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October 26, 2020

**BY ELECTRONIC MAIL**

Honorable Thomas P. Rogers  
Montgomery County Courthouse  
2 East Airy Street  
Norristown, PA 19404-0311

Re: *Wolk v. School District of Lower Merion*  
Civil Action No, 2016-01839

Dear Judge Rogers:

We represent the School District of Lower Merion in this matter, which is scheduled to be remanded to this Court on or about October 30, 2020, in accordance with Pa.R.A.P. 2572. Although a number of motions were filed while the case was on appeal, the case has not been in this Court since 2016. We are writing because the District needs guidance about the August 2016 preliminary injunction which was the subject matter of the appeals in this case. Plaintiff is seeking over \$50 million from the District, and preliminary objections have been pending since 2016. We would appreciate Your Honor hearing us (or assigning some other judge to hear us) either telephonically or by video conference, so that the District can make sure that it complies with this Court's 2016 order without violating other laws.

In August 2016, Judge Smyth entered a preliminary injunction regarding Act 1 exceptions that the Pennsylvania Department of Education had approved for the 2016-2017 school year, and which had been incorporated into the budget approved at the Board's June 2016 meeting. Judge Smyth concluded that the exceptions should not have been approved, but he did not decide what, if anything, the District should do with the taxes that it had collected and would collect, expressly leaving that issue for "another day and forum." The injunction has been subject to an automatic *supersedeas* which will end when the record is remanded. That said, it is not clear what practical steps the District can take to comply with a four-year-old preliminary injunction regarding tax increases that the Department of Education (as required by statute) approved expressly on account of undisputed increases in special education and PSERS (the Pennsylvania State Employees Retirement System) expenses. The portion of the budget allocated to those two areas is mandated by other state and federal laws, and the District cannot revoke or suspend those payments.

I should also add that the District filed preliminary objections to the Complaint (and then the Amended Complaint). Those preliminary objections were assigned to Judge Drayer and then reassigned to Judge Haaz, who entered a protective order in May 2016, staying discovery until the preliminary objections were resolved, and who handled other motions. Although fully briefed

in 2016, the preliminary objections have never been decided, a point emphasized by the Supreme Court when it considered the District's initial appeal from Judge Smyth's order:

This case obviously manifests a great deal of procedural disorder. For example, it is difficult to apprehend that a judicial officer would undertake to issue a final and permanent injunction while a challenge to the standing of the proponent to seek judicial review remained pending. *Accord* Pa.R.C.P. No. 1028(c)(2) ("The court shall determine promptly all preliminary objections").

*Wolk v. School District of Lower Merion*, 197 A.3d 730, 739 (Pa. 2018).

We are asking for the assistance of this Court in order to bring order to the disorder the Supreme Court identified. We thought that the case had been assigned to Judge Page, because we had received an order from him while the case was on appeal, and we accordingly notified him of the pending remand and asked him for a conference, the resolution of the preliminary objections, and a stay of the preliminary injunction pending further proceedings. Apparently, we were wrong in that assumption, because while Judge Page granted the motion to determine the preliminary objections, his order suggests that he might not be the judge resolving them. He denied the request for a stay, and, while saying that whoever would resolve the preliminary objections could hear the parties, he also observed that no case management conferences are currently being held.

Further underscoring the need for a case management conference, on October 16, the Court Administrator issued the enclosed Civil Case Management Conference Order, which appears to have been generated automatically and that sets a schedule as though pleadings had closed and discovery was open. Neither is true. On May 3, 2016, Judge Haaz stayed discovery pending the outcome of preliminary objections, which, as noted above, have been pending since March 2016.

Not knowing who will hear the preliminary objections, or when, we are writing to you, because the District needs guidance as to how to address a preliminary injunction directed to monies appropriated for and spent for special education and PSERS for the 2016-2017 year, pending the remainder of litigation. By way of example, Article VI of the Public School Code of 1949 governs the actions a School Board must and can take. Among its provisions is 24 P.S. § 6-603, which permits only a single assessment, levy, and collection of school taxes in any one year; 24 P.S. § 6-609, which prohibits work to be "hired to be done," as well as purchases and contracts, which would cause the monies appropriated for specific purposes in the budget to be exceeded; and 24 P.S. § 6-616.1, which allows for the reopening of the budget (except for years not at issue here) only if it is done within thirty days after the General Appropriation Act and only to reflect a change federal and state allocations for the current fiscal year. The General Appropriation Act for 2020 was effective July 1, 2020. Act of May 29, 2020, P.L. 158 No. 23, Session of 2020 (HB 1083). Accordingly, the District is outside the 30-day window for 2020, and years outside the window for 2016. We are also writing to the Department of Education, which is statutorily entrusted with authority over the two exceptions that were enjoined. Section 333 of the Act of June 27, 2006, P.L. 1873, *as amended*, 53 P.S. § 6926.333(f)(2)(v); (j); and(n).

It would appear that a conference among the Court, counsel, and the Department would be the best way to proceed, but we respectfully request Your Honor's direction in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "D. Alicia Hickok". The signature is written in a cursive, flowing style.

D. Alicia Hickok  
Partner

cc: The Honorable Garrett D. Page  
Arthur Wolk, Esq.  
Michael Kristofco, Esq.  
Kenneth Roos, Esq., Solicitor  
Robert Copeland, Superintendent