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

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Case Name	Issues	Court SD Counsel (PSBA Counsel)	PSBA Position(s)	Case History/Status
PSEA v. Pennsylvania Office of Open Records [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 there is a constitutional right to privacy in one's home address which requires implementation of a balancing test to determine whether the Right to Know Law requires or permits release of such information?	Pa. Supreme Ct. 59 MAP 2010 195 MM 2010 76 MAP 2009 Pa. Commonwealth Court 396 MD 2009 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 addresses against the public's interest in disclosure of information about government.	In July 2009, PSEA filed a petition for review in the Commonwealth Court and won a preliminary injunction forbidding release of home addresses of school employees until further order. Briefing on preliminary objections in the Commonwealth Court was completed in December 2009, and oral argument took place March 17, 2010. Concurrently, similar briefs were filed in December 2009 on appeal of the preliminary injunction order to the Supreme Court, which affirmed that order on August 17, 2010. On September 24, 2010 Commonwealth Court issued a decision dismissing the case for lack of jurisdiction, but offering dicta criticizing the arguments against release of home addresses. PSEA filed notice of appeal to the Supreme Court, which on November 1, 2010, stayed the Commonwealth Court's decision and order, effectively restoring the injunction barring release of home addresses. Briefing

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				in the Supreme Court has been completed. Oral argument took place April 10, 2012. On August 21, 2012, the Supreme Court issued a decision vacating the decision of the Commonwealth Court, and ruling that because the RTKL did not provide affected school employees an adequate process to safeguard their interests, such employees could pursue declaratory judgment in the Commonwealth Court with OOR named as the respondent agency. The Court did not expressly rule on the privacy and personal security issues regarding the release of home addresses, but several times the Court cited to its decision affirming the injunction against release of school employee addresses. The Court remanded the case to Commonwealth Court directing that court to reexamine its analysis of the pertinent privacy and personal security questions. On March 25, 2014, Judge Friedman denied motions to vacate

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				the preliminary injunction against release of records containing home addresses of school employees, but modified it slightly to limit its scope to records maintained by school districts. After extensive procedural wrangling in the Commonwealth Court, the court en banc heard argument on the merits of cross-motions for summary judgment on September 10, 2014. Awaiting decision.
Mollick v. Township of Worcester	Appeal in a Right To Know Law case involving a request for emails on the personal computers of township supervisors. Issue is whether such emails are records of the agency or in the agency's possession, and whether such agencies have any authority or obligation under the RTKL to direct that they be produced.	Pa. Commonwealth Court 2265 CD 2010 2266 CD 2010 2267 CD 2010 Joseph Bagley Michael Clement James Garrity (Sean Fields)	The issue is very similar to the Silberstein case in which PSBA participated, in which the Commonwealth Court ruled, consistent with the PSBA position, that such emails were not records of the agency or in the agency's possession, and that such agencies have no authority or obligation under the RTKL to direct that they be produced. PSBA participation was requested by the solicitor for the township, who also is solicitor for several member school	OOR ordered release of the emails, and Common Pleas reversed. Requester appealed. Briefing is complete. On June 6, 2011 the court ordered the case submitted on briefs only, without oral argument. In a mixed ruling issued December 7, 2011, the court affirmed the lower court's ruling that OOR exceeded its authority by directing the township to provide the requester with sample emails so the requester could draft a more detailed, specific request. On the issue of whether personal emails

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			districts. This could have significant adverse impact on school districts if the Commonwealth Court backs off at all from its ruling in Silberstein or inject new nuance.	allegedly exchanged between two of three township supervisors were "public records", the court vacated and remanded the decision back to the lower court and OOR. Ultimately, the OOR is directed to make a "good faith" determination as to whether the emails are "public records" based in part on whether the emails involved "deliberation" among township supervisors as defined in the Sunshine Act. OOR held a hearing in August 2013 and the case is being briefed there.

