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February 27, 2016

Wilmington Education Improvement Commission

Re: Legal Opinion regarding Resolution in Redistricting Plan

Dear Dr. Allen and Members of the Wilmington Education Improvement Commission:

At your request Bifferato LLC has been asked to render an opinion regarding paragraph 2 of the Redistricting Resolution (the "Resolution") contained in the December 15, 2015 Redistricting in the City of Wilmington and New Castle County: A Transition, Resource, and Implementation Plan (the "Plan"). For the purpose of rendering this opinion, I have made such legal and factual inquiries and such investigations of law as I deemed relevant or necessary for the purposes hereof.

In arriving at the opinions expressed below, I have examined and relied on the following documents:

- (a) Redistricting Resolution at pages 9-10 in the December 15, 2015 Redistricting in the City of Wilmington and New Castle County: A Transition, Resource, and Implementation Plan;
- (b) February 23, 2016 Memo from Joe Pika Ph.D. and Henry Harper, Ph.D. co-Chairs of the WEIC Redistricting Committee and Dan Rich, WEIC Policy Director regarding The Redistricting Resolution, Item #2 in the WEIC Redistricting Plan; and
- (c) February 23, 2016 Letter from Teri Quinn Gray, Ph.D. President of the Delaware State Board of Education to Tony Allen, Ph.D., Chairperson of the Wilmington Education Improvement Commission.

As originally proposed, paragraph 2 of the Resolution provides as follows:

Upon passage of the Joint Resolution by the General Assembly, and signature by the Governor, the Plan, with stipulated milestones at each stage shall be carried out according to the timetable specified if the necessary and sufficient funding, recommended action, and related transition supports are provided in the timeframe and manner proposed, as confirmed by the Commission in consultation with the affected school districts. If the necessary and sufficient funding and transition supports are not provided by the conclusion of each stage and in the manner proposed, the Board of Education, at the request of the Commission after consulting with the affected districts, shall suspend the timetable for implementation until the resources and supports are provided. If the

necessary and sufficient funding and transition supports are not confirmed by the Commission in consultation with the affected districts by July 2018, the plan will expire.

At a meeting of the Delaware State Board of Education (the “Board”) conducted on February 18, 2016, the Board voted to approve the Plan conditioned upon the following change to the Resolution:

If the necessary and sufficient funding and transition supports are not provided by the conclusion of each stage and in the manner proposed, the Board of Education, at the request of the Commission after consulting with the affected districts, ~~shall~~ may suspend the timetable for implementation until the resources and supports are provided.

It is our opinion that this requested change would not have created a so-called “unfunded mandate” or otherwise grant the Board the authority to force the relevant school districts to proceed with redistricting pursuant to the Plan over their objection in the face of insufficient funding. The requested change would only have affected the suspension of timetables for implementation.

The plain text of the Resolution, with or without the Board’s requested change, does not support a reading where only an action by the Board (whether mandatory or discretionary) will prevent the school districts from being forced to comply with the redistricting plan if there is insufficient funding. First, the first sentence of the Resolution provides as follows: “Upon passage of the Joint Resolution by the General Assembly, and signature by the Governor, the Plan, with stipulated milestones at each stage shall be carried out according to the timetable specified if the necessary and sufficient funding, recommended action, and related transition supports are provided in the timeframe and manner proposed, as confirmed by the Commission in consultation with the affected school districts.” This provision explicitly provides that the Plan shall be carried out only if sufficient funding is provided, as confirmed by WEIC in consultation with the school districts, and does not require any action by the Board. Moreover, the Resolution explicitly states that the Plan “will expire” if “necessary and sufficient funding and transition supports are not confirmed by the Commission in consultation with the affected districts by July 2018.” This expiration does not require the suspension of any timetables by the Board or any action from the Board. It is our opinion that these separate, independent sentences provide protections to the school districts that they do not need to proceed with redistricting if there are not “sufficient funds” by July 2018.

It is our opinion that the language contained in the Resolution is clear and unambiguous. However to the extent that a party were to have a different interpretation and conclude that paragraph 2 is ambiguous, then we would look to the intention behind the Resolution to establish the meaning of the provisions. *See e.g., In re Digex S'holders Litig.*, 789 A.2d 1176, 1199-1200 (Del. Ch. 2000) (“Generally, where a statute is unambiguous, there is no reasonable doubt as to the meaning of the words used and the Court’s role is then limited to an application of the literal

meaning of the words. Where, however, a statute is ambiguous and its meaning is not clear, the Court must rely upon its methods of statutory interpretation and construction to arrive at a meaning. If a statute is reasonably susceptible to different conclusions or interpretations, it is ambiguous. The fundamental rule in interpreting an ambiguous statute is to ascertain and give effect to the intent of the Legislature.”). *Cf. In re Mobilactive Media, LLC*, 2013 Del. Ch. LEXIS 26, at *49-50 (Del. Ch. Jan. 25, 2013) (“When interpreting a contract, the court’s ultimate goal is to determine the shared intent of the parties.... If the contract is ambiguous, a court will apply the parol evidence rule and consider all admissible evidence relating to the objective circumstances surrounding the creation of the contract.”) In the instant circumstances, we have reviewed the February 23, 2016 Memo from Joe Pika Ph.D. and Henry Harper, Ph.D. co-Chairs of the WEIC Redistricting Committee and Dan Rich, WEIC Policy Director regarding The Redistricting Resolution, Item #2 in the WEIC Redistricting Plan in which the individuals involved in drafting the Resolution set out the clear and concise intention behind paragraph 2 of the Resolution, which is consistent with our opinion contained herein. Similarly the February 23, 2016 Letter from Teri Quinn Gray, Ph.D. President of the State further supports this unambiguous interpretation.

Regards,



Thomas F. Driscoll III