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Business Solutions, Family Approach

Financial and Legal Risks for School Districts: Preparing your Education System for Tomorrow and Beyond

MAY 27, 2020

2:00 TO 3:00 P.M.



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Joel Martin, CPA

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Joel Martin is a partner at H2R CPA. He has managed hundreds of audits for – and has provided consulting expertise to – Western Pennsylvania public school districts, charter schools, municipalities, and tax collectors.

In addition to providing assurance services for governmental entities, Mr. Martin and the H2R CPA team of governmental trained accountants provide outsourced accounting solutions, consultation, analysis, contract negotiations, and more. The H2R CPA team of professionals is able to assess a variety of accounting needs during this most challenging time to help governments assess efficient/cost-effective solutions to arm Districts, Boards, and taxpayers with the best current and future information in order to make effective decisions moving forward.

Joel shares his sought-after expertise at industry seminars and associations. He has spoken for the Pennsylvania Association of School Business Officials (PASBO) and at seminars on topics such as GASB 34 and real estate tax audits. He also frequently speaks to school and municipality boards regarding the latest accounting standards and the financial impact they present.



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Nate DiBenedetto

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Nathaniel (Nate) DiBenedetto was raised in the Philadelphia area and began his career at H2R CPA in the spring of 2014. Nate has spent much of his career providing assurance, accounting, and consulting services for a variety of public school districts, charter schools, municipalities, and other various governmental entities.

Nate currently serves in a variety of roles, servicing multiple school districts in various aspects of accounting, assurance, management and consulting services. Nate has participated in multiple contract negotiations and has a deep understanding of school accounting. He regularly develops analyses and strategies for public school districts, providing them with the tools to understand how various legislation, accounting changes, and outside factors can impact them today, tomorrow and in the future.



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Michael L. Brungo

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Michael L. Brungo is a Partner with Maiello Brungo & Maiello, LLP. The focus of Mr. Brungo's practice is the representation of public entities such as school districts, municipalities, and municipal authorities on issues ranging from special education, student rights and constitutional and civil rights issues to teacher tenure and personnel actions. Mr. Brungo also represents public and private entities regarding employment matters such as hiring and discipline, defending claims of discrimination, and negotiating terms and conditions of employment.

Mr. Brungo's work with public entities has extended to appearing before various public agencies and courts. Additionally, he has negotiated collective bargaining agreements and engaged in interest and grievance arbitration on behalf of his clients. Mr. Brungo has extensive experience in litigation of special education matters; labor and employment matters, including discrimination and personnel-related issues; and civil rights matters.

Mr. Brungo has been named a 2011 – 2014 Pennsylvania Super Lawyer in the areas of Schools & Education and Labor & Employment. Only 5 percent of lawyers in the state receive this honor through peer recognition and professional achievement.

Mr. Brungo is a former adjunct professor in the St. Francis College Industrial Relations Graduate Program. He also conducts seminars on various education, labor and personnel issues, including discrimination, civil rights, special education, and public employee tenure.





Falco A. Muscante

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For his public clients, including school districts, boroughs, townships, sewer authorities, and third class cities, Mr. Muscante has served as lead negotiator in collective bargaining negotiations. He has also provided legal counsel in student disciplinary and expulsion hearings and eminent domain proceedings for acquisition of land for recreational and flood control projects and civil rights litigation matters. In addition, he has represented his public clients in grievance arbitration hearings, Act III police and fire interest arbitration proceedings, and personnel-related litigation.

In addition to serving as legal counsel and solicitor, Mr. Muscante has also served as a former appointed member of a Zoning Hearing Board and Planning Commission, and as a former elected Borough Councilmember and elected School Board Director.

Mr. Muscante's legal experience also extends to the representation of private clients in an extensive range of civil matters including estate administration, real estate closings, quiet title actions, and small business and non-profit incorporation. He has also represented his private clients in civil litigation, including personal injury and employment-related matters, at all levels of both the state and federal court system.

Licensed to practice in Pennsylvania since 1987, Mr. Muscante has been admitted to practice before all the Courts of the Commonwealth and federal courts, including the Third Circuit Court of Appeals and the United States Supreme Court.



