

To: Council About Parochial Board of Directors
From: Cara Marie Dobie and Courtney Austin
Date: September 22, 2017
Re: Legislative Report

Court Retains Injunctions On State Funds to Private Schools

Court of Claims Judge Cynthia Stephens ruled that a preliminary injunction against the state's \$2.5 million appropriation to private schools to provide for the cost of complying with Michigan's mandates. This appropriation covers the 2016-17 fiscal year and other funds in the upcoming 2017-18 year. For context, a recent decision by the U.S. Supreme Court said that Missouri violated the U.S. Constitution's Free Exercise Clause within the First Amendment by using public funds for religious institutions.

In her opinion, Ms. Stephens ruled that the Michigan constitution is less specific than Missouri, stating that public funds cannot be used for all "private" and "nonpublic" schools, religious and secular.

DeVos Won't Mandate Nationwide Vouchers, Student Choice

When delivering a speech to the American Legislative Exchange Council (ALEC) conference in Denver, U.S. Department of Education Secretary Betsey DeVos expressed her support of governors and legislators advancing school choice options in their states, but no official actions will be taken by Washington, D.C.

DeVos praised former Michigan Governor John Engler for his early work for school choice freedom, among other prominent political figures. DeVos' vision includes allowing state and local legislators, teachers, and parents to determine what is best for their children and students, pushing federal government "out of the way."

DeVos has the support of President Trump, too – he agrees that the federal government has too strong of a stake in education. In response, she referred positively to the legislative chambers in certain states that have already passed pro-school choice legislation.

With a less affirmative attitude, DeVos scolded the American Federation of Teachers (AFT) for rejecting the idea that schools should be more about the individual students and families, and instead focusing on maintaining the school "system" that has been so popular with the teachers' unions since the 1800s. AFT's relationship with DeVos has not exactly been constructive so far – AFT President Randi Weingarten compared DeVos to a climate change denier, due to her refusal of "the good in our public schools and their foundational place in our democracy."

As for her progress so far, DeVos noted that her department's student loan repayment regulation and a "gainful employment rule" were not well written, anticipating more damage than expected. She also noted how vouchers give more opportunities with school choice for those who are economically disadvantaged, instead of catering to rich populations.

Snyder Signs Teacher Pension Legislation

On Thursday, July 13, Governor Rick Snyder signed into law SB 401 (PA 92, immediate effect), which overhauls the teacher pension system. Opting out of a public signing ceremony, those in attendance included the Governor, House Speaker Tom Leonard (R-DeWitt), Senate Majority Leader Arlan Meekhof (R-West Olive), and the bill's sponsors, Rep. Thomas Albert (R-Belding) and Sen. Phil Pavlov (R-St. Clair). New teachers hired starting February 1, 2018 will have to choose between two plans. With the first, the teacher can enroll in a 401(k) plan with the school district matching 4% of their annual salary and the state matching up to 3% of the teacher's own contribution. The second option is a hybrid plan with a mix of 401(k) and pension benefits, similar to the current plan offered to teachers. However, teachers would have to contribute about 1% more of their income than the current 5%.

Being that it could be more expensive, the bill includes a fallout plan for the hybrid option. If the pension falls below 85% funded on average after five years, the state has one year to raise funding levels back up or the plan closes to new hires.

Democrats and Republicans are split on the likelihood of this scenario, but Mr. Snyder emphasized that all interested parties were at the table after a long debate between the Governor, Mr. Leonard, and Mr. Meekhof on ending or continuing pensions for new hires. Teachers unions were not pleased with the change, anticipating damage to the entire Michigan Public School Employees Retirement System. Specific groups opposed included the Michigan Education Association and American Federation of Teachers-Michigan, and several others representing statewide public school officials.

In terms of cost, the first five years are expected to total \$255 million, but forecasts beyond that margin are unclear. The bill also does not grow nor reduce the \$29 billion in unfunded liability currently in the pension system, but eliminates the purchase of service credit for all plans after September 29, 2017.

M-STEP, Letter Grading, and the ESSA

The Michigan Department of Education and the Superintendent of Public Instruction – Brian Whiston – were last week called before the House Education Reform Committee to present the state's progress regarding the Every Student Succeeds Act (ESSA). After Whiston's testimony, the questioning started with the assertion that the M-STEP is "a steaming pile of horse dung."

MDE and Whiston reminded the committee that he actually advocated for getting rid of the M-STEP and that it was the legislature that kept it in place. An interesting verbal spar ensued, having little to do with the ESSA other than to point out that whatever Michigan's ESSA plan is, before the USDoE, it no longer includes a "letter grade" system. This is a problem for members of the committee. There were plans for an A-F letter grading system for schools to be put on a publicly-available dashboard so parents could see how their school or potential school was measuring-up regarding test scores and student growth. These plans fell through, despite boilerplate in the MDE budget indicating this system should be implemented.

Instead, Whiston has followed federal law, which is to make publicly-available key performance areas for schools across the state, including: dropout rate; attendance; percentage of graduated proficient on an SAT; expulsion rates; and student-to-teacher ratios. The outcome of this entire discussion: be prepared for letter grades; legislation pending this fall.

Speaking of ESSA, here's a glimpse of where that issue resides:

Remember that the initial point of Whiston's testimony was MDE's progress in ESSA implementation. In summary:

- In early August, the USDoE indicated to MDE that the ESSA plan needed some additional clarification.
- Specifically, USDoE asks states to pick one of three options for school accountability/transparency; Michigan had indicated the "Transparency Dashboard" option, but Michigan's ESSA plan was a little light on details as to what that would look like (meaning: available data, not aesthetics!).
- MDE staff developed the dashboard criteria, and an index from which to identify struggling/failing schools, based on input from various stakeholders regarding the state's initial ESSA draft plan (submitted back in June).
- This new plan for the Transparency Dashboard was submitted on August 11.
- On September 6, MDE submitted additional pieces requested by USDoE related to long-term goals and interim targets to achieve those goals

Where that puts the state now is waiting for USDoE to approve this plan or request more clarification, which is expected any time.

