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PETRARCA, GLEASON, BOYLE AND IZZO ATTORNEYS SECURE PERMANENT INJUNCTION FOR CHARTER SCHOOL CLIENT

On July 24, 2023, Cook County Judge Anna Loftus issued a permanent injunction on behalf of Urban Prep Academies, which was represented by Petrarca, Gleason, Boyle & Izzo attorneys, Eric Grodsky and Eric Bernard. CPS sought to close both of Urban Prep Academies' campuses at the conclusion of the 2022-2023 school year through a non-renewal of the charter agreement. On behalf of Urban Prep Academies, our firm challenged whether CPS had the lawful authority to non-renew Urban Prep Academies' charter based upon the school closure moratorium which remains in place until an elected board of education is seated in January of 2025. Following a trial on the merits of the case, Judge Loftus found that CPS violated the school closure moratorium and further found that CPS' actions amounted to an illegal school closure. The permanent injunction

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prohibits CPS from closing Urban Prep until 2025 and requires CPS to negotiate contracts with Urban Prep so that it can continue operating its two campuses, Urban Prep-Englewood and Urban Prep-Bronzeville. If you are interested in reading a more thorough summary of the proceedings, please see the article about this dispute published in the Cook County Record.

Petrarca, Gleason, Boyle & Izzo, LLC is grateful for the opportunity to represent Urban Prep Academies, which will be able to continue to provide an excellent education to Chicago-area boys and young men.

NEW REQUIREMENTS RELATING TO

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EXCESS FUND ACCUMULATIONS

NEW REQUIREMENTS RELATING TO EXCESS FUND ACCUMULATIONS

A new law recently signed by Governor Pritzker will require school districts to report and avoid excess accumulation of money in their principal operating funds. Public Act 103-0394 has added Section 17-1.10 to the School Code. This law will affect each district's annual budget and levy process. It also has implications for one of the most common types of tax rate objection.

Annual Calculation. Beginning with the 2024-2025 school year and for every year thereafter, each district must calculate the combined fund balance of its three principal operating funds: the Educational Fund, the Operations and Maintenance Fund, and the Transportation Fund. The amounts are to be derived from the district's most recently audited annual financial report (AFR). The results of this calculation must be

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made in a written report presented at a school board meeting. (Expressly exempted from this provision, however, are any school districts receiving federal impact aid.)

Note that just last year the General Assembly imposed an obligation on districts to publicly report the cash reserve balances in each district fund twice a year, at the time of the budget and levy hearings. This is an additional requirement, including the aggregation of those three funds and the making of an annual report in writing.

Operational Funds Reserve Reduction Plan. For those districts where the combined principal fund balance exceeds a certain amount, the law imposes an additional requirement. Specifically, where that combined balance is greater than 2.5 times the district's average combined expenditures in those three funds over the prior three fiscal years, the district must submit a plan to the Illinois State Board of Education. That plan must report the methods by which the district will, within

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3 years, reduce that combined balance to an amount no more than 2.5 times the 3-year average expenditures. The law does not suggest what those methods might be, but a district should be able to consider a variety of approaches, including reduced levies, expenditure variations, redistribution of revenues, and fund transfers. All such reserve reduction plans will be posted by ISBE on its website.

The necessary calculation may be illustrated in this way:

The filing of an operational funds reserve reduction plan is required where

$$\frac{\textbf{Combined Fund Balance (Ed + O\&M + Tran.)}}{\textbf{Combined Fund Average Expenditures Over Last 3 FYs}} > 2.5$$

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Regarding the timing of these requirements, the law does not specify when the annual fund report is due, but does provide that, where a reduction plan is required, it must be filed by December 31, so the fund report must be made before that date as well. However, the law also expressly provides that the district is to use its AFR for the expenditure amounts and fund balances, figures which on occasion might not be available for a fiscal year until after January 1 of the next year. Thus, it may be necessary to use incomplete or estimated numbers for the prior year expenditures and final fund balance amounts when final AFRs are not available.

It should be emphasized that, as a practical matter, while excess accumulations in particular operating funds frequently do happen, it would be a rare occurrence where there is an excess accumulation in a school district's three principal operating funds in combination.

