



CLIENT ALERT
March 30, 2020

CORONAVIRUS (COVID-19)

ACT 13 (SENATE BILL 751) AND SCHOOL TRANSPORTATION

There can be no dispute that the action taken by the Pennsylvania General Assembly on a unanimous vote by both the Senate and House of Representatives and signed by the Governor was a welcome breath of fresh air during this critical closure period.

While no legislation is perfect, Senate Bill 751 tried to address the key issues facing schools that included what the impact of the closure would be on school district transportation vendors.

Within SB751 there were specific provisions to address this critical issue. Subsection L of SB 751 (24 PS 1501.8) provides:

- (1) **EACH SCHOOL ENTITY MAY RENEGOTIATE A CONTRACT FOR SCHOOL BUS TRANSPORTATION SERVICES TO ENSURE CONTRACTED PERSONNEL AND FIXED COSTS, INCLUDING ADMINISTRATIVE AND EQUIPMENT, ARE MAINTAINED DURING THE PERIOD OF SCHOOL CLOSURE. DURING THE PERIOD OF SCHOOL CLOSURE, THE SCHOOL BUS TRANSPORTATION CONTRACTOR SHALL SUBMIT WEEKLY DOCUMENTATION TO THE SCHOOL ENTITY THAT ITS COMPLEMENT LEVELS REMAIN AT OR ABOVE THE LEVEL ON MARCH 13, 2020, IN ORDER TO CONTINUE BEING PAID.**
- (2) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, IF A SCHOOL ENTITY CONTINUES TO PAY A SCHOOL BUS TRANSPORTATION CONTRACTOR OR OPERATES ITS OWN SCHOOL BUS TRANSPORTATION, THE SCHOOL ENTITY SHALL BE ELIGIBLE FOR REIMBURSEMENT FROM THE DEPARTMENT OF EDUCATION AT A RATE THE SCHOOL ENTITY WOULD HAVE RECEIVED HAD THE PANDEMIC OF 2020 NOT OCCURRED, HAD THE MINIMUM INSTRUCTION DAYS REQUIREMENT NOT BEEN WAIVED UNDER SUBSECTION (B)(1) OR HAD THE SECRETARY NOT TAKEN ACTION UNDER SUBSECTION (B)(2).**

The thought process behind the above provisions is, if schools are closed and the transportation vendors are not getting paid or their contracts are such that it places them at a disadvantage, we may lose transportation vendors and/or transportation vendors may end up losing bus drivers who are already in a critical shortage. In turn, in the event that schools would reopen, it would create a catastrophic situation if we would not be able to get students or only a portion of the students to school in light of transportation related failures.

This section of SB751 addresses two critical parts. The first half (Subsection (1)) gives schools the ability to renegotiate a transportation agreement and continue to pay them if certain conditions are met.

The second half of Subsection (1) also provides that school bus transportation vendors shall submit weekly documentation that its complement levels remain to or above the March 13, 2020, levels to continue being paid.

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This now brings us to the crossroad question if school districts are going to continue to pay vendors with payments per the terms of their agreement, at least one condition precedent is to have a complement level remain at or above the level of March 13, 2020.

There is nothing in the law, even Subsection (2) to even remotely suggest that the transportation vendor is entitled to 100% of their monthly payment.

While Subsection (2) clearly indicates that “**If** a school entity continues to pay a school bus transportation contractor or operates its own school bus transportation, the school entity shall be eligible for reimbursement from the Department of Education at a rate the school entity would have received had the pandemic of 2020 not occurred, had the minimum instruction days requirement not been waived. . . ,” it does not compel a 100% make whole remedy.

There are many considerations when Districts are addressing this issue. Uncertainty continues as to whether the Governor will let us know early this week or wait until the last minute closer to April 6, 2020 to determine if in fact schools will remain closed or reopen.

While not openly discussed, it is clearly outlined on national news and in the ranks of medical providers that many places in Pennsylvania are literally less than 10 days away, particularly in the eastern part of the state, from facing the same scenario that the greater New York and New Jersey metropolitan areas are experiencing.

Not that anyone really wants to hear that, however, we are still tasked with ensuring that our transportation vendors do not go under nor do they lose their employees.

We have received numerous inquiries from school districts across the Commonwealth as to what they are planning relative to the transportation issue. Some of the things being contemplated include, but are not limited to:

1. Passing a resolution that the school district will continue to reimburse their transportation provider at their current rate, provided they comply with the requirements of Subsections (1) and (2) of Section L referenced above in SB751.
2. Some districts have weighed the fact that transportation vendors are not removing their buses from their locations and/or transportation hubs and will not be expending any money on fuel to transport students. Depending upon the wording of the transportation agreement, whether there is a set off for fuel or there is a specific charge for fuel, some districts have indicated that they will pay 80% or 90% of the transportation vendor’s cost taking into consideration a credit or set off for fuel costs, and also conditioned upon complying with maintaining necessary complement levels of buses and staff and also submitting their weekly documentation so that in the event there is any type of audit down the line by the state auditors, they will have their ducks in a row when critical documentation is requested.
3. Some districts have simply passed a resolution under the heading of “Transportation Service Payment” and phrased it as follows:

Administration recommends approval to make payment to X Transportation vendor for the balance of the 2019-2020 school year for periods when schools are not in session due to the COVID-19 pandemic. Amounts will be billed and paid at the rate of 90% of the 2019-2020 rates for contracted services, early intervention transportation, and per diem vehicles. Total compensation for the 2019-2020 fiscal year will not exceed 180 days. This payment is conditioned upon the transportation vendor complying with Subsection (1) and (2) of Section (L) of Senate Bill 751 (24 PS 1501.8). The District further requires X Transportation vendor to seek all federal and state stimulus funds available and reimburse the District at appropriate levels. In no instance will the Transportation provider receive a windfall.

COMMENTARY: As most are aware, Congress has passed and President Trump has signed a large stimulus/recovery package that contains a number of provisions that include assistance to transportation providers. The Coronavirus Aid, Relief, and Economic Security Act (the “CARES” Act). The concern of

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many school districts is if in fact they were to pay 100% of the current rate when buses are being housed or not operating, they did not want to be in a situation wherein those transportation vendors received additional monies from the federal government to make them more than whole.

4. Other districts are simply entering into new contracts and/or addendums or interim agreements with their transportation vendors to address among other things the items that are addressed in Item 1 through 3 above for the balance of the 2019-2020 school year.

The full impact of the CARES Act is still being analyzed. We believe the obligation to pay 100% remains open for the time being. Under the section of the CARES Act entitled “Continued Payments to Employees, the Act states that a local educational agency who receives grant funds: *“shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”*

All school districts need to review their transportation agreements. Districts need to work with their administrators and those tasked with overseeing transportation to ensure that if and when school reopens, there is sufficient transportation resources to ensure that students are safely transported to school.

The key with anything is to be as flexible as possible to ensure that the concept of continuity of education is carried over to the continuity of infrastructure that would permit schools to reopen in the event we receive notice that it is permissible to do so.

The purpose of Senate Bill 751 is to be as fair as possible to everyone associated with schools, including safely transporting students transported to and from schools.

We are still early on in this process and there does not appear to be a rush to overhaul long term transportation agreements. It would appear “baby steps” are more appropriate when considering substantial or drastic overhauls of long term transportation contracts.

While the Beard Legal Group Client Alert is designed to provide inform on topics of concern to Pennsylvania Public Schools, it is not legal advice and School Districts should contact their Solicitor, Labor of Special Counsel for advice related to their specific circumstances.