

IN THE SUPREME COURT OF PENNSYLVANIA

No. 152 MAL 2020

**ARTHUR ALAN WOLK, PHILIP BROWNDIES
and CATHERINE MARCHAND**

Respondents,

v.

SCHOOL DISTRICT OF LOWER MERION,

Petitioner.

Petition for Allowance of Appeal from the March 2, 2020 Order of the Commonwealth Court at 1465 CD 2016 on Remand from this Court's December 11, 2018 Order Reversing the Commonwealth Court and Affirming Trial Court's Grant of Preliminary Injunction at No. 2016-01839

**RESPONDENTS' ANSWER TO PETITION FOR ALLOWANCE OF
APPEAL AND MOTION TO STRIKE THE PETITION FOR
INTERLOCUTORY APPEAL BY THE LOWER MERION
SCHOOL DISTRICT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
COUNTER STATEMENT OF THE FACTS	1
A. The Court of Common Pleas’ Findings	2
B. The Pennsylvania Auditor General	8
C. The Pennsylvania Department of Education.....	14
D. The Commonwealth Court’s Review and This Petition.....	16
QUESTIONS PRESENTED FOR REVIEW	17
A. There Is Nothing In This Case Or The Decision Of The Commonwealth Court That Warrants An Interlocutory Appeal	19
B. The Commonwealth Court Applied The Correct Standard Of Deference To The Decision And Order Of Judge Smyth And Indeed Applied A Far More Stringent Standard Than Should Have Been Applied In This Case If In Fact A Preliminary Rather Than A Permanent Injunction Was Issued.	23
C. Rule 1115 Which Defines The Content Of The Petition For Allowance Of Appeal Prohibits Attached Briefs Which Are In Fact The Affidavits Of Hopeful Amici And They Should Be Stricken	25
1) The Pennsylvania State Education Association Affidavit	26
2) The Pennsylvania Association of School Administrators Affidavit	27
3) The Pennsylvania Association of School Business Officials Affidavit	28
4) The Pennsylvania School Boards Association Affidavit	29
CONCLUSION	31

EXHIBITS

- Exhibit A All opinions and orders of Commonwealth Court
- Exhibit B Auditor General Report
- Exhibit C Pennsylvania Department of Education letter,
dated November 22, 2017
- Exhibit D NBC interview (redacted)
- Exhibit E LMSD Budgets 2015-19
- Exhibit F Appellees three motions for judicial notice and LMSD answers

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Allegheny County v. Moon Twp.</i> , 436 Pa. 54, 258 A.2d 630 (1969).....	7
<i>Appeal of Conners</i> , 103 Pa. 356 (Pa. 1883).....	20, 22
<i>Appeal of St. Clair School Board</i> , 74 Pa. 252 (Pa. 1873).....	20, 22, 31
<i>Arthur v. School Board of Pike Borough</i> , 30 A. 299 (Pa.1894).....	20
<i>Cent. Dauphin Sch. Dist. v. Commonwealth</i> , 146 Pa. Commw. 32,608 A.2d 564 (adjudication and decree nisi)	7
<i>Com. Ex rel Corbett v. Snyder</i> , 977 A2d 28, (Pa. Cmwltth. 2009).....	24
<i>Fox Morris Associates, Inc. v. Conroy</i> , 333 A2d 732 (Pa. 1975).....	24
<i>German Twp. Sch. Dist. v. Sangston</i> , 74 Pa. 454 (1874).....	22
<i>Giacomucci v. Se. Delco Sch. Dist.</i> , 742 A.2d 1165 (Pa. Commw. Ct. 1999)	23

<i>Hibbs v. Arensberg</i> , 276 Pa. 24, 119 A. 727 (1923) (reversing).....	8
<i>Kee v. Pennsylvania Tpk. Comm'n</i> , 743 A.2d 546 (Pa. Commw. Ct. 1999)	23
<i>Leary v. City of Phila.</i> , 314 Pa. 458, 172 A. 459 (1934).....	7
<i>Mastrangelo v. Buckley</i> , 433 Pa. 352, 250 A.2d 447 (1969).....	7
<i>Mazzie v. Commonwealth</i> , 432 A.2d 985 (Pa. 1981).....	24
<i>Watts v. Manheim Twp. Sch. Dist.</i> , 84 A.3d 378 (Pa. Commw. Ct. 2014)	23
<i>Watts v. Manheim Twp. Sch. Dist.</i> , 121 A.3d 964 (Pa. 2015).....	8
<u>Statutes</u>	
24 P.S. § 6-688.....	5
24 P.S. § 6-688(a)	3
24 P.S. § 6-687(j).....	7
53 P.S. § 6926.333	5, 6
53 P.S. § 6926.333(a)(2), (b)	5

53 P.S. § 6926.333(f)(v), (i), (n)	5
53 P.S. § 6926.333(t)(2)(v), (n)	4
72 P.S. §§ 402 and 403	9
Article VIII, Section 10 of the Constitution of the Commonwealth	9
<u>Rules</u>	
Pa. R.A.P. 1115	25
Pa. R.A.P. 1115 (a)	2
Pa. R.A.P. 1115(c)	26
Pa. Rules of Professional Conduct 8.4 (c), (d) and Rule 3.3	18
Rule 1114 of the Pa.R.A.P.	19

COUNTER-STATEMENT OF THE FACTS

Here we go again. This time the Lower Merion School District asks this Court to overturn the fourth time Plaintiffs have prevailed in this case. It claims the sky is falling because the Commonwealth Court followed the mandate of this Court and decided the case on the merits, but now implies that the President Judge, who authored the opinion, is somehow tainted because she was on the first panel who dismissed the appeal for violation of the Rules of Civil and Appellate Procedure. (Petition p.15) So far, six judges of the Commonwealth Court heard the case, read the briefs and listened to arguments of the District, and found them unavailing. The rest of the judges denied rehearing *en banc*. Attached are all opinions and orders of the Commonwealth Court, **Exhibit A**.

It is the epitome of hubris that the District argues that these jurists are all wrong but the District, which has perpetrated a recidivist fraud on the taxpayers of Lower Merion and Narberth and squirreled away some 100 million dollars in illegal taxes, is right instead. This surplus is not what the District uses for running the schools, but instead a slush fund hidden in many accounts mislabeled as to their purpose to keep their illegal existence from the auditors and taxpayers.

This is the poster child of piecemeal appeals, and worse yet, the matters argued are not in the record of any Court deciding this case. The District's improper briefing each time simply ignores the Rules of this Court and the Court below about

what may and what may not be included in briefing. Matters outside the record are not permitted to be argued on appeal! Pa. R.A.P. 1115 (a) 6, (b) (c) and (d).

A. THE COURT OF COMMON PLEAS' FINDINGS

Here is the correct status of this case. Judge Smyth, after notice and trial, found the following as matters of fact and law:

The Court admitted into evidence the District's proposed budgets for revenues for fiscal years 2008-09 through 2016-17. (Injunctive Relief Tr. 28-32 & Ex. P-12.) Those schedules reflected that at the start of nearly every fiscal year during that period the "fund-balance funds" designated or assigned as revenue for the coming year grew from the previous year, from \$5,295,979 in 2008-09 to \$9,335,540 in 2016-17. Plaintiff's witness referred to these budgetary plans as advertising to the public that the District would engage in "deficit spending." (Injunctive Relief Tr. 20:7, 25:19, 27, 33:4-5; *accord* Injunctive Relief Tr. 154).

Yet the budgetary projections at the start of every fiscal year that the District would need to use money in the District's reserves to balance the budget never panned out. In fact, for every fiscal year from 2008-09 through 2014-15, the School District passed a budget that projected multimillion-dollar deficits, yet year-end audits showed multimillion-dollar surpluses, amounting to a total during that span of over \$42,500,000. (Injunctive Relief Tr. 33-34, 41-46; *accord* Injunctive Relief Tr. 214.) If distributed to the taxpayers of the District that accumulated surplus, would represent a \$1400 to a median household. (Injunctive Relief Tr. 46.)

According to budgetary-comparison schedules prepared for the District by certified public accountants Rainer Company, the discrepancies between the predicted deficits in the District's amended final budgets for the fiscal years ending June 30, 2010, through June 30, 2015, and the actual surpluses realized at the ends of those fiscal years, were as follows:

Fiscal Year	Deficit Predicted in Final Budget	Actual Surplus at End of Year	Variance with Final Budget
2009-10	(\$4,790,357)	\$9,520,959	\$14,311,316
2010-11	(5,632,954)	2,157,693	7,790,647
2011-12	(5,101,371)	15,537,492	20,638,863
2012-13	(8,820,402)	5,168,620	13,989,022
2013-14	(7,522,634)	6,105,931	13,628,565
2014-15	(7,517,643)	4,117,736	11,635,379
6-year totals:	(\$39,385,361)	\$42,608,431	\$81,993,792

(Injunctive Relief Tr. Exs. P-13, -13a, -13b, -13c, -13d, -13e; Injunctive Relief Tr. 41-44; *see also* Injunctive Relief Tr. 213-14.)

In each year of projecting a deficit in the budget published to the public, the School District did so in connection with proposing a tax increase. (Injunctive Relief Tr. 57.) In each and every year for which Mr. Orlando prepared budgets for the District claiming an anticipated deficit, and thus requiring a tax increase, there has, in fact, been a surplus. (Injunctive Relief Tr. 125, 214, 216-218.)

Including the recently-enacted tax increase for 2016-17, since 2006 the School District has raised its taxes by a total of 53.3%. (Injunctive Relief Tr. 228 & Ex. P-22.) Mr. Orlando estimated the School District has approximately \$50,000,000 to \$60,000,000 in the bank. (Injunctive Relief Tr. 139-40.)

A 2003 amendment to the Public School Code provides that, for the 2005-2006 school year and each school year thereafter, no school district may approve an increase in taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance less than a certain percentage of the district's total budgeted expenditures. 24 P.S. § 6-688(a). Based on the size of Lower Merion School District's total yearly budgeted expenditures, the statutory cap on its "estimated ending unreserved, undesignated fund balance" is 8%. *Id.*

Although each of the School District's budgets technically complied with this Act by estimating less than 8% of total budgeted expenditures in ending unreserved, undesignated fund balance, at the

end of each fiscal year the District wound up with more than 8% of total budgeted expenditures in the form of surpluses. Surpluses at the end of the fiscal year are, by definition, ending unreserved, undesignated, or unassigned fund balance. (Injunctive Relief Tr. 216-17.)

The School District dealt with this issue by, after the end of the fiscal year, transferring surpluses from undesignated funds to other, designated accounts, such as the capital account. (Injunctive Relief Tr. 45-46, 53-57, 68, 70-71, 74, 107-110.)

In this case the School District, as it had done over the previous years covered by the testimony, obtained such approval from the Department of Education to raise taxes by 4.44%, that is, 2.04% beyond the 2.4% index, by representing to the Department needs to cover anticipated costs of special education and employees' pensions as permitted under 53 P.S. § 6926.333(t)(2)(v), (n). (Injunctive Relief Tr. 20-23.) However, neither the District's proposed budgets nor the actual surpluses it experienced in prior years accompany the requests to the Commonwealth for exemptions from the index, which are made at the beginning of the budgeting process. (Injunctive Relief Tr. 128-36.)

In fact, just as the District's final audits every year showed multimillion-dollar total surpluses when the District's budgets had projected multimillion-dollar deficits, for every fiscal year from 2010 through 2015 the audits disclosed year-ending surpluses ranging from hundreds of thousands to millions of dollars in expenditures for special education, classified under the heading "Special Programs." (Injunctive Relief Tr. Exs. P-13, -13a, -13b, -13c, -13d, -13e.) Similarly, the District had, at the time of the hearing, \$15,300,000 in a "committed fund balance" (Injunctive Relief Tr. 226: 15) for retirement, but that fund was not being used for pensions or to reduce the District's contributions to pensions, which were being funded out of the budget each and every year. (Injunctive Relief Tr. 226-27.) If, consistently with the pattern that has played out over nearly a decade, a multimillion-dollar surplus materializes at the end of fiscal year 2016-17 instead of the 9.3-million-dollar deficit the District has projected in its budget, a tax increase less than the statutory "index" of 2.4% would be sufficient to cover any budgetary imbalance.

IV. Legal Conclusions

Lower Merion School District, over the course of approximately the last ten fiscal years, deliberately engaged in a course of conduct that (1) overestimated in budgets, to the tune of millions of dollars, the deficits the District would incur in the fiscal year ahead, and published these estimates to the public to justify tax increases; (2) failed to predict, although the data was patently clear from past years' experience with the budgets, that the District would actually end the fiscal year with a multimillion-dollar surplus; (3) raised taxes for the fiscal year above the 2.4% limit imposed by 53 P.S. § 6926.333 without a referendum of the voters by consistently representing to the Pennsylvania Department of Education that costs for pensions and special education could not be covered without a tax increase so as to qualify for a Department-approved exception to the law's requirement of a referendum for a tax increase above that limit; (4) after the surpluses run up partly due to the tax increases had been realized at the end of the fiscal year, transferred money from "unassigned" or "general reserve" funds to other assigned accounts to avoid the statutory cap of 8% of the annual budget that 24 P.S. § 6-688 allows a school district with a budget the size of Lower Merion's to allocate to unassigned or general funds while still raising taxes.

In the Taxpayer Relief Act, the General Assembly prohibited a school district from raising taxes beyond an "index" established by the Department of Education without submitting the proposed tax increase to a referendum of the voters of the district. 53 P.S. § 6926.333(a)(2), (b)-(c), (1). The "index" is set at 2.4%, so for Lower Merion School District to raise taxes more than that, it ordinarily would have had to put its proposed tax increase for 2016-17, and for the years preceding that, to a referendum of the voters.

Instead, each year, including 2016-17, the District sought to raise taxes beyond the index by justifying to the Department an exception to the requirement of a referendum based on projected costs for special education and pensions, pursuant to 53 P.S. § 6926.333(f)(v), (i), (n). The Department approved the District's 2016-17 request to raise taxes by 4.44%, or 2.04% beyond the index, based on the District's representations to the Department that anticipated costs for special education and pensions would require the tax increase. On the eve of

the hearing on the taxpayers' petition for injunction, June 13, 2016, the board of the School District raised taxes by the 4.44% approved by the Department.

The Taxpayer Relief Act did not require the District to submit to the Department a proposed budget in conjunction with the request to raise taxes. The Act did not require the District to disclose to the Department that, in every fiscal year since at least 2009-10 the District had passed budgets projecting multimillion-dollar deficits for the coming fiscal year, but every year had multimillion-dollar surpluses, according to its official final audits, which the District in the course of the next fiscal year then transferred, at least in part, into other, accounts dedicated for particular purposes.

. . . [A] school budget ... is a legal document which sets limits on how much a district can spend for various purposes throughout the year and which provides for other financial controls and accountability. Those controls and accountability are fundamentally important because school districts use public funds. Action taken in obtaining and spending these funds is part of the public trust given by citizens to their elected officials.

(Injunctive Relief Tr. Ex. P-7.)

In obtaining each year from the Department the required exemption under 53 P.S. § 6926.333 to permit taxes to be raised more than the baseline "index" of 2.4% without placing the increase before the voters in a referendum, the School District, in representing to the Department that projected costs for pensions and special education would require and justified the exemption under 53 P.S. § 6926.333, need not by law have disclosed to the Department that budgets for the preceding years consistently predicted multimillion-dollar deficits for the coming fiscal year and consistently were wrong in that multimillion-dollar surpluses were actually realized at the end of each fiscal year.

The District's legerdemain in yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that

contrary to projections the District every year experienced multimillion-dollar surpluses, which it then transferred into other accounts, while every year seeking and obtaining the Commonwealth's permission to raise taxes beyond what would ordinarily be permitted without a referendum of the voters based on questionable cost estimates, was less than the transparent budgeting and taxing process the Public School Code and the Taxpayer Relief Act sought painstakingly to institute. The District's tax increases in these circumstances violated the spirit, and in some cases the letter, of these laws.

The remedy provided by the law for a school district's repeatedly and intentionally violating the intendment of the Public School Code in budgeting and taxing practices is an injunction against the practices by the courts. See *Mastrangelo v. Buckley*, 433 Pa. 352, 250 A.2d 447 (1969); *Cent. Dauphin Sch. Dist. v. Commonwealth*, 146 Pa. Commw. 32,608 A.2d 564 (adjudication and decree nisi), *aff'd*, 147 Pa. Commw. 426,608 A.2d 576 (1992) (issuing final injunction under Public School Code, 24 P.S. § 6-687(j), against tax imposed by school district)); cf. *Allegheny County v. Moon Twp.*, 436 Pa. 54, 258 A.2d 630 (1969) (affirming injunction against imposition of municipal tax as contrary to state statute).

The budget required is more than a mere estimate of probable revenues and expenditures. It is a method whereby expenditures are controlled and limited during the fiscal period by designating the amount of money legally at the disposal of the supervisors and the purpose for which it may be expended. These budget provisions are not directory but "in the highest degree mandatory."

Mastrangelo, 433 Pa. at 365, 250 A.2d at 454 (citing *Leary v. City of Phila.*, 314 Pa. 458, 472, 172 A. 459, 465 (1934)).

[S]chool boards do not have unfettered discretion; courts have authority to interfere when a school board's "action is based on a misconception of law, ignorance through lack of inquiry into facts necessary to form intelligent judgment, or the result of arbitrary will or caprice " If such an abuse of discretion occurs, then it is amenable to

the injunctive process, an equitable remedy in which the party seeking injunctive relief bears a heavy burden.

Watts v. Manheim Twp. Sch. Dist., 121 A.3d 964, 972-73 (Pa. 2015) (quoting *Hibbs v. Arensberg*, 276 Pa. 24, 26-27, 119 A. 727, 728 (1923) (reversing denial of injunction against school board's awarding of contract)) (affirming affirmance of permanent injunction against school board for decisions concerning student transport not in accordance with School Code).

Taxpayers and the public should be entitled to expect that governmental units taxing them will not year after year pursuant to a systematic pattern present them with projected deficits to justify raising taxes, raise taxes as a consequence, then record actual massive surpluses in the general fund at the end of each fiscal year, only to transfer the surpluses into other, designated accounts so that the source of the funds cannot be readily determined by those not directly involved in the governmental unit's financial affairs. An injunction against this repeated practice of the Lower Merion School District is the only appropriate remedy to bring the illegal practice to a halt.

V. Injunctive Relief

In consideration of the foregoing findings of fact and conclusions of law, the Court hereby orders as follows: The of Lower Merion School District is hereby enjoined from enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior fiscal year. The board of the School District shall, not later than its next scheduled meeting, adopt a resolution revoking the tax increase of 4.44% for fiscal year 2016-17, and enacting a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16.

(See Appendix D of Petition).

B. THE PENNSYLVANIA AUDITOR GENERAL

Without the knowledge of the Plaintiffs, the Auditor General of the Commonwealth of Pennsylvania conducted his own audit and issued a scathing

report which was never brought to the attention of any Court, including the Supreme Court, in spite of the District's ethical and legal obligation to do so.

The Auditor General found the following:

We conducted a Limited Procedures Engagement (LPE) of the Lower Merion School District (District) to determine its compliance with certain relevant state laws, regulations, policies, and administrative procedures (relevant requirements). The LPE covers the period July 1, 2012, through June 30, 2015, except for any areas of compliance that may have required an alternative to this period. The engagement was conducted pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania and The Fiscal Code (72 P.S. §§ 402 and 403), but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

As we conducted our LPE procedures, we sought to determine answers to the following questions, which serve as our LPE objectives:

- Did the District have documented board policies and administrative procedures related to the following?
 - o Internal controls
 - o Budgeting practices
 - o The Right-to-Know Law
 - o The Sunshine Act

Further, we also reviewed the accuracy of the District's budgets for each fiscal year by comparing them to actual revenue and expenditures and the effect on the District's General Fund balance during this time period.

Finally, we reviewed the District's Certification of Utilization of Referendum Exceptions, otherwise known as Act 1 exceptions, that were completed by the District and submitted to the Pennsylvania Department of Education (PDE) during this time period.

Our engagement found that the District properly implemented policies and procedures for the areas mentioned above and complied,

in all significant respects, with relevant requirements, except as detailed in the observation in this report.

The District Persistently Projected Annual Deficits Despite Realizing Annual Surpluses and Maintaining a Steady \$56 Million General Fund Balance

For the five fiscal years ending June 30, 2016, the District's annual budgets projected operating deficits even though, year after year, the District actually generated surpluses. The District's budgets consistently overestimated operating costs and, as a result, underestimated ending fund balances. Contrary to its pessimistic forecasts, the District maintained a steady, substantial General Fund balance during the audit period while also transferring more than \$18 million in the last four fiscal years to a Capital Reserve Fund.

Inaccurate Forecasts of Operations & Fund Balances

The District consistently developed General Fund budgets that projected and anticipated operating deficits, despite actually realizing annual surpluses. In every single year of the five-year period ending June 30, 2016, the operating variance was significant.

The certification form is signed by the Superintendent and submitted to PDE along with the budget. The form itself refers, as follows, to the restrictions provided for in Section 688(b) of the PSC: **"No school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance (unassigned) less than or equal to the specified percentage of its total budgeted expenditures."** Furthermore, the signature by the Superintendent states that he/she certifies that the information regarding total budgeted expenditures and ending unassigned fund balance is accurate and complete.

Due to continually projecting budgetary deficits for the five fiscal years, the District's General Fund was also consistently projected to decrease; however, actual fund balances remained stable and strong at \$56 million.

Consistent Over-Budgeting of Expenditures

During the five fiscal years between July 1, 2011 and June 30, 2016, the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent.

Significant Capital Reserve Fund Transfers

The District maintained two major capital funds separate from the General Fund: the Capital Projects Fund and the Capital Reserve Fund. In four of the last five years reviewed, the District transferred more than \$18.7 million from its General Fund to its Capital Reserve Fund.

The District said that it made transfers to the Capital Reserve Fund to support its five-year plans for capital improvements, school bus replacements, and IT infrastructure improvements. But it also maintained a significant portion of *committed* reserve funds in its General Fund for future, *capital* projects.

It is significant to note that the total amount committed for future use remained constant at \$35.8 million because, according to the District, no expenses were applied against these funds in any of the five years reviewed. More importantly, the District did not spend any of the funds it committed to cover rising pension costs and instead the District applied to PDE for the retirement cost exceptions which enabled it to increase real estate taxes above the Act 1 limit (more detail on this topic is provided later in the observation).

The Unassigned Fund Balance Issues

Section 688 of the Public-School Code prohibits school districts from approving an increase in taxes if its *estimated* unassigned fund balance exceeds a certain threshold. For the District, that threshold is 8 percent of expenditures. In each of the last five fiscal years ending June 30, 2016, the District's *budgets forecasted* unassigned fund balances below 8 percent every year. Thus, the District technically complied with the PSC when it approved tax increases. However, over the five-year period, the *actual* unassigned fund balance as a percentage of total

expenditures averaged more than 9.5 percent, which is above the PSC threshold of 8 percent.

If the District had estimated its unassigned balances more closely to what its actual unassigned fund balances were, it would not have been able to raise taxes because its unassigned fund balance as a percentage of expenditures would have been above the 8 percent threshold.

We reviewed the District's budgets and found that the District did not plan to use committed funds, as directed by its own board policy. It never defined when or how far into the future it actually planned to use the committed funds.

The Impact of Budgeting Inaccuracies on Taxes

The District not only raised taxes every year in the five-year period, it raised them beyond the Act 1 limit. However, it did so not through public referendum, but by obtaining approval for exceptions from PDE for special education and retirement costs.

As stated earlier, the Act 1 index would have been the allowable limit on tax increases for each year if the District had not obtained approval for exceptions from PDE.

According to our review, the total amount of the exceptions used for special education and retirement costs over the five-year period was \$13.8 million which was significantly less than the \$18.7 million the District transferred to the Capital Reserve funds due to the annual operating surpluses. The District clearly had unassigned funds to cover these costs.

In addition, and of greater concern, despite having already committed funds--as much as \$22.3 million in 2012--for the express purpose of covering increasing retirement obligations, the District continued to request further tax increases, citing increasing retirement obligations, as opposed to using funds previously committed for this purpose. As stated previously, the District never spent any of the funds it set aside for retirement costs nor did it develop a timeline for when it intended to spend those funds.

We reviewed the District's financial data and found that in each of the past five fiscal years, the District:

- **Repeatedly budgeted for operating deficits despite actually realizing operating surpluses.**
- **Consistently over-estimated expenditures.**
- **Transferred an average of \$3. 7 million to its Capital Reserve Fund each year (in four of the last five years).**
- **Maintained a steady \$35.8 million in committed reserves.**
- **Maintained a \$56 million General Fund balance consisting of more than \$20 million in unassigned reserves, which exceeded 8 percent of total expenditures.**
- **Annually applied for and received exceptions from PDE so that it could raise taxes above the Act 1 index in lieu of using the committed funds specifically set aside for rising retirement costs.**

The District's conservative budgeting practices allowed it to raise taxes for each fiscal year from fiscal years 2012-16. Additionally, the District was able to obtain exceptions from PDE to increase taxes every year beyond the Act 1 index. These strategies were insufficiently transparent to the public because they painted a financial picture that did not reflect the District's actual financial condition.

Audit periods are integral since information changes over time and the District's statement that this information was previously reviewed by our office is inaccurate as evidenced by the distinct audit periods. It is also unfounded for the District to presume that previous audit reports without findings and/or observations are going to lead to future reports without findings or observations. Each audit engagement we conduct is an independent engagement that is not influenced by previous audits.

We disagree with the District's statement that the issues discussed in our observation are not worthy of being a reportable condition. During our review of the District's financial data for the 2012-13 through 2015-16 fiscal years, we identified continual and repeated operational surpluses, despite the District repeatedly budgeting for operational deficits. **This was primarily due to the District consistently over-estimating expenditures. As a result, the District transferred an**

average of \$3.7 million to its Capital Reserve Fund while maintaining a \$56 million General Fund balance and \$35.8 million in committed fund balances.

During the time period reviewed, and despite healthy fund balances, the District raised taxes above the Act 1 index. The District stated these tax increases were necessary for future expenditures despite already committing funds for this purpose.

During our period of review, we observed that the District's actual expenditures consistently were less than the budgeted amount.

While the District did set aside funds for future increases in PSERS costs, there is no certainty that the District will expend these funds by 2020. In fact, our review of the District's committed funds over the review period showed that the District continued to set aside funds for retirement costs without expending funds for this purpose. Instead, the District continued to apply for and receive Act 1 exceptions.

Our intent was to show that the District applied for exceptions each year while maintaining a large General Fund balance. We are recommending the District evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

We have noted and responded to management's disagreement to our determinations, but our conclusions remain unchanged. As such, this observation stands as presented.

(Exhibit B Auditor General Report) (Emphasis Supplied).

C. THE PENNSYLVANIA DEPARTMENT OF EDUCATION

Following the embarrassment and humiliation of lack of any oversight by the Pennsylvania Department of Education (“PDE”), the PDE wrote to the District asking how they intended to change their taxing practices in light of the findings by

the Auditor General. (PDE letter dated, November 22, 2017 and attached as **Exhibit**

C.)

For the years ending June 30, 2015, 2014, and 2013... **include a Corrective Action Plan (CAP) with the description of the Finding or Observation, a statement indicating the concurrence or nonconcurrence with the Audit Report's Findings/Observations and Recommendations, specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary, a timetable for the implementation of each corrective action step, and a description of monitoring procedures performed to ensure implementation of the corrective action steps.** Your response/CAP will be forwarded to the Department of the Auditor General and any other applicable Commonwealth Agency.

The PDE was interviewed and confirmed it had no power to challenge the illegal taxing practices of the School Districts. (Interview with PDE spokesperson, dated May 6, 2019, and attached as **Exhibit D.**) **Emphasis supplied.**

MR. HANFT: "We approve the amounts that a school district can raise taxes."

MITCH BLACHER (Voiceover): Ben Hanft runs the Department of Education's Subsidy Data and Administration Division.

MITCH BLACHER: "**Do you ever say no?**"

MR. HANFT: "**The way the law works, we can't.**"

MITCH BLACHER: "Who is checking to make sure that the information that the school district sends you is accurate?"

BEN HANFT: "The school district superintendent certifies to the Department the accuracy of the data."

MITCH BLACHER (Voiceover): If districts submit inaccurate information, taxpayers may never know.

MITCH BLACHER: "**What's the penalty if that certification is wrong?**"

MR. HANFT: "**There's nothing as far as I know.**"

As if all of that is not enough to make the District return the money to the taxpayers, it chose another illegal path.

D. THE COMMONWEALTH COURT'S REVIEW AND THIS PETITION

As the record before Judge Smyth shows, since 2005, the District in order to collect the falsely inflated tax increases, increased the millage and that multiplied by the tax rate gave it the illegal surpluses each year. By 2018, the millage was so grossly inflated even without exemptions from the limits of the index tax increase, the District could accumulate even greater surpluses while appearing to change its taxing practices. Since that change of ostensible taxing practices, the District accumulated another 27 million in illegal surpluses. (Budgets of Lower Merion School District 2018, 2019 attached as **Exhibit E**). These are the underlying facts upon which the District now wants this Court to overturn the Commonwealth Court's decision under the false pretext (the District's well documented legerdemain) that the panel of that Court once again ignored the law, and the decision was such a departure from established precedent that it will just turn our jurisprudence into shambles.

This Court should not lose sight of the fact that neither the Commonwealth of Pennsylvania, nor the Pennsylvania Department of

Education are amici or intervenors in this case on behalf of the District in spite of its efforts to the contrary. If the Commonwealth Court is so wrong, if Judge Smyth is so wrong, if the Auditor General is so wrong, surely the Commonwealth would be front and center to make sure the Supreme Court of Pennsylvania straightened them all out.

QUESTIONS PRESENTED FOR REVIEW

On its second review of this case, the Commonwealth Court was right again. It followed the law established by it and this Court, and this simple fraud case should be returned to the Court of Common Pleas for further proceedings.

It is most notable that in spite of its new position that the decision of the Commonwealth Court would violate the legislatively prescriptive procedures for contesting exemption applications before the PDE, and thus, turn the system upside down, the PDE is silent! And, for good reason. The PDE has already publicly stated it has no power to force a District to address any improper taxation issues, and the Auditor General has already found the conduct of the District to be outright fraud on the public. See Exhibit B.

Boiled down into its simplest terms, the arguments of the District are:

1. The Commonwealth Court was powerless to conclude that the Plaintiffs were entirely proper to bring their action before the Court of Common Pleas when

it concluded that the PDE had no procedure by which a taxpayer could ask for intervention by the PDE.

2. The Commonwealth Court wrongly applied a standard that applies to the requirements for the issuance of a preliminary injunction, and instead used a broader less exacting standard even though the record evidence demonstrated a willful abuse of its taxing authority, and the Taxpayer Relief Act in particular, and showed systematic and continuous abusive and fraudulent taxing strategies

3. It is unclear whether the District persists in asserting its undecided Preliminary Objections as a bar here since it didn't assert them as a bar before the trial court and notably never listed them as a basis for appeal to the Commonwealth Court. (See Exhibit A, Opinion p. 20.)¹

This is a simple fraud case undeserving of any fifth bite at the apple.

¹ All of documents quoted from here were subject of Appellees Motion to Supplement the Record which were unopposed by the District except as to the media's own commentary. We have deleted and not quoted that commentary. But we have quoted only the questions and the answers from the Department of Education's spokesperson. While the Motions were not ruled upon as moot, they are important admissions that make this Petition for Allocatur frivolous in the kindest possible use of that term. Since the Petitioner has attached and continues to attach all sorts of irrelevant materials to each of its filings presumably it would have no new objection to these critically important and relevant documents to Respondent's Answer given that it had an obligation to bring these to this Court's attention anyway. Pa. Rules of Professional Conduct 8.4 (c), (d) and Rule 3.3 Candor Toward the Tribunal.

A. THERE IS NOTHING IN THIS CASE OR THE DECISION OF THE COMMONWEALTH COURT THAT WARRANTS AN INTERLOCUTORY APPEAL

Rule 1114 of the Pa.R.A.P. provides in relevant part:

(b) *Standards.* A petition for allowance of appeal may be granted for any of the following reasons:

(4) the question presented is one of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court;

The District claims that a decision on the merits routinely made by the Commonwealth Court after this Court directed that such a decision be made is of such vital importance that the world of education will come to an end unless this Court addresses the decision of the Commonwealth Court that by design, experience and expertise was to address the very issues raised in the appeal before it.

Upon examination of the decision, it is clear that there is nothing novel about it and it follows ample precedent, strictly abides the record below, and without addressing the merits of the controversy other than determining that there was no abuse of discretion by the trial judge.

We reject the School District's contention that Taxpayers should have made their case to the Department and that the trial court erred in exercising equitable jurisdiction to fashion an interim remedy, pending the outcome of a full review of Taxpayers' underlying complaint. (Ex. A, Opinion p. 20)

We further conclude that the trial court had jurisdiction to issue the preliminary injunction because neither the

School Code nor the Local Agency Law provide a statutory remedy to correct the alleged misconduct of the School District. Likewise, the Taxpayer Relief Act provides no statutory appeal from the Department's approval of a referendum exception. We reject the claim of the School District that the doctrine of exhaustion of administrative remedies barred the trial court's preliminary injunction. (Ex. A, Opinion p. 26).

The Department of Education automatically approved exemptions by computer, not by individual analysis, but the Department of Education's computer for all its failings cannot ratify fraud. This Court, has consistently held that a taxing entity may only tax for what it absolutely needs, and no more. *Appeal of St. Clair School Board*, 74 Pa. 252 (Pa. 1873), taxes levied in excess of what is required will be enjoined; *Appeal of Conners*, 103 Pa. 356 (Pa. 1883), even if the excessive tax was authorized by the Legislature and even if already collected, a Court of Equity may intervene to prevent its collection; *Arthur v. School Board of Pike Borough*, 30 A. 299 (Pa.1894), an injunction will lie to rein in abuses of a school district in levying unlawful taxes. Both the Trial Court and the Commonwealth Court note that the District's taxing policies were legerdemain.

Just what is Legerdemain that both Judge Smyth and the Commonwealth Court found so offensive anyway? Google, the source of all truth defines "legerdemain" as:

leg·er·de·main /'leɪərdə,mān/

noun

1. skillful use of one's hands when performing conjuring tricks.

Similar: sleight of hand, juggling, conjuring, magic, prestidigitation, wizardry, illusion, dexterity, thaumaturgy, deception; trickery.

"a classic piece of management legerdemain"

Creating phony bank accounts to hide recidivist excess of unassigned surpluses in excess of 8%, requesting exemptions from the PDE knowing that the money will never be spent, taxing the people more than the index while not affording them a referendum required by The Taxpayer Relief Act, taxing for the same expense twice or more, just of a few of the tricks practiced on the taxpayers of Lower Merion and Narberth by the District over more than a ten year period. The gist of the District's argument is that only the PDE has the authority and the tools to reign in this unlawful conduct.

As the Commonwealth pointed out, there is no authority or even a mechanism for the taxpayers to challenge such conduct, and if there was any question about the rightness of that determination by the Commonwealth Court, the spokesperson for the PDE confirmed it. What's this appeal about, an uncontroverted record confirmed by the PDE itself?

The Court addressed each of the District's arguments seriatim. Taxpayer Relief Act provides no mechanism to challenge this unlawful conduct, nor does the General Rules of Administrative Practice and Procedure nor does GRAPP. Even the School Code provides no remedy. The only entity arguing that these acts or procedures provide remedies for the taxpayers that are exclusive is this District in this case! The PDE says otherwise and it is the agency the District claims has exclusive jurisdiction to deal with a fraud practiced not only upon it but the Taxpayers. The Commonwealth Court properly rejected those arguments.

Pennsylvania law on this subject goes back an eternity, as in *Appeal of Conners*, 103 Pa. 356 (1883), where the Pennsylvania Supreme Court, faced with issues similar to the case at Bar, ordered that the levying and collection of an unlawful tax is within the powers of a Court of Equity, even if the tax has already been levied and collected.

The Court further held that even if the legislature authorized such a tax, if it is in excess of the sum required, the collection may also be enjoined. The Court cited other authority that was in accord, including *Appeal of St. Clair Sch. Bd.*, 74 Pa. 252, 252 (1873) and *German Twp. Sch. Dist. v. Sangston*, 74 Pa. 454 (1874). The Court went on to say, "The rights of taxpayers cannot thus be set at naught, and their property be taken from them." *Id.* at 358.

B. THE COMMONWEALTH COURT APPLIED THE CORRECT STANDARD OF DEFERENCE TO THE DECISION AND ORDER OF JUDGE SMYTH AND INDEED APPLIED A FAR MORE STRINGENT STANDARD THAN SHOULD HAVE BEEN APPLIED IN THIS CASE IF IN FACT A PRELIMINARY RATHER THAN A PERMANENT INJUNCTION WAS ISSUED.

The second issue presented in this Petition is whether the Commonwealth Court applied the appropriate deference standard in finding that the decision of the trial court was not an abuse of discretion and supported by sufficient evidence to warrant a mandatory injunction. Even though the injunction requested below was not a Preliminary Injunction, this Court decided a mandatory injunction was no longer always permanent, but simply a version of a Preliminary Injunction to preserve the status quo. That was contrary to long standing authority. *Watts v. Manheim Twp. Sch. Dist.*, 84 A.3d 378 (Pa. Commw. Ct. 2014), *aff'd*, 632 Pa. 583, 121 A.3d 964 (2015); accord, *Giacomucci v. Se. Delco Sch. Dist.*, 742 A.2d 1165 (Pa. Commw. Ct. 1999); *Kee v. Pennsylvania Tpk. Comm'n*, 743 A.2d 546 (Pa. Commw. Ct. 1999).

That position was soft-pedalled by the District on both its first appeal to the Commonwealth Court and this Court, but now because of the heightened standard of review the District admits it was mandatory injunction which is always permanent because it requires the defendant to do something he hadn't done and does not put the parties back into the place they were before the issuance. The District now urges on this latest appeal that the heightened standard of review is appropriate, not the

highly deferential reviews that prohibits an inquiry into the merits of the controversy by the reviewing court.

Not taken in by that duplicitous argument, the Commonwealth Court opinion nonetheless applied the stricter standard of review anyway, painstakingly quoted from the record below that showed without any contradiction or doubt that the district committed fraud on the taxpayers.

“We do not determine the merits of the underlying controversy.”

The proper question is whether the Taxpayers produced sufficient evidence to show that “substantial legal questions must be resolved to determine the rights of the parties.” Citing *Com. Ex rel Corbett v. Snyder*, 977 A2d 28, (Pa. Cmwlth. 2009) See Exhibit A, Opinion at p. 22.

The Court pointed out in Note 9 that:

“On appeal from an order granting a preliminary injunction our scope of review is “limited to whether there were reasonable grounds for the action of the court below, and we will not consider the merits of the case or pass upon reasons for or against such action, unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable.” *Fox Morris Associates, Inc. v. Conroy*, 333 A2d 732, 733-34 (Pa. 1975)

Where, as here, the preliminary injunction appealed is mandatory in nature, which commands the performance of some positive act to preserve the status quo, “we have insisted that a clear right to relief in the plaintiff be established.” *Mazzie v. Commonwealth*, 432 A.2d 985,988 (Pa. 1981)”. See Exhibit A, Opinion at p. 9.

More than enough evidence was provided below to support whether a Preliminary, Permanent or Mandatory Injunction by any standard. Why does the District fear a remand so much where a Court rather than an administrative agency with which it has so much sway decides this issue? Because with the record below and the Findings of the Auditor General in complete agreement, winning by the District in Court is a legal and factual impossibility.

The District got what it wanted, review by the Commonwealth Court on the merits and with a heightened standard. It lost. No further interlocutory appeal is appropriate here as nothing is new, and nothing is different from what the Auditor General and PDE admit are the way things are. Only the District's legerdemain seeks to call foul what absent its trickery, deception and illusion is just a simple fraud case.

C. RULE 1115 WHICH DEFINES THE CONTENT OF THE PETITION FOR ALLOWANCE OF APPEAL PROHIBITS ATTACHED BRIEFS WHICH ARE IN FACT THE AFFIDAVITS OF HOPEFUL AMICI AND THEY SHOULD BE STRICKEN

The four affidavits of the hopeful future amici should be stricken as neither in accordance with the Pa.R.A.P. nor proper as not part of the record below, untimely as premature, are a prohibited separate brief under Pa. R.A.P. 1115 and afford no useful information relevant to this Petition.

Rather than recite this rule in its entirety it not only does not permit these affidavits but states that “the Prothonotary of the Supreme Court **will refuse** to file any petition for allowance of appeal to which is annexed or appended any brief below or supporting brief.” Pa. R.A.P. 1115(c) **Emphasis added.**

These affidavits are nothing more than supporting briefs in disregard of the Rule.

1) **The Pennsylvania State Education Association Affidavit**

The affidavit from the Pennsylvania State Education Association, the organization of school teachers that gives hundreds of thousands of dollars annually to the campaigns of judges, which is ultra vires at least, makes the preposterous assertion that:

This case strikes at the heart of local control of educational programming, interjects the judiciary into educational policy making clearly reserved to the people and the ballot box, and encourages **risky and unsound financial practices** that threaten the education of students across the Commonwealth. See Exhibit 4 to the Petition, **emphasis added.**

Really? “Risky and unsound financial practices.” This affiant, who clearly didn’t read the Auditor General’s report, concludes that fraud on the taxpayers is not a risky financial practice, but a Court that uncovers it, criticizes it and overturns only the illegal surplus of it has engaged in risky and unsound financial practices! This is just another reason why an amicus from a lobbying group in the name of a charity, that ought to lose its tax exemption for things like this, is itself unsound and risky

legal practices. (**Exhibit F**, Appellees Motion for Judicial Notice PDE letter dated November 22, 2017 and LMSD Response).

2) The Pennsylvania Association of School Administrators Affidavit

Exhibit 5 to Petition is an affidavit from counsel to the Pennsylvania Association of School Administrators. That's the lobbying group for the people who committed the recidivist fraud on the taxpayers of Lower Merion and Narberth.

She claims that the decision of the Commonwealth Court will “strike at the heart of local control of educational programming, interjects the judiciary into the educational policy making clearly reserved to the people and the ballot box. And, encourages risky and unsound financial practices that threaten the education of students across the Commonwealth.”

Clearly, she neither read the opinion and Order of Judge Smyth or the record or the Auditor General report that found that her “administrators” deliberately lied to the Pennsylvania Department of Education and to the taxpayers, and hid the results of what they were doing in so many accounts that were never to be used. She also missed the part about none of the money was involved in the education of students at all, but were illegal surpluses in violation of the Taxpayer Relief Act.

It is an affidavit like this that shows such an ignorance of the facts and proofs in this case that is the poster child for it being stricken is of no help whatsoever to

this Court or anyone else. She is endorsing uncontradicted proof of theft by her members!

3) **The Pennsylvania Association of School Business Officials Affidavit**

Exhibit 6 to Petition is equally useless to aid this Court. It is from none other than the Pennsylvania Association of School Business Officials. That is the same organization that represents business managers like Victor Orlando of the Lower Merion School District who is the one who prepared the false budgets for the District in each of the four years he was in his position as Business Manager before the trial in this case. He testified that he knew that the standards by which he was to account were violated and his budgets violated the Taxpayer Relief Act. See Exhibit 1 to Petition, NT Orlando 205:22-206:8.

Against that testimony, his lobbying group says under oath:

“In so ruling, the Commonwealth Court determined that Plaintiff’s challenging the School District had demonstrated a “clear right to relief”.... It will undermine the decisions made with a duty of **prudence as to financial matters by school board members elected by voters and potentially create financial instability for the School District, students, employees, taxpayers and the community....**”

See Exhibit 6 to Petition, ¶6. In paragraph 13 of same exhibit, Mr. Kegel goes on to say:

“Unfortunately, if the Commonwealth Court is permitted to prevent school boards from making decisions on conservative and prudent financial practices in accordance with the Public School Code and the Taxpayer Relief Act, neither the trial court nor the Commonwealth

Court will have an answer for school districts, students, employees, and the community if the school district has insufficient funds to navigate a crisis such as the current COVID-19 crisis.”

So according to Mr. Kegel, whose organization never saw a false and phony budget it didn't love, feels that if the surplus only is removed beyond the 8% allowed by statute, any Business Manager should be able to cook the books in defiance of the Taxpayer Relief Act, become a one man legislature and his district can scourge the community. He ignores the impact on home sales, the impact on home evictions for inability to pay excessive school taxes, ignores the phony accounting that Orlando admitted to, the lies to the PDE, the public, the taxpayers and the accumulation of now 100 million in illegal surpluses; not money to run the schools, not money for a crisis, but surplus. What's worse and remarkably but not surprisingly abhorrent to anyone's sense of human decency, Mr. Kegel refers to the COVID-19 as an example of the need for illegal surpluses when he knows that this crisis has not impacted the finances of the District or any district one cent. Even without students or staff, this district received 100% of its illegal taxes, and the only people harmed are those who now are out of a job.

4) The Pennsylvania School Boards Association Affidavit

The last supplicant's affidavit is that of the Pennsylvania School Boards Association, Exhibit 7. That affiant swears that the decision of the Commonwealth Court will disenfranchise the voters of the School District by overriding their choices

about the level of investment in the community's public education program the community believes is appropriate and sufficient, in favor of disturbing and (sic)offensive philosophy reflected in the Plaintiffs' complaint that a public school system has no business trying to offer the kind of quality education affluent families can find in the best private schools, and that a tax supported education to be limited to the bare bones minimum.

Of course, Mr. Knade could not have read either the transcript or the Decision and Order of Judge Smythe or the Commonwealth Court's decision because had he done so, he would have realized, as any lawyer should before taking an affidavit that what he swore to is false. The injunction and the decisions about which Mr. Knade refers enforced the Taxpayer Relief Act, an act by the Pennsylvania Legislature to protect Pennsylvanians from profligate spending by school boards whether in a wealthy suburb where, to Mr. Knade's surprise, not everyone is wealthy and only addressed the surplus that was beyond the 8% mandated by the Legislature as the maximum. Mr. Knade clearly did not familiarize himself with the Auditor General's Report which excoriated the District for creating phony bank accounts to hide the excess and illegal taxes with no intention to spend the money and then taxing for the same subjects twice, and more.

According to this organization, fraud on the taxpayers is OK, lies to the PDE are OK, and the Courts are without any authority when the PDE has stated publicly

it has no remedy for this criminal conduct by its members. This is why we have Rules, and those Rules specifically state what is permitted in a Petition for Allowance of Appeal.

These affidavits should be stricken with the admonition that lawyers for proposed but not yet amici owe this Court a higher calling, learning the facts being the first and being honest with the Court, the second, but not necessarily in that order.

The affidavits and their affiants ignore the incontrovertible fact, confirmed by Judge Smythe and the Auditor General, that the District has collected more than \$40 million in taxpayer funds, stored them in mislabeled accounts, and not used them for any school-related purpose. That collection was not only contrary the direction of the legislature, it was against the long-standing precedent of this Court:

That a court of equity may enjoin against the collection of a tax levied without authority of law, is undoubted. Even when legislative authority is given to tax for a certain purpose, yet if the tax levied is clearly in excess of the sum required for that purpose, its collection may also be enjoined.

Appeal of St. Clair School Board, 74 Pa. at 256-57.

CONCLUSION

This Petition should be denied because there is nothing novel about a simple fraud case, the District got its appellate review on the merits and even got a more stringent appellate review for a Mandatory Injunction rather than an ordinary Preliminary Injunction and still lost *per curiam*. The PDE says it has no ability or

authority to deny tax increases sought by school districts and the Commonwealth Court found there is no remedy provided by statute. That leaves the Court of Equity, which has acted many times previously to provide Taxpayers relief against school districts from illegal taxes and it acted here in accordance with that long-standing authority.

Dated: April 8, 2020

Respectfully submitted,

By: /s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)
THE WOLK LAW FIRM
1710-12 Locust Street
Philadelphia, PA 19103
(215) 545-4220 (Telephone)
(215) 545-5252 (Facsimile)
arthurwolk@airlaw.com
Attorney for Respondents/Pro Se

CERTIFICATE OF COMPLIANCE

Respondents' Answer to Petition For Allowance of Appeal and Motion to Strike the Petition for Interlocutory Appeal by the Lower Merion School District complies with the type-volume limitations of Pa.R.A.P. 1116 as this Answer contains 8,611 words, as counted by Microsoft Word 2016, the word processing system used to prepare the answer, which excludes those portions of the brief that are exempt by Pa.R.A.P. 1116(d).

Dated: April 8, 2020

/s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 8, 2020

/s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire

Exhibit A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

:
:
:
:
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:
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:
:
:

No. 1465 C.D. 2016

ORDER

NOW, September 16, 2016, any answer to appellant's application to expedite shall be filed and served on or before September 23, 2016. The Court of Common Pleas of Montgomery County shall certify the record in this matter on or before September 30, 2016. The appeal of the order granting a preliminary injunction shall not prevent the trial court from proceeding further with other aspects of this matter. Pa.R.A.P. 1701(c).



Mary Hannah Leavitt, President Judge

Certified from the Record

SEP 16 2016

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, and Catherine Marchand	:	
	:	
	:	
v.	:	
	:	
The School District of Lower Merion, Appellant	:	No. 1465 C.D. 2016

MEMORANDUM AND ORDER

Before the Court is appellant’s application to expedite this matter and appellees’ answer in opposition thereto. Appellees challenged the right of appellant to approve a 4.44 percent tax increase. Preliminary objections are pending to the amended complaint.

On August 29, 2016, the Court of Common Pleas of Montgomery County (trial court) entered an order enjoining appellant from “enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior fiscal year.” An appeal was filed on August 31, 2016, which, as noted by appellant, acts as an automatic supersedeas of the order.

Appellant seeks expedited briefing and disposition of this matter, asserting that the trial court’s injunction “has upset the process that is mandated by statute for public school budgeting, which requires acting by appellant on its 2017-2018 proposed preliminary budget by January 26, 2017.” Appellant requests an


abbreviated briefing schedule, with argument either in Philadelphia in October or Pittsburgh in November, followed by expedited disposition of the appeal.

Appellee opposes expedited disposition, asserting, *inter alia*, that appellant has a large budget surplus upon which it can rely in the absence of short-term relief.

Because an automatic supersedeas is currently in effect, we will deny the application to expedite without prejudice. If appellees' recently-filed motion to vacate the automatic supersedeas is granted by the trial court, appellant may seek reinstatement of that supersedeas in this Court.

Accordingly, September 20, 2016, appellant's motion to expedite is denied. The trial court record in this matter having been certified on September 16, 2016, appellant's brief (4 copies) and reproduced record (4 copies) shall be filed and served on or before October 20, 2016. Appellees' brief (4 copies) shall be filed and served no more than thirty (30) days after service of appellant's brief.

The Chief Clerk shall list this matter on the Court's Harrisburg argument list during the week of December 12, 2016.



P. Kevin Brobson, Judge

Certified from the Record

SEP 20 2016

and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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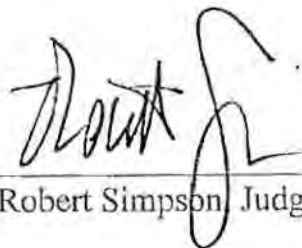
No. 1465 C.D. 2016

ORDER

NOW, October 11, 2016, upon consideration of appellees' motion to quash appeal and the answer in opposition thereto, it appears that appellees argue waiver based on the docketing statement filed by appellant on September 16, 2016. The docketing statement is required by Commonwealth Court pursuant to Internal Operating Procedure 501, 210 Pa. Code §69.501. As noted on the face of the docketing statement, "[a]ny issue omitted will not constitute a waiver of the issue on appeal."

According, appellee's motion to quash is denied.

Appellees' motion to dismiss and/or quash the appeal for failure to file post-trial motions will be decided with the merits of the appeal.



Robert Simpson, Judge

Certified from the Record

OCT 12 2016

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

No. 1465 C.D. 2016

ORDER

Now, October 17, 2016, upon consideration of appellees' "motion for reconsideration of this Court's Order of October 11, 2016 denying appellees' motion to quash and referring a motion to quash for failing to file post trial-motions to the merits panel" (motion), the motion is denied.


As to appellees' first motion to quash (pertaining to the Statement of Issues filed with the Docketing Statement), the Court again directs appellees' attention to the directions noted on the Docketing Statement Form, which provide, in pertinent part: "Information in the Statement of Issues **is used to screen cases for the Court's Mediation Program** Any issue omitted will not constitute a waiver of the issue on appeal." (Emphasis in original). Any issue/argument regarding whether an issue has been properly preserved for appellate review should not be based on the accuracy of the Statement of Issues and will not be decided by the Court in that context.

Appellees' second motion to quash the appeal based upon appellant's failure to file post-trial motions remains listed with the merits of the appeal.

Certified from the Record

OCT 18 2016

And Order Exit



Keith B. Quigley, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, :
and Catherine Marchand :
 : No. 1465 C.D. 2016
v. :
 :
The School District of Lower Merion, :
Appellant :

PER CURIAM

ORDER

AND NOW, this 1st day of December, 2016, upon review of the motion of Arthur Alan Wolk, Philip Browndies, and Catherine Marchand (Appellees) to strike the briefs of the School District of Lower Merion (the District) and amici curiae and/or to quash the District's appeal, as well as the answers and replies thereto, Appellees' motion is hereby listed for consideration with the merits of the appeal.

Certified from the Record

DEC 01 2016

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, :
and Catherine Marchand :

v. :

The School District of Lower Merion, :

Appellant : No. 1465 C.D. 2016

PER CURIAM

ORDER

AND NOW, this 6th day of December, 2016, the above-captioned matter, scheduled for oral argument before a panel of judges on December 15, 2016, in Courtroom No. 5001, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, shall be called as the **second case on the list** of cases to be heard on that same day and location. The argument session commences at 9:30 a.m.

Certified from the Record

DEC 06 2016

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, :
 and Catherine Marchand :
 :
 v. : No. 1465 C.D. 2016
 : ARGUED: December 15, 2016
 The School District of Lower Merion, :
 Appellant :

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
 HONORABLE JULIA K. HEARTHWAY, Judge
 HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
 JUDGE HEARTHWAY

FILED: April 20, 2017

The School District of Lower Merion (School District) appeals from the August 29, 2016, order of the Common Pleas Court of Montgomery County (trial court), which granted the request of Arthur Alan Wolk, Philip Browndies, and Catherine Marchand (collectively, Appellees) for injunctive relief. The trial court enjoined the School District from enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior year.

On March 11, 2016, Appellees filed an amended class action complaint on behalf of present and past residents of Lower Merion, seeking \$55,000,000 in damages plus interest and costs for alleged misrepresentations to the Pennsylvania Department of Education (Department) and expenditures for a continuing education program for teachers (Counts I-III). Appellees also asked the

trial court to suspend the Lower Merion School Board's (Board) authority to act for the School District, to appoint a trustee and court monitor to supervise the School District's decision-making and to manage its finances (Counts IV-V, XI); to impose a constructive trust over the School District's surpluses (Count VI); to award damages and terminate certain employees in connection with a matter settled in 2010 (Counts VII-VIII); to appoint a Board of Viewers (Count IX); to mandate that bond refinance disclosures be revised and that monies be reallocated from one account to another (Count X); and to declare the system of taxation to be unconstitutional because it taxes property owners only and does not vary the amount of tax by the number of children a taxpayer has in the schools (Count XII).

The School District filed preliminary objections to the amended complaint alleging that: (1) Appellees' claims are nonjusticiable political questions; (2) Appellees lack standing; (3) the claims are barred by what is commonly called the Political Subdivision Tort Claims Act;¹ (4) Appellees failed to join indispensable parties; (5) the amended complaint fails to state a claim; (6) it would be contrary to law and the Constitution to award the relief Appellees seek; and (7) Appellees failed to exhaust all administrative remedies.

While the preliminary objections were pending before another judge, Appellees filed the petition at issue here, asking that the School District be enjoined from enacting any tax increase for the 2016-17 fiscal year. On June 14, 2016, a hearing was held on the injunction petition. At the hearing, the School District reported that it had passed a 4.4% tax increase the previous evening, and

¹ 42 Pa. C.S. §§8541-8542.

thus, the matter was moot. Appellees then requested “to address the merits of the case because [the] tax increase is absolutely illegal.” (N.T. at 6.) The trial court permitted Appellees to amend the form of relief requested and argue the merits of the case. Seeking an order enjoining the School District from taking any further actions to implement the tax increase, Appellees presented two witnesses. The substance of their testimony is summarized below.

Section 333 of the Taxpayer Relief Act (Act 1),² 53 P.S. § 6926.333, authorizes the School District to increase its taxes up to a certain index without taxpayer approval, which is 2.4% in this case. However, the School District can increase its taxes by up to 4.4% without taxpayer approval if it applies for certain exemptions with the Department. After projecting a \$9.3 million dollar deficit for the 2016-17 budget, the School District applied for, and was granted, exemptions related to pension contributions and special education costs by the Department. The School District tax increase of 4.4% was thus facially within the Act 1 requirements.

The School District projected a deficit for every fiscal year from the 2009-10 fiscal year through the 2015-16 fiscal year; however, it actually realized a *surplus* of approximately \$42.5 million during those fiscal years. The School District did not credit taxpayers after it realized a surplus, nor did it adjust its budgeting practices to account for the surplus. Over that time-period, the School District underestimated annual revenue by approximately one percent and overestimated expenditures by approximately five-and-a-half percent. Each fiscal

² Act of June 27, 2006, P.L. 1873, *as amended*.

year, the School District projected a budget deficit and proposed a tax increase. The School District has raised taxes by approximately 53.3% since 2006.

The School District, in approving the 2016-17 budget, authorized the Board to transfer funds from its general, unreserved fund to the capital reserve fund. A school district has the authority to make that transfer as long as it complies with the Public School Code of 1949 (School Code).³ This transfer allows a school district to move funds that would be reflected in the general, unreserved fund to the capital reserve fund, which is not governed by statutory restrictions. Absent that transfer, the School District would have an unrestricted, general fund balance greater than the 8% limit imposed by section 688 of the School Code, 24 P.S. §6-688.⁴

The evidence further provided that each fiscal year since 2009-10, the School District certified to the Department that the estimated ending, unreserved, undesignated fund balance would be equal to or less than 8% of the total estimated expenses. The School District, whose only restriction is on the ending, unreserved, undesignated fund balance, has never exceeded the 8% amount. However, at the end of each fiscal year, the School District transfers monies from its general, unreserved fund into other funds to remain in compliance, get more funding, and raise taxes to a higher rate for the following fiscal year.

³ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101 – 27-2702.

⁴ Section 688 of the School Code, *as amended*, 24 P.S. §6-688, *added* by the Act of December 23, 2003, P.L. 304.

On August 29, 2016, the trial court issued an injunction ordering the School District to revoke that portion of the tax increase that had been authorized by the Department pursuant to section 333 of Act 1, 53 P.S. § 6926.333, to compensate for the increased costs of pension and special education obligations. The trial court further enjoined the School District from collecting a tax increase for fiscal year 2016-17, of over 2.4% more than what was in effect for the prior fiscal year. The trial court reasoned that:

The School District's accounting practices may not incur a specific sanction of the statutes regulating them, but they are skirting the purposes of the law to prevent school districts from both accumulating a surplus over a certain percentage of the annual budget and raising taxes over a certain level without going to a referendum of the voters. The [School] District's legerdemain in yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that contrary to projections the [School] District every year experienced multimillion-dollar surpluses, which it then transferred into other accounts, while every year seeking and obtaining the Commonwealth's permission to raise taxes beyond what would ordinarily be permitted without a referendum of the voters based on questionable cost estimates, was less than the transparent budgeting and taxing process the Public School Code and the Taxpayer Relief Act sought painstakingly to institute. The [School] District's tax increases in these circumstances violated the spirit, and in some cases the letter, of these laws.

The remedy provided by the law for a school district's repeatedly and intentionally violating the intendment of the Public School Code in budgeting and taxing practices is an injunction against the practices by the courts. . . .

* * *

Taxpayers and the public should be entitled to expect that governmental units taxing them will not year after year pursuant to a systematic pattern present them with projected deficits to justify raising taxes, raise taxes as a consequence, then record actual massive surpluses in the general fund at the end of each fiscal year, only to transfer the surpluses into other, designated accounts so that the source of the funds cannot be readily determined by those not directly involved in the governmental unit's financial affairs. An injunction against this repeated practice of the . . . School District is the only appropriate remedy to bring the illegal practice to a halt.

(Trial Ct. Op., at 14-15.)

Along with enjoining the School District from “enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior fiscal year,” the trial court also ordered the School District to “adopt a resolution revoking the tax increase of 4.4[]% for fiscal year 2016-17, and enact[] a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16.”⁵ (*Id.*, at 15-16.) The School District appealed to this Court.⁶

Before this Court, the School District contends that the trial court issued a preliminary injunction, which is immediately appealable as an

⁵ The trial court did not address “the question of any rebates, refunds, or credits for taxes already paid,” nor did it address Appellees’ request to establish a constructive trust for the taxpayers who already paid. (Trial Ct. Op., at 16.)

⁶ Our review of a permanent injunction is limited to determining whether the trial court committed an error of law. *J.C. Ehrlich Company, Inc. v. Martin*, 979 A.2d 862, 864 (Pa. Super. 2009).

interlocutory appeal under Pa. R.A.P. 311(a)(4), and thus, Appellees' motion to quash for failure to file post-trial motions should be denied. We disagree.

In determining whether an injunction is preliminary or permanent, an appellate court must look to the nature of the relief granted. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 1132 (Pa. Super. 1986). A preliminary injunction is issued to preserve the status quo and prevent imminent and irreparable harm that could occur before the case is heard on its merits. *Id.* at 1131 (Pa. Super. 1986). A preliminary injunction is an extraordinary remedy that may only be granted if a clear right to relief is established. *Id.* In preserving the status quo, the court must restore the last peaceable, non-contested status that preceded the controversy. *Id.* A preliminary injunction shall issue "only after written notice and [a] hearing." Pa. R.C.P. No. 1531(a). "The question to be determined at this hearing is whether there is an urgent necessity for interim relief before the case can be heard on the merits." *Soja*, 522 A.2d at 1131.

A permanent or final injunction is issued when a party establishes a clear right to relief. *Board of Revision of Taxes v. City of Philadelphia*, 4 A.3d 104, 133 (Pa. 2010). "[T]he party need not establish either irreparable harm or immediate relief," as is necessary when seeking a preliminary injunction, and "a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." *Buffalo Township v. Jones*, 813 A.2d 659, 663 (Pa. 2002). When a final injunction is granted, the court must issue a decree nisi with a statement of the issues, findings of fact and conclusions of law. *Soja*, 522 A.2d at 1132.

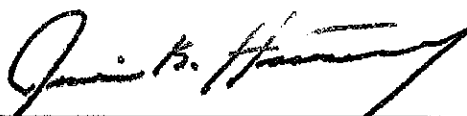
Here, Appellees sought an “injunction” directing the School District to rescind a 4.4% tax increase that was passed in violation of the School Code and Act 1, and to refund any taxes that were paid under it.⁷ The trial court held a hearing to “address the merits of the case because the tax increase [that occurred the night before the hearing,] was [allegedly] illegal.”⁸ (N.T. at 6.) At the hearing, testimony and evidence were presented and both parties had the opportunity to present and cross-examine witnesses. At the hearing’s conclusion, the trial court asked the parties to submit proposed findings of fact, conclusions of law, and responses to opposing submissions. The parties complied. The trial court thereafter, filed an opinion and order with extensive findings of fact and conclusions of law. The trial court did not “maintain the status quo,” as it would in a preliminary injunction, but enjoined the School District from enforcing or collecting a tax increase for fiscal year 2016-17 that was more than 2.4% over the tax from the previous fiscal year. The trial court further ordered the School District to adopt a resolution revoking the 4.44% tax increase for 2016-17, and enact a tax of no more than 2.4% greater than the previous fiscal years’ tax. Thus, after looking at the “nature of the relief granted,” we must conclude that a permanent injunction was issued by the trial court.

⁷ Appellees requested an “injunction,” they did not specify whether the injunction was “preliminary” or “permanent.”

⁸ The trial court permitted Appellees to amend their requested relief at the hearing because the School District passed the tax increase the night before the scheduled hearing. A trial court may enter an order for a *permanent* injunction where appropriate based upon the testimony, evidence, and arguments presented at a hearing for a *preliminary* injunction. See *Watts v. Manheim Township School District*, 84 A.3d 378, 381 (Pa. Cmwlth. 2013).

Pursuant to *City of Philadelphia v. New Life Evangelistic Church c/o Bishop Jackson*, 114 A.3d 472, 478-79 (Pa. Cmwlth. 2013), post-trial motions must be filed within ten days following the trial court's ordering a permanent injunction or the issues raised on appeal are waived. In *New Life Evangelistic Church*, the church was given the opportunity to submit evidence and cross-examine witnesses in response to the city's case. This Court concluded that a trial was held for the purposes of Pa. R.C.P. No. 227.1, and post-trial motions needed to be filed.

Accordingly, because the trial court issued a permanent injunction and the School District failed to file post-trial motions, we must dismiss the School District's appeal because all of its issues are waived.⁹ See Pa. R.C.P. No. 227.1(c)(2) and (b)(2).¹⁰



JULIA K. HEARTHWAY, Judge

⁹ Because we dismiss the School District's appeal for failure to preserve issues on appeal, Appellees' motion to strike the briefs of the School District, the Pennsylvania School Boards Association, and, collectively, the Pennsylvania State Education Association, Pennsylvania Association of School Administrators, and the Pennsylvania Association of School Business Officials, is dismissed as moot.

¹⁰ "Post-trial motions shall be filed within ten days after . . . the filing of the decision in the case of a trial without jury." Pa. R.C.P. No. 227.1(c)(2). Further, grounds for post-trial relief must be stated in the motion or they are deemed waived. Pa. R.C.P. No. 227.1(b)(2).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, :
and Catherine Marchand :

v. :

No. 1465 C.D. 2016

The School District of Lower Merion, :
Appellant :

ORDER

AND NOW, this 20th day of April, 2017, the School District of Lower Merion's appeal of the order of the Montgomery County Court of Common Pleas in the above-captioned matter is dismissed. Further, Arthur Alan Wolk, Philip Browndies, and Catherine Marchand's Motion to Strike the Briefs of Appellant and Amici Curiae is dismissed as moot.



JULIA K. HEARTHWAY, Judge

Certified from the Record

APR 20 2017

and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, :
and Catherine Marchand :

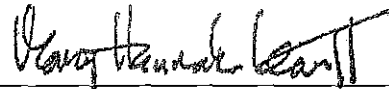
v. :

No. 1465 C.D. 2016

The School District of Lower Merion, :
Appellant :

ORDER

NOW, June 19, 2017, having considered appellant's application for reargument and appellees' answer in response thereto, the application is denied.



MARY HANNAH LEAVITT,
President Judge

Certified from the Record

JUN 19 2017

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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No. 1465 C.D. 2016

ORDER

NOW, March 8, 2019, it appearing that the Supreme Court remanded this matter for consideration of the merits, Appellant School District of Lower Merion (District) shall file an amended brief, or notify the Court of its intent to rely upon its previous brief, by April 8, 2019. Appellees shall file an amended brief, or notify the Court of their intent to rely upon their previous brief, within 30 days of service of the District's amended brief or notification.

Upon receipt of all amended briefs or notifications from counsel, the Chief Clerk is directed to list the above-captioned matter for oral argument before a panel of judges on the next available and appropriate argument session.



Christine Fizzano Cannon, Judge

Certified from the Record

MAR 11 2019

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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No. 1465 C.D. 2016

ORDER

NOW, May 9, 2019, upon consideration of Appellees' application to strike the supplemental brief of Appellant and the amended amici curiae briefs, and the responses of both Appellant and amici curiae, the application shall be listed for disposition at the same time as the merits of this appeal. No further briefs or responses regarding the application are permitted.



Ellen Ceisler, Judge

Certified from the Record

MAY 10 2019

And Order Ent

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, and Catherine Marchand	:	
	:	
v.	:	
	:	
The School District of Lower Merion, Appellant	:	No. 1465 C.D. 2016

ORDER

NOW, May 9, 2019, upon consideration of Appellees' application to strike the supplemental brief of Appellant and the amended amici curiae briefs, and the responses of both Appellant and amici curiae, the application shall be listed for disposition at the same time as the merits of this appeal. No further briefs or responses regarding the application are permitted.



Ellen Ceisler, Judge

Certified from the Record

MAY 10 2019

And Order Ent

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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No. 1465 C.D. 2016

ORDER

NOW, May 29, 2019, upon consideration of Appellees' motion to take judicial notice of the Pennsylvania Department of Education letter dated May 6, 2019 and official statements of the Pennsylvania Department of Education Division of Subsidy Data and Administration Chief given to NBC News, and the response of Appellant in opposition thereto, the motion shall be listed for disposition at the same time as the merits of this appeal. No further briefs or responses regarding the motion are permitted.



Ellen Ceisler, Judge

Certified from the Record

MAY 30 2019

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

No. 1465 C.D. 2016

ORDER

NOW, June 14, 2019, upon consideration of appellees' motion to take judicial notice of Pennsylvania Department of the Auditor General report on the Lower Merion School District dated October 23, 2017, and the response of appellant in opposition thereto, the motion shall be listed for disposition at the same time as the merits of this appeal. No further briefs or responses regarding the motion are permitted.



Christine Fizzano Cannon, Judge

Certified from the Record

JUN 17 2019

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

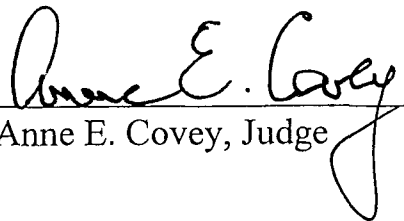
v.

The School District of Lower Merion,
Appellant

No. 1465 C.D. 2016

ORDER

NOW, July 2, 2019, argument on (1) Appellees' "Motion for Sanctions, Referral to the Pennsylvania Attorney General, and Referral to the Attorney Disciplinary Committee," and the Answer thereto, and (2) Appellant's Motion to Strike Appellees' Reply, and Appellees' Answer thereto, is set for July 22, 2019, at 10:00 a.m. The argument shall be conducted by telephone call to the offices of counsel of record, and shall originate from the chambers of a designated judge of the Commonwealth Court sitting in Harrisburg. **Cell phones may not be used.**


Anne E. Covey, Judge

Certified from the Record

JUL 03 2019

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

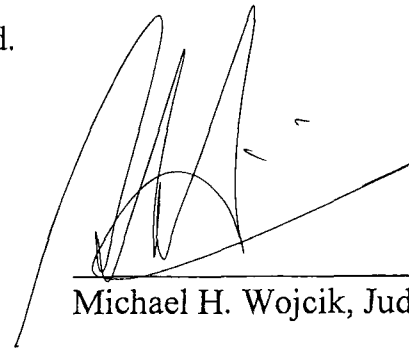
The School District of Lower Merion,
Appellant

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No. 1465 C.D. 2016

ORDER

NOW, July 8, 2019, upon consideration of Appellees' motion to take judicial notice of the Pennsylvania Department of Education letter dated November 22, 2017, and the response of Appellant in opposition thereto, the motion shall be listed for disposition at the same time as the merits of this appeal. No further briefs or responses regarding the motion are permitted.



Michael H. Wojcik, Judge

Certified from the Record
JUL 09 2019
And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

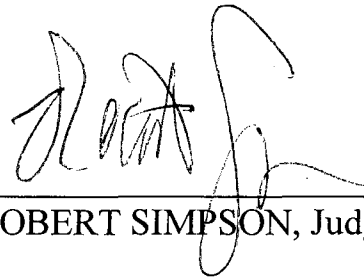
v.

The School District of Lower Merion,
Appellant

No. 1465 C.D. 2016

ORDER

NOW, July 22, 2019, upon consideration of Appellees' "Motion for Sanctions; Referral to the Pennsylvania Attorney General, and Referral to the Attorney Disciplinary Committee" (Motion) and Appellant's answer thereto, and after argument on this issue by counsel of record, the Motion is denied for the reasons discussed during argument.



ROBERT SIMPSON, Judge

Certified from the Record

JUL 22 2018

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

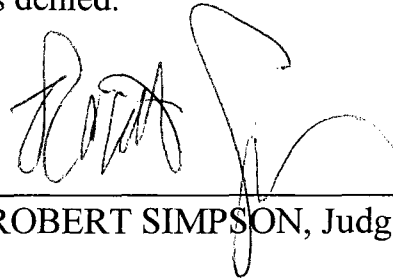
v.

The School District of Lower Merion,
Appellant

No. 1465 C.D. 2016

ORDER

NOW, July 22, 2019, upon consideration of Appellant's "Motion To Strike [Appellant's Counsel's] 'Reply' of June 18, 2019" (Motion), and after argument on the issue by counsel of record, the Motion is denied.



ROBERT SIMPSON, Judge

Certified from the Record

JUL 22 2018

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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No. 1465 C.D. 2016
Argued: November 12, 2019

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION

BY PRESIDENT JUDGE LEAVITT

FILED: March 2, 2020

On remand from the Pennsylvania Supreme Court, we consider the merits of a preliminary injunction issued by the Court of Common Pleas of Montgomery County (trial court) upon the petition of Arthur Alan Wolk, Philip Browndies, and Catherine Marchand (collectively, Taxpayers). The injunction barred the School District of Lower Merion (School District) from implementing a 4.44% tax increase for fiscal year 2016-2017 and, instead, limited the tax increase to 2.4%. This Court affirmed the trial court’s grant of the injunction on the ground that the School District had waived all issues on appeal. *Wolk v. School District of Lower Merion* (Pa. Cmwlth., No. 1465 C.D. 2016, filed April 20, 2017) (unreported). The Supreme Court reversed and directed this Court on remand to address the merits of the School District’s appeal. *Wolk v. School District of Lower Merion*, 197 A.3d 730 (Pa. 2018). After review, we affirm the trial court’s grant of the preliminary injunction.

Background

In 2016, Taxpayers initiated a class action on behalf of present and past residents of Lower Merion, seeking \$55,000,000 in damages plus interest and costs against the School District. Taxpayers alleged that the School District misrepresented its finances to the Pennsylvania Department of Education (Department) and set up an illegal education program for teachers (Counts I-III). Taxpayers sought to suspend the authority of the Lower Merion School Board (School Board) to operate the School District and to replace it with a trustee (Counts IV-V, XI); to impose a constructive trust over the School District's surplus funds (Count VI); to terminate certain employees for misconduct (Counts VII-VIII); to appoint a Board of Viewers (Count IX); to revise the School District's bond refinance disclosures and transfer funds from the capital reserve fund to the general, unreserved fund (Count X); and to declare the School District's taxation system unconstitutional because it taxes property owners without consideration of the number of children a taxpayer has in the schools (Count XII).