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Tax Rate Objections Implications. It is readily apparent that this legislation was meant to address one of the most common tax rate objections filed against school districts, those alleging that certain tax levies were unnecessary because of excess accumulations in a district's fund balance. Many years ago, the courts developed their own rules for evaluating such claims, not based on any statutory language. In cases such as *Central Illinois Public Service Co. v. Miller* (Ill. Sup. Ct., 1969), the courts have used a general rule under which the objectors could be said to have made a prima facie case of excess accumulation where the ratio of money available to be used in a particular fund exceeds 2 or 3 times the average amount spent in the fund over the prior 3 years. If this showing were made, the burden shifted to the district to produce evidence defending the need for its levy despite the amount of revenues available without the levy.

This "Miller ratio" analysis resembles the formula now codified in Section 17-1.10 in some respects, but also differs from it in certain important ways. First, courts using the Miller analysis generally look at each fund individually, while the new law

requires examination of the principal funds in the aggregate. Further, the new law does not address any of the other district funds, such as the Tort Immunity Fund, the Municipal Retirement/Social Security Fund, or the Life Safety Fund. Perhaps most importantly, the law specifies its own new remedy for excess accumulation: the preparation of a report to ISBE by which the district may choose its own path for reduction of the excess over 3 years. This is far different from the objectors' goal, often granted by the courts in the past, of receiving a refund of past taxes.

It remains to be seen, of course, whether and in what ways the courts will view this new legislation as having an effect on excess accumulation tax rate objections, either prospectively or on those objections challenging levies in past years.

If you have any questions, please do not hesitate to contact one of our attorneys.

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MAJOR LEGAL VICTORY FOR CHICAGO CHARTER SCHOOLS

Urban Prep Academies won a significant legal victory on June 23, 2023, with the assistance of attorneys Eric Grodsky and Eric Bernard. The First District Appellate Court granted Urban Prep Academies' motion for a temporary restraining order against Chicago Public Schools (CPS). The order prevents CPS from closing the Urban Prep-Bronzeville and Urban Prep-Englewood campuses until the lawsuit that Urban Prep Academies filed against CPS in April 2023 is fully litigated. The ruling from the Appellate Court will allow both Urban Prep schools to continue to operate and keep their doors open for students.

Urban Prep's lawsuit against Chicago Public Schools alleges that CPS violated the Chicago school closure moratorium, a statute which prohibits CPS from closing schools until 2025. In a brief

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submitted to the Appellate Court, Mr. Grodsky and Mr. Bernard argued that the school closure moratorium prohibited CPS from closing *all* schools, including charter schools, and that CPS' non-renewal of the charters for both academies in October 2022 was tantamount to closing the schools. In granting the restraining order, the Appellate Court determined that Urban Prep Academies had proven that it has "a likelihood of success," on the merits of its lawsuit.

Petrarca, Gleason, Boyle & Izzo, LLC is grateful for the opportunity to represent Urban Prep Academies, which will be able to continue to provide an excellent education to Chicago-area boys and young men.

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GOVERNOR'S DISASTER DECLARATION FOR COVID-19 ENDS

As of May 11, 2023, the COVID-19 public health emergency disaster proclamation declared by Governor Pritzker has ended. The expiration of this declaration also ends many of the rights afforded to individuals and school districts that were contingent upon it. Below are some of the key areas immediately affected by this expiration that schools should be aware of.

- **OPEN MEETINGS ACT**: School boards may no longer hold fully virtual meetings pursuant to Section 7(e). A quorum of the board of education or governing board must be physically present for meetings (Section 2.01). Section 7(a) continues to permit individual members' to participate in the meeting electronically but only for one of the reasons listed in the statute where there is a quorum of members physically present.

- **COVID ADMINISTRATIVE LEAVE:** Schools are no longer required

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to grant paid administrative leave to vaccinated employees for COVID-19 related absences, instead of requiring employees to use available leave as per 105 ILCS 5/10-20.83. Employees should still be provided reimbursement for any leave taken for COVID-related reasons through May 11, 2023.

