

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

NCP Name: [REDACTED]

CP Name: [REDACTED]

OAG Number: 0012432125

CAUSE NUMBER 201045347

IN THE INTEREST OF

§ IN THE 245TH JUDICIAL DISTRICT

[REDACTED]

§ COURT OF

A CHILD

§ HARRIS COUNTY, TEXAS

THE ATTORNEY GENERAL'S MEMORANDUM OF LAW

The ATTORNEY GENERAL OF TEXAS, representing the State of Texas, files this pleading pursuant to Texas Family Code Chapter 231.

ISSUE: Whether a child support obligation continues after the child turns 18 but is currently being home schooled leading to a high school diploma?

FACTS: The child in this case, [REDACTED], hereinafter referred to as "child", is over the age of 18 years. According to the mother of the child, [REDACTED], hereinafter referred to as "mother", the child is currently home schooled that will lead to a high school diploma. For the purpose of this memorandum, we will assume that the mother has or will be able to prove that the home schooling program that the child is participating will lead to a high school diploma.

Page 16 of the Agreed Divorce Decree signed by the Court on April 15, 2011 is the relevant part of the Divorce Decree:

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Child Support

IT IS ORDERED that [REDACTED] is obligated to pay and shall pay to [REDACTED] child support of one thousand one hundred dollars (\$1,100.00) per month, with the first payment being due and payable on May 1, 2011 and a like payment being due and payable on the first day of each month thereafter until the child attains age eighteen (18), or dies, or marries, or enlist in the U.S. Armed Forces, or whose disabilities of minority are removed for general purposes, whichever shall first occur. In the event the child is enrolled and attending either a public or private licensed school, then in that event the child support shall terminate on the first month following the date of the earliest occurrence of one of the events specified below:

1. the child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. the child marries;
3. the child dies;
4. the child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
5. the child's disabilities are otherwise removed for general purposes; or

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that [REDACTED]'s obligation to pay child support to [REDACTED] shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or

DISCUSSION: A “child” is defined by the Texas Family Code as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes. Tex. Fam. Code Ann. §101.003(a). “Child” also includes a person over 18 years of age for whom a person may be obligated to pay child support under Tex. Fam. Code Ann. § 101.003(b).

Tex. Fam. Code Ann. § 101.028 defines “school” as an elementary or secondary school in which a child is enrolled or, if the child is not enrolled in an elementary or secondary school, the public school district in which the child primarily resides.

Paragraph 1 of page 16 of the Divorce Decree states in part: “In the event the child is enrolled and attending either a public or private licensed school, then in that event the child support shall terminate on the first month following the date of the earliest occurrence of one of the events specified below:” Paragraph 2 of page 16 of the Divorce Decree states in part: “If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that [REDACTED]’s obligation to pay child support to [REDACTED] shall not terminate but shall continue for as long as the child is enrolled - ...
2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.”

Paragraph 1 of the Divorce Decree essentially mirrors Texas Family Code § 154.001, which outlines events of when child support obligation terminates. Paragraph 2 of page 16 of the Divorce Decree, on the other hand, essentially mirrors Texas Family Code § 154.002, which outlines when child support obligation shall continue in the event the child is past the age of 18 years. Additionally, both Paragraphs 1 and 2 mentions “private school” which, as outlined above, necessarily includes home schooling for the purposes of child support. Because the child in this case is over the age of 18 years, Texas Family Code § 154.002 and Paragraph 2 of the Divorce Decree is the relevant section in this case.

While the Texas Family Code does not provide a definition of “private school,” the Texas Supreme Court held that home schooling is a private school as specified by Tex. Educ. Code Ann. § 25.086(a)(1) if schooling is done in bona fide manner and courses designed to meet basic educational goals. *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994). The Court in *In re J.H.*, 264 S.W.3d 919 (Tex. App. - Dallas 2008, no pet.) citing the Texas Supreme Court case *Texas Educ. Agency v. Leeper* held that the trial court did not abuse its discretion when it ruled that the evidence showed that the child was enrolled in an

internet-based home schooling program, which is a private secondary school and the evidence showed that the child was complying with the requirement of the program leading to a high school diploma and ordered child support obligation to continue even though the child was over 18 years of age.

In this case, the child, may be considered as a “child” under Texas Family Code because the father of the child, [REDACTED], hereinafter referred to as “father,” “may be obligated to pay child support.” The term “private school” as it is used in the Divorce Decree and in the Texas Family Code necessarily includes home schooling for the purposes of whether the child support should continue past the age of 18 years. If the mother of the child can prove that the child is in a home schooling program “done in bona fide manner and courses designed to meet basic educational goal,” which leads to a high school diploma, then child support obligation should continue until the child graduates and receives his diploma.

CONCLUSION: The Texas Family Code and case law is clear that home schooling is considered as “private school” for the purpose of child support obligation. It is also equally clear that if a child is over the age of 18 and is participating in a home schooling program that leads to a high school diploma then the child support obligation shall not terminate until the child has completed that program and has received a high school diploma. It is for the court to determine whether the home schooling program is being done in a bona fide manner and that the child is complying with the requirements of the program that will eventually lead to a high school diploma. Therefore, the proper inquiry on this case is not whether home schooling qualifies as an event extending child support past the age of 18 years, but rather, whether the child is complying with the requirements of the home schooling program.

Respectfully submitted,

Ken Paxton
Attorney General of Texas

Jeffrey C. Mateer
First Assistant Attorney General

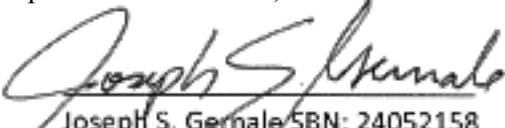


Joseph S. Gernale SBN: 24052158

ATTORNEY OF RECORD
CHILD SUPPORT DIVISION
CHILD SUPPORT OFFICE
6161 SAVOY DR STE 420
HOUSTON TX 77036-3316
Email CSD-legal-615@oag.texas.gov
Telephone No. (713) 243-7100
Toll Free 1(800)252-8014
Fax No. (713) 787-2640

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the below listed parties or their representatives pursuant to Rule 21a, Texas Rules of Civil Procedure, on the 14th day of MAY, 2018.


Joseph S. Gernale SBN: 24052158
ATTORNEY OF RECORD

Party:

[REDACTED]

[REDACTED]

Attorney for Party:

RYAN J ZIMMERMAN
P.O. BOX 1860
SUGARLAND, TX 77487

[REDACTED]

[REDACTED]

CHRISTINE LINCOLN
12777 JONES RD, STE. 475
HOUSTON, TX 77070

[REDACTED]