

**To: C.A.P. Board of Directors**  
**From: Cara Marie Dobie & Justin Allen**  
**September 9, 2016**  
**Legislative Report**

### **Michigan Supreme Court to Weigh in On Education Budget Line-Item for Private Schools**

Over the summer, Governor Rick Snyder (R-Ann Arbor) asked the Supreme Court to issue an advisory opinion on a \$2.5 million line item to reimburse private schools for state-mandate expenses such as immunizations, fire-drills, and background checks. Republicans in the Legislature submitted three separate briefs in support of the appropriation from the House, the Senate and the Great Lakes Education Project. Democrats in the House were unanimously opposed to the law and urged the court to issue an advisory opinion. Five Democratic senators along with the AFL-CIO and the Michigan Education Association took no position on whether the court should issue an opinion but firmly opposed the constitutionality of the law.

Attorney General Bill Schuette's office submitted briefs for and against the law- Schuette and Solicitor General Aaron Lindstrom both supporting the constitutionality and issuing an opinion, while Lindstrom's deputy, B. Eric Restuccia opposed the brief and asked justices not to issue an advisory opinion. The American Civil Liberties Union and the Education Law Center oppose the provision but feel the Supreme Court should not issue an opinion if determination can only be made at trial.

The Michigan Association of School Boards, Michigan Association of School Administrators and Michigan School Business Officials believe the court should issue an opinion opposing the law's constitutionality while the Michigan Catholic Conference is in favor of the bill and urges the justices to issue an opinion on it.

House Speaker Kevin Cotter (R- Mount Pleasant) responded to the Supreme Court's request for briefs regarding whether or not a budget proposal appropriating money to nonpublic schools is constitutional. Cotter argues that providing these funds to private schools is essential in promoting the welfare of thousands of Michigan families and hopes the court will come to the same agreement. Cotter argues that such a bill is constitutional because the Constitution mandates the Legislature protect and promote the health and welfare of its citizens regardless of religion or support for religious schools. He further argues that the Blaine Amendment of the Michigan Constitution, which prohibits public funding of religious or private schools services, is not violated by the appropriation as the reimbursement to private schools applies only to mandates regarding public health, safety and general welfare (i.e. the conducting of immunization statements and vision screenings).

An advisory opinion has yet to be issued and it remains unclear whether the constitutionality of the State's education budget will be challenged.

### **House Education Committee Reports Proposed “Parochialism” Constitutional Amendment**

On April 28, the House Education Committee approved House Joint Resolution B. The resolution, if passed by the Legislature, would put to the voters a question of whether to amend the Michigan Constitution to allow public dollars to go to pay for children with special needs to attend private schools. The rhetoric surrounding the use of public dollars to support private schools has morphed over the years, from direct state aid to the current debate over the use of vouchers. This is the first time the issue has been altered to carve out a certain class of children – those with “special needs” (a term that is not defined in law).

Proponents of the plan argued that the change would incentivize private schools to accept more special education and alternative education students. However, the opposition was summed up in comments by Representative Adam Zemke (D-Ann Arbor) who said, “Unfortunately, this particular suggestion is cloaked in a veil of kindness...however, it’s still a ploy to weaken public schools.”

The bill was reported from committee on a party-line vote, with Republican members voting “yes” and Democratic members voting “no.” The only exception was Representative Mike Callton (R-Nashville) who abstained. The resolution sits on the House floor, though it’s chances for passage are poor due to the fact that constitutional amendments require a 2/3 vote of both chambers. No further action was taken before summer recess.

### **Restraint and Seclusion**

The House of Representatives, in response to Lt. Governor Calley’s task force on Special Education, has introduced a 9-bill package of legislation regarding the use of restraint and seclusion. HB 5409 – 5418 were referred to the House Education committee; the lead bill is introduced by Rep. Frank Liberati (D – Allen Park), who is the Chair of the Legislative Disability Caucus.

Though the initial concept the Lt. Governor spoke of was a ban on restraint and seclusion, HB 5409 does allow it under the following circumstances: on in an emergency, and requiring diligent assessment, monitoring, documentation, and reporting by trained personnel. The bill also outlines a uniform policy regarding the use of restraint and seclusion, including the use of “proactive, effective, evidence- and research-based strategies and best practices to eliminate the use of restraint and seclusion and reduce or eliminate the emergency use of restraint and seclusion.”

This package of bills will be up for a vote in the House Education committee on Thursday, September 15<sup>th</sup>.

## **House Passes Revisions to Graduation Requirements**

Before the summer recess, the House passed [HB 5463](#), which would revise graduation requirements related to arts and foreign language.