The School District filed preliminary objections to the amended complaint asserting that: (1) the claims raised nonjusticiable political questions; (2) Taxpayers lack standing; (3) the claims were barred by the act commonly referred to as the Political Subdivision Tort Claims Act;¹ (4) Taxpayers failed to join indispensable parties; (5) the amended complaint did not state a cause of action upon which relief can be granted; (6) the amended complaint sought unconstitutional relief; and (7) Taxpayers had an administrative remedy with the Department.

While the preliminary objections were pending, Taxpayers petitioned for a preliminary injunction to enjoin the School District from implementing any tax

¹ 42 Pa. C.S. §§8541-8542.

increase for the 2016-2017 fiscal year in light of the prior years' unlawful tax increases. Taxpayers asserted that the injunction would not prejudice the School District because it had accumulated a large surplus. The School District's answer denied the material allegations. The trial court conducted a hearing on June 14, 2016.

At the hearing, the School District informed the trial court that the School Board had approved a 4.44% tax increase the previous evening, which rendered the preliminary injunction moot. Taxpayers requested the trial court "to address the merits of the case because [the] tax increase is absolutely illegal." Notes of Testimony, 6/14/2016, at 6 (N.T. __). The trial court permitted Taxpayers to amend their petition to challenge the newly announced tax increase and present evidence thereon.

Under the Taxpayer Relief Act,² a school district can increase taxes up to a point set by the statutory index, without having to put the increase to a vote by the taxpayers. For the School District, the maximum increase was 2.4% for the 2016-2017 fiscal year.³ However, the School District had requested the Department to allow it to raise taxes by 4.44% without taxpayer approval. In its application for the exception, the School District projected a \$9.3 million deficit for the 2016-2017 school year. On that basis, the Department approved the School District's request for an exception from the voter referendum, which authorized the School District to increase real estate taxes to generate revenue "of no more than \$4,051,213 over the index." Reproduced Record at 1541a (R.R. __).

² Act of June 27, 2006, P.L. 1873, *as amended*, 53 P.S. §6926.333.

³ The amount of the tax increase in excess of 2.4% has been placed in escrow during this litigation.

Taxpayers' evidence showed that the School District had projected a deficit for every fiscal year from 2009-2010 through 2015-2016; however, during that period it accumulated a budget surplus of approximately \$42.5 million. The evidence showed that each year the School District underestimated its annual revenue by approximately 1.1% and overestimated expected expenditures by approximately 5.5%. Each fiscal year, the School District projected a budget deficit that entitled it to an exception from the voter referendum otherwise required by the Taxpayer Relief Act. Since 2006, the School District had increased taxes by 53.3%.

Taxpayers' evidence also established that the School District regularly transferred funds from its general, unreserved fund to its capital reserve fund.⁴ Absent that transfer, the School District would have had a general, unreserved fund balance greater than the 8% limit imposed by Section 688 of the Public School Code of 1949 (School Code).⁵ Since 2009-2010, the School District has annually certified to the Department that its general fund balance would be less than 8% of its estimated

⁴ School District did not identify specific capital projects at the preliminary injunction hearing.

⁵ Act of March 10, 1949, P.L. 30, *as amended*, added by the Act of December 23, 2003, P.L. 304, 24 P.S. §6-688. Section 688(a) of the School Code states, in pertinent part, that

(a) For the 2005-2006 school year and each school year thereafter, no school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance less than the percentages set forth [in Section 688(a)].

24 P.S. §6-688(a). Section 688(a) provides that for a school district with total budgeted expenditures greater than or equal to \$19 million, its estimated ending unreserved, undesignated fund balance must be less than 8% of its total budgeted expenditures in order for the school district to raise real property taxes. 24 P.S. §6-688(a). The School District's total budgeted expenditures ranged from \$193 million to \$258.9 million from fiscal year 2009-2010 through 2016-2017. R.R. 1232a. On the other hand, the capital reserve fund is not subject to statutory caps under the School Code.

expenditures.⁶ The School District's general fund transfers kept its general fund balance below the 8% limit in the School Code. Taxpayers described the fund transfers as a sham designed to avoid putting school tax increases to a vote by residents.

Taxpayers presented two witnesses and documentary evidence, including the School District's proposed budgets for fiscal years 2008-2009 through 2016-2017 and budgetary comparison schedules prepared by certified public accountants. This evidence demonstrated the discrepancies between the projected deficits and the actual realized surpluses. The School District presented no witnesses. Its documentary evidence consisted solely of its preliminary and final budgets for fiscal year 2016-2017 and the Department's letter approving the District's voter referendum exception. The School District argued that Taxpayers did not establish the elements necessary for a preliminary injunction.

Trial Court Decision

On August 29, 2016, the trial court issued an injunction ordering the School District to "adopt a resolution revoking the tax increase of 4.44% for fiscal year 2016-2017, and enacting a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16." Trial Court op. at 15-16. Crediting Taxpayers' evidence, the trial court reasoned as follows:

The School District's accounting practices may not incur a specific sanction of the statutes regulating them, but they are skirting the purposes of the law to prevent school districts from both accumulating a surplus over a certain percentage of the annual budget and raising taxes over a certain level without going to a referendum of the voters. The District's legerdemain in

⁶ Section 688(b) of the School Code provides that a school district that approves an increase in real property taxes shall provide the Department with information certifying compliance with Section 688 of the School Code. 24 P.S. §6-688(b).

yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that contrary to projections the District every year experienced multimillion-dollar surpluses, which it then transferred into other accounts, while every year seeking and obtaining the Commonwealth's permission to raise taxes beyond what would ordinarily be permitted without a referendum of the voters based on questionable cost estimates, was less than the transparent budgeting and taxing process the [] School Code and the Taxpayer Relief Act sought painstakingly to institute. The District's tax increases in these circumstances violated the spirit, and in some cases the letter, of these laws.

The remedy provided by the law for a school district's repeatedly and intentionally violating the intendment of the [] School Code in budgeting and taxing practices is an injunction against the practices....

Taxpayers and the public should be entitled to expect that governmental units taxing them will not year after year pursuant to a systematic pattern present them with projected deficits to justify raising taxes, raise taxes as a consequence, then record actual massive surpluses in the general fund at the end of each fiscal year, only to transfer the surpluses into other, designated accounts so that the source of the funds cannot be readily determined by those not directly involved in the governmental unit's financial affairs. An injunction against this repeated practice of the [] School District is the only appropriate remedy to bring the illegal practice to a halt.

Trial Court op. at 14-15 (emphasis added).

The trial court did not identify its injunction as preliminary or permanent. Notably, it directed Taxpayers to post a bond of \$4,200 “[i]n the event

this injunction is construed as subject to Pa. R.C.P. [No.] 1531(b),⁷” and this rule pertains to preliminary injunctions. Trial Court op. at 16. The trial court acknowledged that its decision did not resolve all issues in the case, noting that “preliminary objections were argued before another Judge” two weeks prior. *Id.* at 1. *See also id.* at 16 (declining “Plaintiffs’ requested relief of establishing a constructive trust in favor of taxpayers who have already paid the unlawful increase in taxes, pending determinations relating to the class-action status of this litigation”). Implicitly, the trial court rejected the School District’s jurisdictional challenges.

Appeal

The School District appealed the trial court’s injunction to this Court. Taxpayers moved to quash the School District’s appeal for failure to file a post-trial motion in accordance with Pennsylvania Rule of Civil Procedure No. 227.1(c)(2), (requiring filing of post-trial motions within 10 days after “the filing of the decision in the case of a trial without a jury”). PA. R.C.P. No. 227.1(c)(2). This Court quashed the School District’s appeal, holding that the trial court had in actuality issued a

⁷ Pennsylvania Rule of Civil Procedure No. 1531(b) states:

(b) Except when the plaintiff is the Commonwealth of Pennsylvania, a political subdivision or a department, board, commission, instrumentality or officer of the Commonwealth or of a political subdivision, *a preliminary or special injunction shall be granted only if*

(1) *the plaintiff files a bond in an amount fixed and with security approved by the court, naming the Commonwealth as obligee, conditioned that if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees, or*

(2) *the plaintiff deposits with the prothonotary legal tender of the United States in an amount fixed by the court to be held by the prothonotary upon the same condition as provided for the injunction bond.*

PA. R.C.P. No. 1531(b) (emphasis added).

permanent injunction. By not filing a post-trial motion, the School District had waived all issues raised in its appeal.

The School District filed a petition for allowance of appeal, which the Supreme Court allowed on the question of whether a post-trial motion was required or whether the School District could proceed with an interlocutory appeal as of right under Pennsylvania Rule of Appellate Procedure 311(a)(4).⁸

Reversing this Court, the Supreme Court held that the School District's appeal was governed by Rule 311(a)(4), which authorizes an interlocutory appeal of an order granting an injunction. PA. R.A.P. 311(a)(4). It held that the trial court's August 29, 2016, decision was not a "decision in the case" for purposes of Pennsylvania Rule of Civil Procedure No. 227.1(c) because it did not dispose of all claims for relief. It was not a permanent injunction. The Supreme Court was not, "at this juncture, prepared to say" that a court may never convert a preliminary

⁸ Pennsylvania Rule of Appellate Procedure 311(a)(4) provides:

(a) General rule.—An appeal may be taken as of right and without reference to Pa. R.A.P. 341(c) [regarding final orders] from:

(4) Injunctions.—An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa. C.S. §§3323(f) [regarding injunction issued in matrimonial causes], 3505(a) [regarding injunction issued to prevent disposition of property to defeat obligations]; or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

PA. R.A.P. 311(a)(4).

injunction hearing into a permanent injunction hearing without the consent of the parties. *Wolk*, 197 A.3d at 741-42. The Supreme Court concluded, however, that such a scenario “should be infrequent.” *Id.* at 742.

The Supreme Court remanded the School District’s appeal to this Court for consideration of the merits of the School District’s appeal of the preliminary injunction.⁹

By order of March 8, 2019, this Court directed the parties to file amended briefs or to notify this Court of their intent to rely upon their previous briefs. All parties submitted amended briefs. The Pennsylvania State Education Association (PSEA), Pennsylvania Association of School Administrators (PASA), and the Pennsylvania Association of School Business Officials (PASBO) have jointly filed an amended *amicus curiae* brief in support of the School District. The Pennsylvania School Boards Association also filed an amended brief of *amicus curiae* in support of the School District.

The School District raises three issues, which we have reordered for purposes of our review. First, the School District argues that the trial court usurped the authority of the Department to approve, or disapprove, an exception from the

⁹ On appeal from an order granting a preliminary injunction, our scope of review is “limited to whether there were reasonable grounds for the action of the court below, and we will not consider the merits of the case or pass upon reasons for or against such action, unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable.” *Fox-Morris Associates, Inc. v. Conroy*, 333 A.2d 732, 733-34 (Pa. 1975). Where, as here, the preliminary injunction appealed is mandatory in nature, which commands the performance of some positive act to preserve the status quo, “we have insisted that a clear right to relief in the plaintiff be established.” *Mazzie v. Commonwealth*, 432 A.2d 985, 988 (Pa. 1981). *See also Shepherd v. Pittsburgh Glass Works, LLC*, 25 A.3d 1233, 1241 (Pa. Super. 2011) (explaining that preventative injunctions preserve the status quo by forbidding an act or acts, while mandatory injunctions command the performance of some specific act that will maintain the relationship between the parties).

voter referendum required for a tax increase in excess of the statutory index. Second, the School District contends that the trial court lacked authority to issue a preliminary injunction because preliminary objections raising questions of, *inter alia*, jurisdiction had been filed and were awaiting a decision. Third, the School District argues that Taxpayers did not meet the prerequisites for the issuance of a preliminary injunction and, thus, the trial court's injunction must be vacated.

PSEA, PASA, and PASBO's amended brief of *amici curiae* echoes the School District's argument on justiciability. These associations emphasize that the decisions of the elected board of school directors leave "no room for judicial intervention." PSEA Amended *Amicus Curiae* Brief at 6. The Pennsylvania School Boards Association's amended *amicus curiae* brief echoes the School District's argument that the trial court usurped the authority of the Department to review a school district's request for a referendum exception.

I. Taxpayers' Motion to Strike Amended Briefs

Taxpayers have moved to strike the amended briefs of the School District and of the *amici curiae*.¹⁰ Taxpayers point out that the School District makes legal arguments involving the General Municipal Law¹¹ and Section 1922 of the Statutory Construction Act of 1972, 1 Pa. C.S. §1922. Motion to Strike at 3-5, ¶7. These were not raised to the trial court. They further challenge the School District's citation to "matters on the internet," such as election results, the Department's reports on referendum exceptions, and data of employer contributions to the Public School Employees' Retirement System (PSERS). Motion to Strike at 3-4, ¶7 (citing

¹⁰ See Order of May 9, 2019 (wherein this Court ordered disposition of the application to strike at the same time as the merits of the appeal). Taxpayers also filed a "Motion for Sanctions, Referral to the Pennsylvania Attorney General, and Referral to the Attorney Disciplinary Committee." By order of July 22, 2019, this Court denied Taxpayers' motion.

¹¹ Act of June 25, 1895, P.L. 275, *as amended*, 53 P.S. §§101-11703.8.

School District Amended Brief at 13-33). The record before the trial court lacks any mention of those matters.

Likewise, Taxpayers challenge the amended *amicus curiae* briefs for asserting facts outside the certified record. This includes information about the elected School Board members and the number of votes they received. *See* PSEA Amended *Amici Curiae* Brief at 15-18 and Appendix A.

The School District responds that it may cite new legal authorities that were not cited below. It also argues that the “matters on the internet” it cited were derived from “sources of unquestionable validity” and contain relevant information. School District Memorandum of Law at 5. It argues that this Court “can and does rely on both legislative facts and adjudicative facts.” *Id.* at 4. Likewise, it believes the amended *amici curiae* briefs are proper because they “bring additional insight to the questions before the Court.” *Id.* at 6 (citing PA. R.A.P. 531, Note).

The statutes cited by the School District all relate to its legal objection to Taxpayers’ request for a preliminary injunction, *i.e.*, that Taxpayers did not meet the prerequisites for a preliminary injunction. That legal issue was raised and preserved for review. Accordingly, there is no bar to the School District making additional legal arguments on those preserved issues. *Wert v. Department of Transportation, Bureau of Driver Licensing*, 821 A.2d 182, 186 n.10 (Pa. Cmwlth. 2003) (noting that Pennsylvania Rule of Appellate Procedure 302(a)¹² requires that “issues” be preserved, not “reasoning”).

¹² Rule 302(a) states that “[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal.” PA. R.A.P. 302(a). In *Wert*, we explained:

We do not believe that Pa. R.A.P. 302(a) requires a litigant to make identical arguments at each stage of his case. The issue must be preserved, but this does not mean every argument is written in stone at the initial stage of litigation. Thus, logic

The Statement of Facts in the School District's amended brief refers only briefly to the hearing record. School District's Amended Brief at 23 and 26. Instead, the School District's Statement of Facts presents an extensive compilation of news websites, the School District's online portal, state and local governmental reports and data publications. The School District presented no witnesses at the preliminary injunction hearing.

Rule of Appellate Procedure 2117(a)(4) provides that the statement of the case must contain a narrative statement of "all the facts which are necessary to be known in order to determine the points in controversy, *with an appropriate reference in each instance to the place in the record where the evidence substantiating the fact relied on may be found.*" PA. R.A.P. 2117(a)(4) (emphasis added). Only those facts that have been duly certified in the record on appeal may be considered. *Kochan v. Department of Transportation, Bureau of Driver Licensing*, 768 A.2d 1186, 1189 (Pa. Cmwlth. 2001). The School District offers no explanation for not presenting these documents or relevant witness testimony at the preliminary injunction hearing.

We deny Taxpayers' motion to strike new legal authorities from the School District's amended brief but grant the motion to strike the Statement of Facts in the amended brief to the extent it asserts facts outside the trial court's certified record. We also strike the arguments based upon those stricken factual statements. We deny Taxpayers' motion to strike the citations to new legal authorities from the amended *amici curiae* briefs but grant the motion to strike parts of the amended

dictates that an appellant can raise new arguments so long as they relate to the same issue.

Wert, 821 A.2d at 186 n.9 (internal citations omitted).

amici curiae briefs asserting facts outside the certified record and the arguments made thereupon.

II. Preliminary Injunction Challenge

A. Trial Court's Jurisdiction and Exhaustion of Remedies

The School District argues that the trial court usurped the authority of the Department to approve, or disapprove, a request for an exception from the requirement of a voter referendum on school tax increases in excess of the statutory index. The School District contends that Taxpayers should have filed a complaint with the Department and then appealed to this Court if they received an adverse decision. Taxpayers counter that the Taxpayer Relief Act does not authorize such a remedy, and, further, the trial court has the power to fashion an equitable remedy as “necessary to protect taxpayers from the actions of the school districts.” Taxpayers’ Brief at 6. Those actions, according to Taxpayers, consisted of the School District’s misrepresentation of its finances in order to avoid having to submit the desired tax increase to a voter referendum.

“It is a cornerstone principle in equity that when the legislature provides a statutory remedy, equity has no place.” *Borough of Trappe v. Longaker*, 547 A.2d 1311, 1313 (Pa. Cmwlth. 1988). It is also well established that “an administrative agency has exclusive jurisdiction where the legislature has given it the power to adjudicate on a particular subject matter.” *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894, 903 (Pa. Cmwlth. 2016). Stated otherwise, a statutory remedy must be strictly pursued and this remedy “is exclusive unless the jurisdiction of the courts is preserved thereby.” *Lashe v. Northern York County School District*, 417 A.2d 260, 264 (Pa. Cmwlth. 1980). As this Court further explained in *Lashe*:

Jurisdiction is the power of a court to enter into an inquiry on a certain matter. A careful distinction must be made between

subject matter jurisdiction, which we have just defined, and equity jurisdiction, which describes the remedies available in equity.

Id. at 263 (internal citations omitted). An adequate remedy at law means that “equity may withhold its remedies.” *Id.* at 262. Further, where the “[l]egislature provides a statutory remedy which is mandatory and exclusive, equity is without power to act.” *DeLuca v. Buckeye Coal Co.*, 345 A.2d 637, 640 (Pa. 1975).

Where an administrative agency lacks the competency to rule on a question, such as the constitutionality of a statute it is charged to enforce, the statutory remedy does not bar equitable relief. Accordingly, a challenge to the constitutionality of a taxing statute may be initiated in equity, notwithstanding the statutory remedy for challenging a tax assessment. *Sunrise Energy*, 148 A.3d at 902. In such a scenario, there is less need for “the agency involved to throw light on the issue through exercise of its specialized fact-finding function or application of its administrative expertise.” *Borough of Green Tree v. Board of Property Assessment, Appeals and Review in Allegheny County*, 328 A.2d 819, 825 (Pa. Cmwlth. 2004).

With these principles in mind, we turn to the School District’s jurisdictional arguments.

Section 333(b)(1) of the Taxpayer Relief Act prohibits a school district from “[i]ncreas[ing] the rate of a tax levied for the support of the public schools by more than the index.” 53 P.S. §6926.333(b)(1). The Department calculates and publishes the index on an annual basis. 53 P.S. §6926.333(l). The parties do not dispute that for the fiscal year 2016-2017, the School District’s index was set at 2.4%.

A school district may raise taxes above the index by putting the increase to “the electors of the school district” in a referendum “stating the specific rate or

rates of the tax increase,” which “a majority of the electors voting on the question must approve.” Section 333(c)(1) of the Taxpayer Relief Act, 53 P.S. §6926.333(c)(1). Alternatively, a school district may request an exception from the referendum requirement “due to an expenditure under subsection (f)(2)(iii) or (v) or (n) [relating to pension obligations, special education expenses, grandfathered debt, and electoral debt].” Section 333(j)(1) of the Taxpayer Relief Act, 53 P.S. §6926.333(j)(1). To obtain this exception, a school district must demonstrate to the Department that “[t]he revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in [Section 333(f)(2)].” Section 333(f)(1) of the Taxpayer Relief Act, 53 P.S. §6926.333(f)(1).

A school board that seeks to increase taxes above the statutory index must adopt a preliminary budget proposal for estimated revenues, expenditures, and proposed tax rates, and make the budget proposal available for public inspection. 53 P.S. §6926.331(b)-(c), 6926.333(j)(2). The school district must also submit this information to the Department. 53 P.S. §6926.333(e).

Section 333(j)(3)-(4) of the Taxpayer Relief Act provides the following standards for the Department’s review of a request for an exception:

(3) The department shall approve a school district’s request under this subsection if a review of the data under paragraph (4) demonstrates that:

(i) the school district qualifies for one or more exceptions under subsection (f)(2)(iii) or (v) or (n); and

(ii) the sum of the dollar amounts of the exceptions for which the school district qualifies makes the school district eligible under subsection (f)(1).

(4) For purpose of determining the eligibility of a school district for an exception under subsection (f)(2)(v), the department shall utilize data from the most recent school years for which annual financial report data required under section 2553 of the Public School Code of 1949 has been received. The department shall inform school districts of the school years determined under this subsection no later than 30 days prior to the date on which public inspection of proposed school budget is required under section 311(c).

53 P.S. §6926.333(j)(3)-(4). The Department “shall establish procedures for administering the provisions of this subsection, which may include an administrative hearing on the school district’s submission.” 53 P.S. §6926.333(j)(1). If the Department schedules a hearing on the school district’s request, the school district shall publish notice of the hearing “immediately upon receiving the information from the [D]epartment.” 53 P.S. §6926.333(j)(2).

When the Department approves a school district’s request for a referendum exception, with or without a hearing, the Department determines “the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception.” Section 333(j)(5)(ii) of the Taxpayer Relief Act, 53 P.S. §6926.333(j)(5)(ii). If the Department denies a school district’s request for an exception, there is no administrative appeal. The school district’s sole remedy is to put its proposed tax increase to a vote of the electors. 53 P.S. §6926.333(j)(5)(iii).¹³ The Taxpayer Relief Act does not establish a mechanism by which a school district can challenge the Department’s denial of its exception. Nor

¹³ It states:

If the department denies the request, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

53 P.S. §6926.333(j)(5)(iii).

does it provide a remedy to a taxpayer that wishes to challenge the Department's approval of an exception.

Here, the Department approved the exception for the 2016-2017 tax increase based on the School District's general fund budget showing it needed \$4,050,926 in excess of the tax revenue produced by the statutory index. The trial court found that the School District overstated expenses and understated revenue in order to obtain the exception and avoid a voter referendum. The trial court also found that the School District did not disclose its actual prior year surpluses to the Department in seeking the exception.

Neither the Taxpayer Relief Act nor the School Code provide a remedy to challenge a school tax increase. The Administrative Agency Law¹⁴ and Local Agency Law¹⁵ are likewise unavailing. Where an agency's action "only affects the interest of the public in general, then the action will not be deemed an adjudication." *Ondek v. Allegheny County Council*, 860 A.2d 644, 648 (Pa. Cmwlth. 2004)¹⁶ (holding that a resolution issued by county council was a legislative enactment from which taxpayers have no right to appeal).¹⁷ A tax set by a school district is not an

¹⁴ 2 Pa. C.S. §§501-508, 701-704.

¹⁵ 2 Pa. C.S. §§551-555, 751-754.

¹⁶ Quoting *LaFarge Corp. v. Insurance Department*, 690 A.2d 826, 833 (Pa. Cmwlth. 1997), *rev'd on other grounds*, 735 A.2d 74 (Pa. 1999).

¹⁷ For purposes of the Administrative Agency Law and the Local Agency Law, an "adjudication" is defined as follows:

Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.

2 Pa. C.S. §101. Section 702 of the Administrative Agency Law provides that "[a]ny person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such

“adjudication” because it does not impact discrete parties but the public at large. This is also the case for the Department’s approval of an exception. Only an “adjudication” is reviewable under the Administrative Agency Law. 2 Pa. C.S. §702.

Similarly, the Taxpayer Relief Act does not create a mechanism for challenging the Department’s approval or disapproval of a school district’s application. The school district whose exception is denied has only one recourse: submit the proposed tax increase to the voters. Section 333(c) of the Taxpayer Relief Act, 53 P.S. §6926.333(c). The Taxpayer Relief Act is silent on a challenge to the Department’s approval of an exception to the voter referendum. The Department’s stated public position is that it will not conduct an administrative hearing on its approval of an exception.¹⁸

Nevertheless, the School District argues that Taxpayers have remedies under the General Rules of Administrative Practice and Procedure (GRAPP). GRAPP permits that “[a] person objecting to the approval of an application, petition, motion or other matter which is, or will be, under consideration by an agency may

adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” 2 Pa. C.S. §702. Section 752 of the Local Agency Law likewise provides:

Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).

2 Pa. C.S. §752. To the extent Taxpayers challenge the School Board’s decision to raise taxes by 4.44%, that action does not constitute an adjudication under the Local Agency Law. *Ondek*, 860 A.2d at 648.

¹⁸ Taxpayers have requested that this Court take judicial notice of the Department’s position, which it set forth in a letter of November 22, 2017, stating that there is no hearing on the Department’s decision on a request for an exception to a voter referendum. The statute, not the Department’s stated position, is dispositive.

file a protest.” 1 Pa. Code §35.23. GRAPP also provides that “[a] person complaining of anything done or omitted to be done by a person subject to the jurisdiction of an agency, in violation of a statute or regulation administered or issued by the agency may file a complaint with the agency.” 1 Pa. Code §35.9. GRAPP is not a statutory remedy, and it is irrelevant to the School District’s jurisdictional arguments.

GRAPP “governs the practice and procedure before agencies of the Commonwealth except as otherwise provided[.]” 1 Pa. Code §31.1(a). A “protest” filed under GRAPP does not require an agency to hold a hearing or to develop a factual record. Indeed, the “filing of a protest does not make the protestant a party to the proceeding,” which “is intended solely to alert the agency and the parties to a proceeding of the fact and nature of the objection of the protestant to the proposed agency action.” 1 Pa. Code §35.24. A protest has no effect beyond that achieved by a letter to an agency.

More importantly, GRAPP does not create substantive rights. It governs the procedures for conducting hearings that are created by statute. Neither the Taxpayer Relief Act nor the Administrative Agency Law create a hearing for challenging the School District’s

legerdemain in yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that contrary to projections the District every year experienced multimillion dollar surpluses[.]

Trial Court op. at 14. GRAPP cannot be used to create substantive rights where none exist under the applicable statutes.

The Taxpayer Relief Act, the Public School Code and the Administrative Agency Law do not create a remedy for the taxpayer who asserts a school district has engaged in legerdemain to avoid putting a school tax increase to the voters in a referendum. Even if there were such a remedy, it must be “adequate and complete” to avoid equitable relief. *Borough of Greentree*, 328 A.2d at 825.

Simply, there is no statute that speaks to the harm alleged by Taxpayers, *i.e.*, the School District’s projection of deficits and disguise of prior year surpluses to avoid giving residents the opportunity to vote on a school tax increase. We reject the School District’s contention that Taxpayers should have made their case to the Department and that the trial court erred in exercising equitable jurisdiction to fashion an interim remedy, pending the outcome of a full review of Taxpayers’ underlying complaint.

B. Pending Preliminary Objections

The School District argues, next, that the trial court erred by holding a preliminary injunction hearing when preliminary objections to the amended complaint were pending. Taxpayers counter that the trial court did not err and that, implicitly, the trial court believed it had jurisdiction.

This issue is not listed in the School District’s statement of the questions presented for appeal. This is required by Rule 2116(a) (“No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.”). PA. R.A.P. 2116(a). “This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not set forth in the statement of questions involved or suggested thereby.” *Wirth v. Commonwealth*, 95 A.3d 822, 858 (Pa. 2014). The School District’s issue has been waived.

Even if the issue were not waived, the School District's argument lacks merit. The law does not bar the issuance of a preliminary injunction merely because preliminary objections are pending. In *Aitkenhead v. Borough of West View*, 397 A.2d 878 (Pa. Cmwlth. 1979), for example, the trial court granted the plaintiff a preliminary injunction while the defendant's preliminary objections raising a question of jurisdiction were pending. This Court opined that the action of the court in granting the injunction is a decision in favor of jurisdiction, but only insofar as the preliminary injunction is issued to maintain the *status quo*. *Id.* at 880. In other words, "the preliminary objections have been considered by the [trial court] only for the purpose of determining whether or not a preliminary injunction should issue." *Id.*

A preliminary injunction is not conclusive. It is a "temporary remedy granted until that time when the parties' dispute can be completely resolved." *Chipman ex rel. Chipman v. Avon Grove School District*, 841 A.2d 1098, 1101 (Pa. Cmwlth. 2004). We conclude that the trial court's issuance of a preliminary injunction was not barred by the mere filing of preliminary objections by the School District.

C. Elements of Preliminary Injunction

Finally, the School District argues that Taxpayers did not establish the prerequisites for the issuance of a preliminary injunction, and thus, the trial court's decision must be vacated. Taxpayers counter that the trial court issued a permanent injunction, which was narrowly drawn and consistent with "the long line of tax cases that have uniformly held an injunction is the proper remedy for an abusive, illegal

tax scheme.” Taxpayers Brief at 22. Taxpayers further argue that they have established all the prerequisites for a preliminary injunction.¹⁹

Appellate review of a preliminary injunction is “highly deferential” and is limited to determining whether the trial court abused its discretion. *Summit Town Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1000 (Pa. 2003). Our Supreme Court has expounded on this deferential standard of review as follows:

[W]e recognize that on appeal from the grant or denial of a preliminary injunction, *we do not inquire into the merits of the controversy, but only examine the record to determine if there were any apparently reasonable grounds for the action of the court below.* Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decision of the [trial court].

Id. (citations omitted) (emphasis added). “If the record supports the trial court’s reasons and factual basis, the court did not abuse its discretion.” *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28, 41 (Pa. Cmwlth. 2009). In addition, “the facts are to be viewed in a light most favorable to the winner at the trial court level.” *Id.*

There are six essential prerequisites to a preliminary injunction. The moving party must establish (1) an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury will result from refusing an injunction than from granting it and, concomitantly, that issuance of an injunction will not substantially harm other interested parties; (3) a preliminary injunction will properly restore the parties to

¹⁹ We reject Taxpayers’ contention that the trial court has granted a permanent injunction. The Supreme Court’s holding that the trial court issued a preliminary injunction is binding on this Court. *Wolk*, 197 A.3d at 741-42.

their status as it existed immediately prior to the alleged wrongful conduct; (4) a clear right to relief; (5) the injunction is reasonably suited to abate the alleged harm; and (6) issuance of an injunction will not adversely affect the public interest. *Summit Town Centre*, 828 A.2d at 1001.

For purposes of injunctive relief, statutory violations constitute irreparable harm *per se*. *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317 (Pa. 1947). In *Israel*, the Public Utility Commission filed suit seeking to enjoin a transportation company from operating gypsy taxicabs because the company did not possess a certificate of public convenience as required by Section 903 of the Public Utility Law, then in effect.²⁰ The company admitted a violation of the statute but asserted that its unlicensed taxicab service did not create a harm; to the contrary, it provided a valued service because there was a shortage of taxicabs in Philadelphia. In rejecting the company's argument, the Supreme Court stated:

At the hearing the Commonwealth has made a prima facie showing that the defendants are operating taxicabs in violation of law. The argument that a violation of law can be a benefit to the public is without merit. *When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury....*

The argument that there is no "irreparable damage," would not be so often used by wrongdoers, if they would take the trouble to observe that the word "irreparable" is a very unhappily chosen one, used in expressing the rule that an injunction may issue to prevent wrongs of a repeated and continuing character, or which occasion damages which are estimable only by conjecture and not by any accurate standard. Besides this, where the right

²⁰ Formerly Section 903 of the Act of May 28, 1937, P.L. 1053, *as amended*, 66 P.S. §1343. A substantially similar provision is now codified at Section 502 of the Public Utility Code, 66 Pa. C.S. §502.

invaded is secured by statute ... there is generally no question of the amount of damage, but simply of the right.

Israel, 52 A.2d at 321 (internal quotations omitted) (emphasis added). The Supreme Court affirmed the issuance of a preliminary injunction. *See also Milk Marketing Board v. United Dairy Farmers Co-op Association*, 299 A.2d 191 (Pa. 1973); *Snyder*, 977 A.2d 28.

The trial court found that the School District misrepresented its revenues and expenditures to the Department in order to increase taxes without putting it to a voter referendum, which conduct violated the Taxpayer Relief Act. Trial Court op. at 14-15. Further, the School District had accumulated surplus in excess of the 8% permitted by Section 688(a) of the School Code, 24 P.S. §6-688(a). Statutory violations constitute irreparable harm *per se*, which relieved the trial court of undertaking the balance of the harm inquiry. *Israel*, 52 A.2d at 321. In any case, the School District's accumulated surplus of approximately \$42.5 million from fiscal year 2009-2010 through 2015-2016 far exceeds the amount of the tax increase halted by the preliminary injunction, *i.e.*, \$4,051,213.

A preliminary injunction is appropriate where it restores the parties to the *status quo* that existed prior to the alleged wrongful conduct. *Israel*, 52 A.2d at 321. The trial court's preliminary injunction restores the parties to where they were before the School District's 4.44% tax increase. *Ambrogi v. Reber*, 932 A.2d 969, 979 (Pa. Super. 2007) (noting that an injunction addresses the *status quo* as it existed between the parties before the event that gave rise to the lawsuit, not to the situation as it existed after the alleged wrongful act but before entry of the injunction).

For a right to be clear, it must be "more than merely viable or plausible;" however, this requirement is not the equivalent of stating that no factual disputes exist between the parties. *Ambrogi*, 932 A.2d at 980. The party seeking a

preliminary injunction “need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the parties.” *Snyder*, 977 A.2d at 43.

Here, the trial court found that the School District’s “legerdemain” in repeatedly projecting multimillion-dollar deficits in order to obtain the Department’s approval of its exception, while each year experiencing multimillion-dollar surpluses that it moved into other accounts, violated the Taxpayer Relief Act and the Public School Code. The School District argues that a trial court may not act as a “super school board” to interfere with a school district’s discretion. School District Brief at 51. However, a “preliminary injunction interfering with that discretion is appropriate where a school board” acts in violation of law. *Save Our School v. Colonial School District*, 628 A.2d 1210, 1211-12 (Pa. Cmwlth. 1993).

We do not determine the merits of the underlying controversy. The proper question is whether Taxpayers produced sufficient evidence to show that “substantial legal questions must be resolved to determine the rights of the parties.” *Snyder*, 977 A.2d at 43. Given our highly deferential review, we conclude that the injunction is reasonably suited to abate the alleged harm because the School District was allowed to implement the 2.4% tax increase for fiscal year 2016-2017, notwithstanding Taxpayers’ assertion that the statutory index was based on prior tax increases that were also unlawfully based on accounting practices that amounted to legerdemain.

For all these reasons, we conclude that the trial court had reasonable grounds upon which to enjoin the School District from implementing a 4.44% tax increase for fiscal year 2016-2017 and to limit the tax increase to 2.4%.

Conclusion

We deny Taxpayers' motion to strike new legal authorities from the School District's amended brief and the amended *amici curiae* briefs, but grant the motion to strike the School District's amended brief and the amended *amici curiae* briefs to the extent they assert facts outside the trial court's certified record, as well as the arguments made from the stricken material.

We further conclude that the trial court had jurisdiction to issue the preliminary injunction because neither the School Code nor the Local Agency Law provide a statutory remedy to correct the alleged misconduct of the School District. Likewise, the Taxpayer Relief Act provides no statutory appeal from the Department's approval of a referendum exception. We reject the claim of the School District that the doctrine of exhaustion of administrative remedies barred the trial court's preliminary injunction.

For these reasons, we affirm the trial court's order of August 29, 2016, and remand this matter to the trial court for further proceedings on the underlying complaint.²¹



MARY HANNAH LEAVITT, President Judge

²¹ The docket includes a number of motions for judicial notice filed by Taxpayers, including "Appellees' motion to take judicial notice of Pennsylvania Department of Education letter dated May 6, 2019 and official statements of Pennsylvania Department of Education Division of Subsidy Data and Administration Chief given to NBC news" (filed 5/14/2019); "Appellees' motion to take judicial notice of Pennsylvania Department of the Auditor General report of the Lower Merion School District dated October 23, 2017" (filed 5/28/2019); and "Appellees' motion to take judicial notice of Pennsylvania Department of Education letter dated November 22, 2017" (filed 6/21/2019). All of the motions for judicial notice shall be dismissed because they are immaterial.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies,
and Catherine Marchand

v.

The School District of Lower Merion,
Appellant

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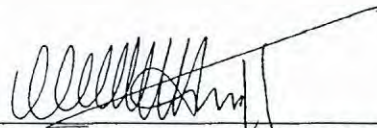
No. 1465 C.D. 2016

ORDER

AND NOW, this 2nd day of March, 2020, the order of Montgomery County Court of Common Pleas, dated August 29, 2016, is hereby AFFIRMED. This matter is REMANDED to the Court for further proceedings on the underlying complaint.

Consistent with the foregoing opinion, Appellees' motion to strike Appellant's amended brief and the amended *amici curiae* briefs is DENIED in part and GRANTED in part. Appellees' motions for judicial notice are DISMISSED.

Jurisdiction relinquished.



MARY HANNAH LEAVITT, President Judge

Certified from the Record

MAR - 2 2020

And Order Exit

Exhibit B

LIMITED PROCEDURES ENGAGEMENT

Lower Merion School District
Montgomery County, Pennsylvania

October 2017



Commonwealth of Pennsylvania
Department of the Auditor General

Eugene A. DePasquale • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen
www.PaAuditor.gov**

**EUGENE A. DePASQUALE
AUDITOR GENERAL**

Mr. Robert L. Copeland, Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dr. Robin Vann Lynch, Board President
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dear Mr. Copeland and Dr. Vann Lynch:

We conducted a Limited Procedures Engagement (LPE) of the Lower Merion School District (District) to determine its compliance with certain relevant state laws, regulations, policies, and administrative procedures (relevant requirements). The LPE covers the period July 1, 2012, through June 30, 2015, except for any areas of compliance that may have required an alternative to this period. The engagement was conducted pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania and The Fiscal Code (72 P.S. §§ 402 and 403), but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

As we conducted our LPE procedures, we sought to determine answers to the following questions, which serve as our LPE objectives:

- Did the District have documented board policies and administrative procedures related to the following?
 - Internal controls
 - Budgeting practices
 - The Right-to-Know Law
 - The Sunshine Act
- Were the policies and procedures adequate and appropriate, and have they been properly implemented?
- Did the District comply with the relevant requirements in the Right-to-Know Law and the Sunshine Act?

- Additionally, we reviewed the District's financial position and budgeting practices during the 2012-13 through 2015-16 fiscal years. Our engagement included a review of the District's annual financial reports, independent auditor's reports, and General Fund budgets for these fiscal years. We used these financial reports to calculate each fiscal year's budget to actual trends and to assess the District's budgeted unassigned General Fund balance to budgeted total expenditures. Further, we also reviewed the accuracy of the District's budgets for each fiscal year by comparing them to actual revenue and expenditures and the effect on the District's General Fund balance during this time period. Finally, we reviewed the District's Certification of Utilization of Referendum Exceptions, otherwise known as Act 1 exceptions, that were completed by the District and submitted to the Pennsylvania Department of Education (PDE) during this time period.

Our engagement found that the District properly implemented policies and procedures for the areas mentioned above and complied, in all significant respects, with relevant requirements, except as detailed in the observation in this report.

The observation and our related recommendations have been discussed with the District's Board and management, and their response is included in the Appendix section of this letter. We appreciate the District's cooperation during the conduct of the engagement.

Sincerely,



Eugene A. DePasquale
Auditor General

October 23, 2017

cc: **LOWER MERION SCHOOL DISTRICT** Board of School Directors

Background Information

School Characteristics 2015-16 School Year ^A	
County	Montgomery
Total Square Miles	24.14
Resident Population^B	62,107
Number of School Buildings	10
Total Teachers	683
Total Full or Part-Time Support Staff	685
Total Administrators	74
Total Enrollment for Most Recent School Year	8,341
Intermediate Unit Number	23
District Vo-Tech School	Central Montco Technical High School

A - Source: Information provided by the District administration and is unaudited.

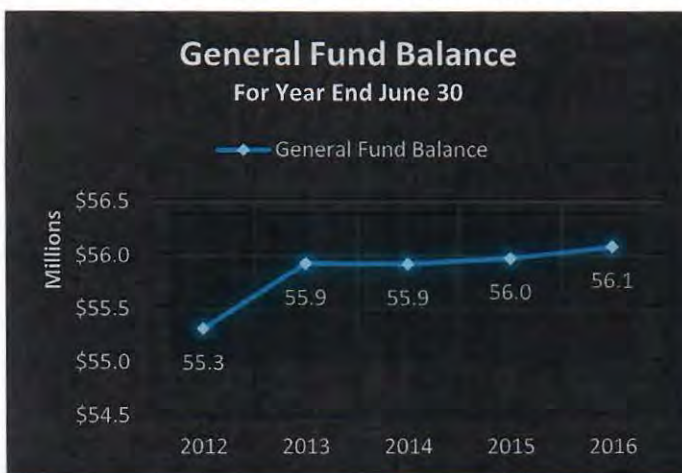
B - Source: United States Census
<http://www.census.gov/2010census>.

Mission Statement^A

Committed to excellent and continuous improvement, the Lower Merion School District strives to ensure that all students achieve their highest level of critical thinking and creativity, that they value themselves and the diversity of others, and that they are knowledgeable, contributing citizens capable of excelling in a rapidly changing world. This is accomplished by individuals engaging in innovative, active experiences tailored to the myriad ways of learning and in partnership with our community.

Financial Information

The following pages contain financial information about the District obtained from annual financial data reported to the PDE and available on PDE's public website. This information was not audited and is presented for **informational purposes only**.

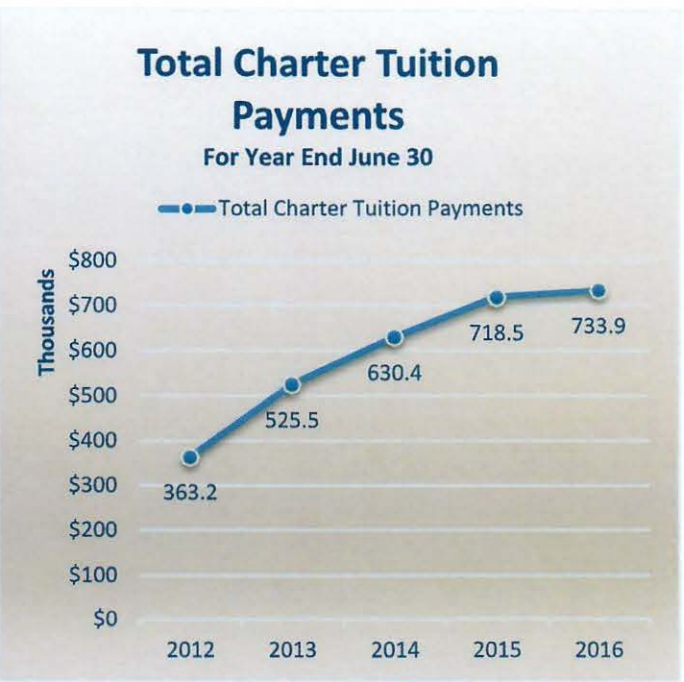
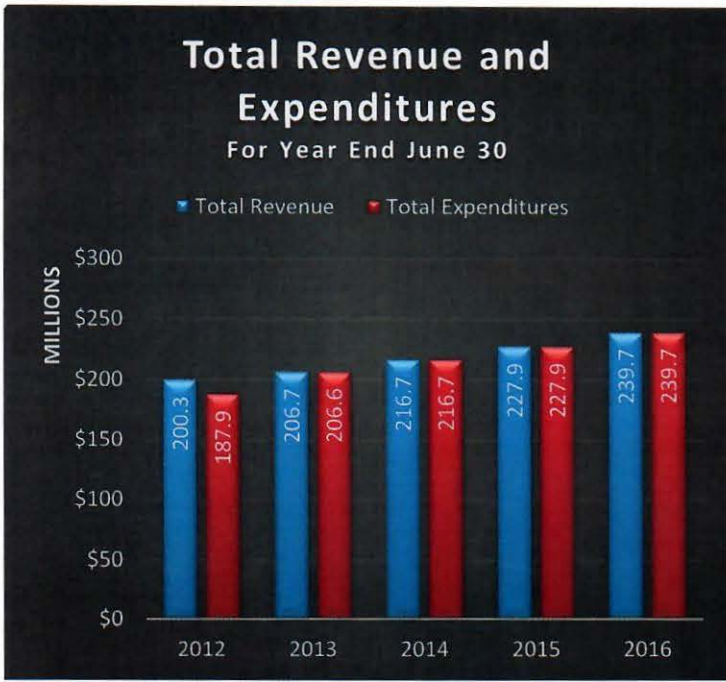


Note: General Fund Balance is comprised of the District's Committed, Assigned and Unassigned Fund Balances.



Note: Total Debt is comprised of Short-Term Borrowing, General Obligation Bonds, Authority Building Obligations, Other Long-Term Debt, Other Post-Employment Benefits and Compensated Absences.

Financial Information Continued



Academic Information

The graphs on the following pages present School Performance Profile (SPP) scores, Pennsylvania System of School Assessment (PSSA), Keystone Exam results, and 4-Year Cohort Graduation Rates for the District obtained from PDE's data files for the 2014-15 and 2015-16 school years.¹ These scores are provided in the District's report for **informational purposes only**, and they were not audited by our Department. Please note that if one of the District's schools did not receive a score in a particular category and year presented below, the school will not be listed in the corresponding chart.² Finally, benchmarks noted in the following graphs represent the statewide average of all public school buildings in the Commonwealth that received a score in the category and year noted.³

What is a SPP score?

A SPP score serves as a benchmark for schools to reflect on successes, achievements, and yearly growth. PDE issues a SPP score using a 0-100 scale for all school buildings in the Commonwealth annually, which is calculated based on standardized testing (i.e. PSSA and Keystone exams), student improvement, advance course offerings, and attendance and graduation rates. Generally speaking, a SPP score of 70 or above is considered to be a passing rate.

PDE started issuing a SPP score for all public school buildings beginning with the 2012-13 school year. For the 2014-15 school year, PDE only issued SPP scores for high schools taking the Keystone Exams as scores for elementary and middle scores were put on hold due to changes with PSSA testing.⁴ PDE resumed issuing a SPP score for all schools for the 2015-16 school year.

What is the PSSA?

The PSSA is an annual, standardized test given across the Commonwealth to students in grades 3 through 8 in core subject areas, including English and Math. The PSSAs help Pennsylvania meet federal and state requirements and inform instructional practices, as well as provide educators, stakeholders, and policymakers with important information about the state's students and schools.

¹ PDE is the sole source of academic data presented in this report. All academic data was obtained from PDE's publically available website.

² PDE's data does not provide any further information regarding the reason a score was not published for a specific school. However, readers can refer to PDE's website for general information regarding the issuance of academic scores.

³ Statewide averages were calculated by our Department based on individual school building scores for all public schools in the Commonwealth, including district schools, charters schools, and cyber charter schools.

⁴ According to PDE, SPP scores for elementary and middle schools were put on hold for the 2014-15 school year due to the state's major overhaul of PSSA exams to align with state Common Core standards and an unprecedented drop in public schools' PSSA scores that year. Since PSSA scores are an important factor in the SPP calculation, the state decided not to use PSSA scores to calculate a SPP score for elementary and middle schools for the 2014-15 school year. Only high schools using the Keystone Exam as the standardized testing component received a SPP score.

The 2014-15 school year marked the first year that PSSA testing was aligned to the more rigorous PA Core Standards.⁵ The state uses a grading system with scoring ranges that place an individual student's performance into one of four performance levels: Below Basic, Basic, Proficient, and Advanced. The state's goal is for students to score Proficient or Advanced on the exam in each subject area.

What is the Keystone Exam?

The Keystone Exam measures student proficiency at the end of specific courses, such as Algebra I, Literature, and Biology. The Keystone Exam was intended to be a graduation requirement starting with the class of 2017, but that requirement has been put on hold until at least 2020. In the meantime, the exam is still given as a standardized assessment and results are included in the calculation of SPP scores. The Keystone Exam is scored using the same four performance levels as the PSSAs, and the goal is to score Proficient or Advanced for each course requiring the test.

What is a 4-Year Cohort Graduation Rate?

PDE collects enrollment and graduate data for all Pennsylvania public schools, which is used to calculate graduation rates. Cohort graduation rates are a calculation of the percentage of students who have graduated with a regular high school diploma within a designated number of years since the student first entered high school. The rate is determined for a cohort of students who have all entered high school for the first time during the same school year. Data specific to the 4-year cohort graduation rate is presented in the graph.⁶

⁵ PDE has determined that PSSA scores issued beginning with the 2014-15 school year and after are not comparable to prior years due to restructuring of the exam. (Also, see footnote 4).

⁶ PDE also calculates 5-year and 6-year cohort graduation rates. Please visit PDE's website for additional information: <http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx>.

2014-15 Academic Data
School Scores Compared to Statewide Averages

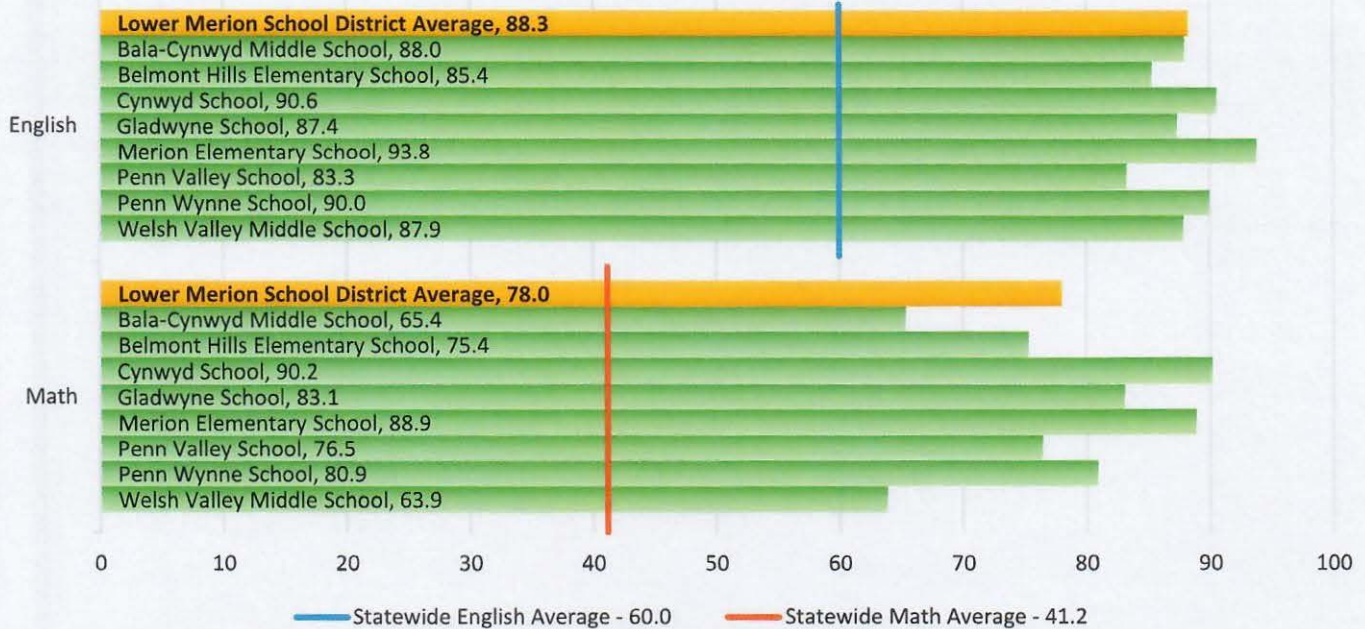
2014-15 SPP Scores



2014-15 Keystone % Advanced or Proficient

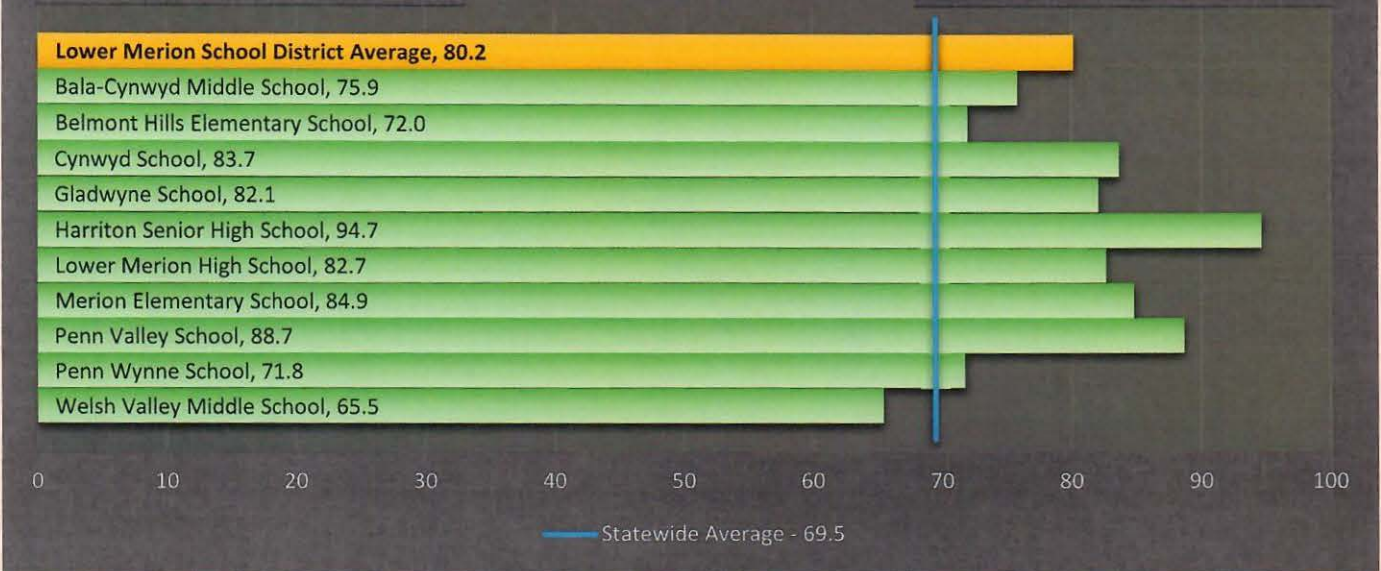


2014-15 PSSA % Advanced or Proficient

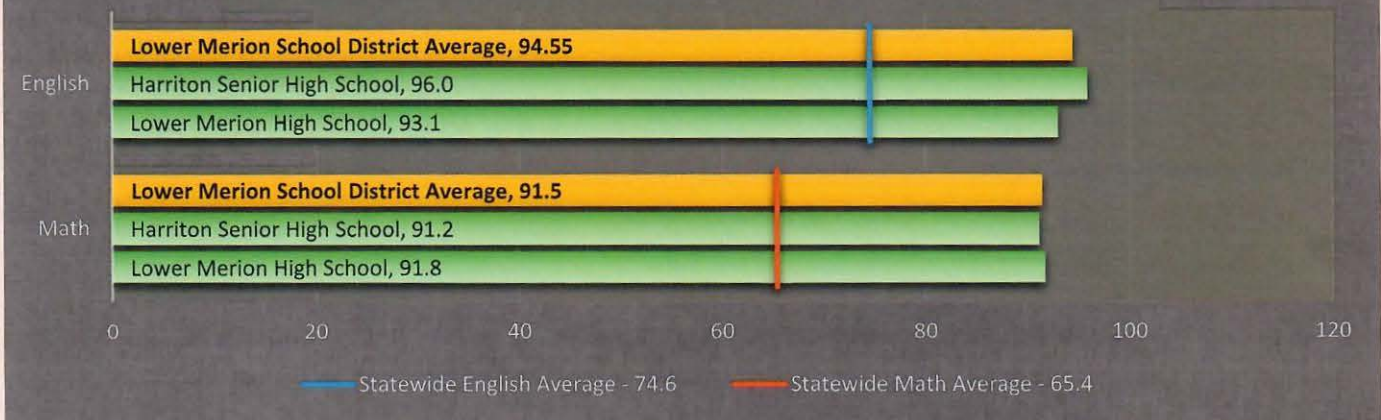


2015-16 Academic Data
School Scores Compared to Statewide Averages

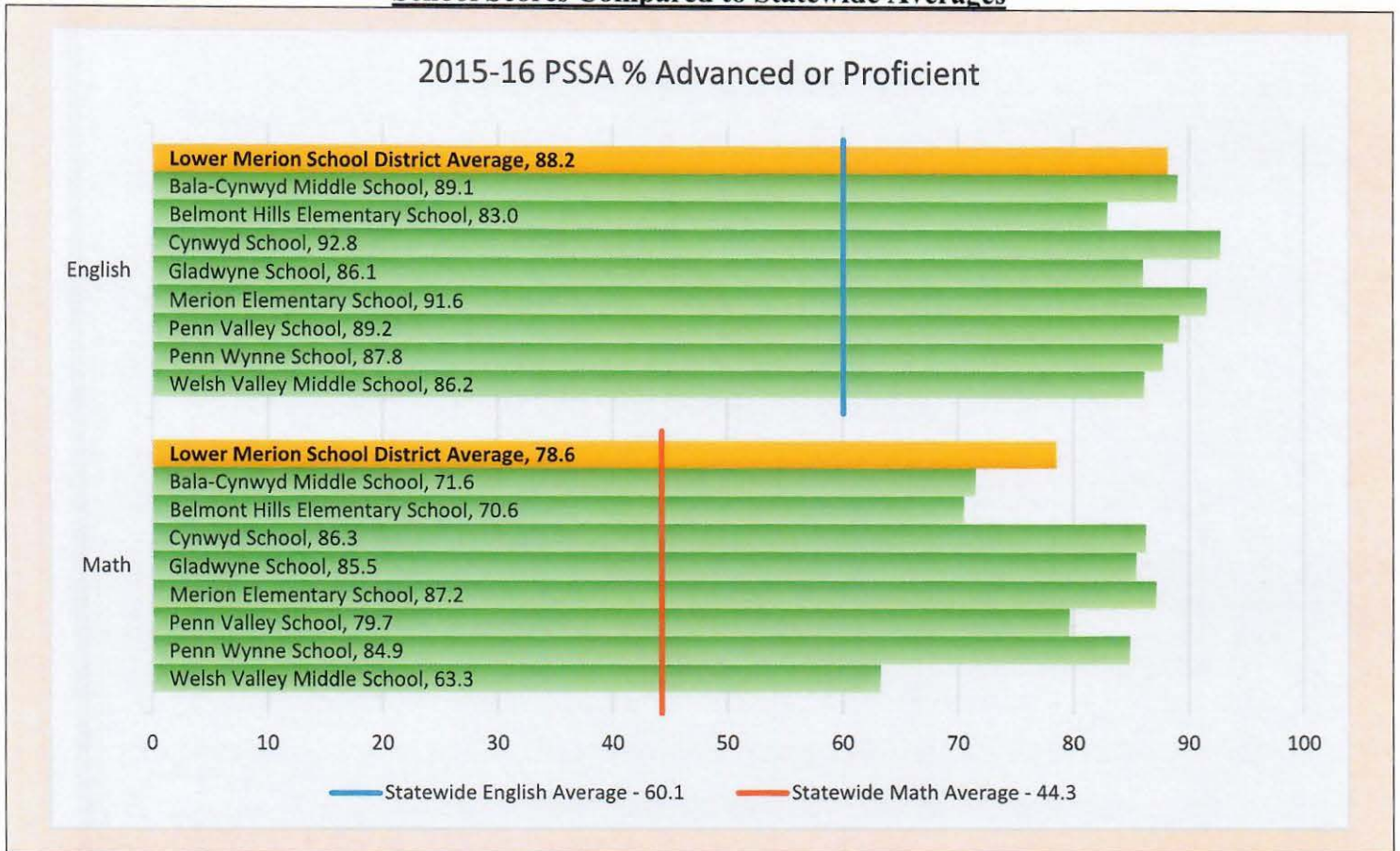
2015-16 SPP Scores



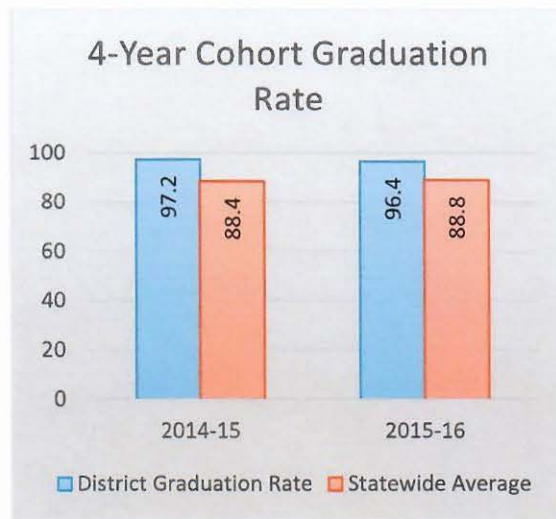
2015-16 Keystone % Advanced or Proficient



2015-16 Academic Data
School Scores Compared to Statewide Averages



4-Year Cohort Graduation Rates



Observation

Observation

The District Persistently Projected Annual Deficits Despite Realizing Annual Surpluses and Maintaining a Steady \$56 Million General Fund Balance

Criteria relevant to the observation:

Section 688(a) of the Public School Code (PSC) states, in part:

“ . . . no school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance less than the percentages [as] set forth.” See 24 P.S. 6-688(a).

For school districts with total budgeted expenditures greater than or equal to \$19 million, the estimated ending unreserved, undesignated fund balance must be below 8 percent for it to be allowed to raise taxes under the aforementioned section of the PSC.

Section 688(b) of the PSC, states, in part:

“ . . . each school district that approves an increase in real property taxes shall provide the Department of Education with information certifying compliance with this section. Such information shall be provided in a form and manner prescribed by the Department of Education and shall include information on the school district’s estimated ending unreserved, undesignated fund balance expressed as a dollar amount and as a percentage of the school district’s total budgeted expenditures for that school year.” See 24 P.S. 6-688(b).

For the five fiscal years ending June 30, 2016, the District’s annual budgets projected operating deficits even though, year after year, the District actually generated surpluses. The District’s budgets consistently overestimated operating costs and, as a result, underestimated ending fund balances. Contrary to its pessimistic forecasts, the District maintained a steady, substantial General Fund balance during the audit period while also transferring more than \$18 million in the last four fiscal years to a Capital Reserve Fund.⁷

Inaccurate Forecasts of Operations & Fund Balances

The District consistently developed General Fund budgets that projected and anticipated operating deficits, despite actually realizing annual surpluses. As Figure 1 below demonstrates, in every single year of the five-year period ending June 30, 2016, the operating variance was significant.⁸

Figure 1

Lower Merion School District Budgeted Deficits Despite Actual Surpluses			
Fiscal Year	Budgeted Operating Surplus/(Deficit)	Actual Operating Surplus/(Deficit)	Net Variance
2012	(\$5,101,371)	\$15,537,492	\$20,638,863
2013	(\$8,820,452)	\$5,168,620	\$13,989,072
2014	(\$7,522,634)	\$6,105,931	\$13,628,565
2015	(\$7,517,643)	\$4,117,736	\$11,635,379
2016	(\$8,513,255)	\$3,205,194	\$11,718,449
Total	(\$37,475,355)	\$34,134,973	\$71,610,328

⁷ The Capital Reserve Fund was one of two capital reserve funds maintained by the District during the audit period. The other fund is called the Capital Projects Fund.

⁸ Source: *The Required Supplementary Information, Budgetary Comparison Schedule, General Fund*, included as part of the District’s independently audited financial statements for each respective year. The budgeted amounts included here are the original budgets, rather than amended budgets, since the original budgets were used by the District in its applications for Act 1 (known as *Taxpayer Relief Act*) exceptions to PDE. The only year in the five-year period that had an amended budget was fiscal year 2016.

Criteria relevant to the observation (continued):

PDE's *Certification of Estimated Ending Fund Balance for the General Fund Budget*, accompanies a school district's Fund Budget (PDE Form 2028). The certification form is signed by the Superintendent and submitted to PDE along with the budget. The form itself refers, as follows, to the restrictions provided for in Section 688(b) of the PSC:

"No school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance (unassigned) less than or equal to the specified percentage of its total budgeted expenditures."

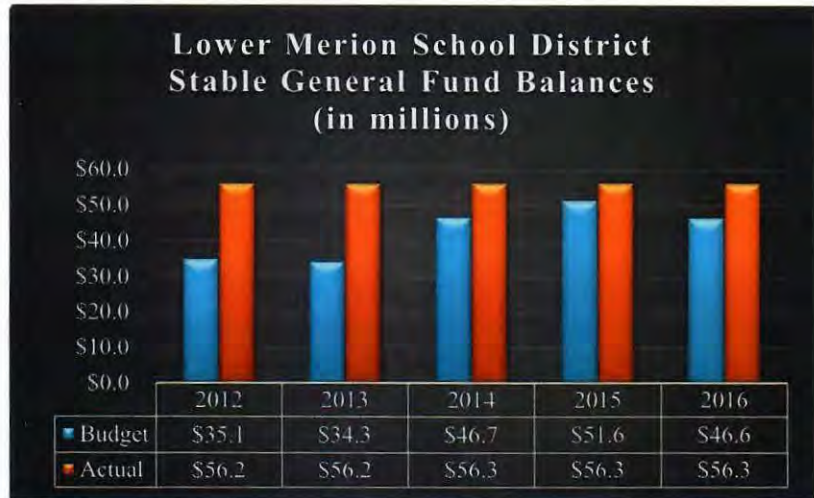
Furthermore, the signature by the Superintendent states that he/she certifies that the information regarding total budgeted expenditures and ending unassigned fund balance is accurate and complete.

The *Government Finance Officers Association (GFOA)* has developed budgeting best practices for school districts in its *Recommended Budget Practices*. Listed among the best practices are the following:

1. *General Fund Reserve.* School districts should establish a formal process on the level of the unrestricted fund balance that should be maintained in the general fund as a reserve to hedge against risk.
2. *Year-end Savings.* A district should have a policy to define what happens to year end funds that are not used by a department. The GFOA recommends that districts develop policies that encourage a more strategic use of these funds.

Due to continually projecting budgetary deficits for the five fiscal years, the District's General Fund was also consistently projected to decrease; however, actual fund balances remained stable and strong at \$56 million, as shown in the chart below.⁹ As of June 30, 2016, Lower Merion's General Fund balance was the third largest in the Commonwealth. Only the Pittsburgh and Philadelphia City school districts had General Fund balances greater than the Lower Merion School District.

Figure 2



The following section addresses the main reason for the District's over-budgeting of operating costs and under-budgeting of General Fund balances.

Consistent Over-Budgeting of Expenditures

During the five fiscal years between July 1, 2011, and June 30, 2016, the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent. Even as recently as fiscal year 2015-16, the District budgeted expenditures nearly \$10 million more than actual expenditures.

⁹ Ibid.

Criteria relevant to the observation (continued):

Act 1 of 2006 known as the *Taxpayer Relief Act*, states, in part:

“Providing for taxation by school districts, for the State funds formula, for tax relief in first class cities, for school district choice and voter participation, for other school district options and for a task force on school cost reduction; making an appropriation; prohibiting prior authorized taxation; providing for installment payment of taxes; restricting the power of certain school districts to levy, assess and collect taxes; and making related repeals.”

The *Taxpayer Relief Act* has a provision for the imposition of a tax under the PSC and defines the calculation of the index limiting tax increases.

See 53 P.S. § 6926.101 *et seq.*

Section 304(b) of Act states: “A school district which imposes a tax under this chapter is subject to section 688 [related to Limit of indebtedness] of the Public School Code.”

See 53 P.S. § 6926.304(b).

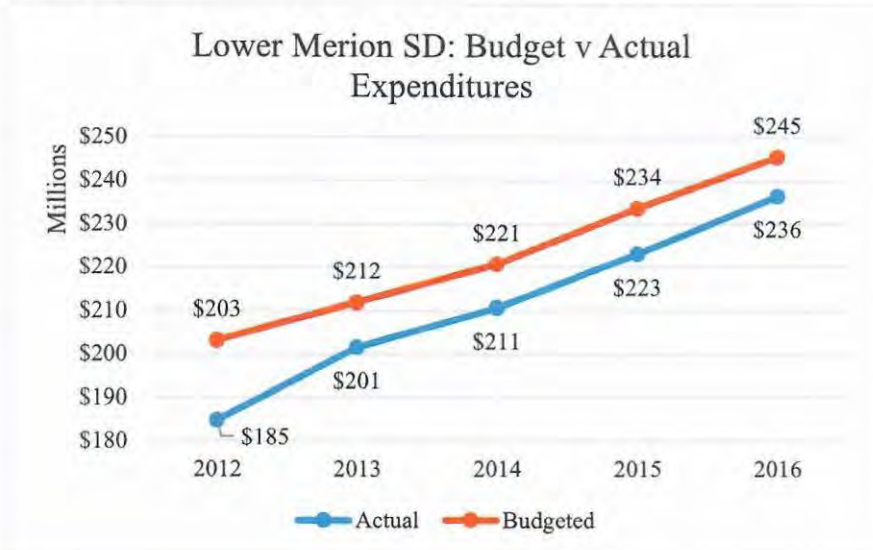
Section 333 of the Act, provides for the public referendum requirements for increasing certain taxes, and subsections (f) and (n) provides for referendum exceptions, as follows, in pertinent part:

“(f) Referendum exceptions.--A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

- (1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

The graph shown in Figure 3 below illustrates the District’s consistent disparity between budgeted and actual expenditures.¹⁰

Figure 3



The District stated that it did use historical data, where appropriate, in projecting costs in addition to using guidance obtained from multiple sources, including its financial advisor, insurance broker, energy consultant, county and local planners, various local and state purchasing consortiums, and internal staff. However, the consistency with which it overestimated its expenditures year after year results in the appearance of questionable budgeting practices.

Significant Capital Reserve Fund Transfers

The District maintained two major capital funds separate from the General Fund: the Capital Projects Fund and the Capital Reserve Fund.¹¹ In four of the last five years reviewed, the District transferred more than \$18.7 million from its General Fund to its Capital Reserve Fund.

¹⁰ Ibid.

¹¹ According to the independently audited financial statements, the Capital Projects Fund “is used to account for financial resources to be used for the acquisition or construction of major capital assets other than those financed by enterprise operations.” The Capital Reserve Fund “is used to account for proceeds of specific revenue sources that are legally restricted to expenditures for future capital projects.”

Criteria relevant to the observation (continued):

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following . . . (v) costs incurred in providing **special education programs and services**. . .

(n) Treatment of certain required payments.--

(1) The provisions of subsections (f) and (j) shall apply to a school district's share of **payments to the Public School Employees' Retirement System** as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the increase in estimated payments between the current year and the upcoming year, as determined by the department under this section, is greater than the index....”

(Emphases added.) See 53 P.S. § 6926.333(f) and (n).

The District's Board Policy #620, *Fund Balance*, states, in part:

“The school district will strive to maintain an unassigned general fund balance of less than eight percent (8%) of the budgeted expenditures for that fiscal year. The total fund balance, consisting of any nonspendable, restricted, committed, assigned and unassigned balances, may exceed eight percent (8%). The District's policy is to first apply expenditures toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances.

The District was able to transfer millions to the Capital Reserve Fund because it realized an operating surplus in each of the five years reviewed. Figure 4 shows the annual surplus and transfers to the Capital Reserve Fund.¹²

Figure 4¹³

Lower Merion SD Actual Operating Surplus and Transfers				
Fiscal Year	Actual Revenues	Actual Expenditures	Actual Operating Surplus	Transferred to Capital Reserve Fund
2012	\$200,290,317	\$184,752,825	\$15,537,492 ¹⁴	N/A ¹⁵
2013	\$206,660,839	\$201,492,219	\$5,168,620	\$5,000,000
2014	\$216,697,343	\$210,591,412	\$6,105,931	\$5,900,000
2015	\$227,079,805	\$222,962,069	\$4,117,736	\$4,770,000
2016	\$239,703,544	\$236,498,350	\$3,205,194	\$3,042,000
Totals	\$1,090,431,848	\$1,056,296,875	\$34,134,973	\$18,712,000

The District said that it made transfers to the Capital Reserve Fund to support its five-year plans for capital improvements, school bus replacements, and IT infrastructure improvements. But, it also maintained a significant portion of *committed* reserve funds in its General Fund for future, *capital* projects.

According to the District, in distinguishing from its Capital Reserve Fund, it stated that the separate funds in the General Fund *committed* for future capital projects “are intended to be used for future projects to address the District’s rapidly increasing enrollment.”

Substantial Committed Funds

Committed funds of \$35.8 million per year comprised nearly 64 percent of the total General Fund balance of \$56 million that was maintained in each of the five years reviewed.

¹² Source: For each respective fiscal year, the data was obtained from the *Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds* of the independently audited financial statements.

¹³ Ibid.

¹⁴ According to Note 6 of the District’s June 30, 2012 independently audited financial statements, the District transferred \$3 million from its General Fund to its Debt Service Fund.

¹⁵ The Capital Reserve Fund is first reported on and noted in the financial statements of fiscal year 2013. According to the June 30, 2012 independently audited financial statements, the District reported a Capital Projects Fund, but not a Capital Reserve Fund.

The following table shows the District’s fund balances, by classification, for the five-year period reviewed.

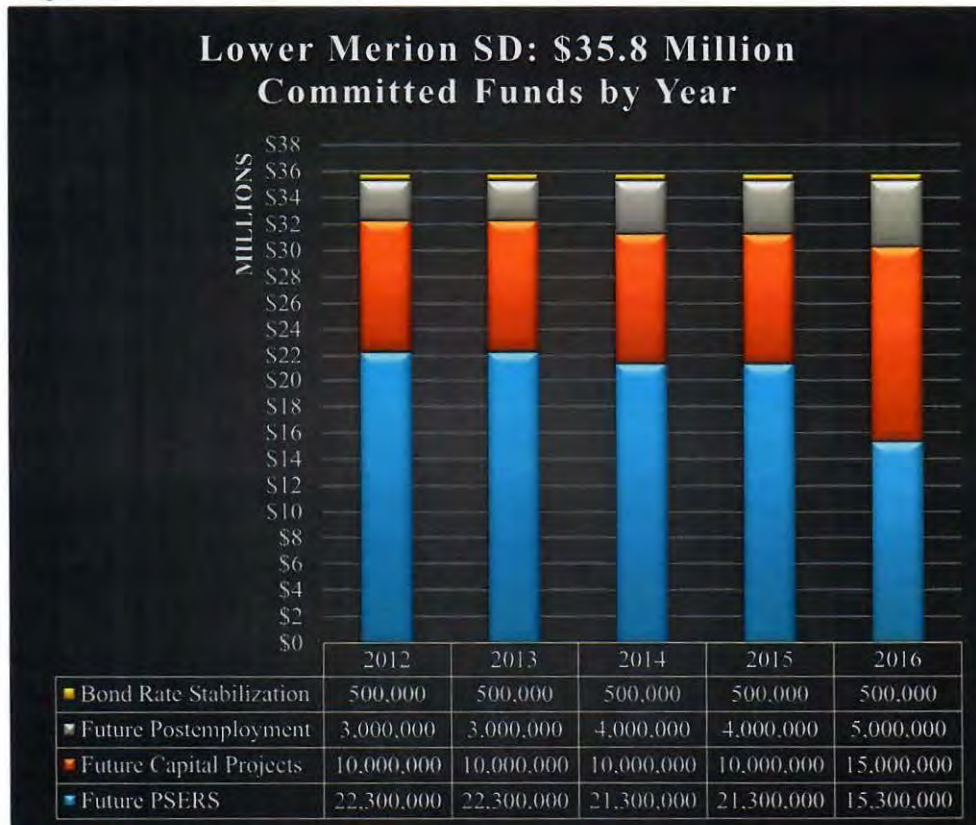
Figure 5

Lower Merion School District Analysis of General Fund Balance by Fiscal Year ¹⁶					
Category	2012	2013	2014	2015	2016
Unassigned	\$19,515,434	\$20,125,688	\$20,121,794	\$20,174,232	\$20,282,605
Committed	35,800,000	35,800,000	35,800,000	35,800,000	35,800,000
Non-spendable	896,100	314,433	336,199	288,103	180,286
Total Fund Balance	\$56,211,534	\$56,240,121	\$56,257,993	\$56,262,335	\$56,262,891

According to District officials, funds were committed for future capital projects, future Public School Employees’ Retirement System (PSERS) obligations, future post-employment healthcare costs, and variable rate bond stabilization.

