

A Tsunami of Assessment Appeals is Coming

by M. Janet Burkardt, Esq.



M. Janet Burkardt

The COVID-19 pandemic has had a myriad of negative effects on school districts and municipalities, most of which are obvious and administrators and elected officials are already reacting to these impacts. However, one impact we see coming which will have a drastic impact on 2021 budgets is the large number of assessment appeals currently being filed on behalf of commercial property owners.

These large, commercial properties, especially hospitality properties, have been seriously negatively impacted by the pandemic and those impacts affect the market value of these properties, some by as much as 30%. Consequently, property owners are seeking to have those market values lowered through assessment appeals so their real property taxes will be lower. In many cases, if not all, those reductions will be warranted and provable through the appraisal process. The bottom line is that taxing jurisdictions will see a reduction in their certified assessed value and a resulting reduction in taxes collected. In Allegheny County, we expect the largest reduction to happen in 2021 although we have already seen some cases that received reductions in 2020.

What is important to understand is that these reductions should not be granted into perpetuity. Instead, these properties will recover back to their stabilized market values in one to three years. But, given the assessment scheme in Pennsylvania, those reductions will remain into perpetuity unless a new appeal is filed by the taxing jurisdiction or a county-wide reassessment is undertaken. Both are costly propositions.

In Pennsylvania, most school districts and many municipalities currently file assessment appeals to increase market values when recent sale prices indicate a property is underassessed. These

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Commonwealth Court Affirms Employee Discipline Confidentiality Protections under the Right-to-Know Law

by Amanda Jewell, Esq.



Amanda Jewell

Recently, in *Highlands School District v. Rittmeyer*, the Commonwealth Court affirmed the decision of the Allegheny County Court of Common Pleas to reverse a final determination issued by the Office of Open Records (“OOR”) that would have required the Highlands School District (“School District”) to provide the names of employees who had been placed on unpaid disciplinary leave.

This case began in February 2019 when a staff writer for the Pittsburgh Tribune-Review issued a Right-to-Know request to the School District seeking the name and other information of an unnamed employee who the Board had voted to place on unpaid disciplinary leave. The District denied the request, along with a subsequent request submitted in April 2019 seeking the same information for a different employee. Both denials were appealed to the OOR and the appeals were granted. Represented by WBK, the School District consolidated both appeals in a Petition for Review to the Court of Common Pleas of Allegheny County. The court reversed, finding that the requested names were exempt from disclosure under Section 708(b)(7)(viii) of the Right-to-Know Law (“RTKL”), which exempts information in an employee’s personnel file relating to discipline. The Tribune-Review then appealed to the Commonwealth Court where it argued that even if the RTKL allowed for the exclusion of the employee names, the School Code and the Sunshine Act did not.

The Commonwealth Court held that there was no basis under the School Code or the Sunshine Act to require the names of the employees in question to be public record. In a previous decision, *School District of Philadelphia v. Jones*, 139 A.3d 358 (Pa. Cmwlth. 2016), the Court interpreted Section 1127 of the School Code to require school districts to furnish employees whom they plan to denote or discharge with a written statement of charges prior to the required agency hearing. In such matters school boards must now pass what is known as a “Jones Resolution.” The Court noted that the plain language of Section 1127 contains no requirement pertaining to the public nature of these records. Further, Section 708 of the Sunshine Act provides that official action must be taken at a public meeting, but discussions concerning an employee’s discipline may be conducted in an executive session outside of the public view. The Court found that this provision

The Right-to-Know Law exempts information in an employee’s personnel file relating to discipline.

within the Sunshine Act supported the School District’s position pertaining to the non-public nature of the disciplinary information at issue.

Although a school district was the prevailing party in this case, ultimately it is a win for employees. By holding that school districts will not be forced to reveal the identities of employees placed on a disciplinary period of suspension, the Court ensured that affected employees are granted a level of protection from

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Act 110 of 2020: Protecting Victims of Student-on-Student Sexual Assault

by Nicole Williams, Esq.

On November 3, 2020, Senate Bill 530 was signed into law as Act 110 of 2020 and codified at 24 P.S. Sec. 13-1318.1. The purpose of the new law is to support students who have been sexually assaulted by another student and to prevent re-victimization by ensuring that students do not see their attacker every day at school.

Schools are now required to expel, transfer or reassign to another school within the school district any student convicted or adjudicated delinquent of sexual assault against a victim enrolled in the same school to another school or educational program. The school is required to ensure that the convicted/adjudicated student is not educated in the same school building or transported on the same school vehicle. The convicted/adjudicated student is also not permitted to participate in the same school-sponsored activities at the same time as the victim.

Importantly, the school entity is not prohibited from taking action for convictions or adjudications for sexual assaults committed by one student against another that occur outside a school setting if the assault has the effect of substantially interfering with the victim's education, creating a threatening or hostile educational environment, or substantially disrupting the orderly operation of the school.

Students are required to notify a school of any such conviction or adjudication within 72 hours. Furthermore, the Act now requires parents to specifically attest, at the time of enrollment, as to whether their child has previously been or is currently expelled from a school due to a conviction/adjudication of sexual assault. Parents are required to provide the name of the school from which the student was expelled with the dates of expulsion and this information is required to be maintained by the school as part of the student's disciplinary record. This means that schools will have to review enrollment policies and procedures and update parental registration forms to include this specific attestation and request for information. Should your school require assistance with policy review or updating forms, please contact our office.



Nicole Williams

Assessment Appeals, *continued*

appeals work to increase uniformity and stabilize the certified assessed value of the jurisdiction. Because they are simply based upon sales, there is no need for expensive evidence to prove value. Consequently, taxing jurisdictions can undertake this effort for minimal cost.

But, when this pandemic is over and properties have recovered their market value, how will taxing jurisdictions ensure that their assessments are increased to reflect the recovered reality? Filing assessment appeals on these properties will be an expensive undertaking requiring the taxing jurisdiction to procure the evidence needed for the hearing. In most cases appraisals will be required. Taxing jurisdictions will have to weigh the benefit versus the cost of this and many will likely decide not to file assessment appeals due to the cost, instead opting to increase millage rates to meet their budgets.

Protections under the Right-to-Know Law, *continued*

public scrutiny. For both school districts and their employees, this case, which will be published and is binding upon all school districts, allows the confidentiality of delicate disciplinary and termination processes to remain intact.

Should you have any questions regarding this case or the impact that it may have on RTKL requests or employee discipline, please contact our attorneys at WBK.

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We're Speaking...

- Attorney Megan Turnbull will be presenting a virtual CLE through the School and Municipal Law Section of the Allegheny County Bar Association on March 25, 2021. The CLE focuses on Tax Assessment and Exemption Appeals in Front of the Board of Viewers.
- On April 21, 2021, Attorney Rebecca Heaton Hall will be co-presenting with Jessica Dirsmith at the LRP Institute virtual ½ day symposium. Their presentation is titled: Emotional Disturbance During a Global Pandemic: Legally Aligned Intervention, Assessment, and Identification Practices.
- Attorney Lynne Sherry is slated to give a special education presentation at Tri-State's Dr. Samuel Francis School Law Symposium and Special Education Workshop on June 23, 2021.