

# Potential Closure of Erie High Schools

Impact on nearby and convenient School Districts

# What is Erie's obligation to provide high school education?

- ▶ Section 501(a) of the Public School Code provides:
  - ▶ The board of school directors in every school district shall establish, equip, furnish, and maintain a sufficient number of elementary public schools, in compliance with the provisions of this act, to educate every person, residing in such district, between the ages of six and twenty-one years, who may attend.
- ▶ Section 502 of the Public School Code provides:
  - ▶ In addition to the elementary public schools, the board of school directors in any school district may establish, equip, furnish, and maintain the following additional schools or departments for the education and recreation of persons residing in said district, and for the proper operation of its schools, namely:--
    - High schools, . . .

# If high schools are closed, what happens to the students?

- ▶ Section 1607(a) of the Public School Code contemplates this situation:
  - ▶ (a) Except as set forth in subsection (b), pupils residing in a school district in which no public high school is maintained may attend, during the entire term, at the expense of the school district of which they are residents, the nearest or most conveniently located high school of such class as they may desire to attend, unless the board of school directors of the district of residence shall have assigned the pupils to a high school and adequate transportation is provided thereto. Pupils who reside in a school district in which no public high school, other than a vocational high school is maintained, may attend, during the entire term, the nearest or most conveniently located academic high school. . . .

# Are other school districts required to enter agreement with Erie?

- ▶ There is no legal obligation of any neighboring or conveniently located school districts to contractually agree to accept Erie's high school students. However, . . .
- ▶ There is case law, Chester Township School District v. Chester School District, 418 Pa. 294, 210 A.2d 501 (1965), in which the Supreme Court held, interpreting Section 1607, that, where there is no high school in their school district, and their district has not assigned them elsewhere, the students may choose where they attend, and the receiving district has a duty to accept them. No consent is required.
- ▶ Section 1603 states that : "In all school districts there *shall be admitted* to the public high schools *therein* all children, under the age of twenty-one years, *residing within the school districts*, who shall be found qualified . . . *together with such additional pupils from other districts* as are herein provided for."

# But doesn't the PSC require consent of the receiving District in other cases?

## ▶ Section 1313

- ▶ Where a pupil resides 1 ½ miles, or more, from the nearest elementary school in the district, such pupil may attend in another district more convenient, but must obtain the consent of the school board in that district, but without the consent of the board where such pupil resides. The district where such pupil resides shall promptly pay, to the district where such pupil attends, the tuition charge

## ▶ Section 1608

- ▶ Pupils wishing to attend a high school in a district other than the high school in the district in which they reside shall obtain the consent of the school board of the district in which such high school is located. Pupils wanting their tuition paid in a high school in another district must get written approval from the school board in the district of which they are residents. The board of school directors of the district in which any such pupil resides may enter into a written agreement with the receiving district for the attendance and tuition of the pupil.

# Is there any different result if the district is in financial recovery?

- ▶ District is covered by Article VI-A of the PSC: School District Financial Recovery
- ▶ Section 621-A limits financial recovery to nine SDs at a time Separate processes for moderate and severe financial recovery SDs
- ▶ Districts in financial recovery must submit a Financial Recovery Plan, with risk of receivership for failure to follow (Sections 641-A, 652-A, 653-A(b)(2))
- ▶ Erie is in early warning system (Section 611-A(c) and 22 Pa.Code Ch. 731) and must develop a plan, per Section 694-A (added by Act 86 of 2016)
- ▶ Plan may include closure or reconstitution of schools (Section 642-A(a)(11))
  - ▶ Convert to charter schools
  - ▶ Closing high schools would be subject to Section 1607

# Erie's Financial Watch Status

- ▶ Act 86 of 2016 added Section 694-A to the PSC, which provides that the secretary shall notify each district that receives educational access program funding that is equal to or greater than \$2,000,000 in any one fiscal year that the district has been identified for financial watch status
  - ▶ A district identified for financial watch shall receive technical assistance from the department and shall develop a plan to improve the district's finances based on the technical assistance provided for approval by the secretary.
  - ▶ The plan shall be submitted to the secretary no later than 180 days after the district has been identified for financial watch status. Each year thereafter, determined otherwise, the district shall submit a report outlining the status of the district's plan, meet with the secretary/designee to review the report and the status of the district's finances and hold an annual public hearing regarding the plan.
- ▶ Erie's Plan may include closing of its high schools

# What have the courts said about closing HS in distressed school districts?

- ▶ Duquesne SD was designated on Education Empowerment List (since expired) pursuant to Section 1704-B of PSC
- ▶ Special board of control appointed to oversee district under Section 692 (repealed and replaced by Financial Recovery, Art. VI-A) decided to eliminate HS program, and students enrolled in West Mifflin, East Allegheny, and South Allegheny SDs by assignment of the Secretary pursuant to Sections 1607.1 and 1113(b.2)
  - ▶ Section 1607.1(a)(1) allowed assignment of up to 165 students each from distressed district
  - ▶ This provision does not apply to Erie; only 3<sup>rd</sup> class districts
- ▶ Receiving SDs challenged constitutionality of the law, in West Mifflin Area SD v. Zahorchak, 956 A.2d 1040 (2008), the Commonwealth Court upheld the constitutionality of both provisions; Determined to be unconstitutional special legislation in West Mifflin Area SD v. Zahorchak, 4 A.3d 1042 (Pa. 2010)