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Ira Weiss

Founding Partner

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Ira Weiss is a nationally known public sector legal authority with across-the-board experience in municipal, education and tax law. The founder of the Law Offices of Ira Weiss and a Partner with Weiss Burkardt Kramer LLC, Ira has served public entities for more than four decades.

Ira's achievements have been recognized with many awards including the Distinguished Achievement in Law Award from Tri-State Area School Study Council in 2012 and the President's Award for Distinguished Career Achievement by the Pennsylvania School Boards Solicitors Association in 2008.

Ira has been extremely active in the training of professional educators as an Adjunct Professor of Administrative and Policy Studies in the School of Education at the University of Pittsburgh. He and members of Weiss Burkardt Kramer LLC have designed programs and served as instructors for the Tri-State School Study Council of the University of Pittsburgh.

Ira was appointed to the Pennsylvania General Assembly's Legislative Audit Advisory Commission and served on the Board of Directors of the Education Policy and Leadership Center. He continues to work closely with the state legislature participating in several legislative study commissions involving taxation and being instrumental in advancing corrective legislation concerning municipal and school statutory issues.

Ira has decades of experience with collective bargaining for school districts.

Ira has been elected as a Fellow in the Academy of Trial Lawyers of Allegheny County. He has also been named a "Pennsylvania Super Lawyer" each year from 2005 to the present in the fields of schools and education. This status ranks him among the top five percent of the 45,000 lawyers practicing in Pennsylvania.



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Lessons from History

- 2001 Recession (March to November)
 - ✓ Dotcom Bubble
 - ✓ September 11
 - ✓ Start of underfunding the school pension plan
 - ✓ Enron and WorldCom caused the fund to lose almost 13% of its value in 2 years
 - ✓ Public schools made hard decisions financially

Lessons from History (cont'd)

- 2007 – Mortgage crisis – 2007 to 2009
 - ✓ American Recovery and Reinvestment Act of 2009
 - Provided federal funding to districts
 - Districts had to manage funding cuts and the burden for funding continued to increase
- Previous recessions provided a road map on how school districts could navigate a recession
 - ✓ Prior recessions were caused by economic forces, not a pandemic
 - ✓ Prior recessions did not disrupt “normal” operations
 - Keeping kids safe (for example) by having them attend school via remote learning was not a part of any of these equations



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Current State of Affairs

- COVID-19 Pandemic
 - ✓ Families First Coronavirus Response Act (FFCRA)
 - ✓ Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Normal operations?
 - ✓ Will students be able to return to school full time Fall of 2020?
 - ✓ Mitigation procedures?
 - Smaller classes?
 - Focus on “core” subjects only?
 - Transportation?
 - Many Other Variables



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FINANCIAL CHALLENGES FOR SCHOOL DISTRICTS

May 27, 2020

Ira Weiss, Esquire

SCHOOL DISTRICTS CANNOT MAKE UP LOST REVENUE



Act 1 of 2006 places limits on real estate tax increases by school districts. It is limited to the Educational Cost Index (ECI) which is published annually by PDE.



It is generally 2%-3% of millage. Any increase beyond the index requires a referendum.



School Districts can apply for exceptions, but they are very limited.

IMPACT OF COVID-19 EMERGENCY

Using the 2008 Recession as a guide:

- Interest Earnings will drop 70%-75%. These earnings will not be recovered.
- Earned Income Tax could decline as much as 10%-25%. The 4th quarter 2020-2021 payment has been deferred until July 15. Watch the May and June collections.
- Delinquent real estate tax collections will decline.
- Realty Transfer Tax fell 60% over 5 years in 2008.

(Source PASBO April 2020)

REAL ESTATE ASSESSMENT APPEALS



Commercial Appeals on malls, office buildings, apartment buildings, big box retail and hotels: owners will use the “dark storeroom method” which assumes vacant property.



Residential appeals will increase.



Appeals must be monitored closely and must be defended.



Allegheny County appeal deadline - March 31. All other counties – July 30 or August 31.

WHAT DOES THIS MEAN FOR SCHOOL DISTRICTS?

Districts cannot increase taxes to make up for lost revenue due to drops in collection rates, assessment appeals or decreases in earned income tax revenue or transfer tax revenue.



There are no other authorized sources of tax revenue.