The breakdown of the annual \$35.8 million fluctuated from year to year, although it totaled the same amount every year, as shown in Figure 6 below.

Figure 6



¹⁶ Source: For each respective fiscal year, the data was obtained from the *Balance Sheet – Governmental Funds* of the independently audited financial statements.

It is significant to note that the total amount committed for future use remained constant at \$35.8 million because, according to the District, no expenses were applied against these funds in any of the five years reviewed. More importantly, the District did not spend any of the funds it committed to cover rising pension costs and instead the District applied to PDE for the retirement cost exceptions which enabled it to increase real estate taxes above the Act 1 limit¹⁷ (more detail on this topic is provided later in the observation).

Best business practices recommend that school districts annually adopt a plan for usage of their committed funds and that they review these commitments for validity. During our review of board meeting minutes, we found that the District's Board only approved the committing of funds in two of the five fiscal years (2014 and 2016) and there was no apparent plan for usage or review for validity.

The Unassigned Fund Balance Issues

Section 688 of the Public School Code prohibits school districts from approving an increase in taxes if its *estimated* unassigned fund balance exceeds a certain threshold.¹⁸ For the District, that threshold is 8 percent of expenditures.¹⁹

In each of the last five fiscal years ending June 30, 2016, the District's budgets *forecasted* unassigned fund balances below 8 percent every year. Thus, the District technically complied with the PSC when it approved tax increases. However, over the five-year period, the *actual* unassigned fund balance as a percentage of total expenditures averaged more than 9.5 percent, which is above the PSC threshold of 8 percent.

If the District had estimated its unassigned balances more closely to what its actual unassigned fund balances were, it would not have been able to raise taxes because its unassigned fund balance as a percentage of expenditures would have been above the 8 percent threshold.

¹⁷ 53 P.S. § 6926.333(f)(2)(v), (n).

¹⁸ 24 P.S. § 6-688.

¹⁹ Pursuant to Section 688(a) of the PSC, an 8 percent limit applies to districts with estimated total expenditures equal to or exceeding \$19 million. In all five years reviewed in this observation, the District's total expenditures significantly exceeded that threshold.

In addition, the District's Board Policy #620, *Fund Balance*, instructs the District to "first apply expenditures toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances."

We reviewed the District's budgets and found that the District did not plan to use committed funds, as directed by its own board policy. It never defined when or how far into the future it actually planned to use the committed funds. The District asserts that it has complied with its board policy and used its unassigned fund balance to fill budgetary holes.

The Impact of Budgeting Inaccuracies on Taxes

As stated earlier, the Lower Merion School District can only raise taxes if its estimated unassigned fund balance falls below 8 percent. Any time the District's estimated unassigned fund balance as a percentage of expenditures fell below 8 percent, it could approve tax increases up to a limit known as the Act 1 index.

However, a school district can also raise taxes beyond the Act 1 index, but it must seek approval through a public referendum or else obtain approval for exceptions from PDE. PDE has allowed for certain exceptions to the Act 1 limit, e.g., for estimated increases in special education costs and retirement costs.

The District not only raised taxes every year in the five-year period, it raised them beyond the Act 1 limit. However, it did so not through public referendum, but by obtaining approval for exceptions from PDE for special education and retirement costs.

The exceptions used by the District in each year are shown in Figure 7 below.²⁰

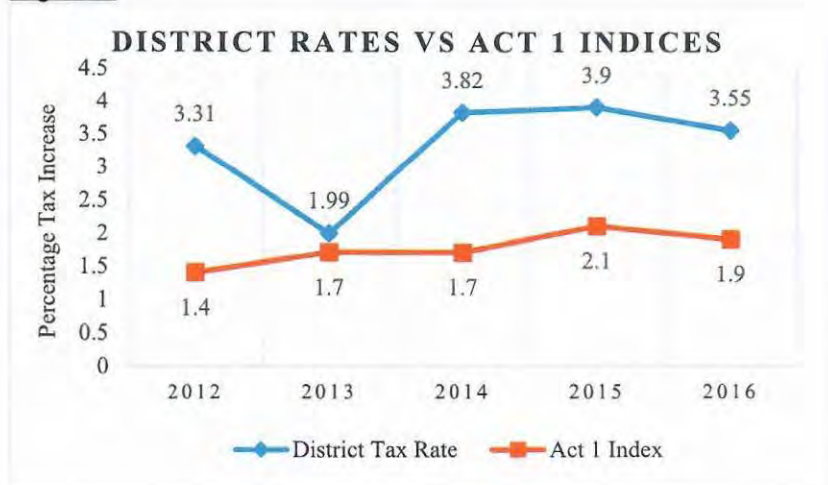
Figure 7

Lower Merion School District Use of Exceptions			
Fiscal Year	Special Education	Retirement	Total
2012	\$1,543,574	\$1,621,343	\$3,164,917
2013	\$486,768	-	\$ 486,768
2014	\$2,478,906	\$1,233,830	\$3,712,736
2015	\$1,592,463	\$1,714,965	\$3,307,428
2016	\$1,610,194	\$1,536,794	\$3,146,988
Total	\$7,711,905	\$6,106,932	\$13,818,837

Consistent over-budgeting of expenditures and the District’s maintenance of steady, substantial committed funds rendered the *estimated* unassigned fund balance low enough for the District to justify raising taxes in each of the five fiscal years. Figure 8 below illustrates the difference between the annual Act 1 index for the District and its actual tax rates.

As stated earlier, the Act 1 index would have been the allowable limit on tax increases for each year if the District had not obtained approval for exceptions from PDE.²¹

Figure 8



²⁰ Source: PDE forms for each year, entitled, *The Certification of Utilization of Referendum Exceptions*. The District noted that it could have increased taxes even more than it did in certain years because it had obtained approval from PDE for exceptions in amounts greater than what it actually used. For instance, in fiscal year 2013, the District applied for special education and retirement amounts totaling \$3.7 million, but only used \$486,000, as shown in Figure 7.

²¹ Source: For each respective fiscal year, the PDE 2028 – Final General Fund Budget.

According to our review, the total amount of the exceptions used for special education and retirement costs over the five-year period was \$13.8 million which was significantly less than the \$18.7 million the District transferred to the Capital Reserve funds due to the annual operating surpluses (See Figure 4 and 5). The District clearly had unassigned funds to cover these costs.

In addition, and of greater concern, despite having already committed funds—as much as \$22.3 million in 2012—for the express purpose of covering increasing retirement obligations, the District continued to request further tax increases, citing increasing retirement obligations, as opposed to using funds previously committed for this purpose. As stated previously, the District never spent any of the funds it set aside for retirement costs nor did it develop a timeline for when it intended to spend those funds.

Residents' Lawsuit²²

Annual tax increases coupled with the District's widely reported substantial General Fund balance led residents to file a lawsuit against the District. On March 11, 2016,²³ an amended “noncertified” class action complaint²⁴ was filed in the Montgomery County Court of Common Pleas on behalf of present and past residents of the District in an attempt to end the District's *alleged* practice of projecting budget deficits and to prevent the District from exceeding its Act 1 index for 2016-17.²⁵

The District filed preliminary objections to the amended complaint, and District management argues that “there is significant community opposition to the suit.” Meanwhile, with the preliminary objections pending before another judge, the residents filed the petition for injunctive relief, requesting that the District be enjoined from enacting any tax increase for the 2016–17 fiscal year. On August 29, 2016, the trial court issued an injunction ordering the District to revoke “that portion of the tax

²² This section is provided for informational purposes **only**.

²³ The initial complaint was filed on February 1, 2016.

²⁴ While the court dockets appear to indicate that the lawsuit has been proceeding as a “class action”, District management has noted that the matter was never officially certified as a class action suit. Therefore, we are referring to the matter as a “noncertified” class action.

²⁵ *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, Montgomery County Court of Common Pleas, August 29, 2016 (regarding to Injunctive relief).

increase that had been authorized by the Department [of Education] pursuant to Section 333 of Act 1²⁶ . . . to compensate for the increased costs of pension and special education obligations. The trial court further enjoined the District from collecting a tax increase for fiscal year 2016-17 of over 2.4 percent more than what was in effect for the prior fiscal year.”²⁷ As confirmed by the District, the lawsuit is still pending at the lower court level, and the District’s preliminary objections have not yet been ruled upon.²⁸

Conclusion

We reviewed the District’s financial data and found that in each of the past five fiscal years, the District:

- Repeatedly budgeted for operating deficits despite actually realizing operating surpluses.
- Consistently over-estimated expenditures.
- Transferred an average of \$3.7 million to its Capital Reserve Fund each year (in four of the last five years).
- Maintained a steady \$35.8 million in committed reserves.
- Maintained a \$56 million General Fund balance consisting of more than \$20 million in unassigned reserves, which exceeded 8 percent of total expenditures.
- Annually applied for and received exceptions from PDE so that it could raise taxes above the Act 1 index in lieu of using the committed funds specifically set aside for rising retirement costs.

The District’s conservative budgeting practices allowed it to raise taxes for each fiscal year from fiscal years 2012-16. Additionally, the District was able to obtain exceptions from PDE to increase taxes every year beyond the Act 1 index. These strategies were insufficiently transparent to

²⁶ 53 P.S. § 6926.333.

²⁷ The procedural history cited here is, in part, from the unreported opinion of the Pennsylvania Commonwealth Court issued April 20, 2017 (reargument denied June 19, 2017) regarding the District’s appeal of the lower court’s August 29, 2016, injunction order. *See Wolk et al. v. Lower Merion Sch. District*, 2017 WL 1418445, page 1 (2017). In its unreported opinion, the Commonwealth Court dismissed the District’s appeal for failure to preserve issues on appeal by failing to file post-trial motions. The District has requested an allowance of appeal, filed July 19, 2017, to the Pennsylvania Supreme Court (481 MAL 2017) on the lower court’s August 29, 2016, order.

²⁸ As of October 18, 2017, *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, is still pending at the lower court level.

the public because they painted a financial picture that did not reflect the District's actual financial condition.

Recommendations

The Board and District officials should:

1. Consider modification of the board policy governing the General Fund to include an annual review of the validity of its committed reserves and a requirement of the Board to approve a plan for using those committed funds.
2. As part of its annual budgeting process, determine whether its General Fund commitments and reserves should be maintained, increased, or used for their respective designated, authorized purposes.
3. Evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

Management Response:

The District disagreed with our observation and provided a lengthy response which can be found in its entirety in the appendix.

Auditor Conclusion

The following is our conclusion to those management comments that we deemed relevant to the facts of this observation. Our response is presented by topic area for clarity.

Summary

It is important to note that our audit period for the prior report was January 28, 2011, through November 26, 2013. Our review period for the financial objective in this engagement was July 1, 2012, through June 30, 2016. The information contained in our observation in this report resulted from District decisions and actions that occurred during our current review period.

Audit periods are integral since information changes over time and the District's statement that this information was previously reviewed by our office is inaccurate as evidenced by the distinct audit periods. It is also unfounded for the District to presume that previous audit reports without findings and/or observations are going to lead to future reports without findings or observations. Each audit engagement we conduct is an independent engagement that is not influenced by previous audits.

We disagree with the District's statement that the issues discussed in our observation are not worthy of being a reportable condition. During our review of the District's financial data for the 2012-13 through 2015-16 fiscal years, we identified continual and repeated operational surpluses, despite the District repeatedly budgeting for operational deficits. This was primarily due to the District consistently over-estimating expenditures. As a result, the District transferred an average of \$3.7 million to its Capital Reserve Fund while maintaining a \$56 million General Fund balance and \$35.8 million in committed fund balances.

During the time period reviewed, and despite healthy fund balances, the District raised taxes above the Act 1 index. The District stated these tax increases were necessary for future expenditures despite already committing funds for this purpose.

Key Considerations

We agree that each district has unique circumstances which create challenges for annually budgeting expenditures. However, our review of the District's budget showed the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent during the period reviewed.

If budgeted expenditures were more accurate and more in line with actual expenditures, the District would have been limited in its ability to raise taxes over the Act 1 index.

Fund Balance

The District responded that the Office of the Auditor General [*sic*] took special note of the health of the District's fund balance in its last audit report, and offered no findings

or observations of concern. The District went on to say that is the same fund that the Auditor General is now viewing as “too high.” The District is correct that there were no findings in the prior audit report, however, there was not a special note regarding the health of the District’s fund balance in the prior audit report. Furthermore, the District’s assertion that we view the District’s fund balance as too high is inaccurate.

During our period of review, we observed that the District’s actual expenditures consistently were less than the budgeted amount. The overly pessimistic budgets allowed the District to raise taxes over the Act 1 index.

The District questioned why other school districts with similar fund balances did not have a similar observation. The District states that the General Fund balance percentages of other districts in the Commonwealth is misleading. As stated earlier, this observation is not solely based on the District’s General Fund balance. While other districts in the Commonwealth have a greater General Fund balance, in percentage terms, than the Lower Merion School District, the situations are not similar. The other districts cited in the District’s response did not consistently outperform budgets and raise taxes above the Act 1 index.

Variance

The District questioned our rationale for using the independent auditor’s report for the budgeted and actual amounts used in Figures 1, 3, and 4 of the observation, instead of using the final revised budget document that was submitted to PDE. The District’s chart in this section also included transfers out as an expenditure. Our rationale for using the original budgeted versus actual revenue and expenditure figures and not to include transfers out was to show the consistent variance from presentation of the original budget to what actually transpired at year end. This is important to show the need for a transparent budgetary process.

Furthermore, the original budgeted expenditures were used to apply for Act 1 exceptions, not the amended figures. The Business Manager and Superintendent confirmed on October 13, 2017, that our figures used in Figures 1, 3, and 4 were accurate and did not contain errors. The District had

a difference of opinion on which figures we should have presented to highlight the significant budgeting variances that occurred during our period of review. Our presentation of data will stand as presented in Figures 1, 3, and 4. It should also be noted that the figures used throughout the observation in this report were obtained from the independent auditor's report to ensure consistency and ensure the numbers we presented were audited as part of the District's annual independent financial audit.

The District noted budgeting variances due to circumstances beyond the District's control for specific account functions. While we acknowledge that this can occur, the pattern of outperforming budgetary amounts over our review period is concerning since Act 1 exceptions were based on the budgetary numbers. We continue to believe that using historical data for certain expenditures would have helped the District to budget more accurately.

Substantial Committed Funds

The District stated that our comment that "the District never spent any of the funds it set aside for retirement costs, nor did it develop a timeline for when it intended to spend those funds" was misleading. While the District did set aside funds for future increases in PSERS costs, there is no certainty that the District will expend these funds by 2020. In fact, our review of the District's committed funds over the review period showed that the District continued to set aside funds for retirement costs without expending funds for this purpose. Instead, the District continued to apply for and receive Act 1 exceptions.

We believe that the District should have considered using a portion of its committed fund balances for PSERS obligations prior to applying for and exercising the use of the Act 1 exception for retirement costs. Furthermore, the District's fund balance policy #620 noted committed funds should be used before unassigned fund balances. Review of the District's budgets noted unassigned fund balances were budgeted to be used before the committed funds for retirement obligations.

Referendum Exceptions/Act 1

The District applied for and received PDE's approval for Act 1 exceptions. As stated multiple times, request and approval for Act 1 exceptions was based on District prepared budgetary projections that were consistently pessimistic.

Our intent was to show that the District applied for exceptions each year while maintaining a large General Fund balance. We are recommending the District evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

Pending Residents' Lawsuit

We wish to note that our discussion regarding the residents' lawsuit in the observation was presented for informational purposes *only* (see related footnote). Further, we denoted that the District's alleged practice of projecting budget deficits and exceeding its Act 1 index for 2016-17 remains an *allegation* until the final lower court's decision is issued at least within this venue.²⁹

Conclusion

We have noted and responded to management's disagreement to our determinations, but our conclusions remain unchanged. As such, this observation stands as presented.

²⁹ Pending *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, Montgomery County Court of Common Pleas (pending status of case was confirmed as of October 18, 2017).

Status of Prior Audit Findings and Observations

Our prior audit of the District resulted in no findings or observations.

Appendix

LOWER MERION SCHOOL DISTRICT MANAGEMENT COMMENTS

Summary

The Administration of Lower Merion School District appreciates the opportunity to respond to the draft Performance Audit received September 5, 2017. Our management comments are provided with the hope of addressing many of the assertions made throughout the report and to show the Auditor General the ways in which the principles that are in the draft report have been part and parcel of our already adopted standard and expanded operational methodology. Specifically, this document was prepared for two reasons:

1. The District believes that its financial practices and financial standing are sound and it has achieved **consistent budget approval by the Pennsylvania Department of Education, a history of strong audit reports from the office of the Auditor General and continued clean annual audit reports from independent auditors.** Much of the data identified in the draft audit has been previously reviewed and approved by the Auditor General's office.
2. The District believes that based on the methodology adopted by the Auditor General's office, the draft audit report does not rise to the level of a "finding" or an "observation."¹ A finding would indicate non-compliance with a "statute, regulation, policy, contract, grant requirement or administrative procedure." **The report in fact indicates that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District's accounting and budgeting practices have been generally affirmed in every audit report for at least the past 20 years.** Moreover, the recommendation that budgeting be based on historical amounts is not in keeping with mandated accounting policies for matters such as self-insurance (for which the District seeks actuarial analysis annually), PSERS, and special education expenditures (as to which the District cannot cap current expenditures at prior expenditure levels).

As a threshold matter, the District expresses its concern that the Auditor General appears to have been influenced by material presented by Arthur Wolk and Keith Knauss at an injunction hearing held in 2016. The District has been involved in litigation with Mr. Wolk, and that litigation is ongoing. The District believes that Mr. Wolk is wrong as to the merits of the case, but also disagrees with the public policy position that animates his litigation. Mr. Wolk believes that it is wrong to try to provide public education at a level commensurate with the best secondary schools in the region. His philosophy is readily apparent from his amended complaint, in which he states: "Public education is not courses, programs, activities, free laptop computers, and curriculums [*sic*] that are neither mandated nor normally part of a public education standard, and are normally provided only by private institutions at larger expense to individual patrons who

¹ According to the methodology outlined by the Auditor General, "Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not arising to the level of noncompliance with specific criteria."

prefer to afford their children education and opportunities that are neither required, nor offered, nor appropriate for public education paid for by taxpayers.” In the amended complaint, he also condemns teacher salaries as too high, and calls the “higher or continuing education” program for teachers “nothing but a theft of the Plaintiffs’ tax money and a scam.” The District believes that Mr. Wolk’s positions are at odds with those of most residents of the District; indeed, over 3,500 residents of the Lower Merion School District have signed a petition opposing Mr. Wolk and his lawsuit and supporting the District’s budgeting practices.

Key Considerations

Among the universal school district budgeting laws observed by LMSD that we wish to emphasize in this response is the requirement by the Pennsylvania Department of Education that districts budget on a line item basis. **This is and always has been our practice.** It is important to note, moreover, that while there are universal laws and standards for districts, no school district is the same and each must approach budgeting based on local circumstances and realities.

The Auditor General made multiple requests over the course of the past year for information, and some of that information is reattached, because it was not referenced in the Performance Audit draft that was provided to us.² The District notes as well that in questioning the acknowledged and undisputed consistency of the District’s accounting practices on the grounds that they have resulted in the appearance of questionable budgeting practices, the Auditor General seems to have departed from his own previous position that conservative accounting practices that are designed to maintain healthy fund balances and a good credit rating are laudable rather than blameworthy. As set forth in greater detail below, the Auditor General’s positions on adequate fund balances, community awareness of the purpose and timetable for using these balances, and the extent of permissible variances are not only at odds with best accounting practices but are actually inaccurate in some respects.

Enrollment Growth

No school district in Pennsylvania has been impacted more by enrollment growth in recent years than Lower Merion School District. **Since 2008, LMSD has had the largest growth in the Commonwealth by total number of students (nearly 1,500 additional students) and the second-fastest enrollment growth rate (more than 21%) according to the Pennsylvania Department of Education.** As the 2016-17 school year opened, enrollment in the District was nearly 8,400 students for the first time since the early 1970’s. The last time LMSD enrolled this many students, the District operated 15 schools (ten K-6 elementary schools, three 7-9 junior high schools and two 10-12 senior high schools). Today the District has just ten schools and has been making every effort to maximize limited space in an era of unprecedented growth.

LMSD’s growth is in direct contrast to that of most districts in the state. Of the 500 school districts in the Commonwealth, more than 400 are showing declining enrollment. Only 15 districts are showing growth in excess of 10% in the last eight years. It should be noted that

² This includes a 13-page response to supplemental questions from the Auditor General on 9/27/16 detailing our use of historical analysis in developing the budget, as well as a detailed written response to questions regarding committed fund balance and capital reserve transfers, sent 5/19/17.

enrollment growth is projected to continue in LMSD for the foreseeable future. Two recent independent enrollment studies (conducted by the Montgomery County Planning Commission and Sundance Associates) point to steady increases in enrollment through 2021 and beyond. Here are some statistics worth noting from these studies:

- Enrollment is projected to increase by approximately 1,000 students over the next six years.
- Middle schools will increase by more than 350 students.
- Growth will impact the high schools the most with the addition of 700 more students.
- The current second grade class of 687 started as a kindergarten class of 454 and will graduate as a 12th grade class of 908 students.

Enrollment growth continues to have a significant impact on the District's budget planning. An increasing number of students has resulted in the need for additional staff and expanded facilities and a reserve for future growth. Additionally, enrollment growth has required/is projected to require additional expenses with regard to transportation and other services to maintain existing programs. Staffing is the single biggest driver of the budget; more students result in the need for more staffing and thus, greater costs. During the 2005-06 school year, for example, there were 670 teachers in the LMSD; today, there are 779.

The District has a long history of proactively addressing enrollment growth despite challenges posed by limited space, lack of available land and the high cost of purchasing property in Lower Merion Township and Narberth Borough. The District has sought to make the best of its existing property and has expanded classroom capacity as needed following careful study and public planning. In recent years, the District has increased capacity at a cost of more than \$30M, completing additions at two elementary schools, two middle schools and re-purposing space in the District Administration Building for high school classroom use. Our demographic studies indicate that in the next few years we will need to – at minimum – add capacity at one middle school, one elementary school and one high school. The middle school project is currently underway with the installation of temporary modular classrooms this summer. We are holding \$15M dollars in committed fund balance in anticipation of needing those funds to expand classroom capacity in response to growing enrollment.

The District has also invested another \$3M in safety accommodations and security infrastructure following the tragedy at Sandy Hook Elementary School – **a reminder that even the most accurate demographic projections and budget forecasts may not account for certain unforeseen and necessary expenditures.**

While expanding classroom capacity is one strategy to address enrollment growth, the Board of School Directors continues to be sensitive to the potential costs of temporary classrooms and new construction. Thus, the Board has implemented fiscally-responsible short-term strategies that have provided more time to review enrollment projections and plan for the future.

In an effort to maintain favorable class sizes, preserve programs, maximize existing resources and provide planning flexibility at the elementary level, for example, the District now utilizes a “partner school” plan. The plan caps certain sections of grade levels in elementary schools that

have reached class size targets. When those sections are capped, students who register thereafter will be enrolled at a “partner school” – a Lower Merion elementary school that can accommodate further enrollment in that class section. This strategy has helped minimize the need to open additional sections in the short term, maximizing existing classroom capacity and staff resources. This program along with other strategies allowed us to hold tax increases below the state index for the 2017-18 school year.

While the District must consider enrollment growth in its budget planning, it is impossible – even with detailed studies and projection data – to forecast the precise impacts and costs. Ten years ago, for example, it would have been difficult to fully predict trends like: significant growth in the number of students enrolling in public schools vs. private schools in our community (a swing of between 600-700 students); a greater draw rate (almost double in eight years) of public school students from multifamily homes and rental apartments; and the development of new housing in Lower Merion (464 new units in the last two years and almost 1800 expected over the next six years). One thing is certain, families are continuing to choose Lower Merion School District for the quality of its schools. The demographic studies have indicated that growth is most closely associated with “the overall quality, reputation, and appeal of the [District].”

As LMSD balances its commitment to fiscal responsibility with the needs of its students, the Board of School Directors has made clear their commitment to maintaining the quality of the educational experience. The commitment is manifested in the long-term strategic plans, developed with extensive input from the entire community, including specific stakeholders. The funding required to support annual strategic plan needs is a part of public budget discussions. **Funding decisions have been developed and endorsed by the community, as evidenced by the cross-party support for the current School Board and the involvement of a broad cross-section of the population in our strategic planning and budgeting processes.**

Fund Balance

Lower Merion School District carries approximately \$56M in total fund balance, which represents roughly 22.9% of 2016 budgeted expenditures. Most of this amount represents a “committed” fund balance, which means it serves a financially-prudent purpose as permitted by law. In fact, the Office of the Auditor General took special note of the health of the District’s fund balance in its last audit report, and offered no findings or observations of concern. Yet, that is the same fund balance that the Auditor General is now viewing as “too high.” The balance includes \$15.3M for PSERS (state pension system).³ While the District’s PSERS obligation for this year is currently about \$20M, the state projects that within five years this amount will increase to over \$23M, a point at which reserves will be needed to offset the increases, something that the District has anticipated and prepared for several years – well before the prior audit, which raised no concerns with this analysis. An additional \$15M is committed for future capital projects and will be used for ongoing facilities needs, decreasing the District’s reliance on borrowing, and carrying into effect the community-developed strategic plan. A total of \$5M is

³ PSERS is managed by the Commonwealth, and school districts are mandated by law to contribute based on a rate annually determined by the PSERS Board. Local districts have no control over current and future contribution rates. Per 2017 data from PSERS, the current unfunded liability for the pension system is over \$42B. It is no surprise that district contribution rates continue to rise almost every year. (See chart on p. 13)

committed for post-retirement benefits as determined by actuaries and an additional \$0.5M is assigned for rate stabilization on variable rate bonds (should interest rates rise, the District will be covered). The reliance on actuaries for projected uncertainty is a good accounting practice. The remaining \$20.3M in “unassigned” fund balance constitutes [*sic*] approximately 7.6% of the District’s budget and is **therefore well below the allowable 8% limit set by the PA School Code**. The District used \$6.3M to close its budget deficit and maintained \$13.9M in reserve. The \$13.9M represents 5.2% of the budget.

The Auditor General’s public pronouncements have affirmed the principles behind Lower Merion School District’s and certain other districts’ budgeting practices. In a December 2015 Performance Audit report of the Pittsburgh Public Schools (which were carrying the state’s largest fund balance as of December 31, 2014 of just over \$129.2M) the Auditor General explained, “It is important to note that **a generous fund balance is a necessary component of a fiscally healthy school district**. Fund balances are important to districts the same way a savings account is important to individuals. Just as individuals should maintain a savings account to deal with emergencies or other unforeseen events, districts should also have funds in reserve to pay for emergency repairs or interruptions to revenues...School districts must walk a fine line between being prepared for emergencies, increasing fixed costs, or interruptions to revenue and being responsible to their students and taxpayers.”

The Auditor General cited Pittsburgh as one of the state’s most “successful financially run districts” due in large part to its healthy reserves. According to Pittsburgh’s most recent audit, the district’s fund balance ratio to total budget was 24%, which is actually higher than Lower Merion’s.

Although the Auditor General has recently referred to “20%” as a possible threshold for appropriate fund balance percentages, we reviewed school district audits released by the Auditor General’s Office between January 1, 2017 and July 27, 2017 but found **no observations or findings regarding fund balance in any of the 67 school district audits. This list included 29 districts with fund balances above 20% and at least 23 districts that had higher fund balance percentages than LMSD in 2015-16**. For example, of the six school district audits released via the Auditor General website on February 2, 2017 four districts had fund balances greater than LMSD and one had a fund balance of more than 40%.⁴

At the same time, the Auditor General has continued to recognize that school districts that run low fund balances risk the fiscal health of the district. As part of a public release regarding a recent audit of Blackhawk School District, he noted the following⁵:

- “Just as individuals and families should maintain a savings account to deal with unforeseen events, school districts should also have funds in reserve.”

⁴ Windber 40.6%, Midd West 34.2%, Carmichaels 25.6%, and Wyomissing 23%. Information based on press releases and audits at <http://www.paauditor.gov/>

⁵ Auditor General DePasquale Says Poor Budget Planning Led to Blackhawk School District’s Nearly Depleted Fund Balance <http://www.paauditor.gov/press-releases/auditor-general-depasquale-says-poor-budget-planning-led-to-blackhawk-school-district%E2%80%99s-nearly-depleted-general-fund-balance>

- “Unbudgeted expenditures necessitated that the district use the general fund balance to cover these expenditures...This is an unsustainable practice that nearly depleted the district’s general fund and led to the district’s perilous financial condition.”

In an audit of Eastern York School District, he shared similar concerns about the District’s declining fund balance:

“Maintaining a healthy general fund for a school district is not unlike individuals and families stashing cash in a savings account to save for an emergency,” DePasquale said. He cautioned that a decreasing fund balance reduces a district’s ability to pay for unexpected repairs or cover unexpected interruptions in revenue — like the recent nine-month budget impasse — and could impact the district’s credit rating.⁶

According to a study by the Commonwealth Foundation, 167 districts (one-third of all districts in Pennsylvania) had a higher percentage of total fund balance to actual expenditures than Lower Merion School District in 2014-15.⁷ By 2015-16, this number had increased to 181 districts (more than 36% of PA districts), according to a report by Temple University.⁸ Additionally, more than 50 districts are operating with a total fund balance of less than 6%, including 17 districts completely in the red and operating in a deficit. The Temple report also found that 33% of Pennsylvania school districts (165 total) had an actual unassigned fund balance as a percentage of actual expenditures greater or equal to Lower Merion’s.

This statewide snapshot underscores our District’s fiscal vitality and illustrates that there is great variance in total fund balance percentages across the state and no guidelines, mandates, or even general consensus as to what an appropriate percentage should be. The Temple study confirmed the varied distribution of fund balances across the Commonwealth and noted that “fund balance is a point-in-time measure; they change from year to year. **The amount of fund balance is not necessarily an indicator that school districts are collectively, or even individually, irresponsibly hoarding a pot of gold that could or should be used to avoid tough budget decisions.**”

Districts with adequate and healthy fund balances can address short-term and long-term needs, demonstrate financial stability and preserve or enhance bond ratings, thereby lowering debt issuance costs. The ratings agency Moody’s affirmed LMSD’s Aaa credit rating last year, enabling the refinancing of general obligation bonds that will save taxpayers \$9.8M. Among Pennsylvania’s 500 school districts, LMSD is one of only five that carries the Moody’s Aaa credit rating. Moody’s specifically cited the District’s “strong and stable reserve levels” in its most recent report. In the best and worst of times, a strong credit profile serves a district well. **The facts clearly show that Lower Merion School District has observed both responsible**

⁶ Eastern York’s Emergency Fund Too Low, Audit Warns
<http://www.ydr.com/story/news/education/2016/07/21/audit-flags-eastern-york-fund-balance-drop/87399304/>

⁷ School Districts Amass Record Reserve Funds
<https://www.commonwealthfoundation.org/policyblog/detail/school-districts-amass-record-reserve-funds>. Lower Merion’s percentage was 24.56% for 2014-15, which was based upon \$55,974,232 of fund balance to \$237,893,842 actual expenditures.

⁸ Explaining School Fund Balances/Temple University Center for Regional Policy
<http://www.cla.temple.edu/corp/files/2017/07/Fund-Balance-Update-2017.pdf>

budgeting practices and the letter of the law with regard to maintaining an appropriate fund balance.

We find it puzzling that the Auditor General is suggesting that the District ought to spend down its fund balance, particularly in light of his recent public comments regarding the Pennsylvania budget crisis. In a June letter co-signed by State Treasurer Joseph Torsella, the Auditor General noted the dangers of the Commonwealth's declining fund balance and the implications with regard to the state's credit rating, ability to pay obligations, and chronic need for borrowing:

*"The continued drop in the average annual General Fund balance is indicative of a structural imbalance between revenues and expenditures. Without a correction to this imbalance, we anticipate the trend of lower General Fund average balances to continue to worsen in the coming years."*⁹

This month, Standard & Poor's Global Rating lowered its general obligation rating on the Commonwealth from "A+" to "AA-", citing the need for "additional liquidity and...the likely need for external borrowing." **The result is that the state -- and taxpayers -- will pay more to borrow money.**

The same principle holds here, only with the opposite result. The taxpayers of the Lower Merion School District have benefited from a strong credit rating and lower borrowing costs (which is particularly important given unprecedented enrollment growth and the need to expand capacity at our schools). A deliberate plan to reduce the District's fund balance would likely lead to a lower bond rating and an increased cost of borrowing. The District believes this is bad policy for the same reason that the Auditor General has advanced in other contexts.

Variance

The title of the audit report suggests that the District projects deficits and yet realizes surpluses. This is true and we believe it is the result of prudent, conservative budgeting and year-long efficiency and frugality, as well as the fact that the budgets are developed line-by-line, category-by-category, as the Department of Education requires. We do a careful analysis of each budget category every year, but that doesn't necessarily result in zero (0%) variance between budgeted expenditures and actual expenditures in each category.

Each year school districts prepare budgets that are an estimation of expenses for the following school year. In Pennsylvania, budgets are prepared almost a year in advance of implementation and must take into account numerous variables, including but not limited to:

- Enrollment changes
- Staffing needs
- State budgets (which often aren't determined until late in, or in many cases after the closing of, the budget cycle)

⁹ Auditor General DePasquale, Treasurer Torsella Warn Legislators of Dangerously Low General Fund Balance Going into Next Fiscal Year <http://www.paauditor.gov/press-releases/auditor-general-depasquale-treasurertorsella-warn-legislators-of-dangerously-low-general-fund-balance-going-into-next-fiscal-year>

- Fluctuations in the local real estate market and transfer tax revenues
- Special education costs
- Charter school costs
- Healthcare costs
- Facilities planning and emergency needs (winter weather, repairs, etc.)

This timetable can be particularly challenging to rapidly-growing districts like Lower Merion. The District makes a best estimate as to its projected costs using historical data and guidance obtained from multiple sources, including its financial advisor, insurance broker, energy consultant, county and local planners, various local and state purchasing consortiums and internal staff.

The budgeting process in LMSD begins in early fall with outlines and expectations given to administrators. The District utilizes a modified zero-based budgeting that relies on carefully-examined historical data. (See footnote #2 and attached documents). A variety of situations and scenarios, from union contract agreements to emergency situations are considered. The administration then follows a PDE timeline in submitting and presenting for public Board deliberation a series of budget documents.

In that regard, the District notes that in footnote 2, the Auditor General attempts to justify using “original” rather than “amended” budget data in Figure 1, “since the original budgets were used by the District in its applications for Act 1 ... exceptions to PDE.” But the numbers that the Auditor General are not from *any* budget that was submitted on a Department of Education form to the Department of Education. *See* 24 P.S. § 6-687, 24 P.S. § 6-688. Instead, the data came from a table in the Audited Financial Statements prepared for the District, which was not intended to and did not set forth either the preliminary estimates that were submitted to the Department of Education in applying for the exceptions or the statutory measure of final expenditures. If the correct budgeted and actual numbers are used, the story looks very different.

Expenditures	2012	2013	2014	2015	2016
Budgeted	\$204,571,449.00	\$212,809,404.00	\$221,634,342.00	\$234,520,559.00	\$246,266,565.00
Difference Between Actual and Budgeted	\$16,660,515.00	\$6,177,152.00	\$4,954,871.00	\$7,445,096.00	\$6,563,577.00
Percentage Difference	8.14%	2.90%	2.24%	3.17%	2.67%
Revenues					
Budgeted	\$197,986,495.00	\$202,930,116.00	\$213,062,872.00	\$226,063,700.00	\$236,931,310.00
Difference Between Actual and Budgeted	\$2,303,822.00	\$3,730,723.00	\$3,634,471.00	\$1,016,105.00	\$2,772,234.00
Percentage Difference	1.16%	1.84%	1.71%	0.45%	1.17%

It is worth noting that the largest variance by far was in 2012, a year that was previously audited by the Auditor General, who raised no concerns raised over that variance at that time. The subsequent variances have all been much lower. The errors in Figure 1 are carried over into Figures 3 and 4. Moreover, in Figure 7, the Auditor General misreported the amount of the special education exception that was not used, suggesting that the District forewent \$1,050, when in fact it forewent \$51,050.

In addition, the District can have and generally does have almost no variance between projected and actual expenditures in many areas (approximately 72% of line items were within a 2% variance in 201516) but nonetheless experiences surpluses based on a small subset of line items. That line item budgeting is preserved through the course of the year. Accordingly, if not all of the monies budgeted for an item are needed – whether because the winter was warmer than projected or healthcare expenditures were lower than the actuaries anticipated – the monies are not simply moved elsewhere to be spent in other categories; they are saved. Those savings add up to produce a surplus, and it could be that one or two line items could give rise to a significant surplus.

In the audited fiscal year of 2014-15, for example, the District realized a total surplus of approximately \$4M. The two main factors were a one-time bond refunding (similar to mortgage refinancing) and fewer employee healthcare claims (District is self-insured) that reduced expenses and together accounted for the surplus. **Without these non-recurring savings, the District would not have experienced a surplus for the year.** Following an accepted practice, these funds were transferred to LMSD's capital reserve account upon a public Board vote to be used as part of the District's five-year capital improvement plan, five-year technology/infrastructure plan and for the replacement of aging buses. These plans have been developed in recognition that deferring such projects indefinitely would eventually result in increased maintenance costs and the degradation of District facilities and operations. This is a snapshot of just one fiscal year, but it is telling in the context of variance and fund balance.

In 2015-16, the District realized a positive variance on a single line item of nearly \$439K due to lower-than-expected costs related to students who receive educational services through schools, programs, or agencies outside of the District (Budget Code 560/Tuition to Non-Public Schools). Per Federal regulations (Individuals with Disabilities Act and Section 504 of the Rehabilitation Act of 1973), the District is responsible for providing a free and appropriate public education (FAPE) to students with disabilities. To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met at no additional expense to the parent/guardian. Sometimes students' needs, due to their disability, exceed what can be provided within their home school, and outside educational services and placements are necessary to provide FAPE.

In preparing a budget, we need to ensure that enough funds are available to support all students with disabilities without knowing in advance all the specific services that will be required for every disabled child. As students' needs change, their educational program must be adapted to meet current needs. Administration also cannot predict the enrollment of new students with disabilities. The District has had new students enroll with complex needs that require highly specialized programs costing in excess of \$100,000. Furthermore, **the District does not control**

costs associated with out-of-district programs and we are not provided with exact tuition costs of programs until well after the final budget is approved. While our administration makes carefully considered recommendations based on an analysis of historical trends and current student population, it is not possible to know the exact dollar amount needed a year in advance.¹⁰

Likewise, there are a number of examples where actual costs exceeded historical budgeted costs, demonstrating additional challenges in relying on historical data. For several years, vo-tech expenditures were less than the budget of \$350,000, however when we received our final vo-tech school tuition for 2015-16, it was more than \$600,000 (See Table 1) resulting in an unfavorable variance of \$258,000. The vo-tech program sets tuition rates and the District has no input in the cost figures. Historical data would not have led the school district to budget for increased costs.

Transportation is another area of fluctuation, depending upon required transportation services as a result of student placement and needs. For the 2015-16 school year, the District budgeted a little more than \$12M, but spent more than \$13M. The variance was due in large part to specialized transportation services to meet the requirements of students with special needs (See Table 1). Generally speaking, when districts choose to contract with an intermediate unit to provide special education transportation, the IU submits a report to PDE at the end of the year and those expenditures are recorded in the following year. LMSD realized the cost increase in specialized transportation services and determined that the most fiscally-responsible way to provide them moving forward was through other contracted services. However, the District was still paying for IU transportation services provided in the prior year, while paying for contracted services in the current year. This is another example where historical data would not have determined our actual costs. See Table 1 below for additional examples of variance between budgeted and actual expenditures in the 2015-16 LMSD Budget.

Table 1: Examples of Variance in the 2015-16 LMSD Budget

Year End	Function	Budget	Actual	Difference
6/30/2016	1300 VoTech	\$350,000.00	\$608,022.00	(\$258,022.00)
	2300 Support Srvc- Administration	\$12,980,919.00	\$13,052,231.00	(\$71,312.00)
	2700 Transportation	\$12,156,308.00	\$13,203,694.00	(\$1,047,386.00)
	2800 Central Sprt & Tech Srvc	\$5,566,821.00	\$5,897,778.00	(\$330,957.00)
	3300 Community Svcs	\$197,500.00	\$198,566.00	(\$1,066.00)
Total		\$31,251,548.00	\$32,960,291.00	(\$1,708,743.00)

A greater focus on historical budgeting would not have helped the District budget more accurately and/or reduce variance in most situations. Areas of significant variance occur not

¹⁰ Approximately 13.5% of District students receive special education services and their individualized programs are developed and annually reviewed by each individual student’s IEP (Individualized Education Plan) team, which includes relevant school personnel, parents, and the student (if 14 years of age or older).

because of a failure to understand or look at historical information, but rather due to circumstances beyond the District’s control.

Finally, the fact is that LMSD’s conservative budgeting practices are common to districts across the Commonwealth. As noted by school budget expert Dr. William Hartman of Penn State, the majority of Pennsylvania school districts “underestimate revenues”, “overestimate expenditures” and “any resulting surplus goes to fund balance.” Dr. Hartman affirms these “conservative practices” as appropriate strategies for “prudent budget management to allow for future unknowns.”¹¹ The Auditor General has not previously taken issue with these practices.

Fund Transfers

The District appropriately, lawfully, and publicly authorized the transfer of funds to its capital reserve for each and every year under auditor review. According to the state accounting manual¹², the District’s practices are consistent with code; as referenced above, surpluses from the general operating fund may be transferred to capital reserve to fund budgeted capital reserve items. During the years 2012-16, the District transferred more than \$18M and spent more than \$19M in support of its five-year capital improvement plan, five-year bus replacement plan and five-year technology plan. Over the next five years, the District anticipates needing nearly \$22M to implement these ongoing plans.¹³

Substantial Committed Funds

The draft Performance Audit accurately notes that the District has maintained a relatively constant committed fund balance of around \$35.8M for the five fiscal years 2012-16. All budgeted items in the committed fund balance have been affirmed as appropriate by local auditors and reflect a measure of fiscal prudence for a district planning for future needs – particularly given uncertainties like enrollment growth and increasing PSERS obligations. That the number has remained constant is a reflection of sound fiscal policy and strategic budgeting decisions. For example, the District planned to utilize committed fund balance to support the financing of several recent classroom expansion projects. After careful review, the District determined that it could realize savings and maintain funds for future capital projects by taking advantage of historically low interest rates and issuing bonds for these projects. The result would be greater flexibility and security in the future; if enrollment growth continued and interest rates rose, the District would be able to save taxpayers by having more funds available (and issuing less debt service) for future capital projects as designated in the community-generated strategic long-term plans.

¹¹ “An Analysis of the Budgeting Process in Downingtown Area School District” by Dr. William T. Hartman, Professor of Education, Emeritus, the Pennsylvania State University 10/11/16

¹² Municipal Code P.L. 145, Act of April 30, 1943, also known as Purdon’s 53§1431 accounts for (1) moneys transferred during any fiscal year from appropriations made for any particular purpose which may not be needed, (2) surplus moneys in the General Fund of the treasury of the LEA at the end of any fiscal year, and (3) interest earnings of the fund itself.

¹³ The five-year facilities plan is presented to the Board Facilities & Purchasing Committee and reviewed on a consistent basis.

Neighboring school districts without modernized facilities will face significant challenges in renovating/building new schools in coming years due to Act 1 constraints and the rising costs of construction. Other districts will eventually need to incur debt – likely at much greater cost – to continue to provide safe, adequate facilities. Preserving high quality facilities is a priority for the District not only related to capacity needs. LMSD's commitment to consistent maintenance and upkeep yields long-term cost savings and value to the community. **Deferring these services would lead to costly repairs, renovations and impact the curb appeal of the community's public schools – potentially diminishing property values.**

The importance – and challenge – of maintaining adequate committed funds to mitigate future employee retirement obligations is illustrated by the table below (Table 2), which shows the most recent PSERS employer contribution projections through 2021-22. Every year PSERS provides new projections to school districts estimating what future obligations will be. For the year ending June 30, 2010, the 2021-22 rate was projected to be 27.03%. The most recent projection (as of June 30, 2016) for 2021-22 is 36.40%. In the current 2017-18 year, the actual employer contribution rate is already 32.57%. With rates continually being adjusted upward, the District is being prudent in appropriately planning for the uncertainty of PSERS employer contribution rate obligation.

Table 2: Historical PSERS Employer Contribution Projections

Year Ending	2021-22 Projection of Employer Contribution Rate %
6/30/2010	27.03
6/30/2011	27.58
6/30/2012	30.76
6/30/2013	32.01
6/30/2014	31.90
6/30/2015	33.51
6/30/2016	36.40

The draft Performance Audit’s assessment that “the District never spent any of the funds it set aside for retirement costs, nor did it develop a timeline for when it intended to spend those funds” is misleading. As noted above, the District has been very clear as to the purpose of its committed fund balance and the importance of maintaining these funds to cover increasing PSERS obligations and when that is projected to occur. To date, the District has utilized state subsidies and annual tax revenues to cover rising PSERS costs with that timeline in mind, recognizing that **it will be impossible to keep pace with projected increases without drawing from reserves.**

The Auditor General appears to be under a mistaken impression in this regard. The reason the fund balance was established in the first place was to respond to projections of future need. Those projections have been revisited at various points in time, and the evaluation of the timeline has been communicated to the Board and the public. During the 2015-16 school year, for

example, the District hosted a series of “community conversations” on the budget, including a February 22, 2016 presentation to local civic associations that described PSERS employer contribution projections and the forecasted need to draw from reserves as early as 2020.¹⁴ If the Auditor General had asked for information of this kind in any of the multiple requests he made during the course of the year, the District would certainly have provided it.

In that regard, we also note that in our review of a number of other school district audits this year, including those of districts that maintain a committed fund balance for PSERS, we could find no references to a timeline for drawing down PSERS reserves. We reviewed 2015-16 financial statements and budget presentations for several districts that have recently been audited (Windber and Midd-West, for example) and found no specific mention of how and when retirement funds held in reserve would be spent.¹⁵ We also note that the Auditor General has not sought a specific timeline for a PSERS reserve drawdown in past audits, and never before criticized the long-standing fund balance.

Finally, the Board approves the audited financial statements annually, and they contain a full description of committed reserves. In addition, there is a public vote any time an item in the committed fund balance changes.

In 2017, the District augmented its practices to include a Board motion to reconfirm commitments even if designations do not change. Although not required by law or code, the Board has updated its procedures to confirm committed fund balances whether they change or not.

Referendum Exceptions/Act 1

Under Act 1, the Pennsylvania Department of Education publishes an inflationary tax index that represents the maximum real estate property tax levy increase for each school district (without PDE exception or voter approval). Districts that seek to raise taxes above the index can only do so by submitting referendum exceptions to PDE or receiving approval from the local voters by referendum. The four referendum exceptions are school construction-grandfathered debt, school construction-electoral debt, special education expenditures and retirement contributions. Requests for exceptions are unique to each district. The General Assembly requires PDE approval before such exceptions can be taken, and while PDE does not approve all amounts requested for all districts, PDE has approved Lower Merion School District’s requests for exceptions in full, for each year of the draft Performance Audit. It should be noted, however, that it was rare for the District to take the full exceptions.

The draft audit seems to suggest that districts seeking exceptions to raise taxes above the Act 1 index are somehow violating the spirit of the law. We disagree. The narrow exceptions that the Lower Merion School District has applied for are **mandatory** expenditures; the District’s taxpayers cannot determine that they do not want to fund pensions or special education. The District has **always** used exceptions specifically for the purposes stated in its application to PDE.

¹⁴ 2016-17 LMSD Budget: A Community Conversation

http://www.lmsd.org/uploaded/documents/Departments/Business/ISC_Budget_Pres_Apr_2016.pdf¹⁵ If the data exists we could not find it online in audit reports, presentations, or financial reports.

Those exceptions do not cover the cost of the District’s contributions; they do not even cover the *increased* cost from one year to the next.

	LMSD Contributions to PSERS*	Difference Year over Year	Taxes Realized Through PSERS Exceptions
2011-12	\$4,403,139	\$1,634,365	\$1,621,343
2012-13	\$6,537,759	\$2,134,620	\$0
2013-14	\$9,231,888	\$2,694,130	\$1,233,830
2014-15	\$11,305,376	\$2,073,488	\$1,714,965
2015-16	\$14,373,465	\$3,068,089	\$1,536,794

*Half of the District’s total contribution is paid by the Commonwealth. Accordingly, only the half actually spent by the District is set forth here.

Even with funds obtained through exceptions, the District cannot fully cover its increasing annual special education and PSERS obligations without drawing from other sources. We find it particularly telling that the PSERS Board recently scaled back the number of years it includes in its employer contribution rate projections (from 20 years to five). Forecasts have been so consistently and egregiously low that they have been almost useless for school district planning purposes.

Moreover, the Auditor General has not taken issue with or identified a single concern with the District’s use of exceptions for special education. Similar to rising PSERS costs, the costs of providing appropriate special education services continue to increase while state support remains virtually unchanged. Since 2000, the District’s special education budget has increased from less than \$15M to nearly \$48M. At the same time, state contributions for special education have remained flat at less than \$3.5M/year. As a result, LMSD must rely more on local revenues to comply with federal and state mandates, such as IDEA. The learning environment in LMSD is considered by the Department of Education to be highly inclusive for students with special needs.

The fact is that none of the funds that make up the District’s fund balance were obtained through exceptions. All of the monies raised through the exceptions were spent on the costs covered by the exceptions. The entirety of the fund balances have come from other sources clearly defined and discussed during our budget process and, as the Auditor General observed, the fund balances have been in place for several years – since prior to the last audit.

Wolk Litigation

The Auditor General devotes an entire section of the report to the *Wolk* litigation. The amended complaint in that case seeks relief that includes but is not limited to \$55,000,000, plus interest and attorneys’ fees, suspension of the Board and appointment of a Trustee over the District, requiring the District and its Directors to attend courses in arithmetic and public finance, a

constructive trust, orders that certain employees be terminated, and a declaration that the method and mode of school tax assessment and collection in Pennsylvania is illegal. Whether or not the Auditor General is in sympathy with Mr. Wolk’s goals, the District respectfully suggests that the public policy opinion should be outside the scope of an audit.

Community Values

During the District’s most recent strategic planning process, the community affirmed its steadfast support for providing a rich, progressive curricular and co-curricular experience. Opportunity is at the heart of what defines us as a school system. LMSD offers a rigorous, comprehensive multi-disciplinary academic program, low class sizes, an array of world-class services for special needs and gifted children as well as community-based learning programs, early-intervention literacy support, an International Baccalaureate diploma program, a full menu of high school honors and AP courses, an extensive range of course offerings in music, technology and the arts. The District's world language program enables all students to receive uninterrupted foreign language instruction from first grade until the time they graduate from high school. More than 500 supervised academic, athletic, community outreach and performance-oriented co-curricular programs are available in the District, from elementary school technology clubs to high school varsity sports. In addition to serving student programs, the District's facilities are utilized by thousands of community members for enrichment programs, recreation and general use.

Opportunities yield results. Our schools rank among the highest in Pennsylvania for SAT and PSAT scores, AP participation rate, total number of National Merit Semifinalists, total number of International Baccalaureate diplomas granted and in numerous publications’ “top schools” lists. For the past three years, the District has been named one of the top ten school districts in the US by Niche.com and recently our schools earned recognition as among the top STEM schools in the country. We annually are recognized as among the nation’s Best Communities for Music Education by the NAMM Foundation. All ten schools have been recognized for excellence by the Commonwealth. Approximately 95% of high school graduates attend institutions of higher learning. Our students excel at the national level in co-curricular programs ranging from Science Olympiad to FIRST Robotics and our athletic teams have won numerous state championships.

In short, LMSD seeks to provide an extraordinary level of service and opportunity and a culture of student and staff excellence. This is what distinguishes our schools and serves as a point of pride for the community. The community consistently votes for school boards that share these values. They demand that the District deliver a world-class public education and they are willing to make the investments necessary as indicated by the Board members they choose to elect. And it should be noted that our schools are truly a Lower Merion community investment; more than 85% of our budget comes from local revenues. LMSD believes it serves as a model of how public schools can be successful with community support and adequate funding. We believe all districts should be able to provide the same level of opportunity and investment in their children. **The ability to do so requires sustained financial stability and budget stewardship as demonstrated (and affirmed by the voting public) over time by Lower Merion School District.**

Additional Considerations

- **Revenues:** More than 90% of the school districts in Pennsylvania levy an earned income or wage tax in addition to real estate taxes to generate revenue. Unlike these districts, Lower Merion does not have an earned income tax, so its reliance on real estate taxes is particularly pronounced. (As required by state law, Lower Merion's residents were presented the option and voted to rely on property taxes alone.) State and Federal subsidies account for just 14% of LMSD's total revenue – well below the state average. The result is that communities with different taxing authorities must take significantly different approaches to budgeting. **In Lower Merion, the heavy reliance on property taxes as a primary source of revenue forces more conservative budgeting.**

It should also be noted that school districts are required to operate by a different set of rules than other governmental entities (municipalities, for example) when it comes to generating revenue. Other governmental entities can establish budgets and cover projected expenses (and shortfalls) through other means like municipal service fees and have no fund balance limit. School districts do not have this opportunity, nor the same degree of flexibility.

- **State accounting changes:** In recent years, the state has changed its accounting manual with regard to account reporting. This has created some challenges in using historical budgeting to accurately track longitudinal data in certain accounting locations. For example, software used to be recorded as object code 618. At the end of the 2016 school year, this code was changed to object code 650. So when looking at historical numbers for software, an item/budget code that might have previously been reported as an expense now appears as a zero in the budget. The District has worked hard to reconcile previous and current budgets, but given that the LMSD budget has more than 8000 expenditure accounts, the state changes have made it more challenging to track historical numbers as items have been reported in different locations in different years.
- **Public process:** The LMSD budget reflects public input received through a variety of forums, including regular Board meetings, public budget workshops, committee meetings and community comments. In 2016-17, the District's Finance Committee hosted a series of detailed, in-depth presentations on key areas of the budget, including curriculum and instruction, facilities, transportation, staffing and special education. The District also maintains [*sic*] online and video resources related to the budget, which can be found in the budget section of the District website.
- **Common Practices:** The District utilizes accounting and budgeting practices that are standard for school districts across the Commonwealth. **In fact, every state and independent audit of the District over the past five years (seven total) has affirmed the District's full compliance with budgeting and accounting standards. The District has consistently been lauded for strong fiscal management by credit ratings agencies.** Both the Pennsylvania School Boards Association and Pennsylvania Association of School Business Officials affirmed the District's practices during the

past school year. PASBO issued a school budgeting fact sheet and the following statement¹⁵ in response to the ongoing Wolk lawsuit (referenced in the draft Performance Audit):

“Despite the fact that Lower Merion adhered to all applicable laws, provided appropriate transparency regarding financial decisions, engaged in careful, long-term financial planning and budgeted conservatively in light of the myriad of fluctuating issues that are beyond their control, they are being criticized and penalized for coming in under budget and planning for future taxpayer savings.”

Conclusion

By all accounts the District’s sound, lawful, and responsible financial practices have enabled the preservation of high-quality educational programs in the face of unprecedented enrollment growth, perennial state budget uncertainty and the rising costs of mandates like pensions and special education. We believe the pressing question with regard to reserves and a healthy fund balance is whether the District should spend down such surpluses or prudently set them aside for anticipated needs.

Lower Merion School District is in a fortunate position to have broad community support for high-quality public education. The community, through its elected school board, has made significant investments in program, infrastructure, staffing and has prioritized saving for the future. **Decision-making has occurred in public, with thoughtful deliberation and complete transparency.**

Ultimately, doing as the Auditor General recommends will result not just in reduced fund balances, but in a reduction of services. Because of the line item budget, and because a district cannot spend at a deficit, the inevitable shortfalls in critical areas will lead – as they did for many districts during the recent budget impasse – to borrowing money at high interest rates, requiring more tax increases to cover the interest than if the needs had been properly anticipated up front. As noted previously, due solely to fixed costs and mandates (salaries, PSERS, special education, etc.) and not accounting for the fastest enrollment growth in the region, our district (and many others) will – by drawing down its reserves – be forced to grapple with budgetary shortfalls and likely a diminished bond rating. Over the long term, this would most certainly have a negative impact on the quality of LMSD schools and real estate in Lower Merion and Narberth.

The draft Performance Audit suggests that a school district that does what the law allows (through Act 1 exceptions) is utilizing a loophole in the law. **LMSD has never exceeded the legally-approved Act I tax rate (index and approved exceptions).** The General Assembly permitted only certain narrow areas of increased expenditures, and the only two that the District has invoked are for areas in which expenditures cannot be compromised, but state and federal funding does not cover the costs of complying with the statutes that give rise to the expenditures. As those costs go up, the General Assembly wanted to ensure that districts can meet those needs. Voters cannot by referendum decide not to fund pensions or special education. LMSD has actively solicited continuous and ongoing public input on its expenditures and long-term

¹⁵ Recent Court Decision Has Statewide Implications http://www.pasbo.org/blog_home.asp?Display=84

strategic plans, and it has always followed Board-enacted policies concerning assigning surplus to appropriate accounts. LMSD maintains an appropriate fund balance based on generally accepted accounting standards and laws governing school districts.

We understand that some might choose to make different budgeting decisions. One district might place less emphasis on maintaining capital reserve funds and instead borrow funds when interest rates are low. Other districts may fund building projects mostly with reserves and reduce public exposure to interest rate increases. Others might use a combination of several strategies. Given that our district continues to grow at a rate far faster than any other school district in the region, our practice has been to maintain a variety of fiscal strategies in an effort to grow in the most responsible manner. **Our Aaa bond rating enables our community to maintain a reliable combination of options for addressing growth while preserving our programs.**

We would refer the Auditor General to strategies employed by local municipalities as examples of responsible, realistic and appropriate approaches to budgeting. In 2015 Lower Merion Township proudly shared with taxpayers that it had realized a budget surplus instead of a planned deficit due to positive budgetary performance and expenditures that were less than what had been budgeted. The Township's fund balance policy, which it deems its "fiscal safety net", requires a minimum year-end General Fund undesignated fund balance no less than 12% of that year's total General Fund operating expenditures. Further [*sic*], the policy has a goal to maintain a year-end General Fund undesignated fund balance within a minimum of 15% and a maximum of 18% of the General Fund expenditures. In recent years, the Township has adopted General Fund budgets with structural imbalance anticipating a drawdown of fund balance to finish the year closer to the policy goal range. Fund balance was reduced in 2014 but due to better than projected financial performance in 2015, the fund balance actually increased. At year-end 2015, the General Fund undesignated fund balance was 35%, up from 34% the previous year. In turn, the Township has been able to maintain its AAA rating from Standard & Poor's Rating Service and its Aaa rating from Moody's Investors Service. The high credit rating means the Township's general obligation bonds are considered excellent investment quality, allowing the Township to borrow at the lowest possible interest rates, which translates to tangible savings for taxpayers. Likewise, this is and has been the goal of Lower Merion School District.

The Lower Merion School District appreciates the Auditor General's consideration in reviewing this information and taking the time to understand some of the factors unique to budgeting in our District.

Distribution List

This letter was initially distributed to the Superintendent of the District, the Board of School Directors, and the following stakeholders:

The Honorable Tom W. Wolf

Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Pedro A. Rivera

Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Joe Torsella

State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Mrs. Danielle Mariano

Director
Bureau of Budget and Fiscal Management
Pennsylvania Department of Education
4th Floor, 333 Market Street
Harrisburg, PA 17126

Dr. David Wazeter

Research Manager
Pennsylvania State Education Association
400 North Third Street - Box 1724
Harrisburg, PA 17105

Mr. Nathan Mains

Executive Director
Pennsylvania School Boards Association
400 Bent Creek Boulevard
Mechanicsburg, PA 17050

This letter is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the letter can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: News@PaAuditor.gov.

Exhibit C



pennsylvania
DEPARTMENT OF EDUCATION

November 22, 2017

Mr. Robert L. Copeland
Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, PA 19003

Re: Auditor General's Performance Audit Report
Fiscal Years Ending June 30, 2015, 2014 and 2013

Dear Mr. Copeland:

The Department of Education (Department) has received the Lower Merion School District Performance Audit Report for years ended June 30, 2015, 2014 and 2013 issued by the Department of the Auditor General.

Please review, evaluate, and respond to the Performance Audit Report Prior Year Finding/Observation using the attached Audit Review Procedures (Attachment A). Your response shall also include a **Corrective Action Plan (CAP)** with the description of the Finding or Observation, a statement indicating the concurrence or nonconcurrence with the Audit Report's Findings/Observations and Recommendations, specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary, a timetable for the implementation of each corrective action step, and a description of monitoring procedures performed to ensure implementation of the corrective action steps. Your response/CAP will be forwarded to the Department of the Auditor General and any other applicable Commonwealth Agency.

Please Note – If the Performance Audit Report identifies a potential educator certification violation, you will be contacted directly by the Department's Bureau of School Leadership and Teacher Quality (BSLTQ). Please direct any questions regarding the Certification Irregularity Findings to the BSLTQ.

The response along with the **Corrective Action Plan** is to be signed by you and the original and **two (2)** copies are to be transmitted on the Lower Merion School District's official stationery within **forty-five (45)** days of receipt of this letter to the following address:

Ms. Connie L. Derr, Audit Coordinator
Bureau of Budget and Fiscal Management
Department of Education
333 Market Street – 4th Floor
Harrisburg, Pennsylvania 17126-0333

Mr. Robert L. Copeland
Page 2
November 22, 2017

Audit Reports are available under the Pennsylvania Department of the Auditor General's website, www.paauditor.gov. If you have any questions, please contact Lynda Thompson at (717) 265-7496.

Sincerely,



Connie L. Derr, Audit Coordinator

CLD:ac

Attachment

cc: Dr. Robin Van Lynch, Board President
Ms. Denise LaPera, Board Secretary

**PENNSYLVANIA DEPARTMENT OF EDUCATION
AUDIT REVIEW PROCEDURES
AUDITOR GENERAL'S LOCAL EDUCATIONAL AGENCIES PERFORMANCE AUDIT REPORTS**

<u>ACTION BY:</u>	<u>STEP</u>	<u>ACTION</u>
Secretary of Education	1.	Receives copy of Performance Audit Report for each Local Educational Agency (LEA) from the Office of the Auditor General.
Audit Coordinator Department of Education	2.	Requests response/corrective action from the LEA when report contains findings, observations or recommendations to the auditee. Forwards request to the LEA Administrator ¹ with a copy to the President/Chair of the LEA's Board of Directors and the Secretary.
LEA Administrator ¹	3.	Forwards LEA Performance Audit Report for response to established Audit Review Committee or the Board acting as a whole.
LEA Audit Review Committee or Board of Directors	4.	Prepares response to each finding, observation and recommendation including a Corrective Action Plan addressing each determination. Forwards response to President/Chair of the Board for Board action.
LEA Board of Directors	5.	Passes resolution adopting and approving the response and the Corrective Action Plan . Forwards response and any supporting documentation to LEA Administrator ¹ .
LEA Administrator ¹	6.	Forwards ORIGINAL and TWO (2) copies of Audit Response Package to the Pennsylvania Department of Education, Bureau of Budget and Fiscal Management, Division of Budget, 333 Market Street – 4 th Floor, Harrisburg, Pennsylvania 17126-0333. The Audit Response Package should include: <ul style="list-style-type: none"> • Date of Board Meeting/Board Certification/Adopting the Response and Corrective Action Plan • Description of Finding or Observation • Statement of Concurrence or Nonconcurrence • LEA's Response, Corrective Action Plan, Resolution, Supporting Documentation • Implementation Dates of Each of the Corrective Action Steps • Description of Monitoring Procedures to Ensure Implementation of the Corrective Action • Signature of the LEA Administrator¹

The Audit Response Package is due at the Department of Education within **45 days** of receipt of the PDE's request.

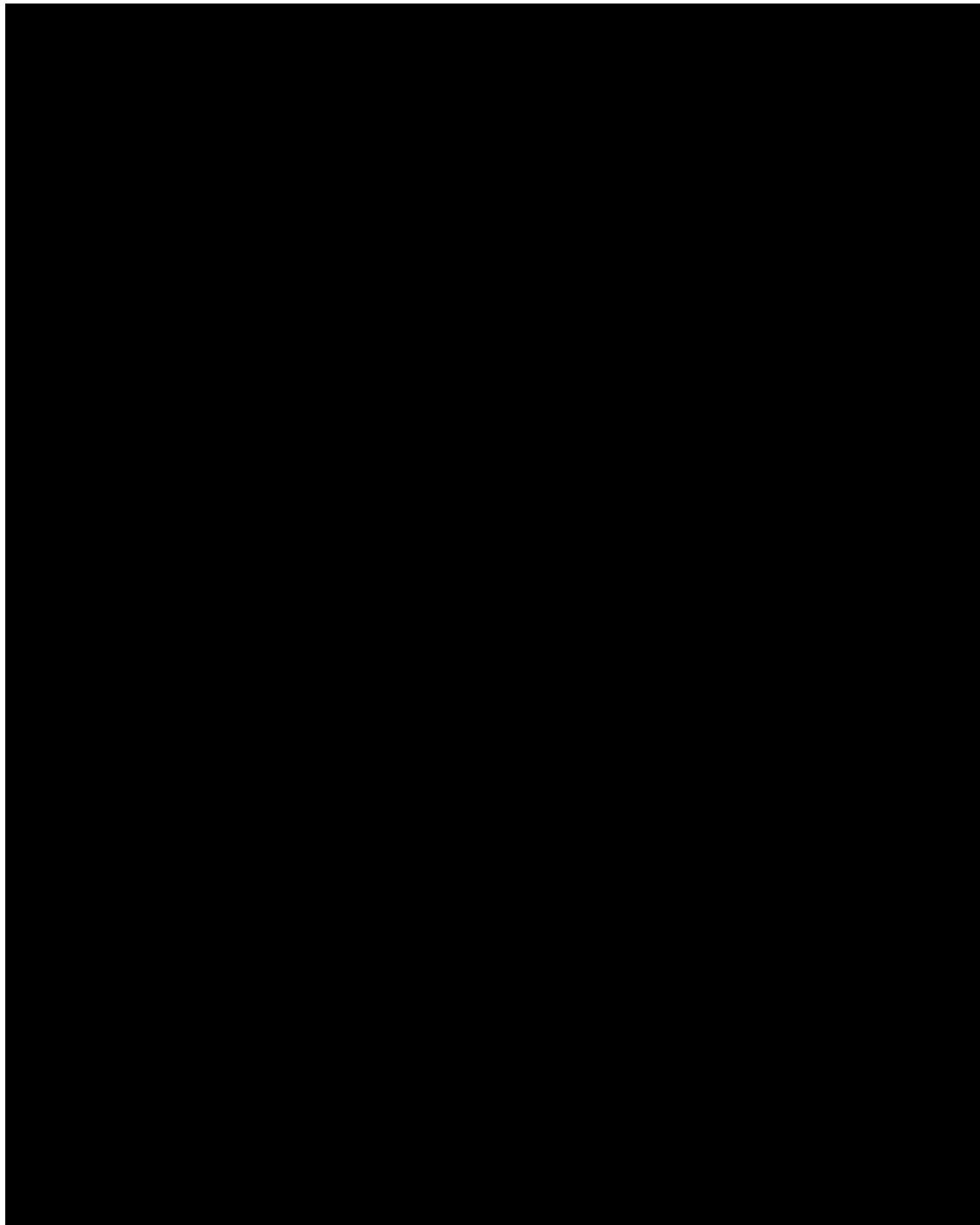
¹LEA Administrator is:

- Superintendent of a School District;
- Executive Director of an Intermediate Unit;
- Superintendent of Record for an Area Vocational Technical School;
- Chief Administrative Officer for Charter School;
- President of Postsecondary Educational Agencies.

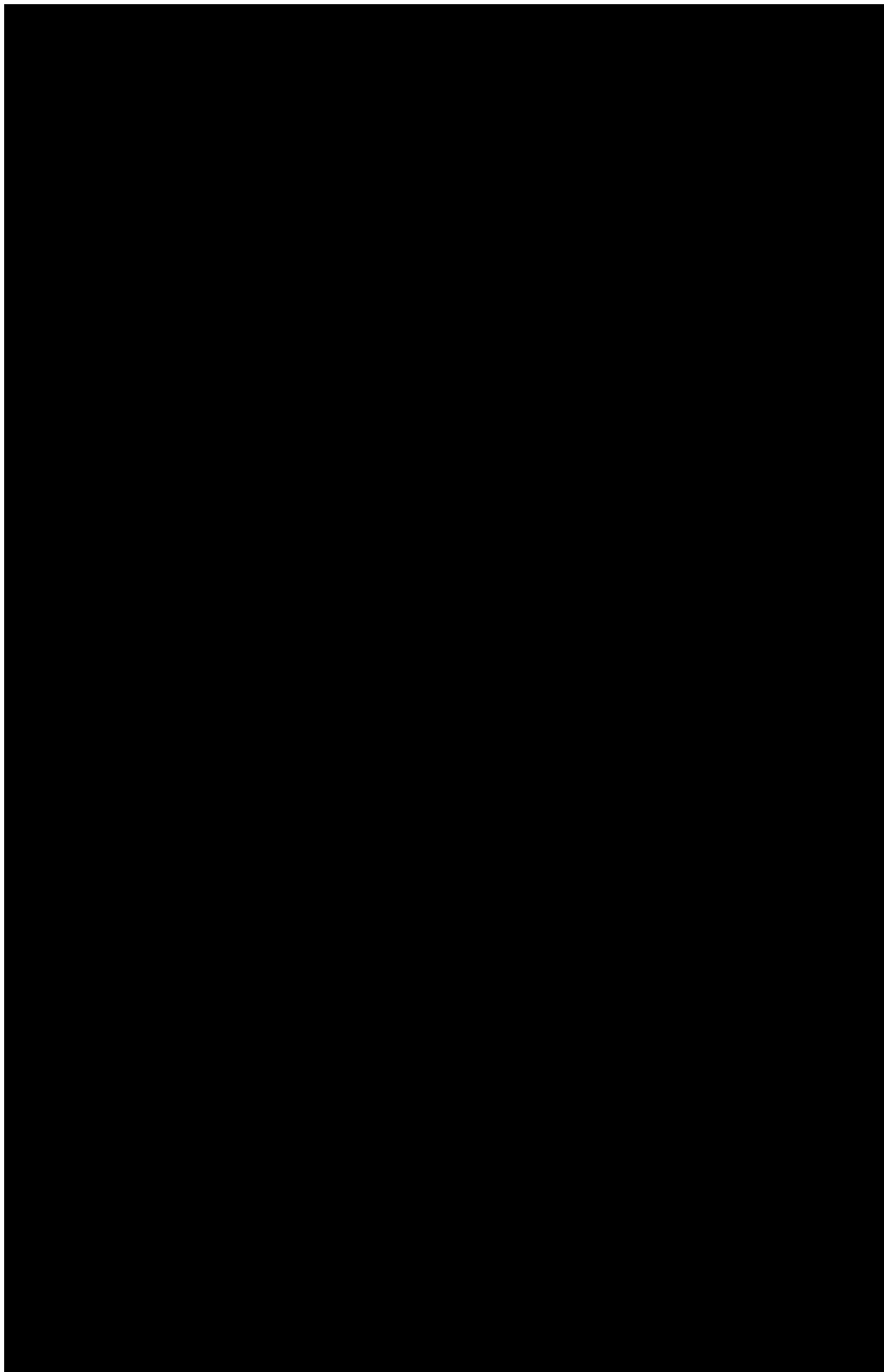
Exhibit D

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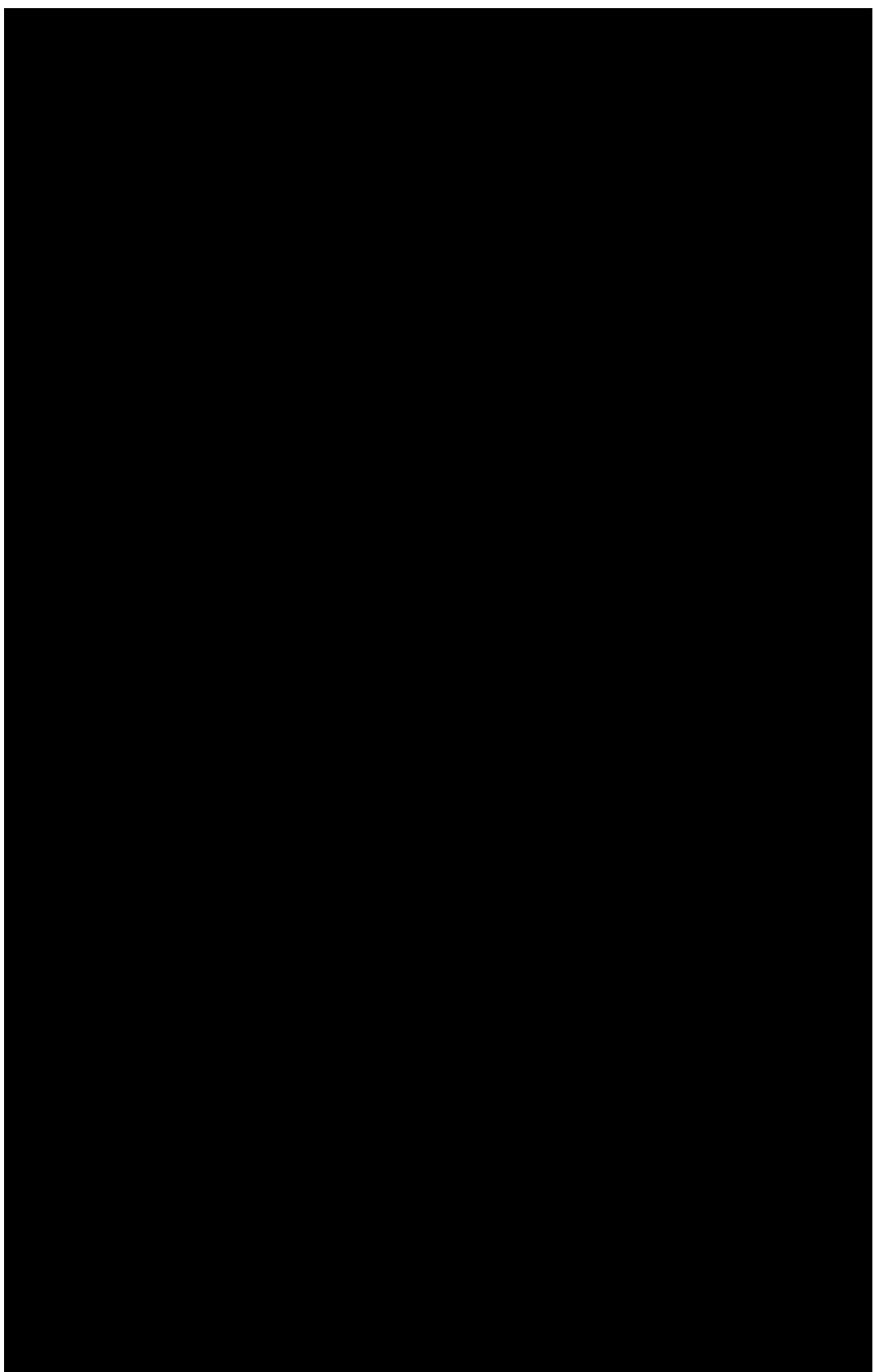
**TRANSCRIPTION OF NBC10 INVESTIGATORS NEWS REPORT
PUBLISHED, MONDAY, MAY 6, 2019
CREDIT MITCH BLACHER**



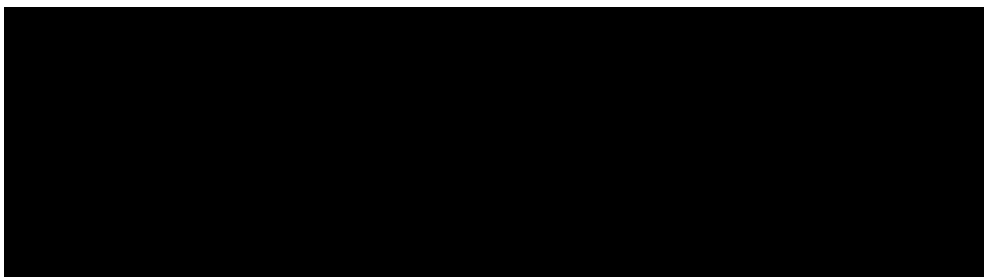
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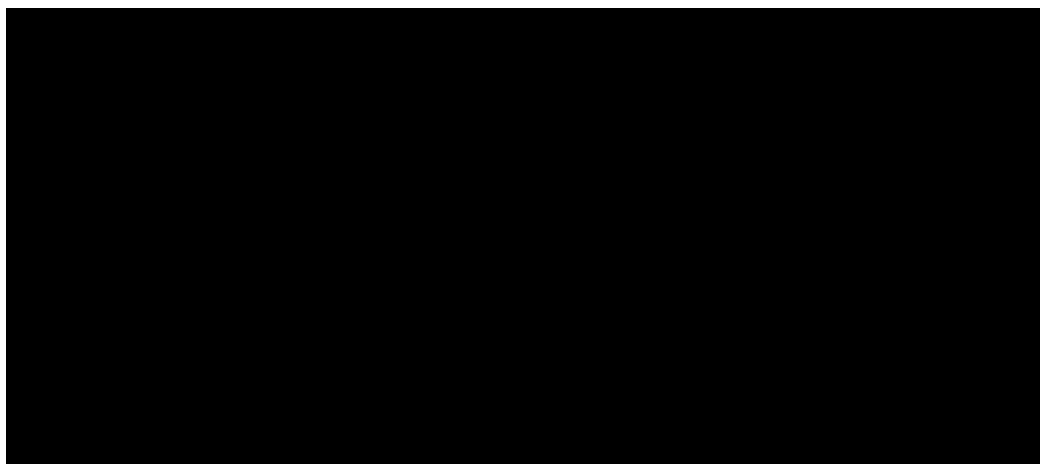


MR. HANFT: "We approve the amounts that a school district can raise taxes."