- **SCHOOL CODE CHANGES:**

- Remote Learning Days: Remote learning and blended remote learning days that are allowable under Section 10-30 of the Illinois School Code are no longer applicable.
- Minimum Clock Hours: Subsections (a) – (j) of section 10-19.05 of the Illinois School Code are back in effect as the disaster declaration and is no longer in effect (Section 10-19.05 (j-5)).
- Report Cards: The deadline to submit report cards to ISBE will no longer be extended; they are due by October 31st.
- Substitute Teachers: Individuals who have obtained a

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short-term substitute teaching license are no longer permitted to be hired for teacher absences lasting six or more days.

- Dismissal Hearings for Tenured Teachers: Certain provisions of Section 24-12(d)(3) of the School Code which permitted remote hearings no longer applies.
- Evaluation Ratings: The provisions under Sections 24A-5, 24A-15, 34-85c, and 24-11, are no longer applicable to teachers and principal evaluation ratings. This includes the default to excellent ratings in some situations and allowing for written agreements as an alternative to performance ratings for non-tenure teachers.
- Withholding Report Cards: The school authority to withhold report cards of those students who have failed to comply with dental and eye examination requirements is now restored.

Districts or cooperatives that may have adopted temporary policies or procedures as a result of COVID-19 since it was first declared a public disaster in March 2020, over three years ago should review them at this time. These policies may cover such topics as vaccinations, testing, COVID-19 notifications, and absences. Any policies or procedures that are contingent

upon the continuance of an emergency disaster declaration may no longer be in effect or applicable.

If you have any questions, please do not hesitate to contact us. We will provide updates with additional guidance as it becomes available. Attorneys in our Flossmoor (708-799-6766), Downers Grove (630-796-2086) and/or Oak Brook (630-928-1200) offices can assist with any questions you may have about these and related matters during these ever-changing times.

US DEPARTMENT OF EDUCATION PROPOSES NEW TITLE IX REGULATION PROHIBITING

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OUTRIGHT BAN ON PARTICIPATION BY TRANSGENDER STUDENTS IN ATHLETICS

On April 6, 2023, the US Department of Education issued its proposed regulation under Title IX concerning students' eligibility for athletic teams.

The proposed regulation would be added to 34 C.F.R. §106.41 as (b)(2), and provides as follows:

If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level: (i) be substantially related to the achievement of an important educational objective, and (ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.

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Schools seeking to apply such criteria would be required to take into account differences in grade and education level, level of competition, and sports.

The US Department of Education also released a Fact Sheet to guide institutions on how the proposed regulation would impact their athletic programs. The Department explained that the proposed regulation would prohibit a school from categorically banning transgender students from participating on a sports team that is consistent with their gender identity.

Instead, schools are to develop their own policies that include eligibility criteria designed to protect students from being denied equal opportunity in athletics. Such team eligibility criteria must:

- serve "important educational objectives, such as ensuring fairness in competition or preventing sports-related injury;"
- account for the nature of the sport, level of competition, and grade/education level to which they apply;
- "not be premised on disapproval of transgender students or a desire to harm a particular student;" and

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- "minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied."

The Department, in its fact sheet, expects that elementary school students should generally be allowed to participate on an athletic team consistent with their gender identity. It also noted that it is "particularly difficult" to exclude students from participation based on gender identity "immediately following elementary school." At the high school and college level, limiting participation based on gender identity may be permitted if it meets the policy framework outlined above. Of particular note, it is the Department's position that it is more difficult to justify a school's need to restrict students from participating in a sport consistent with their gender identity at a lower level of competition such as intramural or JV level teams.

The Department stated its fact sheet that a clarification on "Title IX's application to sex-related eligibility criteria is particularly important as some States have adopted criteria that categorically limit transgender students' eligibility to participate on male or female athletic teams consistent with

their gender identity,"

We will provide further updates on this proposed regulation, including any updates to IHSA's current policy. If you have any questions, please contact one of our attorneys.

If you have any questions about this or any of our other briefings, please contact one of our attorneys at 708/799-6766 (Flossmoor), 630/928-1200 (Oak Brook), or 630/796-2086 (Downers Grove).

