007-08 school year, the title of this position was changed to Special Programs Officer.

¹² The Springfield Township School District (Montgomery County) policy was discussed with the Superintendent because this policy contains a section titled “Enforcement of Residential Status and Due

Superintendent Rada stated that he was familiar with the Section 1302 Guidelines. OSI provided him with copies of the other documents.

On February 7, 2008, OSI conducted an interview of the secretary/notary, who provided the following information to OSI:

- She has held the position of notary for the last 11 years, and her license is currently up for renewal.
- She had done notarial work for SHASD before being hired by the District as a secretary.
- She is licensed by the Commonwealth of Pennsylvania as a notary, and the application process for this license must include an endorsement by a state senator and character recommendations.
- She presented OSI with an original copy of a newspaper article and a handwritten note. The newspaper article was from the June 12, 2004 edition of the *Pottsville Republican & Herald*, and it bore the headline:

**IU pact falls short again
NS delays special ed OK;
acts on non-resident students**

- This article pertained to actions of the school board of North Schuylkill School District relative to the issues of special education and non-resident students attending North Schuylkill schools. The section of this article pertaining to the issue of non-resident students is as follows:

Concerning another matter, the board approved a policy recommendation regarding eligibility of students who are non-residents of the district.

It in effect cracks down on non-resident students attending school at North Schuylkill by providing false information about where they live.

The business manager said the policy is available to all school districts, but it is up to the boards to approve them.

Process Rights,” which partially reads as follows: “The district has the responsibility and right to use legal means available to assure that students enrolled in the district’s schools are legal residents meeting the standards of residency cited in this policy. The district will utilize standard investigation procedures including home visits, surveillance of students, verification of information with third parties, social agencies, schools and governmental organizations and agencies. The district recognizes that access to public education is a basic property right which persons cannot be denied without due process.” We discussed this policy with the Superintendent because we believe that the District should have a similar policy and that all parents and taxpayers should be aware of the District’s rights and responsibilities relative to this issue. The Springfield Township School District’s policy was adopted on July 12, 2006, and revised on June 20, 2007. It is available on Springfield Township School District’s website at www.sdst.org/policies/202.php (accessed on May 15, 2008).

A copy of a residency affidavit, given to board members and the public, states, “In accordance with Act 48 of 2003,¹³ if it is found that the information contained in this sworn statement is false, the student must be removed from the school after notice of an opportunity to appeal.”

“Any person who knowingly provides false information in this sworn statement for the purpose of enrolling a child in a school district for which the child is not eligible commits a summary offense and shall, upon conviction, be sentenced to pay a fine of up to \$300 or to perform up to 240 hours of community service, or both. In addition, the person shall pay all court costs and shall be liable to the school district for an amount equal to the cost of tuition calculated . . . during the period of enrollment.”

In addition, the business manager said, the student who uses an address other than his or her own to attend the school must live there all year, not just for the school year, and the homeowner must claim them for taxes.

- In June 2004, she cut this newspaper article out and forwarded it, with the section about non-resident students highlighted, to Superintendent Rada.
- She also presented OSI with an original copy of Superintendent Rada’s handwritten response, which read, in pertinent part: “I do not think that we will adopt this policy. RJR 6/16/04”.
- As of June 2004, she knew that several non-resident students were attending SHASD schools as the result of submitting false information to the District.
- In June 2004, she interpreted Superintendent Rada’s response to the newspaper article to mean that she should place her notarial seal on all non-resident guardianship and residency forms without asking any questions, even if she knew that the documents contained false information.
- Her notary license is renewed every four years. SHASD pays the fees for this license, which include the following:

○ Application fee	\$40
○ Prothonotary’s fee	18
○ Insurance Bond	70
○ Seal with new term expiration date	<u>26</u>
○ TOTAL	\$154
- In the past, she has notarized as many as 55 guardianship forms for one school year, but the number of guardianship forms has decreased in recent years.
- In exchange for SHASD paying her licensing fees, she charges no fees for notarizing District documents, including guardianship and residency forms.
- She performs school district notarial services at her secretary’s desk in the high school.
- Outside of the school district, she performs notary services for a local fire company and a local sportsman’s club.

¹³ Act 48 of 2003 included amendments that created the current version of Section 1302 of the Public School Code.