GOING FORWARD

Consider all these factors in bargaining

Hard Decisions on capital programs, staffing and programs

Review disclosures in Official Statements relating to finances

The Great Unknown...State Revenues



Thank You

Additional comments or questions:

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Current Situation

- 2020 Act 13
 - ✓ All Pennsylvania Districts are to pay employees their complete compensation
 - Schools are not “saving money”
- Difficult to control costs and predict revenues prior to COVID-19 (COVID-19 now adds additional layers and complexity)
- PASBO a great wealth of information on the latest daily developments with discussion boards etc.
- Funding considerations
 - ✓ CARES Act
 - ✓ Continuity of Education Equity Grant
 - ✓ School Nutrition and Summer Food Service Grants
 - ✓ FEMA Grant



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Current Situation (cont'd)

CARES Act – Specifics regarding the actual funding, allowed expenditures, audit requirements, accounting regulation, etc. are still being worked out

- Follow Government guidelines for any funding to comply with future program audits, single audits, etc.
 - ✓ The Educational Stabilization Fund has been assigned a CFDA number – 84.425C
 - Uniform Guidance rules for audit
 - Funding that causes schools to exceed \$750k threshold
- Historically, education system operated with relatively “known” numbers – number of students, teachers, buildings, etc.
- COVID-19 adds a major layer of complexity regarding short- and long-term projections
- Schooling will look different – but there are many uncertainties at this point in time



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Revenues

Prior to COVID-19

1. State budget was determined prior to local district budget deadline
2. Stable unemployment rate and healthy economy
3. Regular collection of income taxes
4. Relatively stable and predictable collection of Real Estate, Earned Income, Transfer, and Delinquent tax

Now...

1. State budget is a continual work in process
2. Jobless Benefit Claims are high
3. Delayed collection of Earned Income taxes due to legislation changes pushing deadline to July 15
4. Expected decrease in Real Estate, Earned Income, Transfer, and Delinquent tax collections



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Expenditures

- School districts struggled with controlling expenses prior to COVID-19
- Controlling costs will be difficult and unknown
 - ✓ This may be one of the most difficult dilemmas school districts will have undertaken financially due to the level of uncertainty in regard to an escalation of costs and increased government mandates
 - ✓ Many schools are now looking to fill holes in budgets from \$500,000 to \$1,000,000, and even more
 - ✓ We don't know how the virus will unfold, how schools will operate in the future
 - ✓ Possible increased charter school costs



How to adjust with uncertainty

- Focus on the budget versus actual – review the budget monthly
 - ✓ Variances must be addressed and communicated
 - *Example:* Budget may show a collection rate of 90%, but after 2 months the collection rate could reduce to 70%
 - Update projections monthly based on live data so that it can be properly evaluated
 - It is paramount to update and revise projections immediately during these evolving times to ensure the decision makers have accurate data to make sound decisions
 - Any State mandate should be immediately evaluated to determine its potential impact on finances



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Possible areas of help?

- How much Fund Balance (reserves) does your Districts have?
- What does the impact of a new teacher's contract or early retirement incentive have on the current year, future years, and in 30 years?
- It can be deceiving to look at measures over 1 year or 5 years and show a nice projection; however, what does the longer-term future look like?
- Are there expenses that the district can push off, restructure, or eliminate?
- Are there possible debt restructurings?
- What are the current contracts with District personnel?
 - ✓ What are the expenditures over the life of the contract?
- Will furloughs, or positions that won't be replaced, be required?