U.S. SUPREME COURT RULES THAT IDEA'S EXHAUSTION REQUIREMENT DOES NOT PRECLUDE PLAINTIFF'S

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ADA CLAIM BECAUSE THE RELIEF SOUGHT IS NOT AVAILABLE UNDER IDEA

U.S. SUPREME COURT RULES THAT IDEA'S EXHAUSTION REQUIREMENT DOES NOT PRECLUDE PLAINTIFF'S ADA CLAIM BECAUSE THE RELIEF SOUGHT IS NOT AVAILABLE UNDER IDEA

Perez v. Sturgis Pub. Sch., No. 21-887 (U.S. Mar. 21, 2023)

The Supreme Court issued a unanimous decision on March 21, 2023, holding that a plaintiff may seek a remedy, such as money damages, under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 or other federal laws without first exhausting the administrative procedures provided through IDEA and State law. This holds true even when the underlying dispute deals with the student's individual special education program. The only claims which require exhaustion under the IDEA are those claims where the relief requested, i.e., the remedy, can be provided through the

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administrative procedures of the IDEA itself.

This decision may have a significant impact on the way that disputes from special education students are brought against school districts. It opens the door for parents to directly file federal lawsuits seeking monetary relief when there is a dispute over special education services without first having to file for and exhaust the administrative hearing procedures required by the IDEA. It could also increase "dual forum" cases wherein the District is litigating an administrative due process claim while at the same time defending a federal lawsuit.

FACTS/BACKGROUND

This was a case that brought by a deaf student (Perez) in Michigan alleging deficiencies within the District's special education program after learning that the student would not be receiving a graduation diploma. The IDEA claims were settled by the parties by allowing the student to continue his education in a specialized school. The parents of the student then brought a federal lawsuit under ADA seeking compensatory damages from Sturgis Public Schools (SPS).

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SPS filed a motion to dismiss the original complaint in federal court under IDEA, 20 U. S. C. §1415(l), arguing that Perez was barred from bringing forth the ADA claim as he had not yet exhausted all of IDEA's administrative dispute resolution procedures. The district court ruled in favor of SPS and dismissed the complaint and that decision was affirmed on appeal by the Sixth Circuit Court of Appeals. The rulings were, in large part, based upon the interpretation of a specific section of the IDEA which required exhaustion of the administrative procedures before filing a civil action "seeking relief that is also available under [IDEA]", 20 U.S.C. §1415(l) and the Supreme Court's decision in *Fry v. Napoleon Community Schools,* 580 U.S. 154 (2017).

SUPREME COURT RULING

In interpreting the plain language of IDEA, the Court found that the term "relief" found in the first clause of the IDEA is synonymous with the word "remedy", which is used in the second clause of the IDEA. The Court agreed with Perez in determining that exhaustion is not required when the remedy of monetary damages are sought. The Court even opined that a plaintiff "who files an ADA action seeking both damages and the sort of

equitable relief IDEA provides may find his request for equitable relief barred or deferred if he has yet to exhaust §1415(f) and (g)" while permitting his claim for damages to proceed. This is a departure from previous caselaw that held that when the gravamen of a lawsuit dealt with the denial of FAPE for the IDEA provides relief, exhaustion was required even if the Plaintiff brought the claim under separate laws and sought different remedies.

This decision will have a clear impact on future special education cases. Parents can now avoid the requirement of exhaustion of IDEA remedies if they file a federal lawsuit under ADA or Section 504 requesting monetary damages. This is true even if the alleged harm stated stems from a denial of FAPE from a district. While the Supreme Court intimated that a request for equitable relief may be barred or deferred if there has yet to an exhaustion of the IDEA administrative process, that does not necessarily assist school districts. Instead, it means that a parent could both file a federal lawsuit for monetary damages, while at the same time pursue a due process hearing, creating the potential for parallel lawsuits with potentially different outcomes.

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The standard for monetary damages under ADA or Section 504 will be limited, however, as there must be a finding of deliberate indifference or intentional discrimination, which is a high bar to overcome. Any request for compensation in the form of compensatory or educational expenses is available under IDEA and therefore the exhaustion rule should still apply in these instances.

If you have questions about exhaustion or other IDEA matters, please contact one of our attorneys at 708/799-6766 (Flossmoor), 630/928-1200 (Oak Brook), or 630/796-2086 (Downers Grove).