- As of the 2007-08 school year, she has begun to question parents or guardians who are submitting guardianship or residency forms, but she had not done so in the past because of Superintendent Rada's response to the newspaper article about the North Schuylkill School District.
- Regarding notarizing residency documents, she was not concerned with the issue of year-round residency, because the practice of non-resident students attending SHASD had been going on for several years.
- As the result of a letter sent out by SHASD in July or August 2007, residency forms and proof of residence were required for the 2007-08 school year, and she notarized these forms even if she believed they contained false information.
- Prior to the 2007-08 school year, she made no attempt to corroborate information provided to her by parents or guardians, relative to residency or guardianship.
- She admitted to notarizing forms for students whom she knew did not reside in the Schuylkill Haven Area School District.
- She could have administered an oath to parents or guardians submitting these forms, but she chose not to administer an oath in these situations.
- Prior to the 2007-08 school year, she made no attempt to ensure that parents or guardians were swearing to the truthfulness of the following statements on the form:
 - "Student will live with guardian year-round."
 - "Guardian will provide full support for student."
 - "Guardian will have complete control over all school matters relative to the student under guardianship."

Also on February 7, 2008, OSI conducted an interview of the District's Special Programs Officer, who, in response to questions, stated the following:

- He has been employed as the SPO for SHASD since August 27, 2007, and this is a full-time salaried position.
- His duties as the SPO are based on assignments received from the SHASD Superintendent, and these assignments included the following:
 - Investigation of inconsistencies on the student guardianship list.
 - Investigation of student residency issues.
 - Serving as truancy officer.
 - ISS ("In School Suspension") monitoring.
 - Other duties as assigned by the Superintendent.
- His specific duties relative to residency issues include contacting individuals listed as guardians and making home visits to corroborate that students are actually living with guardians or in the locations stated on residency forms.
- He was given certain criteria by the Superintendent for use in determining that a student actually resides in a guardian's residence, and these criteria include the following
 - Student's bedroom in residence.
 - Student's clothing in the residence.
 - Toys or games for student in the residence.

- Questioning the student and his or her teachers.
- He also uses the Schuylkill County Tax Assessment website to identify the actual owner of the residence in which the student resides.
- He is aware that guardianship qualification includes the mandate that the student reside with the guardian on a year-round basis, and his questions for the guardian included this issue.
- He was familiar with the Public School Code relative to this issue.
- OSI showed him a copy of the Section 1302 Guidelines and he replied that he has this document and he uses it when attempting to corroborate guardianship and residency issues. Some students were removed from the District because they did meet these guidelines.
- He uses the Internal Revenue Service's 50% support criteria for claiming personal exemptions as a guideline for meeting the guardianship requirements. However, when asked by OSI about specific non-resident student investigations that he had conducted, he stated that he did not address the Internal Revenue Service dependency issue in any of these investigations.
- He doubts the legitimacy of some of the guardianship statuses that he approved, but his investigation powers are limited.
- A thorough investigation of certain residency situations would require surveillance activities after school hours and on weekends, but he is not authorized to conduct such full-scale investigations.
- He only reports on the facts that he sees during the course of his limited investigations, and he does not make any final decisions relative to guardianship and residency issues.
- All final decisions relative to these issues are made by the superintendent.

Based on this investigation, OSI identified 31 students with suspicious guardianship and non-resident student status for the 2007-08 school year. The reasons that the residency status for these VRG Students was deemed *suspicious* include the following:

- Twenty-one of these students had parents who signed various SHASD forms that were actually required to be signed by the student's guardian.
- Eighteen of the Parents' "Declaration and Authorization For Admission of Non-Resident Student" forms contained the notarial seal of the high school secretary/notary. The secretary/notary admitted to OSI that she routinely notarized these forms, even though she knew they contained false information.
- Six of these students had parents who entered into rental agreements for properties located within the boundaries of the SHASD for the 2007-08 school year.
- The first guardianship form filed by one of the students is dated August 19, 2005, a little more than a month after SHASD sent a letter to this student's father telling him that the student's listed address was not considered legitimate.
- The mother of one of these students admitted to OSI during a telephone conversation that the student lives in another school district.

- The purported guardian for one of these students is 81 years old.
- The SPO visited the purported apartment of one of these students, which was a room in a garage described by the SPO as a “shed.”

