

Pandemic of 2020: Act 13 and Act 15

by Jocelyn P. Kramer, Esq. and Nicole Wingard Williams, Esq.

ACT 13

On March 27, 2020, as a result of the global pandemic, Governor Wolf signed Act 13 of 2020 into law. Act 13 amends the Pennsylvania School Code and the provisions of Act 13 became effective immediately, are only in effect for the 2019-2020 school year and expire on June 30, 2020.

Act 13 requires school entities to make a good faith effort to offer continuity of education. School entities must submit their continuity of education plan to the Pennsylvania Department of Education, as well as post the plan on its publicly accessible website. Furthermore, school entities must provide written notice to all parents of students who have an Individualized Education Plan of the school's proposal for ensuring that the student continues to receive a Free and Appropriate Education, or FAPE, throughout the school closure.

Act 13 provides a waiver of the statutory requirement for school entities to provide 180 instructional days, and also authorized the Pennsylvania Secretary of Education to take several specific additional actions. On April 9, 2020, in response to Act 13, the Secretary signed an order which became effective immediately. For the 2019-2020 school year only, that order waived: 1) the application deadline for flexible instruction days; 2) the minimum total number of hours required for a career and technical education program; 3) the requirement to include student performance data in a professional employee's performance rating; 4) the minimum number of days of prekindergarten instruction; 5) the twelve-week student teacher requirement; 6) the statewide administration of the National Institute for Metalworking Skills ("NIMS") Assessment and the National Occupational Competency Testing Institute ("NOCTI") Exam.

School boards and JOCs can apply to the Secretary for a waiver of any provision of the School Code other than 528 ("third party services"), 1124 ("causes for suspension") and 1125.1 ("persons to be suspended"), so long as the waiver is directly related to the staffing needs or impacts the instructional program or operations. The waiver should be submitted on the form provided by PDE: <https://www.education.pa.gov/Schools/safeschools/emergencyplanning/COVID-19/Waivers/Pages/Act13.aspx>. Once received, the Secretary of Education has 30 days to approve or disapprove the waiver request.

As noted above, the requirement that professional employee evaluations include student performance data has been waived for the 2019-2020 school year. While school entities are still responsible for completing professional employee evaluations, due to school closures student performance and building-level data will not be available and evaluations will be based solely on observation and practice evidence. PDE has issued updated evaluation tools (82-1, 82-2, and 82-3) and guidance for 2019-2020 evaluations.

The guidance for evaluations can be found here: <https://www.education.pa.gov/Teachers%20-%20Administrators/Educator%20Effectiveness/Pages/default.aspx>.

Additionally, it should be noted that Act 13 contains provisions that will result in wide-ranging updates to the current professional employee evaluation system for the 2021-2022 school year. Look for more information on those changes in future updates.

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Attorneys Emily Hammel and Danielle Guarascio Join WBK as Associates

Emily Hammel joins the firm's Special Education team and will focus her practice on providing guidance and assistance to our school district clients on the complexities of providing special education services to students. Emily graduated from



Emily Hammel

the University of Pittsburgh School of Law in 2013, with academic awards including the CALI Award for legal research. She earned her undergraduate degree in Psychology from Gettysburg College.

Emily most recently served as Associate Counsel in the Dependency Division of the Allegheny County Office of Conflict Counsel where she represented juvenile clients in dependency matters.

Danielle Guarascio joins the firm's Municipal and School Law team and will focus her practice on general solicitor matters including local taxation. Danielle graduated from Duquesne Law School in 2019 with awards in Trial Practices and Oral Argument.



Danielle Guarascio

Danielle most recently clerked for Amato, Start & Associates, a municipal law firm in Sewickley, PA.

Pandemic of 2020, *continued*

From a financial standpoint, Act 13 also proclaims that no employee who was employed as of March 13, 2020 shall receive more or less compensation or PSERS credit or contribution than he or she would have otherwise been entitled to received had the pandemic of 2020 not occurred. This provision requires that school districts continue to pay school employees throughout the current school closures. The legislation does not differentiate between different types of employees, for instance between teachers, substitutes, coaches, or part-time employees. Any questions pertaining to compensation for those employees should be directed to a school entity's solicitor for a fact-specific analysis.

Act 13 declares that school entities will not receive less subsidy payments, reimbursements, allocations tuition or other payments from PDE or other school entities. Likewise, school entities must continue to pay charter and cyber charter schools based upon the charter school's enrollment on March 13, 2020 and non-public schools and private residential rehabilitative institutions may not receive less payment from school entities for students enrolled as of March 13, 2020.

Please contact your solicitor with any questions you have during this challenging time.

Finally, Act 13 provides that school entities may renegotiate contracts for transportation services to ensure that personnel and equipment maintenance costs are maintained during the period of school closure. In order to satisfy this provision and continue to be paid, transportation contractors are required to submit weekly documentation to the school entity showing that its costs remain at or above the level of March 13, 2020. So long as a school entity continues to pay a transportation contractor or operate its own transportation, the school entity will be eligible for reimbursement from the State at the level it would have received without the closure.

ACT 15

On April 20, 2020, Governor Wolf signed Act 15 of 2020 into law, effective immediately. Act 15 addresses a multitude of items, but several are of particular importance for school entities.

As discussed above, Act 13 allowed school entities to renegotiate transportation contracts. Act 15 took that one step further and authorizes school entities to renegotiate any contract with contract service providers. The purpose of this provision, to ensure that personnel and administrative costs are maintained during school closure, as well as the requirement for weekly documentation, are the same as the requirements of Act 13. Both of these provisions are permissive and school districts will have to weigh the financial and future service impacts of renegotiating versus not renegotiating.

Act 15 also addresses local government meetings and specifically authorizes virtual meetings, a practice that many school entities and local municipalities have already been utilizing during this pandemic. Act 15 permits a quorum of the governing board to be established virtually, rather than in person. Furthermore, Act 15 requires that if a board is going to consider any action unrelated to the COVID-19 emergency, the meeting where such consideration is going to be given must be advertised five (5) days prior, to the extent practicable, on the agency's publicly accessible website and/or in a newspaper of general circulation. If an emergency meeting is being held to address any issue related

to the COVID-19 emergency disaster, a board may proceed without advance notice; however, the board may not consider any issue not related to the disaster emergency. Furthermore, the minutes of any such emergency meeting must be made available to the public within 20 days or prior to the next board meeting, whichever shall occur first. Public participation must be permitted to the extent practicable, either through an authorized telecommunication device, defined by the Act as any device which permits, at a minimum, audio communication between individuals, or through written comments received by the agency through the U.S. postal mail or e-mail designated to receive comments. Finally, Act 15 provides that statutory time limits for certain approvals or actions may be tolled as of the date of the emergency declaration and requires notice to those affected, though lack of receipt does not affect the tolling. Those affected may request that the action proceed despite the disaster, but discretion to proceed with such a request lies with the governing board. These provisions of Act 15 expire upon termination or expiration of the COVID-19 disaster emergency.

The OOR has recently issued guidance indicating that its interpretation of Act 15 is that school entities are not covered by the Act 15 provisions for local government meetings. The OOR's reasoning for excluding school districts is not clear, and for various statutory interpretation reasons, our office disagrees with the guidance. In order to facilitate public participation while balancing the interests of public safety and government transparency, our office is advising our school district clients so that their meetings comply with the mandates of Act 15 and with the Sunshine Law generally, subject to current limitations, including stay-at-home orders, social distancing and mask requirements.

Should you have questions relating to either of the above Acts or any issues arising during this challenging time, we encourage you to contact your solicitor.

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