



EDUCATION

# ALERT

## OUR PUBLIC SCHOOLS - THE GREAT "AMERICAN EQUALIZER" IS IN DANGER OF DISAPPEARING

Every Monday to Friday from 6 a.m. to 7 a.m., I read the online versions of *School Business Daily*, *Employment 360*, and *The New York Times*. I do this so that I can keep not only up-to-date to satisfy my own intellectual curiosity, but also to provide that type of broad-based legal advice that all the consultants say is necessary to provide the value-added legal advice that clients deserve.

Over the past year, the focus of these publications (primarily *School Business Daily*) has been to report about the crises that are being faced by public school entities throughout the nation, along with Canada. There isn't a day that I read stories outlining extensive furloughs of teaching and support staff, referenda failing to raise taxes, state pension funds being seriously underfunded, school entities seeking protection under Chapter 9 of the bankruptcy laws, increasing labor strikes because of constrictions in the ability of school districts to pay a fair compensation level to its professional and non-professional staff, proceeding to shorter school years and work weeks for the purposes of saving money, and state legislatures grappling to deal with mounting debt and an inability to meet the educational needs of the students.

Indeed, in the State of Pennsylvania, Pennsylvania's only way to fulfill the obligation to pay the basic education subsidy to Pennsylvania school districts was as the result of the federal stimulus funds, which are scheduled to run out at the conclusion of the 2010-2011 school year. The State will then be forced to make up the \$760 million it received from a tax base that is suffering from a prolonged recession that does not seem to benefit most of the school entities in the State. Coupled with state statutory restrictions on districts' ability to raise additional income because of our reduced statewide average weekly wage and a reduced employment cost index for secondary schools, the future of public education in Pennsylvania as we know it is in serious danger. Pennsylvania is not alone.

In my 31 years of observing public school entities, primarily in the State of Pennsylvania, I will be the first to say that the school districts that I have represented over these years have not always done things in the most optimal and efficient manner. I am also aware that the school districts I represent are laden with a myriad of federal and state mandates and competing community concerns about the delivery of the educational program that stretches the ability of any board to effectively satisfy its constituencies.

That being said, I do believe that the future of public education is clearly at risk. In Pennsylvania, the state legislature is faced with a serious funding shortfall for the state pension system for state employees (SERS) and for public school employees (PSERS). The projected rate spike will start in 2012-2013 and has the potential of making almost every one of the 500 school districts in the Commonwealth of Pennsylvania insolvent and unable to fulfill its statutory requirements to pay its pension obligation.

Thusfar, the reaction of the Pennsylvania legislature is to hold hearings and study the issue. In the meantime, the failure to address the "pension spike," which was exacerbated as the result of our poor economy, is putting the brakes on the viable negotiations of successor labor contracts and essentially paralyzing the ability of even the most reasonable of school boards to resolve any compensation or wage-related issues that will extend beyond the 2011-2012 fiscal year.

Unfortunately, I have not seen that either the state legislature or the federal government has exercised the kind of intestinal fortitude that it will take to address the crisis that will affect us even if the economy slowly improves and recovers from the October 2008 collapse.

Unless our legislature and federal government successfully addresses the issue of education, the system is, in my opinion, on the verge of collapsing within the next 2-3 years.

What will it take to resolve this problem? As stated before, it

will take a level of intestinal fortitude that is typically not seen at the legislative level. We have to unfortunately come to terms with the fact that we will no longer have the financial horsepower to operate our educational system in the way that we know it. There will have to be significant changes both structurally and substantively in order for us to inch our way out of the “educational depression” of our time.

Specifically, this is what needs to occur:

- Districts themselves have to be more aggressive in negotiating labor contracts that are affordable to the district with substantive concessions.
- State legislatures need to give boards the leverage under state law to unilaterally implement its last best offer when the labor contract is at impasse.
- State pension systems need to be overhauled with the pension systems that provide for defined benefit programs having to be “frozen” so that additional accrued defined benefit obligations will not occur and that the pension systems have to move to purely defined contribution programs. Making it applicable to only new employees is too little and too late, given the broad-based nature of the economics facing school entities.
- School districts will no longer be able to create golden handcuff benefits at all levels in the organization and will have to substantively live within their means moving forward.
- The use of distance learning and technology to pool district resources to deal with low enrollment programs and to rethink the traditional virtues of a bricks and mortar education will be necessary.
- Teachers will no longer be able to have expensive/Cadillac healthcare plans that are substantively different than that received by the taxpayers who fund our education.
- State legislatures will need to remove, to the extent possible, as many of the mandates that preclude efficiencies of school districts as possible.
- Legislatures should eliminate archaic bidding laws in favor of electronic methodologies.
- Legislatures should eliminate prevailing wage laws on public building projects, even though they support unions. Our communities can no longer afford the impact of prevailing wage predeterminations on building projects.
- School districts should be able to furlough professional and

non-professional staff for economic items only, notwithstanding any statutory requirements or strictures.

- School district traditional notions of having a high school class of 25-30 students may have to change. Districts may want to consider having a full-time teacher who is supported by assistant teachers earning a lesser sum of money following a university model. Perhaps school districts will have lecture courses that would have between 50-75 students with smaller group discussion courses led by assistant teachers.

These ideas and more ideas will need to be implemented in order to assist our school entities that are going through the most difficult time since the Great Depression. The future is not completely bleak and rethinking education as we know it may be a valued outcome.

I, for one, cannot sit idly by while the world around us seems to be closing in on our educational establishment. The time is now to intensely pressure our state and federal legislators that we do need to changes and the flexibility to continue to operate and we do need their courage to address issues that they may not want to address. Their failure will be our failure, and the failure of generations to come. Please do not let our state legislators and legislatures to mortgage our future by amortizing the debt of our pension obligations for many years to come. We need to deal with the issue now, limit benefits, and begin to live within a standard of living more commensurate with the output of this country, which is no longer a manufacturing power. Unless we do this, the great American equalizer will fall the way to a mediocre educational delivery system that will cater to the needs of those with exceptionalities only, while the more affluent population will be educated in private or charter schools. I do not believe that this was what our constitutional framers thought was in the best interest of our community. It is time for the wake-up call.

Otherwise, I envision the next 20 years of my practice to be devoted to be a “workout lawyer.” The term “workout lawyer” primarily refers to private sector attorneys who spend their time legally untangling debtor businesses and either winding them down and sending them to bankruptcy or working out their economic situation so that they can continue to operate. This is not an exciting prospect for the educational industry.

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