Conclusions and Recommendations:

For the 2007-08 school year, as many as 31 students attended SHASD schools even though they were not actually residing in the District or residing with and being supported by a guardian as required by Section 1302 of the Public School Code. To avoid paying tuition, the parent(s) or the purported guardians of these students filed sworn statements containing false information in an attempt to deceive SHASD’s administration into believing that the students were either residing with a parent in the District or residing with a guardian in the District throughout the entire year and that the purported guardian was the sole source of the student’s financial support. Furthermore, a notary employed as a secretary by SHASD, believing she was acting in accordance with the Superintendent’s wishes, notarized some of these forms even though she knew that the forms contained false information. In addition to costing as much as \$237,793 in uncollected tuition revenue,¹⁴ the District received more state funds from PDE than it was entitled to receive due to these additional students.

This situation occurred in large measure due to the District administration’s lax enforcement of not only the Public School Code, a regulation issued by the State Board of Education, and a Basic Education Circular issued by PDE, but also of the District’s own policies and procedures.

These findings should be especially troubling to the taxpayers of SHASD, as Section 1302 was clearly intended to relieve taxpayers who actually reside in and financially support a school district from effectively being forced to pay for the education of children of non-residents who do not financially support the district.

Accordingly, we recommend that the District should do the following:

- Direct its solicitor to pursue all legal remedies available to the District to collect the tuition that is due and owing to it, including, but not limited to, the remedies set forth in Section 1302 of the Public School Code, with respect to all persons who provided false information to the District;
- Amend SHASD’s policies and procedures to adopt additional methods for verifying compliance with Section 1302, including a policy that includes the following provision:¹⁵

¹⁴ See Table 1. The figure is based on tuition rates in effect for the 2007-08 school year and assumes that all suspicious students are found to be ineligible and that all would attend SHASD schools for the entire school year. Note that these calculations do not include special education adjustments, if any, which generally result in higher tuition amounts.

¹⁵ This provision is based on a policy adopted by Springfield Township School District (Montgomery County), as discussed in footnote 12.

SHASD has the responsibility and right to use legal means available to ensure that the students enrolled within SHASD schools are legal residents meeting the standards of residency as defined by the Public School Code and the Pennsylvania Department of Education. SHASD and/or other entities will utilize standard investigation procedures and methods, including home visits, surveillance of students, and verification of information with third parties, social agencies, schools and governmental organizations and agencies, when deemed appropriate and necessary, as a means to substantiate actual residency status of students;

- Require the District's SPO to investigate each VRG Student application and to make a positive determination of whether the claim of eligibility is valid, and authorize the SPO to use the additional investigative methods described above;
- Require that a purported guardian provide additional supporting documentation to show that the VRG Student is residing with the guardian year round and is being fully supported by the guardian;
- Require that the student's VRG file, in addition to the residency form, contain a more detailed questionnaire that would supplement information contained on the residency form;
- Work with PDE to determine and repay the amount of state subsidy that had been overpaid to SHASD for the 2007-08 school year and any other school years;
- Require any notary employed by the school District to be familiar with the requirements of the Public School Code, and, when called upon to notarize guardianship and non-resident student forms, to call the signer's attention to the penalties for submitting false information, and to administer the oath and require the signer of said forms to swear or affirm that the facts set forth therein are true and correct; and
- Take whatever additional steps it deems appropriate and necessary to ensure compliance with the requirements of the Public School Code.

Upon the public release of this report, we will deliver to the District, in care of its solicitor, a list of the 31 suspicious files together with an explanation of our reasons for selecting each file and our suggestions for further investigation. We will also provide detailed information about two additional suspicious situations relative to the 2007-08 school year. For the purpose of this public report, it is sufficient to recommend that the District utilize its SPO to thoroughly investigate all situations involving apartment leases by parents or guardians with permanent residences located outside of the District and those that involve below-market rental rates.

Finally, we are also forwarding copies of this report to the Pennsylvania Department of Education, the Pennsylvania Department of State's Bureau of Commissions, Elections and Legislation (Division of Commissions, Legislation and Notaries), and the District Attorney of Schuylkill County for their review and whatever further action they may deem appropriate.

FINDING II: Due to the District’s failure to adequately investigate suspicious claims of residency and residency with a guardian, as many as 48 students may have attended District schools in the 2006-07 school year without paying tuition, resulting in a cost to the District of as much as \$340,201.

OSI’s analysis of VRG Student folders for the 2007–08 school year indicates that 30 of the 31 students who, for the reasons set forth in Finding I, were classified as suspicious for the 2007–08 school year, also attended District schools during the 2006–07 school year under equally suspicious circumstances.

In addition, we identified 39 VRG Students who attended District schools in the 2006-07 school year but did not attend in the 2007-08 school year. Based on a review of the Permanent Student Record folders for these 39 additional VRG Students, and based upon interviews of SHASD officials, OSI identified 27 claims of residency or residency with a guardian as suspicious. However, 9 of these VRG Students transferred out of the District prior to or early in the 2006-07 school year, leaving 18 additional suspicious cases.

