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CONFIDENTIAL MEMORANDUM

PRIVILEGED ATTORNEY-CLIENT MEMORANDUM NOT
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TO: Lori Harkness
State Director for Special Education
Colorado Department of Education

FROM: Antony B. Dyl *Antony B. Dyl*
Assistant Attorney General
State Services Section

RE: Age of Majority under State Law for Purposes of 34 CFR Part 300.517

You have requested an informal opinion regarding the "age of majority under State law that applies to all students..." pursuant to 34 CFR Part 300.517. For the reasons discussed below, I conclude that the "age of majority" applicable to all students in Colorado remains twenty-one or the age of emancipation.

Newly enacted federal regulations promulgated under the Individuals with Disabilities Education Act (the "IDEA") allow States to transfer "all rights accorded to parents under Part B of the Act" to the student "when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)" 34 CFR Part 300.517(a). Whenever a State transfers rights to the student under this provision, the agency involved must notify the individual student and the parents of the transfer of rights. 34 CFR Part 300.517(a)(3). For those students who have not been determined to be incompetent under State law, but who do not have the ability to provide informed consent with respect to their educational programs, the State must

establish procedures for appointing the parent or another appropriate individual to represent the educational interests of the student under Part B of the IDEA.

In order to determine whether 34 CFR Part 300.517(a) allows such a transfer of rights in Colorado, we must first determine when, under Colorado law, "all students" reach the applicable "age of majority".

DISCUSSION

The "age of majority" refers to the age when a person is no longer considered a minor; i.e., when an individual becomes an adult for certain purposes. For purposes of Colorado statutes, unless the context otherwise requires:

"Minor" means any person who has not attained the age of twenty-one years. No construction of this subsection (6) shall supersede the express language of any statute.

Section 2-4-401(6), C.R.S. (1998). This statutory definition is deemed controlling as a matter of law unless otherwise provided by statute. For instance, in the context of determining the age of emancipation, the Colorado Court of Appeals interpreted this statutory provision as follows:

In Colorado, by statutory definition, a person retains the status of minority until the age of 21 years. C.R.S. 1963, 135--1--2(14). We consider that statutory definition to be controlling as to the age at which emancipation occurs as a matter of law except where otherwise provided by statute. In the absence of emancipation occurring upon attainment of majority, the question of whether a child is emancipated is essentially one of fact determinable by the trier of fact.

Van Orman v. Van Orman, 30 Colo. App. 117, 492 P.2d 81, 83 (Colo. App. 1971). Likewise, in the context of determining child support, the Colorado Supreme Court found that:

'Emancipation ordinarily occurs upon the attainment of majority,' [citation omitted], which is statutorily defined in Colorado as age twenty-one. § 2-4-401(6), 1B C.R.S. (1980). We have held that at age twenty-one, a presumption arises that a person has 'the physical and mental capabilities to support himself...' [citation omitted]. Accordingly, '[u]nder normal circumstances, parents have no legal obligation to support their children beyond the age of majority.'

In re Marriage of Plumber, 735 P.2d 165, 166 (Colo. 1987)(quoting Koltay v. Koltay, 667 P.2d 1374, 1376 (Colo. 1983)). Thus, it appears clear that unless specifically provided otherwise, the generally-applicable age of majority in Colorado is twenty-one.

However, there are various specific statutory exceptions to this rule. For instance, an individual is not considered to be a minor after the age of eighteen for purposes of the tolling of statutes of limitations, section 13-81-101(3), C.R.S. (1998); of entering into contractual obligations, section 13-22-101(1)(a); managing his or her estate, section 13-22-101(1)(b), C.R.S. (1998); making decisions about his or her own body, Section 13-22-101(1)(c), C.R.S. (1998); or consenting to medical care, section 13-22-103, C.R.S. (1998). Particularly relevant to our inquiry is the following exception:

every person, otherwise competent, shall be deemed to be of full age at the age of eighteen years or older for the following specific purposes:

(c) To sue and be sued in any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem or someone acting on his behalf;

Section 13-22-101(c), C.R.S. (1998). Since transfer of due process rights under the IDEA would entitle a student to request an administrative hearing in certain circumstances, it could be argued that section 13-22-101(c) should lower the age of majority to eighteen for purposes of 34 CFR Part 300.517. At least one court has relied upon this statute to find that, for purposes of the applicable statute of limitations, the age of majority has been lowered to eighteen. McKinney v. Armco Recreational Products, Inc., 419 F. Supp. 464, 466 (D. Colo. 1976).

However, reviewing the cases decided under section 13-22-101(c), it does not appear that this statute would operate to lower the age of majority for "all students". In Hesseltine v. U.S., 538 F. Supp. 1003 (D. Colo. 1982), plaintiffs filed a wrongful death action against the United States for the traffic-related deaths of their parents. Plaintiffs were 18, 19, 21 and 22 at the time of the accident, and the relevant statutory damages provision indicated that in the event the decedent left minor children, the statutory cap on damage awards was inapplicable. In deciding whether, under Colorado law, the plaintiffs were "minors" at the time of the accident, the Court held as follows:

The government contends that a "minor," for the purposes of this statute, is a person under eighteen years old. The Hesseltine children argue that minority extends until twenty-one. I conclude that a child is a minor, as that term is used in this statute, until his or her twenty-first birthday.