REMINDER ABOUT BOARD ORGANIZATIONAL MEETINGS

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Pursuant to a recent amendment to the School Code, every school board now has until 40 days after the consolidated election to hold its organizational meeting for electing officers and setting a meeting schedule. 105 ILCS 5/10-10. School boards previously had a shorter period of 28 days after the election to hold this meeting. Of course, newly elected board members cannot be seated until after the official canvass of the results is performed by the county clerk and the elected member has taken the proscribed oath of office. The county clerk has 21 days after the election to perform the canvassing.

Therefore, the effective window period to hold all school board organizational meetings this year begins when the canvassing is complete, likely no earlier than Tuesday, April 25, and ends no later than Sunday, May 14, 2023. If your Board does not have a regular meeting scheduled during that window period, a special meeting should be called.

The only tasks which must be performed at the organizational meeting are these:

1) Swear in and seat newly elected board members. The prescribed oath for board members is in School Code Section 10-16.5 and

your local board policy.

2) Elect board officers, including president, vice president and secretary.

3) Set the board's regular meeting schedule.

Of course, other business may be, but need not be, conducted at the organizational meeting.

If you have any questions about organizational meetings or the transition to new board terms, please contact one of our attorneys at 708/799-6766 (Flossmoor), 630/928-1200 (Oak Brook), or 630/796-2086 (Downers Grove).

COOK COUNTY SCHOOL BOARD

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CANDIDATES' FILING LOCATIONS FOR THE APRIL 4, 2023, ELECTION

For several years now, filings for school board candidates have been handled by the County Clerk rather than at the local school districts as was formerly done. The Cook County Clerk handles this increase in the volume of filings by using multiple sites in the suburbs as well as the Clerk's central office in Chicago to accept these filings. The Cook County Clerk will be using the below-listed filing sites for the upcoming election, same as 2 years ago.

For the first day of filing only, December 12, 2022, the hours of filing will be from 8:00 a.m. to 4:00 p.m. and there will be 4 locations where petitions may be filed:

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Orland Park Civic Center **14750 Ravinia Avenue** **Orland Park, IL**	**Old Orchard Country Club** **700 W. Rand Road** **Mt. Prospect, IL**

Elections Operations Center **1330 S. 54th Avenue** **Cicero, IL**	**Cook County Clerk's Office** **69 W. Washington, Pedway Level** **Chicago, IL**

For the remaining filing period days (Tuesday, December 13 through Friday, December 16, and Monday, December 19), the hours for filing will be from 9:00 a.m. to 5:00 p.m. and the locations will be limited to the following:

Elections Operations Center **1330 S. 54th Avenue** **Cicero, IL**	**Cook County Clerk's Office** **69 W. Washington, Pedway Level** **Chicago, IL**

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All candidates who are in line by 8 a.m. on December 12 will have their papers stamped with that time. If more than one candidate seeking the same office files at 8 a.m., a lottery will be conducted to determine whose name will appear first on the ballot. Candidates for the same office who file between 4 and 5 p.m. on December 19, the last day of filing, will also be included in a ballot lottery for the last spot on the ballot. Anyone who files between 8:01 a.m. on December 12 and 3:59 p.m. on December 19 will be on the ballot in the order they turned in their nomination paperwork.

Here is a link to the Clerk's website announcement:

School Board Candidate Filing Locations and Hours.pdf (cookcountyclerkil.gov)

If you have any questions, please contact any of the attorneys in our Flossmoor Office (708-799-6766), Oak Brook Office (630-928-1200) or Downers Grove Office (630-796-2086).

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RECAPTURE OF AGGREGATE EXTENSION BASE NOW ALLOWS UNDER-LEVY WITHOUT PENALTY

NOW ALLOWS UNDER-LEVY WITHOUT PENALTY

Since its adoption about 30 years ago, the Property Tax Extension Limitation Law ("PTELL" or "tax cap") has contained an inherent disincentive for school districts and other taxing bodies to ever levy less than the legal maximum in any year. That is because when a district levies less than the maximum in one year it forever reduces the limit on its future tax levies. However, a new provision added to the PTELL this year will now provide districts with a means to avoid this problem. If a timely certification is made, a district can under-levy one year without penalizing itself with reduced tax caps in the future.