Table 2 illustrates OSI’s calculation that SHASD should have received as much as an additional \$340,201 in tuition during the 2006-07 school year, based on the 48 cases identified as suspicious:

Table 2
2006-07 School Year SHASD Tuition Amounts Uncollected

Grade Level	Number of Violations	Annual Tuition¹⁶	Uncollected Tuition
Elementary (K-6)	11 Students	@ \$6,110.61	\$67,216.71
Secondary (7-12)	37 Students	@ \$7,377.97	\$272,984.89
Total	48 Students		\$340,201.60

The reasons for classifying the 18 cases that related only to the 2006–07 school year as *suspicious* include the following:

- Thirteen of these students had parents who signed various District VRG forms that were actually required to be signed by the student’s guardian.
- Twelve of the VRG affidavit forms contained the notarial seal of the District’s secretary/notary.

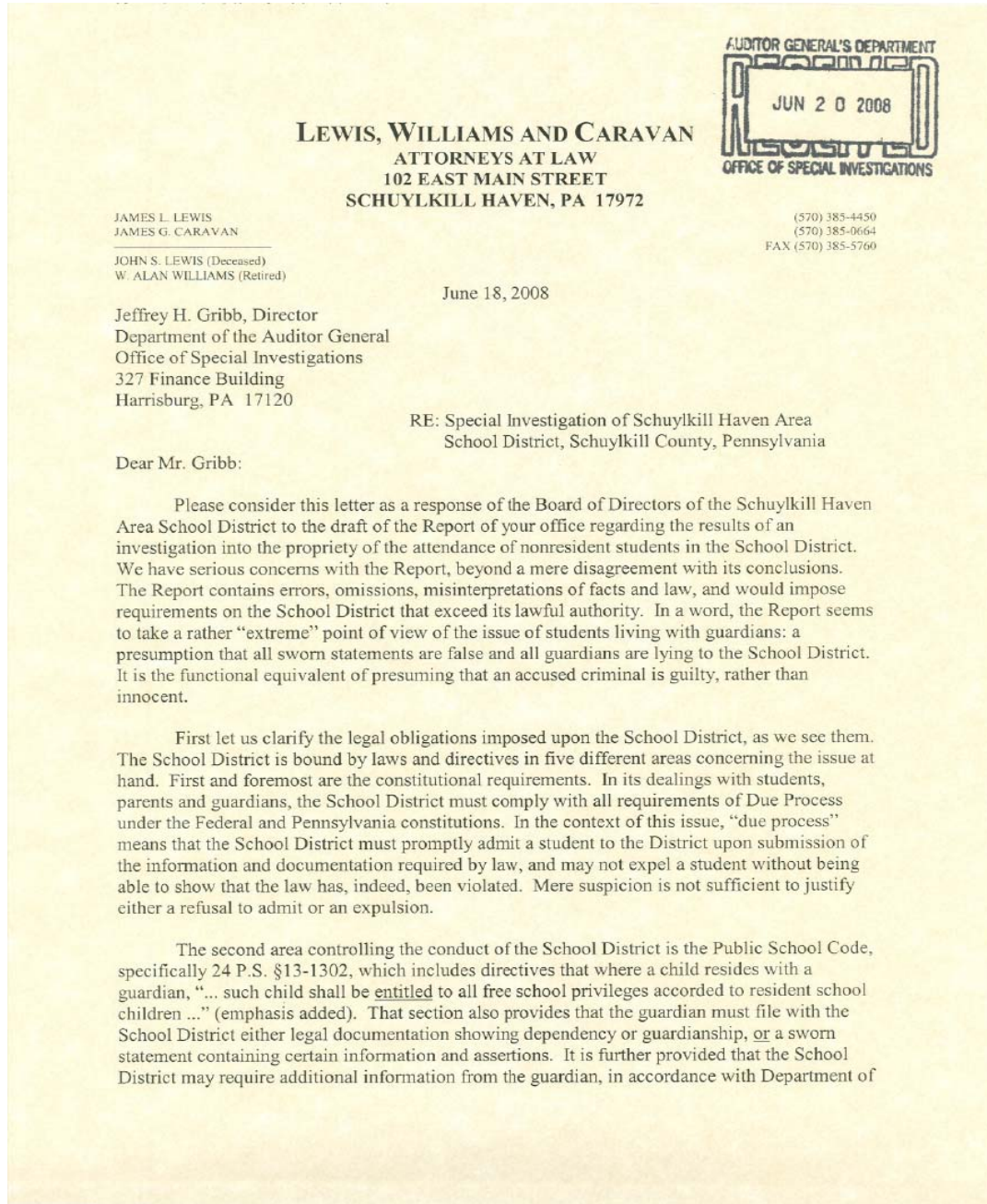
¹⁶ The tuition rates for SHASD for 2006-07 were determined by the Labor, Education and Community Services Comptroller’s Office, School Finance Division as explained in footnote 5 of this report. The uncollected tuition calculation assumes that all of the suspicious VRG Students are found to be ineligible and that all attended District schools for the entire school year. Note that these calculations do not include special education adjustments, if any, which generally result in higher tuition amounts.

