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CASE NO. A09-0672

STATE OF MINNESOTA
IN COURT OF APPEALS

DEAN HALVORSON, Relator,

v.

COUNTY OF ANOKA
and
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,
Respondents.

RELATOR'S REPLY BRIEF

EDUCATION MINNESOTA

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Statutes:

Minn. Stat. § 124D.96 (2008) 1, 2
Minn. R. 2960.0080, subp. 9 (2009). 3, 4
Minn. R. 2960.0270, subp. 7 (2009). 4

ARGUMENT

I. Pines School is not an "educational institution" under the unemployment statutes, nor does it become an "educational institution" under Minnesota Statutes § 124D.96.

Relator will not repeat his argument that the program he was assigned to was not an "educational institution" for purposes of the unemployment exclusion. Relator, however, will address Respondent Department of Employment and Economic Development's (DEED's) attempt to read the above-cited statute to both define "educational institution" to include Pines School and to influence the reading of the unemployment statutes in its favor.

Upon review of the original legislation enacting Minnesota Statutes § 124D.96, the "Welfare and Correctional Institutions' Policies for Educational Programs," it is clear that the Minnesota Legislature did not define an educational program provided by a correctional institution as a stand alone educational institution. See Appendix #1, 1982 Sess. Law, Ch. 470, § 2: "Section 1. LEGISLATIVE INTENT. The legislature finds that a process for curriculum and staffing evaluation is needed to ensure quality and continued improvement of the *educational programs provided to students placed in the state's welfare and correctional institutions.*" Emphasis added. The <u>institutions</u> are the welfare and correctional institutions; the educational program is simply one of their components.

Furthermore, the statute actually contrasts welfare and correctional institutions with educational institutions:

> 124D.96 WELFARE AND CORRECTIONAL INSTITUTIONS' POLICIES FOR EDUCATIONAL PROGRAMS.
>
> Before July 1 of each year, each welfare and correctional institution which offers an elementary, secondary or vocational educational program shall develop a written policy for its educational program for the next school year. The institutional policy shall specify the educational goals for the institution; instructional plans for implementing these goals; estimated number and grade level of students; number of licensed educational staff; areas of licensure; student to staff ratios; number of supervisory personnel; proposed educational budget; procedures for evaluation of the program; and any other information deemed necessary by the commissioner of education for the evaluation of the educational institutions. The institutions shall submit the policy to the commissioner of education who will review the policy to determine whether the program and personnel employed in the program are adequate to meet the institution's obligation to provide instruction and services in compliance with the Department of Education rules and standards. If necessary, the commissioner shall make recommendations to the institution for changes in its educational program.

Minn. Stat. § 124D.96 (2008). The law lists the requirements of the welfare and correctional institutions' policies for their educational programs and concludes with a catch-all phrase that the policy should include "any other information deemed necessary by the commissioner of education for the evaluation of *the educational institutions."* This means that in developing their policies, the welfare and correctional institutions should look to what is used to evaluate the educational institutions (which are another kind of entity). Contrary to the Respondents' arguments, it does not suddenly define correctional educational programs as educational institutions for purposes of unemployment.

Minnesota law clearly envisions that those who provide residential correctional facilities for children must provide such services in line with the

Minnesota Department of Education, but that does not convert the entity from one whose purpose is *corrections* to one whose purpose is *education*. These care and treatment facilities must provide educational *services:*

> Subp. 9. Educational services
>
> The license holder must ensure that educational services are provided to residents according to items A to D, except where not applicable, due to the age of the resident or the resident's short stay in the facility.
>
> A. The license holder must facilitate the resident's admission to an accredited public school or, if the resident is home-schooled or educated at a private school or school operated by the license holder, the school must meet applicable laws and rules. If the educational services are provided on the grounds of the facility, the license holder must:
>
> (1) arrange for educational programs that provide for instruction on a year-round basis, if required by law;[1]
>
> (2) get the approval of the education services from the Department of Education; and
>
> (3) cooperate with the school district.
>
> B. The license holder must facilitate the resident's school attendance and homework activities.
>
> C. The license holder must inquire at least every 90 days to determine whether the resident is receiving the education required by law and the resident's individual education plan that is necessary for the resident to make progress in the appropriate grade level. The license holder must report the resident's educational problems to the case manager or placing agency.
>
> D. The license holder must provide education about chemical health to the resident who has had a problem related to inappropriate chemical use, but who does not have a sufficient chemical use history to refer to treatment. The education must provide the resident with opportunities to examine the problems associated with inappropriate chemical use.

Minn. R. 2960.0080, subp. 9 (2009).

[1] This Rule also reiterates the necessity of "year-round" school when required.

In addition, detention settings must also provide a program and services that are consistent with Department rules:

> Subp. 7. Education program.
> The license holder must provide education programs and services to a resident that are consistent with Department of Education rules and statutory requirements governing education of a resident. If the license holder suspects that a resident has a disability, and educational evaluation must be conducted according to applicable rules to determine if the resident has a disability. The license holder must ensure that the appropriate evaluation is completed and must assist a student who has disabilities and needs special education and related services to obtain those services.

Minn. R. 2960.0270, subp. 7 (2009).

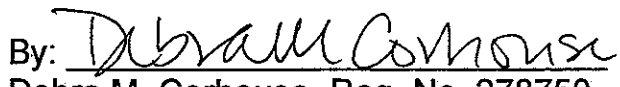
What is unique about the Pines School (as contrasted to typical schools and the schools Respondents lists on page 11 of its brief) is that it is a component of an institution with an entirely different purpose: corrections. Here, we have a corrections institution offering an educational program that would otherwise be offered by the home school district. Like the crossing guards in other states, Relator was assigned by a non-educational institution to perform educational duties. The issue here, however, is not the type of duties he was performing, but for whom he was performing them. Courts have consistently found that a school assignment does not preclude benefits for those not employed by an educational institution. Thus, Relator should be eligible for unemployment benefits in his position with Anoka County.

CONCLUSION

For the foregoing reasons, Relator respectfully requests that based on the error of law, this Court reverse the judgment of the Department below.

Dated: August 31, 2009.

EDUCATION MINNESOTA

By: 

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