2012 PA Super 185

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

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

BEFORE: GANTMAN, MUNDY, AND STRASSBURGER,* JJ.

OPINION BY MUNDY, J.: Filed: September 5, 2012

Appellant, S.D., appeals from the portion of the July 27, 2011 dispositional order directing the Juvenile Probation Department to notify Temple University of his adjudication of delinquency for sexual abuse of children.[1] After careful review, we affirm.

The relevant facts and procedural history, as gleaned from the certified record, are as follows. In 2010, Pennsylvania State Trooper Paul R. Iannaci, Jr. (Trooper Iannaci) received a tip from the National Center for Missing and Exploited Children that someone in Whitehall Township was disseminating child pornography through e-mail. N.T., 6/29/11, at 10. The tip stated that someone was using AOL e-mail to send two videos of child pornography to a

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[1] 18 Pa.C.S.A. § 6312(c)(1).

*Retired Senior Judge assigned to the Superior Court.

Yahoo e-mail account. ***Id.*** After investigating, Trooper Iannaci learned that Appellant's residence was the source. After obtaining and executing a search warrant on Appellant's residence, Trooper Iannaci seized two computers with three hard drives. ***Id.*** at 10-11. Trooper Iannaci bookmarked 22 images from the three hard drives that contained child pornography but according to Trooper Iannaci, "there were hundreds." ***Id.*** at 11. After speaking to Appellant and his parents, Appellant confessed that he was the one who was viewing and sending child pornography between the two e-mail accounts. ***Id.*** at 10. At the time of the adjudication hearing, Appellant had graduated high school and had been accepted to Temple University, starting the 2011 fall semester. ***Id.*** at 3.

On June 29, 2011, the juvenile court conducted an adjudication hearing at which Appellant admitted to one count of sexual abuse of children. In exchange, the Commonwealth withdrew a second count of sexual abuse of children, criminal use of communication facility, and obscene and other sexual materials and performances.[2] On July 27, 2011, the juvenile court adjudicated Appellant delinquent and entered its dispositional order, placing Appellant on probation. Relevant to this appeal, the juvenile court directed the Juvenile Probation Department to "provide notification to Temple University of this adjudication; that notification shall be limited to

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[2] 18 Pa.C.S.A. §§ 6312(d)(1), 7512(a), and 5903(a)(1), respectively.

the adjudication and disposition without any further details[]." N.T., 7/27/11, at 35. The juvenile court also stayed the notification to Temple University pending appeal to this Court. ***Id.*** at 36. On August 4, 2011, Appellant filed a timely post-disposition motion, raising the notification issue. The juvenile court denied the motion on August 18, 2011. On September 8, 2011, Appellant filed a timely notice of appeal.[3]

On appeal, Appellant raises two issues for our review.

> 1. Did the juvenile court exceed its jurisdiction and authority when it ordered the disclosure of an adjudication and disposition to the [Appellant]'s university?
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> 2. Did the juvenile court abuse its discretion when it ordered the disclosure of the juvenile adjudication and disposition to the [Appellant]'s university?

Appellant's Brief at 2.

Preliminarily, we note that the Juvenile Act grants juvenile courts broad discretion when determining an appropriate disposition. ***In re R.D.***, 44 A.3d 657, 664 (Pa. Super. 2012). In addition, "[a] petition alleging that a child is delinquent must be disposed of in accordance with the Juvenile Act. Dispositions which are not set forth in the Act are beyond the power of the juvenile court." ***Id.*** (citation omitted). We will disturb a juvenile court's disposition only upon a showing of a manifest abuse of discretion. ***Id.***

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[3] Appellant and the juvenile court have complied with Pa.R.A.P. 1925.

However, when resolution of an issue turns on the interpretation of a statute, our review is *de novo*. ***Commonwealth v. M.W.***, 39 A.3d 958, 962 (Pa. 2012).

The Juvenile Act provides for the disclosure of delinquency adjudications to the school at which the delinquent juvenile is enrolled.