- Five of these students had parents who entered into rental agreements for properties located within the boundaries of the SHASD for the 2006-07 school year.

Conclusions and Recommendations:

Because this finding is largely the same as Finding I, except that it pertains to a prior school year, our conclusions and recommendations for corrective actions are generally the same as those set forth in Finding I. The only significant difference is the amount of uncollected tuition revenue and overpayment of state funds from PDE, which would be particular to this school year. We note that there was a significant reduction in the number of non-resident students between the 2006-07 and 2007-08 school years.

SCHUYLKILL HAVEN AREA SCHOOL DISTRICT'S RESPONSE TO DRAFT REPORT¹⁷



¹⁷ Please note that we have redacted two paragraphs on the third page of the District's response, as well as several references that had appeared in the text of our draft report, in order to eliminate the risk that any particular students could be identified in this public report. As explained in our response to the District's response, we are providing the District with all of the suspicious student files for its confidential review.

Education guidelines. Those guidelines take two forms: regulations and Basic Education Circulars.

Regulations have the force of law, but only within the confines of the law under which they are promulgated. There are two regulations that are applicable to the issue at hand. 22 Pa. Code §11.19 deals specifically with the guardianship situation. That regulation simply reiterates the language of the applicable statute (24 P.S. §13-1302), with the only significant addition being a reference to the second applicable regulation.

That other regulation is 22 Pa. Code §11.11, which deals primarily with the right of resident children to attend public schools, and provides procedures for enrollment. The net effect is that “nonresident” children living with a guardian have the same rights to enrollment as resident children. Specifically, it is required that any child shall normally be enrolled the next business day after application for enrollment, but in no event later than five days thereafter. The School District must accept a nonresident child for enrollment when the guardian has submitted the documentation and information required by law.

There is a Basic Education Circular (BEC) that deals with the education of children residing with a guardian. Curiously, that BEC was issued on December 7, 2001 and, by its own terms, expired on June 30, 2005. It appears that no successor BEC was issued to extend or replace this now-expired BEC. The December 7, 2001 BEC was cited in the Report, even though it was not in effect for the years addressed by the Report (2006-07 and 2007-08).

But even if we consider this expired BEC, we find that it adds little to the discussion. The BEC provides some guidance as to what constitutes “reasonable” information that may be requested by the School District (pursuant to established school board policy) to substantiate the assertions contained in the sworn statement that must be filed by the guardian. However, most of these guidelines do not address the issue that is the primary focus of the Report: whether the child actually “resides” with the guardian. The BEC is of some aid in determining whether the guardian is truly supporting the child “gratis”. But even those guidelines provide that the sworn affidavit of the guardian can be considered “reasonable” substantiation of that assertion. The BEC also provides a sample of a sworn statement to be signed by the guardian. While the BEC is useful and perhaps even helpful, it does not have the force of law and, by its own terms, is meant only to “alert” school districts to their obligations in this area, and the forms are merely for convenience and may be adapted for local use.

