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September 5, 2013

VIA EMAIL AND FIRST CLASS MAIL

Roy Johnson
Executive Director
Vancouver Housing Authority
2500 Main Street, Suite 200
Vancouver, WA 98660-2697

Re: MTW Annual Plan Amendment, FY 2012

Dear Mr. Johnson:

I am writing to share our office's comments on the proposed Moving to Work (MTW) Annual Plan Amendment for Fiscal Year 2014. Please share these comments with VHA's Board of Commissioners before it is asked to approve the Annual Plan.

COMMENTS

3. New Lease Requirement for Skyline Crest Residents

VHA is proposing new conditions for occupancy at its Skyline Crest campus. We believe this is a new activity that exceeds the scope of the initial "Campus of Learners" initiative approved by HUD and thus disagree with VHA that HUD approval and public process are not necessary at this stage.

Although not evidenced in its Annual Plan, VHA has verbally made clear that it proposes to impose new conditions of occupancy that obligate residents to 1) not allow their children to miss more than ten percent (10%) of the school year (presumptively, regardless of any medical condition or other valid circumstance that may warrant such an absence), and 2) to "talk with VHA" when the first condition has not been met. Failure to comply with either condition will result in lease termination. Further, VHA is not permitting Skyline residents the opportunity to opt out of this new initiative and maintain housing assistance.

a. The Proposal is Unlawful and Unrelated to MTW Statutory Objectives.

We ask that VHA rescind this proposal as it contravenes several federal and state laws, as well as public policy. First, this condition exceeds the scope of authority granted

VHA under Housing Authorities Law, RCW 35.82, *et seq*. As a statutorily created entity, VHA's powers are limited to that conferred upon it by the Washington State Legislature. The Legislature has not specifically empowered VHA to impose such conditions of occupancy, nor could it as those conditions run afoul of a tenant's constitutional right to parent her child.

It is not the role of a housing authority to monitor or control the education decisions of its residents. Washington has developed an adequate framework for ensuring the proper education of children in this state, and does not need VHA to assist in this regard. For instance, Revised Code of Washington (RCW) 28A.225, *et seq.* (aka the "Becca Bill"), provides consequences for unexcused absences, including fines or juvenile detention. It also requires schools to take appropriate steps to work with families to reduce or eliminate absences and avoid truancy. Educational and childhood development are best left in the hands of those who are experienced in, and given funding for, such matters.

Notably, and as discussed further below, VHA's proposed conditions impinge on the rights granted to teenagers and their families by the Washington State Legislature, set forth in RCW 28A.225.010(1)(e).

Second, the conditions violate federal and state laws prohibiting unreasonable lease terms. *See* 42 USC 1437(d)(1)(2); RCW 59.18.360. The conditions have no rational relationship to the health, safety, welfare or convenience of tenants or use of dwelling units.

Third, the conditions are likely unenforceable because they are terms of adhesion and are therefore unconscionable. *See Townsend v. Quadrant Corp*, 153 Wash. App. 870 (2009). Under Washington law, "[w]hether a contract is one of adhesion depends upon an analysis of the following factors: "'(1) whether the contract is a standard form printed contract, (2) whether it was prepared by one party and submitted to the other on a take it or leave it basis, and (3) whether there was no true equality of bargaining power between the parties.'" *Id.* (citations omitted). VHA's proposal attempts to take unfair advantage of the imbalance of bargaining power in the landlord-tenant relationship. It essentially requires that low-income parents either yield constitutionally protected child-rearing authority to VHA or become homeless. Such a choice is patently unfair to low-income families who cannot afford to move but who also want to decide by and for themselves, without interference from a landlord inexperienced and unlicensed in educational or childhood development, how to best guide their children to educational success.

Fourth, the proposal represents an impermissible encroachment into the parent-child relationship and a family's right of privacy. It is axiomatic that parents have a fundamental right to direct the education and rearing of their children. *See USCA Const. Amend. 14* (Fourteenth Amendment); *Santosky v. Kramer*, 455 US 475, (1982). VHA has not offered any authority for the proposition that it may condition the provision of basic shelter upon a parent's relinquishment of control over his/her child's education and upbringing.

Fifth, the conditions have no rational relationship to VHA's MTW statutory objectives. A child's academic success may eventually lead to that child's economic

independence, but it will not lead to the parents' economic independence. VHA is obligated, under its MTW agreement, to develop initiatives designed to encourage people *who are working or seeking work* gain self-sufficiency – by definition that means the adult members of a given household. VHA's proposed conditions of occupancy offer no encouragement to parents to achieve their educational and employment related goals.

VHA's position on this issue is ironic given its position on its imputed minimum income initiative. Regarding that issue, our office, along with other community stakeholders, asked VHA to provide supportive services to assist residents overcome the various barriers to economic self-sufficiency. VHA steadfastly declined these requests, asserting that its role is to provide "affordable housing", and that it is not "staffed or funded to assume the role of multi-disciplinary case managers." It is thus surprising that VHA deems it appropriate for its case-managers to take on the disciplines of education and childhood development. And, as for funding, it likely would have taken no more funding to assist parents further their educational and economic goals than it will for VHA to micro-manage the parenting and education of Skyline Crest children over the next several years. And, increasing administrative costs for tasks wholly unrelated to affordable housing is inconsistent with the MTW statutory objective of decreasing administrative costs.

Furthermore, during the Advisory Committee meeting of August 1, 2013, VHA management mistakenly asserted that Tacoma Housing Authority (THA) has undertaken a similar initiative. THA's Education Project is markedly different. First, its project is voluntary; it was not imposed on public housing tenants who have little choice but to accept a housing authority's intrusion on their right to parent their children if they wish to keep their housing. Second, THA has made abundantly clear that the children are not responsible for the family's shelter. Third, THA's initiative applies only to children in elementary school because THA recognizes that there are more complex considerations to be made when developing an appropriate model for teenagers. VHA's model does not account for the difficulties that parents may encounter, despite their best efforts, in keeping teenagers on a path of academic success. And, VHA's proposal requires more than Washington's truancy laws require, in violation of RCW 28A.225.010(1)(e). VHA has not demonstrated any authority for imposing a greater standard on low-income parents than state law imposes on all parents.

For the above stated reasons, VHA should abandon its coercive social engineering model and focus instead on developing an incentive based model, such as Tacoma Housing Authority's Scholars Incentive Program. Under this model, eighth grade students are enrolled in a college bound program; in exchange, THA provides, among other things, an IDA. Encouraging children through a reward system is far more likely to yield positive results than coercing children and their parents to comply with misguided and subjective standards to avoid the threat of homelessness.

b. As Described, the Proposed Change Is Otherwise Flawed.

This proposed initiative poses many unanswered questions. What will happen to tenants who are hailed into VHA's office for a "talk"? Will VHA staff unilaterally and

subjectively decide that one parent's efforts are good enough, another parent's efforts are not? Will, for instance, VHA staff insist that a child facing daily bullying at school attend school regardless to avoid violating its arbitrary 10% rule? Will VHA do as it is doing now, coerce parents into "voluntary" plans to address attendance issues based on its subjective determinations of what steps are appropriate. What if that plan fails? How will VHA ensure that its efforts comport with educational and anti-discrimination laws?

Finally, how does VHA anticipate handling the complexities of shared custody arrangements? If a Skyline resident is unable to control whether a co-parent (particularly a perpetrator of domestic violence) who does not reside at Skyline assist their child in complying with VHA's attendance rule, will a family lose its housing as a result?

Thank you for your consideration of our comments.

Sincerely,

Amy McCullough
Attorney at Law

cc: cl