# Section 1607(b) is similar to Section 1607.1 for assignment of students to districts.

- ▶ If a 3<sup>rd</sup> class district operating under a special board of control pursuant to Section 692 has, with the approval of the Secretary, eliminated its HS and has not assigned its HS pupils to another district and provided adequate transportation, then:
  - ▶ The Secretary has the authority:
    - ▶ To designate two or more districts, which shall accept the HS students of the distressed district, so long as a designated district's border is no more than three (3) miles from the border of the distressed district.
    - ▶ To establish a process for the distressed district to use to reassign its HS students to the districts so designated.
    - ▶ To establish the per-pupil tuition rate that a receiving district shall be paid for each reassigned student in a regular or special education
- ▶ Used to have similar 165 student limitation; eliminated by Act 141-2012
- ▶ Does not apply to Erie, which is a 2<sup>nd</sup> Class District

# Does the 10-mile rule apply to students attending other districts?

- ▶ Section 1361(1) of the PSC states that the school board may provide for the free transportation of any resident pupil to and from the kindergarten, elementary school, or secondary school, provided that such school is not operated for profit and is located within the district boundaries or outside the district boundaries at a distance not exceeding ten miles by the nearest public highway
- ▶ However, Section 1607(a) requires that, where an agreement is entered, adequate transportation must be provided. No mileage limitation is included
- ▶ Section 1607(b)(1) addresses distressed districts of the 3<sup>rd</sup> class and authorizes the Secretary to designate 2 or more districts to accept HS students, provided the border of the designated district is no more than three miles from the border of the distressed district
  - ▶ Does not apply; Erie is 2<sup>nd</sup> class district; Erie is not designated as distressed

# Will the other districts be required to hire displaced Erie teachers?

- ▶ There is a provision in Section 1607(b.1) similar to the Transfer between Entities provision in Section 1113
  - ▶ Section 1113(a) provides that, when a program or class is transferred as a unit from one or more school entities to another school entity or entities, professional employees who were assigned to the class or program immediately prior to the transfer and are classified as teachers and who are furloughed as a result of the transfer shall be offered employment in the program or class by the receiving entity or entities when services are needed to sustain the program or class transferred, as long as there is no suspended professional employee in the receiving entity who is properly certificated to fill the position in the transferred class or program

# Section 1607(b.1) provides:

- ▶ A district that eliminates its high school shall create a pool comprised of the professional and TPEs who have received formal notice of furlough as a result
- ▶ Employees in the pool shall be offered employment by any district receiving students who have been reassigned pursuant to Section 1607(b) whenever that district has a vacancy that an employee is certified to fill, provided that no employee of the receiving district, has a right to such vacancy
- ▶ No new employee shall be hired by any district receiving students who have been reassigned pursuant to Section 1607(b) until the position has been offered, in order of seniority, to all properly certified members of the pool
- ▶ Employees hired from the pool shall be credited by the hiring district for all sick leave accumulated and shall be credited for years of service in the district that has eliminated its high school program for purposes of salary schedule placement for purposes of sabbatical leave eligibility, suspension and realignment rights and eligibility for any retirement incentives or severance payments in a hiring district
- ▶ Does not apply to Erie, as a 2<sup>nd</sup> Class District

# So, what do we know?

- ▶ Erie has the legal ability to close its high schools
- ▶ Erie may, but is not required to, enter agreements with other SDs to accept its students and provide adequate transportation
- ▶ The 3-mile does not apply at this time and 10-mile rules may not apply
- ▶ If Erie does not enter agreements, students may enroll in nearest or most conveniently located HS, which does not require consent of receiving SD
- ▶ Secretary has no authority to assign students to districts at this time
- ▶ Receiving SDs have no limit on number of students that may seek to enroll
- ▶ Transfer of Entity provisions do not apply at this time
- ▶ If Erie enters Financial Recovery, its Plan may include requirements similar to the statutory provisions that do not technically apply

# When could all of this happen?

- ▶ Closing of a school building has specific legal requirements, per Section 524 of the PSC, providing for Department approval and 60 days' notice in writing to all temporary professional and professional employees affected.
  - ▶ Erie must obtain Department approval to close a school
  - ▶ Erie must give professional staff 60 days' notice
- ▶ Erie has not yet submitted its development plan under financial watch
- ▶ Erie currently undertaking a feasibility study of the possibility of closing its high schools
- ▶ Decision likely required by March 2017 for 2017-2018 school year
- ▶ More likely target is 2018-2019 school year

# How will Erie's high school students be absorbed?

- ▶ How many students will have to be absorbed?
- ▶ Possibility that Collegiate may apply for charter school status
- ▶ Possibility that Central Tech may apply for charter school status
  - ▶ Charter school may be established by converting existing public school (Section 1717-A)
  - ▶ Collegiate was a draw from neighboring SDs when it was previously a charter
- ▶ Students enroll in existing cyber charter schools
- ▶ Students enroll in existing charter schools (Montessori; Perseus House; Erie RISE)
- ▶ Erie may enter into agreements and provide transportation to nearby and convenient high schools
  - ▶ 10-mile limitation may not apply if Erie provides adequate transportation