



Procedures to Close Public Schools

Elizabethtown Area School District

Presented by

Jeffrey D. Litts, Esq.

Kegel Kelin Litts & Lord LLP

January 12, 2021



Purpose of the Program...

- Explain the procedure that a school district must follow when permanently closing a public school
- Answer questions and provide accurate information regarding the legally required procedure



Background Information

- The Public School Code and the State Board of Education regulations define the process that must be followed when a public school is permanently closed.
- School closures are not uncommon in Lancaster County – Cocalico, Conestoga Valley, Donegal, Elizabethtown Area and Manheim Central School Districts have all closed schools in the recent past.



Legal Authority

- Public School Code § 1311 authorizes school boards to close public schools on account of their student enrollment, the condition of an existing school buildings or other legitimate reasons.
- Courts do not interfere with school board decisions to close schools absent allegations of fraud, arbitrariness or capriciousness. *Beegle v. Greencastle-Antrim School District*, 401 A.2d 374 (1979); *Borough of Clifton Heights v. School District of Township of Upper Darby*, 377 A.2d 836 (1977).



Legal Authority

- Public School Code § 780 requires a school board to hold a public hearing on a school closure at least 90 days prior to any school board decision relating to the closing of the school.
- Notice of the public hearing (date, time and place) must be publicly advertised at least 15 days prior to the date of the hearing.



Section 780: Public Hearing Notice

- The public hearing notice must identify the name of the school recommended for closure. *Save Our School v. Colonial School District*, 628 A.2d 1210 (1993).
- The public hearing notice needs to be published in a “newspaper of general circulation,” and does not need to appear in a local legal newspaper. *Concerned Citizens for Better Schools v. Brownsville Area School District*, 660 A.2d 668 (1995).



Section 780: Public Hearing

- A court stenographer records the hearing proceeding, which usually includes – an administrative presentation on the school closure recommendation; the opportunity for school board members’ comments and questions on the presentation and public comments from other attendees.
- The purpose of the public hearing is for “school boards [to] obtain community input...at least three months before voting to permanently close a school...”
Colonial School District, 628 A.2d at 1213.

Section 780: 90-Day Waiting Period

- 90 days must pass between the public hearing and a school board vote to permanently close a school.
- This waiting period provides the community, administration and school board to consider the information shared at the public hearing, as well as time to discuss and/or provide public comment on the recommendation before any vote.



Section 780: School Board vote

- A school board must vote at a publicly advertised meeting on any proposed action item to permanently close a school.
- Five (5) affirmative votes of nine (9) school board directors are needed to permanently close a school.



School Code Public Hearing Process

- The mandated public hearing process under the School Code *cannot* be done quickly nor can be done secretly.
- The public hearing process requires at minimum 105 days (15 days + 90 days = 105 days), if not longer.
- Moreover, the school board hearing and any subsequent vote must be done publicly and in compliance with the Sunshine Act.



Timing of School Closures

- School Code § 524 also provides schools cannot be closed while classes are in session, except when necessary to develop “orderly” attendance areas. PDE approval is required for any mid-year school closure.
- School districts must provide teachers with 60 days notice of any school closure, otherwise they are required to pay teachers laid a result of the school’s closure for the duration of that school year.



School Closure Notification

- If a school board votes to close a school, notification must be given to both the affected teachers and the state Department of Education.
- Failure to comply with notice requirements may result in potential financial consequences for the school district.



Teacher Notification

- School Code § 524 requires if a school is closed after classes end, affected teachers are entitled to a 60-day written notice of the closure before classes start in the upcoming school year.
- If teaching positions are abolished as a result of a school closure, those lay-offs cannot take effect during a school year or later than 60 days prior to opening of the next school term.



PDE Notification

- The State Board of Education regulations require a school district to notify PDE of its desire to close a public school prior to its closure. *22 Pa. Code §349.28(a)*.
- The notice must state the reasons for the school closing, and describe how the closing contributes to the orderly development of attendance areas.
- The regulation does not state when (i.e., how many days or months prior to the closing) PDE must receive a notification of the closing.



Bottom-line

- The school closure process cannot be done secretly or on short notice – the law mandates a public process that cannot be rushed.
- We strongly recommend that the solicitor be involved in any potential school closure proceeding to ensure compliance with the various legal requirements associated with the public hearing and to avoid potential pitfalls throughout the process.



Questions?