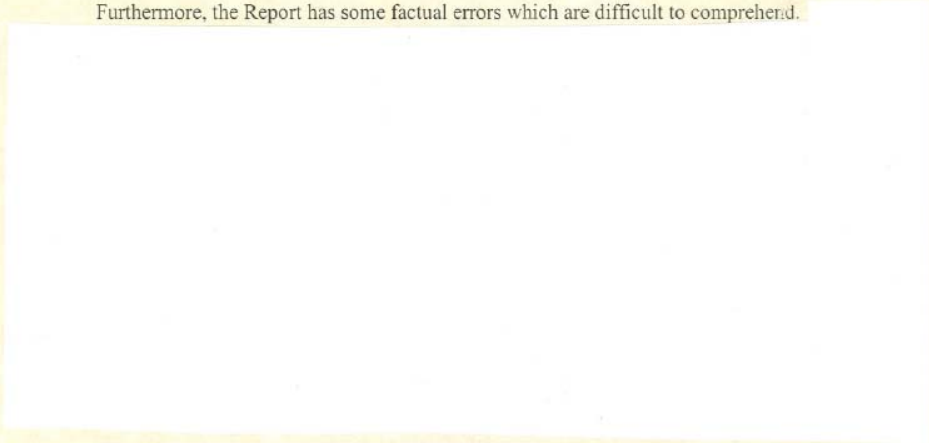
The last area which controls the conduct of the School District in this area are the properly adopted policies of the School District. The Schuylkill Haven Area School District does have such a policy (Board Policy No. 202), adopted July 12, 2006, and revised June 20, 2007. The revisions were done to assure compliance with legal and constitutional (due process) requirements. The contents of the policy do not add anything substantive that is not already contained in the applicable law and regulations.

With these legal directives in mind, what actually happens when a guardian seeks to enroll a child in the School District? All enrollments are handled by the Principal’s Office in each of the three buildings (elementary, middle school, and high school) in this rather small

school district. The building principal is initially responsible for processing the enrollment, subject to review and approval by the Superintendent's Office. In the case of a guardianship situation, the guardian is provided with the appropriate "sworn statement" to fill out and sign, and is requested to provide any other documentation that may be required in a particular case. The child is then admitted to the school district and begins attending school. For the 2007-08 school year, the School District has also conducted further investigation of guardianship situations, including a home visit by the School District's Special Program's Officer (SPO). If the SPO obtains sufficient evidence to establish that the child is not actually residing with the guardian or that the guardian is not actually supporting the child, the School District will take the necessary steps to comply with the requirements of the School Code. This procedure would seem to be more in line with the School Code and with Due Process requirements than the recommendations contained in the Report.

Clearly there is a difference in the philosophy of the School District in enforcing the residency requirements and the philosophy of the Investigator who prepared the Report. The School District believes that it has taken sufficient steps to maintain the required balance between enforcement and Due Process requirements. The Investigator appears to focus solely on enforcement at all costs, without regard to applicable Due Process requirements, and the established rules of law and evidence which would govern any enforcement proceedings which the School District would pursue.

Furthermore, the Report has some factual errors which are difficult to comprehend.



The same criticism applies to the remaining factual "findings" set forth on pages 14 and 15 of the Report. No evidence of any actual wrongdoing is provided by the Investigator. Some of these findings actually seem to indicate that there is no wrongdoing (i.e., that some entered into rental agreements for properties located within the school district), many are trivial or easily explainable (some forms were signed by parents rather than guardians), one was simply insulting (the guardian is 81 years old – exactly what age is deemed by the Inspector to be the number where one becomes too old to be a guardian?), and all allegations regarding the school's notary

are misleading, at best (a notary is not required to investigate the truth of all statements in a sworn document; she is to accept the word of the person presenting the document). While many of the remaining items may, indeed, be "suspicious", that alone is not enough to justify expelling a student or refusing admission to a student. Again, the School District cannot proceed against alleged wrongdoers without proper evidence that can be used in a legal proceeding. Indeed, the School District has investigated most of these "suspicious" situations, but has been unable to uncover any evidence of wrongdoing.

The Investigator has not set forth any evidence that could be deemed sufficient to prove that any particular student should not have been enrolled or should be expelled. There is certainly not enough evidence to meet the required burden of proof (beyond a reasonable doubt) to prosecute any particular guardian for providing false statements or other criminal violations.

Notwithstanding such deficiencies in the results of the investigation, the Investigator nevertheless has concluded that the cited violations do exist, but that it is incumbent upon the School District, not the Investigator, to unearth and obtain actual proof of such violations. The irony of such a conclusion is obvious: he could not find such evidence but the School District must do so! The consequences of such a tainted Report could be tragic – to the School District, to the families of those whose wrongdoing is alleged, and ultimately to the Office of the Auditor General for sanctioning such a flawed document.