MITCH BLACHER (Voiceover): Ben Hanft runs the Department of Education's Subsidy Data and Administration Division.

MITCH BLACHER: "Do you ever say no?"

MR. HANFT: "The way the law works, we can't."



MITCH BLACHER: "Who is checking to make sure that the information that the school district sends you is accurate?"

BEN HANFT: "The school district superintendent certifies to the Department the

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accuracy of the data."

MITCH BLACHER (Voiceover): If districts submit inaccurate information, taxpayers may never know.

MITCH BLACHER: "What's the penalty if that certification is wrong?"

MR. HANFT: "There's nothing as far as I know."

MITCH BLACHER (Voiceover): Taxpayers in Ray Clark's district likely won't get their money back, but the school board is considering ways to fix its tax mistake.

MITCH BLACHER: "The Department of Education says it only manages the process to raise taxes in a school district. The department says it has no oversight ability or authority to audit a school district's finances.

"For the investigators, I'm Mitch Blacher, NBC-10 News."

- - -

Exhibit E



OUR DISTRICT WELCOMES

students of all races, ethnicities and nationalities
 students with diverse abilities
 students who are LGBT
 students of all family structures
 students who are English language learners
 students of all religions
 students from all socio-economic backgrounds
 students of all body types

...YOU



Safe, Supportive, Inclusive

Lower Merion School District is committed to providing a safe, supportive and inclusive learning environment for all students and employees.

[Read More »](#)



Lower Merion Board of School Directors

INITIAL 2018-19 BUDGET PRESENTATION

January 22, 2018

Some important highlights

This presentation is an initial budget update not a “Preliminary” Budget.

A Preliminary Budget is associated with the request to apply for exceptions which will not be a part of this year’s financial plan.

Our use of fund balance to balance the budget will be \$3.7 million compared to \$6.3 million in this year’s budget.

We are anticipating increased revenue and that is reflected in the budget.

We continue to have challenges due to increased enrollment.

We continue to plan both for near and long term goals.

The Impact of Enrollment Growth

The greatest cost to any school district is directly related to the number of children served.

Our enrollment growth “cost” is about 1% annually.

No other school district in the Commonwealth of Pennsylvania has been impacted more than Lower Merion.

2017-18 PERSONNEL NEEDS DRIVEN BY ENROLLMENT GROWTH AND PROGRAMMATIC ENHANCEMENTS

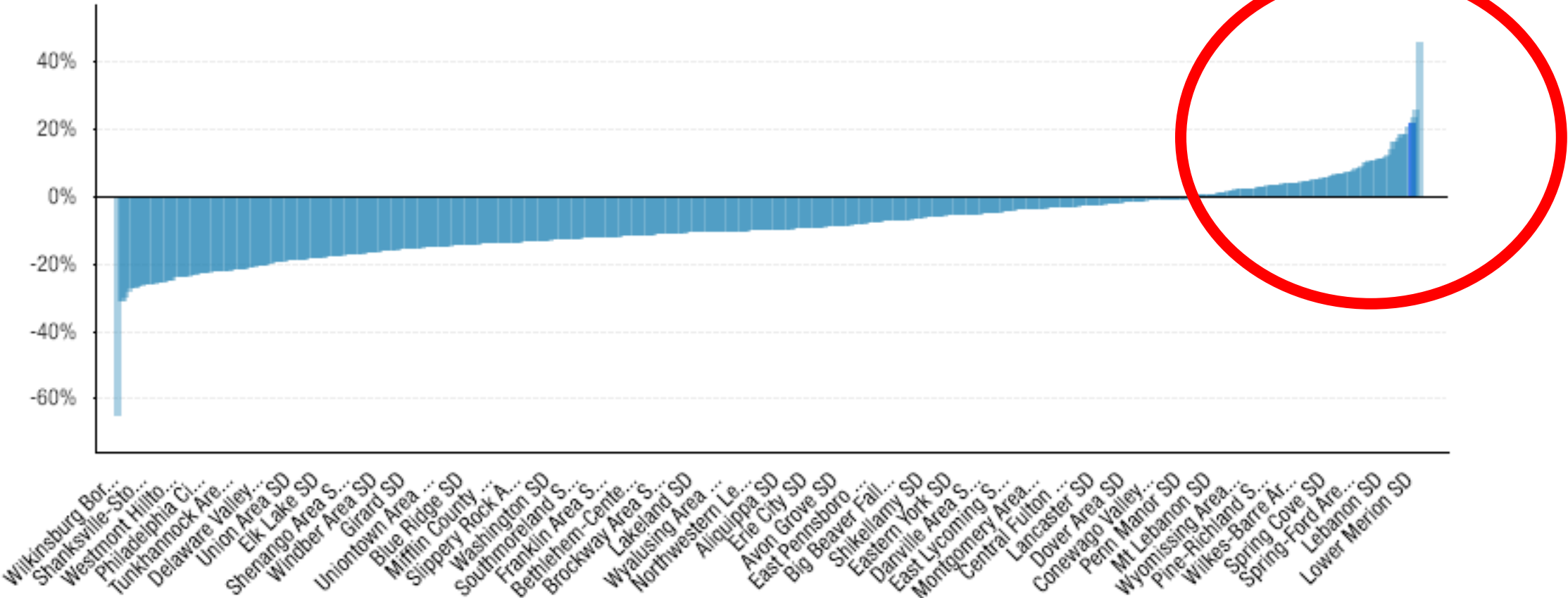
Professional

- HHS: Learning Support Teacher to support incoming student needs (1.0 FTE) ***Will seek federal funding to support position*
- HHS & LMHS: Science Teachers to accommodate student choice in multiple sciences (1.5 FTE)
- BCMS: Classroom Teachers to support teaming model (4.0 FTE) & Math Support Teacher to align student support opportunities between the middle schools pursuant to schedule change (0.6 FTE)
- WVMS: Reading Specialist to align student support opportunities between the middle schools pursuant to schedule change (0.5 FTE)
- BHES/other schools: Behavior Specialist to support student needs (1.0 FTE)
- PVES/PWES/other school(s): Reading/Math Support Specialist to support student needs (1.0 FTE)
- All Elementary Schools: Increase assignment of Instrumental (Strings) Teacher (0.2 FTE) and Instructional Support Teacher (0.5 FTE)
- All Schools: Challenge Teacher to meet PDE requirements for gifted case load assignments; will be assigned to school based on need (1.0 FTE)

Support

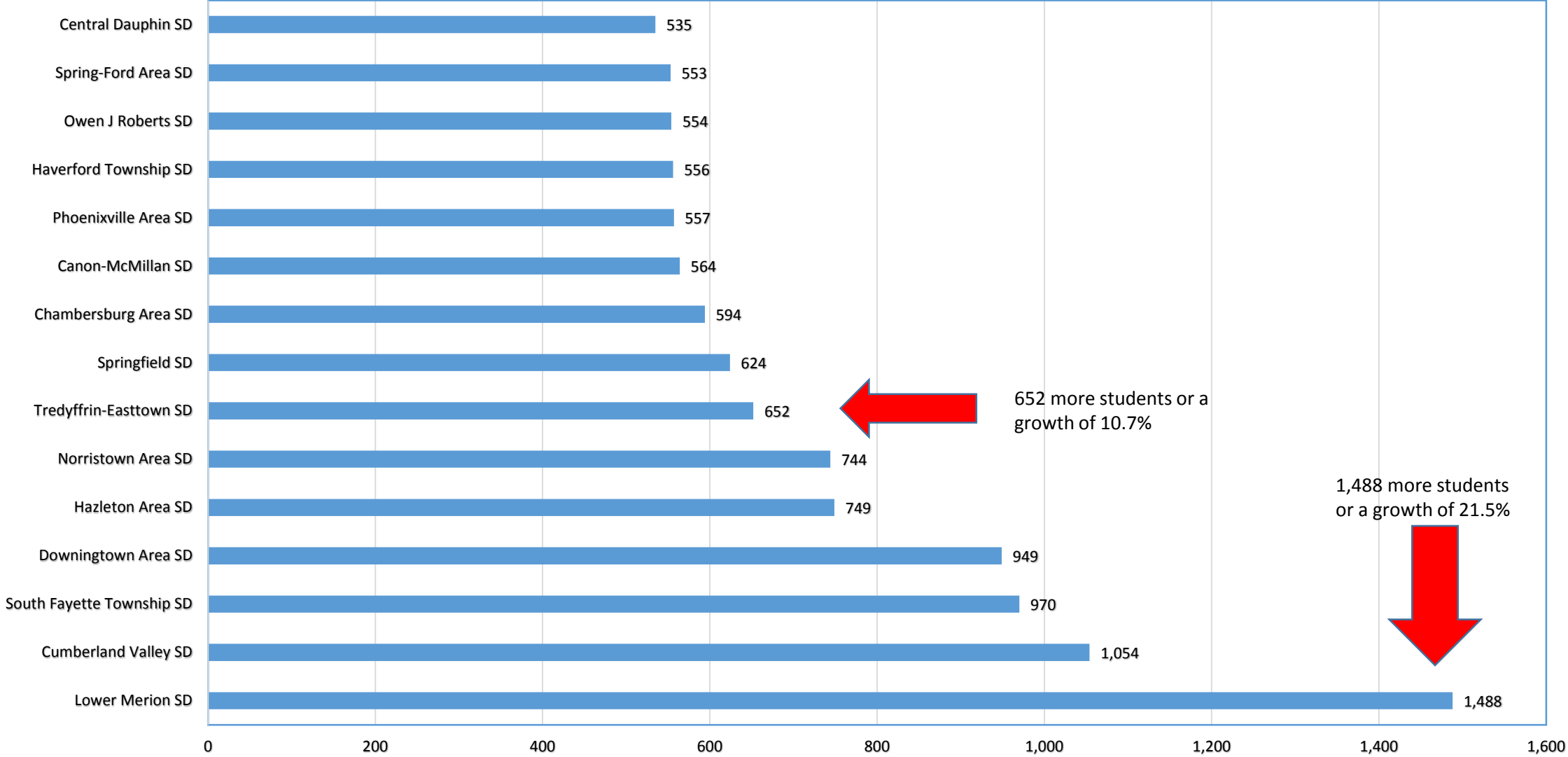
- All Schools: Instructional Aides assigned based on IEP determined needs (3.0 FTE)
- BC: Custodian to cover new modular classrooms (0.5 FTE)

Change in Student Count from 2008 to 2017



Source: Pennsylvania Department of Education

Change in Student Count - PA Districts 2008-2017 (TOP 15)



Source: Pennsylvania Department of Education

2018-19 Budget Cycle

Act 1

- Adopt Resolution certifying millage rate will not exceed 2.4% index
- Schedule Budget Finance Committee Meetings
- Adopt Proposed Final Budget
- Adopt Final Budget

What Drives the Budget?

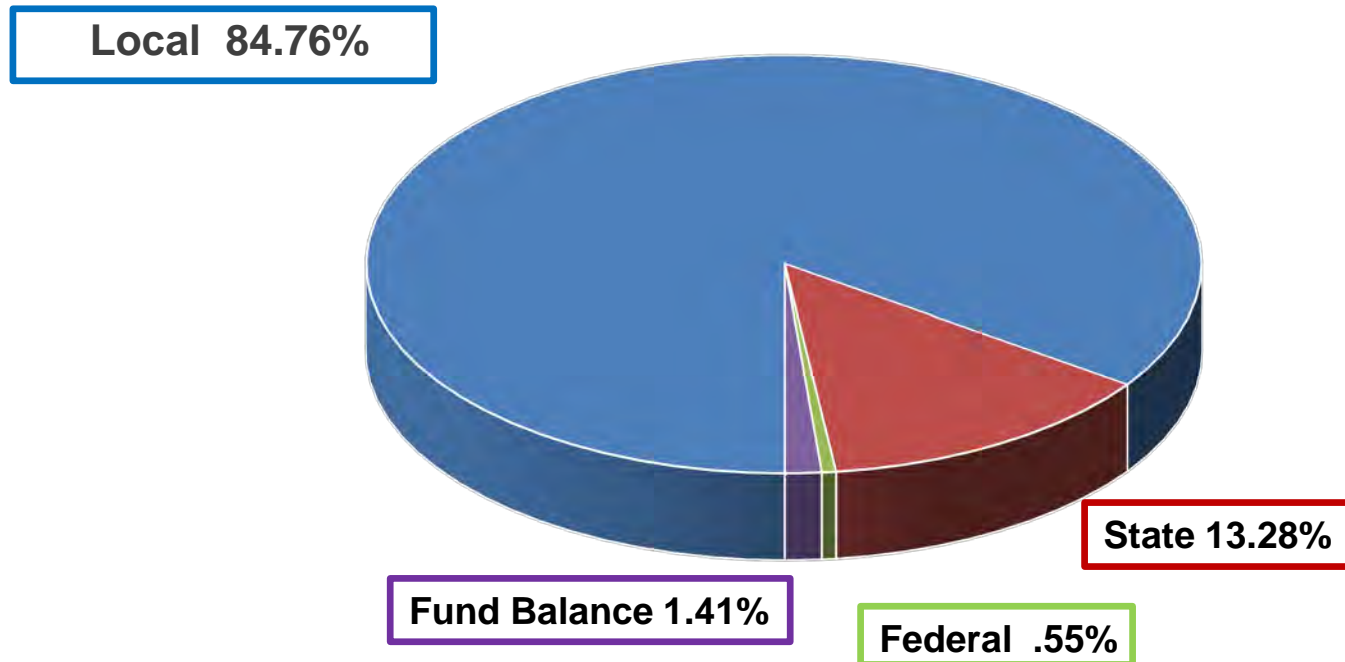
1. Instructional Program - maintaining low class size while continuing student programs
 - a. Enrollment Growth
 - b. Personnel Costs
 - c. Special Education Mandates
2. No/Minimal Increase in State or Federal Funding

2018-19 Budget Highlights

Uncertain Issues

- Current and Future tax revenues
- State Budget – Governor will present the Commonwealth Budget in February
- Pending Budget Litigation
- Current Negotiations

Where the Money Comes From



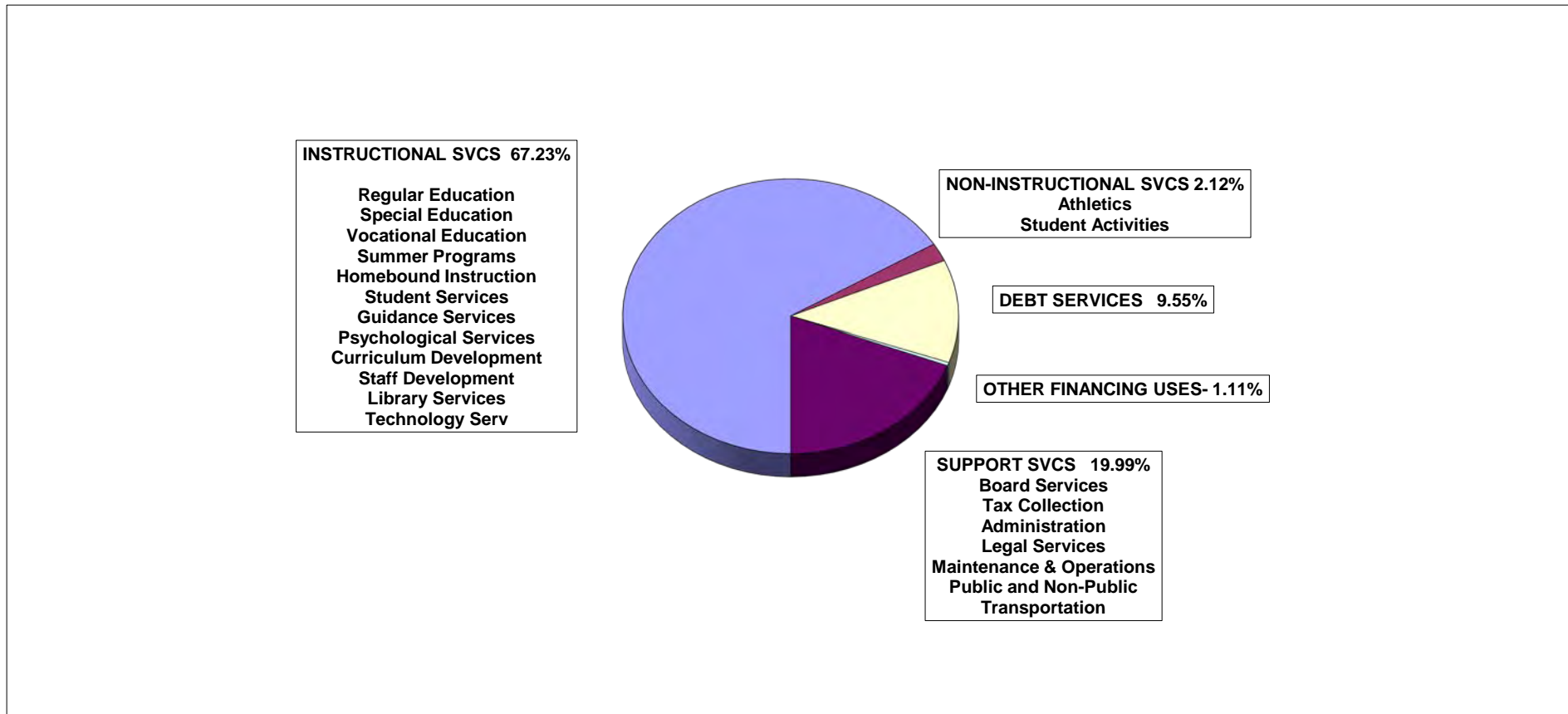
Anticipated Revenue

Description	Budget 2017-18	Initial Budget 2018-19
Fund Balance Funds Designated as a Revenue	6,371,211	3,773,572
<u>Local Sources</u>		
Current Real Estate Taxes	210,569,830	215,866,364
Interim Real Estate Taxes	301,000	600,000
Public Utility Realty Tax	220,000	210,000
Local Services Tax	205,000	210,000
Realty Transfer Taxes	3,250,000	3,700,000
Delinquent Real Estate Taxes	3,600,000	3,600,000
Interest Income	425,000	1,000,000
Tuition - Summer Programs	200,000	170,000
IU Federal Funds	1,200,000	1,265,000
Misc. Other Local Sources	107,500	155,000
Total Local Sources	220,078,330	226,776,364

Anticipated Revenue (cont'd)

Description	Budget 2017-18	Initial Budget 2018-19
<u>State Sources</u>		
Basic Education Funding Subsidy	3,794,830	3,892,946
Special Education Subsidy	2,932,363	2,961,349
Transportation Subsidy	2,200,000	2,400,000
Revenue for Social Security Payment	4,700,000	4,800,000
Revenue for Retirement	20,000,000	21,000,000
State Property Tax Reduction Allocation	3,473,683	-
Health Services Subsidies	250,000	250,000
Rental & Sinking Fund Reimbursement	200,000	200,000
Misc. Other State Subsidies	20,000	25,000
Total State Sources	37,570,876	35,529,295
<u>Federal Sources</u>	1,185,000	1,458,679
Total Revenue	258,834,206	263,764,338
Total Revenue and Designated Fund Balance	265,205,417	267,537,910

How Does The Money Support Our Children?



DESCRIPTION	Budget 2017-18	Initial Budget 2018-19
Salaries	124,630,887	129,237,748
Benefits	79,821,183	81,146,060
Other		
- Purchased Professional and Technical Svcs (IU services, consultants, etc)		
- Purchased Property Svcs (water utility, repair work, leases, etc)		
- Other Purchased Svcs (tuition payments to charters, special ed, vo-tech, general insurance, contracted transportation, etc)		
- Supplies (general supplies, books, technology related items, fuel, gas, electricity, etc)		
- Property (equipment)		
- Other Objects (debt service payments, fund transfers, etc)	59,953,347	61,534,310
Budget Reserve	800,000	800,000
	265,205,417	272,718,118
Tax Monies required to balance the Budget		(5,180,208)
Budgeted Mill Value	7,620,178	7,689,191
Additional Increase in Mills Required		0.6737
Total Mills	28.074	28.7477
Mills Increase		2.40%
Budget Expenditure Increase		2.83%

Real Estate Tax Change

Median Household Assessment		\$250,680
2017-18 Real Estate Tax mill rate	28.0740	
Face amount of 2017-18 Real Estate Tax		7,038
2018-19 Real Estate Tax mill rate	28.7477	
Face amount of 2018-19 Real Estate Tax		7,206
	Tax Increase	\$169

Median household assessments provided by Montgomery Co. Board of Assessments

Special Education Exceptions

Fiscal Year	Act 1 Index Threshold	Net Increase in Expenditures	Exception Amount
2014-15	675,257	2,267,720	1,592,463
2015-16	654,033	2,264,227	1,610,194
2016-17	880,489	3,128,817	2,248,328
2017-18 *	995,396	2,897,093	1,901,697
2018-19 **	1,025,111	722,680	(302,431)

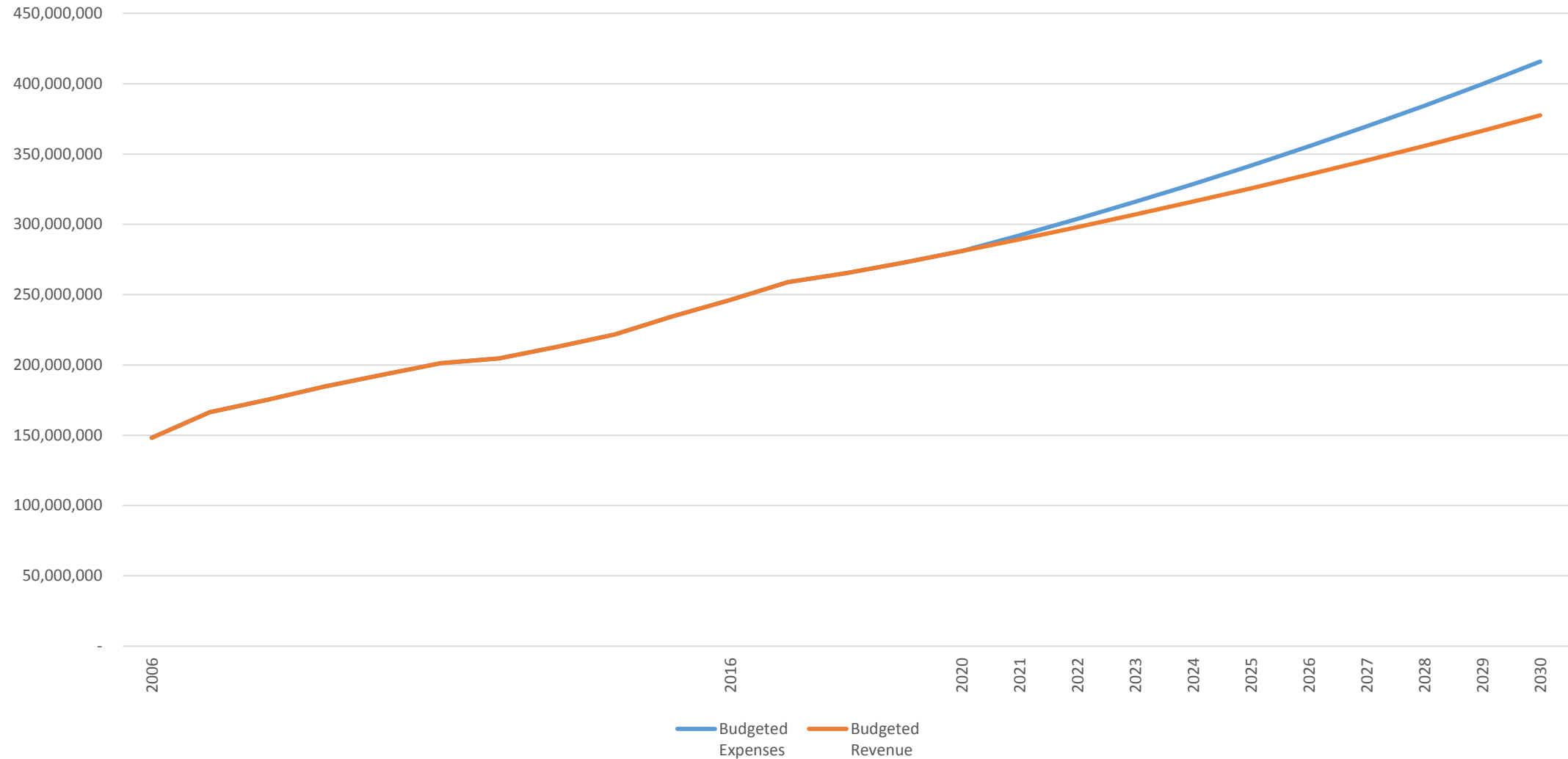
* Exception not taken in 2017-18

** Since the net increase does not exceed the Act 1 threshold, the District does not qualify for the Act 1 exception in 2018-19.

Retirement Exceptions

Fiscal Year	PSEERS Employer Contribution Rate	PSEERS Employer Contribution Rate % Increase
2013-14	16.93%	37.0%
2014-15	21.40%	26.4%
2015-16	25.84%	20.7%
2016-17	30.03%	16.2%
2017-18	32.57%	8.5%
2018-19	33.43%	2.6%
2019-20 (Projected)	34.79%	4.1%

WHY PSERS RESERVE IS NEEDED



Budget Calendar - 2018

February 13 - Superintendent presentation to ISC

March 14 - Finance Committee - Presentation of Operations including facilities and transportation

April 4 - Finance Committee – Presentation on Student Services including gifted and talented

April 16 – Proposed Final Budget Approval

April 25 - Finance Committee – Presentation on staffing including enrollment impact and class size and Technology

May 16 - Finance Committee – Presentation of Curriculum and Instruction

May 22 – Public Inspection Deadline of Proposed Final Budget

May - Superintendent presentation to Federations

May 27 – Public Notice of Intent to adopt 2018-19 Budget

June - Superintendent presentation to Staff

June 11 Final Budget Approval/Adoption

Financial Impact of Millage Uncertainty

Current Unassigned Fund Balance	\$20,000,000
Segregated for Litigation (for 2 years)	8,000,000+
Available Unassigned Fund Balance	12,000,000

For each year that we don't have resolution to budget litigation, we segregate \$4+ million. If the District does not prevail, it would cause a drastic reduction in fund balance which would have a negative impact on our credit rating.

Lower Merion School District: A Public School System

Independent schools implement a stringent vetting process designed to ensure that students entering will be successful. Public schools encourage all students – no matter where they are from, no matter their skills in language or mathematics, no matter their religion or beliefs and strive to provide a superior education – and we represent what has been a crown jewel in our republic – a public education.



Financial Statements

Lower Merion School District
Montgomery County, Pennsylvania

June 30, 2018

R*ainer*
& Company

A Professional Corporation
Certified Public Accountants



TABLE OF CONTENTS

<u>Title</u>	<u>Page No.</u>
Independent Auditors' Report on Financial Statements	1-2
Management's Discussion and Analysis	3-15

BASIC FINANCIAL STATEMENTS

Government-Wide Financial Statements:

Statement of Net Position (Deficit)	16
Statement of Activities	17

Fund Financial Statements:

Balance Sheet - Governmental Funds	18
Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position (Deficit)	19
Statement of Revenues, Expenditures, and Changes in Fund Balances - Governmental Funds	20
Reconciliation of the Governmental Funds Statement of Revenues, Expenditures, and Changes in Fund Balances to the Statement of Activities	21
Statement of Net Position (Deficit) - Proprietary Funds	22
Statement of Revenues, Expenses, and Changes in Net Position (Deficit) - Proprietary Funds	23
Statement of Cash Flows - Proprietary Funds	24
Statement of Fiduciary Net Position	25
Statement of Changes in Fiduciary Net Position	26
Notes to the Financial Statements	27-49

Required Supplementary Information:

Budgetary Comparison Schedule - General Fund	50
Schedule of the District's Proportionate Share of the Net Pension Liability	51
Schedule of the District Pension Contributions	52
Schedule of Changes in Net OPEB Liability and Related Ratios	53



A Professional Corporation
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT

Board of School Directors
Lower Merion School District
Montgomery County, Pennsylvania

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of and for the year ended June 30, 2018, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of June 30, 2018, and the respective changes in financial position, and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 15, budgetary comparison information on page 50, the schedule of the District's proportionate share of the net pension liability on page 51, and the schedule of District's pension contributions on page 52, and the schedule of net OPEB liability and related ratios on page 53 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated December 21, 2018, on our consideration of Lower Merion School District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Lower Merion School District's internal control over financial reporting and compliance.

Rainer + Co

Rainer & Company

Newtown Square, PA
December 21, 2018

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

The discussion and analysis of Lower Merion School District's financial performance provides an overall review of the District's financial activities for the fiscal year ended June 30, 2018. The intent of this discussion and analysis is to look at the District's financial performance as a whole. Readers should also review the financial statements and the notes to the financial statements.

The Management's Discussion and Analysis (MD&A) is an element of the reporting model adopted by the Governmental Accounting Standards Board (GASB) in their Statement Number 34, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments. Comparative information between the current year and the prior year is required to be presented.

FINANCIAL HIGHLIGHTS

The trends of prior years indicated that during the fiscal year 2017-18, the Lower Merion School District would experience another year of increased staff for student enrollment growth, benefits for our employees and increased costs for instruction. In the budgeting process for the 2017-18 Budget, the Board of School Directors was able to balance the budget with a .06777 mills increase (\$6.78 per \$10,000 of assessed value) to the taxpayers within the District. Through prudent financial management, the actual expenditures did not increase as much as was anticipated when the budget was prepared. The combination of revenues exceeding the budget and less expenditures than budgeted resulted in the opportunity for the Board to transfer additional funds into the Capital Reserve Fund. The fund balance commitment categories are for future pension obligations, postemployment benefit obligations, future capital projects, as well as stabilization of variable rate bonds.

OVERVIEW OF FINANCIAL STATEMENTS

The accompanying financial statements have been prepared in accordance with GASB Statement Number 34 and present both government-wide and fund level financial statements using both the accrual and modified accrual basis of accounting, respectively.

Government-Wide Financial Statements

The first two statements are government-wide financial statements - the Statement of Net Position (Deficit) and the Statement of Activities. These provide both long-term and short-term information about the District's overall financial status.

The government-wide statements report information about the District as a whole using accounting methods similar to those used by private-sector companies. The Statement of Net Position (Deficit) includes all of the government's assets and liabilities. All of the current year's revenues and expenses are accounted for in the Statement of Activities regardless of when cash is received or paid.

The two government-wide statements report the District's net position and how it has changed. Net position, the difference between the District's assets and liabilities, is one way to measure the District's financial health or position.

Over time, increases or decreases in the District's net assets are an indication of whether its financial health is improving or deteriorating, respectively.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

Government-Wide Financial Statements (Continued)

To assess the overall health of the District, you need to consider additional non-financial factors, such as changes in the District's property tax base and the performance of the students.

The government-wide financial statements of the District are divided into two categories:

- **Governmental Activities** - All of the District's basic services are included here, such as instruction, administration, and community services. Property taxes and state and federal subsidies and grants finance most of these activities.
- **Business-Type Activities** - The District operates a food service operation and charges fees to staff and students to cover the costs of the food service operation.

Fund Level Financial Statements

The remaining statements are fund financial statements that focus on individual parts of the District's operations in more detail than the government-wide statements. The governmental fund statements tell how the District's general services were financed in the short term as well as what remains for future spending. Proprietary fund statements offer short and long-term financial information about the activities that the District operates like a business. For this District this is our Food Service Fund. Fiduciary fund statements provide information about financial relationships where the District acts solely as a trustee or agent for the benefit of others.

- **Governmental Funds** - Most of the District's activities are reported in governmental funds, which focus on the determination of financial position and change in financial position, not on income determination. Governmental funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can readily be converted to cash. The governmental fund statements provide a detailed short-term view of the District's operations and the services it provides. Governmental fund information helps the reader determine whether there are more or fewer financial resources that can be spent in the near future to finance the District's programs. The relationship (or differences) between governmental activities (reported in the Statement of Net Position (Deficit) and the Statement of Activities) and governmental funds is reconciled in the financial statements.
- **Proprietary Funds** - These funds are used to account for District activities that are similar to business operations in the private sector; or where the reporting is on determining net income, financial position, changes in financial position, and a significant portion of funding through user charges. When the District charges customers for services it provides - whether to outside customers or to other units in the District - these services are generally reported in proprietary funds. The Food Service Fund is the District's proprietary fund and is the same as the business-type activities we report in the government-wide statements.
- **Fiduciary Funds** - The District is the trustee, or fiduciary, for some scholarship funds. All of the District's fiduciary activities are reported in a separate Statement of Fiduciary Net Position. We exclude these activities from the District's other financial statements because the District cannot use these assets to finance its operations.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data.

FINANCIAL ANALYSIS OF THE DISTRICT - GOVERNMENT-WIDE STATEMENTS

The District's total net deficit was \$132,582,218 and \$138,044,233 as of June 30, 2018 and 2017, respectively. Net position (deficit) as of June 30, 2017 has been restated as a result of the District's adoption of Government Accounting Standards Board Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. The statement required the adjustment of the net OPEB obligation for the government wide statements. The effect of the restatement was to reduce District-wide net position (deficit) as of July 1, 2017 by \$5,564,566. The following table presents condensed financial information for the net position (deficit) of the District as of June 30, 2018 and 2017.

Schedule of Net Position (Deficit)
Years Ended June 30, 2018 and 2017

	Governmental Activities		Business-Type Activities		Total	
	2018	2017	2018	2017	2018	2017
Current Assets	\$ 112,839,705	\$ 100,295,126	\$ 1,941,561	\$ 1,603,283	\$ 114,781,266	\$ 101,898,409
Capital Assets	403,928,989	411,804,412	8,435	20,055	403,937,424	411,824,467
Deferred Outflows of Resources	79,867,932	94,094,543	677,873	806,956	80,545,805	94,901,499
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	596,636,626	606,194,081	2,627,869	2,430,294	599,264,495	608,624,375
Current Liabilities	49,486,979	47,707,489	578,728	536,974	50,065,707	48,244,463
Noncurrent Liabilities	673,203,560	687,378,822	4,184,213	4,144,323	677,387,773	691,523,145
Deferred Inflows of Resources	4,351,556	6,836,097	41,677	64,903	4,393,233	6,901,000
TOTAL LIABILITIES AND DEFERRED INFLOWS OF RESOURCES	727,042,095	741,922,408	4,804,618	4,746,200	731,846,713	746,668,608
Net Position (Deficit):						
Invested in Capital Assets,						
Net of Related Debt	169,674,686	160,445,170	8,435	20,055	169,683,121	160,465,225
Restricted: Capital Projects	21,520,049	11,967,682	0	0	21,520,049	11,967,682
Unrestricted	(321,600,204)	(308,141,179)	(2,185,184)	(2,335,961)	(323,785,388)	(310,477,140)
TOTAL NET POSITION (DEFICIT)	\$(130,405,469)	\$(135,728,327)	\$(2,176,749)	\$(2,315,906)	\$(132,582,218)	\$(138,044,233)

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

The results of this year's operations as a whole are reported in the Statement of Activities. All expenses are reported in the first column. Specific charges, grants, revenues, and subsidies that directly relate to specific expense categories are represented to determine the final amount of the District's activities that are supported by other general revenues. The largest revenues are property taxes, local taxes, and the state basic education subsidy.

The following table presents condensed financial information for the Statement of Activities in a different format to show total revenues for the year. Compared to the prior year, the District's total revenues increased by \$11,504,107 or 4.47%. Property taxes, which include current and interim real estate taxes, increased by \$6,708,390 or 3.19%. Investment earnings increased by \$1,351,892 or 175.24%. Governmental activities expenses increased by \$4,374,203 or 1.71%. Instruction expense decreased by \$1,438,233 or 0.95%.

Statement of Activities
For the Years Ended June 30, 2018 and 2017

	Governmental Activities		Business-Type Activities		Total	
	2018	2017	2018	2017	2018	2017
REVENUES:						
Program Services:						
Charges for Services	\$ 622,638	\$ 1,055,799	\$ 2,711,337	\$2,681,091	\$ 3,333,975	\$ 3,736,890
Operating Grants and Contributions	29,814,832	26,768,160	930,650	922,767	30,745,482	27,690,927
General Revenues:						
Property Taxes	216,765,378	210,056,988	0	0	216,765,378	210,056,988
Other Taxes	5,299,247	4,199,608	0	0	5,299,247	4,199,608
Grants, Subsidies and Contributions Not Restricted	11,245,715	10,713,783	0	0	11,245,715	10,713,783
Investment Earnings	2,123,362	771,470	0	0	2,123,362	771,470
Miscellaneous Income	67,851	108,705	0	0	67,851	108,705
Loss on Disposal of Capital Assets	(798,532)	0	0	0	(798,532)	0
TOTAL REVENUES	265,140,491	253,674,513	3,641,987	3,603,858	268,782,478	257,278,371
EXPENSES:						
Instruction	\$ 149,576,326	\$ 151,014,559	0	0	149,576,326	151,014,559
Instructional Student Support	20,038,924	21,038,229	0	0	20,038,924	21,038,229
Administrative and Financial Support	16,216,242	15,588,946	0	0	16,216,242	15,588,946
Operation and Maintenance of Plant Services	28,375,913	27,486,480	0	0	28,375,913	27,486,480
Pupil Transportation	14,282,944	14,938,198	0	0	14,282,944	14,938,198
Student Activities	5,332,444	5,362,928	0	0	5,332,444	5,362,928
Community Services	219,108	209,239	0	0	219,108	209,239
Interest on Long-Term Debt	8,621,897	9,187,491	0	0	8,621,897	9,187,491
Unallocated Depreciation Expense	11,589,269	11,219,321	0	0	11,589,269	11,219,321
Food Services	0	0	3,502,830	3,317,070	3,502,830	3,317,070
TOTAL EXPENSES	254,253,067	256,045,391	3,502,830	3,317,070	257,755,897	259,362,461
CHANGE IN NET POSITION	\$ 10,887,424	\$ (2,370,878)	\$ 139,157	\$ 286,788	\$ 11,026,581	\$ (2,084,090)

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

EXPENSES

The following table presents condensed financial information on the expenses of the District by function. The table illustrates both the gross and net costs of services. Unrestricted grants, subsidies, and contributions are deducted to reflect the amount needed to be funded by other revenue sources. The amount needed to be funded by other revenue sources increased by \$1,228,760 or 0.60% more than the prior year.

Expense Analysis
For the Years Ended June 30, 2018 and 2017

The following table reflects condensed financial activities of the Food Service Program, the only business-type activity of the District.

	Total Cost of Services		Net Cost of Services	
	2018	2017	2018	2017
Expenses - Governmental Activities:				
Instruction	\$ 149,576,326	\$ 151,014,559	\$ 129,813,784	\$ 133,904,186
Instructional Student Support	20,038,924	21,038,229	24,153,442	19,047,496
Administrative and Financial Support	16,216,242	15,588,946	14,225,976	13,771,703
Operation and Maintenance of Plant Services	28,375,913	27,486,480	26,645,980	25,368,341
Pupil Transportation	14,282,944	14,938,198	9,922,982	10,734,434
Student Activities	5,332,444	5,362,928	4,789,686	4,779,221
Community Services	219,108	209,239	219,108	209,239
Interest on Long-Term Debt	8,621,897	9,187,491	8,621,897	9,187,491
Unallocated Depreciation Expense	11,589,269	11,219,321	11,589,269	11,219,321
TOTAL EXPENSES	<u>\$ 254,253,067</u>	<u>\$ 256,045,391</u>	229,982,124	228,221,432
Less: Grants, Subsidies and Contributions Not Restricted			<u>(11,245,715)</u>	<u>(10,713,783)</u>
AMOUNT NEEDED TO BE FUNDED BY OTHER REVENUE SOURCES			<u>\$ 218,736,409</u>	<u>\$ 217,507,649</u>

Business-Type Activities
For the Years Ended June 30, 2018 and 2017

	Total Cost of Services		Net Cost of Services	
	2018	2017	2018	2017
Expenses - Business-Type Activities:				
Food Services	<u>\$ 3,502,830</u>	<u>\$ 3,317,070</u>	<u>\$ (139,157)</u>	<u>\$ (286,788)</u>

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

THE DISTRICT FUNDS

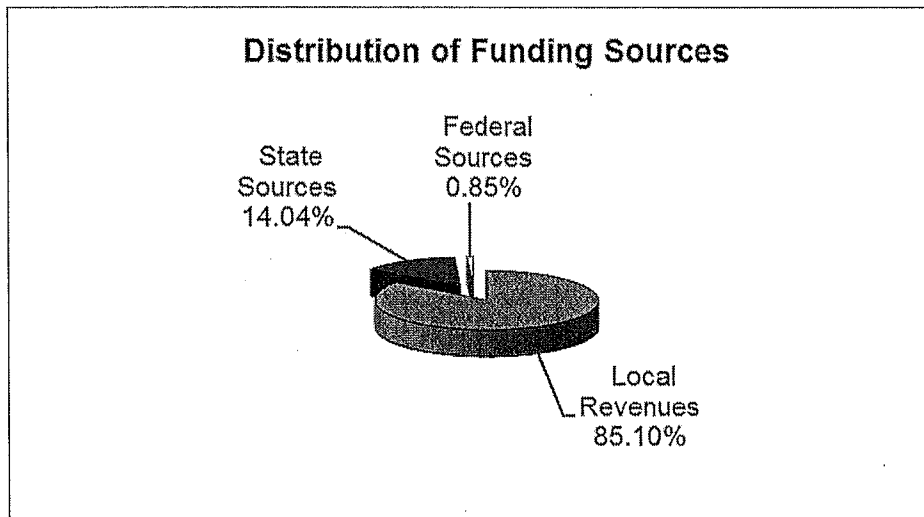
GENERAL FUND

At June 30, 2018, the District reported a total fund balance of \$56,262,891, which consists of \$391,853 as nonspendable fund balance, \$35,800,000 as committed fund balance and \$20,071,038 as unassigned fund balance. There is no change from the prior year. The School Board of the Lower Merion School District consciously maintains a fund balance to respond to unforeseen contingencies. This philosophy conforms to the Board's belief that the tax burden should be aligned with both the current and future funding needs of the District. As the School District has experienced unprecedented enrollment growth and the need to expand facilities, the fund balance is necessary to maintain educational programs while, at the same time, responsibly planning for future needs.

Revenues

Revenues totaled \$266,456,965, an increase of \$13,189,102 as compared to the 2016-17 revenues. The following table reflects a comparison of current year revenues with the revenues recognized in the prior year:

	Revenue 2018	% of Total	Increase From 2017	Percentage Increase	Revenue 2017
Local Revenues	\$ 226,766,062	85.10%	\$ 10,197,342	4.71%	\$ 216,568,720
State Sources	37,419,517	14.04%	1,473,308	4.10%	35,946,209
Federal Sources	2,271,386	0.85%	1,518,452	201.67%	752,934
	<u>\$ 266,456,965</u>	<u>99.99%</u>	<u>\$ 13,189,102</u>	<u>5.21%</u>	<u>\$ 253,267,863</u>



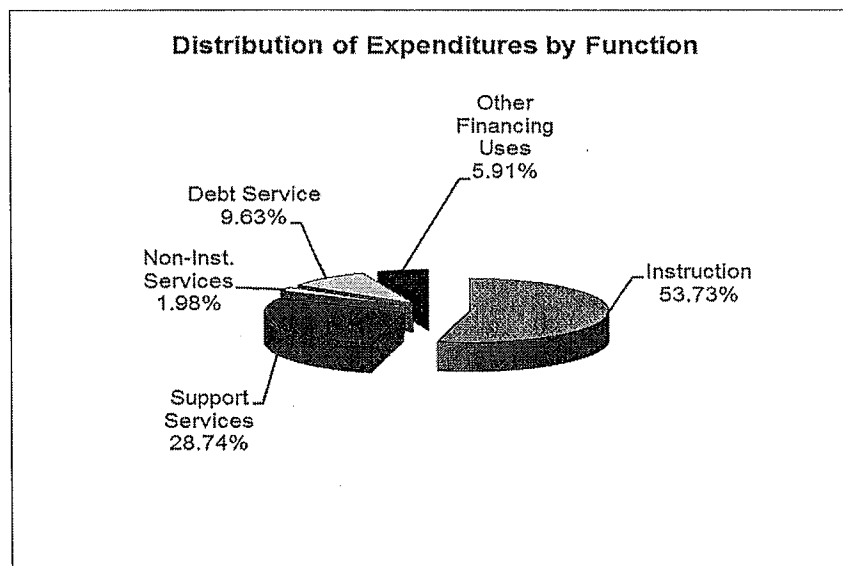
LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

The District balanced the budget by utilizing the fund balance from the previous year and increasing the 2017-18 real estate tax rates from 27.3963 to 28.0740 mills. As a result of the increase in millage and increases in real estate assessments, revenues from current, interim, and delinquent real estate taxes increased by \$7,785,509. The collection rate for current real estate taxes was 97.20%. This compares with 96.93% in 2016-17. Real estate transfer taxes collections increased by \$1,106,196. The District experienced an increase in investment revenue of \$1,291,102 for the general fund.

Expenditures

Expenditures, totaling \$266,456,965, increased \$13,189,102 over the 2016-17 expenditures. These expenditures were segregated into various programs depending on the functions of the activity. These programs and the costs associated with each, as well as comparison to the costs incurred in the prior year and the final 2017-18 budget are as follows:

	Expenditures 2018	% of Total	Increase From 2017	Variance with Final Budget - Positive (Negative)
Instruction	\$ 143,173,030	53.73%	\$ 504,584	\$ 8,717
Support Services	76,573,972	28.74%	1,053,121	50,175
Non-Instructional Services	5,280,967	1.98%	65,210	2,476
Debt Service	25,668,801	9.63%	794,525	4,323
Other Financing Uses	15,760,195	5.91%	10,771,662	(1,317,239)
TOTAL EXPENDITURES BY FUNCTION	\$ 266,456,965	100.00%	\$ 13,189,102	\$ (1,251,548)



LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

The increase in expenditures from 2017-18 is due to increases in various categories. Our pension obligations increased over \$3.7 million from the prior year, as a result of the employer contribution rate increasing from 30.03% to 32.57%. Instructional program costs increased \$504,584 from the prior year as a result of increases in salaries due to the collective bargaining agreement, as well additional staff and educational materials necessary to accommodate the student enrollment growth. Support pupil personnel and instructional costs increased \$268,448 from last year. Also, the Board approved the transfer of \$13.580 million to the Capital Reserve to address future capital needs.

Budget

During the fiscal year, the Board of School Directors authorizes revisions to the original budget to accommodate differences from the original budget to the actual expenditures of the District. All adjustments are again confirmed at the time the annual audit is accepted. This is done after the end of the fiscal year in accordance with state law. A schedule showing the District's original and final budget amounts compared with amounts actually paid and received is provided in the financial statements.

The Budgetary Reserve includes amounts that will be funded for operating contingencies such as an unpredictable change in the cost of goods and services and the occurrence of events which are vaguely perceptible during the time of the budget process but which nonetheless may require expenditures by the District during the year of operation.

CAPITAL PROJECTS FUND

At June 30, 2018, the District reported a fund balance of \$0, which is a decrease of \$131,306 from the prior year. Increases in this fund during 2017-18 include investment earnings of \$1,108. The capital project fund expended \$37,418 in support services and \$94,996 for active capital construction projects.

CAPITAL RESERVE FUND

At June 30, 2018, the District reported a fund balance of \$21,520,049, which is an increase of \$9,683,673 from the prior year. Increases in this fund during 2017-18 include a \$13,579,796 transfer from the general fund, other local revenues of \$274,729, and investment earnings of \$81,444. The capital reserve fund expended \$3,925,052 in support services and \$327,244 in capital outlay expenditures.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

CAPITAL ASSETS

At June 30, 2018, the District's governmental activities and business-type activities had \$403,937,424 invested in a broad range of capital assets, including land, buildings, and furniture and equipment. This amount represents a net decrease (including additions, deletions, and depreciation) of \$7,887,043 from last year.

The following schedule depicts the change in capital assets for the period July 1, 2017 through June 30, 2018. During this period, the District had the following significant additions in capital assets:

Schedule of Capital Assets

	<u>Beginning Balance</u>	<u>Increase (Decrease)</u>	<u>Ending Balance</u>
<u>Governmental Activities:</u>			
Capital Assets:			
Land	\$ 19,643,123	\$ 0	\$ 19,643,123
Land Improvements	2,574,921	705,382	3,280,303
Buildings	477,866,598	1,140,186	479,006,784
Construction in Process	93,944	581,768	675,712
Furniture and Equipment	8,248,948	(51,420)	8,197,528
Transportation	14,878,979	59,790	14,938,769
TOTAL CAPITAL ASSETS	<u>523,306,513</u>	<u>2,435,706</u>	<u>525,742,219</u>
Accumulated Depreciation for:			
Land Improvements	2,179,014	78,091	2,257,105
Buildings	96,919,644	9,764,192	106,683,836
Furniture and Equipment	6,603,894	338,338	6,942,232
Transportation	5,799,549	130,508	5,930,057
TOTAL ACCUMULATED DEPRECIATION	<u>111,502,101</u>	<u>10,311,129</u>	<u>121,813,230</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 411,804,412</u>	<u>\$ (7,875,423)</u>	<u>\$ 403,928,989</u>
<u>Business-Type Activities:</u>			
Capital Assets:			
Machinery and Equipment	\$ 122,263	\$ (2,809)	\$ 119,454
Accumulated Depreciation for:			
Machinery and Equipment	102,208	8,811	111,019
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 20,055</u>	<u>\$ (11,620)</u>	<u>\$ 8,435</u>

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

DEBT ADMINISTRATION

As of July 1, 2017, the District had total outstanding bond principal of \$245,265,000. During the year, the District paid principal in the amount of \$16,525,000 resulting in ending outstanding debt as of June 30, 2018 of \$228,740,000.

Other obligations include accrued vacation pay and severance for specific employees of the District. More detailed information about our long-term liabilities is included in the notes to the financial statements.

Debt Service Schedule
June 30, 2018

	<u>Principal Outstanding July 1, 2017</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2018</u>
General Obligation Note, Series of 1989	\$ 15,900,000	\$ 2,000,000	\$ 0	\$ 13,900,000
General Obligation Bonds, Series A & B of 2009	66,260,000	5,355,000	0	60,905,000
General Obligation Bonds, Series of 2012	5,385,000	5,385,000	0	0
General Obligation Bonds, Series A of 2012	41,105,000	2,700,000	0	38,405,000
General Obligation Bonds, Series of 2013	9,790,000	5,000	0	9,785,000
General Obligation Bonds, Series of 2014	9,970,000	115,000	0	9,855,000
General Obligation Bonds, Series A of 2015	9,315,000	395,000	0	8,920,000
General Obligation Bonds, Series B of 2015	31,875,000	5,000	0	31,870,000
General Obligation Bonds, Series of 2016	55,665,000	565,000	0	55,100,000
	<u>\$ 245,265,000</u>	<u>\$ 16,525,000</u>	<u>\$ 0</u>	<u>\$ 228,740,000</u>

THE DISTRICT'S FUTURE

The total District enrollment has increased over the last ten school years resulting from out of state move-ins, fewer students enrolling in private schools, and housing turnover resulting in more families with school age children. From 1998 - 2012, the District renovated and expanded all six elementary schools, both middle schools, and built two new high schools, Harriton and Lower Merion. The District has an extensive network infrastructure and a district-wide area network. All schools are connected to the network

A district-wide facilities and enrollment projection study was completed in 2012. A new enrollment projection study was completed in April 2015 and updated in November 2016 and December 2017. These studies indicate that enrollment will continue to increase in the next decade.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

Additions at Gladwyne and Penn Valley Elementary Schools were completed in the 2014/15 school year, and additions and alterations at the two middle schools were completed for the 2015/16 school year.

Renovations to the District Administration Building to create additional science classroom space was completed in the fall of 2016. Four temporary classrooms were installed at Penn Wynne Elementary school in the summer of 2016 to accommodate increased enrollment. Six temporary classrooms were installed at Bala Cynwyd Middle School in the summer of 2017 to accommodate increased enrollment.

The School District engaged two demographers to conduct additional enrollment studies in the fall of 2016 in order to assess future needs. The results of these studies has been incorporated into the planning process for dealing with growth throughout the District. The District plans to have these same two demographers provide updated studies in the fall of 2018.

STRATEGIC PLAN

Lower Merion School District launched an ambitious, year-long comprehensive planning process in the fall of 2013 to provide a new direction for public education in our community. In recent years, strategic planning in the District had been driven largely by the Pennsylvania Department of Education's strategic planning requirements, and plans were developed to address specific issues and perceived weaknesses. The 2014 Lower Merion School District planning process was designed to be more expansive in scope and significantly more inclusive of our diverse, dynamic community. Thousands of stakeholders contributed to this process, sharing their thoughts, ideas, and dreams for our schools through community surveys, community forums, focus groups, public meetings, and a steering committee of 70 community volunteers.

The result of these collective efforts is our Strategic Plan, *All Forward: Strategic Pathways for Lower Merion School District*. *All Forward* differs greatly from previous District strategic plans, both in content and structure. Rather than a tactical guide with step-by-step instructions, the plan serves as a strategic compass for the next five years and beyond. We designed it to be actionable, inspirational, and accessible to all members of our school community. Five "bold statements of strategic intent" provide the framework of our plan. These statements, crafted by our steering committee, represent where we want to be as a school community and indicate a shift from where we are today in how we define student success, develop curriculum, support professional learning, engage students, and partner with our community. It is important to note that the intent of the plan is not to solve a problem or fix a failure. Rather, it serves as a necessary next step forward in our evolution as one of the finest public school systems in the United States.

Collaboration, innovation, and celebration are consistent themes throughout the plan and characterize the community's work in developing this document. Our plan embraces a collective, intentional, positive approach to change. It is driven by our belief in continuous improvement and an unyielding passion for high-quality public education. It represents our commitment to the children of Lower Merion and Narberth now and forever.

MISSION STATEMENT

Committed to excellence and continuous improvement, the Lower Merion School District strives to ensure that all students achieve their highest level of critical thinking and creativity, that they value themselves and the diversity of others, and that they are knowledgeable, contributing citizens capable of excelling in a rapidly changing world.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

This is accomplished by individuals engaging in innovative, active experiences tailored to myriad ways of learning and in partnership with our community.

VISION STATEMENT

Students are our reason for being. We create an environment designed to fulfill the individual learning needs and aspirations of each student. The District develops active partnerships at all levels of our learning community and values the individual contribution of each member.

We view learning as dynamic, innovative, and collaborative. Individuals learn best when their hearts, minds, and spirits are intimately engaged in the learning process.

Enter to learn. Go forth to serve

BELIEFS

Our deepest convictions and values;

We believe that:

- All people have equal intrinsic worth.
- People learn in different ways and at different rates.
- Each person bears responsibility for the well-being of society and the quality of the environment.
- Learning occurs everywhere and is a lifelong pursuit of knowledge, truth, and wisdom.
- High quality public education directly benefits the entire community and is essential for a democratic society.
- The responsibility for learning rests primarily with the individual; however, education is the shared responsibility of the student, home, family, school, and entire community.
- Individuals learn best when actively engaged in the learning process.
- Excellence demands sustained effort.
- All individuals can be successful learners.
- High expectations yield high results.
- Society benefits when individual rights are balanced with social responsibility.
- Ethical conduct is essential to the quality of life.

STRATEGIC PATHWAYS

Pathway 1: Redefining Success - Transform how we define, measure, and report student achievement with a focus on each student's individualized growth and mastery in areas that extend beyond traditional academic indicators.

Pathway 2: Transformative Curriculum - Shift from content areas silos to a connected curriculum that prepares students to transfer knowledge and apply thinking strategies across disciplines.

Pathway 3: A Commitment to Professional Learning - Transform professional learning from a top-down model to one that honors and harnesses our educators' collective wisdom.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2018

Pathway 4: Student-Driven Schools - Adjust our system from one characterized by heavily prescribed requirements to one that affords more self-directed goal setting and positive risk taking – where students navigate their own learning in close partnership with professionals.

Pathway 5: A Spirit of Community - Transform our approach to community outreach from one that is less coordinated to one that strategically leverages and maximizes community resources to strengthen our schools.

FINANCIAL MANAGEMENT

Our financial report is designed to provide our citizens, taxpayers, parents, students, investors, and creditors with a general overview of the District's finances and to show the Board's accountability for the money it receives. If you have questions about this report or wish to request additional financial information, please contact Victor J. Orlando, Business Manager, Lower Merion School District, 301 East Montgomery Avenue, Ardmore, PA 19003.

LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
June 30, 2018

<u>ASSETS</u>	Governmental Activities	Business-Type Activities	Total
Current:			
Cash and Cash Equivalents	\$ 17,577,510	\$ 0	\$ 17,577,510
Investments	74,670,964	1,451,331	76,122,295
Due from Other Governments	11,518,784	94,544	11,613,328
Other Receivables	220,004	62,092	282,096
Property Taxes Receivable, Net	2,797,251	0	2,797,251
Internal Balances	5,663,339	273,615	5,936,954
Inventories	0	59,979	59,979
Prepaid Expenses	391,853	0	391,853
TOTAL CURRENT ASSETS	<u>112,839,705</u>	<u>1,941,561</u>	<u>114,781,266</u>
Capital Assets, Net of Accumulated Depreciation	<u>403,928,989</u>	<u>8,435</u>	<u>403,937,424</u>
TOTAL ASSETS	<u>516,768,694</u>	<u>1,949,996</u>	<u>518,718,690</u>
<u>DEFERRED OUTFLOWS OF RESOURCES</u>			
Deferred Outflows of Resources - Accumulated Decrease in Fair Value of Hedging Derivatives	6,080,969	0	6,080,969
Deferred Outflows of Resources - Pension Plan	73,183,769	0	73,183,769
Deferred Outflows of Resources - OPEB	603,194	677,873	1,281,067
TOTAL DEFERRED OUTFLOWS OF RESOURCES	<u>79,867,932</u>	<u>677,873</u>	<u>80,545,805</u>
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	<u>\$ 596,636,626</u>	<u>\$ 2,627,869</u>	<u>\$ 599,264,495</u>
<u>LIABILITIES</u>			
Current:			
Accounts Payable and Other Current Liabilities	\$ 30,590,347	\$ 25,700	\$ 30,616,047
Internal Balances	0	349,189	349,189
Bonds Payable Due Within One Year	16,525,000	0	16,525,000
Unearned Revenues -	271,325	203,839	475,164
Accrued Interest	2,100,307	0	2,100,307
TOTAL CURRENT LIABILITIES	<u>49,486,979</u>	<u>578,728</u>	<u>50,065,707</u>
Long-Term:			
Bonds Payable Due After One Year	217,729,303	0	217,729,303
Deferred Instrument - Interest Rate Swap	6,080,969	0	6,080,969
Net Pension Liability	436,755,787	4,184,213	440,940,000
Accrued Post Employment Benefits and Compensated Absences	12,637,501	0	12,637,501
TOTAL LONG-TERM LIABILITIES	<u>673,203,560</u>	<u>4,184,213</u>	<u>677,387,773</u>
TOTAL LIABILITIES	<u>722,690,539</u>	<u>4,762,941</u>	<u>727,453,480</u>
<u>DEFERRED INFLOWS OF RESOURCES</u>			
Deferred Inflows of Resources - Pension Plan	4,350,323	41,677	4,392,000
Deferred Inflows of Resources - OPEB	1,233	0	1,233
TOTAL DEFERRED INFLOWS OF RESOURCES	<u>4,351,556</u>	<u>41,677</u>	<u>4,393,233</u>
<u>NET POSITION (DEFICIT)</u>			
Invested in Capital Assets, Net of Related Debt	169,674,686	8,435	169,683,121
Restricted for: Capital Projects	21,520,049	0	21,520,049
Unrestricted	<u>(321,600,204)</u>	<u>(2,185,184)</u>	<u>(323,785,388)</u>
TOTAL NET POSITION (DEFICIT)	<u>(130,405,469)</u>	<u>(2,176,749)</u>	<u>(132,582,218)</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	<u>\$ 596,636,626</u>	<u>\$ 2,627,869</u>	<u>\$ 599,264,495</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Activities
For the Year Ended June 30, 2018

Rainier & Company
 A Professional Corporation
 Certified Public Accountants
 Business Consultants

FUNCTIONS/PROGRAMS	Program Revenues			Net Revenues (Expenses) and Changes in Net Assets			
	Expenses	Charges For Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Governmental Activities:							
Instruction	\$ 149,576,326	\$ (381,262)	\$ (19,381,280)	\$ 0	\$ (129,813,784)	\$ 0	\$ (129,813,784)
Instructional Student Support	20,038,924	0	(2,052,009)	0	(17,986,915)	0	(17,986,915)
Administrative and Financial Support Services	16,216,242	0	(1,990,266)	0	(14,225,976)	0	(14,225,976)
Operation and Maintenance of Plant Services	28,375,913	(218,410)	(1,511,523)	0	(26,645,980)	0	(26,645,980)
Pupil Transportation	14,282,944	0	(4,359,962)	0	(9,922,982)	0	(9,922,982)
Student Activities	5,332,444	(22,966)	(519,792)	0	(4,789,686)	0	(4,789,686)
Community Services	219,108	0	0	0	(219,108)	0	(219,108)
Interest on Long-Term Debt	8,621,897	0	0	0	(8,621,897)	0	(8,621,897)
Unallocated Depreciation Expense	11,589,269	0	0	0	(11,589,269)	0	(11,589,269)
TOTAL GOVERNMENTAL ACTIVITIES	254,253,067	(622,638)	(29,814,832)	0	(223,815,597)	0	(223,815,597)
Business-Type Activities:							
Food Services	3,502,830	(2,711,337)	(930,650)	0	0	139,157	139,157
TOTAL PRIMARY GOVERNMENT	\$ 257,755,897	\$ (3,333,975)	\$ (30,745,482)	\$ 0	(223,815,597)	139,157	(223,676,440)
General Revenues:							
Taxes:							
Property Taxes, Levied for General Purposes, Net					216,765,378	0	216,765,378
Public Utility Realty, Earned Income and Realty							
Transfer Taxes, Levied for General Purposes, Net					5,299,247	0	5,299,247
Grants, Subsidies and Contributions Not Restricted					11,245,715	0	11,245,715
Investment Earnings					2,123,362	0	2,123,362
Loss on Disposal of Capital Assets					(798,532)	0	(798,532)
Miscellaneous Income					67,851	0	67,851
TOTAL GENERAL REVENUES					234,703,021	0	234,703,021
CHANGE IN NET POSITION (DEFICIT)					10,887,424	139,157	11,026,581
Net Position (Deficit) - July 1, 2017					(135,728,327)	(2,315,906)	(138,044,233)
Prior Period Adjustment					(5,564,566)	0	(5,564,566)
NET POSITION (DEFICIT) - JULY 1, 2017 (RESTATED)					\$ (141,292,893)	\$ (2,315,906)	\$ (143,608,799)
NET POSITION (DEFICIT) - JUNE 30, 2018					\$ (130,405,469)	\$ (2,176,749)	\$ (132,582,218)

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT

Balance Sheet

Governmental Funds

June 30, 2018

<u>ASSETS</u>	General Fund	Capital Projects Fund	Capital Reserve Fund	Debt Service Fund	Total Governmental Funds
Cash and Cash Equivalents	\$ 17,577,510	\$ 0	\$ 0	\$ 0	\$ 17,577,510
Investments	65,026,655	0	7,498,325	2,145,984	74,670,964
Taxes Receivable, Net	2,797,251	0	0	0	2,797,251
Due from Other Funds	6,672,458	0	14,620,387	0	21,292,845
Due from Other Governments	11,518,784	0	0	0	11,518,784
Other Receivables	199,548	0	8,767	11,689	220,004
Prepaid Expenses	391,853	0	0	0	391,853
TOTAL ASSETS	<u>\$ 104,184,059</u>	<u>\$ 0</u>	<u>\$ 22,127,479</u>	<u>\$ 2,157,673</u>	<u>\$ 128,469,211</u>
<u>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</u>					
Liabilities:					
Accounts Payable and Accrued Liabilities	\$ 4,238,854	\$ 0	\$ 603,330	\$ 0	\$ 4,842,184
Due to Other Funds	15,625,407	0	4,100	0	15,629,507
Payroll Accruals and Withholdings	25,748,162	0	0	0	25,748,162
Unearned Revenues	271,325	0	0	0	271,325
TOTAL LIABILITIES	<u>45,883,748</u>	<u>0</u>	<u>607,430</u>	<u>0</u>	<u>46,491,178</u>
Deferred Inflows of Resources:					
Unavailable Revenue - Property Taxes	2,037,420	0	0	0	2,037,420
Fund Balances:					
Nonspendable	391,853	0	0	0	391,853
Committed	35,800,000	0	0	0	35,800,000
Assigned	0	0	21,520,049	2,157,673	23,677,722
Unassigned	20,071,038	0	0	0	20,071,038
TOTAL FUND BALANCES	<u>56,262,891</u>	<u>0</u>	<u>21,520,049</u>	<u>2,157,673</u>	<u>79,940,613</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND FUND BALANCES	<u>\$ 104,184,059</u>	<u>\$ 0</u>	<u>\$ 22,127,479</u>	<u>\$ 2,157,673</u>	<u>\$ 128,469,211</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds Balance Sheet
to the Statement of Net Position (Deficit)
June 30, 2018

Total Fund Balances - Governmental Funds		\$ 79,940,613
<p>Amounts reported for governmental activities in the statement of net position (deficit) are different because:</p>		
<p>Capital assets used in governmental activities are not financial resources and, therefore, are not reported as assets in governmental funds. The cost of assets is \$523,306,513, and the accumulated depreciation is \$111,502,101.</p>		403,928,989
<p>Property taxes receivable will be collected this year, but are not available soon enough to pay for the current period's expenditures and, therefore, are deferred.</p>		2,037,420
<p>Long-term liabilities, including bonds payable, are not due and payable in the current period and, therefore, are not reported as liabilities in the funds. Long-term liabilities at year-end consist of:</p>		
Bonds Payable	\$(234,254,303)	
Accrued Interest on the Bonds	(2,100,307)	
Net Pension Liability	(436,755,787)	
Accrued Compensated Absences	(801,646)	
Accrued Other Post-Employment Benefits	(11,835,855)	(685,747,898)
<p>Deferred outflows and inflows of resources related to pensions are applicable to future periods and, therefore, are not reported in the fund statements.</p>		
Deferred Outflows of Resources - Pension Plan	73,183,769	
Deferred Outflows of Resources - OPEB	603,194	
Deferred Inflows of Resources - Pension Plan	(4,350,323)	
Deferred Inflows of Resources - OPEB	(1,233)	69,435,407
TOTAL NET POSITION (DEFICIT) - GOVERNMENTAL ACTIVITIES		\$ (130,405,469)

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenditures, and Changes in Fund Balances
Governmental Funds
For the Year Ended June 30, 2018

	General Fund	Capital Projects Fund	Capital Reserve Fund	Debt Service Fund	Total Governmental Funds
Revenues:					
Local Sources:					
Real Estate Taxes	\$ 217,652,294	\$ 0	\$ 0	\$ 0	\$ 217,652,294
Realty Transfer Tax	4,874,399	0	0	0	4,874,399
Earned Income Taxes	214,683	0	0	0	214,683
Earnings from Investments	2,029,117	1,108	81,444	11,693	2,123,362
Other Local Revenues	1,995,569	0	274,729	0	2,270,298
State Sources	37,419,517	0	0	0	37,419,517
Federal Sources	2,271,386	0	0	0	2,271,386
TOTAL REVENUES	266,456,965	1,108	356,173	11,693	266,825,939
Expenditures:					
Instruction	143,173,030	0	0	0	143,173,030
Support Services	76,573,972	37,418	3,925,052	0	80,536,442
Non-Instructional Services	5,280,967	0	0	0	5,280,967
Capital Outlay	0	94,996	327,244	0	422,240
Debt Service (Principal and Interest)	25,668,801	0	0	0	25,668,801
TOTAL EXPENDITURES	250,696,770	132,414	4,252,296	0	255,081,480
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	15,760,195	(131,306)	(3,896,123)	11,693	11,744,459
Other Financing Sources Uses:					
Interfund Transfers Out	(15,756,552)	0	0	0	(15,756,552)
Interfund Transfers In	0	0	13,579,796	2,145,980	15,725,776
Refunds of Prior Years' Revenues	(3,643)	0	0	0	(3,643)
TOTAL OTHER FINANCING SOURCES (USES)	(15,760,195)	0	13,579,796	2,145,980	(34,419)
NET CHANGE IN FUND BALANCES	0	(131,306)	9,683,673	2,157,673	11,710,040
Fund Balances - July 1, 2017	56,262,891	131,306	11,836,376	0	68,230,573
FUND BALANCES - JUNE 30, 2018	\$ 56,262,891	\$ 0	\$ 21,520,049	\$ 2,157,673	\$ 79,940,613

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds
Statement of Revenues, Expenditures and Changes in Fund Balances
to the Statement of Activities
For the Year Ended June 30, 2018

Total Net Change in Fund Balances - Governmental Funds \$ 11,710,040

Amounts reported for governmental activities in the statement of activities are different because:

Capital outlays are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which depreciation expense for the period exceeds capital outlays.

Capital Outlay	\$ 3,713,846	
Depreciation Expense	<u>(11,589,269)</u>	(7,875,423)

Repayment of bond principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the statement of net position. 16,525,000

Bond discounts and premiums are reported as revenues or expenditures in the governmental funds when debt is first issued. In the statement of activities, these costs are deferred and amortized. This is the amount amortization exceeds bond discounts and premiums. 579,939

Because some property taxes will not be collected for several months after the District's fiscal year ends, they are not considered "available" revenues and are deferred in the governmental funds. Deferred tax revenues increased by this amount this year. (886,916)

Governmental funds report District pension contributions as expenditures. However in the Statement of Activities, the cost of pension benefits earned net of employee contributions is reported as pension expense.

District Pension Contributions	37,972,104	
Cost of Benefits Earned Net of Employee Contributions	<u>(47,539,018)</u>	(9,566,914)

Some of the expenses reported in the statement of activities do not require the use of current fiscal resources and, therefore, are not reported as expenditures in the governmental funds.

