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THANK YOU FOR JOINING US

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Financial and Legal Risks for School Districts: Where do we stand regarding the 2020-21 school year?

AUGUST 13, 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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Financial and Legal Risks for School Districts: Where Do We Stand Regarding the 2020-21 School Year?

August 13, 2020

Presented By:

Michael L. Brungo, Esq.

Falco A. Muscante, Esq.

PRESENTERS



Michael L. Brungo, Esq.
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LEARNING OBJECTIVES

- **Instructional Model Recommendations**
 - Understanding the purpose and impact of the recommendations
- **Student Disciplinary Concerns**
 - Handling student discipline regarding new safety policies (i.e. social distancing and masks)
- **Special Education Concerns**
 - Responding to the impact of the pandemic on special education programs
- **Personnel Liability Concerns**
 - Managing staff requests for leave in the age of COVID-19

INSTRUCTIONAL MODEL RECOMMENDATIONS

- On August 10, 2020 recommendations regarding Instructional Models for Schools during the upcoming school year were issued based upon additional recommendations from the Departments of Health (DOH) and Education (PDE).
- What is the purpose of these recommendations?
 - To assist school districts when making local decisions on whether to conduct instruction either fully in person, fully remote or in a hybrid scenario.
- Are these recommendations for Pre-K to 12 Schools in determining instructional models mandatory?
 - No. They are simply recommendations from DOH and PDE. However, there could be legal implications in the event the recommendations are ignored and an infestation of the virus occurs.

INSTRUCTIONAL MODEL RECOMMENDATIONS

- How will school entities know whether there is low, moderate, or substantial community transmission in their county?

Level of Community Transmission in the County	Incidence Rate per 100,000 Residents (Most Recent 7 Days)	AND/OR	PCR Percent Positivity (Most Recent 7 Days)	Recommended Instructional Models
Low	<10	AND	<5%	Full in-person Model OR Blended Learning Model
Moderate	10 to <100	OR	5% to <10%	Blended Learning Model OR Full Remote Learning Model
Substantial	≥100	OR	≥10%	Full Remote Learning Model

STUDENT DISCIPLINARY CONCERNS

- If students ignore the requirement of social distance or wearing a mask, should they be disciplined?
 - How the District responds to such a situation will be based upon the facts of each circumstance.
 - However, whether the student's actions are intentional or the result of the child's personal abilities, or even disabilities, an option is to simply remove the child from in-person attendance and have the child attend virtually only, without any disciplinary impact on the child's record.

SPECIAL EDUCATION CONCERNS

- LEAs are not 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. However, once schools re-open whether virtually or through hybrid means, the LEA must take necessary steps to provide FAPE.
- When the schools remain open the LEA continues to be obligated to provide special education and related services to a child with a disability even when the child is absent for an extended period of time because the child is infected with COVID-19.
 - If services are not provided for an extended period of time (generally, 10 consecutive school days), the LEA must consider to what extent compensatory services may be needed.

MANAGING STAFF REQUESTS FOR LEAVE IN THE AGE OF COVID-19

- Many school districts have adopted Health and Safety Plans that provide for reopening schools with live classroom instruction.
- Due to staff ongoing COVID-19 concerns, seeing an increase in different leave requests from teachers.
- Examples include:
 - Requests for ADA accommodations
 - Requests for sabbaticals for professional development
 - Requests for sabbaticals for restoration of health
 - Requests for FMLA leave
 - Requests for extended sick leave
 - Requests for other CBA provided leaves
- How to manage leave requests and still have successful reopening of schools with live classroom instruction



THANK YOU

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Financial and Legal Risk for School Districts: Preparing Your Education System for Tomorrow and Beyond

FINANCIAL CHALLENGES FOR SCHOOL DISTRICTS

August 13, 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

OTHER COST DRIVERS



Schools should expect increases in charter school and cyber charter enrollments.



Transportation must be provided to charters and non-public school students, even if the district is in a remote mode.



Change to two great unknowns: state revenues and Act 13 2.0



Thank You

Additional comments or questions:

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General Updates

Budget

- One of the biggest items we discussed in our last webinar was the importance of keeping an eye on the budget
 - ✓ Local Revenues such as EIT and Real Estate
 - ✓ In a very limited sample size, some of the districts that we work with have shown positive signs for July
 - ✓ Conclusion: It's very early and too hard to say how much to put into the initial July numbers.
 - ✓ **Monitor budgets very closely!**



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General Updates

COVID-19 will not save schools money

- There is still a perception in the community that COVID-19 closures will somehow be less expensive with the hybrid model
 - ✓ This perception is wrong
 - ✓ Hand sanitizers, busses, custodial, cleaning & disinfecting, nurses, before and after programs, etc.
 - ✓ Are you closely monitoring your budget for these items and how are you ordering supplies?
 - ✓ Do you understand what grants are available to you and what you need to be doing now from an accounting standpoint to ensure full reimbursement?