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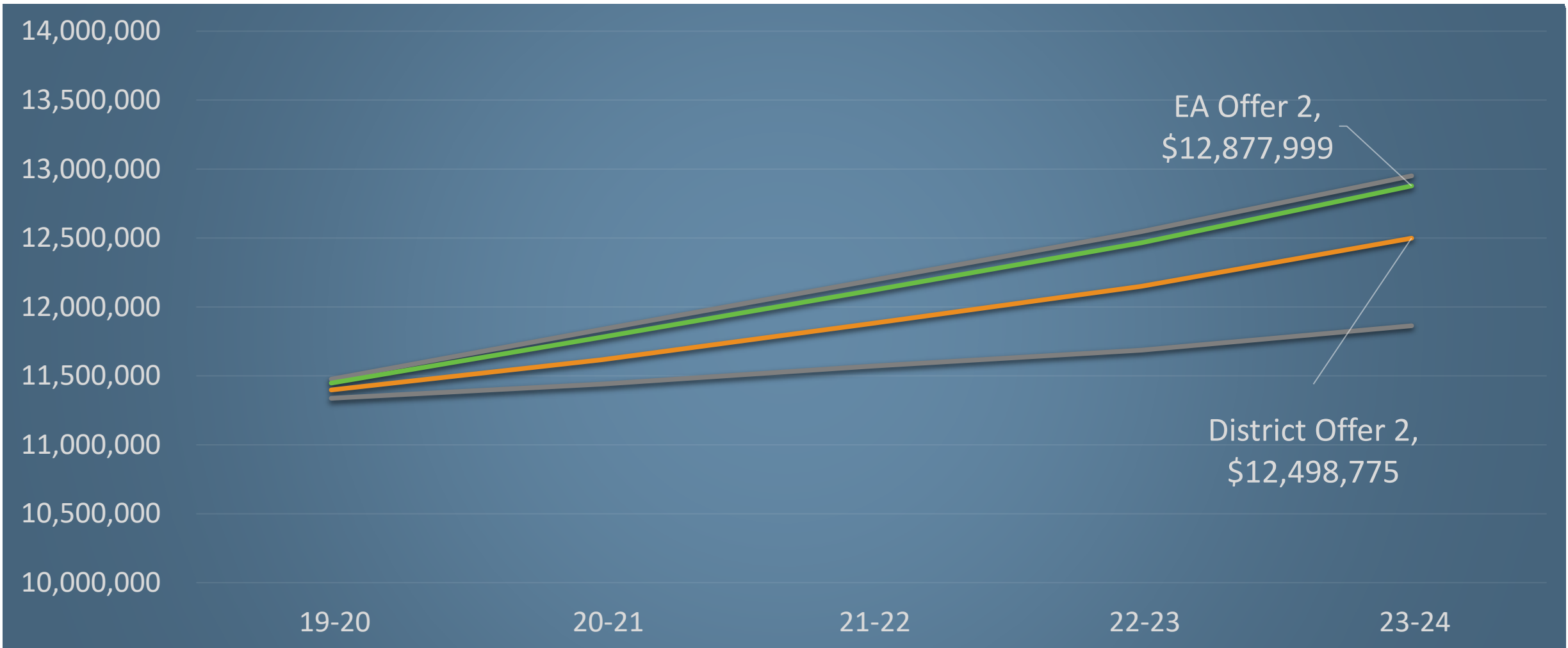
Future Considerations

- Contract negotiations
 - ✓ Consider a pandemic clause
 - ✓ Make sure to fully understand contract ramifications beyond the foreseeable future
- Financial forecast
 - ✓ Develop a financial forecast that can show the expenses of today, tomorrow, and into the future
- Consider outsourcing options for some services
- Some areas can be very complicated to navigate, so ask advice when unsure, as each decision could have major impacts beyond the immediate future