Accrued Post-Employment Benefits and Compensated Absences	\$ 459,733	
Accrued Interest on the Bonds	<u>(58,035)</u>	401,698

CHANGE IN NET POSITION OF GOVERNMENTAL ACTIVITIES		<u><u>\$ 10,887,424</u></u>
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LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
Proprietary Funds
June 30, 2018

<u>ASSETS</u>	<u>Food Services</u>
Current:	
Investments	\$1,451,331
Other Receivables	62,092
Due from Other Funds	273,615
Due from Other Governments	94,544
Inventories	59,979
TOTAL CURRENT ASSETS	<u>1,941,561</u>
Non-Current:	
Furniture and Equipment	119,454
Less: Accumulated Depreciation	(111,019)
TOTAL NON-CURRENT ASSETS	<u>8,435</u>
<u>DEFERRED OUTFLOWS OF RESOURCES</u>	
Deferred Outflows of Resources - Pension Plan	<u>677,873</u>
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	<u>\$2,627,869</u>
<u>LIABILITIES</u>	
Current:	
Accounts Payable and Accrued Liabilities	\$ 25,700
Due to Other Funds	349,189
Unearned Revenues	203,839
TOTAL CURRENT LIABILITIES	<u>578,728</u>
Long-Term:	
Net Pension Liability	<u>4,184,213</u>
TOTAL LIABILITIES	4,762,941
<u>DEFERRED INFLOWS OF RESOURCES</u>	
Deferred Inflows of Resources - Pension Plan	41,677
<u>NET POSITION (DEFICIT)</u>	
Invested in Capital Assets	8,435
Unrestricted (Deficit)	(2,185,184)
TOTAL NET POSITION (DEFICIT)	<u>(2,176,749)</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	<u>\$2,627,869</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenses and
Changes in Net Position (Deficit)
Proprietary Funds
For the Year Ended June 30, 2018

		<u>Food Services</u>
Operating Revenues:		
Food Service Revenue		\$ 2,711,337
Cost of Sales:		
Inventories - July 1, 2016	\$ 71,662	
Purchases of Food, Milk and Donated Commodities	1,259,790	
COST OF GOODS AVAILABLE FOR SALE	<u>1,331,452</u>	
Less: Inventories - June 30, 2017	59,979	
TOTAL COST OF SALES		<u>1,271,473</u>
GROSS PROFIT		1,439,864
Operating Expenses:		
Payroll	1,148,029	
Employee Benefits	951,447	
Depreciation	11,620	
Other Operating Expenses	120,261	
TOTAL OPERATING EXPENSES		<u>2,231,357</u>
OPERATING LOSS		(791,493)
Non-Operating Revenues:		
Earnings on Investments	17,316	
Federal Subsidies	640,130	
State Subsidies	273,204	
TOTAL NON-OPERATING REVENUES		<u>930,650</u>
INCREASE IN NET POSITION		139,157
Net Position (Deficit) - July 1, 2017		<u>(2,315,906)</u>
NET POSITION (DEFICIT) - JUNE 30, 2018		<u><u>\$(2,176,749)</u></u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Cash Flows
Proprietary Funds
For the Year Ended June 30, 2018

	<u>Food Services</u>
Cash Flows From Operating Activities:	
Cash Received from Users	\$ 2,697,191
Cash Payments to Employees for Services	(1,926,163)
Cash Payments to Suppliers for Goods and Services	(1,383,740)
NET CASH USED BY OPERATING ACTIVITIES	<u>(612,712)</u>
Cash Flows From Non-Capital Financing Activities:	
State Sources	273,221
Federal Sources	635,587
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	<u>908,808</u>
Cash Flows From Investing Activities:	
Purchase of Investments/Deposits to Investment Pools	<u>(296,096)</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	0
Cash and Cash Equivalents - July 1, 2017	<u>0</u>
CASH AND CASH EQUIVALENTS - JUNE 30, 2018	<u>\$ 0</u>
 <u>Reconciliation of Operating Loss to Net Cash Used by Operating Activities:</u>	
Operating Loss	\$ (791,493)
Adjustments to Reconcile Operating Loss to Net Cash Used by Operating Activities:	
Depreciation	11,620
Changes in Assets and Liabilities:	
Receivables	(16,879)
Inventories	11,683
Deferred Outflows of Resources	129,083
Accounts Payable and Accrued Liabilities	23,877
Deferred Inflows of Resources	(23,226)
Net Pension Liability	39,890
Unearned Revenues	2,733
NET CASH USED BY OPERATING ACTIVITIES	<u>\$ (612,712)</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Fiduciary Net Position
June 30, 2018

<u>ASSETS</u>	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>	<u>Agency Funds</u>
Cash and Cash Equivalents	\$ 0	\$ 0	\$ 452,637
Investments	477,531	131,662	13,346,889
Due from Other Funds	0	0	1,743,933
TOTAL ASSETS	\$ 477,531	\$ 131,662	\$ 15,543,459
<u>LIABILITIES</u>			
Payroll Withholdings	\$ 0	\$ 0	\$ 7,789,707
Due to Other Funds	0	0	7,331,698
Due to Student Groups	0	0	422,054
TOTAL LIABILITIES	\$ 0	\$ 0	\$ 15,543,459
<u>NET POSITION</u>			
Reserved for Scholarships	\$ 0	\$ 131,662	
Reserved for Employee Benefits	477,531	0	
TOTAL LIABILITIES AND NET POSITION	\$ 477,531	\$ 131,662	

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Changes in Fiduciary Net Position
For the Year Ended June 30, 2018

	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>
Additions:		
Contributions:		
Gifts and Contributions	\$ 21,416	\$ 0
Investment Income:		
Earnings from Investments	<u>5,313</u>	<u>1,361</u>
TOTAL ADDITIONS	<u>26,729</u>	<u>1,361</u>
Deductions:		
Benefits Paid	54,020	2,000
Investment Management Fees	<u>1,375</u>	<u>0</u>
TOTAL DEDUCTIONS	<u>55,395</u>	<u>2,000</u>
CHANGE IN NET POSITION	(28,666)	(639)
Net Position - July 1, 2017	<u>506,197</u>	<u>132,301</u>
NET POSITION - JUNE 30, 2018	<u>\$ 477,531</u>	<u>\$ 131,662</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies

Lower Merion School District's (the District's) financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements (Statements and Interpretations). Governments are also required to follow the pronouncements of the Financial Accounting Standards Board (FASB) issued through November 30, 1989 (when applicable) that do not conflict with or contradict GASB pronouncements. Although the District has the option to apply FASB pronouncements issued after that date to its business-type activities and enterprise funds, the District has chosen not to do so. The more significant accounting policies established in GAAP and used by the District are discussed below.

A. Reporting Entity

The District is governed by an elected Board of Directors. Accounting principles generally accepted in the United States of America require that the financial statements present the District and its component units, entities for which the District is considered to be financially accountable. Blended component units, although legally separate entities, are, in substance, part of the District's operations and so data from these units are required to be combined with data of the primary District. Each discretely presented component unit, on the other hand, is required to be reported in a separate column in the government-wide financial statements to emphasize it is legally separate from the District. Based on the application of these principles, there are no component units presented in the District's financial statements.

B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the District and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported in separate columns in the fund financial statements.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the District considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, franchise taxes, licenses and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. Only a portion of special assessments receivable due within the current fiscal period is considered to be susceptible to accrual as revenue of the current period. All other revenue items are considered to be measurable and available only when cash is received by the District.

The District reports the following major government funds:

General Fund - The General Fund is the District's primary operating fund. It accounts for all financial resources except those required to be accounted for in another fund.

Capital Projects Fund - The Capital Projects Fund is used to account for financial resources to be used for the acquisition or construction of major capital assets other than those financed by enterprise operations.

Capital Reserve Fund - The Capital Reserve Fund is used to account for proceeds of specific revenue sources that are legally restricted to expenditures for future capital projects.

The District reports the following major proprietary funds:

Food Service Fund - The Food Service Fund (an Enterprise Fund) is used to account for the operations of the District's school cafeterias that are financed and operated in a manner similar to a private business enterprise where the intent of the governing body is that the cost of providing goods or services to the school population on a continuing basis will be recovered or financed primarily through user charges.

Additionally, the District reports the following fund types:

Fiduciary Funds - Fiduciary Funds are used to account for assets held by the District in a trustee capacity or as an agent for individuals, private organizations, or other governments. These include private-purpose trust funds and agency funds. Private-purpose trust funds account for resources, including both principal and earnings, which must be expended in accordance with a trust agreement, and are accounted for in essentially the same manner as proprietary funds. Agency funds are purely custodial and thus do not involve measurement of the results of operations.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Private-sector standards of accounting and financial reporting issued prior to December 1, 1989, generally are followed in both the government-wide and proprietary fund financial statements to the extent that those standards do not conflict with or contradict guidance of the Governmental Accounting Standards Board. School districts also have the option of following subsequent private-sector guidance for their business-type activities and enterprise funds, subject to this same limitation. The District has elected not to follow subsequent private-sector guidance.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services or privileges provided, 2) operating grants and contributions, and 3) capital grants and contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than as program revenues. Likewise, general revenues include all taxes.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Food Service Enterprise Fund are charges to customers for sales and services. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

For purposes of the statements of cash flows of proprietary funds, cash equivalents include all highly liquid debt instruments with original maturities of three months or less.

When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, then unrestricted resources as they are needed.

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity

Deposits and Investments

Under Section 440.1 of the Public School Code of 1949, as amended, the District is permitted to invest funds consistent with sound business practices in the following types of investments:

Obligations of (a) the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, (b) the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth, or (c) any political subdivision of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision.

Deposits in savings accounts or time deposits or share accounts of institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation to the extent that such accounts are so insured and, for any amounts above the insured maximum, provided that approved collateral as provided by law therefore shall be pledged by the depository.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Receivables and Payables

Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "due to/from other funds" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the non-current portion of interfund loans). All other outstanding balances between funds are reported as "due to/from other funds." Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

All trade and property tax receivables are shown net of any allowance for uncollectibles. There is no property tax receivable allowance at June 30, 2018.

Property taxes attach as an enforceable lien on property as of July 1. Taxes are levied on July 1 and payable in the following periods:

- Discount Period - July 1 to August 31 - 2% of Gross Levy
- Flat Period - September 1 to October 31
- Penalty Period - October 31 to Collection - 10% of Gross Levy

Inventories

Inventories in the Food Service Fund consist of government donated commodities which were valued at estimated fair market value at donation, and purchased commodities and supplies, both valued at cost using the first-in first-out (FIFO) method.

Capital Assets

Capital assets, which include property, plant, and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the District as assets with an initial, individual cost of more than \$10,000 (amount not rounded) and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during construction is not capitalized.

Property, plant, and equipment is depreciated using the straight-line method over the following estimated useful lives:

Land Improvements	20 Years
Buildings	25-50 Years
Furniture and Equipment	5-20 Years
Transportation	10-25 Years

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Deferred Outflows of Resources

The District reports decreases in net assets that relate to future periods as deferred outflows of resources in the government-wide and proprietary funds statement of net position. The District reports deferred outflow of resources related to the deferred amount related to the accumulated decrease in the fair value of hedging derivatives. The District also reports deferred outflows of resources for contributions made to the District's defined benefit pension plans and other post employment benefit plans between the measurement date of the net pension and OPEB liabilities from those plans and the end of the District's fiscal year. No deferred outflows of resources affect the governmental funds financial statements in the current fiscal year.

Deferred Inflows of Resources

The District's statements of net position and its governmental funds report a separate section for deferred inflows of resources. This separate financial statement element reflects an increase in net assets that applies to a future period(s). Deferred inflows of resources are reported in the District's various statements of net position for actual pension plan investment earnings in excess of the expected amounts included in determining pension expense. In its governmental funds, the only deferred inflow of resources is for revenues that are not considered available. The District will not recognize the related revenues until they are available (collected no later than 60 days after the end of District's fiscal year) under the modified accrual basis of accounting. Accordingly, unavailable revenues from property taxes are reported in the governmental funds balance sheet.

Compensated Absences

The District's vacation policy provides that administrative employees may carry over vacation time with the approval of the Superintendent. Employees accrue vacation at rates which vary with length of service or job classification. Vacation must be taken in the year subsequent to when it was earned. If separation of service occurs in the year subsequent to earning, then the unused balance of what was earned in the prior year is paid at separation. The liability at June 30 represents vacation earned at that date that will be taken in the subsequent year.

Accrued Severance Pay

Employees that have completed at least ten years of credited School District service that retire under the normal PSERS guidelines shall be eligible for a severance benefit. The benefit the personnel can receive ranges from \$50 up to \$150 for each day of unused sick leave and is available to pay for medical, dental, vision, life insurance, prescriptions, and long-term care insurance. Severance pay is generally liquidated by the General Fund.

Long-Term Obligations

In the government-wide financial statements and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net position. Bond premiums and discounts are deferred and amortized over the life of the bonds using the straight-line method which approximates the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are expensed in the year incurred in both the government-wide and fund financial statements.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Long-Term Obligations (Continued)

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Bond issuance costs are expensed in the year they are incurred in both the government-wide and fund financial statements.

Government-Wide and Proprietary Fund Net Position

Government-wide and proprietary fund net position are divided into three components:

Invested in Capital Assets, Net of Related Debt - Consists of the historical cost of capital assets less accumulated depreciation and less any debt that remains outstanding that was used to finance those assets.

Restricted for: Capital Projects - Consists of the capital projects fund fund-balance that is restricted by the District for capital outlays.

Unrestricted - Consists of all other net position reported in this category.

Governmental Fund Balances

The District has adopted GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions as of July 1, 2010. The intention of the statement is to provide a more structured classification of fund balance and to improve the usefulness of fund balance reporting to the users of the District's financial statements. The statement establishes a hierarchy for fund balance classifications and the constraints imposed on the uses of those resources.

In the governmental fund financial statements, fund balances are classified as follows:

Nonspendable - Amounts that cannot be spent either because they are in nonspendable form or because they are legally or contractually required to be maintained intact.

Restricted - Amounts that can be used only for specific purposes because of state or federal laws, or externally imposed by grantors or creditors.

Committed - Amounts that can be used only for specific purposes determined by a formal action by the Board of Directors resolution. This includes the budget reserve account. In addition, committed amounts cannot be uncommitted except by removing the constraints through the same type of action.

Assigned - Amounts the District intends to use for a specific purpose. Intent can be expressed by the Board of Directors or by an official or body to which the Board of Directors delegates the authority.

Unassigned - Amounts available for any purpose. Positive amounts are reported only in the General Fund.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Governmental Fund Balances (Continued)

The Board of Directors establishes (and modifies and rescinds) fund balance commitments by passage of a resolution. The District's policy is to first apply an expenditure toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances.

NOTE 2 - Budgetary Information

Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America. An annual appropriated budget is adopted for the general fund. All annual appropriations lapse at fiscal year end. Project-length financial plans are adopted for all capital projects funds.

The District follows these procedures in establishing the budgetary data reflected in the financial statements:

1. The Business Manager submits to the School Board a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed expenditures and the means of financing them.
2. Public hearings are conducted at the District offices to obtain taxpayer comments.
3. Prior to July 1, the budget is legally enacted through passage of an ordinance.
4. The Business Manager is authorized to transfer budgeted amounts between departments within any fund; however, any revisions that alter the total expenditures of any fund must be approved by the School Board.
5. Formal budgetary integration is employed as a management control device during the year for the general fund.
6. Budgeted amounts are as originally adopted, or as amended by the School Board.

NOTE 3 - Deposits and Investments

Deposits - At year end, the total carrying amount of the District's checking, savings, and certificates of deposit (including trust and agency funds) was \$18,030,147, and the corresponding bank balance was 18,031,071.

Custodial Credit Risk - Deposits - Custodial credit risk is the risk that in the event of a bank failure, the District's deposits may not be returned to it. The District does not have a policy for custodial credit risk. Of the bank balance, \$750,000 was covered by federal depository insurance. The remaining balances were uninsured and covered by collateral held by the institution's trust department on a pooled basis not in the name of the District.

Investments - Statutes authorize the District to invest in U.S. Government Agency Bonds, time or share accounts, or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or in certificates of deposit when they are secured by proper bond or collateral, repurchase agreements, state treasurer's investment pools, or mutual funds.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 3 - Deposits and Investments (Continued)

All funds in the Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and Pennsylvania Treasurer's Investment Program are invested in accordance with Section 440.1 of the School Code. These funds operate and are authorized under the Intergovernmental Cooperation Act of 1972. Each school district owns a prorata share of each investment or deposit which is held in the name of the Fund. Certificates of deposit or other fixed-term investments purchased by the District through the Fund's administrator are purchased in the name of the District.

Custodial Credit Risk - Investments - For an investment, custodial credit risk is the risk that in the event of the failure of the counterparty, the District will not be able to recover the value of its investments or collateral security that are in the possession of an outside party. The District has no investment subject to custodial credit risk.

Interest Rate Risk - The District has no formal policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

Credit Risk - The District has no investment policy that would limit its investment choices to certain credit ratings. The Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and the Pennsylvania Treasurer's Investment Program have AAA Standard & Poor's credit ratings.

Concentration of Credit Risk - The District investment policy states that unless covered by federal deposit insurance, the aggregate amount of deposits in any financial institution shall not exceed the lesser of two-tenths of 1% of the assets of that institution or \$40,000,000 unless fully collateralized by the assets of the institution pledges in the name of the District at market value.

	<u>Credit Rating</u>	<u>Fair Value</u>
<u>Pooled Investments:</u>		
Pennsylvania School District Liquid Asset Fund:		
General Fund Accounts	AAA	\$ 53,432,395
Capital Reserve Fund Account	AAA	4,070,504
Food Service Fund Account	AAA	134,082
Debt Service Fund	AAA	2,145,984
Trust and Agency Account	AAA	13,478,552
TOTAL		<u>73,261,517</u>
Pennsylvania Local Government Investment Trust:		
General Fund Accounts	AAA	10,583,667
Capital Reserve Fund Account	AAA	3,427,529
Food Service Fund Account	AAA	1,317,249
Trust and Agency Account	AAA	477,530
TOTAL		<u>15,805,975</u>
Pennsylvania Treasurer's Investment Program:		
General Fund Accounts	AAA	1,010,593
Capital Reserve Fund Account	AAA	292
TOTAL		<u>1,010,885</u>
TOTAL POOLED INVESTMENT		<u>\$ 90,078,377</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 4 - Hedging Derivative Instruments

As of June 30, 2018 the District was party to a contract for a derivative instrument. The fair value balance and notional amount of the derivative instrument outstanding at June 30, 2018, classified by type, and the change in fair value of the derivative instrument for the year then ended as reported in the 2018 financial statements is as follows (amounts in thousands):

	<u>Changes in Fair Value</u>		<u>Fair Value at June 30, 2018</u>		
	<u>Classification</u>	<u>Amount</u>	<u>Classification</u>	<u>Amount</u>	<u>Notional</u>
Governmental activities					
Cash flow hedges:					
Pay-fixed interest rate swaps	Deferred outflow of resources	\$ (3,010)	Debt	\$ (6,081)	\$ 60,905

Fair value - The swap had a negative fair value of \$6,080,968 at June 30, 2018. The fair value of the interest rate swap is derived from proprietary models based upon well recognized financial principles and reasonable estimates about relevant future market conditions.

Objectives and terms - As a means of minimizing interest rate fluctuations, the District entered into an interest rate swap in connection with its \$102 million Series of 2009 adjustable rate general obligation bonds. The intention of the swap was to effectively change the District's variable interest rate on the notes to a synthetic fixed rate of 4.041%.

Terms - The swap agreement terminates on April 1, 2027, but will be subject to earlier termination by the School District. The swap's notional amount of \$60,905,000 represents the notes' total balance outstanding as of the effective date of the swap on February 1, 2009 and is structured to match the principal schedule of the notes. Under the swap, the District pays interest at a fixed rate of 4.041% in exchange for the counterparty's agreement to pay interest at a floating rate equal to the Securities Industry and Financial Markets Association (SIFMA) Swap Index Rate which is designed to match the variable market rate on the bonds. The bond's variable-rate (Market Rate) is determined by the remarketing agent in accordance with defined interest rate adjustment dates, interest rate determination or reset dates, and interest rate periods.

Credit risk - As of June 30, 2018, the District was not exposed to credit risk because the swap had a negative fair value. However, should interest rates change and the fair value of the swap become positive, the District would be exposed to credit risk in the amount of the derivative's fair value. The swap counterparty was rated AA by Fitch Ratings and Aa3 by Moody's as of June 30, 2018.

Basis risk - The District is exposed to basis risk on its pay-fixed interest rate swaps because the variable-rate payments received by the District on these hedging derivative instruments are based on a rate or index other than interest rates the District pays on its hedged variable-rate debt, which is remarketed every 30 days. As of June 30, 2018, the SIFMA swap index was 1.51 percent and the Market Rate on the bonds was 1.49 percent.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 5 - Taxes Receivable

Taxes receivable as of year end for the District's individual major funds and nonmajor fiduciary funds in the aggregate are as follows:

	<u>General</u>	<u>Nonmajor and Other Funds</u>	<u>Total</u>
Real Estate Taxes	\$ 2,267,159	\$ 0	\$ 2,267,159
Local Services Taxes	36,559	0	36,559
Transfer Taxes	<u>493,533</u>	<u>0</u>	<u>493,533</u>
 NET TAXES RECEIVABLE	 <u>\$ 2,797,251</u>	 <u>\$ 0</u>	 <u>\$ 2,797,251</u>

At the end of the current fiscal year, the District reported deferred inflows of resources, related to unavailable real estate and earned income tax revenue, in the amount of \$2,308,745 in the governmental funds.

NOTE 6 - Interfund Receivables, Payables, and Transfers

	<u>Interfund Receivables</u>	<u>Interfund Payables</u>
General Fund	\$ 6,672,458	\$15,625,406
Capital Reserve Fund	14,620,387	4,100
Agency Fund	1,743,933	7,331,698
Food Service Fund	<u>273,615</u>	<u>349,189</u>
	<u>\$ 23,310,393</u>	<u>\$23,310,393</u>
	<u>Transfer to Other Funds</u>	<u>Transfer From Other Funds</u>
General Fund	\$ 15,756,552	\$ 0
Capital Reserve	0	13,579,796
Debt Service Fund	0	2,145,980
Student Activities Fund (Agency Fund)	<u>0</u>	<u>30,776</u>
	<u>\$ 15,756,552</u>	<u>\$ 15,756,552</u>

The general fund makes interfund transfers to the capital reserve fund to provide funds for future capital outlay, to the debt service fund for future debt service, and to the student activities fund to provide funds for student extra-curricular activities.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
 June 30, 2018

NOTE 7 - Capital Assets

Capital asset activity for the year ended June 30, 2018 was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
<u>Governmental Activities:</u>				
Capital Assets:				
Land	\$ 19,643,123	\$ 0	\$ 0	\$ 19,643,123
Land Improvements	2,574,921	705,382	0	3,280,303
Buildings	477,866,598	1,140,186	0	479,006,784
Construction in Progress	93,944	675,710	(93,942)	675,712
Furniture and Equipment	8,248,948	110,905	(162,325)	8,197,528
Transportation	14,878,979	1,880,195	(1,820,405)	14,938,769
TOTAL CAPITAL ASSETS	<u>523,306,513</u>	<u>4,512,378</u>	<u>(2,076,672)</u>	<u>525,742,219</u>
Accumulated Depreciation for:				
Land Improvements	2,179,014	78,091	0	2,257,105
Buildings	96,919,644	9,764,192	0	106,683,836
Furniture and Equipment	6,603,894	519,263	(180,925)	6,942,232
Transportation	5,799,549	1,227,722	(1,097,215)	5,930,057
TOTAL ACCUMULATED DEPRECIATION	<u>111,502,101</u>	<u>11,589,269</u>	<u>(1,278,140)</u>	<u>121,813,230</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$411,804,412</u>	<u>\$ (7,076,891)</u>	<u>\$ (798,532)</u>	<u>\$403,928,989</u>
<u>Business-Type Activities:</u>				
Capital Assets:				
Machinery and Equipment	\$ 122,263	\$ 0	\$ (2,809)	\$ 119,454
Accumulated Depreciation for: Machinery and Equipment	<u>102,208</u>	<u>11,620</u>	<u>(2,809)</u>	<u>111,019</u>
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 20,055</u>	<u>\$ (11,620)</u>	<u>\$ 0</u>	<u>\$ 8,435</u>

Depreciation expense was charged to functions/programs of the District as follows:

Governmental Activities - Unallocated	\$ 11,589,269
Business-Type Activities	<u>11,620</u>
TOTAL	<u>\$ 11,600,889</u>

LOWER MERION SCHOOL DISTRICT

Notes to Financial Statements

June 30, 2018

NOTE 8 - Bonds Payable

	<u>Principal Outstanding July 1, 2017</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2018</u>
General Obligation Note Series of 1989	\$ 15,900,000	\$ 2,000,000	\$ 0	\$ 13,900,000
General Obligation Bonds, Series A & B of 2009	66,260,000	5,335,000	0	60,905,000
General Obligation Bonds, Series of 2012	5,385,000	5,385,000	0	0
General Obligation Bonds, Series A of 2012	41,105,000	2,700,000	0	38,405,000
General Obligation Bonds, Series of 2013	9,790,000	5,000	0	9,785,000
General Obligation Bonds, Series of 2014	9,970,000	115,000	0	9,855,000
General Obligation Bonds, Series A of 2015	9,315,000	395,000	0	8,920,000
General Obligation Bonds, Series B of 2015	31,875,000	5,000	0	31,870,000
General Obligation Bonds, Series of 2016	<u>55,665,000</u>	<u>565,000</u>	<u>0</u>	<u>55,100,000</u>
TOTAL	245,265,000	16,525,000	0	228,740,000
Less: Deferred Amounts:				
Issuance Premium (Discounts)	12,096,828	(1,088,960)	0	11,007,868
Refunding Deferred Charge	<u>(6,002,586)</u>	<u>509,021</u>	<u>0</u>	<u>(5,493,565)</u>
LONG-TERM DEBT	<u>\$251,359,242</u>	<u>\$15,945,061</u>	<u>\$ 0</u>	<u>\$234,254,303</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 8 - Bonds Payable (Continued)

	<u>Current Outstanding Principal</u>
General Obligation Note, Series of 1989. Original principal amount of \$30,000,000, maturing August 1, 2023. The note was advanced by Emmaus General Authority under the Bond Pool Program. Interest is charged at a variable rate equal to the Weekly Rate of the underlying bonds plus .35%. The rate at June 30, 2018 was 1.06%.	\$ 13,900,000
General Obligation Bonds, Series A & B of 2009. Original principal amount of \$102,350,000, maturing April 1, 2027, bearing interest at a variable rate equal to the Weekly Rate of the underlying bonds. The rate at June 30, 2018 was 1.11%.	60,905,000
General Obligation Bonds, Series 2012. Original principal amount of \$30,835,000, maturing May 15, 2018, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	0
General Obligation Bonds, Series A 2012. Original principal amount of \$47,015,000, maturing November 12, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	38,405,000
General Obligation Bonds, Series 2013. Original principal amount of \$9,810,000, maturing November 15, 2024, bearing interest from 1.00% to 2.00%. Interest is paid semi-annually on May 15 and November 15.	9,785,000
General Obligation Bonds, Series 2014. Original principal amount of \$9,980,000, maturing November 15, 2025, bearing interest from 2.00% to 2.35%. Interest is paid semi-annually on May 15 and November 15.	9,855,000
General Obligation Bonds, Series A of 2015. Original principal amount of \$9,700,000, maturing September 1, 2034, bearing interest from 3.00% to 3.125%. Interest is paid semi-annually on March 1 and September 1.	8,920,000
General Obligation Bonds, Series B of 2015. Original principal amount of \$31,880,000, maturing September 1, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 1 and September 1.	31,870,000
General Obligation Bonds, Series 2016. Original principal amount of \$55,665,000, maturing September 15, 2032, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 15 and September 15.	<u>55,100,000</u>
TOTAL	<u><u>\$ 228,740,000</u></u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 8 - Bonds Payable (Continued)

The annual requirements to amortize all debts outstanding as of June 30, 2018, are as follows:

<u>Year Ended</u>	<u>Interest</u>	<u>Principal</u>	<u>Total</u>
2019	\$ 6,944,088	\$ 17,415,000	\$ 24,359,088
2020	6,292,654	18,920,000	25,212,654
2021	5,570,270	21,155,000	26,725,270
2022	4,826,257	22,690,000	27,516,257
2023	4,000,350	23,725,000	27,725,350
2024-2028	10,261,380	93,210,000	103,471,380
2029-2033	2,281,283	30,325,000	32,606,283
2034-2035	40,938	1,300,000	1,340,938
TOTAL MATURITIES	\$ 40,217,220	\$ 228,740,000	\$ 268,957,220

Swap Payments and Associated Debt

Hedging derivative instrument payments and hedged debt - As of June 30, 2018, aggregate debt service requirements of the District's debt and net receipts/payments on associated hedging derivative instruments are as follows. These amounts assume that current interest rates on variable-rate bonds and current reference rates of hedging derivative instruments will remain the same for their term. As these rates vary, interest payments on variable-rate bonds and net receipts/payments on the hedging derivative instruments will vary. Refer to Note 4 for information on derivative instruments.

	<u>Bonds with Associated Derivatives</u>		<u>Interest Rate</u>	<u>Totals</u>
	<u>Principal</u>	<u>Interest</u>	<u>Swap, Net</u>	
2019	5,590,000	1,387,441	1,583,710	8,561,151
2020	5,840,000	1,255,332	1,444,115	8,539,446
2021	6,110,000	1,117,248	1,298,343	8,525,591
2022	6,395,000	972,762	1,145,850	8,513,612
2023	6,700,000	821,486	986,296	8,507,782
2024-2027	30,270,000	1,681,427	2,129,277	34,080,704
	<u>\$ 60,905,000</u>	<u>\$ 7,235,695</u>	<u>\$ 8,587,591</u>	<u>\$ 76,728,286</u>

NOTE 9 - Accrued Post-Employment Benefits and Compensated Absences

	<u>(RESTATED)</u>			<u>Balance June 30, 2018</u>
	<u>Balance July 1, 2017</u>	<u>Additions</u>	<u>Reductions</u>	
Accrued Compensated Absences	\$ 1,133,488	\$ 0	\$ 331,842	\$ 801,646
Accrued Other Post-Employment Benefits	11,361,785	474,070	0	11,835,855
TOTAL	<u>\$12,495,273</u>	<u>\$ 474,070</u>	<u>\$ 331,842</u>	<u>\$12,637,501</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 10 - Contingent Liabilities

Amounts received or receivable from grantor agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures which may be disallowed by the grantor cannot be determined at this time although the District expects such amounts, if any, to be immaterial.

The District is currently in litigation with former employees of the District regarding wrongful discharge from employment, with taxpayers contesting real estate assessments, and with parents of students regarding educational and disciplinary issues. The amount, if any, of awards or settlements cannot be determined at this time, although the District expects such amounts, if any, to be immaterial.

In August 2016 the District received an injunction from the Court of Common Pleas of Montgomery County arising out of a complaint filed by certain plaintiffs regarding past and current real estate tax increases. As part of the injunction, the Court has enjoined the District from enforcing or collecting a real estate tax increase for the fiscal year 2016-17 of over 2.4% than was in effect for the prior fiscal year. The District previously adopted a budget for the 2016-17 fiscal year which included a real estate tax increase of 4.44%. On August 31, 2016, the District formally filed an appeal to the Court's decision. The Commonwealth Court denied the District's appeal on procedural grounds and never addressed the merits of the appeal. The District filed an Application for Allowance of Appeal to the Pennsylvania Supreme Court on July 10 2017. On December 11, 2018, the Supreme Court reversed the Commonwealth Court decision and sent the case back to the Commonwealth Court for consideration of the merits of the appeal. In the meantime, the attorney-plaintiff filed a petition to remove the members of the District's School Board from office with the Montgomery County Court of Common Pleas. He has subsequently attempted to withdraw that petition.

NOTE 11 - Employee Retirement Systems and Pension Plans

Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Public School Employees' Retirement System (PSERS) and additions to/deductions from PSERS's fiduciary net position have been determined on the same basis as they are reported by PSERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Plan description

PSERS is a governmental cost-sharing multi-employer defined benefit pension plan that provides retirement benefits to public school employees of the Commonwealth of Pennsylvania. The members eligible to participate in the System include all full-time public school employees, part-time hourly public school employees who render at least 500 hours of service in the school year, and part-time per diem public school employees who render at least 80 days of service in the school year in any of the reporting entities in Pennsylvania. PSERS issues a publicly available financial report that can be obtained at www.psers.state.pa.us.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

Benefits provided

PSERS provides retirement, disability, and death benefits. Members are eligible for monthly retirement benefits upon reaching (a) age 62 with at least 1 year of credited service; (b) age 60 with 30 or more years of credited service; or (c) 35 or more years of service regardless of age. Act 120 of 2010 (Act 120) preserves the benefits of existing members and introduced benefit reductions for individuals who become new members on or after July 1, 2011. Act 120 created two new membership classes, Membership Class T-E (Class T-E) and Membership Class T-F (Class T-F). To qualify for normal retirement, Class T-E and Class T-F members must work until age 65 with a minimum of 3 years of service or attain a total combination of age and service that is equal to or greater than 92 with a minimum of 35 years of service. Benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service. For members whose membership started prior to July 1, 2011, after completion of five years of service, a member's right to the defined benefits is vested and early retirement benefits may be elected. For Class T-E and Class T-F members, the right to benefits is vested after ten years of service.

Participants are eligible for disability retirement benefits after completion of five years of credited service. Such benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service, but not less than one-third of such salary nor greater than the benefit the member would have had at normal retirement age. Members over normal retirement age may apply for disability benefits.

Death benefits are payable upon the death of an active member who has reached age 62 with at least one year of credited service (age 65 with at least three years of credited service for Class T-E and Class T-F members) or who has at least five years of credited service (ten years for Class T-E and Class T-F members). Such benefits are actuarially equivalent to the benefit that would have been effective if the member had retired on the day before death.

Member Contributions

1. Active members who joined the System prior to July 22, 1983, contribute at 5.25% (Membership Class T-C) or at 6.50% (Membership Class T-D) of the member's qualifying compensation.
2. Members who joined the System on or after July 22, 1983, and who were active or inactive as of July 1, 2001, contribute at 6.25% (Membership Class T-C) or at 7.50% (Membership Class T-D) of the member's qualifying compensation.
3. Members who joined the System after June 30, 2001 and before July 1, 2011, contribute at 7.50% (automatic Membership Class T-D). For all new hires and for members who elected Class T-D membership, the higher contribution rates began with service rendered on or after January 1, 2002.
4. Members who joined the System after June 30, 2011, automatically contribute at the Membership Class T-E rate of 7.5% (base rate) of the member's qualifying compensation. All new hires after June 30, 2011, who elect Class T-F membership, contribute at 10.3% (base rate) of the member's qualifying compensation. Membership Class T-E and T-F are affected by a "shared risk" provision in Act 120 of 2010 that in future fiscal years could cause the Membership Class T-E contribution rate to fluctuate between 7.5% and 9.5% and Membership Class T-F contribution rate to fluctuate between 10.3% and 12.3%.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

Employer Contributions

The school districts' contractually required contribution rate for fiscal year ended June 30, 2018 was 31.74% of covered payroll, actuarially determined as an amount that, when combined with employee contributions, is expected to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Contributions to the pension plan from the District were \$38,312,642 for the year ended June 30, 2018.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At June 30, 2018, the District reported a liability of \$440,940,000 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2017 and the total pension liability used to calculate the net pension liability was determined by rolling forward the System's total pension liability as of June 30, 2016 to June 30, 2017. The District's proportion of the net pension liability was calculated utilizing the employer's one-year reported covered payroll as it relates to the total one-year reported covered payroll. At June 30, 2018, the District's proportion was .8928%, which was an increase of .0036% from its proportion measured as of June 30, 2017.

For the year ended June 30, 2018, the District recognized pension expense of \$48,220,094. At June 30, 2018, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows Of Resources	Deferred Inflows Of Resources
Difference between expected and actual experience	\$ 4,600,000	\$ 2,664,000
Changes in assumptions	11,978,000	0
Net difference between projected and actual investment		
Earnings	10,217,000	0
Changes in proportions	8,754,000	1,728,000
Difference between employer contributions and proportionate share of total contributions	0	0
Contributions subsequent to the measurement date	38,312,642	0
	<u>\$ 73,861,642</u>	<u>\$ 4,392,000</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

The deferred outflows of resources related to pensions resulting from District contributions subsequent to the measurement date of \$38,312,642 will be recognized as a reduction of the net pension liability in the year ended June 30, 2018. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in the pension expense as follows:

Year ended June 30:

2018	\$ 7,827,000
2019	15,419,000
2020	9,009,000
2021	<u>(1,098,000)</u>
Total	<u>\$ 31,157,000</u>

Changes in Actuarial Assumptions

The total pension liability as of June 30, 2017 was determined by rolling forward the System's total pension liability as of June 30, 2016 to June 30, 2017 using the following actuarial assumptions, applied to all periods included in the measurement:

- Actuarial Cost Method (Entry Age Normal) - level % of pay.
- Investment Return – 7.25% (includes inflation of 2.75%).
- Salary growth – Effective average of 5.00%, comprised of inflation of 2.75% and 2.25% for real wage growth and for merit or seniority increases.
- Mortality rates were based on the RP-2014 Mortality Tables for Males and Females, adjusted to reflect PSERS' experience and projected using a modified version of the MP-2015 Mortality Improvement Scale.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

The pension plan's policy in regard to the allocation of invested plan assets is established and may be amended by the Board. Plan assets are managed with a long-term objective of achieving and maintaining a fully funded status for the benefits provided through the pension.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term Expected Real Rate of Return</u>
Global public equity	20.0%	5.1%
Fixed income	36.0%	2.6%
Commodities	8.0%	3.0%
Absolute return	10.0%	3.4%
Risk parity	10.0%	3.8%
Infrastructure/MLPs	8.0%	4.8%
Real estate	10.0%	3.6%
Alternative investments	15.0%	6.2%
Cash	3.0%	0.6%
Financing (LIBOR)	(20.0%)	1.1%
	<u>100%</u>	

The above was the Board's adopted asset allocation policy and best estimates of geometric real rates of return for each major asset class as of June 30, 2017.

Discount rate

The discount rate used to measure the total pension liability was 7.25%. The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current contribution rate and that contributions from employers will be made at contractually required rates, actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the District's proportionate share of the net pension liability to changes in the discount rate

The following presents the net pension liability, calculated using the discount rate of 7.25%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (6.25%) or 1-percentage point higher (8.25%) than the current rate:

	<u>1% Decrease 6.25%</u>	<u>Current Discount Rate 7.25%</u>	<u>1% Increase 8.25%</u>
District's proportionate share of the net pension liability	\$542,758,000	\$440,940,000	\$354,976,000

Pension plan fiduciary net position

Detailed information about PSERS' fiduciary net position is available in PSERS Comprehensive Annual Financial Report which can be found on the System's website at www.psers.state.pa.us.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 12 - Other Post-Employment Benefits

The District provides post-retirement health care benefits (medical, dental, prescription, vision) to its administrative personnel who retire under normal PSERS guidelines or elect early retirement at age 55 with 25 years of service. The District contributes toward the cost of single health coverage, and the amount of the contribution is based upon the employee's years of service. The District's contribution rate ranges from 50% for employees with 5 years of service to 100% for employees with 15 or more years of service. The lifetime maximum that the District will pay for a retiree's coverage shall not exceed the employee's highest annual salary while working at the District.

The health insurance plan is a single employer, defined benefit OPEB plan. The medical and prescription drug benefits are administered through Independence Blue Cross. Dental and Vision benefits are administered through Delta Dental and Davis Vision, respectively. Separate financial statements are not issued for the plan. The term life insurance is purchased from PSBA (Pennsylvania School Board Association) Insurance Trust.

Actuarial Methods and Assumptions

Calculations are based on the types of benefits provided under the terms of the substantive plan at the time of the valuation and on the pattern of sharing of costs between the employer and plan members to that point. Calculations reflect a long-term perspective, so methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets. In the July 1, 2017 actuarial valuation, the following actuarial assumptions were used:

Interest	3.13%
Actuarial Cost Method	Entry Age Normal
Salary Increases	An assumption for salary increases is used only for spreading contributions over future pay under the entry age normal cost method. For this purpose, salary increases are composed of a 2.5% cost of living adjustment, 1% real wage growth, and for teachers and administrators a merit increase which varies by age from 2.75 to 0%

Annual OPEB Cost and NET OPEB Liability:

The District's annual other Post-employment benefit (OPEB) cost (expense) is calculated based on the annual required contribution of the employer (ARC). The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities over a period not to exceed 13 years. The following table shows the components of the District's annual OPEB cost for the year, the amount actually contributed to the plan and the changes in the District's OPEB liability.

Net OPEB Liability:	
Balance as of July 1, 2017 (RESTATED)	\$ 11,305,716
Service Cost	795,592
Interest Expense	293,799
Changes in Assumptions	(1,409)
Estimated Contributions	<u>(557,843)</u>
 NET OPEB LIABILITY AS OF JUNE 30, 2018	 <u>\$ 11,835,855</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 12 - Other Post-Employment Benefits (Continued)

Sensitivity of the District's proportionate share of the net pension liability to changes in the discount rate

The following presents the net OPEB liability, calculated using the discount rate of 3.13%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (2.13%) or 1-percentage point higher (4.13%) than the current rate:

	1% Decrease 2.13%	Current Discount Rate 3.13%	1% Increase 4.13%
Net OPEB Liability	\$ 12,926,116	\$ 11,835,855	\$ 10,881,235

Sensitivity of the District's proportionate share of the net pension liability to changes in the healthcare cost trend rates

The following presents the net OPEB liability, calculated using the healthcare cost trend rate of 5.5%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (4.5%) or 1-percentage point higher (6.5%) than the current rate:

	1% Decrease 4.5%	Current Rate 5.5%	1% Increase 6.5%
Net OPEB Liability	\$10,867,654	\$11,835,855	\$12,964,987

For the year ended June 30, 2018, the District recognized OPEB expense of \$1,089,215. At June 30, 2018, the District reported deferred outflows of resources and deferred inflows of resources related to net OPEB liability from the following sources:

	Deferred Outflows Of Resources	Deferred Inflows Of Resources
Changes in assumptions	\$ 0	\$ 1,233
Benefit payments subsequent to the measurement date	603,194	0
	<u>\$ 603,194</u>	<u>\$ 1,233</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2018

NOTE 12 - Other Post-Employment Benefits (Continued)

The deferred outflows of resources related to the OPEB liability resulting from District contributions subsequent to the measurement date of \$603,194 will be recognized as a reduction of the net pension liability in the year ended June 30, 2019. Other amounts reported as deferred inflows of resources related to pensions will be recognized in the pension expense as follows:

Year ended June 30:

2019	\$	176
2020		176
2021		176
2022		176
2023		176
Thereafter		353
Total	<u>\$</u>	<u>1,233</u>

NOTE 13 - Prior Period Adjustment

Net position (deficit) as of June 30, 2017 has been restated as a result of the District's adoption of Government Accounting Standards Board Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. The statement required the adjustment of the net OPEB liability for the government wide statements. The effect of the restatement was to reduce District-wide net position (deficit) as of July 1, 2017 by \$5,564,566.

NOTE 14 - Deficit Net Position

A deficit of \$132,582,218 exists in the District-wide net position as of June 30, 2018 (the net pension deficit for governmental activities as of June 30, 2018 is \$130,405,469 and the net position deficit for business-type activities as of June 30, 2018 is \$2,176,749). The deficit is a result of the District's adoption of Government Accounting Standards Board Statement No. 68 *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
 June 30, 2018

NOTE 15 - Fund Balances - General Fund

Nonspendable:		
Prepaid Expenses		\$ 391,853
Committed:		
Future Capital Projects	15,000,000	
Future PSERS Obligations	15,300,000	
Future Postemployment Healthcare Benefits	5,000,000	
Rate Stabilization of Variable Interest Rate Bonds	<u>500,000</u>	35,800,000
Unassigned		<u>20,071,038</u>
TOTAL		<u><u>\$ 56,262,891</u></u>

NOTE 16 - Subsequent Events

The District has evaluated subsequent events through December 21, 2018, which represents the date the financial statements were available to be issued.

LOWER MERION SCHOOL DISTRICT
Required Supplementary Information
Budgetary Comparison Schedule
General Fund
For the Year Ended June 30, 2018

	Original Budget	Amended Budget	Actual	Variance with Final Budget - Positive (Negative)
Revenues:				
Local Revenues	\$ 220,078,330	\$ 220,078,330	\$226,766,062	\$ 6,687,732
State Program Revenues	37,570,876	37,570,876	37,419,517	(151,359)
Federal Program Revenues	1,185,000	1,185,000	2,271,386	1,086,386
TOTAL REVENUES	<u>258,834,206</u>	<u>258,834,206</u>	<u>266,456,965</u>	<u>7,622,759</u>
Expenditures:				
Regular Programs	104,870,665	100,005,665	100,003,884	1,781
Special Programs	47,344,037	41,774,037	41,768,332	5,705
Vocational Programs	525,000	514,000	513,398	602
Other Instructional Programs	982,045	888,045	887,416	629
Pupil Personnel Services	10,531,477	9,671,477	9,671,186	291
Instructional Staff Services	7,243,765	6,389,765	6,380,967	8,798
Administrative Services	13,315,483	14,155,483	14,138,721	16,762
Pupil Health	3,936,994	3,692,194	3,690,495	1,699
Business Services	1,346,454	1,290,054	1,289,468	586
Operation and Maintenance of Plant Services	19,411,239	20,961,239	20,943,657	17,582
Student Transportation Services	13,609,008	13,513,008	13,512,022	986
Central and Other Support Services	7,325,927	6,950,927	6,947,456	3,471
Student Activities	5,503,443	5,063,443	5,061,859	1,584
Community Services	215,000	220,000	219,108	892
Debt Service	26,058,124	25,673,124	25,668,801	4,323
TOTAL EXPENDITURES	<u>262,218,661</u>	<u>250,762,461</u>	<u>250,696,770</u>	<u>65,691</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>(3,384,455)</u>	<u>8,071,745</u>	<u>15,760,195</u>	<u>7,688,450</u>
Other Financing Uses:				
Budgetary Reserve	(800,000)	0	0	0
Interfund Transfers Out	(2,186,756)	(14,442,956)	(15,756,552)	(1,313,596)
Refunds of Prior Years' Revenues	0	0	(3,643)	(3,643)
TOTAL OTHER FINANCING USES	<u>(2,986,756)</u>	<u>(14,442,956)</u>	<u>(15,760,195)</u>	<u>(1,317,239)</u>
NET CHANGE IN FUND BALANCES	<u>\$ (6,371,211)</u>	<u>\$ (6,371,211)</u>	0	<u>\$ 6,371,211</u>
Fund Balance - July 1, 2017			<u>56,262,891</u>	
FUND BALANCE - JUNE 30, 2018			<u>\$ 56,262,891</u>	

LOWER MERION SCHOOL DISTRICT
Schedule of the District's Proportionate Share of the Net Pension Liability
For the Year Ended June 30, 2018

<u>Year Ended</u>	<u>District's Proportion of the Net Pension Liability (Asset)</u>	<u>District's Proportionate Share of the Net Pension Liability (Asset)</u>	<u>District's Covered Payroll</u>	<u>Net Pension Liability (Asset) as a Percentage of Covered Payroll</u>	<u>Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
June 30, 2014	0.8504%	\$ 336,594,000	\$ 108,521,471	310.16%	-41.78%
June 30, 2015	0.8798%	381,089,000	113,197,880	336.66%	-35.68%
June 30, 2016	0.8892%	440,659,000	115,166,003	382.63%	-29.24%
June 30, 2017	0.8928%	440,940,000	118,860,782	370.97%	-30.07%

LOWER MERION SCHOOL DISTRICT
Schedule of the District's Pension Contributions
For the Year Ended June 30, 2018

<u>Year Ended</u>	<u>Contractually Required Contribution</u>	<u>Contributions in Relation to the Contractually Required Contribution</u>	<u>Contribution Excess/ (Deficiency)</u>	<u>District's Covered Payroll</u>	<u>Contributions as a Percentage of Covered Payroll</u>
June 30, 2014	\$ 16,941,000	\$ (16,941,000)	\$ 0	\$ 108,521,471	15.61%
June 30, 2015	22,717,000	(22,717,000)	0	113,197,880	20.07%
June 30, 2016	28,289,000	(28,289,000)	0	115,166,003	24.56%
June 30, 2017	34,149,000	(34,149,000)	0	118,860,782	28.73%

LOWER MERION SCHOOL DISTRICT

Schedule of Changes in Net OPEB Liability and Related Ratios (Unaudited)
For the Year Ended June 30, 2018

Total OPEB Liability:		
Service Cost	\$	795,592
Interest		293,799
Changes of Benefit Terms		0
Differences Between Expected and Actual Experience		0
Changes of Assumptions		(1,409)
Benefit Payments		(557,843)
NET CHANGE IN TOTAL POLICE PENSION LIABILITY		<u>530,139</u>
Total Net OPEB Liability - Beginning (RESTATED)	\$	<u>11,305,716</u>
TOTAL NET OPEN LIABILITY - ENDING	\$	<u><u>11,835,855</u></u>
Covered Employee Payroll	\$	<u><u>109,660,791</u></u>
Net OPEB Liability as a Percentage of Covered Employee Payroll		<u><u>10.79%</u></u>

Financial Statements

Lower Merion School District
Montgomery County, Pennsylvania

June 30, 2017

Rainer
& Company

A Professional Corporation
Certified Public Accountants

TABLE OF CONTENTS

<u>Title</u>	<u>Page No.</u>
Independent Auditors' Report on Financial Statements	1-2
Management's Discussion and Analysis	3-15

BASIC FINANCIAL STATEMENTS

Government-Wide Financial Statements:

Statement of Net Position (Deficit)	16
Statement of Activities	17

Fund Financial Statements:

Balance Sheet - Governmental Funds	18
Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position (Deficit)	19
Statement of Revenues, Expenditures, and Changes in Fund Balances - Governmental Funds	20
Reconciliation of the Governmental Funds Statement of Revenues, Expenditures, and Changes in Fund Balances to the Statement of Activities	21
Statement of Net Position (Deficit) - Proprietary Funds	22
Statement of Revenues, Expenses, and Changes in Net Position (Deficit) - Proprietary Funds	23
Statement of Cash Flows - Proprietary Funds	24
Statement of Fiduciary Net Position	25
Statement of Changes in Fiduciary Net Position	26
Notes to the Financial Statements	27-48

Required Supplementary Information:

Budgetary Comparison Schedule - General Fund	49
Schedule of Post Employment Benefit Obligation Funding Progress	50
Schedule of the District's Proportionate Share of the Net Pension Liability	51
Schedule of the District Pension Contributions	52



A Professional Corporation
Certified Public Accountants

INDEPENDENT AUDITORS' REPORT

Board of School Directors
Lower Merion School District
Montgomery County, Pennsylvania

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of and for the year ended June 30, 2017, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of June 30, 2017, and the respective changes in financial position, and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 15, budgetary comparison information on page 49, the schedule of post employment benefit obligation funding progress on page 50, the schedule of the District's proportionate share of the net pension liability on page 51, and the schedule of District's pension contributions on page 52 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated December 21, 2017, on our consideration of Lower Merion School District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Lower Merion School District's internal control over financial reporting and compliance.


Rainer & Company

Newtown Square, PA
December 21, 2017

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

The discussion and analysis of Lower Merion School District's financial performance provides an overall review of the District's financial activities for the fiscal year ended June 30, 2017. The intent of this discussion and analysis is to look at the District's financial performance as a whole. Readers should also review the financial statements and the notes to the financial statements.

The Management's Discussion and Analysis (MD&A) is an element of the reporting model adopted by the Governmental Accounting Standards Board (GASB) in their Statement Number 34, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments. Comparative information between the current year and the prior year is required to be presented.

FINANCIAL HIGHLIGHTS

The trends of prior years indicated that during the fiscal year 2016-17, the Lower Merion School District would experience another year of increased staff for student enrollment growth, benefits for our employees and increased costs for instruction. In the budgeting process for the 2016-17 Budget, the Board of School Directors was able to balance the budget with a 1.1642 mills increase (\$11.642 per \$10,000 of assessed value) to the taxpayers within the District. Through prudent financial management, the actual expenditures did not increase as much as was anticipated when the budget was prepared. This resulted in the savings being added to the beginning fund balance for school year 2017-18. The combination of revenues exceeding the budget and less expenditures than budgeted resulted in the opportunity for the Board to transfer additional funds into the Capital Reserve Fund. The fund balance commitment categories are for future pension obligations, postemployment benefit obligations, future capital projects, as well as stabilization of variable rate bonds.

OVERVIEW OF FINANCIAL STATEMENTS

The accompanying financial statements have been prepared in accordance with GASB Statement Number 34 and present both government-wide and fund level financial statements using both the accrual and modified accrual basis of accounting, respectively.

Government-Wide Financial Statements

The first two statements are government-wide financial statements - the Statement of Net Position (Deficit) and the Statement of Activities. These provide both long-term and short-term information about the District's overall financial status.

The government-wide statements report information about the District as a whole using accounting methods similar to those used by private-sector companies. The Statement of Net Position (Deficit) includes all of the government's assets and liabilities. All of the current year's revenues and expenses are accounted for in the Statement of Activities regardless of when cash is received or paid.

The two government-wide statements report the District's net position and how it has changed. Net position, the difference between the District's assets and liabilities, is one way to measure the District's financial health or position.

Over time, increases or decreases in the District's net assets are an indication of whether its financial health is improving or deteriorating, respectively.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

Government-Wide Financial Statements (Continued)

To assess the overall health of the District, you need to consider additional non-financial factors, such as changes in the District's property tax base and the performance of the students.

The government-wide financial statements of the District are divided into two categories:

- **Governmental Activities** - All of the District's basic services are included here, such as instruction, administration, and community services. Property taxes and state and federal subsidies and grants finance most of these activities.
- **Business-Type Activities** - The District operates a food service operation and charges fees to staff and students to cover the costs of the food service operation.

Fund Level Financial Statements

The remaining statements are fund financial statements that focus on individual parts of the District's operations in more detail than the government-wide statements. The governmental fund statements tell how the District's general services were financed in the short term as well as what remains for future spending. Proprietary fund statements offer short and long-term financial information about the activities that the District operates like a business. For this District this is our Food Service Fund. Fiduciary fund statements provide information about financial relationships where the District acts solely as a trustee or agent for the benefit of others.

- **Governmental Funds** - Most of the District's activities are reported in governmental funds, which focus on the determination of financial position and change in financial position, not on income determination. Governmental funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can readily be converted to cash. The governmental fund statements provide a detailed short-term view of the District's operations and the services it provides. Governmental fund information helps the reader determine whether there are more or fewer financial resources that can be spent in the near future to finance the District's programs. The relationship (or differences) between governmental activities (reported in the Statement of Net Position (Deficit) and the Statement of Activities) and governmental funds is reconciled in the financial statements.
- **Proprietary Funds** - These funds are used to account for District activities that are similar to business operations in the private sector; or where the reporting is on determining net income, financial position, changes in financial position, and a significant portion of funding through user charges. When the District charges customers for services it provides - whether to outside customers or to other units in the District - these services are generally reported in proprietary funds. The Food Service Fund is the District's proprietary fund and is the same as the business-type activities we report in the government-wide statements.
- **Fiduciary Funds** - The District is the trustee, or fiduciary, for some scholarship funds. All of the District's fiduciary activities are reported in a separate Statement of Fiduciary Net Position. We exclude these activities from the District's other financial statements because the District cannot use these assets to finance its operations.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data.

FINANCIAL ANALYSIS OF THE DISTRICT - GOVERNMENT-WIDE STATEMENTS

The District's total net position (deficit) was \$138,044,233 and \$135,960,143 as of June 30, 2017 and 2016, respectively. The following table presents condensed financial information for the net position (deficit) of the District as of June 30, 2017 and 2016.

Schedule of Net Position (Deficit)
Years Ended June 30, 2017 and 2016

	Governmental Activities		Business-Type Activities		Total	
	2017	2016	2017	2016	2017	2016
Current Assets	\$ 100,295,126	\$ 102,865,758	\$ 1,603,283	\$ 2,011,647	\$ 101,898,409	\$ 104,877,405
Capital Assets	411,804,412	414,721,127	20,055	31,675	411,824,467	414,752,802
Deferred Outflows of Resources	94,094,543	52,352,108	806,956	385,998	94,901,499	52,738,106
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	606,194,081	569,938,993	2,430,294	2,429,320	608,624,375	572,368,313
Current Liabilities	47,707,489	46,300,841	536,974	1,162,602	48,244,463	47,463,443
Noncurrent Liabilities	687,378,822	649,990,138	4,144,323	3,798,875	691,523,145	653,789,013
Deferred Inflows of Resources	6,836,097	7,005,463	64,903	70,537	6,901,000	7,076,000
TOTAL LIABILITIES AND DEFERRED INFLOWS OF RESOURCES	741,922,408	703,296,442	4,746,200	5,032,014	746,668,608	708,328,456
Net Position (Deficit):						
Invested in Capital Assets,						
Net of Related Debt	160,445,170	147,563,425	20,055	31,675	160,465,225	147,595,100
Restricted: Capital Projects	11,967,682	14,768,490	0	0	11,967,682	14,768,490
Unrestricted	(308,141,179)	(295,689,364)	(2,335,961)	(2,634,369)	(310,477,140)	(298,323,733)
TOTAL NET POSITION (DEFICIT)	\$ (135,728,327)	\$ (133,357,449)	\$ (2,315,906)	\$ (2,602,694)	\$ (138,044,233)	\$ (135,960,143)

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

The results of this year's operations as a whole are reported in the Statement of Activities. All expenses are reported in the first column. Specific charges, grants, revenues, and subsidies that directly relate to specific expense categories are represented to determine the final amount of the District's activities that are supported by other general revenues. The largest revenues are property taxes, local taxes, and the state basic education subsidy.

The following table presents condensed financial information for the Statement of Activities in a different format to show total revenues for the year. Compared to the prior year, the District's total revenues increased by \$13,925,025 or 5.72%. Property taxes, which include current and interim real estate taxes, increased by \$10,410,149 or 5.21%. Investment earnings increased by \$336,219 or 77.25%. Governmental activities expenses increased by \$20,702,897 or 8.80%. Instruction expense increased by \$10,442,174 or 7.43%.

Statement of Activities
For the Years Ended June 30, 2017 and 2016

	Governmental Activities		Business-Type Activities		Total	
	2017	2016	2017	2016	2017	2016
REVENUES:						
Program Services:						
Charges for Services	\$ 1,055,799	\$ 632,912	\$ 2,681,091	\$ 2,514,420	\$ 3,736,890	\$ 3,147,332
Operating Grants and Contributions	26,768,160	23,852,093	922,767	821,434	27,690,927	24,673,527
General Revenues:						
Property Taxes	210,056,988	199,646,839	0	0	210,056,988	199,646,839
Other Taxes	4,199,608	4,682,505	0	0	4,199,608	4,682,505
Grants, Subsidies and Contributions Not Restricted	10,713,783	10,678,058	0	0	10,713,783	10,678,058
Investment Earnings	771,470	435,251	0	0	771,470	435,251
Miscellaneous Income	108,705	86,944	0	0	108,705	86,944
Sale of Capital Assets	0	2,890	0	0	0	2,890
Transfers In (Out)	0	(904)	0	904	0	0
TOTAL REVENUES	253,674,513	240,016,588	3,603,858	3,336,758	257,278,371	243,353,346
EXPENSES:						
Instruction	\$ 151,014,559	140,572,385	0	0	151,014,559	140,572,385
Instructional Student Support	21,038,229	18,256,350	0	0	21,038,229	18,256,350
Administrative and Financial Support	15,588,946	14,775,375	0	0	15,588,946	14,775,375
Operation and Maintenance of Plant Services	27,486,480	24,216,736	0	0	27,486,480	24,216,736
Pupil Transportation	14,938,198	13,500,631	0	0	14,938,198	13,500,631
Student Activities	5,362,928	4,854,449	0	0	5,362,928	4,854,449
Community Services	209,239	198,566	0	0	209,239	198,566
Interest on Long-Term Debt	9,187,491	8,242,820	0	0	9,187,491	8,242,820
Unallocated Depreciation Expense	11,219,321	10,725,182	0	0	11,219,321	10,725,182
Food Services	0	0	3,317,070	3,340,731	3,317,070	3,340,731
TOTAL EXPENSES	256,045,391	235,342,494	3,317,070	3,340,731	259,362,461	238,683,225
CHANGE IN NET POSITION	\$ (2,370,878)	\$ 4,674,094	\$ 286,788	\$ (3,973)	\$ (2,084,090)	\$ 4,670,121

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

EXPENSES

The following table presents condensed financial information on the expenses of the District by function. The table illustrates both the gross and net costs of services. Unrestricted grants, subsidies, and contributions are deducted to reflect the amount needed to be funded by other revenue sources. The amount needed to be funded by other revenue sources increased by 17,328,218 or 8.7% more than the prior year.

Expense Analysis
For the Years Ended June 30, 2017 and 2016

	Total Cost of Services		Net Cost of Services	
	2017	2016	2017	2016
Expenses - Governmental Activities:				
Instruction	\$ 151,014,559	\$ 140,572,385	\$ 133,904,186	\$ 125,129,341
Instructional Student Support	21,038,229	18,256,350	19,047,496	16,641,580
Administrative and Financial Support	15,588,946	14,775,375	13,771,703	13,135,595
Operation and Maintenance of Plant Services	27,486,480	24,216,736	25,368,341	22,880,088
Pupil Transportation	14,938,198	13,500,631	10,734,434	9,560,401
Student Activities	5,362,928	4,854,449	4,779,221	4,343,916
Community Services	209,239	198,566	209,239	198,566
Interest on Long-Term Debt	9,187,491	8,242,820	9,187,491	8,242,820
Unallocated Depreciation Expense	11,219,321	10,725,182	11,219,321	10,725,182
 TOTAL EXPENSES	 \$ 256,045,391	 \$ 235,342,494	 228,221,432	 210,857,489
 Less: Grants, Subsidies and Contributions Not Restricted			 (10,713,783)	 (10,678,058)
 AMOUNT NEEDED TO BE FUNDED BY OTHER REVENUE SOURCES			 \$ 217,507,649	 \$ 200,179,431

The following table reflects condensed financial activities of the Food Service Program, the only business-type activity of the District.

Business-Type Activities
For the Years Ended June 30, 2017 and 2016

	Total Cost of Services		Net Cost of Services	
	2017	2016	2017	2016
Expenses - Business-Type Activities:				
Food Services	\$ 3,317,070	\$ 3,340,731	\$ (286,788)	\$ 3,973

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

THE DISTRICT FUNDS

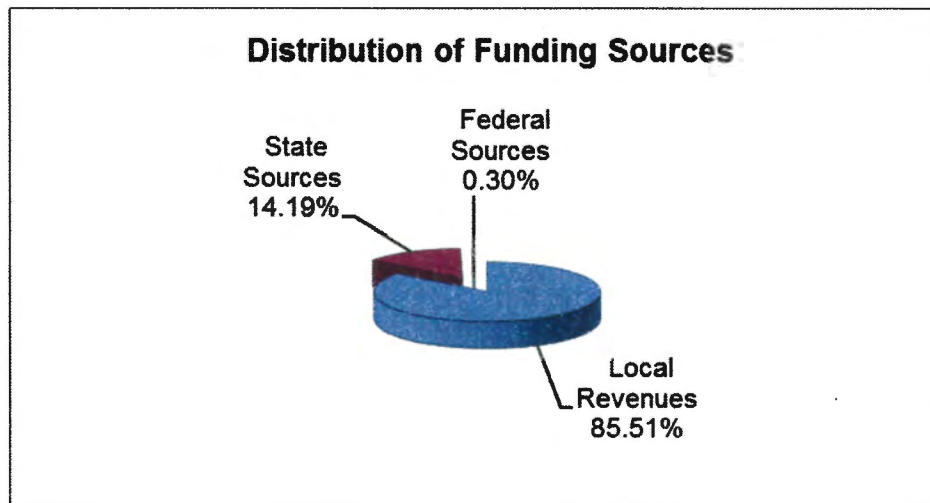
GENERAL FUND

At June 30, 2017, the District reported a total fund balance of \$56,262,891, which consists of \$246,007 as nonspendable fund balance, \$35,800,000 as committed fund balance and \$20,216,884 as unassigned fund balance. There is no change from the prior year. The School Board of the Lower Merion School District consciously maintains a fund balance to respond to unforeseen contingencies. This philosophy conforms to the Board's belief that the tax burden should be aligned with both the current and future funding needs of the District. As the School District has experienced unprecedented enrollment growth and the need to expand facilities, the fund balance is necessary to maintain educational programs while, at the same time, responsibly planning for future needs.

Revenues

Revenues totaled \$253,267,863, an increase of \$13,564,319 as compared to the 2015-16 revenues. The following table reflects a comparison of current year revenues with the revenues recognized in the prior year:

	Revenue 2017	% of Total	Increase (Decrease) From 2016	Percentage Increase (Decrease)	Revenue 2016
Local Revenues	\$ 216,568,720	85.51%	\$ 10,049,757	4.87%	\$ 206,518,963
State Sources	35,946,209	14.19%	3,618,193	11.19%	32,328,016
Federal Sources	752,934	0.30%	(103,631)	-12.10%	856,565
	<u>\$ 253,267,863</u>	<u>100.00%</u>	<u>\$ 13,564,319</u>	<u>5.66%</u>	<u>\$ 239,703,544</u>



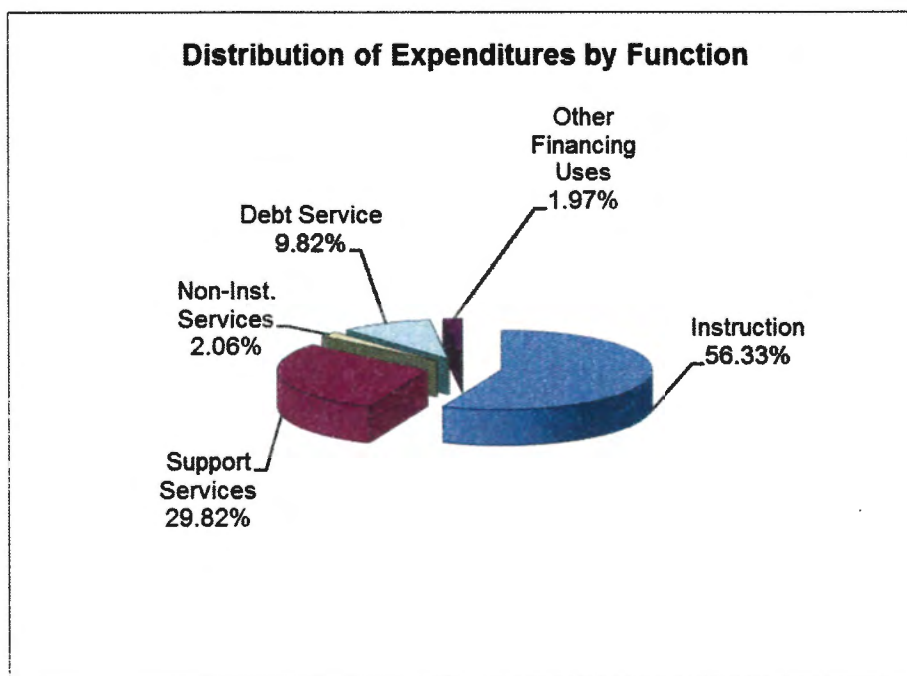
LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

The District balanced the budget by utilizing the fund balance from the previous year and increasing the 2016-17 real estate tax rates from 26.2321 to 27.3963 mills. As a result of the increase in millage and increases in real estate assessments, revenues from current, interim, and delinquent real estate taxes increased by \$10,270,092. The collection rate for current real estate taxes was 96.93%. This compares with 96.91% in 2015-16. Real estate transfer taxes collections decreased by \$478,860. The District experienced an increase in investment revenue of \$335,560 for the general fund.

Expenditures

Expenditures, totaling \$253,267,863, increased \$13,564,875 over the 2015-16 expenditures. These expenditures were segregated into various programs depending on the functions of the activity. These programs and the costs associated with each, as well as comparison to the costs incurred in the prior year and the final 2016-17 budget are as follows:

	Expenditures 2017	% of Total	Increase (Decrease) From 2016	Variance with Final Budget - Positive (Negative)
Instruction	\$ 142,668,446	56.33%	\$ 5,665,515	\$ 4,214,154
Support Services	75,520,851	29.82%	6,547,839	525,964
Non-Instructional Services	5,215,757	2.06%	302,900	115,459
Debt Service	24,874,276	9.82%	(735,274)	4,828
Other Financing Uses	4,988,533	1.97%	1,783,895	806,000
TOTAL EXPENDITURES BY FUNCTION	\$ 253,267,863	100.00%	\$ 13,564,875	\$ 5,666,405



LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

The increase in expenditures from 2016-17 is due to increases in various categories. Our pension obligations increased over \$5.7 million from the prior year, as a result of the employer contribution rate increasing from 25.84% to 30.03%. Instructional program costs increased over \$5.6 million from the prior year as a result of increases in salaries due to the collective bargaining agreement, as well additional staff and educational materials necessary to accommodate the student enrollment growth. Support pupil personnel and instructional costs increased over \$2.1 million from last year. Also, the Board approved the transfer of \$4.946 million to the Capital Reserve to address future capital needs.

Budget

During the fiscal year, the Board of School Directors authorizes revisions to the original budget to accommodate differences from the original budget to the actual expenditures of the District. All adjustments are again confirmed at the time the annual audit is accepted. This is done after the end of the fiscal year in accordance with state law. A schedule showing the District's original and final budget amounts compared with amounts actually paid and received is provided in the financial statements.

The Budgetary Reserve includes amounts that will be funded for operating contingencies such as an unpredictable change in the cost of goods and services and the occurrence of events which are vaguely perceptible during the time of the budget process but which nonetheless may require expenditures by the District during the year of operation.

CAPITAL PROJECTS FUND

At June 30, 2017, the District reported a fund balance of \$131,306, which is a decrease of \$3,404,757 from the prior year. Increases in this fund during 2016-17 include investment earnings of \$5,607. The capital project fund expended \$246,430 in support services and \$3,158,771 for active capital construction projects.

CAPITAL RESERVE FUND

At June 30, 2017, the District reported a fund balance of \$11,836,376, which is an increase of \$603,949 from the prior year. Increases in this fund during 2016-17 include a \$4,945,533 transfer from the general fund, other local revenues of 182,992, and investment earnings of \$27,848. The capital reserve fund expended \$2,950,070 in support services and \$1,602,354 in capital outlay expenditures.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

CAPITAL ASSETS

At June 30, 2017, the District's governmental activities and business-type activities had \$411,824,467 invested in a broad range of capital assets, including land, buildings, and furniture and equipment. This amount represents a net decrease (including additions, deletions, and depreciation) of \$2,928,335 from last year.

The following schedule depicts the change in capital assets for the period July 1, 2016 through June 30, 2017. During this period, the District had the following significant additions in capital assets:

	<u>Beginning Balance</u>	<u>Increase (Decrease)</u>	<u>Ending Balance</u>
<u>Governmental Activities:</u>			
Capital Assets:			
Land	\$ 19,643,123	\$ 0	\$ 19,643,123
Land Improvements	2,574,921	0	2,574,921
Buildings	470,052,105	7,814,493	477,866,598
Construction in Process	1,535,496	(1,441,552)	93,944
Furniture and Equipment	8,162,704	86,244	8,248,948
Transportation	13,913,568	965,411	14,878,979
TOTAL CAPITAL ASSETS	<u>515,881,917</u>	<u>7,424,596</u>	<u>523,306,513</u>
Accumulated Depreciation for:			
Land Improvements	2,142,282	36,732	2,179,014
Buildings	87,394,522	9,525,122	96,919,644
Furniture and Equipment	6,194,307	409,587	6,603,894
Transportation	5,429,679	369,870	5,799,549
TOTAL ACCUMULATED DEPRECIATION	<u>101,160,790</u>	<u>10,341,311</u>	<u>111,502,101</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 414,721,127</u>	<u>\$ (2,916,715)</u>	<u>\$ 411,804,412</u>
<u>Business-Type Activities:</u>			
Capital Assets:			
Machinery and Equipment	\$ 122,263	\$ 0	\$ 122,263
Accumulated Depreciation for:			
Machinery and Equipment	90,588	11,620	102,208
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 31,675</u>	<u>\$ (11,620)</u>	<u>\$ 20,055</u>

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

DEBT ADMINISTRATION

As of July 1, 2016, the District had total outstanding bond principal of \$260,535,000. During the year, the District paid principal in the amount of \$15,270,000 resulting in ending outstanding debt as of June 30, 2017 of \$245,265,000.

Debt Service Schedule
June 30, 2017

	<u>Principal Outstanding July 1, 2016</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2017</u>
General Obligation Note, Series of 1989	\$ 17,900,000	\$ 2,000,000	\$ 0	\$ 15,900,000
General Obligation Bonds, Series A & B of 2009	71,395,000	5,135,000	0	66,260,000
General Obligation Bonds, Series of 2012	10,515,000	5,130,000	0	5,385,000
General Obligation Bonds, Series A of 2012	43,710,000	2,605,000	0	41,105,000
General Obligation Bonds, Series of 2013	9,795,000	5,000	0	9,790,000
General Obligation Bonds, Series of 2014	9,975,000	5,000	0	9,970,000
General Obligation Bonds, Series A of 2015	9,700,000	385,000	0	9,315,000
General Obligation Bonds, Series B of 2015	31,880,000	5,000	0	31,875,000
General Obligation Bonds, Series of 2016	<u>55,665,000</u>	<u>0</u>	<u>0</u>	<u>55,665,000</u>
	<u>\$ 260,535,000</u>	<u>\$ 15,270,000</u>	<u>\$ 0</u>	<u>\$ 245,265,000</u>

Other obligations include accrued vacation pay and severance for specific employees of the District. More detailed information about our long-term liabilities is included in the notes to the financial statements.

THE DISTRICT'S FUTURE

The total District enrollment has increased over the last ten school years resulting from out of state move-ins, fewer students enrolling in private schools, and housing turnover resulting in more families with school age children. From 1998 - 2012, the District renovated and expanded all six elementary schools, both middle schools, and built two new high schools, Harriton and Lower Merion. The District has an extensive network infrastructure and a district-wide area network. All schools are connected to the network

A district-wide facilities and enrollment projection study was completed in 2012. A new enrollment projection study was completed in April 2015 and updated in November 2015. These studies indicate that enrollment will continue to increase in the next decade.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

Additions at Gladwyne and Penn Valley Elementary Schools were completed in the 2014/15 school year, and additions and alterations at the two middle schools were completed for the 2015/16 school year.

Renovations to the District Administration Building to create additional science classroom space was completed in the fall of 2016. Four temporary classrooms were installed at Penn Wynne Elementary school in the summer of 2016 to accommodate increased enrollment.