The School District cannot, should not, and will not refuse to admit a student, expel a student, or initiate legal proceedings against a guardian or parent based upon mere suspicion, as the Investigator would require. Of course the existence of suspicious circumstances will allow the School District to conduct a further investigation. But that investigation should be reasonable, and should not be in the nature of an inquisition. Night time and weekend surveillance of students and guardians in their homes, as suggested by the Investigator, is incompatible with the educational process in a country which treasures individual freedom from governmental intrusion. Furthermore, the School District is an educational institution, not a police organization. Overnight and weekend surveillance of its citizens would rightfully cause a backlash against any governmental institution, especially one involved with such a fundamental right as public education.

Even some of the less onerous suggestions in the Report are either unreasonable, impractical, or simply will not be available. For example, a requirement that the guardian submit proof that the child is claimed as a dependent for Federal income tax purposes is, in many cases, asking for that which does not exist. If a child moves into the home of a guardian after July 1 of a particular year, the guardian will not be able to claim the child as a dependent that year (the 50% rule). Furthermore, if the guardian does claim the child as a dependent for the next year, the proof will not be available until the guardian's income tax return is filed, usually on or slightly before April 15 of the following year. Thus the "proof" of income tax dependency will likely not be available until the child has been a student in the School District for almost two complete school years.

The Report also fails to acknowledge that the School District has taken significant measures to enforce the law regarding nonresident students. The issue entered the (local) public

eye several years ago, when a neighboring school district was the subject of a similar investigation. Since that time the Schuylkill Haven Area School District has revised its policies to meet the requirements of the law; has revised the forms used for the sworn statements filed by guardians; has required additional documentation of residency in particular situations, where the evidence has so warranted; has hired and assigned an employee who is specifically charged with investigation of nonresident students and enforcing the applicable law; has, indeed, rejected a number of proposed guardianships that did not comply with the law for various reasons; and reduced the number of students with guardians to a total of 29 by the end of the 2007-08 school year.

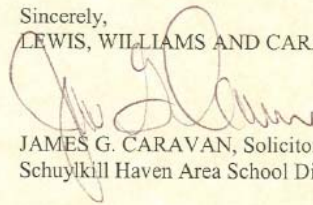
It is difficult to see what else could reasonably have been done by the School District within the bounds set by the law. If there are some "suspicious" situations that remain, it is because there is no available evidence to prove that the situation is improper. As stated above, the School District may not proceed against a student, parent, or guardian without evidence that is competent, admissible, and sufficient to meet the stringent burden of proof that is imposed by the law.

Lastly, if we do occasionally err in such a matter as this, let us err on the side of those who are truly the victims, those who truly have no say in their fate: the students. The Commonwealth of Pennsylvania has decreed that all children of certain age are entitled to a free public education. That right is not to be taken away in haste, upon whim and conjecture, without due process of law.

In summary, the Board of Directors of the Schuylkill Haven Area School District strongly objects to both the findings and conclusions in the Report. The findings lack the specificity to allow individual confirmation or refutation. If the Investigator has evidence that would allow the School District to initiate enforcement proceedings in individual cases, such evidence should be provided to the School District Administration. If such evidence does not exist, then the conclusions of the Report are clearly erroneous and the recommendations are unwarranted and improper.

The School District believes that it has done all that the law allows to enforce the residence requirements for students. The findings, conclusions and recommendations of the Report are erroneous and should be revised to reflect that the School District has taken appropriate steps to comply with the law.

Sincerely,
LEWIS, WILLIAMS AND CARAVAN



JAMES G. CARAVAN, Solicitor
Schuylkill Haven Area School District

cc: Richard Rada, Superintendent

THE DEPARTMENT OF THE AUDITOR GENERAL'S COMMENTS ON THE RESPONSE OF SCHUYLKILL HAVEN AREA SCHOOL DISTRICT TO DRAFT REPORT

We are disappointed in both the tone and substance of the District's response to our draft report. We are particularly disappointed that the District has responded, not to the actual findings and recommendations of the report, but to its mischaracterization of those findings and recommendations.¹⁸

As already clearly explained in the report, we found that, in a large number of the non-resident student files, the evidence of eligibility for tuition-free education in the District's schools was inadequate or inconclusive. As a result, we recommended that the District investigate further to gather the evidence necessary to make a positive determination of whether the claim for eligibility is valid, and we offered suggestions on how the District could do so. We emphasized throughout the report that, because local taxpayers bear most of the financial burden, it is primarily the District's responsibility to conduct the investigations, make the determinations, and pursue the available legal processes to collect any tuition that it may be entitled to receive, and that no state agency can or should bear this responsibility on the District's behalf.