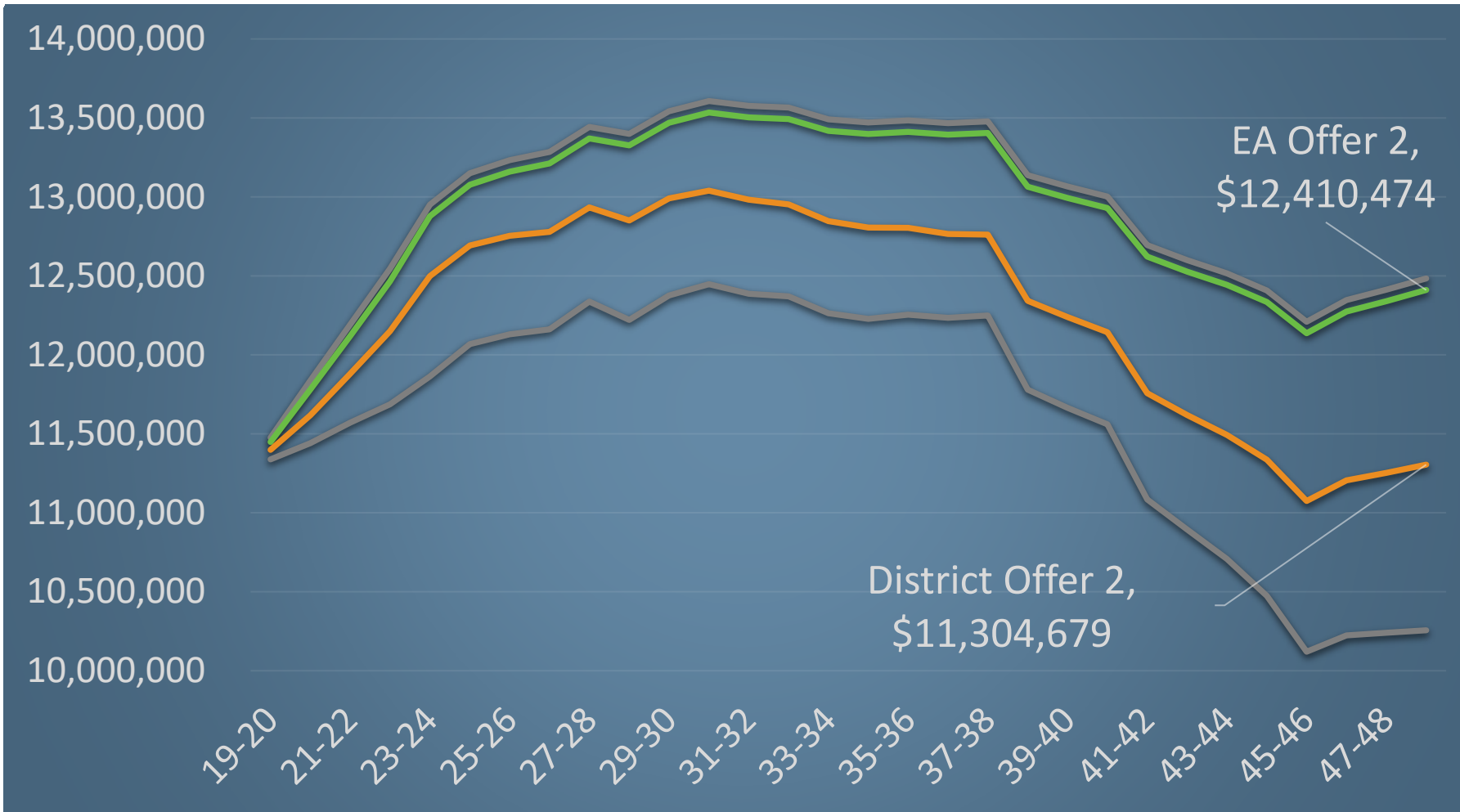
Financial Budget

Expected Total Salary Costs – 5 Years - Contract Term



Financial Budget

Expected Total Salary Costs – 30 Years



The EA reduced their offer by \$2,133,600 or 16% over 30 years.

The District increased their offer by \$18,637,083 or 163% over 30 years.



COVID-19 Impact on the Future of Public Education: Personnel, Student and Special Education Concerns

May 27, 2020

Presented By:

Michael L. Brungo, Esq.

Falco A. Muscante, Esq.

PRESENTERS



Michael L. Brungo, Esq.
Partner



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Partner

LEARNING OBJECTIVES

- To understand the effects of the COVID-19 pandemic as it relates to the future school district operations in the areas of:
 - **Personnel**
 - **Student**
 - **Special Education**
- To identify practical next steps for school districts in order to minimize “liability”

GENERAL PERSONNEL CONSIDERATIONS

- Act 13 still requires payment to all school employees through the end of the 2019-2020 school year
- Concerns over disruption of revenue streams (EIT, delinquent tax, etc.) could force difficult decisions of possible layoff of professional and non-professional/support staff
- Currently developing budget for 2020-2021 school year amid uncertainties of revenue projections

GENERAL PERSONNEL CONSIDERATIONS

- Forced to make conservative projections resulting in budget shortfalls
- Reluctant to raise tax millage due to high unemployment, fixed or limited income and increased burden of higher taxes
- Proposed legislation would prevent school districts from raising taxes due to mistaken impression that districts have saved significant funds from forced closure of school facilities

