W|B|K
Weiss Burkardt Kramer LLC
Education & Municipal Law

In Brief: School Law Update

April 2014

Supreme Court Issues Decision on Executive Sessions and the Sunshine Act

by Nicole Wingard Williams, Esquire

Nicole Wingard Williams

It is well-known that the Sunshine Act provides certain exceptions to the requirement that agency meetings be open to the public. In a recently decided case, Smith v. Twp. of Richmond, 82 A.3d 407 (Pa. 2013), the Supreme Court of Pennsylvania further expounded on these exceptions and held that closed-door meetings which did not involve deliberations did not violate the Sunshine Act.

In Richmond, Richmond Township was engaged in litigation with the Lehigh Cement Company over the possible expansion of the Company's limestone quarry into the Township. The East Penn Valley Residents Group had also joined in the litigation as an intervenor. Before entering into a settlement agreement with the parties, the Township Board of Supervisors held four meetings, two with representatives of adjacent municipalities, one with the Residents Group and one with the Company and its attorneys, in order to gather information on how the quarry operations affected the neighboring municipalities, the concerns of the Residents Group and to ask questions of the Company that were raised as a direct result of the information gathered in the previous three meetings. At a subsequent open meeting and after public debate, the settlement agreement was accepted by the Board of Supervisors. A resident of the Township filed suit, claiming that the four closed-door meetings held by the Township with the various parties violated the Sunshine Act.

The Commonwealth Court observed that under the Sunshine Act, the gathering must be held to "deliberat[e] agency business or tak[e] official action" and further explained that the Act defines deliberation as "the discussion of agency business held for the purpose of making a decision." 65 Pa.C.S. §703. The Commonwealth Court found, and the Supreme Court confirmed, that there were no deliberations in the four closed-door meetings and as a result, there was no violation of the Sunshine Act.

CAUTION URGED

While the Richmond case does provide authority for closed-door sessions where members of an agency gather information which may later assist them in taking official action on an issue, the case should be read with a note of caution. Sunshine Act cases tend to be highly fact-sensitive and as such, it would be easy for a court to determine that deliberations did in fact occur at a closed-door meeting. The Supreme Court cautioned in Richmond that "when an agency holds such gatherings…skepticism among the general public is not unreasonable, as suspicions may naturally arise that the conversations are aimed at deliberating agency business in private. In such cases, the agency incurs the risk that citizens will challenge the propriety of its actions, and consequently, that it will have to defend those actions in the context of legal proceedings where an evidentiary record is developed (as in this case) and a determination is made by a fact-finder concerning whether a violation occurred." 82 A.3d at 416.

Therefore, it follows that these information-only sessions should only be held sparingly and if absolutely necessary. Any time an agency wishes to hold a closed-door session, it should consult with its solicitor to discuss the basis for the session and to determine whether the session is properly allowed to be closed under the Sunshine Act. If an agency and its solicitor do believe that a gathering can be properly closed as a session being held for informational purposes only, the agency must be extremely cautious and ensure that no deliberations occur in the session.

Important Changes Made to the Educator's Misconduct Act!

by Jocelyn P. Kramer, Esquire

Jocelyn P. Kramer

On February 18, 2014, the chief school administrator's obligation to submit mandatory reports regarding professional educators exploded.

Prior to February, mandatory reports were required to be filed in three circumstances: (1) for the dismissal of a certificated employee for cause within 30 days after the decision by an arbitrator or school board; (2) upon a charge or conviction for a crime set forth in Section 111 of the Public School Code or for a crime involving moral turpitude within 30 days of learning about the charge or conviction; or (3) within 60 days of receiving information constituting "reasonable cause to believe" that a certificated employee has caused physical injury to a student as a result of negligence or malice or has committed sexual abuse or exploitation. The reports were sometimes delayed for months pending the outcome of an arbitration or appeal.

Not so today; the reasons for mandatory reporting have nearly tripled and the deadline for filing has been reduced to a mere 15 days. Chief school administrators must file a mandatory report within 15 days of receiving notice of any of the following: (1) that an educator has been provided notice of intent to dismiss/separate from employment for cause, notice of nonrenewal for cause, notice of removal from eligibility lists for cause or notice of a determination not to reemploy for cause; (2) that a resignation or separation from employment has been tendered after any allegations of misconduct have arisen; (3) that there is an allegation of sexual misconduct/sexual abuse or exploitation; (4) that there is information constituting reasonable cause to suspect that an educator has caused physical injury to a student as a result of negligence or malice; (5) that an educator has been charged with or convicted of a crime graded as a misdemeanor or felony; (6) that an educator is the subject of a child abuse report filed by the school entity under 23 Pa.C.S. Ch. 63 (relating to child protective services); (7) that an educator has been identified in an indicated or founded report as a perpetrator of abuse.

Additionally, the Child Protective Services Law (CPSL) was also recently amended and goes into effect on December 31, 2014. Under the amendments to the CPSL, the standard for filing a report of suspected child abuse has changed. The definition of child abuse has been expanded from "serious physical injury" to "bodily injury." This expansion will significantly increase the number of mandated reports relating to injuries at school. The filing of a ChildLine report on a school employee triggers your 15 day deadline to also file a mandatory report to the Department.

Failure to file a mandatory report will result in civil penalties and will jeopardize the certification of a chief school administrator. To ensure compliance and learn the specifics of these important legislative changes, schedule a training session with Weiss Burkardt Kramer LLC today!

Audiotaping Now Permitted on School Buses

by Nicole Wingard Williams, Esquire

Previously school districts were only permitted to utilize video cameras on school vehicles and buses.

Recently, however, Senate Bill 57 was passed. This Bill amends the Crimes Code and now affords school districts the right to audiotape on school vehicles and buses so long as several requirements are met. First, the Board of School Directors must adopt a policy that authorizes audio interception on school vehicles and buses for purposes of security and discipline. Second, the district must send annual notice of the practice to parents and student. Finally, all school vehicles and buses must display conspicuously posted notices indicating that students may be audiotaped.

Weiss Burkardt Kramer recommends that all districts consider approving a policy permitting audiotaping on school vehicles and buses. Please do not hesitate to contact us for questions regarding compliance with these requirements, including the revision of your current policies to include this important update!

Weiss Burkardt Kramer, LLC

445 Fort Pitt Boulevard Suite 503 Pittsburgh, PA 15219
www.wbklegal.com Phone: (412) 391-9890 Fax: (412) 391-9685

Ira Weiss	iweiss@wbklegal.com
M. Janet Burkardt	jburkardt@wbklegal.com
Jocelyn P. Kramer	jkramer@wbklegal.com
Laura M. McCurdy	lmccurdy@wbklegal.com
Aimee Rankin Zundel	azundel@wbklegal.com
Lisa M. Colautti	lcolautti@wbklegal.com
James P. McGraw	jmcgraw@wbklegal.com
Christian D. Bareford	cbareford@wbklegal.com
Nicole W. Williams	nwilliams@wbklegal.com

Partners In Excellence

Weiss Burkardt Weiss, LLC is proud to be affiliated with King, Spry, Herman, Freund and Faul, LLC. Our combination of experience and expertise provides comprehensive representation over a wide range of legal and public entities.