

Custody Orders: What Schools Need to Know

by Michelle Gannon, Esq.

Frequently, when parents are divorcing, separating, or have never lived together, they seek court intervention to assist them in determining who their child/children will live with and who gets to decide important matters regarding their child/children. Custody orders are court orders which identify who has care and control over a child/children and who is entitled to make decisions on their behalf. Situations involving custody arrangements can be difficult for schools to navigate.



Michelle Gannon

Physical custody identifies where the child/children spends time. Sole physical custody means that one parent has the child/children 100% of the time while the other parent has no time with the child/children. Primary physical custody means that one (1) parent has more than fifty percent of time with the child/children, meaning the other parent then has partial physical custody, or custody less than half of the time. The last kind of physical custody is shared physical custody. This means that, in a two-week period, both parents have seven (7) overnights with the child/children. Schools should be made aware of a family's physical custody arrangements, which will identify who is able to pick the child/children up from school. The family can always deviate from the schedule in

the custody order, but schools should confirm any alleged deviation with both parents before releasing a student to the non-custodial parent.

Legal custody is the right to make major decisions affecting a child/children's best interests, including educational decisions. Most parents share legal custody, meaning they must agree on educational decisions affecting a

student. In the event there is disagreement between the parents, this means that the current status quo prevails. If there is no order regarding custody, both parents are naturally vested with shared legal custody. If one parent has sole legal custody, this parent has the final decision-making authority. Although one parent may have sole legal custody, the other parent still has the right to access educational information regarding the student. Lastly, there are some situations where a child has been removed from his/her parents' care and is in foster care. Through those proceedings, educational decision-making authority is often vested in either a foster parent or an attorney. In the event you need to schedule a meeting to discuss a student, the parents will still need to be invited, but the decision-making authority is vested in that third party.

Anytime an issue arises involving child custody arrangements, we encourage you to reach out to your solicitor for direction. ♦

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Hearings Follow the Commonwealth Court Ruling that Pennsylvania's Funding System is Unconstitutional

by Kelly Perkovich, Esq.

On February 7, 2023, the Commonwealth Court ruled in *William Penn School District et al. v. Pennsylvania Department of Education et al.*, that Pennsylvania's school funding system is unconstitutional and must be reformed. Specifically, in the near 800-page opinion, the court found that The Education Clause, article III, section 14 of the Pennsylvania Constitution, requires that every student receive a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education and that education is a fundamental right guaranteed by the Constitution to all school-age children residing in the Commonwealth.

Following the decision, the 15-member bipartisan Basic Education Funding Commission (the "Commission") gathered to hear testimony across the Commonwealth and gather input from school districts, Pennsylvania educational organizations and associations, and charter schools, on how to make school funding more equitable. The 11th and final hearing was held on November 16, 2023, and the Commission is now tasked with completing a report and presenting it to the General Assembly no later than Jan. 11, 2024. A key takeaway from the hearings was that the funding shortfall is about \$6.2 billion, or about 20% of what the state currently spends each year, according to Matthew Kelly, a Penn State professor who analyzed the state's school funding system who also testified during the trial. Notably, this



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Ongoing Property Assessment Litigation Leads to Uncertainty for Budgets

by Lee Dellecker, Esq.



Lee Dellecker

Recent developments in the field of assessment litigation could lead to all Allegheny County taxing bodies paying significant tax refunds over the course of 2024.

On September 1, 2022, Judge Alan D. Hertzberg issued an Order of Court retroactively reducing Allegheny County's Common Level Ratio ("CLR") for the 2022 tax year. The CLR is an annually published ratio that measures appreciation in the real estate market. In assessment appeals, the CLR is applied to a property's fair market value to offset any appreciation that may have occurred since the last County-wide reassessment. If, for example, a property has a fair market value of \$100,000 and the CLR is 70%, the property's assessment will be \$70,000.

As a result of this litigation, Allegheny County's CLR underwent a staggering and unprecedented reduction from 81.1% to 63.5%. Allegheny County Council additionally passed legislation reopening the 2022 assessment appeal to file retroactive appeals a year late. Although touted as a win for modest homeowners, the data shows that the expanded appeal window and slashed CLR largely served high-end commercial owners who rushed to take advantage of the opportunity.

Commercial values are affected by various market conditions. The COVID-19 pandemic, the rise of online shopping, the transition to hybrid and remote work models, and the rise of interest rates have all resulted in a general decline in commercial property values. Despite the fact many office buildings and retail storefronts are now worth the same or less than what they were worth during the 2012 County-wide reassessment, commercial property owners still have a right to claim the application of the CLR to their properties under state law.

On January 1, 2024, the CLR is scheduled to drop again, falling to 54.5%. Due to unfavorable market conditions and the significant decline in the CLR, it is anticipated that many commercial properties could see assessment reductions of up to 50%. This could result in a shrinking of the commercial tax base, leading to significant refunds and less tax revenue moving forward without a millage rate adjustment.

Additionally, it is worth noting that property owners are currently challenging both the 2023 and 2024 CLRs in the case of *Gioffre et al. v. County of Allegheny* (No. GD 23-4044). If they are successful, the 2023 and 2024 CLRs could drop even lower, and property owners might once again be permitted to file retroactive assessment appeals by Allegheny County Council. This latest challenge is still in its early stages, so WBK is not in a position to comment on its chances of success at this time.

In light of this uncertainty, school districts and municipalities are advised to act cautiously and conservatively when planning their budgets. Those with large commercial tax bases will be the most negatively impacted by these events. It is recommended that you plan to have a cushion in your budget to account for significant, unplanned for commercial tax refunds. Our team is available to help assess risks and related strategies as we move into the new year. ♦

Pennsylvania's Funding System, *continued*

estimate does not include the cost to repair infrastructure including facilities costs to manage environmental hazards, like asbestos and broken or inadequate air conditioning, that many districts are facing, and that force school closures during extreme heat. While Kelly did not offer a number on the cost of updating the infrastructure in our region or across the Commonwealth, he did estimate that the cost of modernizing and repairing the School District of Philadelphia's infrastructure would cost \$7.9 billion alone. As it stands currently, Pennsylvania ranks 45th among states in the proportion of state versus local funding, providing only 38% of the total, compared to the national average of 47%. We look forward to sharing the recommendations by the Commission to remedy the school funding system, once they issue the report. ♦

We're Speaking

- Attorneys Jocelyn Kramer and Megan Turnbull are presenting the school law portion of the PSBA new school director trainings in December 2023.
- On December 2, 2023, Attorney Turnbull assisted as a small-group facilitator for the Local Government Academy's (LGA) Newly Elected Official's (LGA) Opening Day program.
- Attorney Turnbull will also be speaking about the Ethics Act and the Sunshine Law for the LGA on January 27, 2024.
- Attorney Turnbull will be presenting on the legal implications of AI to SHASDA at the organization's meeting on February 1, 2024. ♦

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