PSBA Judicial Advocacy Report:
Status of court cases in which PSBA is participating as *Amicus Curiae* or has brought suit on behalf of members

Case Name	Issues	Court SD Counsel (PSBA Counsel)	PSBA Position(s)	Case History/Status
Volk v. The School District of Lower Merion	Whether a court of common pleas has the authority to issue a ruling concluding that PDE should not have granted Act 1 exceptions to the index limit on real estate tax increases, enjoining school district from levying or collecting a tax rate in excess of the index and requiring the district to refund any excess.	Commonwealth Court of Pennsylvania No. 1465 C.D. 2016, on appeal from Court of Common Pleas of Montgomery County. No. 16-01839 Michael D. Kristofco (Stuart L. Knade)	The court had no authority to usurp the exclusive statutory authority of PDE to decide whether Act 1 exception applications should be granted. Contrary to the court's conclusions, a school district's budgeting process, the exception application process, and related information are highly transparent and made known to the public, and as a matter of law PDE had available to it all relevant SD financial information pertinent to deciding whether the criteria for exceptions was met.	Plaintiff asserting taxpayer class status filed suit alleging among other things that school district had over several years consistently misrepresented budget information to PDE for purposes of claiming Act 1 exceptions to real estate tax increase referendum requirements, resulting in the accumulation of excess fund balances. Court of Common pleas entered an injunction prohibiting SD from levying or collecting any tax increase above the Act 1 index limit. School district filed interlocutory appeal to Commonwealth Court. After an expedited briefing schedule, oral argument took place on December 15 2016. Awaiting decision. Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=1465+CD+2016

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Cornwall-Lebanon School District v. Cornwall-Lebanon School District	This case involves the important issue of whether an arbitration award that reinstates a teacher terminated for sexual misconduct violates a well-defined and dominant public policy.	Pennsylvania Commonwealth Court 814 CD 2016 Timothy D. Sheffey, Esq. (Katherine M. Fitz-Patrick)	In order to provide a safe environment for students to learn, schools have a duty to prohibit sex discrimination, including sexual harassment, sexual misconduct, and sexual abuse; and when schools investigate complaints of sexual harassment and the complaint is substantiated, schools must remedy the situation in order to protect students from future injury. An arbitration award requiring a school district to reinstate a teacher it terminated for sexual misconduct, especially in light of the fact that the teacher lied about the nature of his relationship with the student, undermines the ability of the school district to implement the duties public policy imposes on the school district to ensure that other students will not become victims of that teacher's inappropriate conduct in the future. It blatantly defies this firmly established public policy for an arbitration award to force a school district to continue to employ a teacher found	On April 21, 2016, the Court of Common Pleas of Lebanon County vacated an arbitration award, which ordered the school district to reinstate the terminated teacher. The Education Association appealed. On September 22, 2016, PSBA filed its amicus brief. Oral argument was held on December 12, 2016. On February 3, 2017, Commonwealth Court issued a decision reversing the trial court's order. On March 3, 2017, the school district filed a Petition for Allowance of Appeal with the Pa. Supreme Court. Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=814+CD+2016

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			to have engaged in such predatory conduct. Accordingly, PSBA urged the Court to affirm the decision of the lower court.	
Valley Forge Towers et al v. Upper Merion SD and Keystone Realty Advisers	Owners of apartment buildings and other commercial properties sued to enjoin SD from appealing tax assessments only of higher value commercial properties, and seeking declaratory judgment that this violated the Uniformity Clause of the PA Constitution by subjecting commercial properties to higher assessments, alleging that single family homes were also under-assessed but the district purposely did not appeal those.	Pa. Supreme Ct. 49 MAP 2016, (on appeal from Sept. 10, 2015 decision of the Commonwealth Ct. at 1960 CD 2014) Wendy Rothstein (Stuart Knade)	School districts have an express statutory right to appeal property tax assessments and do so in order to promote uniformity and fairness, and reduce the need for increases in tax rates. Owners of under-assessed properties are not paying their fair share of the community's tax burden, and are forcing other taxpayers to subsidize their tax obligations. It is well established that appeals by taxing districts promote uniformity and help to correct dis-uniformity caused by infrequent county-wide reassessments, as well as that it is reasonable for taxing authorities to focus their efforts on the most glaring examples where the escaping tax revenue is sufficient to justify the cost of litigation.	Court of Common Pleas granted SDs preliminary objections and dismissed suit. After property owners appealed, Commonwealth Ct. affirmed on Sept. 10, 2015, ruling consistently with a number of prior decisions ruling that appeals by taxing authorities do not constitute spot reassessment, and the use of monetary thresholds in deciding which assessments to appeal was a reasonable approach that does not violate the Uniformity Clause of the Pa. Constitution or the Equal Protection Clause of the U.S. Constitution. Pa. Supreme Ct. granted allowance of appeal April 26, 2016. Briefing is complete. Oral argument took place on March 8, 2017. Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=49+MAP+2016