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Zauflick v. Pennsbury School District [PSBA is one of a group of local government organizations filing a joint amicus brief being prepared by counsel retained by PSATS.]	Lawsuit against a school district arising from serious injuries suffered by a student when a school bus lost control and struck her. The main issue on appeal is a constitutional challenge to the $500,000 cap on damages against political subdivisions imposed by the Political Subdivision Tort Claims Act (PSTCA), which required the trial court to "mold" the $14 million damages awarded by the jury to the amount of the PSTCA cap.	Pennsylvania Commonwealth Court 1219 CD 2012 Pa. Supreme Court 1 MAP 2014 Robert J. Tribeck (Stuart Knade)	The Pennsylvania Supreme Court has ruled previously that the damages cap does not violate either the state or U.S. constitutions, and is an appropriate legislative means of asserting sovereign immunity and protecting local government finances from disastrous damages awards	After the jury at trial awarded the Plaintiff $14 million in damages, the court then molded the verdict to conform to the $500,000 cap on damages established by the PSTCA. Plaintiff appealed. Oral Argument was held on February 11, 2013. On July 3, 2013, Commonwealth Court, constrained by the precedential case law that previously upheld the constitutionality of the PSTCA's statutory cap, affirmed the order of the trial court molding the jury verdict to the $500,000 cap. On August 2, 2013, Plaintiff filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court, 554 MAL 2013. On January 16, 2014, the Supreme Court granted allocatur. Oral argument before the Supreme Court took place May 6, 2014. Awaiting decision.

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The School District of Philadelphia v. Department of Education and Walter D. Palmer Leadership Learning Partners Charter School	Did the Commonwealth Court err when it held that a cap on student enrollment in a 2005 school charter was valid for school years before 2008 but was invalid for school years after 2008, even though the Charter School Law states that a cap is permissible if "agreed to by the charter school ... as part of a written charter ... whether ... approved prior to or ... subsequent to the [law's] effective date"?	Pa. Supreme Court 28 EAP 2013 Pa. Commonwealth Court 360 CD 2011 Carl A. Solano, Deena Jo Schneider, Michael Levin, and Paul Cianci Robert Max Junker (School District of Pittsburgh) (Katherine Fitz-Patrick)	Both the charter school and the School District signed a written charter agreement in 2005, which contained an enrollment cap. By signing the charter agreement, both parties intended to be legally bound by and mutually agreed to the terms of the charter. Invalidating a charter agreement or requiring a new agreement be reached during the term of the charter due to a new law is extremely detrimental to school districts. Increases in student enrollment and the inability to enforce enrollment caps in charter agreements is a concern for school districts across the state. If school districts cannot count on the validity of charters entered into with charter schools, school districts cannot appropriately allocate limited funds and resources or appropriately plan for the future.	On July 1, 2008, Act 61 amending § 1723–A(d)(1) of the Charter School Law July 1, 2008, eliminating enrollment caps unless agreed to by the parties to the charter. In March 2011, the Secretary of Education found that the charter school agreed to an enrollment cap in its 2005 charter, but he concluded the enrollment cap was invalid for the 2008-09 and 2009-10 school years. On April 3, 2012, Commonwealth Court affirmed that ruling. The court held that the enrollment cap was imposed unilaterally in 2005; and therefore, unenforceable after July 1, 2008, since the parties did not enter into a new agreement on enrollment caps after the passage of Act 61. Pa. Supreme Court granted the Petition for Allowance of Appeal On June 7, 2013. The Brief of *Amici Curiae,* by PSBA and Pittsburgh, was filed on August 21, 2013. Oral argument took place March 11, 2014. Decision issued May 27, 2014 in favor of the

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				school district, consistent with the positions and arguments presented by PSBA. Upon remand to the Commonwealth Court, judgment for the school district was entered on September 25, 2014 in the amount of $1,517,410.51, plus interest.
Watts v. Manheim Township School District	Whether a child, whose time is evenly divided between separated parents who both reside in the school district but on different bus routes, is entitled to receive transportation services between the parents' homes and the child's school.	Commonwealth Court 935 CD 2013 Pa. Supreme Court 112 MAP 2014 Robert M. Frankhouser, Jr. and David M. Walker (Katherine M. Fitz-Patrick)	Under the State Board of Education Regulations the board of school directors is responsible for all aspects of pupil transportation, including: selecting the means of transportation; establishing routes, schedules, and loading zones; and adopting policies and establishing criteria and procedures governing transportation services. Due to significant financial costs, the school district amended its transportation policy, eliminating transportation of students to multiple locations. The law does not require the school district to transport the same student to multiple locations within the school district at varying times.	On May 24, 2013, the Court of Common Pleas of Lancaster County granted Father's Petition for a Permanent Injunction, and ordered the School District to resume busing services. On May 31, 2013, Manheim Township filed a Notice of Appeal in the Commonwealth Court. PSBA filed an amicus brief on September 3, 2013. Oral argument held 12/11/13. On January 7, 2014, Commonwealth Court affirmed the trial court's decision. Commonwealth Court opined that the school district was obligated by the School Code to accommodate the custody arrangement of a resident student's parents by transporting the student to and from school from multiple