GENERAL PERSONNEL CONSIDERATIONS

- Layoff of professional staff based on economic reasons required Board Resolution adoption by May 1, 2020
- If Resolution not adopted, professional staff reductions possible based on attrition – not filling open positions due to staff retirements
- Professional staff reductions also possible based on curtailment or alteration of educational program – if anticipated, should be part of 2020-2021 final budget adoption

GENERAL PERSONNEL CONSIDERATIONS

- Must balance economic savings of professional staff reductions based on attrition against impact on educational programs and possible increase in class sizes at time when school districts must remain competitive with cyber charter schools and CDC recommendations actually compel smaller class sizes
- Layoff of non-professional employees, such as custodians, difficult when CDC recommendations require more frequent and extensive cleaning regimens

IMMEDIATE STAFF CONCERNS

- School districts currently coordinating return of professional and non-professional staff to school facilities to prepare classrooms and facilities for 2020-2021 school year
- Some staff may express concerns about exposure to COVID-19 and be reluctant to enter school facilities due to those concerns
- School districts should implement and demonstrate compliance with CDC recommendations with notification to staff

IMMEDIATE STAFF CONCERNS

- School districts should implement and demonstrate compliance with OSHA recommendations with notification to staff
- If employee still expresses concerns, the school district could then minimize concerns by demonstrating compliance with CDC and OSHA recommendations

IMMEDIATE STAFF CONCERNS

- If employee still refuses to report to school facilities and it is an essential function of their job to report, then school district should approach refusal as a request for accommodation under the ADA
- At that point, they should engage in interactive dialogue to determine whether employee concerns are supported by a specific disability and whether additional reasonable accommodations are possible

SPECIAL EDUCATION ISSUES

- Despite the flurry of legislation, both at the federal and state level, to address the impact of the COVID-19 pandemic, none of the legislation relieved public school districts of their obligation to provide FAPE for their special education students

SPECIAL EDUCATION ISSUES

- Are Public Schools (LEA) required to continue to provide a free appropriate public education (FAPE) to students with disabilities during a school closure caused by a COVID-19 outbreak?
 - IDEA, Section 504, and Title II of the ADA do not specifically address such a situation. However, if an LEA closes school because of COVID-19, and does not provide any educational services to the general student population, then it would not be required to provide services to students with disabilities during that same period of time.
 - However, once school resumes, the LEA must make every effort to provide special education and related services in accordance with the child's IEP or Section 504 Plan.

SPECIAL EDUCATION ISSUES

- What are other resources or methods which may be considered when schools are closed?
 - The IEP Team can also consider if the child could benefit from online or virtual instruction, instructional telephone calls, and other curriculum based instructional activities which may be readily available.
 - If a child does not receive services during a closure, the IEP team must make an individualized determination whether and to what extent compensatory services may be needed to make up for any skills that may have been lost.

SPECIAL EDUCATION ISSUES

- The move to provide continuity of education plans, including new instruction, have exposed school districts to a flood of due process/compensatory education claims as a result of the closure
- Anticipating defenses to such claims, school districts must assess to what extent, if any, a parent's refusal or unwillingness to facilitate the online/continued instruction learning plan lessens the district's compensatory education or additional services exposure

SPECIAL EDUCATION ISSUES

- If a child with a disability is infected with the virus and absent for an extended period of time is the LEA obligated to provide special education services if schools remain open?
 - Yes. An IEP meeting should be conducted to address the child's placement and the contents of the child's IEP, if warranted. If the IEP goals remain the same and only the time needed to provide the special education will change, the IEP should be amended to state specifically the amount of time to be spent in special education.
 - Homebound Services may also be considered as being appropriate.
 - The IEP team may also be required to determine whether compensatory education may be needed to make up for any skills that may have been lost.