The School District engaged two demographers to conduct additional enrollment studies in the fall of 2016 in order to assess future needs. The results of these studies has been incorporated into the planning process for dealing with growth throughout the District. The District plans to have these same two demographers provide updated studies in the fall of 2017.

STRATEGIC PLAN

Lower Merion School District launched an ambitious, year-long comprehensive planning process in the fall of 2013 to provide a new direction for public education in our community. In recent years, strategic planning in the District had been driven largely by the Pennsylvania Department of Education's strategic planning requirements, and plans were developed to address specific issues and perceived weaknesses. The 2014 Lower Merion School District planning process was designed to be more expansive in scope and significantly more inclusive of our diverse, dynamic community. Thousands of stakeholders contributed to this process, sharing their thoughts, ideas, and dreams for our schools through community surveys, community forums, focus groups, public meetings, and a steering committee of 70 community volunteers.

The result of these collective efforts is our Strategic Plan, *All Forward: Strategic Pathways for Lower Merion School District*. *All Forward* differs greatly from previous District strategic plans, both in content and structure. Rather than a tactical guide with step-by-step instructions, the plan serves as a strategic compass for the next five years and beyond. We designed it to be actionable, inspirational, and accessible to all members of our school community. Five "bold statements of strategic intent" provide the framework of our plan. These statements, crafted by our steering committee, represent where we want to be as a school community and indicate a shift from where we are today in how we define student success, develop curriculum, support professional learning, engage students, and partner with our community. It is important to note that the intent of the plan is not to solve a problem or fix a failure. Rather, it serves as a necessary next step forward in our evolution as one of the finest public school systems in the United States.

Collaboration, innovation, and celebration are consistent themes throughout the plan and characterize the community's work in developing this document. Our plan embraces a collective, intentional, positive approach to change. It is driven by our belief in continuous improvement and an unyielding passion for high-quality public education. It represents our commitment to the children of Lower Merion and Narberth now and forever.

MISSION STATEMENT

Committed to excellence and continuous improvement, the Lower Merion School District strives to ensure that all students achieve their highest level of critical thinking and creativity, that they value themselves and the diversity of others, and that they are knowledgeable, contributing citizens capable of excelling in a rapidly changing world.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

This is accomplished by individuals engaging in innovative, active experiences tailored to myriad ways of learning and in partnership with our community.

VISION STATEMENT

Students are our reason for being. We create an environment designed to fulfill the individual learning needs and aspirations of each student. The District develops active partnerships at all levels of our learning community and values the individual contribution of each member.

We view learning as dynamic, innovative, and collaborative. Individuals learn best when their hearts, minds, and spirits are intimately engaged in the learning process.

Enter to learn. Go forth to serve

BELIEFS

Our deepest convictions and values;

We believe that:

- All people have equal intrinsic worth.
- People learn in different ways and at different rates.
- Each person bears responsibility for the well-being of society and the quality of the environment.
- Learning occurs everywhere and is a lifelong pursuit of knowledge, truth, and wisdom.
- High quality public education directly benefits the entire community and is essential for a democratic society.
- The responsibility for learning rests primarily with the individual; however, education is the shared responsibility of the student, home, family, school, and entire community.
- Individuals learn best when actively engaged in the learning process.
- Excellence demands sustained effort.
- All individuals can be successful learners.
- High expectations yield high results.
- Society benefits when individual rights are balanced with social responsibility.
- Ethical conduct is essential to the quality of life.

STRATEGIC PATHWAYS

Pathway 1: Redefining Success - Transform how we define, measure, and report student achievement with a focus on each student's individualized growth and mastery in areas that extend beyond traditional academic indicators.

Pathway 2: Transformative Curriculum - Shift from content areas silos to a connected curriculum that prepares students to transfer knowledge and apply thinking strategies across disciplines.

Pathway 3: A Commitment to Professional Learning - Transform professional learning from a top-down model to one that honors and harnesses our educators' collective wisdom.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2017

Pathway 4: Student-Driven Schools - Adjust our system from one characterized by heavily prescribed requirements to one that affords more self-directed goal setting and positive risk taking – where students navigate their own learning in close partnership with professionals.

Pathway 5: A Spirit of Community - Transform our approach to community outreach from one that is less coordinated to one that strategically leverages and maximizes community resources to strengthen our schools.

FINANCIAL MANAGEMENT

Our financial report is designed to provide our citizens, taxpayers, parents, students, investors, and creditors with a general overview of the District's finances and to show the Board's accountability for the money it receives. If you have questions about this report or wish to request additional financial information, please contact Victor J. Orlando, Business Manager, Lower Merion School District, 301 East Montgomery Avenue, Ardmore, PA 19003.

LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
June 30, 2017

<u>ASSETS</u>	<u>Governmental</u> <u>Activities</u>	<u>Business-Type</u> <u>Activities</u>	<u>Total</u>
Current:			
Cash and Cash Equivalents	\$ 7,089,787	\$ 0	\$ 7,089,787
Investments	75,319,185	1,137,919	76,457,104
Due from Other Governments	8,888,159	90,018	8,978,177
Other Receivables	127,597	45,213	172,810
Property Taxes Receivable, Net	3,513,462	0	3,513,462
Internal Balances	5,110,929	258,471	5,369,400
Inventories	0	71,662	71,662
Prepaid Expenses	246,007	0	246,007
TOTAL CURRENT ASSETS	100,295,126	1,603,283	101,898,409
Capital Assets, Net of Accumulated Depreciation	411,804,412	20,055	411,824,467
TOTAL ASSETS	512,099,538	1,623,338	513,722,876
 <u>DEFERRED OUTFLOWS OF RESOURCES</u>			
Deferred Outflows of Resources - Accumulated Decrease in Fair Value of Hedging Derivatives	9,099,196	0	9,099,196
Deferred Outflows of Resources - Pension Plan	84,995,347	806,956	85,802,303
TOTAL DEFERRED OUTFLOWS OF RESOURCES	94,094,543	806,956	94,901,499
 TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 606,194,081	\$ 2,430,294	\$ 608,624,375
 <u>LIABILITIES</u>			
Current:			
Accounts Payable and Other Current Liabilities	\$ 28,856,479	\$ 29,389	\$ 28,885,868
Internal Balances	0	306,479	306,479
Bonds Payable Due Within One Year	16,525,000	0	16,525,000
Unearned Revenues	283,738	201,106	484,844
Accrued Interest	2,042,272	0	2,042,272
TOTAL CURRENT LIABILITIES	47,707,489	536,974	48,244,463
Long-Term:			
Bonds Payable Due After One Year	234,834,242	0	234,834,242
Deferred Instrument - Interest Rate Swap	9,099,196	0	9,099,196
Net Pension Liability	436,514,677	4,144,323	440,659,000
Accrued Post Employment Benefits and Compensated Absences	6,930,707	0	6,930,707
TOTAL LONG-TERM LIABILITIES	687,378,822	4,144,323	691,523,145
TOTAL LIABILITIES	735,086,311	4,681,297	739,767,608
 <u>DEFERRED INFLOWS OF RESOURCES</u>			
Deferred Inflows of Resources - Pension Plan	6,836,097	64,903	6,901,000
 <u>NET POSITION (DEFICIT)</u>			
Invested in Capital Assets, Net of Related Debt	160,445,170	20,055	160,465,225
Restricted for: Capital Projects	11,967,682	0	11,967,682
Unrestricted	(308,141,179)	(2,335,961)	(310,477,140)
TOTAL NET POSITION (DEFICIT)	(135,728,327)	(2,315,906)	(138,044,233)
 TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	\$ 606,194,081	\$ 2,430,294	\$ 608,624,375

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Activities
For the Year Ended June 30, 2017

FUNCTIONS/PROGRAMS	Expenses	Program Revenues			Net Revenues (Expenses) and Changes in Net Assets		
		Charges For Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Governmental Activities:							
Instruction	\$ 151,014,559	\$ (319,293)	\$ (16,791,080)	\$ 0	\$ (133,904,186)	\$ 0	\$ (133,904,186)
Instructional Student Support	21,038,229	0	(1,990,733)	0	(19,047,496)	0	(19,047,496)
Administrative and Financial Support Services	15,588,946	0	(1,817,243)	0	(13,771,703)	0	(13,771,703)
Operation and Maintenance of Plant Services	27,486,480	(705,796)	(1,412,343)	0	(25,368,341)	0	(25,368,341)
Pupil Transportation	14,938,198	0	(4,203,764)	0	(10,734,434)	0	(10,734,434)
Student Activities	5,362,928	(30,710)	(552,997)	0	(4,779,221)	0	(4,779,221)
Community Services	209,239	0	0	0	(209,239)	0	(209,239)
Interest on Long-Term Debt	9,187,491	0	0	0	(9,187,491)	0	(9,187,491)
Unallocated Depreciation Expense	11,219,321	0	0	0	(11,219,321)	0	(11,219,321)
TOTAL GOVERNMENTAL ACTIVITIES	256,045,391	(1,055,799)	(26,768,160)	0	(228,221,432)	0	(228,221,432)
Business-Type Activities:							
Food Services	3,317,070	(2,681,091)	(922,767)	0	0	286,788	286,788
TOTAL PRIMARY GOVERNMENT	\$ 259,362,461	\$ (3,736,890)	\$ (27,690,927)	\$ 0	(228,221,432)	286,788	(227,934,644)
General Revenues:							
Taxes:							
Property Taxes, Levied for General Purposes, Net					210,056,988	0	210,056,988
Public Utility Realty, Earned Income and Realty					4,199,608	0	4,199,608
Transfer Taxes, Levied for General Purposes, Net					10,713,783	0	10,713,783
Grants, Subsidies and Contributions Not Restricted					771,470	0	771,470
Investment Earnings					108,705	0	108,705
Miscellaneous Income						0	
TOTAL GENERAL REVENUES					225,850,554	0	225,850,554
CHANGE IN NET POSITION (DEFICIT)					(2,370,878)	286,788	(2,084,090)
Net Position (Deficit) - July 1, 2016					(133,357,449)	(2,602,694)	(135,960,143)
NET POSITION (DEFICIT) - JUNE 30, 2017					\$ (135,728,327)	\$ (2,315,906)	\$ (138,044,233)

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Balance Sheet
Governmental Funds
June 30, 2017

<u>ASSETS</u>	<u>General Fund</u>	<u>Capital Projects Fund</u>	<u>Capital Reserve Fund</u>	<u>Debt Service Fund</u>	<u>Total Governmental Funds</u>
Cash and Cash Equivalents	\$ 7,089,787	\$ 0	\$ 0	\$ 0	\$ 7,089,787
Investments	69,297,407	137,321	5,884,457	0	75,319,185
Taxes Receivable, Net	3,513,462	0	0	0	3,513,462
Due from Other Funds	5,362,524	0	6,814,124	0	12,176,648
Due from Other Governments	8,888,159	0	0	0	8,888,159
Other Receivables	127,597	0	0	0	127,597
Prepaid Expenses	246,007	0	0	0	246,007
TOTAL ASSETS	<u>\$ 94,524,943</u>	<u>\$ 137,321</u>	<u>\$ 12,698,581</u>	<u>\$ 0</u>	<u>\$ 107,360,845</u>
<u>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</u>					
Liabilities:					
Accounts Payable and Accrued Liabilities	\$ 4,544,092	\$ 64	\$ 862,205	\$ 0	\$ 5,406,361
Due to Other Funds	7,059,768	5,951	0	0	7,065,719
Payroll Accruals and Withholdings	23,450,118	0	0	0	23,450,118
Unearned Revenues	283,738	0	0	0	283,738
TOTAL LIABILITIES	<u>35,337,716</u>	<u>6,015</u>	<u>862,205</u>	<u>0</u>	<u>36,205,936</u>
Deferred Inflows of Resources:					
Unavailable Revenue - Property Taxes	2,924,336	0	0	0	2,924,336
Fund Balances:					
Nonspendable	246,007	0	0	0	246,007
Committed	35,800,000	0	0	0	35,800,000
Assigned	0	131,306	11,836,376	0	11,967,682
Unassigned	20,216,884	0	0	0	20,216,884
TOTAL FUND BALANCES	<u>56,262,891</u>	<u>131,306</u>	<u>11,836,376</u>	<u>0</u>	<u>68,230,573</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES	<u>\$ 94,524,943</u>	<u>\$ 137,321</u>	<u>\$ 12,698,581</u>	<u>\$ 0</u>	<u>\$ 107,360,845</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds Balance Sheet
to the Statement of Net Position (Deficit)
June 30, 2017

Total Fund Balances - Governmental Funds		\$ 68,230,573
<p>Amounts reported for governmental activities in the statement of net position (deficit) are different because:</p>		
<p>Capital assets used in governmental activities are not financial resources and, therefore, are not reported as assets in governmental funds. The cost of assets is \$523,306,513, and the accumulated depreciation is \$111,502,101.</p>		411,804,412
<p>Property taxes receivable will be collected this year, but are not available soon enough to pay for the current period's expenditures and, therefore, are deferred.</p>		2,924,336
<p>Long-term liabilities, including bonds payable, are not due and payable in the current period and, therefore, are not reported as liabilities in the funds. Long-term liabilities at year-end consist of:</p>		
Bonds Payable	\$(251,359,242)	
Accrued Interest on the Bonds	(2,042,272)	
Net Pension Liability	(436,514,677)	
Accrued Compensated Absences	(1,133,488)	
Accrued Other Post-Employment Benefits	(5,797,219)	(696,846,898)
<p>Deferred outflows and inflows of resources related to pensions are applicable to future periods and, therefore, are not reported in the fund statements.</p>		
Deferred Outflows of Resources - Pension Plan	84,995,347	
Deferred Inflows of Resources - Pension Plan	(6,836,097)	78,159,250
TOTAL NET POSITION (DEFICIT) - GOVERNMENTAL ACTIVITIES		\$ (135,728,327)

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenditures,
and Changes in Fund Balances
Governmental Funds
 For the Year Ended June 30, 2017

	General Fund	Capital Projects Fund	Capital Reserve Fund	Debt Service Fund	Total Governmental Funds
Revenues:					
Local Sources:					
Real Estate Taxes	\$ 209,866,785	\$ 0	\$ 0	\$ 0	\$ 209,866,785
Realty Transfer Tax	3,768,203	0	0	0	3,768,203
Earned Income Taxes	212,469	0	0	0	212,469
Earnings from Investments	738,015	5,607	27,848	0	771,470
Other Local Revenues	1,983,248	0	182,992	0	2,166,240
State Sources	35,946,209	0	0	0	35,946,209
Federal Sources	752,934	0	0	0	752,934
TOTAL REVENUES	<u>253,267,863</u>	<u>5,607</u>	<u>210,840</u>	<u>0</u>	<u>253,484,310</u>
Expenditures:					
Instruction	142,668,446	5,163	0	0	142,673,609
Support Services	75,520,851	246,430	2,950,070	0	78,717,351
Non-Instructional Services	5,215,757	0	0	0	5,215,757
Capital Outlay	0	3,158,771	1,602,354	0	4,761,125
Debt Service (Principal and Interest)	24,874,276	0	0	91,449	24,965,725
TOTAL EXPENDITURES	<u>248,279,330</u>	<u>3,410,364</u>	<u>4,552,424</u>	<u>91,449</u>	<u>256,333,567</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>4,988,533</u>	<u>(3,404,757)</u>	<u>(4,341,584)</u>	<u>(91,449)</u>	<u>(2,849,257)</u>
Other Financing Sources (Uses):					
Interfund Transfers In	0	0	4,945,533	0	4,945,533
Interfund Transfers Out	(4,988,533)	0	0	0	(4,988,533)
TOTAL OTHER FINANCING SOURCES (USES)	<u>(4,988,533)</u>	<u>0</u>	<u>4,945,533</u>	<u>0</u>	<u>(43,000)</u>
NET CHANGE IN FUND BALANCES	0	(3,404,757)	603,949	(91,449)	(2,892,257)
Fund Balances - July 1, 2016	56,262,891	3,536,063	11,232,427	91,449	71,122,830
FUND BALANCES - JUNE 30, 2017	<u>\$ 56,262,891</u>	<u>\$ 131,306</u>	<u>\$ 11,836,376</u>	<u>\$ 0</u>	<u>\$ 68,230,573</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds
Statement of Revenues, Expenditures and Changes in Fund Balances
to the Statement of Activities
For the Year Ended June 30, 2017

Total Net Change in Fund Balances - Governmental Funds \$ (2,892,257)

Amounts reported for governmental activities in the statement of activities are different because:

Capital outlays are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which depreciation expense for the period exceeds capital outlays.

Capital Outlay	\$ 8,302,606	
Depreciation Expense	<u>(11,219,321)</u>	(2,916,715)

Repayment of bond principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the statement of net position. 15,270,000

Bond discounts and premiums are reported as revenues or expenditures in the governmental funds when debt is first issued. In the statement of activities, these costs are deferred and amortized. This is the amount amortization exceeds bond discounts and premiums. 528,460

Because some property taxes will not be collected for several months after the District's fiscal year ends, they are not considered "available" revenues and are deferred in the governmental funds. Deferred tax revenues increased by this amount this year. 190,203

Governmental funds report District pension contributions as expenditures. However in the Statement of Activities, the cost of pension benefits earned net of employee contributions is reported as pension expense.

District Pension Contributions	34,251,119	
Cost of Benefits Earned Net of Employee Contributions	<u>(46,646,890)</u>	(12,395,771)

Some of the expenses reported in the statement of activities do not require the use of current fiscal resources and, therefore, are not reported as expenditures in the governmental funds.

Accrued Post-Employment Benefits and Compensated Absences	\$ (134,572)	
Accrued Interest on the Bonds	<u>(20,226)</u>	<u>(154,798)</u>

CHANGE IN NET POSITION OF GOVERNMENTAL ACTIVITIES		<u><u>\$ (2,370,878)</u></u>
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LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
Proprietary Funds
June 30, 2017

<u>ASSETS</u>	<u>Food Services</u>
Current:	
Investments	\$1,137,919
Other Receivables	45,213
Due from Other Funds	258,471
Due from Other Governments	90,018
Inventories	71,662
TOTAL CURRENT ASSETS	<u>1,603,283</u>
Non-Current:	
Furniture and Equipment	122,263
Less: Accumulated Depreciation	<u>(102,208)</u>
TOTAL NON-CURRENT ASSETS	<u>20,055</u>
<u>DEFERRED OUTFLOWS OF RESOURCES</u>	
Deferred Outflows of Resources - Pension Plan	<u>806,956</u>
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	<u>\$2,430,294</u>
<u>LIABILITIES</u>	
Current:	
Accounts Payable and Accrued Liabilities	\$ 29,389
Due to Other Funds	306,479
Unearned Revenues	201,106
TOTAL CURRENT LIABILITIES	<u>536,974</u>
Long-Term:	
Net Pension Liability	<u>4,144,323</u>
TOTAL LIABILITIES	4,681,297
<u>DEFERRED INFLOWS OF RESOURCES</u>	
Deferred Inflows of Resources - Pension Plan	64,903
<u>NET POSITION (DEFICIT)</u>	
Invested in Capital Assets	20,055
Unrestricted (Deficit)	<u>(2,335,961)</u>
TOTAL NET POSITION (DEFICIT)	<u>(2,315,906)</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	<u>\$2,430,294</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenses and
Changes in Net Position (Deficit)
Proprietary Funds
For the Year Ended June 30, 2017

		<u>Food Services</u>
Operating Revenues:		
Food Service Revenue		\$ 2,681,091
Cost of Sales:		
Inventories - July 1, 2016	\$ 100,586	
Purchases of Food, Milk and Donated Commodities	<u>1,247,972</u>	
COST OF GOODS AVAILABLE FOR SALE	1,348,558	
Less: Inventories - June 30, 2017	<u>71,662</u>	
TOTAL COST OF SALES		<u>1,276,896</u>
GROSS PROFIT		1,404,195
Operating Expenses:		
Payroll	1,169,003	
Employee Benefits	724,243	
Depreciation	11,620	
Other Operating Expenses	<u>135,308</u>	
TOTAL OPERATING EXPENSES		<u>2,040,174</u>
OPERATING LOSS		(635,979)
Non-Operating Revenues:		
Earnings on Investments	5,916	
Federal Subsidies	649,569	
State Subsidies	<u>267,282</u>	
TOTAL NON-OPERATING REVENUES		<u>922,767</u>
INCREASE IN NET POSITION		286,788
Net Position (Deficit) - July 1, 2016		<u>(2,602,694)</u>
NET POSITION (DEFICIT) - JUNE 30, 2017		<u><u>\$(2,315,906)</u></u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Cash Flows
Proprietary Funds
For the Year Ended June 30, 2017

	<u>Food Services</u>
Cash Flows From Operating Activities:	
Cash Received from Users	\$ 2,704,336
Cash Payments to Employees for Services	(2,544,180)
Cash Payments to Suppliers for Goods and Services	(1,413,596)
NET CASH USED BY OPERATING ACTIVITIES	<u>(1,253,440)</u>
Cash Flows From Non-Capital Financing Activities:	
State Sources	267,542
Federal Sources	649,378
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	<u>916,920</u>
Cash Flows From Investing Activities:	
Purchase of Investments/Deposits to Investment Pools	<u>336,520</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	0
Cash and Cash Equivalents - July 1, 2016	<u>0</u>
CASH AND CASH EQUIVALENTS - JUNE 30, 2017	<u>\$ 0</u>

Reconciliation of Operating Loss to Net Cash Used by Operating Activities:

Operating Loss	\$ (635,979)
Adjustments to Reconcile Operating Loss to Net Cash	
Used by Operating Activities:	
Depreciation	11,620
Changes in Assets and Liabilities:	
Receivables	19,065
Inventories	28,924
Deferred Outflows of Resources	(420,958)
Accounts Payable and Accrued Liabilities	(600,106)
Deferred Inflows of Resources	(5,634)
Net Pension Liability	345,448
Unearned Revenues	4,180
NET CASH USED BY OPERATING ACTIVITIES	<u>\$ (1,253,440)</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Fiduciary Net Position
June 30, 2017

<u>ASSETS</u>	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>	<u>Agency Funds</u>
Cash and Cash Equivalents	\$ 0	\$ 0	\$ 422,112
Investments	506,197	132,301	11,786,484
Due from Other Funds	0	0	28,972
TOTAL ASSETS	\$ 506,197	\$ 132,301	\$ 12,237,568
<u>LIABILITIES</u>			
Payroll Withholdings	\$ 0	\$ 0	\$ 6,698,941
Due to Other Funds	0	0	5,091,893
Due to Student Groups	0	0	446,734
TOTAL LIABILITIES	\$ 0	\$ 0	\$ 12,237,568
<u>NET POSITION</u>			
Reserved for Scholarships	\$ 0	\$ 132,301	
Reserved for Employee Benefits	506,197	0	
TOTAL LIABILITIES AND NET POSITION	\$ 506,197	\$ 132,301	

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Changes in Fiduciary Net Position
For the Year Ended June 30, 2017

	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>
Additions:		
Contributions:		
Gifts and Contributions	\$ 13,208	\$ 0
Investment Income:		
Earnings from Investments	<u>2,171</u>	<u>645</u>
TOTAL ADDITIONS	<u>15,379</u>	<u>645</u>
Deductions:		
Benefits Paid	51,627	2,000
Investment Management Fees	<u>1,517</u>	<u>0</u>
TOTAL DEDUCTIONS	<u>53,144</u>	<u>2,000</u>
CHANGE IN NET POSITION	(37,765)	(1,355)
Net Position - July 1, 2016	<u>543,962</u>	<u>133,656</u>
NET POSITION - JUNE 30, 2017	<u>\$ 506,197</u>	<u>\$ 132,301</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies

Lower Merion School District's (the District's) financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements (Statements and Interpretations). Governments are also required to follow the pronouncements of the Financial Accounting Standards Board (FASB) issued through November 30, 1989 (when applicable) that do not conflict with or contradict GASB pronouncements. Although the District has the option to apply FASB pronouncements issued after that date to its business-type activities and enterprise funds, the District has chosen not to do so. The more significant accounting policies established in GAAP and used by the District are discussed below.

A. Reporting Entity

The District is governed by an elected Board of Directors. Accounting principles generally accepted in the United States of America require that the financial statements present the District and its component units, entities for which the District is considered to be financially accountable. Blended component units, although legally separate entities, are, in substance, part of the District's operations and so data from these units are required to be combined with data of the primary District. Each discretely presented component unit, on the other hand, is required to be reported in a separate column in the government-wide financial statements to emphasize it is legally separate from the District. Based on the application of these principles, there are no component units presented in the District's financial statements.

B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the District and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported in separate columns in the fund financial statements.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the District considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, franchise taxes, licenses and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. Only a portion of special assessments receivable due within the current fiscal period is considered to be susceptible to accrual as revenue of the current period. All other revenue items are considered to be measurable and available only when cash is received by the District.

The District reports the following major government funds:

General Fund - The General Fund is the District's primary operating fund. It accounts for all financial resources except those required to be accounted for in another fund.

Capital Projects Fund - The Capital Projects Fund is used to account for financial resources to be used for the acquisition or construction of major capital assets other than those financed by enterprise operations.

Capital Reserve Fund - The Capital Reserve Fund is used to account for proceeds of specific revenue sources that are legally restricted to expenditures for future capital projects.

The District reports the following major proprietary funds:

Food Service Fund - The Food Service Fund (an Enterprise Fund) is used to account for the operations of the District's school cafeterias that are financed and operated in a manner similar to a private business enterprise where the intent of the governing body is that the cost of providing goods or services to the school population on a continuing basis will be recovered or financed primarily through user charges.

Additionally, the District reports the following fund types:

Fiduciary Funds - Fiduciary Funds are used to account for assets held by the District in a trustee capacity or as an agent for individuals, private organizations, or other governments. These include private-purpose trust funds and agency funds. Private-purpose trust funds account for resources, including both principal and earnings, which must be expended in accordance with a trust agreement, and are accounted for in essentially the same manner as proprietary funds. Agency funds are purely custodial and thus do not involve measurement of the results of operations.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Private-sector standards of accounting and financial reporting issued prior to December 1, 1989, generally are followed in both the government-wide and proprietary fund financial statements to the extent that those standards do not conflict with or contradict guidance of the Governmental Accounting Standards Board. School districts also have the option of following subsequent private-sector guidance for their business-type activities and enterprise funds, subject to this same limitation. The District has elected not to follow subsequent private-sector guidance.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services or privileges provided, 2) operating grants and contributions, and 3) capital grants and contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than as program revenues. Likewise, general revenues include all taxes.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Food Service Enterprise Fund are charges to customers for sales and services. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

For purposes of the statements of cash flows of proprietary funds, cash equivalents include all highly liquid debt instruments with original maturities of three months or less.

When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, then unrestricted resources as they are needed.

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity

Deposits and Investments

Under Section 440.1 of the Public School Code of 1949, as amended, the District is permitted to invest funds consistent with sound business practices in the following types of investments:

Obligations of (a) the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, (b) the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth, or (c) any political subdivision of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision.

Deposits in savings accounts or time deposits or share accounts of institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation to the extent that such accounts are so insured and, for any amounts above the insured maximum, provided that approved collateral as provided by law therefore shall be pledged by the depository.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Receivables and Payables

Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "due to/from other funds" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the non-current portion of interfund loans). All other outstanding balances between funds are reported as "due to/from other funds." Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

All trade and property tax receivables are shown net of any allowance for uncollectibles. There is no property tax receivable allowance at June 30, 2017.

Property taxes attach as an enforceable lien on property as of July 1. Taxes are levied on July 1 and payable in the following periods:

- Discount Period - July 1 to August 31 - 2% of Gross Levy
- Flat Period - September 1 to October 31
- Penalty Period - October 31 to Collection - 10% of Gross Levy

Inventories

Inventories in the Food Service Fund consist of government donated commodities which were valued at estimated fair market value at donation, and purchased commodities and supplies, both valued at cost using the first-in first-out (FIFO) method.

Capital Assets

Capital assets, which include property, plant, and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the District as assets with an initial, individual cost of more than \$10,000 (amount not rounded) and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during construction is not capitalized.

Property, plant, and equipment is depreciated using the straight-line method over the following estimated useful lives:

Land Improvements	20 Years
Buildings	25-50 Years
Furniture and Equipment	5-20 Years
Transportation	10-25 Years

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Deferred Outflows of Resources

The District reports decreases in net assets that relate to future periods as deferred outflows of resources in the government-wide and proprietary funds statement of net position. The District reports deferred outflow of resources related to the deferred amount related to the accumulated decrease in the fair value of hedging derivatives. The District also reports deferred outflows of resources for contributions made to the District's defined benefit pension plans between the measurement date of the net pension liabilities from those plans and the end of the District's fiscal year. No deferred outflows of resources affect the governmental funds financial statements in the current fiscal year.

Deferred Inflows of Resources

The District's statements of net position and its governmental funds report a separate section for deferred inflows of resources. This separate financial statement element reflects an increase in net assets that applies to a future period(s). Deferred inflows of resources are reported in the District's various statements of net position for actual pension plan investment earnings in excess of the expected amounts included in determining pension expense. In its governmental funds, the only deferred inflow of resources is for revenues that are not considered available. The District will not recognize the related revenues until they are available (collected no later than 60 days after the end of District's fiscal year) under the modified accrual basis of accounting. Accordingly, unavailable revenues from property taxes are reported in the governmental funds balance sheet.

Compensated Absences

The District's vacation policy provides that administrative employees may carry over vacation time with the approval of the Superintendent. Employees accrue vacation at rates which vary with length of service or job classification. Vacation must be taken in the year subsequent to when it was earned. If separation of service occurs in the year subsequent to earning, then the unused balance of what was earned in the prior year is paid at separation. The liability at June 30 represents vacation earned at that date that will be taken in the subsequent year.

Accrued Severance Pay

Employees that have completed at least ten years of credited School District service that retire under the normal PSERS guidelines shall be eligible for a severance benefit. The benefit the personnel can receive ranges from \$50 up to \$150 for each day of unused sick leave and is available to pay for medical, dental, vision, life insurance, prescriptions, and long-term care insurance. Severance pay is generally liquidated by the General Fund.

Long-Term Obligations

In the government-wide financial statements and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net position. Bond premiums and discounts are deferred and amortized over the life of the bonds using the straight-line method which approximates the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are expensed in the year incurred in both the government-wide and fund financial statements.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Long-Term Obligations (Continued)

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Bond issuance costs are expensed in the year they are incurred in both the government-wide and fund financial statements.

Government-Wide and Proprietary Fund Net Position

Government-wide and proprietary fund net position are divided into three components:

Invested in Capital Assets, Net of Related Debt - Consists of the historical cost of capital assets less accumulated depreciation and less any debt that remains outstanding that was used to finance those assets.

Restricted for: Capital Projects - Consists of the capital projects fund fund-balance that is restricted by the District for capital outlays.

Unrestricted - Consists of all other net position reported in this category.

Governmental Fund Balances

The District has adopted GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions as of July 1, 2010. The intention of the statement is to provide a more structured classification of fund balance and to improve the usefulness of fund balance reporting to the users of the District's financial statements. The statement establishes a hierarchy for fund balance classifications and the constraints imposed on the uses of those resources.

In the governmental fund financial statements, fund balances are classified as follows:

Nonspendable - Amounts that cannot be spent either because they are in nonspendable form or because they are legally or contractually required to be maintained intact.

Restricted - Amounts that can be used only for specific purposes because of state or federal laws, or externally imposed by grantors or creditors.

Committed - Amounts that can be used only for specific purposes determined by a formal action by the Board of Directors resolution. This includes the budget reserve account. In addition, committed amounts cannot be uncommitted except by removing the constraints through the same type of action.

Assigned - Amounts the District intends to use for a specific purpose. Intent can be expressed by the Board of Directors or by an official or body to which the Board of Directors delegates the authority.

Unassigned - Amounts available for any purpose. Positive amounts are reported only in the General Fund.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Governmental Fund Balances (Continued)

The Board of Directors establishes (and modifies and rescinds) fund balance commitments by passage of a resolution. The District's policy is to first apply an expenditure toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances.

NOTE 2 - Budgetary Information

Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America. An annual appropriated budget is adopted for the general fund. All annual appropriations lapse at fiscal year end. Project-length financial plans are adopted for all capital projects funds.

The District follows these procedures in establishing the budgetary data reflected in the financial statements:

1. The Business Manager submits to the School Board a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed expenditures and the means of financing them.
2. Public hearings are conducted at the District offices to obtain taxpayer comments.
3. Prior to July 1, the budget is legally enacted through passage of an ordinance.
4. The Business Manager is authorized to transfer budgeted amounts between departments within any fund; however, any revisions that alter the total expenditures of any fund must be approved by the School Board.
5. Formal budgetary integration is employed as a management control device during the year for the general fund.
6. Budgeted amounts are as originally adopted, or as amended by the School Board.

NOTE 3 - Deposits and Investments

Deposits - At year end, the total carrying amount of the District's checking, savings, and certificates of deposit (including trust and agency funds) was \$7,511,899, and the corresponding bank balance was \$7,535,995.

Custodial Credit Risk - Deposits - Custodial credit risk is the risk that in the event of a bank failure, the District's deposits may not be returned to it. The District does not have a policy for custodial credit risk. Of the bank balance, \$750,000 was covered by federal depository insurance. The remaining balances were uninsured and covered by collateral held by the institution's trust department on a pooled basis not in the name of the District.

Investments - Statutes authorize the District to invest in U.S. Government Agency Bonds, time or share accounts, or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or in certificates of deposit when they are secured by proper bond or collateral, repurchase agreements, state treasurer's investment pools, or mutual funds.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 3 - Deposits and Investments (Continued)

All funds in the Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and Pennsylvania Treasurer's Investment Program are invested in accordance with Section 440.1 of the School Code. These funds operate and are authorized under the Intergovernmental Cooperation Act of 1972. Each school district owns a prorata share of each investment or deposit which is held in the name of the Fund. Certificates of deposit or other fixed-term investments purchased by the District through the Fund's administrator are purchased in the name of the District.

Custodial Credit Risk - Investments - For an investment, custodial credit risk is the risk that in the event of the failure of the counterparty, the District will not be able to recover the value of its investments or collateral security that are in the possession of an outside party. The District has no investment subject to custodial credit risk.

Interest Rate Risk - The District has no formal policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

Credit Risk - The District has no investment policy that would limit its investment choices to certain credit ratings. The Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and the Pennsylvania Treasurer's Investment Program have AAA Standard & Poor's credit ratings.

Concentration of Credit Risk - The District investment policy states that unless covered by federal deposit insurance, the aggregate amount of deposits in any financial institution shall not exceed the lesser of two-tenths of 1% of the assets of that institution or \$40,000,000 unless fully collateralized by the assets of the institution pledges in the name of the District at market value.

	<u>Credit Rating</u>	<u>Fair Value</u>
<u>Pooled Investments:</u>		
Pennsylvania School District Liquid Asset Fund:		
General Fund Accounts	AAA	\$ 50,923,102
Capital Reserve Fund Account	AAA	133,906
Food Service Fund Account	AAA	339,560
Trust and Agency Account	AAA	11,918,785
TOTAL		<u>63,315,353</u>
Pennsylvania Local Government Investment Trust:		
General Fund Accounts	AAA	10,367,662
Capital Projects Fund Account	AAA	137,321
Capital Reserve Fund Account	AAA	5,107,389
Food Service Fund Account	AAA	798,359
Trust and Agency Account	AAA	506,197
TOTAL		<u>16,916,928</u>
Pennsylvania Treasurer's Investment Program:		
General Fund Accounts	AAA	8,006,643
Capital Reserve Fund Account	AAA	643,162
TOTAL		<u>8,649,805</u>
TOTAL POOLED INVESTMENT		<u>\$ 88,882,086</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 4 - Hedging Derivative Instruments

As of June 30, 2017 the District was party to a contract for a derivative instrument. The fair value balance and notional amount of the derivative instrument outstanding at June 30, 2017, classified by type, and the change in fair value of the derivative instrument for the year then ended as reported in the 2017 financial statements is as follows (amounts in thousands):

	<u>Changes in Fair Value</u>		<u>Fair Value at June 30, 2017</u>		<u>Notional</u>
	<u>Classification</u>	<u>Amount</u>	<u>Classification</u>	<u>Amount</u>	
Governmental activities					
Cash flow hedges:					
Pay-fixed interest rate swaps	Deferred outflow of resources	\$ (4,917)	Debt	\$ (9,099)	\$ 66,260

Fair value - The swap had a negative fair value of \$9,099,196 at June 30, 2017. The fair value of the interest rate swap is derived from proprietary models based upon well recognized financial principles and reasonable estimates about relevant future market conditions.

Objectives and terms - As a means of minimizing interest rate fluctuations, the District entered into an interest rate swap in connection with its \$102 million Series of 2009 adjustable rate general obligation bonds. The intention of the swap was to effectively change the District's variable interest rate on the notes to a synthetic fixed rate of 4.041%.

Terms - The swap agreement terminates on April 1, 2027, but will be subject to earlier termination by the School District. The swap's notional amount of \$66,260,000 represents the notes' total balance outstanding as of the effective date of the swap on February 1, 2009 and is structured to match the principal schedule of the notes. Under the swap, the District pays interest at a fixed rate of 4.041% in exchange for the counterparty's agreement to pay interest at a floating rate equal to the Securities Industry and Financial Markets Association (SIFMA) Swap Index Rate which is designed to match the variable market rate on the bonds. The bond's variable-rate (Market Rate) is determined by the remarketing agent in accordance with defined interest rate adjustment dates, interest rate determination or reset dates, and interest rate periods.

Credit risk - As of June 30, 2017, the District was not exposed to credit risk because the swap had a negative fair value. However, should interest rates change and the fair value of the swap become positive, the District would be exposed to credit risk in the amount of the derivative's fair value. The swap counterparty was rated AA by Fitch Ratings and Aa3 by Moody's as of June 30, 2017.

Basis risk - The District is exposed to basis risk on its pay-fixed interest rate swaps because the variable-rate payments received by the District on these hedging derivative instruments are based on a rate or index other than interest rates the District pays on its hedged variable-rate debt, which is remarketed every 30 days. As of June 30, 2017, the SIFMA swap index was .91 percent and the Market Rate on the bonds was .89 percent.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 5 - Taxes Receivable

Taxes receivable as of year end for the District's individual major funds and nonmajor fiduciary funds in the aggregate are as follows:

	<u>General</u>	<u>Nonmajor and Other Funds</u>	<u>Total</u>
Real Estate Taxes	\$ 3,044,135	\$ 0	\$ 3,044,135
Local Services Taxes	53,195	0	53,195
Transfer Taxes	<u>416,132</u>	<u>0</u>	<u>416,132</u>
 NET TAXES RECEIVABLE	 <u>\$ 3,513,462</u>	 <u>\$ 0</u>	 <u>\$ 3,513,462</u>

At the end of the current fiscal year, the District reported deferred inflows of resources, related to unavailable real estate and earned income tax revenue, in the amount of \$3,208,074 in the governmental funds.

NOTE 6 - Interfund Receivables, Payables, and Transfers

	<u>Interfund Receivables</u>	<u>Interfund Payables</u>
General Fund	\$ 5,362,524	\$ 7,059,768
Capital Reserve Fund	6,814,124	0
Capital Projects Fund	0	5,951
Agency Fund	28,972	5,091,893
Food Service Fund	<u>258,471</u>	<u>306,479</u>
	 <u>\$ 12,464,091</u>	 <u>\$12,464,091</u>
	 <u>Transfer to Other Funds</u>	 <u>Transfer From Other Funds</u>
General Fund	\$ 4,988,533	\$ 0
Capital Reserve	0	4,945,533
Student Activities Fund (Agency Fund)	<u>0</u>	<u>43,000</u>
	 <u>\$ 4,988,533</u>	 <u>\$ 4,988,533</u>

The general fund makes interfund transfers to the capital reserve fund to provide funds for future capital outlay and to the student activities fund to provide funds for student extra-curricular activities.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
 June 30, 2017

NOTE 7 - Capital Assets

Capital asset activity for the year ended June 30, 2017 was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
<u>Governmental Activities:</u>				
Capital Assets:				
Land	\$ 19,643,123	\$ 0	\$ 0	\$ 19,643,123
Land Improvements	2,574,921	0	0	2,574,921
Buildings	470,052,105	7,814,493	0	477,866,598
Construction in Progress	1,535,496	93,942	(1,535,494)	93,944
Furniture and Equipment	8,162,704	220,207	(133,963)	8,248,948
Transportation	13,913,568	1,994,192	(1,028,781)	14,878,979
TOTAL CAPITAL ASSETS	<u>515,881,917</u>	<u>10,122,834</u>	<u>(2,698,238)</u>	<u>523,306,513</u>
Accumulated Depreciation for:				
Land Improvements	2,142,282	36,732	0	2,179,014
Buildings	87,394,522	9,525,122	0	96,919,644
Furniture and Equipment	6,194,307	519,021	(109,434)	6,603,894
Transportation	5,429,679	1,138,446	(768,576)	5,799,549
TOTAL ACCUMULATED DEPRECIATION	<u>101,160,790</u>	<u>11,219,321</u>	<u>(878,010)</u>	<u>111,502,101</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$414,721,127</u>	<u>\$ (1,096,488)</u>	<u>\$(1,820,228)</u>	<u>\$ 411,804,412</u>
<u>Business-Type Activities:</u>				
Capital Assets:				
Machinery and Equipment	\$ 122,263	\$ 0	\$ 0	\$ 122,263
Accumulated Depreciation for:				
Machinery and Equipment	90,588	11,620	0	102,208
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 31,675</u>	<u>\$ (11,620)</u>	<u>\$ 0</u>	<u>\$ 20,055</u>

Depreciation expense was charged to functions/programs of the District as follows:

Governmental Activities - Unallocated	\$ 11,219,321
Business-Type Activities	<u>11,620</u>
TOTAL	<u>\$ 11,160,362</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 8 - Bonds Payable

	<u>Principal Outstanding July 1, 2016</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2017</u>
General Obligation Note Series of 1989	\$ 17,900,000	\$ 2,000,000	\$ 0	\$ 15,900,000
General Obligation Bonds, Series A & B of 2009	71,395,000	5,135,000	0	66,260,000
General Obligation Bonds, Series of 2012	10,515,000	5,130,000	0	5,385,000
General Obligation Bonds, Series A of 2012	43,710,000	2,605,000	0	41,105,000
General Obligation Bonds, Series of 2013	9,795,000	5,000	0	9,790,000
General Obligation Bonds, Series of 2014	9,975,000	5,000	0	9,970,000
General Obligation Bonds, Series A of 2015	9,700,000	385,000	0	9,315,000
General Obligation Bonds, Series B of 2015	31,880,000	5,000	0	31,875,000
General Obligation Bonds, Series of 2016	<u>55,665,000</u>	<u>0</u>	<u>0</u>	<u>55,665,000</u>
TOTAL	260,535,000	15,270,000	0	245,265,000
Less: Deferred Amounts:				
Issuance Premium (Discounts)	13,261,558	(1,164,730)	0	12,096,828
Refunding Deferred Charge	<u>(6,638,856)</u>	<u>636,270</u>	<u>0</u>	<u>(6,002,586)</u>
LONG-TERM DEBT	<u>\$267,157,702</u>	<u>\$14,741,540</u>	<u>\$ 0</u>	<u>\$251,359,242</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 8 - Bonds Payable (Continued)

	<u>Current Outstanding Principal</u>
General Obligation Note, Series of 1989. Original principal amount of \$30,000,000, maturing August 1, 2023. The note was advanced by Emmaus General Authority under the Bond Pool Program. Interest is charged at a variable rate equal to the Weekly Rate of the underlying bonds plus .35%. The rate at June 30, 2017 was 1.66%.	\$ 15,900,000
General Obligation Bonds, Series A & B of 2009. Original principal amount of \$102,350,000, maturing April 1, 2027, bearing interest at a variable rate equal to the Weekly Rate of the underlying bonds. The rate at June 30, 2017 was 0.89%.	66,260,000
General Obligation Bonds, Series 2012. Original principal amount of \$30,835,000, maturing May 15, 2018, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	5,385,000
General Obligation Bonds, Series A 2012. Original principal amount of \$47,015,000, maturing November 12, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	41,105,000
General Obligation Bonds, Series 2013. Original principal amount of \$9,810,000, maturing November 15, 2024, bearing interest from 1.00% to 2.00%. Interest is paid semi-annually on May 15 and November 15.	9,790,000
General Obligation Bonds, Series 2014. Original principal amount of \$9,980,000, maturing November 15, 2025, bearing interest from 2.00% to 2.35%. Interest is paid semi-annually on May 15 and November 15.	9,970,000
General Obligation Bonds, Series A of 2015. Original principal amount of \$9,700,000, maturing September 1, 2034, bearing interest from 3.00% to 3.125%. Interest is paid semi-annually on March 1 and September 1.	9,315,000
General Obligation Bonds, Series B of 2015. Original principal amount of \$31,880,000, maturing September 1, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 1 and September 1.	31,875,000
General Obligation Bonds, Series 2016. Original principal amount of \$55,665,000, maturing September 15, 2032, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 15 and September 15.	<u>55,665,000</u>
TOTAL	<u><u>\$245,265,000</u></u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 8 - Bonds Payable (Continued)

The annual requirements to amortize all debts outstanding as of June 30, 2017, are as follows:

<u>Year Ended</u>	<u>Interest</u>	<u>Principal</u>	<u>Total</u>
2018	\$ 7,196,698	\$ 16,525,000	\$ 23,721,698
2019	6,522,183	17,415,000	23,937,183
2020	5,917,294	18,920,000	24,837,294
2021	5,243,585	21,155,000	26,398,585
2022	4,550,482	22,690,000	27,240,482
2023-2027	12,546,702	108,115,000	120,661,702
2028-2032	3,250,725	33,595,000	36,845,725
2033-2035	164,968	6,850,000	7,014,968
TOTAL MATURITIES	\$ 45,392,636	\$ 245,265,000	\$ 290,657,636

Swap Payments and Associated Debt

Hedging derivative instrument payments and hedged debt - As of June 30, 2017, aggregate debt service requirements of the District's debt and net receipts/payments on associated hedging derivative instruments are as follows. These amounts assume that current interest rates on variable-rate bonds and current reference rates of hedging derivative instruments will remain the same for their term. As these rates vary, interest payments on variable-rate bonds and net receipts/payments on the hedging derivative instruments will vary. Refer to Note 4 for information on derivative instruments.

	<u>Bonds with Associated Derivatives</u>		<u>Interest Rate</u>	<u>Totals</u>
	<u>Principal</u>	<u>Interest</u>	<u>Swap, Net</u>	
2018	\$ 5,355,000	\$ 1,132,468	\$ 2,098,966	\$ 8,586,434
2019	5,590,000	1,038,781	1,932,370	8,561,151
2020	5,840,000	940,962	1,758,485	8,539,447
2021	6,110,000	838,728	1,576,863	8,525,591
2022	6,395,000	731,757	1,386,855	8,513,612
2023-2027	36,970,000	1,902,448	3,716,038	42,588,486
	\$ 66,260,000	\$ 6,585,144	\$ 12,469,577	\$ 85,314,721

NOTE 9 - Accrued Post Employment Benefits and Compensated Absences

	<u>Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance</u>
	<u>July 1, 2016</u>			<u>June 30, 2017</u>
Accrued Compensated Absences	\$1,792,413	\$ 0	\$ 658,925	\$ 1,133,488
Accrued Other Post-Employment Benefits	5,003,722	793,497	0	5,797,219
TOTAL	\$6,796,135	\$ 793,497	\$ 658,925	\$6,930,707

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 10 - Contingent Liabilities

Amounts received or receivable from grantor agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures which may be disallowed by the grantor cannot be determined at this time although the District expects such amounts, if any, to be immaterial.

The District is currently in litigation with former employees of the District regarding wrongful discharge from employment, with taxpayers contesting real estate assessments, and with parents of students regarding educational and disciplinary issues. The amount, if any, of awards or settlements cannot be determined at this time, although the District expects such amounts, if any, to be immaterial.

In August 2016 the District received an injunction from the Court of Common Pleas of Montgomery County arising out of a complaint filed by certain plaintiffs regarding past and current real estate tax increases. As part of the injunction, the Court has enjoined the District from enforcing or collecting a real estate tax increase for the fiscal year 2016-17 of over 2.4% than was in effect for the prior fiscal year. The District previously adopted a budget for the 2016-17 fiscal year which included a real estate tax increase of 4.44%. On August 31, 2016, the District formally filed an appeal to the Court's decision. The Commonwealth Court denied the District's appeal. The District filed an Application for Allowance of Appeal to the Pennsylvania Supreme Court on July 19, 2017, which application is pending. In the meantime, the attorney-plaintiff in that case filed, as attorney for a group of residents, a petition to remove the members of the School Board from office with the Montgomery County Court of Common Pleas.

NOTE 11 - Employee Retirement Systems and Pension Plans

Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Public School Employees' Retirement System (PSERS) and additions to/deductions from PSERS's fiduciary net position have been determined on the same basis as they are reported by PSERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Plan description

PSERS is a governmental cost-sharing multi-employer defined benefit pension plan that provides retirement benefits to public school employees of the Commonwealth of Pennsylvania. The members eligible to participate in the System include all full-time public school employees, part-time hourly public school employees who render at least 500 hours of service in the school year, and part-time per diem public school employees who render at least 80 days of service in the school year in any of the reporting entities in Pennsylvania. PSERS issues a publicly available financial report that can be obtained at www.pfers.state.pa.us.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

Benefits provided

PSERS provides retirement, disability, and death benefits. Members are eligible for monthly retirement benefits upon reaching (a) age 62 with at least 1 year of credited service; (b) age 60 with 30 or more years of credited service; or (c) 35 or more years of service regardless of age. Act 120 of 2010 (Act 120) preserves the benefits of existing members and introduced benefit reductions for individuals who become new members on or after July 1, 2011. Act 120 created two new membership classes, Membership Class T-E (Class T-E) and Membership Class T-F (Class T-F). To qualify for normal retirement, Class T-E and Class T-F members must work until age 65 with a minimum of 3 years of service or attain a total combination of age and service that is equal to or greater than 92 with a minimum of 35 years of service. Benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service. For members whose membership started prior to July 1, 2011, after completion of five years of service, a member's right to the defined benefits is vested and early retirement benefits may be elected. For Class T-E and Class T-F members, the right to benefits is vested after ten years of service.

Participants are eligible for disability retirement benefits after completion of five years of credited service. Such benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service, but not less than one-third of such salary nor greater than the benefit the member would have had at normal retirement age. Members over normal retirement age may apply for disability benefits.

Death benefits are payable upon the death of an active member who has reached age 62 with at least one year of credited service (age 65 with at least three years of credited service for Class T-E and Class T-F members) or who has at least five years of credited service (ten years for Class T-E and Class T-F members). Such benefits are actuarially equivalent to the benefit that would have been effective if the member had retired on the day before death.

Member Contributions

1. Active members who joined the System prior to July 22, 1983, contribute at 5.25% (Membership Class T-C) or at 6.50% (Membership Class T-D) of the member's qualifying compensation.
2. Members who joined the System on or after July 22, 1983, and who were active or inactive as of July 1, 2001, contribute at 6.25% (Membership Class T-C) or at 7.50% (Membership Class T-D) of the member's qualifying compensation.
3. Members who joined the System after June 30, 2001 and before July 1, 2011, contribute at 7.50% (automatic Membership Class T-D). For all new hires and for members who elected Class T-D membership, the higher contribution rates began with service rendered on or after January 1, 2002.
4. Members who joined the System after June 30, 2011, automatically contribute at the Membership Class T-E rate of 7.5% (base rate) of the member's qualifying compensation. All new hires after June 30, 2011, who elect Class T-F membership, contribute at 10.3% (base rate) of the member's qualifying compensation. Membership Class T-E and T-F are affected by a "shared risk" provision in Act 120 of 2010 that in future fiscal years could cause the Membership Class T-E contribution rate to fluctuate between 7.5% and 9.5% and Membership Class T-F contribution rate to fluctuate between 10.3% and 12.3%.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

Employer Contributions

The school districts' contractually required contribution rate for fiscal year ended June 30, 2017 was 29.20% of covered payroll, actuarially determined as an amount that, when combined with employee contributions, is expected to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Contributions to the pension plan from the District were \$34,576,303 for the year ended June 30, 2017.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At June 30, 2017, the District reported a liability of \$440,659,000 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2016 and the total pension liability used to calculate the net pension liability was determined by rolling forward the System's total pension liability as of June 30, 2015 to June 30, 2016. The District's proportion of the net pension liability was calculated utilizing the employer's one-year reported covered payroll as it relates to the total one-year reported covered payroll. At June 30, 2016, the District's proportion was .8892%, which was an increase of \$59,570,000 from its proportion measured as of June 30, 2015.

For the year ended June 30, 2017, the District recognized pension expense of \$15,245,000. At June 30, 2017, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Deferred Outflows Of Resources</u>	<u>Deferred Inflows Of Resources</u>
Difference between expected and actual experience	\$ 0	\$ 3,671,000
Changes in assumptions	15,907,000	0
Net difference between projected and actual investment earnings	24,560,000	0
Changes in proportions	10,759,000	3,230,000
Difference between employer contributions and proportionate share of total contributions	0	0
Contributions subsequent to the measurement date	34,576,303	0
	<u>\$ 85,802,303</u>	<u>\$ 6,901,000</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

The deferred outflows of resources related to pensions resulting from District contributions subsequent to the measurement date of \$34,576,303 will be recognized as a reduction of the net pension liability in the year ended June 30, 2017. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in the pension expense as follows:

Year ended June 30:

2017	\$ 8,896,000
2018	8,896,000
2019	16,463,000
2020	<u>10,070,000</u>
Total	<u>\$ 44,325,000</u>

Changes in Actuarial Assumptions

The total pension liability as of June 30, 2016 was determined by rolling forward the System's total pension liability as of June 30, 2015 to June 30, 2016 using the following actuarial assumptions, applied to all periods included in the measurement:

Changes in assumptions used in measurement of the Total Pension Liability beginning June 30, 2016:

- The Investment Rate of Return was adjusted from 7.50% to 7.25%.
- The inflation assumption was decreased from 3.0% to 2.75%.
- Salary growth changed from an effective average of 5.50%, which was comprised of inflation of 3.00%, real wage growth and for merit or seniority increases of 2.50%, to an effective average of 5.00%, comprised of inflation of 2.75% and 2.25% for real wage growth and for merit or seniority increases.
- Mortality rates were modified from the RP-2000 Combined Healthy Annuitant Tables (male and female) with age set back 3 years for both males and females to the RP-2014 Mortality Tables for Males and Females, adjusted to reflect PSERS' experience and projected using a modified version of the MP-2015 Mortality Improvement Scale. For disabled annuitants the RP-2000 Combined Disabled Tables (male and female) with age set back 7 years for males and 3 years for females to the RP-2014 Mortality Tables for Males and Females, adjusted to reflect PSERS' experience and projected using a modified version of the MP-2015 Mortality Improvement Scale. The actuarial assumptions used in the June 30, 2016 valuation were based on the experience study that was performed for the five-year period ending June 30, 2015. The recommended assumption changes based on this experience study were adopted by the Board at its June 10, 2016 Board meeting, and were effective beginning with the June 30, 2016 actuarial valuation.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

The pension plan's policy in regard to the allocation of invested plan assets is established and may be amended by the Board. Plan assets are managed with a long-term objective of achieving and maintaining a fully funded status for the benefits provided through the pension.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 11 - Employee Retirement Systems and Pension Plans (Continued)

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term Expected Real Rate of Return</u>
Global public equity	22.5%	5.3%
Fixed income	28.5%	2.1%
Commodities	8.0%	2.5%
Absolute return	10.0%	3.3%
Risk parity	10.0%	3.9%
Infrastructure/MLPs	5.0%	4.8%
Real estate	12.0%	4.0%
Alternative investments	15.0%	6.6%
Cash	3.0%	0.2%
Financing (LIBOR)	<u>(14.0%)</u>	0.5%
	<u>100%</u>	

The above was the Board's adopted asset allocation policy and best estimates of geometric real rates of return for each major asset class as of June 30, 2016.

Discount rate

The discount rate used to measure the total pension liability was 7.25%. The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current contribution rate and that contributions from employers will be made at contractually required rates, actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the District's proportionate share of the net pension liability to changes in the discount rate

The following presents the net pension liability, calculated using the discount rate of 7.25%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (6.25%) or 1-percentage point higher (8.25%) than the current rate:

	<u>1% Decrease 6.25%</u>	<u>Current Discount Rate 7.25%</u>	<u>1% Increase 8.25%</u>
District's proportionate share of the net pension liability	\$539,045,000	\$440,659,000	\$357,986,000

Pension plan fiduciary net position

Detailed information about PSERS' fiduciary net position is available in PSERS Comprehensive Annual Financial Report which can be found on the System's website at www.psers.state.pa.us.

LOWER MERION SCHOOL DISTRICT

Notes to Financial Statements

June 30, 2017

NOTE 12 - Other Post-Employment Benefits

The District provides post-retirement health care benefits (medical, dental, prescription, vision) to its administrative personnel who retire under normal PSERS guidelines or elect early retirement at age 55 with 25 years of service. The District contributes toward the cost of single health coverage, and the amount of the contribution is based upon the employee's years of service. The District's contribution rate ranges from 50% for employees with 5 years of service to 100% for employees with 15 or more years of service. The lifetime maximum that the District will pay for a retiree's coverage shall not exceed the employee's highest annual salary while working at the District.

The health insurance plan is a single employer, defined benefit OPEB plan. The medical and prescription drug benefits are administered through Independence Blue Cross. Dental and Vision benefits are administered through Delta Dental and Davis Vision, respectively. Separate financial statements are not issued for the plan. The term life insurance is purchased from PSBA (Pennsylvania School Board Association) Insurance Trust.

Funding Policy

As established by either collective bargaining or school policy, all groups are entitled to receive benefits at retirement until Medicare eligibility age. Spouses and family are included in the coverage. A retiree can elect a higher coverage but the retiree must pay the difference in the premium cost. The District is responsible for funding the balance of the benefits.

As of June 30, 2017 the District has no segregated assets to fund this liability. It is the intention of the District to pay the premium each year as it comes due.

Funding Progress

As of July 1, 2016, the date of the most recent actuarial report, the actuarial accrued liability for benefits was \$9,492,877, all of which was unfunded. The covered payroll (annual payroll of active employees covered by the plan) was \$109,660,791 and the ratio of the unfunded actuarial accrued liability to the covered payroll was 8.66%.

The projection of future benefit payments for an ongoing plan involves estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplemental information following the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

Actuarial Methods and Assumptions

Calculations are based on the types of benefits provided under the terms of the substantive plan at the time of the valuation and on the pattern of sharing of costs between the employer and plan members to that point. Calculations reflect a long-term perspective, so methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets. In the July 1, 2016 actuarial valuation, the following actuarial assumptions were used:

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 12 - Other Post-Employment Benefits (Continued)

Interest	4.5%
Actuarial Cost Method	Entry Age Normal
Amortization Period	13 years, Open Period
Salary Increases	An assumption for salary increases is used only for spreading contributions over future pay under the entry age normal cost method. For this purpose, salary increases are composed of a 2.5% cost of living adjustment, 1% real wage growth, and for teachers and administrators a merit increase which varies by age from 2.75 to 0.25%

Annual OPEB Cost and NET OPEB Obligations:

The District's annual other Post-employment benefit (OPEB) cost (expense) is calculated based on the annual required contribution of the employer (ARC). The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities over a period not to exceed 13 years. The following table shows the components of the District's annual OPEB cost for the year, the amount actually contributed to the plan and the changes in the District's OPEB obligation.

Annual OPEB Cost and NET OPEB Obligations: (Continued)

	<u>2017</u>
Annual OPEB Cost:	
Normal Cost	\$ 606,487
Amortization of Unfunded Actuarial Accrued Liability	980,376
Interest on Net OPEB Obligation	225,167
Adjustment to ARC	<u>(516,759)</u>
ANNUAL OPEB COST	<u>\$ 1,295,271</u>
Net OPEB Obligation:	
Normal OPEB Obligation year beginning July 1	\$ 5,003,722
OPEB Cost for the year ended June 30	1,295,271
Estimated Contributions	<u>(557,843)</u>
NET OPEB OBLIGATION	<u>\$ 5,741,150</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2017

NOTE 12 - Other Post-Employment Benefits (Continued)

The District's annual OPEB cost, the percentage of annual OPEB cost contributed, and the net OPEB obligation for the year ended June 30, 2017 and the two preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
June 30, 2015	1,197,090	53.49%	4,441,132
June 30, 2016	1,167,685	51.82%	5,003,722
June 30, 2017	1,295,271	43.07%	5,741,150

NOTE 13 - Deficit Net Position

A deficit of \$138,044,233 exists in the District-wide net position as of June 30, 2017 (the net pension deficit for governmental activities as of June 30, 2017 is \$135,728,327 and the net position deficit for business-type activities as of June 30, 2017 is \$2,315,906). The deficit is a result of the District's adoption of Government Accounting Standards Board Statement No. 68 *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*.

NOTE 14 - Fund Balances - General Fund

Nonspendable:			
Prepaid Expenses			\$ 246,007
Committed:			
Future Capital Projects		15,000,000	
Future PSERS Obligations		15,300,000	
Future Postemployment Healthcare Benefits		5,000,000	
Rate Stabilization of Variable Interest Rate Bonds		<u>500,000</u>	35,800,000
Unassigned			<u>20,216,884</u>
TOTAL			<u><u>\$ 56,262,891</u></u>

NOTE 15 - Subsequent Events

The District has evaluated subsequent events through December 21, 2017, which represents the date the financial statements were available to be issued.

LOWER MERION SCHOOL DISTRICT
Required Supplementary Information
Budgetary Comparison Schedule
General Fund
For the Year Ended June 30, 2017

	<u>Original Budget</u>	<u>Amended Budget</u>	<u>Actual</u>	Variance with Final Budget - Positive (Negative)
Revenues:				
Local Revenues	\$ 213,524,435	\$ 213,524,435	\$216,568,720	\$ 3,044,285
State Program Revenues	35,483,332	35,483,332	35,946,209	462,877
Federal Program Revenues	705,600	705,600	752,934	47,334
TOTAL REVENUES	<u>249,713,367</u>	<u>249,713,367</u>	<u>253,267,863</u>	<u>3,554,496</u>
Expenditures:				
Regular Programs	101,909,855	101,269,855	100,353,096	916,759
Special Programs	46,899,391	44,228,858	41,089,424	3,139,434
Vocational Programs	350,000	430,000	426,660	3,340
Other Instructional Programs	1,183,887	953,887	799,266	154,621
Pupil Personnel Services	9,334,839	9,834,839	9,792,826	42,013
Instructional Staff Services	6,626,257	6,551,257	6,527,775	23,482
Administrative Services	13,620,678	13,370,678	13,255,838	114,840
Pupil Health	3,988,354	3,763,354	3,693,641	69,713
Business Services	1,343,791	1,343,791	1,271,670	72,121
Operation and Maintenance of Plant Services	19,517,470	20,167,470	20,146,937	20,533
Student Transportation Services	12,581,363	13,971,363	13,942,849	28,514
Central and Other Support Services	6,769,063	7,044,063	6,889,315	154,748
Student Activities	5,543,716	5,118,716	5,006,518	112,198
Community Services	212,500	212,500	209,239	3,261
Debt Service	28,204,104	24,879,104	24,874,276	4,828
TOTAL EXPENDITURES	<u>258,085,268</u>	<u>253,139,735</u>	<u>248,279,330</u>	<u>4,860,405</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>(8,371,901)</u>	<u>(3,426,368)</u>	<u>4,988,533</u>	<u>8,414,901</u>
Other Financing Uses:				
Budgetary Reserve	(800,000)	(800,000)	0	800,000
Interfund Transfers Out	(49,000)	(4,994,533)	(4,988,533)	6,000
TOTAL OTHER FINANCING USES	<u>(849,000)</u>	<u>(5,794,533)</u>	<u>(4,988,533)</u>	<u>806,000</u>
NET CHANGE IN FUND BALANCES	<u>\$ (9,220,901)</u>	<u>\$ (9,220,901)</u>	<u>0</u>	<u>\$ 9,220,901</u>
Fund Balance - July 1, 2016			<u>56,262,891</u>	
FUND BALANCE - JUNE 30, 2017			<u>\$ 56,262,891</u>	

LOWER MERION SCHOOL DISTRICT
Schedule of Post Employment Benefit Obligation Funding Progress
For the Year Ended June 30, 2017

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL (UAAL)</u>	<u>Funded Ratio</u>	<u>Covered Payroll</u>	<u>UAAL as a Percentage of Covered Payroll</u>
February 1, 2010	\$ 0	\$ 8,953,608	\$ 8,953,608	0%	\$ 91,364,323	9.80%
February 1, 2012	0	8,920,298	8,920,298	0%	93,679,636	9.52%
February 1, 2014	0	8,691,202	8,691,202	0%	101,937,918	8.53%
July 1, 2016	0	9,492,877	9,492,877	0%	109,660,791	8.66%

LOWER MERION SCHOOL DISTRICT
Schedule of the District's Proportionate Share of the Net Pension Liability
For the Year Ended June 30, 2017

<u>Year Ended</u>	<u>District's Proportion of the Net Pension Liability (Asset)</u>	<u>District's Proportionate Share of the Net Pension Liability (Asset)</u>	<u>District's Covered Payroll</u>	<u>Net Pension Liability (Asset) as a Percentage of Covered Payroll</u>	<u>Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
June 30, 2014	0.8504%	\$ 336,594,000	\$ 108,521,471	310.16%	-41.78%
June 30, 2015	0.8798%	381,089,000	113,197,880	336.66%	-35.68%
June 30, 2016	0.8892%	440,659,000	115,166,003	382.63%	-29.24%

LOWER MERION SCHOOL DISTRICT
Schedule of the District's Pension Contributions
For the Year Ended June 30, 2017

<u>Year Ended</u>	<u>Contractually Required Contribution</u>	<u>Contributions in Relation to the Contractually Required Contribution</u>	<u>Contribution Excess/ (Deficiency)</u>	<u>District's Covered Payroll</u>	<u>Contributions as a Percentage of Covered Payroll</u>
June 30, 2014	\$ 16,941,000	\$ (16,941,000)	\$ 0	\$ 108,521,471	15.61%
June 30, 2015	22,717,000	(22,717,000)	0	113,197,880	20.07%
June 30, 2016	28,289,000	(28,289,000)	0	115,166,003	24.56%

Financial Statements

Lower Merion School District
Montgomery County, Pennsylvania

June 30, 2016

Rainer
& Company

A Professional Corporation
Certified Public Accountants

TABLE OF CONTENTS

<u>Title</u>	<u>Page No.</u>
Independent Auditors' Report on Financial Statements	1-2
Management's Discussion and Analysis	3-15

BASIC FINANCIAL STATEMENTS

Government-Wide Financial Statements:

Statement of Net Position (Deficit)	16
Statement of Activities	17

Fund Financial Statements:

Balance Sheet - Governmental Funds	18
Reconciliation of the Governmental Funds Balance Sheet to the Statement of Net Position (Deficit)	19
Statement of Revenues, Expenditures, and Changes in Fund Balances - Governmental Funds	20
Reconciliation of the Governmental Funds Statement of Revenues, Expenditures, and Changes in Fund Balances to the Statement of Activities	21
Statement of Net Position (Deficit) - Proprietary Funds	22
Statement of Revenues, Expenses, and Changes in Net Position (Deficit) - Proprietary Funds	23
Statement of Cash Flows - Proprietary Funds	24
Statement of Fiduciary Net Position	25
Statement of Changes in Fiduciary Net Position	26
Notes to the Financial Statements	27-49

Required Supplementary Information:

Budgetary Comparison Schedule - General Fund	50
Schedule of Post Employment Benefit Obligation Funding Progress	51
Schedule of the District's Proportionate Share of the Net Pension Liability	52
Schedule of the District Pension Contributions	53



A Professional Corporation
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INDEPENDENT AUDITORS' REPORT

Board of School Directors
Lower Merion School District
Montgomery County, Pennsylvania

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of and for the year ended June 30, 2016, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of Lower Merion School District, as of June 30, 2016, and the respective changes in financial position, and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 15, budgetary comparison information on page 50, the schedule of post employment benefit obligation funding progress on page 51, the schedule of the District's proportionate share of the net pension liability on page 52, and the schedule of District's pension contributions on page 53 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated December 19, 2016, on our consideration of Lower Merion School District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Lower Merion School District's internal control over financial reporting and compliance.


Rainer & Company

Newtown Square, PA
December 19, 2016

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

The discussion and analysis of Lower Merion School District's financial performance provides an overall review of the District's financial activities for the fiscal year ended June 30, 2016. The intent of this discussion and analysis is to look at the District's financial performance as a whole. Readers should also review the financial statements and the notes to the financial statements.

The Management's Discussion and Analysis (MD&A) is an element of the reporting model adopted by the Governmental Accounting Standards Board (GASB) in their Statement Number 34, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments. Comparative information between the current year and the prior year is required to be presented.

FINANCIAL HIGHLIGHTS

The trends of prior years indicated that during the fiscal year 2015-16, the Lower Merion School District would experience another year of increased staff for special education instruction, student enrollment growth, benefits for our employees and increased costs for instruction. In the budgeting process for the 2015-16 Budget, the Board of School Directors was able to balance the budget with a .8986 mills increase (\$8.986 per \$10,000 of assessed value) to the taxpayers within the District. Through prudent financial management, the actual expenditures did not increase as much as was anticipated when the budget was prepared. This resulted in the savings being added to the beginning fund balance for school year 2016-17. The combination of revenues exceeding the budget and less expenditures than budgeted resulted in the opportunity for the Board to transfer additional funds into the Capital Reserve Fund. The fund balance commitment categories are for future pension obligations, postemployment benefit obligations, future capital projects as well as stabilization of variable rate bonds.

OVERVIEW OF FINANCIAL STATEMENTS

The accompanying financial statements have been prepared in accordance with GASB Statement Number 34 and present both government-wide and fund level financial statements using both the accrual and modified accrual basis of accounting, respectively.

Government-Wide Financial Statements

The first two statements are government-wide financial statements - the Statement of Net Position and the Statement of Activities. These provide both long-term and short-term information about the District's overall financial status.

The government-wide statements report information about the District as a whole using accounting methods similar to those used by private-sector companies. The Statement of Net Position (Deficit) includes all of the government's assets and liabilities. All of the current year's revenues and expenses are accounted for in the Statement of Activities regardless of when cash is received or paid.

The two government-wide statements report the District's net position and how it has changed. Net position, the difference between the District's assets and liabilities, is one way to measure the District's financial health or position.

Over time, increases or decreases in the District's net assets are an indication of whether its financial health is improving or deteriorating, respectively.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

Government-Wide Financial Statements (Continued)

To assess the overall health of the District, you need to consider additional non-financial factors, such as changes in the District's property tax base and the performance of the students.

The government-wide financial statements of the District are divided into two categories:

- **Governmental Activities** - All of the District's basic services are included here, such as instruction, administration, and community services. Property taxes and state and federal subsidies and grants finance most of these activities.
- **Business-Type Activities** - The District operates a food service operation and charges fees to staff and students to cover the costs of the food service operation.

Fund Level Financial Statements

The remaining statements are fund financial statements that focus on individual parts of the District's operations in more detail than the government-wide statements. The governmental fund statements tell how the District's general services were financed in the short term as well as what remains for future spending. Proprietary fund statements offer short and long-term financial information about the activities that the District operates like a business. For this District this is our Food Service Fund. Fiduciary fund statements provide information about financial relationships where the District acts solely as a trustee or agent for the benefit of others.

- **Governmental Funds** - Most of the District's activities are reported in governmental funds, which focus on the determination of financial position and change in financial position, not on income determination. Governmental funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can readily be converted to cash. The governmental fund statements provide a detailed short-term view of the District's operations and the services it provides. Governmental fund information helps the reader determine whether there are more or fewer financial resources that can be spent in the near future to finance the District's programs. The relationship (or differences) between governmental activities (reported in the Statement of Net Position (Deficit) and the Statement of Activities) and governmental funds is reconciled in the financial statements.
- **Proprietary Funds** - These funds are used to account for District activities that are similar to business operations in the private sector; or where the reporting is on determining net income, financial position, changes in financial position, and a significant portion of funding through user charges. When the District charges customers for services it provides - whether to outside customers or to other units in the District - these services are generally reported in proprietary funds. The Food Service Fund is the District's proprietary fund and is the same as the business-type activities we report in the government-wide statements.
- **Fiduciary Funds** - The District is the trustee, or fiduciary, for some scholarship funds. All of the District's fiduciary activities are reported in a separate Statement of Fiduciary Net Position. We exclude these activities from the District's other financial statements because the District cannot use these assets to finance its operations.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data.

FINANCIAL ANALYSIS OF THE DISTRICT - GOVERNMENT-WIDE STATEMENTS

The District's total net position (deficit) was \$135,960,143 and \$140,630,264 as of June 30, 2016 and 2015, respectively. The following table presents condensed financial information for the net position deficit of the District as of June 30, 2016 and 2015.

Schedule of Net Position (Deficit)
Years Ended June 30, 2016 and 2015

	Governmental Activities		Business-Type Activities		Total	
	2016	2015	2016	2015	2016	2015
Current Assets	\$ 102,865,758	\$ 106,790,348	\$ 2,011,647	\$ 1,228,608	\$ 104,877,405	\$ 108,018,956
Capital Assets	414,721,127	414,109,651	31,675	44,294	414,752,802	414,153,945
Deferred Outflows of Resources	52,352,108	34,861,691	385,998	225,395	52,738,106	35,087,086
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	569,938,993	555,761,690	2,429,320	1,498,297	572,368,313	557,259,987
Current Liabilities	46,300,841	42,867,365	1,162,602	439,666	47,463,443	43,307,031
Noncurrent Liabilities	649,990,138	620,929,893	3,798,875	3,355,327	653,789,013	624,285,220
Deferred Inflows of Resources	7,005,463	29,995,975	70,537	302,025	7,076,000	30,298,000
TOTAL LIABILITIES AND DEFERRED INFLOWS OF RESOURCES	703,296,442	693,793,233	5,032,014	4,097,018	708,328,456	697,890,251
Net Position (Deficit):						
Invested in Capital Assets, Net of Related Debt	147,563,425	129,278,736	31,675	44,294	147,595,100	129,323,030
Restricted: Capital Projects	14,768,490	22,810,773	0	0	14,768,490	22,810,773
Unrestricted	(295,689,364)	(290,121,052)	(2,634,369)	(2,643,015)	(298,323,733)	(292,764,067)
TOTAL NET POSITION (DEFICIT)	\$ (133,357,449)	\$ (138,031,543)	\$ (2,602,694)	\$ (2,598,721)	\$ (135,960,143)	\$ (140,630,264)

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

The results of this year's operations as a whole are reported in the Statement of Activities. All expenses are reported in the first column. Specific charges, grants, revenues, and subsidies that directly relate to specific expense categories are represented to determine the final amount of the District's activities that are supported by other general revenues. The largest revenues are property taxes, local taxes, and the state basic education subsidy.