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Grants and Funding

- The Paycheck Protection Program (PPP) is not subject to Uniform Guidance and therefore not subject to single audit guidelines
- Elementary and Secondary School Emergency Relief (ESSER) Fund is subject to Uniform Guidance (therefore subject to single audit)
- Single Audit submission deadlines pushed out up to a year for the upcoming 2020 year-end audits



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General Updates

Cafeteria Updates / Other

- Cafeteria Updates
 - ✓ All students must be offered breakfast and lunch even if learning remotely
 - ✓ Breakfast/lunches will be free, reduced, or purchased exactly under the same guidelines prior to the pandemic
 - ✓ Ensure you are prepared for this, and that you have incorporated policies and procedures to ensure that all breakfasts and lunches are accounted for using the same centralized system
 - ✓ Effective reporting is still required and paramount during this time to ensure proper reimbursements
- Individuals employed by educational institutions are still applying for unemployment, and are not eligible for the most part



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Current Pain Points Due to COVID-19

Moving to a Remote Environment

- Files
 - ✓ Storage
 - ✓ Daily communication
- Equipment
 - ✓ Hardware – PC / laptop / desktop
 - Hands-free headsets
 - Other auxiliary devices – Printers / scanners / mail machines, etc.
 - ✓ Software
 - Access – local machine vs. server
 - Secure information and connection
- Processes
 - ✓ Workflow for items such as payroll, accounts payable, accounts receivable, etc.
 - ✓ Signatures – electronic vs. hard copy



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Converting Business Offices Onsite to Remote

- Files
 - ✓ What is stored on the cloud?
 - ✓ What is in electronic form?
 - ✓ What is in hard copy and how is that moved offsite?
 - ✓ What policies are necessary?
- Flexibility
 - ✓ Rapid change demands flexibility
 - ✓ Preparing now saves time and prevents issues later
 - ✓ Work from home policy



Future Pain Points Due to COVID-19

What we know and expect at this time

- Pandemic has an undefined end
- New normal for workplaces and intercompany communication
- Assess Business Office platforms and maximize technology
- Study conducted said that 73% of companies surveyed (about 50,000 companies globally), said companies should embrace some level of working from home
 - ✓ Work-from-home policy will become a “must have” and is desired by all generations
- Leverage the new normal to create efficiency and cost savings
- Situations will vary by district for many reasons



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Focused Pain Point Due to COVID-19

Payroll

- Payroll must be run efficiently and with accuracy even though it is more challenging
- Crucial bits of information pertinent to all involved with payroll:
 - ✓ Type of payroll system, payroll frequency, number of employees paid, and many other routine items
 - ✓ With the COVID-19 Act 13 of 2020, have you reviewed your employee leave policies?
 - ✓ Documentation for employees unable to work onsite and/or unable to telework – crucial for PSERS reporting
 - ✓ Status of employee contracts – active vs in negotiations
 - ✓ Handling negotiations in an effective and accurate manner
- HR function
- Being agile in a quickly changing environment
 - ✓ Document all processes – on-site and remote
 - ✓ Maximize use of accounting system, Excel, Word and Adobe
 - ✓ Timeliness is key for payroll reporting and payroll-related payments
 - ✓ Stay current with developments in existing software

Panel Insight

- Do CDC guidelines help limit liability exposure for districts?
 - ✓ Do all students and teachers need to be checked for symptoms of COVID-19 each time they enter the building?
- Is a District required to approve all sabbaticals for restoration of health? Is a District permitted to limit the number of sabbaticals for professional development?
 - ✓ Is a District required to pay for all FMLA requests that are COVID-19 related?
- May due process hearings be conducted virtually when government issued attendance restrictions prevent face-to-face meetings?



Panel Insight

- Clarification on wearing masks in school:
 - ✓ Do students need to provide documentation of condition/disability to be exempt from wearing a mask?
 - If yes, do they need a 504 Plan if they do not have an Individualized Education Program (IED)?
 - If a student has an IEP and does not have a disability or condition that would exempt them from wearing a mask, can the district refuse to have this as a Specially Designed Instruction (SDI) if the student simply does not want to wear a mask?
 - ✓ Legally, is there a difference between the word “required” and the word “mandated.” Such as, “masks are mandatory” verse “masks are required.”

Panel Insight

- Any insight into the next stimulus Bill in regard to funding?
 - The Trump administration referenced funding would be limited to schools that re-open, but Governor Wolf's recommendation states we should be hybrid at best.

Q&A

Panel Insight

- What steps should we take to protect the value of the commercial real estate property in our district?
- What steps should we take to improve funding in the future?



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Panel Insight

- Should we expect an increase interest in Charter Schools post pandemic?
 - ✓ If yes, what steps can we take to help mitigate this trend in the future? Should we maintain our online learning program?

Panel Insight

- Do both school administrators and school directors enjoy official immunity?
 - ✓ If so, what is the scope of their official duties? What exceptions apply?
 - ✓ What would be viewed as a “good faith” as to scope of duty?
 - ✓ What does liability insurance cover for officials in regard to the pandemic, as well as what liability insurance does not cover?

Questions / Discussion

THANK YOU