> **§ 6341. Adjudication**
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> ...
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> **(b.1) School notification.--**
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> (1) Upon finding a child to be a delinquent child, the court shall, through the juvenile probation department, provide the following information to the building principal or his or her designee of any public, private or parochial school in which the child is enrolled:
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> (i) Name and address of the child.
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> (ii) The delinquent act or acts which the child was found to have committed.
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> (iii) A brief description of the delinquent act or acts.
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> (iv) The disposition of the case.
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> (2) If the child is adjudicated delinquent for an act or acts which if committed by an adult would be classified as a felony, the court through the juvenile probation department shall additionally provide to the building principal or his or her designee relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child.
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> (3) Notwithstanding any provision set forth herein, the court or juvenile probation department shall

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

42 Pa.C.S.A. § 6341(b.1).

Appellant avers that the word "school," as used in section 6341, does not include colleges and universities. Appellant's Brief at 8. The Commonwealth counters that the juvenile court properly construed section

6341 to include Temple University within the meaning of the word "school." Commonwealth's Brief at 7.

When construing a statute, our objective is to ascertain and effectuate the legislative intent. 1 Pa.C.S.A. § 1921(a). "In pursuing that end, we are mindful that '[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.'" ***Commonwealth v. Shiffler***, 879 A.2d 185, 189 (Pa. 2005), *citing* 1 Pa.C.S.A. § 1921(b). In addition, "[w]hen the language of a statute is clear and unambiguous, the judiciary must read its provisions in accordance with their plain meaning and common usage." ***Commonwealth v. Love***, 957 A.2d 765, 767 (Pa. Super. 2008). However, when the words of a statute are not explicit, courts should resort to other considerations including the General Assembly's intent in enacting the provision. ***Commonwealth v. Diamond***, 945 A.2d 252, 256 (Pa. Super. 2008), *appeal denied*, 955 A.2d 356 (Pa. 2008), *citing* 1 Pa.C.S.A. § 1921(c). In addition, we observe that our Supreme Court has concluded the Juvenile Act is rehabilitative in nature and must therefore be liberally construed. ***Commonwealth v. Ifrate***, 594 A.2d 293, 295 (Pa. 1991), *citing* 1 Pa.C.S.A. § 1928(c).[4]

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[4] Appellant asks this Court to apply the statutory maxim of *expressio unius est exclusion alterius*. Appellant's Brief at 9. This maxim "establishes the inference that, where certain things are designated in a statute, 'all
(Footnote Continued Next Page)

Applying these principles to the case *sub judice*, we conclude the juvenile court did not exceed its authority. As our Supreme Court has noted, "the Juvenile Act is not a model of clarity." ***M.W.***, ***supra*** at 964. The Juvenile Act does not define the term school. However, we note "school" is defined as "an organization that provides instruction as **a:** an institution for the teaching of children **b:** COLLEGE, UNIVERSITY ..." Merriam Webster Collegiate Dictionary 1111 (11th ed. 2009); ***see also*** Black's Law Dictionary 1372 (8th ed. 2004) (defining school as "[a]n institution of learning and education, esp[ecially] for children[]"). Further, the General Assembly has listed community protection as one of the purposes of the Juvenile Act.

§ 6301. Short title and purposes of chapter

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(Footnote Continued) ––––––––––––––––––––––

omissions should be understood as exclusions.'" ***Commonwealth v. Ostrosky***, 866 A.2d 423, 430 (Pa. Super. 2005) (citation omitted), *affirmed*, 909 A.2d 1224 (Pa. 2006). Applying this maxim, Appellant concludes that the Legislature's "inclusion of references to primary and secondary schools implies an exclusion of colleges and universities." Appellant's Brief at 9. However, our Supreme Court has held that "when interpreting a statute, courts are required to follow the Rules of Statutory Construction." ***St. Elizabeth's Child Care Ctr. v. Dep't of Pub. Welfare***, 963 A.2d 1274, 1278 (Pa. 2009), *citing* 1 Pa.C.S.A. § 1901 *et. seq*. Our Supreme Court has held that it is error for courts to apply "*expressio unius est exclusion alterius* ... while not referring to other cannons of statutory construction." ***Id.*** As we explain *infra,* we conclude that the Rules of Statutory Construction give the most reasonable construction of the word "school" in furtherance of the overall purpose of the school notification provision and the Juvenile Act. We therefore decline Appellant's invitation to mechanically apply *expressio unius est exclusion alterius*.

> **(b) Purposes.--**This chapter shall be interpreted and construed as to effectuate the following purposes:
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> ...
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> (2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.
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> ...

42 Pa.C.S.A. § 6301; ***see also In Re A.B.***, 987 A.2d 769, 775 (Pa. Super. 2009) (*en banc*) (stating section 6301(b)(2) "evidences the Legislature's clear intent to protect the community while rehabilitating and reforming juvenile delinquents[]") (citation omitted), *appeal denied*, 12 A.3d 369 (Pa. 2010). The school notification provision itself has the purpose of "protecting school personnel and students from danger from the delinquent child …." 42 Pa.C.S.A. § 6341(b.1)(4).