Regardless, this legislature is focused on the Transparency Dashboard, and will create a letter grading system for schools; that much is clear. And for now, the M-STEP survives, though Whiston, in the state's ESSA plan, plans to shorten the M-STEP from 4 hours to 3, and add the PSAT 8/9 test in 8th grade this coming Spring.

Common Core Repeal

A politically-charged bill – HB 4192 (Gary Glenn, R – Larkin Twp.) – has been introduced to repeal a politically-charged issue – Common Core. Michigan has had its State Standards in place since 2010, following the Common Core Standards developed by a consortium of states and education professionals. These standards across the country have been under assault since their development by conservative legislators in Washington, DC and across the country (not to mention the silliest of internet and social media memes).

The bill stops schools from continuing to implement the Common Core Standards, and replaces those standards in law with the Massachusetts 2008-2009 standards. Starting in the 2017-18 school year, schools would then adopt those standards, or their own individualized school district's standards. They could, if they wished, go back to the Common Core Standards, but there would be no state resources available to support those. Also buried in the bill is a provision that would allow parents to opt their children out of testing (actually, the parents can opt their children out of any school activity the parents deem unacceptable).

A lot of time and effort was spent last session on a top-to-bottom rewrite of teacher evaluations, which are now based on student performance. Further, the legislature added flexibility in how a student can achieve existing standards (i.e. dual enrollment or career and technical education). These bills would make irrelevant those efforts, especially regarding evaluations, no longer having reliable data from which to draw. This, of course, is in addition to the basic fact that changing standards again, already, is extremely disruptive.

The Chair of the Michigan Competitiveness Committee indicated there will be several more hearings on the issue before the legislature decides what to do with them; none are planned yet this Fall.

Supremes Say Religious Schools Can Be Sued For Not Taking A Student

A deferment was issued by the Michigan Supreme Court in the Winkler v. Marist Fathers of Detroit case today, regarding a decision about whether a student with a learning disability can rightfully be rejected by this Oakland County Catholic school. The plaintiff wishes to issue a civil rights claim against the school. The court instead reversed an Appellate Court decision under the ecclesiastical abstention doctrine, which had stated that the court couldn't review their administrative decision because they are a religious institution.

The current decision at hand originated because Bettina Winkler was denied admission, due to her academic record, to Marist Fathers of Detroit high school after attending its middle school. Winkler contended that Marist Fathers didn't consider her dyslexia when denying her admission, which violates the Persons With Disabilities Civil Rights Act (PWDCRA).

With precedent from 1994 in *Dlaikan v. Roodbeen*, the Court of Appeals agreed with Winkler's argument, but Justice Bridget McCormack said that courts still have jurisdiction over civil claims. "The ecclesiastical abstention doctrine may affect how a civil court exercises its subject matter jurisdiction over a given claim; it does not divest a court of such jurisdiction altogether. [...] To the extent *Dlaikan* and other decisions are inconsistent with this understanding of the doctrine, they are overruled," she stated.

With the circuit court already having denied the school's claim that the PWDCRA didn't apply to them because of their religious nature, the Court of Appeals remained silent on the matter until now with the case being in their lap to decide the appropriate application of PWDCRA.

School Reform Office Returned To MDE

After a decision in 2015 to move the School Reform office (SRO) out of the Michigan Department of Education (MDE) and into the Michigan Department of Technology, Management, and Budget (DTMB), Governor Rick Snyder announced on June 30 that the SRO will be returning to the MDE.

The SRO functions to change outlooks for Michigan's worst performing schools, and by moving the SRO to DTMB, they were able to have access to the most current data to help with this goal. Earlier in 2017, State Superintendent Brian Whiston started to work with the SRO to avoid closing almost 40 schools due to performance issues. Strategically, moving the SRO back to the MDE is supposed to be a move that "will ensure the efficient continuation" of creating policies to improve performance, according to School Reform Officer Natasha Baker.

SRO Move To MDE May Alter Suits From District Against The Office

After Governor Snyder decided to move the School Reform Office (SRO) back to the Michigan Department of Education (MDE) from the Michigan Department of Technology, Management, and Budget (DMTB), three school districts from Detroit, Kalamazoo, and Saginaw are pursuing lawsuits. The plaintiffs contend that the SRO's original movement was unconstitutional, but now that it's back in the MDE, the future of the lawsuits is uncertain.

Litigation will likely continue despite the movement back and forth due to the nature of the other claims in the suit, such as the use of "satisfactory results" being unconstitutionally vague.

The movement back to the MDE is seen as a positive step taken by Governor Snyder for these lawsuits, according to Marshall Grate, an attorney from Clark Hill representing Kalamazoo and Saginaw Schools.

24 Teachers Chosen For Michigan Education Advisory Panel

Out of a pool of more than 300 who applied for the position, 24 teachers were chosen to be on the Michigan Teacher Leadership Advisory Council.

State Superintendent Brian Whiston plans to enlist the Council's help to implement the federal Every Student Succeeds Act, which replaces the No Child Left Behind Act, with a mission to return autonomy to states in their decisions about education and how to help low-performing schools boost student performance.

With the Council, the Every Student Succeeds Act, and State Superintendent Whiston's commitment to holding schools accountable, they plan to ensure Michigan's status as a top-performing education state.