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			Additionally, since the student is receiving free transportation services from the school district in accordance with Section 13-1361 of the Pennsylvania School Code, this case is distinguishable from the *Wyland* case. The effect of upholding the lower court's decision in this case would not only have wide-ranging effects on school districts' operations it would interfere with school districts' discretion in adopting policies and providing pupil transportation in accordance with such policies.	households. The school district's application for reargument was denied on February 26, 2014, and the district filed a petition for allocatur in the Pa. Supreme Court on March 28, 2014. Allocatur was granted on September 12, 2014, and briefing in the Supreme Court is underway.
Pennsylvania Gaming Control Board v. Office of Open Records	Right-to-Know Law (RTKL) case in which Commonwealth Court held that -- regardless of what agency employee receives a written request for information – this contact with the agency must be treated like a Right-to-Know Law request.	Pennsylvania Supreme Court 67 MAP 2013 Multiple lawyers for: PA Gaming Board; Intervenors; Office of Open Records	(1) Commonwealth Court erred when it held that the provision in §703 of the RTKL that requires written requests "must" be addressed to the agency open-records officer (ORO) means that the request must be "directed" to the ORO. The whole point of requiring it be addressed to the ORO is to alert the agency to the	Commonwealth Court upheld OOR ruling that any request for some kind of information received by some employee of an agency triggers the timelines and other requirements of the Right to Know Law, regardless of whether the request mentions the law or whether the recipient has any role pertinent to the agency's open records procedures. Gaming Control Board

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	Supreme accepted appeal on these issues: 1. Whether Commonwealth Court erred in holding that a written request for records received by any government agency is to be considered a RTKL request even when the request does not meet the law's bare minimum requirements? 2. Whether Commonwealth Court erred in its analysis under the rules of Statutory Construction by not applying the RTKL's clear and plain language and reaching a result contrary to the intent of the General Assembly?	(Emily J. Leader)	fact that the particular request for information is meant to fall under the RTKL. As Judge Pellegrini's dissent below notes, "Because the majority's holding would make an unaddressed request written on the back of a brown paper bag and given to a PennDot plow driver by the side of the road on a snowy winter night a valid right-to-know law request, I respectfully dissent." (2) The Court never needed to conduct an analysis under the Statutory Construction Act because the language of the statute is plain and unambiguous. Commonwealth Court's majority opinion required a significant stretch of the imagination and does not provide evidence that this part of the statute was ambiguous because whether the word means, "addressed" or "directed" it is plain that RTKL requests must be labeled as an item to go to the agency ORO.	appealed and the PA Supreme Court granted allocatur on September 11, 2013. PSBA's amicus curiae brief was filed October 22, 2013. Briefing is complete. Oral argument took place on May 7, 2014. Awaiting decision.

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Ridley School District v. M.R., et al. (PSBA is joining in and assisting the drafting of an amicus brief in support of the school district's petition for certiorari in the U.S. Supreme Court, appealing from an adverse ruling of the U.S. Court of Appeals for the Third Circuit).	Under the Individuals with Disabilities Act (IDEA), when an administrative due process hearing is held on a special education dispute, the student is entitled to stay in the last educational placement "until all such proceedings have been completed." This is called "stay put" or "pendency." Stay put can include expensive private school placements unilaterally selected by parents when they are unhappy with what the public school has offered. Here, the parents placed the student in private school and lost before the administrative hearing officer. Then, they lost at District Court and the Third	United States Supreme Court S.D. Counsel: John F.X. Reilly. (Hauer & Feld LLP, Washington D.C. prepared Petition for Certiorari) NSBA amicus brief filed by COSA counsel from Indiana, Melissa Conrad. (Emily J. Leader)	NSBA Position(s) with which PSBA concurs: (1) The Supreme needs to clearly rule on the longevity of stay put placements to ensure it is applied consistently throughout the circuits. (2) The Third Circuit should be overruled because a. The position that stay-put continues until every single appeal is exhausted frustrates the requirements that IDEA disputes should be resolved expeditiously and that educational programming for students requiring special education should be collaborative The present approach incentivizes	School district's petition for writ of certiorari was filed June 20, 2014. Supporting NSBA amicus brief was filed July 28, 2014. Respondents' opposition brief was filed August 27, 2014, and the district's reply brief was filed September 10, 2014. Awaiting disposition of petition.

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	Circuit. Despite the fact they had a losing claim, Ridley had to pay the student's private school tuition until this was resolved by the Third Circuit. At issue in this case is: 1. When are "proceedings completed? Should the Third Circuit court be overruled in determining that stay put continues through all appeals		parents to continue appeals indefinitely because they know that during many years of litigation, their child's private school tuition will be paid.	