Currently, as part of the Michigan Merit Curriculum, students must complete at least one credit in the visual, performing or applied arts and at least two credits in a foreign language as part of the requirements for a high school diploma. The bill would change this to require students to complete at least three credits in "21st century skills," which could be met by completing any combination of three credits in the following:

- A language other than English
- Visual, performing or applied arts
- Computer science, computer coding or a combination of the two
- A Michigan Department of Education-approved formal career and technical education program

The bill is now before the Senate Committee on Education for consideration.

## **Court of Appeals Rules for Teachers, Snyder Appeals**

On June 7<sup>th</sup>, the Court of Appeals ruled in *AFT Michigan v. State of Michigan* that the compulsory period of the Michigan Public School Employees Retirement System (MPERS) payments was unconstitutional and that teachers who paid into it should be returned their 3% deduction plus interest.

On July 19<sup>th</sup>, the last day to file an appeal with the Michigan Supreme Court over the case, Governor Snyder appealed the decision independent of Attorney General Bill Schuette. The Attorney General's office is no longer involved and the Governor's office is being represented by Dykema Gossett. A decision by the Michigan Supreme Court is expected in the next couple months. Until then, over \$550 million remains held in an interest-bearing escrow account.

## **Detroit Public Schools**

One of the last things the legislature did before they broke for summer recess was the financial aid package for Detroit Public Schools. Earlier this year, the Senate passed a bipartisan solution that garnered much support in the chamber. However, the House added several quite onerous measures to the legislation. Finally, the two chambers moved legislation to the Governor without Democratic support, and even without the support of several Republican members.

The Governor signed the bills into law on June 21st.

Some details:

**Debt repayment:** \$72 million a year, up to \$617 million, from tobacco settlement.

**Transition costs:** Loan of up to \$150 million, with a cap of \$25 million for building repairs.

**Successor language** All employees have jobs, contracts, and bargaining representation.

**School board:** Election in November. Board takes office on January 1, 2017. 7 members, elected district wide. \$250K from General Fund for the purposes of providing financial support to the formation of a Community District (the new type of school district) after transfer date, and some of that money shall be used to provide training to board members.

**Advisory Board for Community District:** 6 members: Community District superintendent, school board president, parent, representative of a charter authorizer with at least 3 schools in the district chosen by SSRO, administrator or board member of a charter school in the Community District chosen by the School Reform Office, parent of a charter school. IT prepares reports on physical state, utilization, siting, population density, and transportation within the community districts. The Community District board shall consider the advisory board's recommendations when making decisions.

**Charter Authorizers:** An authorizer shall not issue a contract to organize a Public School Academy in a Community District unless the board of the authorizer is accredited by a nationally recognized accrediting body.

**EAA:** The Community District is not authorized to jointly exercise any powers privileges, or authorities of an interlocal agreement after the transfer date

**Merit Pay** for newly-hired DPS employees, hired after an "A-F school accountability system" is in place; job performance and performance evaluations must be primary factor in pay. May not use seniority or advanced degrees to determine pay except for limited circumstances.

**Non Certified teachers** Allowed for DPS only, and granted provisional certificate after three years of teaching.

**School Closure:** Poor performing traditional schools must close if getting an "F" letter grade for three straight years. Charters however are afforded the opportunity to "reconstitute" instead of closing.

**Contracting for Instructional Staff:** Allows for contracting of instructional staff with public entities, with a door open to subcontracting through public to private organizations.

**Strike Language:** Many of the really onerous parts of this bill were watered-down a bit; however, the law still allows parents to file a charge if there is an illegal strike (before this bill was signed, the school itself has to make that charge). This opens the door to false accusations of striking, made worse by the fact that a teacher "guilty" of striking will be fined one day's pay per day of a strike.

## **Zero Tolerance**

Just before summer recess, the House passed HB 5618-5621 and 5693-5695. Almost all of the bills passed unanimously. These bills would encourage the use of “restorative justice” before expelling or suspending a student. The lead bill in the package, HB 5618, would amend all of the zero tolerance sections of law to require that certain factors be given consideration before expelling or suspending a student. These factors include things like the student’s age, disciplinary history, any disabilities, and the seriousness of the offense. However, the bills do not give flexibility to the “zero tolerance” law with regard to firearm expulsions. This is due to federal regulations that require a one-year expulsion for bringing a firearm to school.

As the bills were debated, the section of law allowing a case-by-case modification of this proposed act by the local district was amended to add a rebuttal presumption that if a student met one of the four current criteria that allow a board to choose not to expel (or did not have a history of suspension or expulsion) that the expulsion would not be justified. This could lead to serious legal issues for school districts.

The bills are now before the Senate Judiciary committee for consideration.