The government's argument focuses on the fact that in recent years the General Assembly has reduced minimum age requirements in other statutes, and argues from that that the age of majority should be eighteen. It emphasizes that at eighteen, persons are now entitled to sue and be sued, § 13-22-101, C.R.S. 1973; may be prosecuted for crimes as adults, § 19-1-103(2); and may vote, § 1-2-101(1), C.R.S. 1973.

Notwithstanding those statutes, the government acknowledges that there has been no change in the Colorado Legislature's general definition of "minor," found in § 2-4-401(6), C.R.S. 1973. That subsection provides:

" 'Minor' means any person who has not attained the age of twenty-one years. No construction of this subsection (6) shall supersede the express language of any statute."

This definition applies to "every statute unless the context otherwise requires." § 2-4-401, C.R.S. 1973. The wrongful death statute has no express language amplifying, modifying or contradicting the general statutory definition of "minor." Those statutes which have lowered the age of majority in other contexts manifest a specific intent to that effect. Absent a clear legislative determination, it is not for a federal court to imply an amendment to a Colorado statute.

Id., 538 F. Supp. at 1003-1004. See also In re Marriage of Weaver, 571 P.2d 307, 310 (Colo. App. 1977)(Section 13-22-101 treats persons over 18 as adults only for the specific purposes stated therein).

In Casa Bonita Restaurant v. Industrial Commission, 677 P.2d 344 (Colo. App. 1983), claimant was twenty years old on the date of injury. If the claimant was considered a "minor" on the date of injury, she would be entitled to maximum benefits under the workmen's compensation statute. Casa Bonita argued that the filing of a claim for workmen's compensation before the Industrial Commission constituted suing in a court of this state, and therefore that the provision of section 13-22-101 establishing that a person shall be deemed to be of full age at eighteen years for purposes of suing or being sued superseded the general language of section 2-4-401(6) in determining the claimant's benefits.

The Colorado Court of Appeals stated that the Industrial Commission was a tribunal of the executive branch of government, and thus, although it performed quasi-judicial duties, it was

not a "court". Therefore, finding no specific language which would supersede section 2-4-401(6), the Court held that the claimant was a minor on the date of injury. *Id.*, 677 P.2d at 346.

In our case, the federal regulation states that due process rights may transfer to the student only where "a student with a disability reaches the age of majority under State law that applies to all students..." 34 CFR Part 300.517(a). From the cases and statutes discussed above, it is clear that the general statutory definition of minor as any person under the age of twenty-one remains in effect absent a contrary statute manifesting a specific intent to that effect. It is also clear that those exceptions listed in section 13-22-101, C.R.S. (1998) are limited to those specific purposes set forth in that statute. Finally, the statutory exception to the general statutory definition of "minor" for bringing suit in the courts of this state, section 13-22-101(1)(c), C.R.S. (1998), does not serve to abrogate the general statutory definition for purposes of quasi-judicial proceedings before an executive agency, absent specific legislative authorization to the contrary.

Thus, for purposes of 34 CFR Part 300.517(a), the age of majority in Colorado is twenty-one unless specific statutory authorization can be found lowering that age that is applicable to "all students". In order to address this issue, it is necessary to review Colorado's education laws.

The Exceptional Children's Education Act defines "children with disabilities" as "those persons between the ages of five and twenty-one..." Section 22-20-103(1.5), C.R.S. (1998), but does not further define when a child ceases to be a minor for due process purposes. Furthermore, under section 22-1-102(1), C.R.S. (1998) public schools shall be open for admission "of all children, between the ages of six and twenty-one years, residing in that district..." The statute goes on to state that residency for all such "children" is, with certain exceptions, determined by the residence of the parent or guardian, unless the child is emancipated. Section 22-1-102(2), C.R.S. (1998). Finally, for purposes of the School Attendance law, an "adult" is defined as a person who has reached the age of twenty-one years. Section 22-33-102(2), C.R.S. (1998).

Thus, it appears that Colorado's statutes relating to education confirm the general rule that a person is considered a "minor" until reaching the age of twenty-one. The one applicable exception to this rule would be if a minor child has become legally emancipated from his parents. Although emancipation is presumed to occur upon attainment of majority (i.e., at age twenty-one), it is possible for emancipation to occur prior to age twenty-one. The question of emancipation is determined with reference to the specific facts of each case. Generally, emancipation may be implied from the conduct of the parties and the surrounding circumstances, particularly conduct which is inconsistent with the continuation of parental legal rights and obligations. Factors of significance in determining emancipation include the financial independence of the child, the child's establishment of a residence away from the family domicile, especially with family consent, and the creation of new relationships incompatible with the notion that the child occupies a subordinate position in his parents' family. In re Marriage of Weisbart, 564 P.2d 961, 964 (Colo. App. 1977); In re Marriage of Robinson, 629 P.2d 1069, 1072 (Colo. 1981).

CONCLUSION

For the reasons outlined above, I conclude that the "age of majority under State law that applies to all students..." is twenty-one years, unless that child has been emancipated. this memorandum contains the legal opinion of the authoring attorney and is not to be construed as a formal opinion of the Attorney General.

cc: Charles Masner
Colorado Department of Education

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