

Free Speech at Public Board Meetings

by Jocelyn P. Kramer, Esq.

On November 17th, the U.S. District Court for the Eastern District of Pennsylvania issued a preliminary injunction in the free speech lawsuit filed by residents of the Pennsbury School District. The residents complained that Board Policy 903, Public Participation in Board Meetings, and Policy 922, Civility, violate their right to free speech.



Jocelyn Kramer

The injunction prohibits the school board from enforcing certain parts of school board policies that restrict free speech at public meetings. The injunction prohibits the district from enforcing those policies' prohibitions of speech deemed "personally directed," "abusive," "irrelevant," "offensive," "otherwise inappropriate," or "personal attacks." The court did not remove the prohibition of "obscene" comments, the "reasonable decorum" requirement, or the requirement to notify law enforcement of threats. However, the court also enjoined the district from enforcing Policy 903's requirement that speakers announce their address prior to speaking.

The court determined that Policies 903 and 922 were likely to be found subjective because what is abusive, offensive, irrelevant, or inappropriate varies from speaker to speaker and listener to listener and held that the policies would likely be deemed vague and overbroad because they overly restrict expression that is protected by the Constitution. While the school board raised an argument that this policy was justified due to the potential for minor students being in the audience, the court held that boards may not hide behind the presence of children at meetings to justify an unconstitutional policy.

Finally, the court held that the district could not require speakers to state their address prior to speaking. In holding this, the court found that the right to free speech also encompasses the right to refrain from speaking and enforcing such a provision is invalid because of "its chilling effect on protected speech." While the court did not take issue with limiting the right to speak at school board meetings to students, employees, and residents within the district, it did hold that requiring the speaker to announce their specific home address is an unreasonable restriction. Of note, the school district did not argue in support of the address announcement requirement, and evidence was submitted that the school district accepted the speakers simply providing their township when speaking in order to comply with the residency requirement for speaking.

Pending any further court action, we recommend that school entities discuss this ruling with their solicitor and consider suspending implementation of any policy provisions that conflict with this ruling. If you should have any questions regarding this case and how it affects your current policies, please do not hesitate to contact the attorneys at Weiss Burkardt Kramer.

The court held that the district could not require speakers to state their address prior to speaking.

Commonwealth Court Rules Annual Salary is Measure for Demotion Under Section 1151 of the School Code

by Ira Weiss, Esq.



Ira Weiss

In a recent case, the Commonwealth Court of Pennsylvania ultimately upheld the decision of the Pittsburgh Board of Education and found that a decrease in annual salary, not a per diem amount, is the measure for a demotion case.

In Askin et al vs School District of Pittsburgh, thirty-six assistant principals claimed a demotion under Section 1151 of the Pennsylvania School Code. 1047 C.D. 2020 11/19/21 (Unreported). The basis of the claim was an increased work year with no increase in annual salary, the elimination of summer and additional work due to the increased work year, and a reduction in the value of their unused sick and vacation per diem rates due to the increased work year. The annual salaries of the assistant principals were not reduced.

The Board of Public Education held a bifurcated hearing and ruled there was no demotion. That decision was affirmed by the Pennsylvania Secretary of Education.

In a 2-1 decision the Commonwealth Court affirmed the decision of the Secretary holding that the annual salary is the measure for demotion claims and not per diem amounts. The Court relied on Ahern vs Chester Upland School District, 582 A2d 741 (Pa .Cmwlth. 1990), as the controlling case. Importantly, the Commonwealth Court also held the freeze in salaries did not violate Section 1142 of the School Code since the statutory minimum salaries had been met.

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Commonwealth Court holds that District May Supplement Multiple Charter School Application

by Annemarie Harr Eagle, Esq.

Our office successfully represented the School District of Pittsburgh in an appeal by Propel Charter Schools. On November 19, 2021, the Commonwealth Court of Pennsylvania found in favor of the School District of Pittsburgh and found that the Charter Appeal Board (“CAB”) properly denied Propel Charter School’s Multiple Charter School Organization (“MCSO”) Application.

By way of background, a Multiple Charter School Organization acts to consolidate existing charter schools when one of the existing charter schools has reached certain high performing criteria including student performance profiles in the top quartile of all charter schools during the previous two-year period.

In the case before the court, Propel sought to consolidate its eight existing charter schools when one of said schools performed in the top quartile in the 2015-2016 school year. However, by the time the application came before the Charter Appeal Board in 2019, Propel no longer met that criteria as the 2017-2018 data indicated that none of the eight charter schools performed in the top quartile according to their school performance profile scores. Propel argued that it was irrelevant that the application did not meet that standard as of the date of review because it met the standard as of the date of application, and as a result the School District should not be permitted to supplement the record. The Charter Appeal Board disagreed with Propel and allowed the School District of Pittsburgh to supplement the record with the updated information showing that Propel did not meet the criteria to apply for a MCSO. As a result, the Charter Appeal Board denied Propel Charter Schools MCSO Application because, among other things, the application did not meet the criteria set forth in the Charter School Law.

Propel appealed that decision to the Commonwealth Court of Pennsylvania which again found in favor of the School District of Pittsburgh and held that “the approval of a noncompliant applicant’s MCSO application would undermine ‘the core purpose of the CSL which is to improve students’ education.’” As a result of this decision, Propel is not permitted to form a MCSO by consolidating its eight existing charter schools with one overarching charter. As of the date of this article, Propel has filed an Application for Reconsideration of the Commonwealth Court’s Decision. Our office will continue to keep you updated as the litigation on this unfolds.



Annemarie Harr Eagle

We’re Speaking...

- Attorney Annemarie Harr recently presented at the Pennsylvania Association of Career and Technical Administrators (PACTA) Fall Workshop held at The Penn Stater Conference Center and Hotel in State College, Pennsylvania on October 21 and 22, 2021. Attorney Harr gave both a Title IX update as well as COVID-19 update.
- Attorney Ira Weiss and Attorney Harr gave legal updates on the topics of transgender student rights, McKinney-Vento and Trauma-Informed Approach at the National Association of Pupil Service Administrators on October 26, 2021.
- On November 19, 2021, Attorney Harr presented on the topic of Leaves of Absence for PASBO on 11/19.
- Attorney Jocelyn Kramer and Attorney Harr will be presenting to SHASDA on Title IX, Transgender Student Rights, and Staff Free Speech Rights on December 16, 2021.

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
Aimee Rankin Zundel	azundel@wbklegal.com
Nicole W. Williams	nwilliams@wbklegal.com
Rebecca Heaton Hall	rheatonhall@wbklegal.com
Claude C. Council	councillaw@verizon.net
Annemarie Harr Eagle	aharr@wbklegal.com
Jessica Quinn-Horgan	jqhorgan@wbklegal.com
Megan Turnbull	mtturnbull@wbklegal.com
Lynne Sherry	lsherry@wbklegal.com
Emily H. Hammel	ehammel@wbklegal.com
Danielle M. Guarascio	dguarascio@wbklegal.com
Kelly Perkovich	kperkovich@wbklegal.com
Lee Dellecker	ldellecker@wbklegal.com

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Annual Salary Ruling, *continued*

Commonwealth Assn of School Administrators vs Board of Education of the School District of Philadelphia, 740 A2d 1225 (Pa. Cwlt 1999).

While the opinion of the Commonwealth Court is unreported, the analysis is noteworthy and the discussion of freezes and Section 1142 may be useful in collective bargaining discussions with teachers in situations where districts propose salary freezes.