The new provision is contained in Section 18-190.7 of the

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Property Tax Code. The terms used in the law are "alternative aggregate extension base" and "recapture" (which should not be confused with the amendment last year allowing districts to recover revenues lost due to refunds awarded to taxpayers in tax assessment appeals). This "recapture" relates to the aggregate extension base, the starting point for calculating the district's limiting rate under PTELL. The way this recapture works is that a county clerk, when directed to do so by a taxing district which has levied less than its legal maximum in any year, will use an alternative aggregate extension base. Instead of just using the actual extension from the previous tax year or the highest actual extension over the last 3 years, the clerk will use an amount equal to whatever the maximum extension would have been.

However, districts need to be aware of two important caveats to this new law. The first caveat is that, even under this new law, an extension base cannot be greater than 5% more than the previous year. Although the law says that increases over 5% can be recaptured over time in succeeding years, this limitation presents a major practical obstacle to accessing new revenues, especially in times of high inflation and in cases where there

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has been substantial new construction in a district. Given current consumer price index (CPI) rates, districts should recognize that revenues lost due to even one year of under-levy may not be recovered for many years.

The second important caveat is that a district must have an ISBE Financial Profile System designation of "recognition" or "review" to be eligible to make use of the new law. Districts with a designation of "early warning" or "watch" cannot do so.

To take advantage of the recapture procedure, there is a strict time limit for district action. A district which wants its aggregate extension base to be adjusted after levying less than the maximum for that year must certify that fact to the county clerk within 60 days after the filing of the less-than-maximum levy. So, for instance, if a district levies less than the maximum for tax year 2022 and then files that levy on December 15, the district must file its recapture certification with the county clerk no later than February 13, 2023, even though it will not affect the district until the 2023 levy extended during 2024. That obviously takes some advance planning. Districts which might want to take advantage of this new law will have to act quickly. For that reason, we advise school boards to decide

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on whether to recapture their aggregate extension base at the same time that they approve any levy which is less than the maximum.

While not perfect, the new law is an important and logical reform to PTELL which should have happened long ago. It is designed to allow taxing districts in good financial years to save the taxpayers money without reducing access to future tax revenues in years when those revenues might be more needed. However, because the new law as written will likely be difficult for county clerks to administer, we expect to see some legislative revisions in the near future.

If you have any questions, please do not hesitate to contact one of our attorneys.

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NEW FINANCIAL REPORTING REQUIREMENTS ON CASH BALANCES AND VENDOR INFORMATION

Within the past year, two new financial reporting requirements have been imposed upon school districts. Neither is particularly onerous and neither has penalties specified for noncompliance. Nonetheless, both legal mandates are now in effect.

Cash Balances. New Section 17-1.3 of the School Code provides that at the public hearing at which a school district certifies its annual budget and annual levy, the district must disclose the "cash reserve balance of all funds held by the district related to its operational levy and, if applicable, any obligations secured by those funds." It appears that this requires only a verbal recitation of all fund balances at both the budget hearing and the levy hearing. Even if a public

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hearing is not required for the levy under the Truth in Taxation Act, the fund balances should be announced at the board meeting wherein the final levy is approved.

Vendor Information. New Section 18-50.2 of the Property Tax Code provides that, beginning in tax levy year 2022, every taxing body, including school districts, which impose an aggregate tax levy of more than $5 million must collect and electronically publish certain specified information about its vendors and subcontractors. A "good faith effort" must be made to collect and publish the required information, so a failure to obtain complete or totally accurate information from contractors should not be the responsibility of the district as long as it has made that required effort. The law allows districts to use existing software to comply.

The following information is to be collected and published:

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1. Whether each vendor or subcontractor is a minority-owned or women-owned business, as those terms are defined by the Business Enterprise for Minorities, Women, and Persons with Disabilities Act.
2. Whether the vendor or subcontractor holds any certifications for those categories or if they are self-certifying and, if self-certifying, whether they qualify as a small business under the federal Small Business Administration standards.

If you have any questions, please do not hesitate to contact one of our attorneys.

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