SPECIAL EDUCATION ISSUES

- School districts may be required to have a contingency plan in the case of another outbreak that results in school closure
- The plan would outline an immediate transition to distant or hybrid learning
- Anticipating this possibility and addressing it in IEP development over the summer months will be critical to protecting the districts from future due process/compensatory education claims in the future

SPECIAL EDUCATION ISSUES

- Compensatory education liability
 - Normally awarded in the form of “hours” of service
 - Students can purchase educational services from public or private providers.
 - Private tutoring
 - Psychological counseling
 - Social skills training
 - Speech therapy
 - The hearing officer typically states the type of services that can be provided and the amount of hours to be awarded

SPECIAL EDUCATION ISSUES

- Private school tuition reimbursement liability
 - This remedy may occur in situations in which parents have removed their child from an inappropriate public school program and enroll the student in a private school setting where the student receives an appropriate education

SPECIAL EDUCATION ISSUES

- Private evaluation reimbursement liability
 - If a hearing officer finds that the evaluation was, in fact, not appropriate, then the hearing officer can order the school district to pay for a private evaluation of the student.
- “Prospective” relief.
 - If the hearing officer determines the child’s IEP is inappropriate, parents can obtain not only relief for past violations in the form of compensatory education, but also an order that the district must offer an appropriate program to their child in the future.

STUDENT ISSUES

Dealing with the unknown if schools reopen:

- Compliance with CDC Guidelines
 - Some guidance is based upon the level of community transmissions:
 - When there is no community transmission
 - When there is minimal to moderate community transmission
 - When there is substantial community transmission
 - Some guidance addresses when a confirmed case has entered a school, regardless of the level of community transmission

STUDENT ISSUES

- Work with local health departments
 - To slow the spread of the COVID-19 virus
 - To identify symptoms of the COVID-19 virus
 - To protect vulnerable students and staff
 - To help ensure students have a safe and healthy learning environment
- Before any spread of the virus begins prepare a Plan to help avoid the spread of the virus and to identify and monitor changes which may be an indication of a spread within the schools or community
- Clean and disinfect thoroughly based on CDC guidance and recommendations

STUDENT ISSUES

- Maintaining social distance in a school setting
 - Teach Staff, students and their families to maintain proper distance within the school setting
 - Cancel field trips, assemblies or other large gatherings
 - Cancel or modify classes where students are likely to be in very close contact
 - Increase space between desks
 - Stagger arrival and dismissal times
 - Limit non-essential visitors

STUDENT ISSUES

- Maintaining social distance in a school setting
 - Avoid mixing students in common areas
 - Meals in classrooms rather than cafeteria
 - Stagger lunch by class
 - Restrict hallway use
 - Stagger playground use and limit other activities where multiple classes interact
 - Require sick students and staff to stay at home
 - Monitor for absenteeism

STUDENT ISSUES

- Decreasing class size and increasing number of staff to provide services
- Effect on athletics, extra-curricular and club activities
- Effect on student behavior and resulting disciplinary actions
- Increase in absenteeism and effect on grading and testing results
- Increase in social and emotional issues affecting students as a result of physical and social isolation

STUDENT ISSUES

- Still unknown as to how the pandemic and any resulting school closing, which may negatively effect school attendance and programs, may impact a student's options for and ability to receive post-secondary education
 - Scholarships may diminish in number and value
 - Athletic scholarships may be withheld from students who were denied the opportunity to participate at a time when they would have been most effective
 - Participation in other activities, such as the performing arts, the Honors Club or Science Club may be greatly reduced or eliminated and preclude a student from demonstrating unique talents and abilities

STUDENT ISSUES

- School districts must also be prepared for another forced school closure due to a recurrence of COVID-19, including being prepared to immediately offer new instruction through online/cyber educational programs
- Due to fears of another forced school closure, school districts may face lower student enrollment as more parents enroll their children in cyber charter schools based on the perception that those schools are better equipped to provide cyber education

STUDENT ISSUES

- Loss of students to cyber charter schools will negatively impact school districts' basic subsidies, resulting in less funding at a time when district budgets will be negatively impacted from the loss of other revenue streams

STUDENT ISSUES

- Legal Implications
 - Civil Rights lawsuits under Section 1983 in the event a student contracts the virus
 - Discrimination claims based upon a student's disabilities, or based upon a student's racial or ethnic background
 - Potential discipline action of students (suspension and/or expulsion) and the appeal of such actions to the Court of Common Pleas



THANK YOU

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Questions / Discussion

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