

THE BOARD REPORT

IS IT TIME FOR YOUR DISTRICT TO CONSIDER A MERGER?

The steep funding cuts coming from Harrisburg this Spring have set many school districts scrambling to plug large holes in their budgets. Elsewhere in this edition of School Law News, we address the process to follow in furloughing teachers under the School Code. However, furloughs may only be a short-term solution. The financial problems created by reduced funding, combined with flat or declining student enrollment and steadily increasing costs of salaries and benefits may reoccur year after year. At the same time, Act 1 of 2006 and the anti-windfall provision of the Local Tax Enabling Act have placed strict limits on a district's ability to raise additional revenue. With traditional solutions becoming less viable, one must ask whether more aggressive measures must be considered.

Following the merger of the Center Area and Monaca School Districts in 2009, there are now 500 public school districts in Pennsylvania. During his terms in office, Governor Rendell stated his belief that there should be no more than 100 school districts. Likewise, Governor Corbett stated at an appearance in Clairton in April that some of the school districts hit hard by funding cuts should consider merging with a neighbor.

Could your school district solve some of its long-term problems through a voluntary merger? Certainly that would depend on whether the merging school districts are able to complement each other in terms of population stability, tax bases, facilities and supportive communities. Many communities draw enormous pride from the traditions and autonomy of their local school districts, and

some claim that those interests are threatened by school mergers. However, in our office's capacity as legal counsel in the merger of the Center Area School District and the Monaca School District, we have seen firsthand the many benefits that can be realized by a well-planned merger.

POSSIBLE ADVANTAGES OF A MERGER

There are several areas in which a merger can benefit both school districts significantly. A few of those are discussed briefly below.

• INCREASED NUMBER OF CURRICULAR AND EXTRACURRICULAR ACTIVITIES

In many small school districts, budget cuts and declining enrollment make it difficult to offer a full range of specialized academic offerings and extracurricular programs. At times there may not be enough student interest in programs such as German or field hockey to justify the expenditure of resources. However, not having a full range of offerings can make a district less attractive to students who may be considering whether to attend public or private school. Also, your district's community members expect that your district will offer a full range of courses and activities to prepare students for post-secondary education. A merger might permit the resulting district to offer courses or activities that neither of the original districts could have offered alone.

• ABILITY TO UTILIZE BUILDING RESOURCES EFFICIENTLY

Many school districts are forced to use school buildings that no lon-



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Mergers continued...

ger fit their present needs. They may have too many buildings, too few buildings or buildings which are too old or poorly situated. A merger affords districts the opportunity to draw from a larger pool of available buildings, to keep or renovate the ones worth keeping and to close and dispose of those that are not.

• ABILITY TO GET A FRESH START FOR AYP PURPOSES

Under the No Child Left Behind Act, if a school's population changes by 50% or more, the school is considered a new school for purposes of the applicable AYP targets. Your district may be able to take advantage of this fresh start.

PRACTICAL CONSIDERATIONS

In the event that your district chooses to pursue merger discussions, there are several considerations that you should expect to address. A few of the more critical issues are the following:

• GOVERNANCE ISSUES

Each school district elects its board members on either an at-large basis, a regional basis or a combination of the two. When districts merge, they must decide jointly which of these methods will be used. There are considerations that apply when the two merging school districts are of unequal size. For example, if the new district elects board members wholly on an at-large basis, this may conceivably result in all of the elected members coming from the larger of the two component districts. In any event, approval by the Court of Common Pleas is required for the new district's electoral scheme.

Further, under the School Code, when school districts merge, each of the incumbent school directors stays in office until his or her term expires. The merged 18-member school board for the new district creates unique voting issues as well as logistics (i.e., where

meetings can be held to accommodate such a large governing body). However, a well planned process of reducing the number of school directors through the election process could effectively address such issues, and should be established at the same time as the electoral scheme.

• COLLECTIVE BARGAINING ISSUES

The merging districts will each have collective bargaining agreements with various employee groups, such as teachers and support staff, and those agreements and groups must be appropriately combined to provide a single workforce for the new district. This will require significant negotiations to bring similar groups under a common contract.

• NAMES AND COLORS

The new district will need to settle on a name, school colors and a mascot. Deciding on these elements can be very challenging, as there is often significant history and tradition underlying a school district's identity.



MERGER PROCESS OVERVIEW

Under Section 224 of the School Code, a merger of school districts is initiated by each of the districts passing an identical resolution which outlines the areas to be combined and submitting those resolutions and a written application to the Commonwealth Board of Education. The Board will then request additional information, send representatives to the merging districts to interview the districts' leadership and schedule a time when the merger application can be placed on the Board's agenda for a vote. While the application is pending, the districts are expected to hold public meetings in the affected communities to get public comment on the proposed merger.

The preceding is a brief summary of some of the issues that districts must address in the merger process.

REPORT

IEP PRINCIPLES FIRMLY ESTABLISHED

Although IEP development may be fraught with many perils, it is reassuring to receive confirmation from the Third Circuit Court of Appeals that certain well established principles remain firmly grounded. In the recent unpublished decision of *W.R. and K.R. v. Union Beach Board of Education*, the Third Circuit confirmed that an IEP must be judged prospectively. A claim of lack of progress under a particular IEP does not automatically imply that the IEP is inappropriate. Rather, school districts must only determine whether the proposed program is reasonably calculated to provide meaningful progress, and if so, the district will not be held liable if, in the end, the IEP does not provide the expected progress.

Also, in the face of a parental challenge that the district failed to provide any information regarding its chosen educational methodology, the Third Circuit noted that a procedural violation of the IDEA is only actionable if it impedes the child's right to FAPE, significantly impedes the parents' right to participation or causes a deprivation in benefits. The facts of the case before the Third Circuit demonstrate the importance of documentation regarding communications with parents. Documentation supported significant parental involvement and that the district had communicated the educational methodology that would be

implemented through the IEP. The parents disagreed with the methodology. The Third Circuit reinforced that once a Court determines that the requirements of the IDEA have been satisfied, parents do not have the right to compel a school district to employ a specific methodology in educating a student.

Although an unpublished opinion cannot be legally cited as precedent, it reflects the Third Circuit's recognition of other appellate Court decisions which support these two well-established principles regarding IEP development and may be relied upon as anchors in developing future IEPs.