We also note the Juvenile Act includes in its definition of "child" someone who "is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years[.]" ***Id.*** § 6302. The Juvenile Act further defines "delinquent child" as "[a] child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation." ***Id.*** We believe it

would be a counterintuitive result for this Court to conclude that legislature only wished to protect students in primary or secondary schools from those juveniles who had been adjudicated delinquent but not those attending institutions of higher education. Likewise, we cannot conclude that a child who is adjudicated delinquent of a felony presents a danger to elementary, middle, and high school students, but ceases to present a danger once the delinquent child enrolls in college. ***See*** 1 Pa.C.S.A. § 1922(5) (stating when construing statutes, courts should presume "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable[]"). Taken in their totality, these considerations lead us to conclude that the word "school", as used in section 6341(b.1) does include colleges and universities.

Appellant correctly observes that the school notification provision employs the terms "building principal" and "child's teacher" throughout its text. Appellant's Brief at 9. However, we agree with the juvenile court that these terms are subject to a liberal construction as well, requiring a broader interpretation. ***See*** Juvenile Court Opinion, 11/30/2011, at 7 n.12. To do otherwise would be to thwart the purposes of the school notification provision and the Juvenile Act itself as described above. Furthermore, the term "principal" is defined as "a person who has controlling authority or is in a leading position as … the chief executive officer of an educational institution." Merriam Webster Collegiate Dictionary 987 (11th ed. 2009).

Furthermore, teacher is defined as "one whose occupation is to instruct[.]" ***Id.*** at 1281. Adhering to the principles recited above, we conclude that a college dean or president, and a college professor fit squarely within these respective definitions.

Appellant also points out that the Commonwealth requires children to attend primary and secondary school, but does not require anyone to attend college. Appellant's Brief at 9. Appellant further argues that because the Commonwealth compels parents to send their children to primary and secondary school, the Commonwealth "undertakes responsibility for [a] myriad [of] issues including the safety of the student." ***Id.*** Appellant is correct that Pennsylvania law requires "every child of compulsory school age having a legal residence in this Commonwealth … to attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language." 24 P.S. § 13-1327(a). We further agree with Appellant that by compelling school attendance, the Commonwealth takes on responsibility for the safety of those students. However, we cannot conclude that the Commonwealth should have no concern for the safety of students attending college. We agree with the juvenile court that "[i]t would surely be an anomaly to intentionally shield such institutions from being notified of serious criminal conduct committed by a student to whom they have opened their doors." Juvenile Court Opinion, 11/30/11, at 7.

Based on the above, we hold that the word "school" as used in section 6341(b.1) includes colleges and universities.[5] We therefore conclude that the juvenile court did not exceed its authority under the Juvenile Act.

Appellant also argues that even if the juvenile court was within its authority to order disclosure to Temple, the order was nevertheless an abuse of discretion and offers several reasons in support of his position. Appellant contends that it was an abuse of discretion for the juvenile court to order limited disclosure to Temple University because of the other provisions of the dispositional order. Appellant's Brief at 12. Appellant avers that because the juvenile court ordered him to submit to therapeutic polygraph examinations, this should "provide[] strong enforcement of all provisions of the order." ***Id.*** Appellant further argues that the disclosure is an "unnecessary sanction" because Appellant admitted to the viewing and dissemination of child pornography and "[t]here was no allegation of any physical assault of any type." ***Id.*** Finally, Appellant argues that the Temple University community is at no risk from him. ***Id.*** at 13.

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[5] We note that Appellant also analogizes the school notification provision to the notification requirements under Megan's Law. ***See*** Appellant's Brief at 11, *citing* 42 Pa.C.S.A. § 9798(b). Appellant correctly notes that certain portions of Megan's Law do mention colleges and universities. ***See*** 42 Pa.C.S.A. § 9798(b)(5) (requiring law enforcement to provide written notice of a sexually violent predator to "[t]he president of each college, university and community college located within 1,000 feet of a sexually violent predator's residence[]"). However, Appellant also correctly observes that Megan's Law does not apply to juvenile proceedings. Appellant's Brief at 11.