The following table presents condensed financial information for the Statement of Activities in a different format to show total revenues for the year. Compared to the prior year, the District's total revenues increased by \$11,725,866 or 5.06%. Property taxes, which include current and interim real estate taxes, increased by \$8,054,002 or 4.20%. Investment earnings increased by \$150,650 or 52.93%. Governmental activities expenses increased by \$10,031,821 or 4.45%. Instruction expense increased by \$9,865,813 or 7.55%.

Statement of Activities
For the Years Ended June 30, 2016 and 2015

	Governmental Activities		Business-Type Activities		Total	
	2016	2015	2016	2015	2016	2015
REVENUES:						
Program Services:						
Charges for Services	\$ 632,912	\$ 517,907	\$ 2,514,420	\$2,605,505	\$ 3,147,332	\$ 3,123,412
Operating Grants and Contributions	23,852,093	20,796,008	821,434	719,292	24,673,527	21,515,300
General Revenues:						
Property Taxes	199,646,839	191,592,837	0	0	199,646,839	191,592,837
Other Taxes	4,682,505	3,962,054	0	0	4,682,505	3,962,054
Grants, Subsidies and Contributions Not Restricted	10,678,058	10,245,914	0	0	10,678,058	10,245,914
Investment Earnings	435,251	284,601	0	0	435,251	284,601
Miscellaneous Income	86,944	84,984	0	0	86,944	84,984
Sale of Capital Assets	2,890	818,378	0	0	2,890	818,378
Transfers In (Out)	(904)	(8,368)	904	8,368	0	0
TOTAL REVENUES	240,016,588	228,294,315	3,336,758	3,333,165	243,353,346	231,627,480
EXPENSES:						
Instruction	140,572,385	130,706,572	0	0	140,572,385	130,706,572
Instructional Student Support	18,256,350	17,832,847	0	0	18,256,350	17,832,847
Administrative and Financial Support	14,775,375	14,031,703	0	0	14,775,375	14,031,703
Operation and Maintenance of Plant Services	24,216,736	24,370,907	0	0	24,216,736	24,370,907
Pupil Transportation	13,500,631	12,043,247	0	0	13,500,631	12,043,247
Student Activities	4,854,449	4,807,218	0	0	4,854,449	4,807,218
Community Services	198,566	188,039	0	0	198,566	188,039
Interest on Long-Term Debt	8,242,820	11,109,891	0	0	8,242,820	11,109,891
Unallocated Depreciation Expense	10,725,182	10,220,249	0	0	10,725,182	10,220,249
Food Services	0	0	3,340,731	3,384,086	3,340,731	3,384,086
TOTAL EXPENSES	235,342,494	225,310,673	3,340,731	3,384,086	238,683,225	228,694,759
CHANGE IN NET POSITION	\$ 4,674,094	\$ 2,983,642	\$ (3,973)	\$ (50,921)	\$ 4,670,121	\$ 2,932,721

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

EXPENSES

The following table presents condensed financial information on the expenses of the District by function. The table illustrates both the gross and net costs of services. Unrestricted grants, subsidies, and contributions are deducted to reflect the amount needed to be funded by other revenue sources. The amount needed to be funded by other revenue sources increased by \$6,428,587 or 3.3% more than the prior year.

Expense Analysis
For the Years Ended June 30, 2016 and 2015

	Total Cost of Services		Net Cost of Services	
	2016	2015	2016	2015
Expenses - Governmental Activities:				
Instruction	\$ 140,572,385	\$ 130,706,572	\$ 125,129,341	\$ 117,579,826
Instructional Student Support	18,256,350	17,832,847	16,641,580	16,407,563
Administrative and Financial Support	14,775,375	14,031,703	13,135,595	12,647,201
Operation and Maintenance of Plant Services	24,216,736	24,370,907	22,880,088	23,128,272
Pupil Transportation	13,500,631	12,043,247	9,560,401	8,359,041
Student Activities	4,854,449	4,807,218	4,343,916	4,356,676
Community Services	198,566	188,039	198,566	188,039
Interest on Long-Term Debt	8,242,820	11,109,891	8,242,820	11,109,891
Unallocated Depreciation Expense	10,725,182	10,220,249	10,725,182	10,220,249
TOTAL EXPENSES	<u>\$ 235,342,494</u>	<u>\$ 225,310,673</u>	210,857,489	203,996,758
Less: Grants, Subsidies and Contributions Not Restricted			<u>(10,678,058)</u>	<u>(10,245,914)</u>
AMOUNT NEEDED TO BE FUNDED BY OTHER REVENUE SOURCES			<u>\$ 200,179,431</u>	<u>\$ 193,750,844</u>

The following table reflects condensed financial activities of the Food Service Program, the only business-type activity of the District.

Business-Type Activities
For the Years Ended June 30, 2016 and 2015

	Total Cost of Services		Net Cost of Services	
	2016	2015	2016	2015
Expenses - Business-Type Activities:				
Food Services	<u>\$ 3,340,731</u>	<u>\$ 3,384,086</u>	<u>\$ 3,973</u>	<u>\$ 50,921</u>

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

THE DISTRICT FUNDS

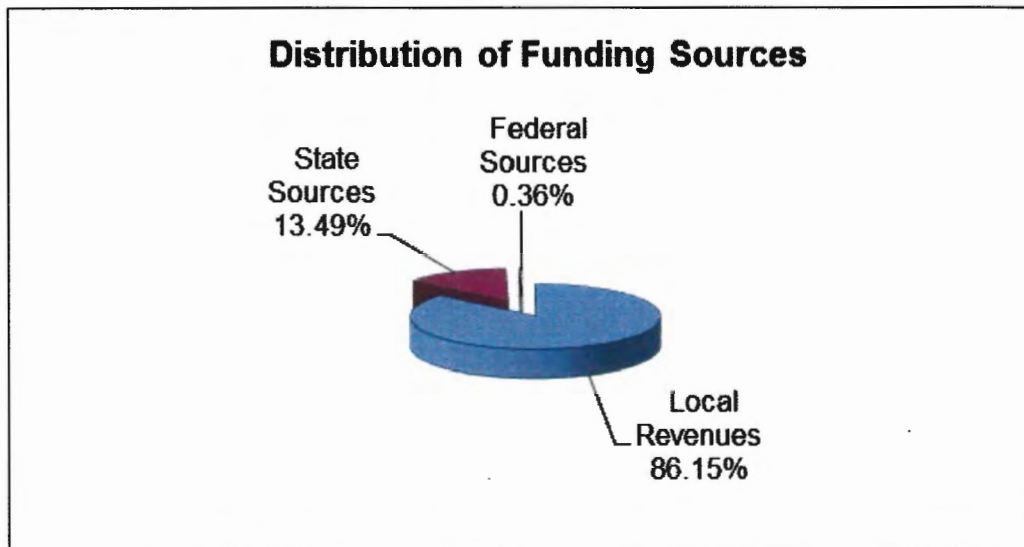
GENERAL FUND

At June 30, 2016, the District reported a total fund balance of \$56,262,891, which consists of \$180,286 as nonspendable fund balance, \$35,800,000 as committed fund balance and \$20,282,605 as unassigned fund balance. This is an increase of \$556 from the prior year. The School Board of the Lower Merion School District consciously maintains a fund balance to respond to unforeseen contingencies. This philosophy conforms to the Board's belief that the tax burden should be aligned with both the current and future funding needs of the District. As the School District has experienced unprecedented enrollment growth and the need to expand facilities, the fund balance is necessary to maintain educational programs while, at the same time, responsibly planning for future needs.

Revenues

Revenues totaled \$239,703,544, an increase of \$12,623,739 as compared to the 2014-15 revenues. The following table reflects a comparison of current year revenues with the revenues recognized in the prior year:

	Revenue 2016	% of Total	Increase (Decrease) From 2015	Percentage Increase	Revenue 2015
Local Revenues	\$ 206,518,963	86.15%	\$ 9,392,835	4.76%	\$ 197,126,128
State Sources	32,328,016	13.49%	3,080,826	10.53%	29,247,190
Federal Sources	856,565	0.36%	150,078	21.24%	706,487
	<u>\$ 239,703,544</u>	<u>100.00%</u>	<u>\$ 12,623,739</u>	<u>5.56%</u>	<u>\$ 227,079,805</u>



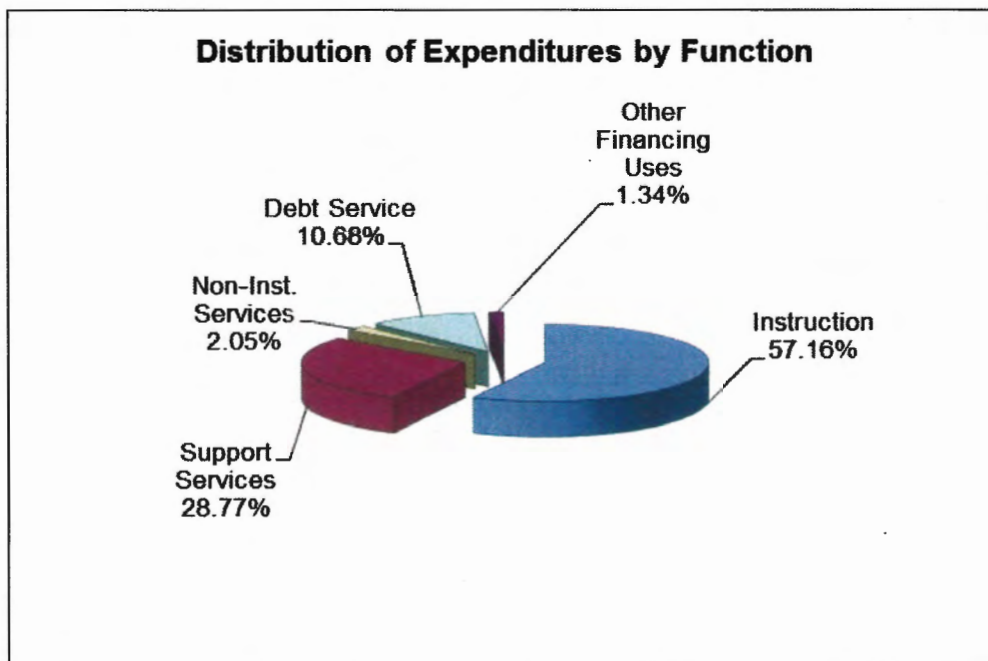
LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

The District balanced the budget by utilizing the fund balance from the previous year and increasing the 2015-16 real estate tax rates from 25.335 to 26.2321 mills. As a result of the increase in millage and increases in real estate assessments, revenues from current, interim, and delinquent real estate taxes increased by \$8,402,360. The collection rate for current real estate taxes was 96.91%. This compares with 96.86% in 2014-15. Real estate transfer taxes collections increased by \$720,529. The District experienced an increase in investment revenue of \$122,436 for the general fund.

Expenditures

Expenditures, totaling \$239,702,988, increased \$12,627,525 over the 2014-15 expenditures. These expenditures were segregated into various programs depending on the functions of the activity. These programs and the costs associated with each, as well as comparison to the costs incurred in the prior year and the final 2015-16 budget are as follows:

	<u>Expenditures 2016</u>	<u>% of Total</u>	<u>Increase (Decrease) From 2015</u>	<u>Variance with Final Budget - Positive (Negative)</u>
Instruction	\$ 137,002,931	57.16%	\$ 9,826,337	\$ 2,600,298
Support Services	68,973,012	28.77%	3,551,378	2,834,735
Non-Instructional Services	4,912,857	2.05%	191,503	271,628
Debt Service	25,609,550	10.68%	(32,937)	189,554
Other Financing Uses	3,204,638	1.34%	(908,756)	667,362
TOTAL EXPENDITURES BY FUNCTION	\$ 239,702,988	100.00%	\$ 12,627,525	\$ 6,563,577



LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

The increase in expenditures from 2015-16 is due to increases in a various categories. Our pension obligations increased over \$5 million from the prior year, as a result of the employer contribution rate increasing from 21.40% to 25.84%. Special education costs increased over \$2.4 million from last year and continue to grow with minimal additional state funding. In addition, there were increases in salaries due to the collective bargaining agreement and additional staff and educational materials as a result of the student enrollment growth. Also, the Board approved the transfer of \$3.042 million to the Capital Reserve to address future capital needs.

Budget

During the fiscal year, the Board of School Directors authorizes revisions to the original budget to accommodate differences from the original budget to the actual expenditures of the District. All adjustments are again confirmed at the time the annual audit is accepted. This is done after the end of the fiscal year in accordance with state law. A schedule showing the District's original and final budget amounts compared with amounts actually paid and received is provided in the financial statements.

The Budgetary Reserve includes amounts that will be funded for operating contingencies such as an unpredictable change in the cost of goods and services and the occurrence of events which are vaguely perceptible during the time of the budget process but which nonetheless may require expenditures by the District during the year of operation.

CAPITAL PROJECTS FUND

At June 30, 2016, the District reported a fund balance of \$3,536,063, which is a decrease of \$6,891,946 from the prior year. Increases in this fund during 2015-16 include investment earnings of \$13,642. The capital project fund expended \$39,162 in support services and \$6,866,426 for active capital construction projects.

CAPITAL RESERVE FUND

At June 30, 2016, the District reported a fund balance of \$11,232,427, which is a decrease of \$1,150,337 from the prior year. Increases in this fund during 2015-16 include a \$3,042,000 transfer from the general fund, other local revenues of 228,116, and investment earnings of \$19,155. The capital reserve fund expended \$3,115,471 in support services and \$1,324,137 in capital outlay expenditures.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

CAPITAL ASSETS

At June 30, 2016, the District's governmental activities and business-type activities had \$414,752,802 invested in a broad range of capital assets, including land, buildings, and furniture and equipment. This amount represents a net increase (including additions, deletions, and depreciation) of \$598,856 from last year.

The following schedule depicts the change in capital assets for the period July 1, 2015 through June 30, 2016. During this period, the District had the following significant additions in capital assets:

Schedule of Capital Assets

	<u>Beginning Balance</u>	<u>Increase (Decrease)</u>	<u>Ending Balance</u>
<u>Governmental Activities:</u>			
Capital Assets:			
Land	\$ 19,643,123	\$ 0	\$ 19,643,123
Land Improvements	2,198,127	376,794	2,574,921
Buildings	452,041,113	18,010,992	470,052,105
Construction in Process	11,192,313	(9,656,817)	1,535,496
Furniture and Equipment	7,205,012	957,692	8,162,704
Transportation	13,510,437	403,131	13,913,568
TOTAL CAPITAL ASSETS	<u>505,790,125</u>	<u>10,091,792</u>	<u>515,881,917</u>
Accumulated Depreciation for:			
Land Improvements	2,110,307	31,975	2,142,282
Buildings	78,240,096	9,154,426	87,394,522
Furniture and Equipment	5,934,962	259,345	6,194,307
Transportation	5,395,109	34,570	5,429,679
TOTAL ACCUMULATED DEPRECIATION	<u>91,680,474</u>	<u>9,480,316</u>	<u>101,160,790</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 414,109,651</u>	<u>\$ 611,476</u>	<u>\$ 414,721,127</u>
<u>Business-Type Activities:</u>			
Capital Assets:			
Machinery and Equipment	\$ 122,263	\$ 0	\$ 122,263
Accumulated Depreciation for:			
Machinery and Equipment	77,968	12,620	90,588
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 44,295</u>	<u>\$ (12,620)</u>	<u>\$ 31,675</u>

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

DEBT ADMINISTRATION

As of July 1, 2015, the District had total outstanding bond principal of \$280,185,000. In March 2016, the District issued \$55,665,000 in bonds for the purpose of the refunding of General Obligation Bonds, Series of 2006 and General Obligations Bonds, Series of 2007. During the year, the District paid principal in the amount of \$16,035,000 resulting in ending outstanding debt as of June 30, 2016 of \$260,535,000.

Debt Service Schedule
June 30, 2016

	<u>Principal Outstanding July 1, 2014</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2015</u>
General Obligation Note, Series of 1989	\$ 19,800,000	\$ 1,900,000	\$ 0	\$ 17,900,000
General Obligation Bonds, Series A of 2006	32,405,000	0	(32,405,000)	0
General Obligation Bonds, Series of 2007	28,575,000	1,700,000	(26,875,000)	0
General Obligation Bonds, Series A & B of 2009	76,320,000	4,925,000	0	71,395,000
General Obligation Bonds, Series of 2012	15,495,000	4,980,000	0	10,515,000
General Obligation Bonds, Series A of 2012	46,230,000	2,520,000	0	43,710,000
General Obligation Bonds, Series of 2013	9,800,000	5,000	0	9,795,000
General Obligation Bonds, Series of 2014	9,980,000	5,000	0	9,975,000
General Obligation Bonds, Series A of 2015	9,700,000	0	0	9,700,000
General Obligation Bonds, Series B of 2015	31,880,000	0	0	31,880,000
General Obligation Bonds, Series of 2016	<u>0</u>	<u>0</u>	<u>55,665,000</u>	<u>55,665,000</u>
	<u>\$ 280,185,000</u>	<u>\$ 16,035,000</u>	<u>\$ (3,615,000)</u>	<u>\$ 260,535,000</u>

Other obligations include accrued vacation pay and severance for specific employees of the District. More detailed information about our long-term liabilities is included in the notes to the financial statements.

THE DISTRICT'S FUTURE

The total District enrollment has increased over the last ten school years resulting from out of state move-ins, fewer students enrolling in private schools, and housing turnover resulting in more families with school age children. From 1998 - 2012, the District renovated and expanded all six elementary schools, both middle schools, and built two new high schools, Harriton and Lower Merion. The District has an extensive network infrastructure and a district-wide area network. All schools are connected to the network.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

THE DISTRICT'S FUTURE (Continued)

A district-wide facilities and enrollment projection study was completed in 2012. A new enrollment projection study was completed in April 2015 and updated in November 2015. These studies indicate that enrollment will continue to increase in the next decade.

Additions at Gladwyne and Penn Valley Elementary Schools were completed in the 2014/15 school year, and additions and alterations at the two middle schools were completed for the 2015/16 school year. Also, the school board approved renovations to the District Administration Building for classroom space which is scheduled to be completed in the fall of 2016.

The School District has engaged two demographers to conduct additional enrollment studies in the fall of 2016 in order to assess future needs.

STRATEGIC PLAN

Lower Merion School District launched an ambitious, year-long comprehensive planning process in the fall of 2013 to provide a new direction for public education in our community. In recent years, strategic planning in the District had been driven largely by the Pennsylvania Department of Education's strategic planning requirements, and plans were developed to address specific issues and perceived weaknesses. The 2014 Lower Merion School District planning process was designed to be more expansive in scope and significantly more inclusive of our diverse, dynamic community. Thousands of stakeholders contributed to this process, sharing their thoughts, ideas, and dreams for our schools through community surveys, community forums, focus groups, public meetings, and a steering committee of 70 community volunteers.

The result of these collective efforts is our new plan, *All Forward: Strategic Pathways for Lower Merion School District*. *All Forward* differs greatly from previous District strategic plans, both in content and structure. Rather than a tactical guide with step-by-step instructions, the plan serves as a strategic compass for the next five years and beyond. We designed it to be actionable, inspirational, and accessible to all members of our school community. Five "bold statements of strategic intent" provide the framework of our plan. These statements, crafted by our steering committee, represent where we want to be as a school community and indicate a shift from where we are today in how we define student success, develop curriculum, support professional learning, engage students, and partner with our community. It is important to note that the intent of the plan is not to solve a problem or fix a failure. Rather, it serves as a necessary next step forward in our evolution as one of the finest public school systems in the United States.

Collaboration, innovation, and celebration are consistent themes throughout the plan and characterize the community's work in developing this document. Our plan embraces a collective, intentional, positive approach to change. It is driven by our belief in continuous improvement and an unyielding passion for high-quality public education. It represents our commitment to the children of Lower Merion and Narberth now and forever.

MISSION STATEMENT

Committed to excellence and continuous improvement, the Lower Merion School District strives to ensure that all students achieve their highest level of critical thinking and creativity, that they value themselves and the diversity of others, and that they are knowledgeable, contributing citizens capable of excelling in a rapidly changing world.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

This is accomplished by individuals engaging in innovative, active experiences tailored to myriad ways of learning and in partnership with our community.

VISION STATEMENT

Students are our reason for being. We create an environment designed to fulfill the individual learning needs and aspirations of each student. The District develops active partnerships at all levels of our learning community and values the individual contribution of each member.

We view learning as dynamic, innovative, and collaborative. Individuals learn best when their hearts, minds, and spirits are intimately engaged in the learning process.

Enter to learn. Go forth to serve

BELIEFS

Our deepest convictions and values;

We believe that:

- All people have equal intrinsic worth.
- People learn in different ways and at different rates.
- Each person bears responsibility for the well-being of society and the quality of the environment.
- Learning occurs everywhere and is a life long pursuit of knowledge, truth, and wisdom.
- High quality public education directly benefits the entire community and is essential for a democratic society.
- The responsibility for learning rests primarily with the individual; however, education is the shared responsibility of the student, home, family, school, and entire community.
- Individuals learn best when actively engaged in the learning process.
- Excellence demands sustained effort.
- All individuals can be successful learners.
- High expectations yield high results.
- Society benefits when individual rights are balanced with social responsibility.
- Ethical conduct is essential to the quality of life.

STRATEGIC PATHWAYS

Pathway 1: Redefining Success - Transform how we define, measure, and report student achievement with a focus on each student's individualized growth, and mastery in areas that extend beyond traditional academic indicators.

Pathway 2: Transformative Curriculum - Shifts from content areas silos to a connected curriculum that prepares students to transfer knowledge and thinking strategies across disciplines.

Pathway 3: A Commitment to Professional Learning - Transforms professional learning from a top-down model to one that honors and harnesses our educators' collective wisdom.

LOWER MERION SCHOOL DISTRICT
Management's Discussion and Analysis
June 30, 2016

STRATEGIC GOALS (Continued)

Pathway 4: Student-Driven Schools - Adjust our system from one characterized by heavily prescribed requirements to one that affords more self-directed goal setting and positive risk taking – where students navigate their own learning in close partnership with professionals.

Pathway 5: A Spirit of Community - Transform our approach to community outreach from one that is less coordinated to one that strategically leverages and maximizes community resources to strengthen our schools.

FINANCIAL MANAGEMENT

Our financial report is designed to provide our citizens, taxpayers, parents, students, investors, and creditors with a general overview of the District's finances and to show the Board's accountability for the money it receives. If you have questions about this report or wish to request additional financial information, please contact Victor J. Orlando, Business Manager, Lower Merion School District, 301 East Montgomery Avenue, Ardmore, PA 19003.

LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
June 30, 2016

<u>ASSETS</u>	<u>Governmental Activities</u>	<u>Business-Type Activities</u>	<u>Total</u>
Current:			
Cash and Cash Equivalents	\$ 15,369,361	\$ 0	\$ 15,369,361
Investments	70,754,192	1,468,523	72,222,715
Due from Other Governments	7,805,265	90,087	7,895,352
Other Receivables	228,444	64,278	292,722
Property Taxes Receivable, Net	3,560,094	0	3,560,094
Internal Balances	4,968,116	288,173	5,256,289
Inventories	0	100,586	100,586
Prepaid Expenses	180,286	0	180,286
TOTAL CURRENT ASSETS	102,865,758	2,011,647	104,877,405
Capital Assets, Net of Accumulated Depreciation	414,721,127	31,675	414,752,802
TOTAL ASSETS	517,586,885	2,043,322	519,630,207
 <u>DEFERRED OUTFLOWS OF RESOURCES</u>			
Deferred Outflows of Resources - Accumulated			
Decrease in Fair Value of Hedging Derivatives	14,016,176	0	14,016,176
Deferred Outflows of Resources - Pension Plan	38,335,932	385,998	38,721,930
TOTAL DEFERRED OUTFLOWS OF RESOURCES	52,352,108	385,998	52,738,106
 TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	\$ 569,938,993	\$ 2,429,320	\$ 572,368,313
 <u>LIABILITIES</u>			
Current:			
Accounts Payable and Other Current Liabilities	\$ 28,762,736	\$ 59,705	\$ 28,822,441
Internal Balances	0	905,971	905,971
Bonds Payable Due Within One Year	15,270,000	0	15,270,000
Unearned Revenues	246,059	196,926	442,985
Accrued Interest	2,022,046	0	2,022,046
TOTAL CURRENT LIABILITIES	46,300,841	1,162,602	47,463,443
Long-Term:			
Bonds Payable Due After One Year	251,887,702	0	251,887,702
Deferred Instrument - Interest Rate Swap	14,016,176	0	14,016,176
Net Pension Liability	377,290,125	3,798,875	381,089,000
Accrued Post Employment Benefits and Compensated Absences	6,796,135	0	6,796,135
TOTAL LONG-TERM LIABILITIES	649,990,138	3,798,875	653,789,013
TOTAL LIABILITIES	696,290,979	4,961,477	701,252,456
 <u>DEFERRED INFLOWS OF RESOURCES</u>			
Deferred Inflows of Resources - Pension Plan	7,005,463	70,537	7,076,000
 <u>NET POSITION (DEFICIT)</u>			
Invested in Capital Assets, Net of Related Debt	147,563,425	31,675	147,595,100
Restricted for: Capital Projects	14,768,490	0	14,768,490
Unrestricted	(295,689,364)	(2,634,369)	(298,323,733)
TOTAL NET POSITION (DEFICIT)	(133,357,449)	(2,602,694)	(135,960,143)
 TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	\$ 569,938,993	\$ 2,429,320	\$ 572,368,313

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Activities
For the Year Ended June 30, 2016

FUNCTIONS/PROGRAMS	Program Revenues				Net Revenues (Expenses) and Changes in Net Assets		
	Expenses	Charges For Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Governmental Activities:							
Instruction	\$ 140,572,385	\$ (498,403)	\$ (14,944,641)	\$ 0	\$ (125,129,341)	\$ 0	\$ (125,129,341)
Instructional Student Support	18,256,350	0	(1,614,770)	0	(16,641,580)	0	(16,641,580)
Administrative and Financial Support Services	14,775,375	0	(1,639,780)	0	(13,135,595)	0	(13,135,595)
Operation and Maintenance of Plant Services	24,216,736	(108,156)	(1,228,492)	0	(22,880,088)	0	(22,880,088)
Pupil Transportation	13,500,631	0	(3,940,230)	0	(9,560,401)	0	(9,560,401)
Student Activities	4,854,449	(26,353)	(484,180)	0	(4,343,916)	0	(4,343,916)
Community Services	198,566	0	0	0	(198,566)	0	(198,566)
Interest on Long-Term Debt	8,242,820	0	0	0	(8,242,820)	0	(8,242,820)
Unallocated Depreciation Expense	10,725,182	0	0	0	(10,725,182)	0	(10,725,182)
TOTAL GOVERNMENTAL ACTIVITIES	235,342,494	(632,912)	(23,852,093)	0	(210,857,489)	0	(210,857,489)
Business-Type Activities:							
Food Services	3,340,731	(2,514,420)	(821,434)	0	0	(4,877)	(4,877)
TOTAL PRIMARY GOVERNMENT	\$ 238,683,225	\$ (3,147,332)	\$ (24,673,527)	\$ 0	(210,857,489)	(4,877)	(210,862,366)
General Revenues:							
Taxes:							
Property Taxes, Levied for General Purposes, Net					199,646,839	0	199,646,839
Public Utility Realty, Earned Income and Realty					4,682,505	0	4,682,505
Transfer Taxes, Levied for General Purposes, Net					10,678,058	0	10,678,058
Grants, Subsidies and Contributions Not Restricted					435,251	0	435,251
Investment Earnings					(904)	904	0
Transfers					2,890	0	2,890
Sale of Capital Assets					86,944	0	86,944
Miscellaneous Income							
TOTAL GENERAL REVENUES					215,531,583	904	215,532,487
CHANGE IN NET POSITION (DEFICIT)					4,674,094	(3,973)	4,670,121
Net Position (Deficit) - July 1, 2015					(138,031,543)	(2,598,721)	(140,630,264)
NET POSITION (DEFICIT) - JUNE 30, 2016					\$ (133,357,449)	\$ (2,602,694)	\$ (135,960,143)

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT

Balance Sheet

Governmental Funds

June 30, 2016

<u>ASSETS</u>	<u>General Fund</u>	<u>Capital Projects Fund</u>	<u>Capital Reserve Fund</u>	<u>Debt Service Fund</u>	<u>Total Governmental Funds</u>
Cash and Cash Equivalents	\$ 15,369,361	\$ 0	\$ 0	\$ 0	\$ 15,369,361
Investments	58,173,231	4,813,780	7,675,732	91,449	70,754,192
Taxes Receivable, Net	3,560,094	0	0	0	3,560,094
Due from Other Funds	5,163,973	0	3,702,738	0	8,866,711
Due from Other Governments	7,652,065	0	153,200	0	7,805,265
Other Receivables	221,211	0	7,233	0	228,444
Prepaid Expenses	180,286	0	0	0	180,286
TOTAL ASSETS	<u>\$ 90,320,221</u>	<u>\$ 4,813,780</u>	<u>\$ 11,538,903</u>	<u>\$ 91,449</u>	<u>\$ 106,764,353</u>
<u>LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES</u>					
Liabilities:					
Accounts Payable and Accrued Liabilities	\$ 4,649,902	\$ 1,277,717	\$ 306,476	\$ 0	\$ 6,234,095
Due to Other Funds	3,898,595	0	0	0	3,898,595
Payroll Accruals and Withholdings	22,528,641	0	0	0	22,528,641
Unearned Revenues	246,059	0	0	0	246,059
TOTAL LIABILITIES	<u>31,323,197</u>	<u>1,277,717</u>	<u>306,476</u>	<u>0</u>	<u>32,907,390</u>
Deferred Inflows of Resources:					
Unavailable Revenue - Property Taxes	2,734,133	0	0	0	2,734,133
Fund Balances:					
Nonspendable	180,286	0	0	0	180,286
Committed	35,800,000	0	0	0	35,800,000
Assigned	0	3,536,063	11,232,427	91,449	14,859,939
Unassigned	20,282,605	0	0	0	20,282,605
TOTAL FUND BALANCES	<u>56,262,891</u>	<u>3,536,063</u>	<u>11,232,427</u>	<u>91,449</u>	<u>71,122,830</u>
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES	<u>\$ 90,320,221</u>	<u>\$ 4,813,780</u>	<u>\$ 11,538,903</u>	<u>\$ 91,449</u>	<u>\$ 106,764,353</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds Balance Sheet
to the Statement of Net Position (Deficit)
June 30, 2016

Total Fund Balances - Governmental Funds \$ 71,122,830

Amounts reported for governmental activities in the statement of net position are different because:

Capital assets used in governmental activities are not financial resources and, therefore, are not reported as assets in governmental funds. The cost of assets is \$505,881,917, and the accumulated depreciation is \$101,160,790. 414,721,127

Property taxes receivable will be collected this year, but are not available soon enough to pay for the current period's expenditures and, therefore, are deferred. 2,734,133

Long-term liabilities, including bonds payable, are not due and payable in the current period and, therefore, are not reported as liabilities in the funds. Long-term liabilities at year-end consist of:

Bonds Payable	\$(267,157,702)	
Accrued Interest on the Bonds	(2,022,046)	
Net Pension Liability	(377,290,125)	
Accrued Compensated Absences	(1,792,413)	
Accrued Other Post-Employment Benefits	<u>(5,003,722)</u>	(653,266,008)

Deferred outflows and inflows of resources related to pensions are applicable to future periods and, therefore, are not reported in the fund statements.

Deferred Outflows of Resources - Pension Plan	38,335,932	
Deferred Inflows of Resources - Pension Plan	<u>(7,005,463)</u>	<u>31,330,469</u>

TOTAL NET POSITION (DEFICIT) - GOVERNMENTAL ACTIVITIES \$ (133,357,449)

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenditures,
and Changes in Fund Balances
Governmental Funds
For the Year Ended June 30, 2016

	General Fund	Capital Projects Fund	Capital Reserve Fund	Debt Service Fund	Total Governmental Funds
Revenues:					
Local Sources:					
Real Estate Taxes	\$ 199,596,693	\$ 0	\$ 0	\$ 0	\$ 199,596,693
Realty Transfer Tax	4,247,063	0	0	0	4,247,063
Earned Income Taxes	217,082	0	0	0	217,082
Earnings from Investments	402,455	13,642	19,155	0	435,252
Other Local Revenues	2,055,670	0	228,116	0	2,283,786
State Sources	32,328,016	0	0	0	32,328,016
Federal Sources	856,565	0	0	0	856,565
TOTAL REVENUES	239,703,544	13,642	247,271	0	239,964,457
Expenditures:					
Instruction	137,002,931	0	0	0	137,002,931
Support Services	68,973,012	39,162	3,115,471	384,724	72,512,369
Non-Instructional Services	4,912,857	0	0	0	4,912,857
Capital Outlay	0	6,866,426	1,324,137	0	8,190,563
Debt Service (Principal and Interest)	25,609,550	0	0	102,561	25,712,111
TOTAL EXPENDITURES	236,498,350	6,905,588	4,439,608	487,285	248,330,831
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	3,205,194	(6,891,946)	(4,192,337)	(487,285)	(8,366,374)
Other Financing Sources (Uses):					
Bond Proceeds	0	0	0	55,665,000	55,665,000
Bond Premium	0	0	0	6,389,827	6,389,827
Payment to Refunding Bonds Escrow Agent	0	0	0	(61,578,654)	(61,578,654)
Refunds of Prior Years Revenues	(155,738)	0	0	0	(155,738)
Interfund Transfers In	0	0	3,042,000	0	3,042,000
Interfund Transfers Out	(3,051,790)	0	0	0	(3,051,790)
Sale of Fixed Assets	2,890	0	0	0	2,890
TOTAL OTHER FINANCING SOURCES (USES)	(3,204,638)	0	3,042,000	476,173	313,535
NET CHANGE IN FUND BALANCES	556	(6,891,946)	(1,150,337)	(11,112)	(8,052,839)
Fund Balances - July 1, 2015	56,262,335	10,428,009	12,382,764	102,561	79,175,669
FUND BALANCES - JUNE 30, 2016	\$ 56,262,891	\$ 3,536,063	\$ 11,232,427	\$ 91,449	\$ 71,122,830

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Reconciliation of the Governmental Funds
Statement of Revenues, Expenditures and Changes in Fund Balances
to the Statement of Activities
For the Year Ended June 30, 2016

Total Net Change in Fund Balances - Governmental Funds \$ (8,052,839)

Amounts reported for governmental activities in the statement of activities are different because:

Capital outlays are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which capital outlays exceed depreciation expense for the period

Capital Outlay	\$ 11,336,658	
Depreciation Expense	<u>(10,725,182)</u>	611,476

Repayment of bond principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities in the statement of net position.

Bond Proceeds	\$ 3,615,000	
Principal Payments on Long-Term Liabilities	<u>16,035,000</u>	19,650,000

Bond discounts and premiums are reported as revenues or expenditures in the governmental funds when debt is first issued. In the statement of activities, these costs are deferred and amortized. This is the amount bond discounts and premiums issued exceeds amortization. (1,976,787)

Because some property taxes will not be collected for several months after the District's fiscal year ends, they are not considered "available" revenues and are deferred in the governmental funds. Deferred tax revenues increased by this amount this year. 50,146

Governmental funds report District pension contributions as expenditures. However in the Statement of Activities, the cost of pension benefits earned net of employee contributions is reported as pension expense.

District Pension Contributions	28,460,366	
Cost of Benefits Earned Net of Employee Contributions	<u>(33,570,733)</u>	(5,110,367)

Some of the expenses reported in the statement of activities do not require the use of current fiscal resources and, therefore, are not reported as expenditures in the governmental funds.

Accrued Post-Employment Benefits and Compensated Absences	\$ (202,164)	
Accrued Interest on the Bonds	<u>(295,371)</u>	(497,535)

CHANGE IN NET POSITION OF GOVERNMENTAL ACTIVITIES		<u>\$ 4,674,094</u>
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LOWER MERION SCHOOL DISTRICT
Statement of Net Position (Deficit)
Proprietary Funds
June 30, 2016

<u>ASSETS</u>	<u>Food Services</u>
Current:	
Investments	\$1,468,523
Other Receivables	64,278
Due from Other Funds	288,173
Due from Other Governments	90,087
Inventories	100,586
TOTAL CURRENT ASSETS	<u>2,011,647</u>
Non-Current:	
Furniture and Equipment	122,263
Less: Accumulated Depreciation	<u>(90,588)</u>
TOTAL NON-CURRENT ASSETS	<u>31,675</u>
 <u>DEFERRED OUTFLOWS OF RESOURCES</u>	
Deferred Outflows of Resources - Pension Plan	<u>385,998</u>
 TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	<u>\$2,429,320</u>
 <u>LIABILITIES</u>	
Current:	
Accounts Payable and Accrued Liabilities	\$ 59,705
Due to Other Funds	905,971
Unearned Revenues	196,926
TOTAL CURRENT LIABILITIES	<u>1,162,602</u>
Long-Term:	
Net Pension Liability	<u>3,798,875</u>
 TOTAL LIABILITIES	4,961,477
 <u>DEFERRED INFLOWS OF RESOURCES</u>	
Deferred Inflows of Resources - Pension Plan	<u>70,537</u>
 <u>NET POSITION (DEFICIT)</u>	
Invested in Capital Assets	31,675
Unrestricted (Deficit)	<u>(2,634,369)</u>
TOTAL NET POSITION (DEFICIT)	<u>(2,602,694)</u>
 TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND NET POSITION (DEFICIT)	<u>\$2,429,320</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Revenues, Expenses and
Changes in Net Position (Deficit)
Proprietary Funds
For the Year Ended June 30, 2016

Operating Revenues:		
Food Service Revenue		\$ 2,514,420
Cost of Sales:		
Inventories - July 1, 2015	\$ 72,374	
Purchases of Food, Milk and Donated Commodities	1,384,245	
COST OF GOODS AVAILABLE FOR SALE	<u>1,456,619</u>	
Less: Inventories - June 30, 2016	<u>100,586</u>	
TOTAL COST OF SALES		<u>1,356,033</u>
GROSS PROFIT		1,158,387
Operating Expenses:		
Payroll	1,164,117	
Employee Benefits	782,189	
Depreciation	12,620	
Other Operating Expenses	25,772	
TOTAL OPERATING EXPENSES	<u>1,984,698</u>	
OPERATING LOSS		(826,311)
Non-Operating Revenues:		
Earnings on Investments	1,728	
Federal Subsidies	580,891	
State Subsidies	238,815	
TOTAL NON-OPERATING REVENUES	<u>821,434</u>	
LOSS BEFORE OPERATING TRANSFERS IN		(4,877)
Other Financing Sources:		
Operating Transfers In		<u>904</u>
INCREASE IN NET POSITION (DEFICIT)		(3,973)
Net Position - July 1, 2015		<u>(2,598,721)</u>
NET POSITION (DEFICIT) - JUNE 30, 2016		<u><u>\$(2,602,694)</u></u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Cash Flows
Proprietary Funds
For the Year Ended June 30, 2016

	<u>Food Services</u>
Cash Flows From Operating Activities:	
Cash Received from Users	\$ 2,526,850
Cash Payments to Employees for Services	(1,273,915)
Cash Payments to Suppliers for Goods and Services	(1,403,740)
NET CASH USED BY OPERATING ACTIVITIES	<u>(150,805)</u>
Cash Flows From Non-Capital Financing Activities:	
State Sources	237,719
Federal Sources	566,148
Operating Transfers In	904
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	<u>804,771</u>
Cash Flows From Investing Activities:	
Purchase of Investments/Deposits to Investment Pools	<u>(653,966)</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	0
Cash and Cash Equivalents - July 1, 2015	<u>0</u>
CASH AND CASH EQUIVALENTS - JUNE 30, 2016	<u>\$ 0</u>
 <u>Reconciliation of Operating Loss to Net Cash Used by Operating Activities:</u>	
Operating Loss	\$ (826,311)
Adjustments to Reconcile Operating Loss to Net Cash Used by Operating Activities:	
Depreciation	12,620
Changes in Assets and Liabilities:	
Receivables	(2,907)
Inventories	(28,212)
Deferred Outflows of Resources	(160,603)
Accounts Payable and Accrued Liabilities	627,211
Deferred Inflows of Resources	(231,488)
Net Pension Liability	443,548
Unearned Revenues	15,337
NET CASH USED BY OPERATING ACTIVITIES	<u>\$ (150,805)</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Fiduciary Net Position
June 30, 2016

<u>ASSETS</u>	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>	<u>Agency Funds</u>
Cash and Cash Equivalents	\$ 0	\$ 0	\$ 459,175
Investments	543,962	133,656	7,930,724
Due from Other Funds	0	0	165
TOTAL ASSETS	<u>\$ 543,962</u>	<u>\$ 133,656</u>	<u>\$ 8,390,064</u>
<u>LIABILITIES</u>			
Payroll Withholdings	\$ 0	\$ 0	\$ 3,579,414
Due to Other Funds	0	0	4,350,483
Due to Student Groups	0	0	460,167
TOTAL LIABILITIES	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 8,390,064</u>
<u>NET POSITION</u>			
Reserved for Scholarships	\$ 0	\$ 133,656	
Reserved for Employee Benefits	543,962	0	
TOTAL LIABILITIES AND NET POSITION	<u>\$ 543,962</u>	<u>\$ 133,656</u>	

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Statement of Changes in Fiduciary Net Position
For the Year Ended June 30, 2016

	<u>Employee Trust</u>	<u>Private- Purpose Trusts</u>
Additions:		
Contributions:		
Gifts and Contributions	\$ 70,664	\$ 0
Investment Income:		
Earnings from Investments	<u>787</u>	<u>405</u>
TOTAL ADDITIONS	<u>71,451</u>	<u>405</u>
Deductions:		
Benefits Paid	30,295	3,000
Investment Management Fees	<u>1,469</u>	<u>0</u>
TOTAL DEDUCTIONS	<u>31,764</u>	<u>3,000</u>
CHANGE IN NET POSITION	39,687	(2,595)
Net Position - July 1, 2015	<u>504,275</u>	<u>136,251</u>
NET POSITION - JUNE 30, 2016	<u>\$ 543,962</u>	<u>\$ 133,656</u>

The accompanying notes are an integral part of this statement.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies

Lower Merion School District's (the District's) financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements (Statements and Interpretations). Governments are also required to follow the pronouncements of the Financial Accounting Standards Board (FASB) issued through November 30, 1989 (when applicable) that do not conflict with or contradict GASB pronouncements. Although the District has the option to apply FASB pronouncements issued after that date to its business-type activities and enterprise funds, the District has chosen not to do so. The more significant accounting policies established in GAAP and used by the District are discussed below.

A. Reporting Entity

The District is governed by an elected Board of Directors. Accounting principles generally accepted in the United States of America require that the financial statements present the District and its component units, entities for which the District is considered to be financially accountable. Blended component units, although legally separate entities, are, in substance, part of the District's operations and so data from these units are required to be combined with data of the primary District. Each discretely presented component unit, on the other hand, is required to be reported in a separate column in the government-wide financial statements to emphasize it is legally separate from the District. Based on the application of these principles, there are no component units presented in the District's financial statements.

B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the District and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported in separate columns in the fund financial statements.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the District considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, franchise taxes, licenses and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. Only a portion of special assessments receivable due within the current fiscal period is considered to be susceptible to accrual as revenue of the current period. All other revenue items are considered to be measurable and available only when cash is received by the District.

The District reports the following major government funds:

General Fund - The General Fund is the District's primary operating fund. It accounts for all financial resources except those required to be accounted for in another fund.

Capital Projects Fund - The Capital Projects Fund is used to account for financial resources to be used for the acquisition or construction of major capital assets other than those financed by enterprise operations.

Capital Reserve Fund - The Capital Reserve Fund is used to account for proceeds of specific revenue sources that are legally restricted to expenditures for future capital projects.

The District reports the following major proprietary funds:

Food Service Fund - The Food Service Fund (an Enterprise Fund) is used to account for the operations of the District's school cafeterias that are financed and operated in a manner similar to a private business enterprise where the intent of the governing body is that the cost of providing goods or services to the school population on a continuing basis will be recovered or financed primarily through user charges.

Additionally, the District reports the following fund types:

Fiduciary Funds - Fiduciary Funds are used to account for assets held by the District in a trustee capacity or as an agent for individuals, private organizations, or other governments. These include private-purpose trust funds and agency funds. Private-purpose trust funds account for resources, including both principal and earnings, which must be expended in accordance with a trust agreement, and are accounted for in essentially the same manner as proprietary funds. Agency funds are purely custodial and thus do not involve measurement of the results of operations.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation (Continued)

Private-sector standards of accounting and financial reporting issued prior to December 1, 1989, generally are followed in both the government-wide and proprietary fund financial statements to the extent that those standards do not conflict with or contradict guidance of the Governmental Accounting Standards Board. School districts also have the option of following subsequent private-sector guidance for their business-type activities and enterprise funds, subject to this same limitation. The District has elected not to follow subsequent private-sector guidance.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services or privileges provided, 2) operating grants and contributions, and 3) capital grants and contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than as program revenues. Likewise, general revenues include all taxes.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Food Service Enterprise Fund are charges to customers for sales and services. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

For purposes of the statements of cash flows of proprietary funds, cash equivalents include all highly liquid debt instruments with original maturities of three months or less.

When both restricted and unrestricted resources are available for use, it is the District's policy to use restricted resources first, then unrestricted resources as they are needed.

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity

Deposits and Investments

Under Section 440.1 of the Public School Code of 1949, as amended, the District is permitted to invest funds consistent with sound business practices in the following types of investments:

Obligations of (a) the United States of America or any of its agencies or instrumentalities backed by the full faith and credit of the United States of America, (b) the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the Commonwealth, or (c) any political subdivision of the Commonwealth of Pennsylvania or any of its agencies or instrumentalities backed by the full faith and credit of the political subdivision.

Deposits in savings accounts or time deposits or share accounts of institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation to the extent that such accounts are so insured and, for any amounts above the insured maximum, provided that approved collateral as provided by law therefore shall be pledged by the depository.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Receivables and Payables

Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "due to/from other funds" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the non-current portion of interfund loans). All other outstanding balances between funds are reported as "due to/from other funds." Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

All trade and property tax receivables are shown net of any allowance for uncollectibles. There is no property tax receivable allowance at June 30, 2016.

Property taxes attach as an enforceable lien on property as of July 1. Taxes are levied on July 1 and payable in the following periods:

- Discount Period - July 1 to August 31 - 2% of Gross Levy
- Flat Period - September 1 to October 31
- Penalty Period - October 31 to Collection - 10% of Gross Levy

Inventories

Inventories in the Food Service Fund consist of government donated commodities which were valued at estimated fair market value at donation, and purchased commodities and supplies, both valued at cost using the first-in first-out (FIFO) method.

Capital Assets

Capital assets, which include property, plant and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the District as assets with an initial, individual cost of more than \$10,000 (amount not rounded) and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed. Interest incurred during construction is not capitalized.

Property, plant, and equipment is depreciated using the straight-line method over the following estimated useful lives:

Land Improvements	20 Years
Buildings	25-50 Years
Furniture and Equipment	5-20 Years
Transportation	10-25 Years

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Deferred Outflows of Resources

The District reports decreases in net assets that relate to future periods as deferred outflows of resources in the government-wide and proprietary funds statement of net position. The District reports deferred outflow of resources related to the deferred amount related to the accumulated decrease in the fair value of hedging derivatives. The District also reports deferred outflows of resources for contributions made to the District's defined benefit pension plans between the measurement date of the net pension liabilities from those plans and the end of the District's fiscal year. No deferred outflows of resources affect the governmental funds financial statements in the current fiscal year.

Deferred Inflows of Resources

The District's statements of net position and its governmental funds report a separate section for deferred inflows of resources. This separate financial statement element reflects an increase in net assets that applies to a future period(s). Deferred inflows of resources are reported in the District's various statements of net position for actual pension plan investment earnings in excess of the expected amounts included in determining pension expense. In its governmental funds, the only deferred inflow of resources is for revenues that are not considered available. The District will not recognize the related revenues until they are available (collected not later than 60 days after the end of District's fiscal year) under the modified accrual basis of accounting. Accordingly, unavailable revenues from property taxes are reported in the governmental funds balance sheet.

Compensated Absences

The District's vacation policy provides that administrative employees may carry over vacation time with the approval of the Superintendent. Employees accrue vacation at rates which vary with length of service or job classification. Vacation must be taken in the year subsequent to when it was earned. If separation of service occurs in the year subsequent to earning, then the unused balance of what was earned in the prior year is paid at separation. The liability at June 30 represents vacation earned at that date that will be taken in the subsequent year.

Accrued Severance Pay

Employees that have completed at least ten years of credited School District service that retire under the normal PSERS guidelines shall be eligible for a severance benefit. The benefit the personnel can receive ranges from \$50 up to \$150 for each day of unused sick leave and is available to pay for medical, dental, vision, life insurance, prescriptions, and long-term care insurance. Severance pay is generally liquidated by the General Fund.

Long-Term Obligations

In the government-wide financial statements and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net position. Bond premiums and discounts are deferred and amortized over the life of the bonds using the straight-line method which approximates the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are expensed in the year incurred in both the government-wide and fund financial statements.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows, of Resources and Net Position or Equity (Continued)

Long-Term Obligations (Continued)

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Bond issuance costs are expensed in the year they are incurred in both the government-wide and fund financial statements.

Government-Wide and Proprietary Fund Net Position

Government-wide and proprietary fund net position are divided into three components:

Invested in Capital Assets, Net of Related Debt - Consists of the historical cost of capital assets less accumulated depreciation and less any debt that remains outstanding that was used to finance those assets.

Restricted for: Capital Projects - Consists of the capital projects fund fund-balance that is restricted by the District for capital outlays.

Unrestricted - Consists of all other net position reported in this category.

Governmental Fund Balances

The District has adopted GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions as of July 1, 2010. The intention of the statement is to provide a more structured classification of fund balance and to improve the usefulness of fund balance reporting to the users of the District's financial statements. The statement establishes a hierarchy for fund balance classifications and the constraints imposed on the uses of those resources.

In the governmental fund financial statements, fund balances are classified as follows:

Nonspendable - Amounts that cannot be spent either because they are in nonspendable form or because they are legally or contractually required to be maintained intact.

Restricted - Amounts that can be used only for specific purposes because of state or federal laws, or externally imposed by grantors or creditors.

Committed - Amounts that can be used only for specific purposes determined by a formal action by the Board of Directors resolution. This includes the budget reserve account. In addition, committed amounts cannot be uncommitted except by removing the constraints through the same type of action.

Assigned - Amounts the District intends to use for a specific purpose. Intent can be expressed by the Board of Directors or by an official or body to which the Board of Directors delegates the authority.

Unassigned - Amounts available for any purpose. Positive amounts are reported only in the General Fund.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 1 - Summary of Significant Accounting Policies (Continued)

D. Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources, and Net Position or Equity (Continued)

Governmental Fund Balances (Continued)

The Board of Directors establishes (and modifies and rescinds) fund balance commitments by passage of a resolution. The District's policy is to first apply expenditure toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances.

NOTE 2 - Budgetary Information

Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America. An annual appropriated budget is adopted for the general fund. All annual appropriations lapse at fiscal year end. Project-length financial plans are adopted for all capital projects funds.

The District follows these procedures in establishing the budgetary data reflected in the financial statements:

1. The Business Manager submits to the School Board a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed expenditures and the means of financing them.
2. Public hearings are conducted at the District offices to obtain taxpayer comments.
3. Prior to July 1, the budget is legally enacted through passage of an ordinance.
4. The Business Manager is authorized to transfer budgeted amounts between departments within any fund; however, any revisions that alter the total expenditures of any fund must be approved by the School Board.
5. Formal budgetary integration is employed as a management control device during the year for the general fund.
6. Budgeted amounts are as originally adopted, or as amended by the School Board.

NOTE 3 - Deposits and Investments

Deposits - At year end, the total carrying amount of the District's checking, savings, and certificates of deposit (including trust and agency funds) was \$15,828,536, and the corresponding bank balance was \$15,860,407.

Custodial Credit Risk - Deposits - Custodial credit risk is the risk that in the event of a bank failure, the District's deposits may not be returned to it. The District does not have a policy for custodial credit risk. Of the bank balance, \$750,000 was covered by federal depository insurance. The remaining balances were uninsured and covered by collateral held by the institution's trust department on a pooled basis not in the name of the District.

Investments - Statutes authorize the District to invest in U.S. Government Agency Bonds, time or share accounts, or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or in certificates of deposit when they are secured by proper bond or collateral, repurchase agreements, state treasurer's investment pools, or mutual funds.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 3 - Deposits and Investments (Continued)

All funds in the Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and Pennsylvania Treasurer's Investment Program are invested in accordance with Section 440.1 of the School Code. These funds operate and are authorized under the Intergovernmental Cooperation Act of 1972. Each school district owns a prorata share of each investment or deposit which is held in the name of the Fund. Certificates of deposit or other fixed-term investments purchased by the District through the Fund's administrator are purchased in the name of the District.

Custodial Credit Risk - Investments - For an investment, custodial credit risk is the risk that in the event of the failure of the counterparty, the District will not be able to recover the value of its investments or collateral security that are in the possession of an outside party. The District has no investment subject to custodial credit risk.

Interest Rate Risk - The District has no formal policy that limits investment maturities as a means of managing its exposure to fair value losses arising from increasing interest rates.

Credit Risk - The District has no investment policy that would limit its investment choices to certain credit ratings. The Pennsylvania School District Liquid Asset Fund, Pennsylvania Local Government Investment Trust, and the Pennsylvania Treasurer's Investment Program have AAA Standard & Poor's credit ratings.

Concentration of Credit Risk - The District investment policy states that unless covered by federal deposit insurance, the aggregate amount of deposits in any financial institution shall not exceed the lesser of two-tenths of 1% of the assets of that institution or \$40,000,000 unless fully collateralized by the assets of the institution pledges in the name of the District at market value.

	<u>Credit Rating</u>	<u>Fair Value</u>
<u>Pooled Investments:</u>		
Pennsylvania School District Liquid Asset Fund:		
General Fund Accounts	AAA	\$ 14,074,860
Capital Reserve Fund Account	AAA	128,743
Food Service Fund Account	AAA	522,952
Trust and Agency Account	AAA	8,064,381
TOTAL		<u>22,790,936</u>
Pennsylvania Local Government Investment Trust:		
General Fund Accounts	AAA	39,098,095
Capital Projects Fund Account	AAA	4,813,780
Capital Reserve Fund Account	AAA	6,907,944
Debt Service Fund Account	AAA	91,449
Food Service Fund Account	AAA	945,571
Trust and Agency Account	AAA	543,961
TOTAL		<u>52,400,800</u>
Pennsylvania Treasurer's Investment Program:		
General Fund Accounts	AAA	276
Capital Reserve Fund Account	AAA	639,045
TOTAL		<u>639,321</u>
TOTAL POOLED INVESTMENTS (CARRIED FORWARD)		<u>\$ 75,831,057</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 3 - Deposits and Investments (Continued)

TOTAL POOLED INVESTMENTS (BROUGHT FORWARD)		\$ 75,831,057
Certificates of Deposit:		
General Fund Accounts	Not Applicable	<u>5,000,000</u>
 TOTAL INVESTMENTS		 <u>\$ 80,831,057</u>

NOTE 4 - Hedging Derivative Instruments

As of June 30, 2016 the District was party to a contract for a derivative instrument. The fair value balance and notional amount of the derivative instrument outstanding at June 30, 2016, classified by type, and the change in fair value of the derivative instrument for the year then ended as reported in the 2016 financial statements is as follows (amounts in thousands):

	<u>Changes in Fair Value</u>		<u>Fair Value at June 30, 2016</u>		<u>Notional</u>
	<u>Classification</u>	<u>Amount</u>	<u>Classification</u>	<u>Amount</u>	
Governmental activities					
Cash flow hedges:					
Pay-fixed interest rate swaps	Deferred outflow of resources	\$ (1,540)	Debt	\$ (14,016)	\$ 71,395

Fair value - The swap had a negative fair value of \$14,016,176 at June 30, 2016. The fair value of the interest rate swap is derived from proprietary models based upon well recognized financial principles and reasonable estimates about relevant future market conditions.

Objectives and terms - As a means of minimizing interest rate fluctuations, the District entered into an interest rate swap in connection with its \$102 million Series of 2009 adjustable rate general obligation bonds. The intention of the swap was to effectively change the District's variable interest rate on the notes to a synthetic fixed rate of 4.041%.

Terms - The swap agreement terminates on April 1, 2027, but will be subject to earlier termination by the School District. The swap's notional amount of \$71,395,000 represents the notes' total balance outstanding as of the effective date of the swap on February 1, 2009 and is structured to match the principal schedule of the notes. Under the swap, the District pays interest at a fixed rate of 4.041% in exchange for the counterparty's agreement to pay interest at a floating rate equal to the Securities Industry and Financial Markets Association (SIFMA) Swap Index Rate which is designed to match the variable market rate on the bonds. The bond's variable-rate (Market Rate) is determined by the remarketing agent in accordance with defined interest rate adjustment dates, interest rate determination or reset dates, and interest rate periods.

Credit risk - As of June 30, 2016, the District was not exposed to credit risk because the swap had a negative fair value. However, should interest rates change and the fair value of the swap become positive, the District would be exposed to credit risk in the amount of the derivative's fair value. The swap counterparty was rated AA by Fitch Ratings and Aa3 by Moody's as of June 30, 2016.

Basis risk - The District is exposed to basis risk on its pay-fixed interest rate swaps because the variable-rate payments received by the District on these hedging derivative instruments are based on a rate or index other than interest rates the District pays on its hedged variable-rate debt, which is remarketed every 30 days. As of June 30, 2016, the SIFMA swap index was .41 percent and the Market Rate on the bonds was .41 percent.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 5 - Taxes Receivable

Taxes receivable as of year end for the District's individual major funds and nonmajor fiduciary funds in the aggregate are as follows:

	<u>General</u>	<u>Nonmajor and Other Funds</u>	<u>Total</u>
Real Estate Taxes	\$ 3,094,484	\$ 0	\$ 3,094,484
Local Services Taxes	39,945	0	39,945
Transfer Taxes	<u>425,665</u>	<u>0</u>	<u>425,665</u>
 NET TAXES RECEIVABLE	 <u>\$ 3,560,094</u>	 <u>\$ 0</u>	 <u>\$ 3,560,094</u>

At the end of the current fiscal year, the District reported deferred inflows of resources, related to unavailable real estate and earned income tax revenue, in the amount of \$2,734,133 in the governmental funds.

NOTE 6 - Interfund Receivables, Payables and Transfers

	<u>Interfund Receivables</u>	<u>Interfund Payables</u>
General Fund	\$ 5,163,973	\$ 3,898,595
Capital Reserve Fund	3,702,738	0
Agency Fund	165	4,350,483
Food Service Fund	<u>288,173</u>	<u>905,971</u>
	 <u>\$ 9,155,049</u>	 <u>\$ 9,155,049</u>
	 <u>Transfer to Other Funds</u>	 <u>Transfer From Other Funds</u>
General Fund	\$ 3,051,790	\$ 0
Capital Reserve	0	3,042,000
Food Service Fund	0	904
Student Activities Fund (Agency Fund)	<u>0</u>	<u>8,886</u>
	 <u>\$ 3,051,790</u>	 <u>\$ 3,051,790</u>

The general fund makes interfund transfers to the food service fund to subsidize food service operations, to the capital reserve fund to provide funds for future capital outlay, and to the student activities fund to provide funds for student extra-curricular activities.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
 June 30, 2016

NOTE 7 - Capital Assets

Capital asset activity for the year ended June 30, 2016 was as follows:

	<u>Beginning Balance</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balance</u>
Governmental Activities:				
Capital Assets:				
Land	\$ 19,643,123	\$ 0	\$ 0	\$ 19,643,123
Land Improvements	2,198,127	376,794	0	2,574,921
Buildings	452,041,113	18,010,992	0	470,052,105
Construction in Progress	11,192,313	7,001,322	(16,658,139)	1,535,496
Furniture and Equipment	7,205,012	1,180,866	(223,174)	8,162,704
Transportation	13,510,437	1,593,933	(1,190,802)	13,913,568
TOTAL CAPITAL ASSETS	<u>505,790,125</u>	<u>28,163,907</u>	<u>(18,072,115)</u>	<u>515,881,917</u>
Accumulated Depreciation for:				
Land Improvements	2,110,307	31,975	0	2,142,282
Buildings	78,240,096	9,154,426	0	87,394,522
Furniture and Equipment	5,934,962	482,519	(223,174)	6,194,307
Transportation	5,395,109	1,056,262	(1,021,692)	5,429,679
TOTAL ACCUMULATED DEPRECIATION	<u>91,680,474</u>	<u>10,725,182</u>	<u>(1,244,866)</u>	<u>101,160,790</u>
GOVERNMENTAL ACTIVITIES CAPITAL ASSETS, NET	<u>\$414,109,651</u>	<u>\$17,438,725</u>	<u>\$(16,827,249)</u>	<u>\$ 414,721,127</u>
Business-Type Activities:				
Capital Assets:				
Machinery and Equipment	\$ 122,263	\$ 0	\$ 0	\$ 122,263
Accumulated Depreciation for:				
Machinery and Equipment	77,968	12,620	0	90,588
BUSINESS-TYPE ACTIVITIES CAPITAL ASSETS, NET	<u>\$ 44,295</u>	<u>\$ (12,620)</u>	<u>\$ 0</u>	<u>\$ 31,675</u>

Depreciation expense was charged to functions/programs of the District as follows:

Governmental Activities - Unallocated	\$ 10,725,182
Business-Type Activities	<u>12,620</u>
TOTAL	<u>\$ 10,737,802</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 8 - Bonds Payable

	<u>Principal Outstanding July 1, 2015</u>	<u>Maturities</u>	<u>Additions (Refinancing)</u>	<u>Principal Outstanding June 30, 2016</u>
General Obligation Note Series of 1989	\$ 19,800,000	\$ 1,900,000	\$ 0	\$ 17,900,000
General Obligation Bonds Series A of 2006	32,405,000	0	(32,405,000)	0
General Obligation Bonds Series of 2007	28,575,000	1,700,000	(26,875,000)	0
General Obligation Bonds Series A & B of 2009	76,320,000	4,925,000	0	71,395,000
General Obligation Bonds Series of 2012	15,495,000	4,980,000	0	10,515,000
General Obligation Bonds Series A of 2012	46,230,000	2,520,000	0	43,710,000
General Obligation Bonds Series of 2013	9,800,000	5,000	0	9,795,000
General Obligation Bonds Series of 2014	9,980,000	5,000	0	9,975,000
General Obligation Bonds Series A of 2015	9,700,000	0	0	9,700,000
General Obligation Bonds Series B of 2015	31,880,000	0	0	31,880,000
General Obligation Bonds Series of 2016	<u>0</u>	<u>0</u>	<u>55,665,000</u>	<u>55,665,000</u>
TOTAL	280,185,000	16,035,000	(3,615,000)	260,535,000
Less: Deferred Amounts:				
Issuance Premium (Discounts)	9,470,360	(2,598,629)	6,389,827	13,261,558
Refunding Deferred Charge	<u>(4,824,445)</u>	<u>484,243</u>	<u>(2,298,654)</u>	<u>(6,638,856)</u>
LONG-TERM DEBT	<u>\$284,830,915</u>	<u>\$13,920,614</u>	<u>\$ 476,173</u>	<u>\$267,157,702</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 8 - Bonds Payable (Continued)

	<u>Current Outstanding Principal</u>
General Obligation Note, Series of 1989. Original principal amount of \$30,000,000, maturing August 1, 2023. The note was advanced by Emmaus General Authority under the Bond Pool Program. Interest is charged at a variable rate equal to the Weekly Rate of the underlying bonds plus .35%. The rate at June 30, 2016 was 1.16%.	\$ 17,900,000
General Obligation Bonds, Series A & B of 2009. Original principal amount of \$102,350,000, maturing April 1, 2027, bearing interest at a variable rate equal to the Weekly Rate of the underlying bonds. The rate at June 30, 2016 was 0.40%.	71,395,000
General Obligation Bonds, Series 2012. Original principal amount of \$30,835,000, maturing May 15, 2018, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	10,515,000
General Obligation Bonds, Series A 2012. Original principal amount of \$47,015,000, maturing November 12, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on May 15 and November 15.	43,710,000
General Obligation Bonds, Series 2013. Original principal amount of \$9,810,000, maturing November 15, 2024, bearing interest from 1.00% to 2.00%. Interest is paid semi-annually on May 15 and November 15.	9,795,000
General Obligation Bonds, Series 2014. Original principal amount of \$9,980,000, maturing November 15, 2025, bearing interest from 2.00% to 2.35%. Interest is paid semi-annually on May 15 and November 15.	9,975,000
General Obligation Bonds, Series A of 2015. Original principal amount of \$9,700,000, maturing September 1, 2034, bearing interest from 3.00% to 3.125% Interest is paid semi-annually on March 1 and September 1.	9,700,000
General Obligation Bonds, Series B of 2015. Original principal amount of \$31,880,000, maturing September 1, 2028, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 1 and September 1.	31,880,000
General Obligation Bonds, Series 2016. Original principal amount of \$55,665,000, maturing September 15, 2032, bearing interest from 2.00% to 5.00%. Interest is paid semi-annually on March 15 and September 15.	<u>55,665,000</u>
TOTAL	<u>\$260,535,000</u>

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 8 - Bonds Payable (Continued)

The annual requirements to amortize all debts outstanding as of June 30, 2016, are as follows:

<u>Year Ended</u>	<u>Interest</u>	<u>Principal</u>	<u>Total</u>
2017	\$ 7,228,078	\$ 15,270,000	\$ 22,498,078
2018	6,810,644	16,525,000	23,335,644
2019	6,173,194	17,415,000	23,588,194
2020	5,607,058	18,920,000	24,527,058
2021	4,973,877	21,155,000	26,128,877
2022-2026	14,911,061	114,115,000	129,026,061
2027-2031	4,412,438	44,900,000	49,312,438
2032-2035	453,178	12,235,000	12,688,178
TOTAL MATURITIES	\$ 50,569,527	\$260,535,000	\$311,104,527

Swap Payments and Associated Debt

Hedging derivative instrument payments and hedged debt - As of June 30, 2016, aggregate debt service requirements of the District's debt and net receipts/payments on associated hedging derivative instruments are as follows. These amounts assume that current interest rates on variable-rate bonds and current reference rates of hedging derivative instruments will remain the same for their term. As these rates vary, interest payments on variable-rate bonds and net receipts/payments on the hedging derivative instruments will vary. Refer to Note 4 for information on derivative instruments.

	<u>Bonds with Associated Derivatives</u>		<u>Interest Rate</u>	<u>Totals</u>
	<u>Principal</u>	<u>Interest</u>	<u>Swap, Net</u>	
2017	\$ 5,135,000	\$ 885,028	\$ 2,602,879	\$ 8,622,907
2018	5,355,000	820,914	2,416,878	8,592,792
2019	5,590,000	754,042	2,222,920	8,566,962
2020	5,840,000	684,226	2,020,460	8,544,686
2021	6,110,000	611,270	1,808,963	8,530,233
2022-2026	35,230,000	1,836,130	5,508,736	42,574,866
2027	8,135,000	110,874	295,382	8,541,256
	<u>\$ 71,395,000</u>	<u>\$ 5,702,484</u>	<u>\$ 16,876,218</u>	<u>\$ 93,973,702</u>

NOTE 9 - Defeased Bonds

As a result of certain bond refundings which require that funds be placed in escrow, the District has defeased bonds. Escrow accounts were established to provide for future debt service on the defeased bonds. Defeased bonds are no longer outstanding under the Pennsylvania Local Government Unit Debt Act. The escrow accounts assets and the liabilities for the defeased debt below are not included in the District's financial statements.

	<u>Call Date(s)</u>	<u>Interest Rates</u>	<u>Outstanding Principal at June 30, 2016</u>
General Obligation Bonds Series A of 2006	9/1/17	4.00 - 4.375%	\$ 32,405,000
General Obligation Bonds Series of 2007	9/1/16 & 9/1/17	3.90 - 5.00%	\$ 58,115,000

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 10 - Accrued Post Employment Benefits and Compensated Absences

	<u>Balance</u> <u>July 1,</u> <u>2015</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance</u> <u>June 30,</u> <u>2016</u>
Accrued Compensated Absences	\$2,152,839	\$ 0	\$ 360,426	\$1,792,413
Accrued Other Post-Employment Benefits	<u>4,441,132</u>	<u>562,590</u>	<u>0</u>	<u>5,003,722</u>
TOTAL	<u><u>\$6,593,971</u></u>	<u><u>\$ 562,590</u></u>	<u><u>\$ 360,426</u></u>	<u><u>\$6,796,135</u></u>

NOTE 11 - Contingent Liabilities

Amounts received or receivable from grantor agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures which may be disallowed by the grantor cannot be determined at this time although the District expects such amounts, if any, to be immaterial.

The District is currently in litigation with former employees of the District regarding wrongful discharge from employment, with taxpayers contesting real estate assessments, and with parents of students regarding educational and disciplinary issues. The amount, if any, of awards or settlements cannot be determined at this time, although the District expects such amounts, if any, to be immaterial.

In August 2016 the District received an injunction from the Court of Common Pleas of Montgomery County arising out of a complaint filed by a resident regarding past and current real estate tax increases. As part of the injunction, the Court has enjoined the District from enforcing or collecting a real estate tax increase for the fiscal year 2016-17 of over 2.4% than was in effect for the prior fiscal year. The District previously adopted a budget for the 2016-17 fiscal year which included a real estate tax increase of 4.44%. On August 31, 2016, the District formally filed an appeal to the Court's decision. The matter was heard by the Commonwealth Court on December 15, 2016. A formal decision is expected within 60-90 days.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 12 - Employee Retirement Systems and Pension Plans

Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Public School Employees' Retirement System (PSERS) and additions to/deductions from PSERS's fiduciary net position have been determined on the same basis as they are reported by PSERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Plan description

PSERS is a governmental cost-sharing multi-employer defined benefit pension plan that provides retirement benefits to public school employees of the Commonwealth of Pennsylvania. The members eligible to participate in the System include all full-time public school employees, part-time hourly public school employees who render at least 500 hours of service in the school year, and part-time per diem public school employees who render at least 80 days of service in the school year in any of the reporting entities in Pennsylvania. PSERS issues a publicly available financial report that can be obtained at www.psers.state.pa.us.

Benefits provided

PSERS provides retirement, disability, and death benefits. Members are eligible for monthly retirement benefits upon reaching (a) age 62 with at least 1 year of credited service; (b) age 60 with 30 or more years of credited service; or (c) 35 or more years of service regardless of age. Act 120 of 2010 (Act 120) preserves the benefits of existing members and introduced benefit reductions for individuals who become new members on or after July 1, 2011. Act 120 created two new membership classes, Membership Class T-E (Class T-E) and Membership Class T-F (Class T-F). To qualify for normal retirement, Class T-E and Class T-F members must work until age 65 with a minimum of 3 years of service or attain a total combination of age and service that is equal to or greater than 92 with a minimum of 35 years of service. Benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service. For members whose membership started prior to July 1, 2011, after completion of five years of service, a member's right to the defined benefits is vested and early retirement benefits may be elected. For Class T-E and Class T-F members, the right to benefits is vested after ten years of service.

Participants are eligible for disability retirement benefits after completion of five years of credited service. Such benefits are generally equal to 2% or 2.5%, depending upon membership class, of the member's final average salary (as defined in the Code) multiplied by the number of years of credited service, but not less than one-third of such salary nor greater than the benefit the member would have had at normal retirement age. Members over normal retirement age may apply for disability benefits.

Death benefits are payable upon the death of an active member who has reached age 62 with at least one year of credited service (age 65 with at least three years of credited service for Class T-E and Class T-F members) or who has at least five years of credited service (ten years for Class T-E and Class T-F members). Such benefits are actuarially equivalent to the benefit that would have been effective if the member had retired on the day before death.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 12 - Employee Retirement Systems and Pension Plans (Continued)

Member Contributions

1. Active members who joined the System prior to July 22, 1983, contribute at 5.25% (Membership Class T-C) or at 6.50% (Membership Class T-D) of the member's qualifying compensation.
2. Members who joined the System on or after July 22, 1983, and who were active or inactive as of July 1, 2001, contribute at 6.25% (Membership Class T-C) or at 7.50% (Membership Class T-D) of the member's qualifying compensation.
3. Members who joined the System after June 30, 2001 and before July 1, 2011, contribute at 7.50% (automatic Membership Class T-D). For all new hires and for members who elected Class T-D membership, the higher contribution rates began with service rendered on or after January 1, 2002.
4. Members who joined the System after June 30, 2011, automatically contribute at the Membership Class T-E rate of 7.5% (base rate) of the member's qualifying compensation. All new hires after June 30, 2011, who elect Class T-F membership, contribute at 10.3% (base rate) of the member's qualifying compensation. Membership Class T-E and T-F are affected by a "shared risk" provision in Act 120 of 2010 that in future fiscal years could cause the Membership Class T-E contribution rate to fluctuate between 7.5% and 9.5% and Membership Class T-F contribution rate to fluctuate between 10.3% and 12.3%.

Employer Contributions

The school districts' contractually required contribution rate for fiscal year ended June 30, 2016 was 25.00% of covered payroll, actuarially determined as an amount that, when combined with employee contributions, is expected to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Contributions to the pension plan from the District were \$28,746,930 for the year ended June 30, 2016.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

At June 30, 2016, the District reported a liability of \$381,089,000 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2015 and the total pension liability used to calculate the net pension liability was determined by rolling forward the System's total pension liability as of June 30, 2014 to June 30, 2015. The District's proportion of the net pension liability was calculated utilizing the employer's one-year reported covered payroll as it relates to the total one-year reported covered payroll. At June 30, 2015, the District's proportion was .008798%, which was an increase of \$44,495,000 from its proportion measured as of June 30, 2014.

