

Reminders for Serving Students with Disabilities

by Lynne Sherry, Esq.

As school districts prepare to open the doors to students this year, there are a few reminders that will help districts ensure that they are prepared to meet student needs and remain compliant with the Individuals with Disabilities in Education Act (IDEA) and Section 504 of the Rehabilitation Act.



Child Find – Red Flags:

Both the IDEA and Section 504 have a Child Find mandate, which requires districts to affirmatively “identify, locate and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services.” 34 CFR 300.111 (c). In addition to districts’ obligations to post “general public notice obligations” regarding Child Find, there are several areas of Child Find liability most frequently litigated. Some of these areas include excessive absences/truancy related to disability; multiple hospitalizations; an ineffective 504 plan to address student needs; severe or persistent behavioral struggles without response to interventions (and involving out of school discipline).

IEPs and 504 Plans must be in effect at the beginning of each school year, and the failure to have an appropriate IEP or 504 Plan in effect on the first day of school could result in a denial of FAPE.

Truancy Related to Disability:

As the school year begins, districts should carefully assess any trends in individual student attendance and determine whether students with disabilities are absent for reasons related to the disability. Districts are encouraged to be proactive in convening IEP/504 teams to discuss chronic absenteeism or truancy and incorporate potential strategies and plans for improved attendance within a Student’s IEP or 504 Plan. Districts should document all efforts to address truancy within a Student’s IEP or 504 Plan. This may include evaluations to analyze or assess a student’s issues with school avoidance. Districts are also cautioned against filing truancy citations or sending truancy notices where the IEP/504 team has not yet convened to address the issues underlying a student’s chronic absenteeism, where a Student Attendance Improvement Conference (SAIC) has not been convened to include all necessary team members, and in cases where the IEP/504 team has convened and has agreed upon a divergence from the attendance policy. See *M.L. v. West Chester Area School District*, 27929-22-23 (SEA PA 7.14.2023) (Gerl, J.) (finding that a district-initiated truancy process, following notice that student’s absences resulted from disability-related school avoidance anxiety, was inappropriate). ♦

Board Members Have a Property Interest in Their Positions

by Rebecca Hall, Esq.



*On May 1, 2024, the Third Circuit Court of Appeals found that a school board president may not be removed from their position unless they are provided with notice and a hearing under 24 P.S. § 514. In the case of *Montemuro v. Jim Thorpe Area Sch. Dist.*, 99 F.4th 639 (3d Cir. 2024), the Board elected Montemuro as president of the school board. For unknown reasons, a week later the board voted Montemuro out of the position and appointed a new board president. Montemuro then sued the board members who voted him out of his position claiming he had a property interest in his board position under the Fourteenth Amendment requiring due process of law (notice and hearing).*

Section 514 of the Pennsylvania School Code requires that,

The board of school directors in any school district, except as herein otherwise provided, shall after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove any of its officers, employes, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.

A school board president is considered an “officer” under Pennsylvania case law. *Buell v. Union Twp. Sch. Dist.*, 395 Pa. 567, 569 (1959). Therefore, the Third Circuit found that under the plain language of Section 514, an “officer” may only be removed for the reasons listed within the School Code: incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct. Establishing grounds for removal from office requires that the board president receives proper notice of the allegations and the opportunity for a hearing. It is important to remember that board members are elected officials. Even if a board

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Allegheny County Assessment Updates and a Wider Perspective

by Elizabeth Sattler, Esq. ☞
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Although observers of Pennsylvania tax assessment litigation often describe it as a slow replay of “Groundhog Day,” there are some notable updates to share:

Allegheny County Appeal Deadline Changes

Beginning this fall, Allegheny County joins many other counties of the Commonwealth as it adjusts the tax assessment appeal process to a prospective basis. The appeal window for **2025** assessment appeals is open August 1, 2024, through October 1, 2024. Taxing bodies wishing to initiate appeals should be analyzing available 2024 sales data now to meet the earlier deadline.

If appeals are quickly scheduled and heard by the Board of Property Assessment Appeals and Review (“BPAAR”), many taxing bodies will be in a better position to project revenue and refunds moving into the 2025 budgeting process.

PPS Reassessment Litigation

As previously reported, Pittsburgh Public Schools (“PPS”) initiated a lawsuit in Spring 2024 against Allegheny County and County Executive Sara Innamorato seeking to compel a County-wide reassessment on the legal basis that the current system fails to guaranty the constitutional right to uniformity in taxation. The County recently filed preliminary objections to the lawsuit. A hearing on those objections will take place in late August.

The Need for a Statewide Legislative Solution

On July 15, 2024, the Democratic Senate Policy Committee convened a hearing titled, The Cost of Inaction-Property Reassessments. The hearing was sponsored by Senator Wayne Fontana (42nd Dist.) and Senator Katie Muth (44th Dist.) concerning how the absence of predictable and professional reassessments adversely impact local government, real estate markets and property owners in Allegheny county and beyond. Senator Lindsey Williams (38th Dist.) and Senator Jay Costa (43rd Dist.) also attended. WBK Founder Ira Weiss testified of the challenges facing school districts in the current system and called for legislative reforms to create a statewide assessment system

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WBK Happenings

- Attorneys Ira Weiss and Jocelyn Kramer are named in *The Best Lawyers in America*® 2025 edition.
- On July 15, 2024, Attorney Weiss provided testimony at the Senate Democratic Policy Committee hearing regarding property reassessments in Pennsylvania.
- Over the course of the summer, Attorney Annemarie Harr Eagle has been providing training to school districts and educational organizations on the updated Title IX regulations, as required by the regulations. Should your district or organization need to fulfill its requirement, please contact Attorney Harr Eagle or your solicitor for the necessary training. ♦

Board Members, *continued*

properly removes a board president from his or her position as an officer, the individual will remain on the board because they are an elected official. Board members hold their offices on the condition that they “behave themselves well while in office,” and that they shall (not may) be removed “on conviction of misbehavior in office or of any infamous crime.” *Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 592 Pa. 194, 206 (2007).

Should you have any questions on the Montemuro case generally or how it may apply to a situation arising in your school district, we encourage you to contact your solicitor or the attorneys at WBK. ♦

Allegheny County Assessments, *continued*

creating stability and fairness in taxation. Dr. Melissa Friez, Mt. Lebanon School District Superintendent, offered testimony regarding local impacts to budgets, operations and financial forecasting. Interestingly, representatives from each relevant affected sector identified the same solution: regular, triannual reassessment of all Commonwealth real estate by a competent Commonwealth agency. The Senators were attentive and engaged. Future hearings will likely be scheduled.

The hearing is available to be viewed at:
<https://www.senatorfontana.com/policy-committee-hearing-the-cost-of-inaction-property-reassessments>
The attorneys at WBK stand ready to answer questions regarding tax assessment appeals and related issues. ♦

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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