The juvenile court heard extensive argument on this issue during the proceedings below, as this provision was the only contested provision of the dispositional order. The juvenile court considered Appellant's interests and balanced those against the interests of the Temple University community. The juvenile court stated that it wants Appellant to attend Temple and it did not wish to ruin his career. N.T., 7/27/11, at 32.

Contrary to Appellant's assertion, the juvenile court noted several reasons why notification to Temple would be necessary. If notified, Temple University would be able to offer Appellant any support, counseling, or programs they have to offer, while still taking measures to protect its own interests. The juvenile court noted that Temple could make a determination as to whether Appellant should be given a single room to himself as opposed to living with a roommate. ***Id.*** at 13. Temple may also be able to restrict his computer and internet access and usage. ***Id.*** at 20. While it may be true that therapeutic polygraphs and forbidding Appellant from viewing child pornography are important tools in rehabilitation, it does not follow that the notification to Temple serves no purpose in assuring compliance.

While we agree with Appellant that there is nothing in the record to suggest that he has sexually assaulted anyone, the dissemination of child pornography is not a victimless crime. As our Supreme Court has noted, "each image of child pornography creates a permanent record of a child's abuse, which results in continuing exploitation of a child when the image is

subsequently viewed." ***Commonwealth v. Davidson***, 938 A.2d 198, 219 (Pa. 2007). Given the record in this case, we cannot say that the ordered notification to Temple University constitutes a manifest abuse of discretion.[6]

Therefore, based on the circumstances of this case, we conclude that the juvenile court did not err in ordering limited disclosure to Temple University of Appellant's adjudication and disposition. Accordingly, we affirm the July 27, 2011 dispositional order.

Dispositional order affirmed.

Judge Strassburger files a Dissenting Opinion.

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[6] Appellant also argues that the Admissions Department is not the office the Probation Department must notify. Appellant's Brief at 12. We observe that at the time of the dispositional hearing, Appellant had been accepted to Temple, but had not started classes. Although the juvenile court indicated that the admissions office would be the proper office to notify, the dispositional order itself does not require the Probation Department to notify admissions. The dispositional order as written does not prevent the Probation Department from notifying any appropriate office.

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Criminal Division, at No(s): CP-39-CV-0000519-2011

BEFORE: GANTMAN, MUNDY, and STRASSBURGER,* JJ.

DISSENTING OPINION BY STRASSBURGER, J.:

I respectfully dissent. In my view, the statutory notification procedures outlined in Section 6341(b.1.) of the Juvenile Act, 42 Pa.C.S. § 6341(b.1), apply only to those individuals who are enrolled in primary or secondary school (*i.e.*, elementary, junior high or high school) at the time of adjudication. When S.D. was adjudicated delinquent, he was not enrolled in any of these schools; rather, he was admitted to a post-secondary institution (*i.e.*, college or university), namely Temple University. Accordingly, I conclude that the juvenile court lacked the statutory authority necessary to order that Temple University be notified of S.D.'s adjudication of delinquency. My conclusion is compelled by a common-sense understating of the Juvenile Act, and a plain reading approach to analyzing the clear and unambiguous language of Section 6341(b.1.).

* Retired Senior Judge assigned to the Superior Court

For purposes of the Juvenile Act, a "child" is an individual who commits an act of delinquency when he or she is under the age of eighteen. 42 Pa.C.S. § 6302 (Definitions). Instantly, S.D. committed the offense at issue when he was seventeen years old, a "child," and thus, he was tried in our juvenile court system. S.D. was adjudicated delinquent when he was eighteen years old. By the time of his adjudication, S.D. had graduated from high school and was admitted to Temple University.

"A petition alleging that a child is delinquent must be disposed of in accordance with the Juvenile Act. Dispositions which are not set forth in the Act are beyond the power of the juvenile court." ***Commonwealth v. B.D.G.***, 959 A.2d 362, 366-367 (Pa. Super. 2008) (*en banc*).