Given the foregoing summary of our actual findings and recommendations, it is not necessary to rebut each and every mischaracterization of them by the District. However, we do wish to point out the following:

- Nowhere in the report is it stated or suggested that any student should be expelled or denied enrollment pending the completion of the recommended investigative steps. Our position was, and remains, that the District should attempt to *collect the tuition* that would be due and owing if further investigation by the District reveals that certain students are not, in fact, eligible for tuition-free education in the District's schools.

¹⁸ The findings in this public report do not materially differ from the draft report furnished to the District for its review and response. However, minor editorial changes have been made to the report to clarify issues raised by the District's response. In addition, we have revised the calculation of the potential financial impact to the District discussed in Finding II, which was inadvertently understated in the draft report and which has led to our acknowledgment in this final report that the District's policy changes may have resulted in a significant reduction in the number of non-resident students. Incidentally, we also acknowledge that the Section 1302 BEC cited in the report is beyond its stated expiration date, and we can find no published statement by the Pennsylvania Department of Education regarding its current status. We nevertheless believe that the BEC provides useful guidance on measures to enforce the provisions of Section 1302 of the Public School Code and the regulations of the State Board of Education (cited in the report) which independently support our findings and recommendations regardless of the current status of the BEC. We also intend to recommend that the Department of Education re-issue the BEC, or confirm its current validity, prior to the start of the 2008-09 school year.

- Nowhere in the report is it stated or suggested that the District should exceed its lawful authority. Our position was, and remains, that the District should *avail itself of the legal processes and remedies* that are available to it under the law.
- Nowhere in the report is it stated or suggested that there should be a presumption that all sworn statements are false and all guardians are lying to the District. Our position was, and remains, that determining eligibility involves the application of the law to the facts in each case as discovered upon a *thorough investigation*. Some cases may prove to be legitimate, others not. Of the latter, some may involve dishonesty, but others may have non-culpable explanations, such as an innocent misunderstanding of the eligibility requirements.
- Nowhere in the report is it stated or suggested that our investigation has found conclusive evidence that violations exist. Our position was, and remains, that certain specific *suspicious* cases appear to require *further investigation* by the District to make a positive determination of eligibility.
- Nowhere in the report is it stated or suggested that any student should be denied the right to a free public education. Our position was, and remains, that those students who are ultimately found by the District to be ineligible for a tuition-free education in the District’s schools remain eligible to receive a free public education in the school district *in which they actually reside*.
- Nowhere in the report is it stated or suggested that any student’s rights should be denied without due process of law, or that any proceedings should be instituted on the basis of mere suspicion. Our position was, and remains, that suspicious cases require additional investigation, and that the District should not inhibit its Special Programs Officer from taking the additional investigative steps that may be necessary to obtain the evidence to make a positive determination. The District may then choose from among the legal remedies available to it, *all of which afford due process* to the students and other persons affected.¹⁹

Furthermore, we acknowledge that the District’s recent policy changes were a step in the right direction, and the report does not suggest otherwise. We further acknowledge that these policy changes may have led to a significant reduction in the number of non-resident students. However, we must strongly disagree with the District’s contention that “it has done all that the law allows to enforce the residence requirements for students.” Given the potential financial impact, the taxpayers of the District deserve a higher level of vigilance from District officials to ensure that tuition is collected from the parents of students who are not legally entitled to a tuition-free education in District schools.

¹⁹ In addition to the remedies in Section 1302 of the Public School Code and whatever adjudicative procedures are available under the District’s own policies, the District may avail itself of the complaint resolution process offered by the Pennsylvania Department of Education’s School Services Unit to resolve enrollment disputes between school districts and parents or guardians. See: *Basic Education Circular* “Enrollment of Students, 24 P.S. § 13-1301,” issued on July 1, 2002.

Finally, it is important to explain that, because of the obvious sensitivity of the information, we have not yet disclosed to the District the names of the non-resident student files that we regard as suspicious. However, it has always been our intention that, upon the public release of this report, we will deliver to the District, in care of its solicitor, a list of those files together with an explanation of our reasons for selecting each file and our suggestions for further investigation. As stated in Finding I, we will also provide detailed information about two additional suspicious situations relative to the 2007-08 school year involving apartment leases.

We trust that the District will protect all of the information that we provide from unnecessary public disclosure. We hope that, after reviewing this information, the District will recognize that there are no factual errors in the report, as it claimed in its response, and that it will agree that the recommendations set forth in the report are both appropriate and necessary. Regardless, the Department of the Auditor General will follow-up at the appropriate time to determine whether all of our recommendations have been implemented.

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