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Discovery Charter School v. The School District of Philadelphia	Allocator was granted on whether Commonwealth Court had the power to judicially create a right to amend legally binding charters and grant jurisdiction in CAB over amendment disputes. The Charter School Law does not address nor contemplate amendments as of right to legally binding charters. Also at issue is whether a charter seeking a material amendment should comply with the application and hearing procedures contained in the CSL. Finally, the court agreed to consider whether Commonwealth Court could direct that a failure to act on an amendment within an unclear time constitutes and appealable deemed denial of the amendment.	PA Supreme Court 16 EAP 2016 Carl Solano Allison Peterson (Emily Leader)	The Charter School Law has no provisions for amending a charter or for appeals to CAB to decide amendment disputes, nor does it establish a standard of review. Commonwealth Court exceeded its authority in rewriting the CSL to expedite a process for amending charters and appellate review of amendment disputes. A charter school which wishes to amend its charter is not without a remedy. It may first seek to negotiate amendments. If unsuccessful, it can make application for a new charter and go through the public hearings and vetting required to ensure that it has the capacity and community support to operate the charter school under the amended charter. Here, the amendment was to increase enrollment by over 70%. This is a material change as is adding grades or changing the fundamental approach to curriculum of a charter, and other things that may have played a role in the initial approval.	CAB held it had no jurisdiction over amendment disputes. In 2015, Commonwealth Court reversed CAB and required it to exercise jurisdiction and consider the amendment request pursuant to standards for revocation or nonrenewal of a charter, regardless of how material the change might be. 111 A. 3d 248 (Pa. Cmwlth. 2015) Supreme Court granted the district's appeal in 2015. 135 A. 3d 581 (Pa. 2015) Oral argument took place March 7, 2017. Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=16+EAP+2016

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Pocono Mountain School District v. Pennsylvania Department of Education, Division of Subsidy Data and Administration	Pursuant to Retirement Code provision, PDE deducted from subsidy owed to the SD delinquent employer pension contributions owed to PSERS by a defunct charter school no longer operating, such that SD could not offset the deductions from tuition amounts owed to the charter school. However, multiple provisions of the Charter School Law say that SDs shall not be responsible for debts of a charter school, creating a statutory conflict in this situation.	Pa. Supreme Ct. 87 MAP 2015 (Appeal from July 8, 2015 decision of the Commonwealth Ct. at 2052 CD 2014, affirming PDE determination at No. EDU-2014-SLAP-000176, entered October 23, 2014) Ellen Schurdak (Stuart Knade)	The courts have a duty to attempt to harmonize statutes appearing to be in conflict, and construe them together so as to give effect to both. The only way to do that, and honor the Charter School Law protection of SDs from debts of charter schools is to construe the Retirement Code subsidy intercept provision as applying only to the extent the SD can offset the amounts deducted against tuition owed to the charter school.	SD objected to subsidy deduction PDE caused in order to pay PSERS the amount of delinquent employer pension contributions owed by a defunct and bankrupt charter school no longer operating. PDE denied the objection, and SD appealed to Commonwealth Ct., which on July 8, 2015, affirmed PDE determination in a decision that does not even mention the Charter School Law. Pa. Supreme Ct. granted SD's petition for allowance of appeal on Dec. 7, 2015. Oral argument in the Supreme Ct. occurred May 11, 2016. On December 28, 2016, the Supreme Court issued a decision in favor of the school district consistent with the positions expressed by PSBA. Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=87+MAP+2015
PSEA v. Pennsylvania Office of Open Records	Whether there is a constitutional right to privacy in one's home address which requires implementation of a balancing test to determine	Pa. Supreme Ct. 11 MAP 2016 Joshua Harmon (Emily Leader)	Before home addresses of public employees can be released under the RTKL, the Pennsylvania Constitution requires a balancing test weighing an individual's interest in the privacy of home	On October 16, 2016, the Pennsylvania Supreme Court reversed Commonwealth Court's decision below, holding that the Pennsylvania Constitution provides a right to informational privacy in

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[At invitation of the Governors Office of General Counsel, PSBA joined the amicus brief of the Department of General Services, Dept. of Conservation and Natural Resources, Office of the Budget, Office of General Counsel, and the Pennsylvania State Association of Township Supervisors.	whether the Right to Know Law requires or permits release of such information?		addresses against the public's interest in disclosure of information about government.	personal information, including home addresses. When a RTKL request seeks personal information, the agency must engage in a balancing test to determine whether the public interest in having access to such information outweighs the privacy interest at stake. Putting together mailing lists for a commercial or other personal purpose does not outweigh the privacy interest. CASE CLOSED Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=11+MAP+2015
Central Westmoreland Career and Technical Center Education Association, et al. v. Penn-Trafford School District	This case involves the question of whether a program was transferred from a C & T to a sending school district when the district decided to have their C & T students take math at the school district but did not expand its curriculum or staff to take	Pennsylvania Supreme Court 11 WAP 2015 Michael L. Brungo, Esq. (Emily J. Leader)	This does not constitute the transfer of a class or program, which is a prerequisite to the preferential hiring provisions of the Transfer of Entities Act.	PSBA filed its amicus brief on July 31, 2015. Oral argument is scheduled for October 7, 2015. On February 16, 2016, the Pennsylvania Supreme Court reversed Commonwealth Court's opinion which favored the school districts and held that if students are transferred from one school entity to another AND the receiving entity

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	but did not expand its curriculum or staff to take them back. When a Penn-Trafford teacher resigned, the former C & T math teachers who had been furloughed sought a preferential hiring pursuant to the "Transfer of Entities" Act.			assumes program responsibility for these students, the hiring requirements are triggered. CASE CLOSED Link to Docket: https://ujsportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=11+WAP+2015