In general, Section 6341(b.1.) provides for mandatory notification when a child is adjudicated delinquent. Pursuant to Section 6341(b.1.)(1), (2) and (3), a juvenile court, through the juvenile probation department, is required to notify and provide certain, delineated information "**to the building principal or his or her designee of any public, private or parochial school in which the child is enrolled.**" According to the mandate in Section 6341(b.1.)(4), "**[t]he building principal or his or her designee shall inform the child's teacher of all information received under this subsection.**"

In interpreting statutory language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and

approved usage." 1 Pa.C.S. § 1903. Stated differently, "[a]bsent a definition in a statute, statutes are presumed to employ words in their popular and plain everyday sense, and popular meanings of such words must prevail." ***Commonwealth v. Sanchez-Rodriguez***, 814 A.2d 1234, 1237 (Pa. Super. 2003). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). Although certain statutes must be interpreted liberally, a liberal construction cannot be used to violate or rewrite the plain, unambiguous language of a statute. ***See Theodore Kirsch v. Public Sch. Emples. Ret. Bd.***, 985 A.2d 671, 676 (Pa. 2009); ***Hull v. Rose, Schmidt, Hasley & Disalle P.C.***, 700 A.2d 996, 1000 (Pa. Super. 1997).

According to the American Heritage Dictionary 1395 (4th Ed. 2006), a "principal," when used as a noun and in its non-legal sense, is defined in pertinent part as: "One who holds a position of presiding rank, especially the head of an elementary school or high school." In drafting Section 6341(b.1.), our legislature utilized the term "principal" in the context of the Juvenile Act, and included the words "child" and "teacher" in the same and similar subsections. Through this particular word usage, Section 6341(b.1.) clearly and unequivocally expressed our legislature's intent to embrace the term "principal" in its popular everyday meaning: as a high ranking administrator of an elementary, junior high or a high school.

It is beyond cavil that the standard age for graduation from high school is eighteen years old. By incorporating in Section 6341(b.1.) the Juvenile Act's definition of a "child" – one who is under the age of eighteen at the time of the offense – our legislature naturally assumed that the "child" would be attending junior high or high school when he or she was adjudicated delinquent. Against this backdrop, the word "teacher" is instructive in the sense that it is commonly associated with junior high or high school. The word "teacher" is in stark contrast to the term "professor," which is the title most often used to denote those educators who are instructing at the post-secondary or collegiate level. ***See*** AMERICAN HERITAGE DICTIONARY 1400 (4th Ed. 2006). Given this contextual setting, the relevant definition of "principal" in the American Heritage Dictionary listed above is the only conceivable one that can be used to define the term "principal" in Section 6341(b.1.). Therefore, I construe the word "principal" in its plain and ordinary sense to mean "the head of an elementary school or high school." AMERICAN HERITAGE DICTIONARY 1395 (4th Ed. 2006)

I recognize that the Majority cites a dictionary definition of "principal" that defines the term abstractly, without specific reference to the junior high or high school venue. ***See*** Maj. Slip. Op. at 9-10. But common sense, basic human experience, and the vernacular have created an exclusive and distinct meaning for the word "principal" that militates against such a construction. For example, I find it very likely that those who have attended

junior high or high school have had the opportunity (or have known someone who has had the opportunity) to be called into the "principal's office." Conversely, I find it highly unlikely that those who have attended a college or university have ever been into a "principal's office." In fact, I submit that at the collegiate level, the idea of a "principal" is nonexistent because the administrators at post-secondary institutions (at least in the United States) are not dubbed "principals." Instead, the high-ranking administrators of colleges and universities have titles such as "president," "chancellor," "dean" and "provost," and they undertake duties and responsibilities that are markedly different from those of a principal.

A juvenile court cannot order notification to a "principal" when a college or university does not have one. Indeed, the juvenile court in this case, perhaps realizing that there is no such thing as a "principal" at Temple University, indicated that notification should be made to the Admissions Department. ***See*** Maj. Slip. Op. at 13 n. 6. And the Majority, while tacitly acknowledging that the Admissions Department does not qualify as a "principal," speculates that the Juvenile Probation Department will locate and notify someone at Temple University who closely resembles a "principal." ***See id.*** In my view, the Majority, under the guise of liberal interpretation, rewrites the word "principal" to contravene its plain and natural meaning.

Our legislature used specific language when it drafted Section 6341(b.1.), and decided to limit notification to a "principal." If our

legislature intended a high school "principal" to mean a university "president" or "dean," it could have easily done so by expressly including those terms in the statute, or otherwise choosing language that was sufficient to cover all possible educational institutions and their administrators. Even when viewed through the lens of a liberal construction, the word "principal" cannot be reasonably interpreted to include a university "president" or "dean."

Because S.D. was not enrolled in high school at the time of his adjudication, and Section 6341(b.1.) does not apply to post-secondary educational institutions, I conclude the juvenile court lacked the statutory authority to order notification to Temple University. Therefore, and in contrast to the Majority, I would vacate this portion of the juvenile's court's dispositional order.