For the year ended June 30, 2016, the District recognized pension expense of \$41,596,000. At June 30, 2016, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 12 - Employee Retirement Systems and Pension Plans (Continued)

	Deferred Outflows Of Resources	Deferred Inflows Of Resources
Difference between expected and actual experience	\$ 0	\$ 1,573,000.00
Changes in assumptions	0	0
Net difference between projected and actual investment earnings	9,975,000	771,000
Changes in proportion	0	4,732,000
Difference between employer contributions and proportionate share of total contributions	0	0
Contributions subsequent to the measurement date	28,746,930	0
	<u>\$ 38,721,930</u>	<u>\$ 7,076,000</u>

The deferred outflows of resources related to pensions resulting from District contributions subsequent to the measurement date of \$28,746,930 will be recognized as a reduction of the net pension liability in the year ended June 30, 2016. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in the pension expense as follows:

Year ended June 30:

2016	\$ (1,150,000)
2017	(1,150,000)
2018	(1,150,000)
2019	6,349,000
Total	<u>\$ 2,899,000</u>

Actuarial assumptions

The total pension liability as of June 30, 2015 was determined by rolling forward the System's total pension liability as of the June 30, 2014 actuarial valuation to June 30, 2015 using the following actuarial assumptions, applied to all periods included in the measurement:

- Actuarial cost method - Entry Age Normal - level % of pay
- Investment return - 7.50%, includes inflation at 3.00%
- Salary increases - Effective average of 5.50%, which reflects an allowance for inflation of 3.00%, real wage growth of 1%, and merit or seniority increases of 1.50%
- Mortality rates were based on the RP-2000 Combined Healthy Annuitant Tables (male and female) with age set back 3 years for both males and females. For disabled annuitants the RP-2000 Combined Disabled Tables (male and female) with age set back 7 years for males and 3 years for females.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 12 - Employee Retirement Systems and Pension Plans (Continued)

The actuarial assumptions used in the June 30, 2014 valuation were based on the experience study that was performed for the five-year period ending June 30, 2010. The recommended assumption changes based on this experience study were adopted by the Board at its March 11, 2011 Board meeting, and were effective beginning with the June 30, 2011 actuarial valuation.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

The pension plan's policy in regard to the allocation of invested plan assets is established and may be amended by the Board. Plan assets are managed with a long-term objective of achieving and maintaining a fully funded status for the benefits provided through the pension.

<u>Asset Class</u>	<u>Target Allocation</u>	<u>Long-Term Expected Real Rate of Return</u>
Public markets global equity	22.5%	4.8%
Private markets (equity)	15.0%	6.6%
Private real estate	12.0%	4.5%
Global fixed income	7.5%	2.4%
U.S. long treasuries	3.0%	1.4%
TIPS	12.0%	1.1%
High yield bonds	6.0%	3.3%
Cash	3.0%	0.7%
Absolute return	10.0%	4.9%
Risk parity	10.0%	3.7%
MLPs/Infrastructure	5.0%	5.2%
Commodities	8.0%	3.1%
Financing (LIBOR)	(14.0)%	1.1%
	<u>100%</u>	

The above was the Board's adopted asset allocation policy and best estimates of geometric real rates of return for each major asset class as of June 30, 2015.

Discount rate

The discount rate used to measure the total pension liability was 7.50%. The projection of cash flows used to determine the discount rate assumed that contributions from plan members will be made at the current contribution rate and that contributions from employers will be made at contractually required rates, actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 12 - Employee Retirement Systems and Pension Plans (Continued)

Sensitivity of the District's proportionate share of the net pension liability to changes in the discount rate

The following presents the net pension liability, calculated using the discount rate of 7.50%, as well as what the net pension liability would be if it were calculated using a discount rate that is 1-percentage point lower (6.50%) or 1-percentage point higher (8.50%) than the current rate:

	1% Decrease 6.50%	Current Discount Rate 7.50%	1% Increase 8.50%
District's proportionate share of the net pension liability	\$ 469,728,000	\$ 381,089,000	\$ 306,586,000

Pension plan fiduciary net position

Detailed information about PSERS' fiduciary net position is available in PSERS Comprehensive Annual Financial Report which can be found on the System's website at www.psers.state.pa.us.

NOTE 13 - Other Post-Employment Benefits

The District provides post-retirement health care benefits (medical, dental, prescription, vision) to its administrative personnel who retire under normal PSERS guidelines or elect early retirement at age 55 with 25 years of service. The District contributes toward the cost of single health coverage, and the amount of the contribution is based upon the employee's years of service. The District's contribution rate ranges from 50% for employees with 5 years of service to 100% for employees with 15 or more years of service. The lifetime maximum that the District will pay for a retiree's coverage shall not exceed the employee's highest annual salary while working at the District.

The health insurance plan is a single employer, defined benefit OPEB plan. The medical and prescription drug benefits are administered through Independence Blue Cross. Dental and Vision benefits are administered through Delta Dental and Davis Vision, respectively. Separate financial statements are not issued for the plan. The term life insurance is purchased from PSBA (Pennsylvania School Board Association) Insurance Trust.

Funding Policy

As established by either collective bargaining or school policy, all groups are entitled to receive benefits at retirement until Medicare eligibility age. Spouses and family are included in the coverage. A retiree can elect a higher coverage but the retiree must pay the difference in the premium cost. The District is responsible for funding the balance of the benefits.

As of June 30, 2016 the District has no segregated assets to fund this liability. It is the intention of the District to pay the premium each year as it comes due.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 13 - Other Post-Employment Benefits (Continued)

Funding Progress

As of February 1, 2014, the date of the most recent actuarial report, the actuarial accrued liability for benefits was \$8,691,202, all of which was unfunded. The covered payroll (annual payroll of active employees covered by the plan) was \$101,937,918 and the ratio of the unfunded actuarial accrued liability to the covered payroll was 8.53%.

The projection of future benefit payments for an ongoing plan involves estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplemental information following the notes to the financial statements, presents multiyear trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

Actuarial Methods and Assumptions

Calculations are based on the types of benefits provided under the terms of the substantive plan at the time of the valuation and on the pattern of sharing of costs between the employer and plan members to that point. Calculations reflect a long-term perspective, so methods and assumptions used include techniques that are designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets. In the February 1, 2012 actuarial valuation, the following actuarial assumptions were used:

Interest	4.5%
Actuarial Cost Method	Entry Age Normal
Amortization Period	14 years, Open Period
Salary Increases	An assumption for salary increases is used only for spreading contributions over future pay under the entry age normal cost method. For this purpose, salary increases are composed of a 2.5% cost of living adjustment, 1% real wage growth, and for teachers and administrators a merit increase which varies by age from 2.75 to 0.25%

Annual OPEB Cost and NET OPEB Obligations:

The District's annual other Post-employment benefit (OPEB) cost (expense) is calculated based on the annual required contribution of the employer (ARC). The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities over a period not to exceed 14 years. The following table shows the components of the District's annual OPEB cost for the year, the amount actually contributed to the plan and the changes in the District's OPEB obligation.

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 13 - Other Post-Employment Benefits (Continued)

Annual OPEB Cost and NET OPEB Obligations: (Continued)

	<u>2016</u>
Annual OPEB Cost:	
Normal Cost	\$ 552,089
Amortization of Unfunded Actuarial Accrued Liability	850,178
Interest on Net OPEB Obligation	199,851
Adjustment to ARC	<u>(434,433)</u>
 ANNUAL OPEB COST	 <u>\$ 1,167,685</u>
Net OPEB Obligation:	
Normal OPEB Obligation year beginning July 1	\$ 4,441,132
OPEB Cost for the year ended June 30	1,167,685
Estimated Contributions	<u>(605,095)</u>
 NET OPEB OBLIGATION	 <u>\$ 5,003,722</u>

The District's annual OPEB cost, the percentage of annual OPEB cost contributed, and the net OPEB obligation for the year ended June 30, 2016 and the two preceding years were as follows:

<u>Fiscal Year Ended</u>	<u>Annual OPEB Cost</u>	<u>Percentage of Annual OPEB Cost Contributed</u>	<u>Net OPEB Obligation</u>
June 30, 2014	\$ 1,255,683	58.66%	\$ 3,884,405
June 30, 2015	1,197,090	53.49%	4,441,132
June 30, 2016	1,167,685	51.82%	5,003,722

LOWER MERION SCHOOL DISTRICT
Notes to Financial Statements
June 30, 2016

NOTE 14 - Deficit Net Position

A deficit of \$135,960,143 exists in the District-wide net position as of June 30, 2016 (the net pension deficit for governmental activities as of June 30, 2016 is \$133,357,449 and the net position deficit for business-type activities as of June 30, 2016 is \$2,602,694). The deficit is a result of the District's adoption of Government Accounting Standards Board Statement No. 68 *Accounting and Financial Reporting for Pensions - an Amendment of GASB Statement No. 27*.

NOTE 15 - Fund Balances - General Fund

Nonspendable:		
Prepaid Expenses		\$ 180,286
Committed:		
Future Capital Projects	15,000,000	
Future PSERS Obligations	15,300,000	
Future Postemployment Healthcare Benefits	5,000,000	
Rate Stabilization of Variable Interest Rate Bonds	<u>500,000</u>	35,800,000
Unassigned		<u>20,282,605</u>
TOTAL FUND BALANCES - GENERAL FUND		<u><u>\$ 56,262,891</u></u>

NOTE 16 - Subsequent Events

The District has evaluated subsequent events through December 19, 2016, which represents the date the financial statements were available to be issued.

LOWER MERION SCHOOL DISTRICT
Required Supplementary Information
Budgetary Comparison Schedule
General Fund
For the Year Ended June 30, 2016

	Original Budget	Amended Budget	Actual	Variance with Final Budget - Positive (Negative)
Revenues:				
Local Revenues	\$ 203,892,632	\$ 203,892,632	\$206,518,963	\$ 2,626,331
State Program Revenues	32,333,078	32,333,078	32,328,016	(5,062)
Federal Program Revenues	705,600	705,600	856,565	150,965
TOTAL REVENUES	236,931,310	236,931,310	239,703,544	2,772,234
Expenditures:				
Regular Programs	95,653,682	95,653,682	94,395,229	1,258,453
Special Programs	43,191,298	42,141,298	41,281,448	859,850
Vocational Programs	350,000	610,000	608,022	1,978
Other Instructional Programs	1,458,249	1,198,249	718,232	480,017
Pupil Personnel Services	9,302,571	9,302,571	8,597,398	705,173
Instructional Staff Services	6,474,420	6,124,420	5,589,759	534,661
Administrative Services	12,980,919	13,080,919	13,052,231	28,688
Pupil Health	3,951,303	3,851,303	3,400,780	450,523
Business Services	1,344,848	1,344,848	1,263,142	81,706
Operation and Maintenance of Plant Services	19,205,633	18,105,633	17,372,311	733,322
Student Transportation Services	12,156,308	13,256,308	13,203,694	52,614
Central and Other Support Services	6,391,745	6,741,745	6,493,697	248,048
Student Activities	4,986,985	4,981,985	4,714,291	267,694
Community Services	197,500	202,500	198,566	3,934
Debt Service	27,799,104	25,799,104	25,609,550	189,554
TOTAL EXPENDITURES	245,444,565	242,394,565	236,498,350	5,896,215
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(8,513,255)	(5,463,255)	3,205,194	8,668,449
Other Financing Uses:				
Budgetary Reserve	(800,000)	(800,000)	0	800,000
Refunds of Prior Years Revenues	0	0	(155,738)	(155,738)
Interfund Transfers Out	(22,000)	(3,072,000)	(3,051,790)	20,210
Sale of Fixed Assets	0	0	2,890	2,890
TOTAL OTHER FINANCING USES	(822,000)	(3,872,000)	(3,204,638)	667,362
NET CHANGE IN FUND BALANCES	(9,335,255)	(9,335,255)	556	9,335,811
Fund Balance - July 1, 2015	55,921,794	56,262,335	56,262,335	0
FUND BALANCE - JUNE 30, 2016	\$ 46,586,539	\$ 46,927,080	\$ 56,262,891	\$ 9,335,811

LOWER MERION SCHOOL DISTRICT
Schedule of Post Employment Benefit Obligation Funding Progress
For the Year Ended June 30, 2016

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets</u>	<u>Actuarial Accrued Liability (AAL)</u>	<u>Unfunded AAL (UAAL)</u>	<u>Funded Ratio</u>	<u>Covered Payroll</u>	<u>UAAL as a Percentage of Covered Payroll</u>
February 1, 2010	\$ 0	\$ 8,953,608	\$ 8,953,608	0%	91,364,323	9.80%
February 1, 2012	0	8,920,298	8,920,298	0%	93,679,636	9.52%
February 1, 2014	0	8,691,202	8,691,202	0%	101,937,918	8.53%

LOWER MERION SCHOOL DISTRICT
 Schedule of the District's Proportionate Share of the Net Pension Liability
 For the Year Ended June 30, 2016

<u>Year Ended</u>	<u>District's Proportion of the Net Pension Liability (Asset)</u>	<u>District's Proportionate Share of the Net Pension Liability (Asset)</u>	<u>District's Covered Payroll</u>	<u>Net Pension Liability (Asset) as a Percentage of Covered Payroll</u>	<u>Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
June 30, 2014	0.8504%	\$ 336,594,000	\$ 108,521,471	310.16%	-41.78%
June 30, 2015	0.8798%	\$ 381,089,000	\$ 113,197,880	336.66%	-35.68%

LOWER MERION SCHOOL DISTRICT
Schedule of the District's Pension Contributions
For the Year Ended June 30, 2016

<u>Year Ended</u>	<u>Contractually Required Contribution</u>	<u>Contributions in Relation to the Contractually Required Contribution</u>	<u>Contribution Excess/ (Deficiency)</u>	<u>District's Covered Payroll</u>	<u>Contributions as a Percentage of Covered Payroll</u>
June 30, 2014	\$ 16,941,000	\$ (16,941,000)	0	\$ 108,521,471	15.61%
June 30, 2015	22,717,000	(22,717,000)	0	113,197,880	20.07%

Exhibit F

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES,

V.

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT.

APPELLEES' MOTION TO TAKE JUDICIAL NOTICE OF PENNSYLVANIA
DEPARTMENT OF EDUCATION LETTER DATED MAY 6, 2019 AND
OFFICIAL STATEMENTS OF PENNSYLVANIA DEPARTMENT OF
EDUCATION DIVISION OF SUBSIDY DATA AND ADMINISTRATION
CHIEF GIVEN TO NBC NEWS

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Attorney for Appellees/Pro Se

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ARTHUR ALAN WOLK, PHILIP BROWNDIES	:	
and CATHERINE MARCHAND,	:	
Appellees	:	
	:	
v.	:	
	:	No. 1465 CD 2016
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Appellant	:	

ORDER

NOW, _____, 2019, upon consideration of the Appellees’ Motion to Take Judicial Notice of the Pennsylvania Department of Education Letter Dated May 6, 2019 and Official Statements of Pennsylvania Department of Education Division of Subsidy Data and Administration Chief Given to NBC New, the Court GRANTS the relief requested in the Motion.

It is ORDERED and DECREED that

1. The Court takes judicial notice of the Pennsylvania Department of Education letter dated May 6, 2019 attached to Appellees’ Motion as Exhibit A.
2. The Court takes judicial notice of the matters stated within the Pennsylvania Department of Education letter dated May 6, 2019 attached to Appellees’ Motion as Exhibit A.

3. The Court takes judicial notice of the oral statements of the Pennsylvania Department of Education Chief of the Division of Subsidy Data and Administration, Mr, Benjamin Hamft, given to NBC News, published on May 6, 2019, contained in the link in Appellees' Motion, paragraph 8, note 2, and whose transcript is attached to Appellees' Motion as Exhibit B.

J.

Appellees file this Motion to Take Judicial Notice and, in support thereof, they rely upon the accompanying Memorandum of Law, the two attached exhibits and the Verification of Arthur Alan Wolk, which are all incorporated by reference herein and they aver as follows:

1. Title 225 of the Pennsylvania Code, Section 201 sets forth the criteria for “Judicial Notice of Adjudicative Facts.” The Court may take judicial notice of a fact that is “not subject to reasonable dispute” because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” 225 Pa. Code § 201(b).

2. The Court “**must** take judicial notice if a party requests it and it is supplied with the necessary information.” 225 Pa. Code § 201(c) (emphasis added).

3. The Court may take judicial notice without notice to a party, though if a party makes a timely request, it is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. 225 Pa. Code § 201(e).

4. The Court may take judicial notice “at any stage of the proceeding.” 225 Pa. Code § 201(d). Appellate Courts are to take judicial notice of extra-record materials where it is appropriate to do so and where notice could not have been taken by the trial court. *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Commw. 2017).

5. In addition to facts, the Court may take judicial notice of entire documents. *Thomas v. Grimm*, 155 A.3d at 134 (taking judicial notice of an entire

document, a revised Code of Conduct, which was published after the trial court's record was certified).

6. The Pennsylvania Department of Education sent a letter dated May 6, 2019 which contains adjudicative facts that occurred after the trial court's record was certified for the present appeal and the accuracy of this document cannot be reasonably disputed. The letter is on Department of Education letterhead and signed by an official who has authority to act on behalf of the Department. A true and correct copy of the Department of Education's May 6, 2019 letter is attached at Exhibit A. The Court "must" take judicial notice of the letter and the adjudicative facts contained therein. 225 Pa. Code § 201(c).

7. The Pennsylvania Department of Education's May 6, 2019 letter states that

When reviewing a school district's request for a referendum exception, Act 1 **does not permit the Department to substantively review proposed budgets and evaluate other financial data to determine whether there are alternative mechanisms that a school district could utilize to balance its proposed budget.** The Department's role in approving referendum exceptions is **purely ministerial** and if the two elements above are satisfied, then a school district request for a referendum exception **must be granted.** Furthermore, there is no mechanism for the Department to reverse an already approved request.

(Ex. A at page 1 paragraph 3).¹

¹ "Act 1" is defined as the "Special Session Act 1 of 2006." (Ex. A page 1 paragraph 1)

8. In addition, the Pennsylvania Department of Education Chief of the Division of Subsidy Data and Administration, Benjamin Hanft, gave an interview to the news outlet NBC10 Philadelphia which was published on May 6, 2019 and is available on the internet.² A written transcript of the news clip and interview is attached to this Motion as Exhibit B (the “interview”).

9. During the interview, Mr. Hanft was acting as an official representative of the Department of Education, and the video of that interview shows Mr. Hanft in front of his office at the Department of Education on Commonwealth property. The news crew was invited onto Commonwealth property to conduct the interview. Mr. Hanft stated in the interview that the school district superintendent certifies to accuracy of the data sent to the Department of Education, and the Department cannot say no under the law. (Ex. B at 4:6-5:2). In addition, Mr. Hanft stated:

MITCH BLACHER: “Who is checking to make sure that the information that the school district sends you is accurate?”

BEN HANFT: “The school district superintendent certifies to the Department the accuracy of the data.”

MITCH BLACHER (Voiceover): If districts submit inaccurate information, taxpayers may never know.

MITCH BLACHER: “What’s the penalty if that certification is wrong?”

MR. HANFT: “There’s nothing as far as I know.”

(Ex. B at 4:21-5:2).

² <https://www.nbcphiladelphia.com/investigations/School-Districts-Stockpiling-Huge-Rainy-Day-Funds-Philadelphia-509550082.html> last accessed May 11, 2019

10. The interview contains adjudicative facts that were published after the trial court's record, and the accuracy of the interview and its transcript cannot be reasonably disputed. The Court "must" take judicial notice. 225 Pa. Code § 201(c).

11. Both the letter and the interview address adjudicative facts because the Appellant and the *amici* have both falsely contended that it is the Department of Education -- and only the Department -- that determines whether to approve incremental tax levies above the statutory amount. (Appellant Supp. Brief at pp. 15-17). However, the Department now states in the attached letter and interview that **it makes no such determination.** (Exs. A, B). Instead, the Department approves all applications merely as a ministerial act! (Ex. A). And, it is the school district itself that verifies the truth of the information sent to the Department, with zero penalty for false submissions. (Exs. A, B).

12. The Appellant and its *amici* know the process because they have used it for a decade to stockpile tens of millions of dollars in cash, and their attorneys have stretched the bounds of Professional Conduct Rule 3.3 by (to be generous) misstating material facts to the trial court and again to this Court. (*See e.g.* Appellant Supp. Brief at p. 40) ("Where (as here) the criticism is aimed at the Department that approved the exceptions, following the statutory process is the only way that the persons who actually took the challenged actions can explain or defend them.") As the newly published letter and interview make clear, the actions that are challenged

are the false reporting and fake accounting of the School District, not the ministerial rubber stamp of the Department. (Exs. A, B).

13. The Appellant's presentation of the case itself misstates material facts by urging that the Department of Education made them do it. (Appellant Supp. Brief at p. 3). The school district falsely presents the controversy this way:

IV. Statement of the Questions Involved

1. Can a Court of Common Pleas invalidate the Department of Education's approval of tax increases under Act 1's referendum exceptions for pension and special education obligations?

The Court of Common Pleas answered this question in the affirmative.

(Appellant Supp. Brief at p. 3).

14. This Court should take judicial notice of the Pennsylvania Department of Education's merely ministerial role in school district taxation decisions, the letter from Mr. Hanft on Department of Education letterhead, and his official statements in the NBC interview. (Exs. A, B).

15. Since this revelation by the Department of Education makes the arguments of Appellant and that of its supplicant *amici* utterly devoid of legal or factual foundation, Wolk and the other Appellees must prevail on this issue.

WHEREFORE Appellees respectfully request this Honorable Court to take judicial notice of the letter by the Pennsylvania Department of Education dated May 6, 2019 and the televised interview by the Department of Education's official of the

same date with consequences for the Appellant and its *amici* to be addressed by this Court's Merits Panel at oral argument *sec. leg.*

Dated: May 14, 2019

Respectfully submitted:

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Attorney for Appellees/Pro Se

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT

V.

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

MEMORANDUM OF LAW IN SUPPORT OF APPELLEES' MOTION TO
TAKE JUDICIAL NOTICE OF PENNSYLVANIA DEPARTMENT OF
EDUCATION LETTER DATED MAY 6, 2019 AND OFFICIAL STATEMENTS
OF PENNSYLVANIA DEPARTMENT OF EDUCATION DIVISION OF
SUBSIDY DATA AND ADMINISTRATION CHIEF GIVEN TO NBC NEWS

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. RELIEF REQUESTED1

III. BASIS FOR THIS MOTION.....2

IV. LEGAL ARGUMENT3

V. CONCLUSION.....5

TABLE OF AUTHORITIES

Cases

Thomas v. Grimm, 155 A.3d 128, 134 (Pa. Commw. 2017)5, 6

Rules

Pa. R.A.P. 19215

Regulations

225 Pa. Code § 201 4, 5, 6

I. INTRODUCTION

Appellees file this Motion to Take Judicial Notice of the official position of the Pennsylvania Department of Education's ministerial role in rubber stamping a school district's application to exceed the statutory amount for tax increases, which confirms that the Department of Education does nothing to confirm the veracity of a school district's statements, submissions or accounting when **automatically approving** a school district's request for a tax increase that exceeds the statutory amount.

The information that Appellees supply with this Motion (1) can accurately and readily determined from sources whose accuracy cannot reasonably be questioned; and (2) notice could not have been taken by the trial court because the Department's statements were published and publicized on May 6, 2019.

II. RELIEF REQUESTED

Appellees respectfully request:

1. That the Court takes judicial notice of the Pennsylvania Department of Education letter dated May 6, 2019 attached to Appellees' Motion as Exhibit A.

2. That the Court takes judicial notice of the matters stated within the Pennsylvania Department of Education letter dated May 6, 2019 attached to Appellees' Motion as Exhibit A.

3. That the Court takes judicial notice of the substance of the oral statements of the Pennsylvania Department of Education Chief of the Division of Subsidy Data and Administration, Mr. Benjamin Hanft, given to NBC News, published on May 6, 2019, contained in the link in Appellees' Motion, paragraph 8, note 2, and whose transcript is attached to Appellees' Motion as Exhibit B.

III. BASIS FOR THIS MOTION

The basis for this motion is newly published official statements of the Pennsylvania Department of Education, which include:

1. An official letter on Department letterhead dated May 6, 2019 that states the Department's ministerial duty to rubber stamp a school district's application for a tax increase that exceeds the statutory amount and does not permit the Department to substantively review or evaluate a school district's submissions. (Ex. A).

2. Official oral statements given by a Department official to NBC news,³ published on May 6, 2019, which confirms that a school district certifies the accuracy of the data that it submits to the Department, and if inaccurate data is submitted, there is no penalty for an improper certification of data, nor a requirement to report to the taxpayers. (Ex. B at 4:21-5:2).

³ <https://www.nbcphiladelphia.com/investigations/School-Districts-Stockpiling-Huge-Rainy-Day-Funds-Philadelphia-509550082.html> last accessed May 11, 2019

3. The attached Verification of Arthur Alan Wolk, which attaches and authenticates Exhibits A and B.

IV. LEGAL ARGUMENT

The Pennsylvania Code sets forth the requirements for a Court to take Judicial Notice. 225 Pa. Code § 201. Section 201 states:

Judicial Notice of Adjudicative Facts

- (a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) *Taking Notice.* The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) *Timing.* The court may take judicial notice at any stage of the proceeding.
- (e) *Opportunity to Be Heard.* On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) *Instructing the Jury.* The court must instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

225 Pa. Code § 201.

When a case is on appeal, generally an appellate court may consider only the facts that have been certified in the record on appeal, and extra-record documents cannot become part of the record on appeal merely by appending them to a brief. *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Commw. 2017) (citing Pa. R.A.P. 1921). However, appellate courts may take notice of extra record materials where (1) it is “appropriate to do so” and (2) “where notice could not have been taken by the trial court.” *Id.* (citation omitted). When considering whether it is “appropriate” to take judicial notice, the appellate court looks to the requirements of 25 Pa. Code § 201(b), which ensure that the fact to be noticed “is not subject to reasonable dispute” *Id.* at 133.

The *Thomas* case arose out of a whistleblower claim by a former judicial employee against the court administrator and others. *Id.* at 129-130. After the proceedings in the trial court were complete, the court system revised the employee Code of Conduct, and those revisions were material to the appellant’s argument. *Id.* at 133. On appeal, this Court took “judicial notice of the revised Code of Conduct, the accuracy of which is undisputable and which occurred after the common pleas certified the record.” *Id.* at 134. The revised Code of Conduct was material to the argument because the previous version contained references to the Whistleblower Law and the revised version did not. *Id.* This Court took judicial notice of the entire document. *Id.*

This Court should take judicial notice of the Department of Education's official letter and the official statements of its Chief of the Division of Subsidy Data and Administration. (Exs. A, B). There cannot be a reasonable dispute about the facts contained within these documents because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. 225 Pa. Code § 201(b); (Verification Wolk); (Exs. A, B). When a party requests the court take judicial notice and the necessary information is supplied, the Court must take judicial notice. 225 Pa. Code § 201(c)(2).

V. CONCLUSION

This Court should take judicial notice of the adjudicative facts contained within the letter and official statements of Pennsylvania Department of Education officials because they occurred after the Common Pleas record was certified for appeal, and they cannot be subject to reasonable dispute because they originate from a source whose accuracy cannot be reasonably questioned.

Dated: May 14, 2019

Respectfully submitted:

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arthurwolk@airlaw.com

Attorney for Appellees/Pro Se

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 14, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)

**VERIFICATION OF ARTHUR ALAN WOLK IN SUPPORT
OF APPELLEES' MOTION TO TAKE JUDICIAL NOTICE**

Arthur Alan Wolk states that he is a Plaintiff in this action, that he takes this verification as counsel for the Plaintiffs/Appellees and for his law firm, and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

1. On about May 7, 2019 I became aware of a letter that the Pennsylvania Department of Education sent to Mr. Raymond F. Clarke via email and First Class Mail. The letter is dated May 6, 2019 and it is signed by Mr. Benjamin T. Hanft, Chief of the Division of Subsidy Administration a/k/a the Division of Subsidy Data and Administration.

2. A true and correct copy of the Pennsylvania Department of Education's letter is attached to this Verification, and incorporated into Appellees' Motion and Memorandum of Law as "Exhibit A."

3. On about May 9, 2019 I became aware that Mr. Hanft, the aforementioned Chief of the Department of Education's Division of Subsidy Administration, made official statements during an interview on NBC 10 that first aired on May 6, 2019.

4. I have viewed the news footage of Mr. Hanft's statements to NBC 10 which are available online at this web link:

[https://www.nbcphiladelphia.com/investigations/School-Districts-Stockpiling-Huge-Rainy-Day -Funds Philadelphia-509550082.html](https://www.nbcphiladelphia.com/investigations/School-Districts-Stockpiling-Huge-Rainy-Day-Funds-Philadelphia-509550082.html)

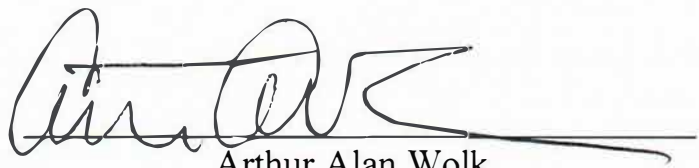
5. I engaged a Pennsylvania Certified Court Reporter to transcribe the statements in the NBC 10 news clip that is available online at the link above.

6. A true and correct copy of the Pennsylvania Certified Court Reporter's transcript of the NBC 10 interview is attached to this Verification and incorporated into Appellees' Motion and Memorandum of Law as "Exhibit B."

7. None of the information in Exhibit A, Exhibit B, or the web link listed in paragraph four, above, was available for introduction into the record in the court below.

8. The certified record from the court below does not contain the information contained in Exhibit A, Exhibit B, or the web link listed in paragraph four.

The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Arthur Alan Wolk

Date: May 14, 2019

Exhibit A



May 6, 2019

Via First-Class Mail and E-mail

Raymond F. Clarke
1564 Overlook Place
Malvern, PA 19355
raymond.clarke@outlook.com

Re: Financial Complaint/Protest

Dear Mr. Clarke,

I am writing in response to your letter dated April 18, 2019 and received on April 22, 2019, a copy of which is enclosed. The Pennsylvania Department of Education ("Department") has reviewed your concern relating to Tredyffrin-Easttown School District's request for a referendum exception under Special Session Act 1 of 2006 ("Act 1").

Initially, it is critical to understand the Department's role in the referendum exception process. The Department is required by law to approve a school district's referendum exception request if a review of its proposed budget demonstrates that (1) the revenue raised by the allowable increase under the school district's index is insufficient to balance the proposed budget and (2) the insufficient funds to balance the proposed budget is due to one or more of the qualifying expenditures listed in section 333(f). See 53 P.S. § 6926.333(f)(1), (j)(3). Furthermore, the Department must rule on a school district's request no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year, in this case no later than March 27, 2019. See 53 P.S. §6926.333 (j)(5)(i)

When reviewing a school district's request for a referendum exception, Act 1 does not permit the Department to substantively review proposed budgets and evaluate other financial data to determine whether there are alternative mechanisms that a school district could utilize to balance its proposed budget. The Department's role in approving referendum exceptions is purely ministerial and if the two elements above are satisfied, then a school district request for a referendum exception must be granted. Furthermore, there is no mechanism for the Department to reverse an already approved request.

In light of the foregoing, the Department considers this matter resolved, and no further action is necessary. See, *Apple v. Commonwealth, Dep't of Ins.*, 431 A.2d 1183, 1185 (Pa. Cmwlth. Ct. 1981) (Agency action in response to complaints is discretionary, and not a matter of right).

Sincerely,

A handwritten signature in black ink that reads "Benjamin T. Hanft".

Benjamin T. Hanft, Chief
Division of Subsidy Administration
Bureau of Budget and Fiscal Management

Enclosure

cc: Dr. David Volkman, Executive Deputy Secretary, PDE (via E-mail w/ enclosure)
Dr. Richard Gusick, Superintendent (via First-Class & E-mail w/ enclosure)
Tredyffrin-Easttown School Board (via First-Class & E-mail w/ enclosure)
Michael Heaberg (via First-Class & E-mail w/ enclosure)
Patricia L. Benson (via First-Class & E-mail w/ enclosure)
Neal Colligan (via First-Class & E-mail w/ enclosure)

Exhibit B

1
2 **TRANSCRIPTION OF NBC10 INVESTIGATORS NEWS REPORT**
3 **PUBLISHED, MONDAY, MAY 6, 2019**
4 **CREDIT MITCH BLACHER**

5 - - -

6 MITCH BLACHER (Voiceover): After his
7 kids moved out, Ray Clark thought his
8 retirement would be quiet. But when he's not
9 clearing brush in Chester County, he's making
10 noise at the Tredyffrin East town school board
11 meetings.

12 MR. CLARK: "That's just wrong."

13 MITCH BLACHER (Voiceover): Clark
14 wondered why the school board kept raising his
15 taxes, especially when Department of Education
16 records show the district had \$32.7 million in
17 its bank account.

18 MR. CLARK: "They invent reasons to
19 keep a lot of money."

20 MARK BLACHER (Voiceover): The district
21 now acknowledges a \$1.3 million mistake that
22 allowed it to raise taxes.

23 UNIDENTIFIED SPEAKER: "We have a lot
24 more work to be done."

25 MITCH BLACHER (Voiceover): While the

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board is working on correcting the overestimation, we looked into how it happened.

MITCH BLACHER: "In Pennsylvania there is a law that is supposed to protect taxpayers. Before a school district can raise your taxes and fill its savings account above a certain cap, it first has to get permission from the State Department of Ed. The cap only gets lifted when the school district tells the Department of Ed that it needs more money. Then it gets more taxes."

MITCH BLACHER (Voiceover): When we looked at all 500 Pennsylvania public school districts' budgets, we discovered the cap gets raised a lot. In the last decade 363 school districts raised taxes. 348 did it with at least \$1 million in a Rainy Day Fund.

In Montgomery County the Springfield Township School District raised taxes ten years in a row.

MITCH BLACHER: "Mitch Blacher with NBC 10."

MS. HACKER: "Hi Mitch, how are you."

MITCH BLACHER: "Nice to see you."

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MITCH BLACHER: (Voiceover): But Superintendent Nancy Hacker wouldn't talk about why taxes here kept climbing, despite \$24-1/2 million sitting in the district's savings account. No school district has more of its budget in the bank.

MS. HACKER: "You have all the information. We're done. Thank you."

MITCH BLACHER (Voiceover): The business manager tells us the district is building a new elementary school, buying new buses and from the street you can see work being done to update the high school. But the board and superintendent wouldn't give specific reasons for a decade of tax increases.

MS. HACKER: "Thank you. We're done."

MS. STEFANO: "They're taking money out of your pocket that could be used for other things...."

MITCH BLACHER (Voiceover): Jennifer Stefano and the fiscally conservative think tank Commonwealth Foundation have for years questioned how Pennsylvania schools tax citizens. She says the examples we're

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highlighting show a need for oversight and transparency.

MS. STEFANO: "There's no accountability..."

MR. HANFT: "We approve the amounts that a school district can raise taxes."

MITCH BLACHER (Voiceover): Ben Hanft runs the Department of Education's Subsidy Data and Administration Division.

MITCH BLACHER: "Do you ever say no?"

MR. HANFT: "The way the law works, we can't."

MITCH BLACHER (Voiceover): Our investigation found it's not a person at the Department of Education but a computer program that signs off on your tax increase. The program doesn't consider how much money is in a district's account or how many times taxes have been raised.

MITCH BLACHER: "Who is checking to make sure that the information that the school district sends you is accurate?"

BEN HANFT: "The school district superintendent certifies to the Department the

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accuracy of the data."

MITCH BLACHER (Voiceover): If districts submit inaccurate information, taxpayers may never know.

MITCH BLACHER: "What's the penalty if that certification is wrong?"

MR. HANFT: "There's nothing as far as I know."

MITCH BLACHER (Voiceover): Taxpayers in Ray Clark's district likely won't get their money back, but the school board is considering ways to fix its tax mistake.

MITCH BLACHER: "The Department of Education says it only manages the process to raise taxes in a school district. The department says it has no oversight ability or authority to audit a school district's finances.

"For the investigators, I'm Mitch Blacher, NBC-10 News."

- - -

CERTIFICATE OF SERVICE

I, Arthur Alan Wolk, hereby certify that on May 14, 2019, I am serving by First Class Mail, postage prepaid, the foregoing Motion to Take Judicial Notice, which service satisfies the requirements of Pa.R.A.P. 121.

Michael D. Kristofco, Esq.
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*Counsel for Amicus Curiae
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THE WOLK LAW FIRM

By: /s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)
Attorney for Appellees/Pro

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, : 1465 CD 2016
and Catherine Marchand :
v. :
The School District of Lower Merion, :
Appellant :

PROOF OF SERVICE

I hereby certify that this 14th day of May, 2019, I have served the attached document(s) to the persons on the date(s)
and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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Service Method: eService
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Phone: 215--98-8-2907
Representing: Appellant School District of Lower Merion

Served: Dorothy Alicia Hickok
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Email: alicia.hickok@dbr.com
Service Date: 5/14/2019
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Phone: 215-988-3364
Representing: Appellant School District of Lower Merion

Served: Michael D. Kristofco
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Email: mkristofco@wispearl.com
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Blue Bell, PA 19422
Phone: 610- 82-5-8400
Representing: Appellant School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

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Amicus Curiae Pennsylvania Association of School Business Officials

Served: Pennsylvania Defense Institute
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Email: jjhare@mdwccg.com
Service Date: 5/14/2019
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Representing: Amicus Curiae Pennsylvania Defense Institute

Served: Stuart Lee Knade
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Email: stuart.knade@psba.org
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Representing: Amicus Curiae Pennsylvania School Boards Association, Inc.

Served: Thomas W. Scott
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Amicus Curiae Pennsylvania State Education Association

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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Representing: Amicus Curiae Pennsylvania Association of School Administrators
Amicus Curiae Pennsylvania Association of School Administrators

/s/ Arthur A. Wolk

(Signature of Person Serving)

Person Serving: Wolk, Arthur A.
Attorney Registration No: 002091
Law Firm: The Wolk Law Firm
Address: 1710-12 Locust Street
Philadelphia, PA 19103
Representing: Appellee Browndies, Philip
Appellee Marchand, Catherine
Appellee Wolk, Arthur Alan

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**SCHOOL DISTRICT OF LOWER MERION'S
ANSWER TO PLAINTIFFS-APPELLEES'
MOTION TO TAKE JUDICIAL NOTICE**

Alfred W. Putnam, Jr., Pa. ID No. 28621
D. Alicia Hickok, Pa. ID No. 87604
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*Counsel for Appellant
School District of Lower Merion*

Appellant The School District of Lower Merion (the “District”), by and through its undersigned counsel, now answers the corresponding numbered paragraphs in Mr. Wolk’s Motion to Take Judicial Notice:

1. The averments of this paragraph state legal conclusions to which no response is required. To the extent a response is required, the District notes that 225 Pa. Code § 201 is a section of the Pennsylvania Code and therefore speaks for itself; Mr. Wolk’s characterizations of it are denied.

2. The averments of this paragraph state legal conclusions to which no response is required. To the extent a response is required, the District notes that 225 Pa. Code § 201(c) is a section of the Pennsylvania Code and therefore speaks for itself; Mr. Wolk’s characterizations of it are denied.

3. The averments of this paragraph state legal conclusions to which no response is required. To the extent a response is required, the District notes that 225 Pa. Code § 201 is a section of the Pennsylvania Code and therefore speaks for itself; Mr. Wolk’s characterizations of it are denied.

4. The averments of this paragraph state legal conclusions to which no response is required. To the extent a response is required, the District notes that 225 Pa. Code § 201 is a section of the Pennsylvania Code and that *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Cmwlth. 2017), is a decision of this Court, both of which speak for themselves; Mr. Wolk’s characterizations of them are denied.

5. The averments of this paragraph state legal conclusions to which no response is required. To the extent a response is required, the District notes that this Court's decision in *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Cmwlth. 2017), speaks for itself; Mr. Wolk's characterization of it is denied.

6. The Department of Education's May 6, 2019 letter is a writing that speaks for itself, and Mr. Wolk's characterizations of it are denied. By way of further response, Mr. Wolk's assertion that this Court "'must' take judicial notice of the letter and the adjudicative facts therein" is a legal conclusion as to which no response is required.

7. The Department of Education's May 6, 2019 letter is a writing that speaks for itself, and Mr. Wolk's characterizations of it are denied.

8. The video referenced in this paragraph is an audiovisual recording that speaks for itself, and Mr. Wolk's characterizations of it are denied. The District lacks sufficient firsthand information regarding the accuracy of the transcription referenced in this paragraph to respond to Mr. Wolk's averments concerning that transcription.

9. The video referenced in this paragraph is an audiovisual recording that speaks for itself, and Mr. Wolk's characterizations of it are denied.

10. The averments of this paragraph state legal conclusions to which no response is required.

11. The averments of this paragraph (a) state legal conclusions to which no response is required; and (b) characterize a document and an audiovisual recording that speak for themselves. By way of further response, the District expressly denies Mr. Wolk’s assertion that it is “fals[e]” that “it is the Department of Education—and only the Department—that determines whether to approve incremental tax levies above the statutory amount.” The exhibits to Mr. Wolk’s application demonstrate no such thing. As the District has explained in its briefs, the statutory scheme enacted by the General Assembly *does* assign to the Department of Education the responsibility for reviewing and approving or rejecting individual school districts’ exceptions applications. LMSD Supp. Br. at 14-17; *see also* 53 P.S. 6926.333(j) (“A school district that seeks to increase the rate of tax due to an expenditure under subsection (f)(2)(iii) or (v) or (n) shall obtain the approval of the department before imposing the tax increase.”). Mr. Wolk’s assertion that “the Department approves all applications merely as a ministerial act” is also denied because it is false, as the District has pointed out before. *See* LMSD Supp. Br. at 18-19. The Department issues a report every year setting forth its disposition of school district requests for funding through one or more of the exceptions authorized by Act 1. Those reports show that the Department regularly refuses to grant the full amount of funding requested by a district. *See* Pa. Dep’t of Educ., *Taxpayer Relief Act Report on Referendum*

Exceptions for School Year 2019-2020 tbl. 5, Apr. 2019, available at

[https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20](https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20Report%20Apr2019.pdf)

[Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20](https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20Report%20Apr2019.pdf)

[Report%20Apr2019.pdf](https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20Report%20Apr2019.pdf). For example, for the 2019-2020 school year, the

Nazareth Area School District requested \$197,601 in referendum exceptions for

special education expenditures, but was approved for \$111,832; the Springfield

School District requested \$974,669 in special education exceptions, but was

approved for \$240,918; and the Centennial School District requested \$180,368 in

referendum exceptions for pension obligations, but was approved for \$21,079. *Id.*¹

¹ These are not isolated incidents. During the 2015-2016 school year, for example, out of the 169 school districts that sought an exception for their pension obligations, 42 received less than they requested (and 5 received more). *See* Pa. Dep't of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2015-2016* tbl. 5, Apr. 2015, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2015-16%20Report%20on%20Referendum%20Exceptions.pdf>. Of the 119 districts seeking a special-education exception that year, 7 districts received less than they had asked for, and 4 received more. *Id.* Likewise, in 2016-2017, 32 districts (out of 176 requestors) received less than requested for pension obligations. *See* Pa. Dep't of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2016-2017* tbl. 5, Apr. 2016, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2016-17%20Report%20on%20Referendum%20Exceptions.pdf>. That same year, 12 of the 125 districts requesting a special-education exception got less than they asked for. *Id.* And for the 2019-2020 school year, 1 district (out of 31) received less than it asked for in pension relief, and 8 districts (out of 78) received less than they requested for special-education expenses. *See* Pa. Dep't of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2019-2020* tbl. 5, Apr. 2019, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20Report%20Apr2019.pdf>.

12. Denied. Mr. Wolk’s allegation that the District’s counsel have violated the Rules of Professional Conduct is both baseless and inflammatory, and the allegation is denied.

13. Denied. The District’s first Question Involved accurately recites one of the issues presented by this appeal. Even if, *arguendo*, the Department of Education were not performing the review required of it by Pennsylvania law, the remedy would be to lodge a complaint with the Department and then, if that complaint were not answered satisfactorily, to appeal to this Court—rather than file a lawsuit in a Court of Common Pleas.² Or, if Mr. Wolk thought he had grounds to do so, he could file for a writ of mandamus, directing the Department to review what is submitted to it.

14. The averments of this paragraph set forth Mr. Wolk’s requested relief, as to which no response is required. To the extent a response is required, the District notes that it has no objection to the Court’s taking judicial notice of the letter but does question the noticeability of a television news report. More importantly, however, the District rejects Mr. Wolk’s suggestion that the Court can—and should—take “judicial notice” of the legal conclusions he draws from

² That, indeed, is what Mr. Clarke did in his complaint that triggered the decision that Mr. Wolk presents for the Court’s consideration. Although Mr. Wolk omitted it from his submission, the District attaches hereto as Exhibit 1 Mr. Clarke’s complaint to the Department of Education.

those materials; in this regard, Mr. Wolk appears not to understand that judicial notice applies to matters of *fact*, not to legal arguments or conclusions.

15. Denied.

For the reasons set forth above and those set forth in the accompanying memorandum of law, the District respectfully requests that the Motion to Take Judicial Notice be **DENIED** as to the proffered news report and that it be **DENIED** insofar as it seeks to have this Court accept as correct and binding statements of Pennsylvania law the legal conclusions set forth in and that Mr. Wolk draws from the materials referenced in the Motion.

Dated: May 28, 2019

Respectfully Submitted,

/s/ D. Alicia Hickok

Alfred W. Putnam, Jr.

Pa. ID No. 28621

D. Alicia Hickok

Pa. ID No. 87604

Mark D. Taticchi

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Counsel for Appellant

School District of Lower Merion

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 28, 2019

/s/ D. Alicia Hickok

D. Alicia Hickok

PROOF OF SERVICE

I, D. Alicia Hickok, certify that I am this day serving by First Class Mail, postage prepaid, the foregoing Answer to Motion to Take Judicial Notice, together with its associated Memorandum of Law, which service satisfies the requirements of Pa.R.A.P. 121.

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Catherine Marchand*

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Dated: May 28, 2019

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/s/ D. Alicia Hickok
D. Alicia Hickok

EXHIBIT 1

18 April 2019

Pedro A. Rivera
Pennsylvania Secretary of Education
333 Market Street
Harrisburg, PA 17126

Secretary Rivera,

This is a formal complaint covered under 1 Pa. Code § 35.9 and 1 Pa. Code § 35.23. This complaint alleges the Tredyffrin Easttown School District (TESD) has submitted at least three documents that are in error to the Pennsylvania Department of Education (PDE):

- Annual Financial Report (AFR) 2016-17
- Annual Financial Report (AFR) 2017-18
- Referendum Exception System (RES) Submission 2019-20

We ask that the Department direct the District to revise and resubmit the above 3 mentioned documents with correct data.

Background

In order to increase property taxes above the Act 1 Index without seeking voter approval, a school district must apply to and receive approval from the Department for a referendum exception. TESS applied for and received approval for a Special Education Exception of \$4,088,232 for FY2019-20 based on AFRs from FY2016-17 and FY2017-18. District administrators and school directors have admitted on several occasions in public and private meetings that an approximate \$1.2M invoice from the Chester County Intermediate Unit (CCIU) for special education services rendered in FY2016-17 was incorrectly recorded as an AFR expenditure in FY2017-18 when it correctly belonged as an AFR expenditure in FY2016-17. The error was known to District Administration in November 2017. The error in the two AFRs has a significant effect changing the special education exception amount from approximately \$4M to \$2M.

Questions/Answers

We ask that officials from the TESS answer the following questions:

1. Was there an invoice or invoices in the approximate amount of \$1.2M from the CCIU for special education services provided in FY 2016-17 that was incorrectly recorded as an expenditure in FY2017-18?
2. Are the AFRs for 2016-17 and 2017-18 inaccurate as a result of the mistake noted in question 1?
3. Is the RES submission inaccurate as a result of the error noted in question 2?
4. Will the district resubmit the AFRs and RES submission with correct data?

Response Time

The District must normally respond with an answer to a complaint within 20 days under 1 Pa. Code § 35.35. ***We ask that the Secretary set the response time instead to 10 days*** for three reasons. One, the District is well aware of the complaint having discussed the problem in at least two public meetings over the past 14 days. Two, time is of the essence as a budget must be passed by June 30th with a possibly reduced Special Education Exception. Three, a decision by PDE on the complaint may take multiple iterations of questions/answers in addition to a possible hearing.

Thank you,

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Tredyffrin Easttown School Board (schoolboard@tesd.net)
Tredyffrin Easttown School Superintendent (gusickr@tesd.net)
Secretary Rivera Administrative Executive (psherts@pa.gov)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, and Catherine Marchand	:	1465 CD 2016
v.	:	
The School District of Lower Merion, Appellant	:	

PROOF OF SERVICE

I hereby certify that this 28th day of May, 2019, I have served the attached document(s) to the persons on the date(s)
and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	Arthur A. Wolk
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Amicus Curiae Pennsylvania Association of School Administrators

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Dorothy Alicia Hickok

(Signature of Person Serving)

Person Serving: Hickok, Dorothy Alicia
Attorney Registration No: 087604
Law Firm: Drinker Biddle & Reath LLP
Address: One Logan Square, Suite 2000
Philadelphia, PA 19103
Representing: Appellant School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**MEMORANDUM OF LAW IN SUPPORT OF
APPELLANT SCHOOL DISTRICT OF LOWER MERION'S
ANSWER TO PLAINTIFFS-APPELLEES'
MOTION TO TAKE JUDICIAL NOTICE**

Alfred W. Putnam, Jr., Pa. ID No. 28621
D. Alicia Hickok, Pa. ID No. 87604
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School District of Lower Merion*

ARGUMENT

Mr. Wolk's latest Motion asks the court to "take judicial notice" of (1) a recent decision of the Department of Education, and (2) a news report relating to that decision. The position he now takes on judicial notice is so plainly contrary to the position he has taken in his pending motion to strike the District's Supplemental Brief (and the briefs of its three *amici*) that his overall legal argument on this subject matter can only be described as incoherent. Nevertheless, there is legal authority governing this topic,¹ and under that law, the Court probably can take judicial notice, if it chooses to do so, of the recent decision of the Department but probably cannot take judicial notice of the news report.² But whatever notice the Court chooses to take, any informed review of what Mr. Wolk has to say in his Motion essentially proves the defect in Mr. Wolk's case and in the injunction entered below.

¹ For a fuller explanation of the law on reliance upon and citation to authorities not cited or relied upon by the court below, the District respectfully refers the Court to its Memorandum of Law in Support of Its Answer to Mr. Wolk's pending Motion to Strike at 4-6.

² Unlike the letter itself, Mr. Hanft's reported statements to a news reporter are not facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Pa.R.E. 201(b)(2). It is not clear, for example, how Mr. Hanft's statements were edited, what questions he was responding to, or what else he might have said that was omitted from the news report but which might have, if included, altered the perceived meaning of the statements the network did choose to air. Thus, while the Court might be able to take judicial notice of the contextual facts that Mr. Hanft spoke to a news reporter and that his interview aired on the NBC 10 television network, the actual substance of Mr. Hanft's statements are not a fit object of judicial notice.

This is so, first, because the decision to which Mr. Wolk draws the attention of the Court is actually itself an example of what an aggrieved party is supposed to do. That decision arose out of a complaint filed with the Department by a taxpayer unhappy with a school district's attempt to rely on one of the exceptions to the referendum requirement.³ What is more, the complaint in question says on its face that it "is a formal complaint covered under 1 Pa. Code § 35.9 and 1 Pa. Code § 35.23," Answer Ex. 1 at 1, which—notably—are the very provisions that the District has argued that Mr. Wolk and his co-Plaintiffs should have used here in order to bring their concerns regarding the District's exceptions to the Department of Education. *See* LMSD Supp. Br. at 39. Having thus exhausted his administrative remedy, if the complainant is unhappy with the Department's decision on his complaint, he is free to appeal that decision to this Court.

All of which, of course, is exactly what Mr. Wolk *did not* do in this case. He *did not* file a complaint with the Department of Education complaining about the exceptions and he *did not* take an appeal from the Department's resolution of his complaint to this Court. Instead, he filed a lawsuit in the Court of Common Pleas and sought an injunction to overturn the Department's approval of the District's exceptions application. In other words, the very decision that Mr. Wolk

³ Although Mr. Wolk omitted it from his Motion, that underlying complaint is just as noticeable as the decision it produced. Accordingly, it is attached to the District's Answer (as Exhibit 1).

now points to actually demonstrates the administrative remedy he failed to invoke in this case. Nothing could better illustrate his failure to preserve any right to that remedy.

Second, the substantive proposition that Mr. Wolk advances in his Motion—that the Department is actually a kind of rubber stamp that invariably approves each and every request for an exception—is demonstrably false. Every year the Department issues an official report setting forth its resolution of any and all requests from the school districts of the Commonwealth for exceptions. Those reports show that the Department regularly challenges school districts’ referendum exceptions requests and frequently authorizes a smaller exception (and, occasionally, a larger exception) than a particular district requested. During the 2015-2016 school year, for example, out of the 169 school districts that sought an exception for their pension obligations, 42 received less than they requested (and 5 received more). *See* Pa. Dep’t of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2015-2016* tbl. 5, Apr. 2015, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2015-16%20Report%20on%20Referendum%20Exceptions.pdf>. Of the 119 districts seeking a special-education exception that year, 7 districts received less than they had asked for, and 4 received more. *Id.* Likewise, in 2016-2017, 32 districts (out of 176 requestors) received less than

requested for pension obligations. *See* Pa. Dep’t of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2016-2017* tbl. 5, Apr. 2016, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2016-17%20Report%20on%20Referendum%20Exceptions.pdf>. That same year, 12 of the 125 districts requesting a special-education exception got less than they asked for. *Id.* And for the 2019-2020 school year, 1 district (out of 31) received less than it asked for in pension relief, and 8 districts (out of 78) received less than they requested for special-education expenses. *See* Pa. Dep’t of Educ., *Taxpayer Relief Act Report on Referendum Exceptions for School Year 2019-2020* tbl. 5, Apr. 2019, available at <https://www.education.pa.gov/Documents/Teachers-Administrators/Property%20Tax%20Relief/ReferendumExceptions/2019-20%20Act%201%20RefExc%20Report%20Apr2019.pdf>. Nothing in this track record shows anything approaching the “rubber stamp” review that Mr. Wolk alleges.

Mr. Wolk’s entire position on this subject appears to hinge on the Department’s use of the word “ministerial” in its May 6, 2019 letter, but he shears that word from its context. In that letter, the Department ruled on a taxpayer’s challenge to Treddyffrin-Easttown School District’s exceptions request and explained that Department employees (like the courts) do not function as a sort of

“super school board” assessing the optimal way for each district to balance its competing obligations and fiscal priorities. The Department explained:

When reviewing a school district’s request for a referendum exception, Act 1 *does not permit the Department to* substantively review proposed budgets and evaluate other financial data to *determine whether there are alternative mechanisms that a school district could utilize to balance its proposed budget*. The Department’s role in approving referendum exceptions is purely ministerial and if the two elements above are satisfied, then a school district request for a referendum exception must be granted.

Wolk. Mem. Ex. A (emphases added). Viewed in this context—and in light of the Department’s extensive track record of authorizing exceptions that vary from what was requested—it is clear that the Department’s use of “ministerial” does not carry the “rubber stamp” connotation suggested by Mr. Wolk, but is merely a recognition that the roles of the Department and a School Board are different, which is, indeed, what the statutes say.⁴

Third, and finally, it should be said that even if it were true (which it is not) that the Department of Education routinely and repeatedly fails to exercise the authority given to it by Act 1, it would not follow that the Court of Common Pleas

⁴ The above context similarly shows that when Mr. Hanft opined that the Department “can’t” “say no” to a school district’s request for an exception, he was not making a categorical statement that a district’s request can never be refused. *See* Wolk Mem. Ex. B at 4:11-13. Instead, as explained in his May 6, 2019 letter, the Department cannot substitute its subjective judgment regarding whether and how to fund each individual line item in each district’s budget. *Id.* Ex. A at 1. Those policy decisions belong to the school districts—and, ultimately, their voters.

had any jurisdiction to correct that dereliction. To the contrary, the remedy for a non-performing agency is either an appeal to this Court or an application for a writ of mandamus. The Court of Common Pleas has only the jurisdiction that it has been given. It does not obtain additional jurisdiction that it has not been given even if it is convinced that the agency that *was* given jurisdiction is asleep at the switch. That complaint, if there is one, must be made first to the agency and then to this Court.

CONCLUSION

For all the reasons set forth above and in the Answer to the Motion to Take Judicial Notice, the District respectfully requests that the Motion to Take Judicial Notice be **DENIED** as to the proffered news report and **DENIED** insofar as it seeks to have this Court accept as correct and binding statements of Pennsylvania law the legal conclusions that Mr. Wolk draws from the materials he references in the Motion and his Memorandum.

Dated: May 28, 2019

Respectfully Submitted,

/s/ D. Alicia Hickok

Alfred W. Putnam, Jr.

Pa. ID No. 28621

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School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, and Catherine Marchand v. The School District of Lower Merion, Appellant	: : : :	1465 CD 2016
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PROOF OF SERVICE

I hereby certify that this 28th day of May, 2019, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

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Served: Pennsylvania Defense Institute
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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Amicus Curiae Pennsylvania Association of School Administrators

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Dorothy Alicia Hickok

(Signature of Person Serving)

Person Serving: Hickok, Dorothy Alicia
Attorney Registration No: 087604
Law Firm: Drinker Biddle & Reath LLP
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Philadelphia, PA 19103
Representing: Appellant School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES,

V.

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT.

APPELLEES' MOTION TO TAKE JUDICIAL NOTICE OF PENNSYLVANIA
DEPARTMENT OF THE AUDITOR GENERAL REPORT ON THE LOWER
MERION SCHOOL DISTRICT DATED OCTOBER 23, 2017

Arthur Alan Wolk, Esquire (02091)
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Attorney for Appellees/Pro Se

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ARTHUR ALAN WOLK, PHILIP BROWNDIES	:	
and CATHERINE MARCHAND,	:	
Appellees	:	
	:	
v.	:	
	:	No. 1465 CD 2016
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Appellant	:	

ORDER

NOW, _____, 2019, upon consideration of the Appellees’ Motion to Take Judicial Notice of the Pennsylvania Department of The Auditor General Report on the Lower Merion School District Dated October 23, 2017, the Court GRANTS the relief requested in the Motion.

It is ORDERED and DECREED that

1. The Court takes judicial notice of the Pennsylvania Department of Auditor General Report attached to Appellees’ Motion as Exhibit A.
2. The Court takes judicial notice of the facts stated within the Pennsylvania Department of Auditor General Report attached to Appellees’ Motion as Exhibit A.

Appellees file this Motion to Take Judicial Notice and, in support thereof, they rely upon the accompanying Memorandum of Law, the attached exhibit and the Verification of Arthur Alan Wolk, which are all incorporated by reference herein and they aver as follows:

1. Title 225 of the Pennsylvania Code, Section 201 sets forth the criteria for “Judicial Notice of Adjudicative Facts.” The Court may take judicial notice of a fact that is “not subject to reasonable dispute” because it “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” 225 Pa. Code § 201(b).

2. The Court “**must** take judicial notice if a party requests it and it is supplied with the necessary information.” 225 Pa. Code § 201(c) (emphasis added).

3. The Court may take judicial notice without notice to a party, though if a party makes a timely request it is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. 225 Pa. Code § 201(e).

4. The Court may take judicial notice “at any stage of the proceeding.” 225 Pa. Code § 201(d). Appellate Courts are to take judicial notice of extra-record materials where it is appropriate to do so and where notice could not have been taken by the trial court. *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Commw. 2017).

5. In addition to facts, the Court may take judicial notice of entire documents. *Thomas v. Grimm*, 155 A.3d at 134 (taking judicial notice of an entire

document, a revised Code of Conduct, which was published after the trial court's record was certified).

6. The Pennsylvania Department of the Auditor General published a Report on October 23, 2017 (the "Report") which contains adjudicative facts that occurred after the proceedings in the Court below. The According to the Report itself, it was sent to Lower Merion School District, its Board, its Superintendent, the Governor of Pennsylvania, and other "stakeholders" – critically, though the Report mentions this litigation no copy was ever sent to any trial or appellate Court that has heard dispute and neither Wolk nor any of the other appellees know of its existence until mere days ago. (See Verification of Wolk).

7. The Report was published on October 23, 2017, which is after the August 29, 2016 Order of the Court below.

8. The Report is on Department of the Auditor General's letterhead, it was signed by an official who has authority to act on behalf of the Department. The Report is published on the internet.¹ A true and correct copy of the Department of Education's May 6, 2019 letter is attached at Exhibit A with highlighting for the Court's convenience. The Court "must" take judicial notice of the letter and the adjudicative facts contained therein. 225 Pa. Code § 201(c).

¹ <https://www.paauditor.gov/audit-report/item/48082> last accessed May 27, 2019.

9. The purpose of the Report was “to determine [the school district’s] compliance with certain relevant state laws, regulations, policies and administrative procedures (relevant requirements).” (Ex. A at Cover Letter p. 1).

10. The Report found that the school district **did not comply with relevant requirements** in the following areas that are material to this litigation:

- “The District’s budgets consistently overestimated operating costs and, as a result, underestimated ending fund balances.” (Ex. A at page 10).
- “the District maintained a steady, substantial General Fund balance during the audit period while also transferring more than \$18 million in the last for fiscal years to a Capital Reserve Fund.” (Ex. A at page 10).
- “The District consistently developed General Fund budgets that projected and anticipated operating deficits despite actually realizing annual surpluses.” (Ex. A at p. 10).
- For “the five year period ending June 30, 2016, the operating variance was significant.” (Ex. A at p. 10).
- For the five year period ending June 30, 2016, “the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent.” (Ex. A at p. 11).
- The District maintained “two major capital funds separate from the General Fund.” (Ex. A at p. 12).
- Despite false representations to the contrary, the district “maintained a significant portion of *committed* reserve funds in its General Fund for future, *capital* projects.’ (Ex. A at p. 13) (emphasis in original).
- The District violated Section 688 of the Public School Code. (Ex. A at pp. 15-18).
- “It is significant to note that the total amount committed for future use remained constant at \$35.8 million because according to the District, no expenses were applied against these funds in any of the five years

reviewed. More importantly, the District did not spend any of the funds it committed to cover rising pension costs and instead the District applied to PDE for the retirement cost exceptions which enabled to increase real estate taxes above the Act I limit.” (Ex. A at p. 15).²

- **“We reviewed the District’s budgets and found that the District did not plan to use committed funds, as directed by its own board policy.”** (Ex. A at p. 16).
- “The District not only raised taxes every year in the five year period, it raised them beyond the Act 1 limit. However, it did so no through public referendum but by obtaining approval for exceptions from PDE for special education and retirement costs.” (Ex. A at p. 16).
- “According to our review, the total amount of the exceptions used for special education and retirement costs over the five year period was \$13.8 million which was significantly less than the \$18.7 million the District transferred to the Capital Reserve funds due to operating surpluses. The District clearly had unassigned funds to cover these costs.” (Ex. A at p. 18).
- The District’s misrepresentations to the Pennsylvania Department of Education allowed it to obtain exceptions to increase taxes beyond the Act 1 index. (Ex. A at p. 19).
- **The District’s budgeting “strategies were insufficiently transparent to the public because they painted a financial picture that did not reflect the District’s actual financial condition.”** (Ex. A at pp. 19-20).
- “[The Auditor General] disagree[s] with the District’s statement that the issues discussed in our observation are not worthy of being a reportable condition. . . . During the time period reviewed, and despite healthy fund balances, the District raised taxes above the Act 1 index. The District stated these tax increases were necessary for future expenditures despite already committing funds for this purpose.” (Ex. A at p. 21).

² The Report refers to the Pennsylvania Department of Education as the “PDE.”

11. Appellees have always maintained that this is a simple fraud case. The Pennsylvania Department of the Auditor General confirms that theory of the case and it confirms the bases for the Judge's Order below. (Ex. A).

12. The Report contains adjudicative facts that were published after the trial court's proceedings, and the accuracy of the Report cannot be reasonably disputed. The Court "must" take judicial notice. 225 Pa. Code § 201(c).

13. According to the Report itself, the Appellant and its *amici* actually received a copy of the Report. (Ex. A at p. 44). Yet they not only failed to disclose the Report to Appellee and to this Court, their briefs and argument to this Court make material misstatements of fact, argue frivolous positions of law, and violated the Rules of Professional Conduct. Sanctions are appropriate here. Appellee will file a related motion seeking relief.

14. Again and again, Appellant and *amici* knowingly and falsely stated material facts to the trial court and to this Court. (*See e.g.* Appellant Supp. Brief at p. 40) ("Where (as here) the criticism is aimed at the Department that approved the exceptions, following the statutory process is the only way that the persons who actually took the challenged actions can explain or defend them.") As the Report makes clear, the actions that are challenged are the false reporting and fake accounting of the School District, not the ministerial rubber stamp of the Department of Education. (Ex. A).

15. The Appellant's presentation of the case itself misstates material facts by urging that the Department of Education made them do it. (Appellant Supp. Brief at p. 3). The school district falsely presents the controversy this way:

IV. Statement of the Questions Involved

1. Can a Court of Common Pleas invalidate the Department of Education's approval of tax increases under Act 1's referendum exceptions for pension and special education obligations?

The Court of Common Pleas answered this question in the affirmative.

(Appellant Supp. Brief at p. 3).

16. This Court should take judicial notice of the Report and its findings. (Ex. A).

17. Since this revelation by the Department of the Auditor General makes the arguments of Appellant and that of its supplicant *amici* utterly devoid of legal or factual foundation, Wolk and the other Appellees must prevail on this issue.

WHEREFORE Appellees respectfully requests this Honorable Court to take judicial notice of the Pennsylvania Department of the Auditor General Report dated October 23, 2017 with consequences for the Appellant and its *amici* to be addressed by this Court's Merits Panel at oral argument *sec. leg.*

Dated: May 28, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT

V.

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

MEMORANDUM OF LAW IN SUPPORT OF APPELLEES' MOTION TO
TAKE JUDICIAL NOTICE OF PENNSYLVANIA DEPARTMENT OF
EDUCATION LETTER DATED MAY 6, 2019 AND OFFICIAL STATEMENTS
OF PENNSYLVANIA DEPARTMENT OF EDUCATION DIVISION OF
SUBSIDY DATA AND ADMINISTRATION CHIEF GIVEN TO NBC NEWS

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. RELIEF REQUESTED1

III. BASIS FOR THIS MOTION.....2

IV. LEGAL ARGUMENT5

V. CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

Thomas v. Grimm, 155 A.3d 128, 134 (Pa. Commw. 2017)4, 5

Rules

Pa. R.A.P. 19214

Regulations

225 Pa. Code § 201 3, 4, 5

I. INTRODUCTION

Appellees file this Motion to Take Judicial Notice of the Pennsylvania Department of the Auditor General's finding of false budget reporting by the Appellant to the Pennsylvania Department of Education and the public, which confirms that facts found by the well-reasoned and supported Order of the Court below.

The information that Appellees supply with this Motion (1) can accurately and readily determined from sources whose accuracy cannot reasonably be questioned; and (2) notice could not have been taken by the trial court because the Department's statements were published and publicized both after the order of the Court below and external to it. Appellant, *amici*, and their attorneys have repeatedly and consistently violated their duty of candor to the tribunals of this Commonwealth including the Court below, the Supreme Court and this Honorable Court.

II. RELIEF REQUESTED

Appellees respectfully request:

1. That the Court takes judicial notice of the Pennsylvania Department of the Auditor General Report dated October 23, 2017 (the "Report") attached to Appellees' Motion as Exhibit A.

2. That the Court takes judicial notice of the matters stated within the Report attached to Appellees' Motion as Exhibit A.

III. BASIS FOR THIS MOTION

The basis for this motion is newly discovered official statements of the Pennsylvania Department of the Auditor General which include:

1. The verification of Arthur Alan Wolk, Esq. which attaches the Report at Exhibit A and the facts contained therein, including but not limited to the facts stated below.

2. “The District’s budgets consistently overestimated operating costs and, as a result, underestimated ending fund balances.” (Ex. A at page 10).

3. “the District maintained a steady, substantial General Fund balance during the audit period while also transferring more than \$18 million in the last for fiscal years to a Capital Reserve Fund.” (Ex. A at page 10).

4. The District consistently developed General Fund budgets that projected and anticipated operating deficits despite actually realizing annual surpluses.” (Ex. A at p. 10).

5. For “the five year period ending June 30, 2016, the operating variance was significant.” (Ex. A at p. 10).

6. For the five year period ending June 30, 2016, “the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent.” (Ex. A at p. 11).

7. The District maintained “two major capital funds separate from the General Fund.” (Ex. A at p. 12).

8. Despite false representations to the contrary, the district “maintained a significant portion of *committed* reserve funds in its General Fund for future, *capital* projects.” (Ex. A at p. 13) (emphasis in original).

9. The District violated Section 688 of the Public School Code. (Ex. A at pp. 15-18).

10. “It is significant to note that the total amount committed for future use remained constant at \$35.8 million because according to the District, no expenses were applied against these funds in any of the five years reviewed. More importantly, the District did not spend any of the funds it committed to cover rising pension costs and instead the District applied to PDE for the retirement cost exceptions which enabled to increase real estate taxes above the Act I limit.” (Ex. A at p. 15).³

11. **“We reviewed the District’s budgets and found that the District did not plan to use committed funds, as directed by its own board policy.”** (Ex. A at p. 16).

12. “The District not only raised taxes every year in the five year period, it raised them beyond the Act 1 limit. However, it did so no through public referendum

³ The Report refers to the Pennsylvania Department of Education as the “PDE.”

but by obtaining approval for exceptions from PDE for special education and retirement costs.” (Ex. A at p. 16).

13. “According to our review, the total amount of the exceptions used for special education and retirement costs over the five year period was \$13.8 million which was significantly less than the \$18.7 million the District transferred to the Capital Reserve funds due to operating surpluses. The District clearly had unassigned funds to cover these costs.” (Ex. A at p. 18).

14. The District’s misrepresentations to the Pennsylvania Department of Education allowed it to obtain exceptions to increase taxes beyond the Act 1 index. (Ex. A at p. 19).

15. **The District’s budgeting “strategies were insufficiently transparent to the public because they painted a financial picture that did not reflect the District’s actual financial condition.”** (Ex. A at pp. 19-20).

16. “We disagree with the District’s statement that the issues discussed in our observation are not worthy of being a reportable condition. . . . During the time period reviewed, and despite healthy fund balances, the District raised taxes above the Act 1 index. The District stated these tax increases were necessary for future expenditures despite already committing funds for this purpose.” (Ex. A at p. 21).

IV. LEGAL ARGUMENT

The Pennsylvania Code sets forth the requirements for a Court to take Judicial Notice. 225 Pa. Code § 201. Section 201 states:

Judicial Notice of Adjudicative Facts

- (a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) *Taking Notice.* The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) *Timing.* The court may take judicial notice at any stage of the proceeding.
- (e) *Opportunity to Be Heard.* On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) *Instructing the Jury.* The court must instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

225 Pa. Code § 201.

When a case is on appeal, generally an appellate court may consider only the facts that have been certified in the record on appeal, and extra-record documents cannot become part of the record on appeal merely by appending them to a brief.

Thomas v. Grimm, 155 A.3d 128, 134 (Pa. Commw. 2017) (citing Pa. R.A.P. 1921). However, appellate courts may take notice of extra record materials where (1) it is “appropriate to do so” and (2) “where notice could not have been taken by the trial court.” *Id.* (citation omitted). When considering whether it is “appropriate” to take judicial notice, the appellate court looks to the requirements of 25 Pa. Code § 201(b), which ensure that the fact to be noticed “is not subject to reasonable dispute” *Id.* at 133.

The *Thomas* case arose out of a whistleblower claim by a former judicial employee against the court administrator and others. *Id.* at 129-130. After the proceedings in the trial court were complete, the court system revised the employee Code of Conduct, and those revisions were material to the appellant’s argument. *Id.* at 133. On appeal, this Court took “judicial notice of the revised Code of Conduct, the accuracy of which is undisputable and which occurred after the common pleas certified the record.” *Id.* at 134. The revised Code of Conduct was material to the argument because the previous version contained references to the Whistleblower Law and the revised version did not. *Id.* This Court took judicial notice of the entire document. *Id.*

This Court should take judicial notice of the Department of the Auditor General’s Report. (Ex. A). There cannot be a reasonable dispute about the facts contained within these documents because they can be accurately and readily

determined from sources whose accuracy cannot reasonably be questioned. 225 Pa. Code § 201(b); (Verification Wolk); (Ex. A). When a party requests the court take judicial notice and the necessary information is supplied, the Court **must** take judicial notice. 225 Pa. Code § 201(c)(2).

V. CONCLUSION

This Court should take judicial notice of the adjudicative facts contained within the Report because they occurred after the Common Pleas Order of August 29, 2016 and they cannot be subject to reasonable dispute because they originate from a source whose accuracy cannot be reasonably questioned.

Dated: May 28, 2019

Respectfully submitted:

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Attorney for Appellees/Pro Se

**VERIFICATION OF ARTHUR ALAN WOLK IN SUPPORT
OF APPELLEES' MOTION TO TAKE JUDICIAL NOTICE AND
MOTION FOR SANCTIONS**

Arthur Alan Wolk states that he is a Plaintiff/Appellee in this action, that he takes this verification as counsel for the Plaintiffs/Appellees and for his law firm, and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

1. On Saturday, May 25, 2019, I received, via an email from Keith Knauss, the Pennsylvania Department of the Auditor General's Report on the Lower Merion School District dated October 23, 2017 (the "Report").

2. According to the Report's cover letter and the last page of the Report itself, it was sent to Appellee and its *amici* in October, 2017.

3. I highlighted the Report and the version with my highlights is attached to Wolk's Reply to the Answer of LMSD to Appellees' Motion to take Judicial Notice, Appellees' Motion to Take Judicial Notice of the Auditor General's Report and Wolk's Motion for Sanctions.

4. Keith Knauss was Plaintiffs' expert witness at the hearing in the Court below that resulted in Judge Smyth's well-reasoned Decision and Order finding that the Lower Merion School District committed fraud.

5. The Report confirms every factual basis of Judge Smyth's Order and since the Auditor General's study was for a four fiscal years from 2012 through

2016, it uncovered even worse illegal conduct by the LMSD for that entire period, a practice which even after found illegal by Judge Smyth and the Auditor General continues today.

6. I was not aware of the Report before Saturday, May 25, 2019 and, according to my conversation with Mr. Knauss, he was not aware of it either as it was not on the LMSD website as required, was never provided to any Court, was never supplied to the bondholders in violation of the Rules of the Securities and Exchange Commission and never disclosed to the taxpayers or residents of Lower Merion and Narberth.

7. The Findings and Conclusions by the Auditor General are directly opposite to every legal and factual argument counsel for the LMSD and its *amici* have made to this Court and the Pa. Supreme Court in every filing and justify the sanction of an Order of Dismissal and other sanctions and referrals of counsels' conduct to the Disciplinary Committee.

The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Arthur Alan Wolk

Date: May 28, 2019

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 28, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)

Exhibit A

LIMITED PROCEDURES ENGAGEMENT

Lower Merion School District
Montgomery County, Pennsylvania

October 2017



Commonwealth of Pennsylvania
Department of the Auditor General
Eugene A. DePasquale • Auditor General



**Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
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www.PaAuditor.gov**

**EUGENE A. DePASQUALE
AUDITOR GENERAL**

Mr. Robert L. Copeland, Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dr. Robin Vann Lynch, Board President
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dear Mr. Copeland and Dr. Vann Lynch:

We conducted a Limited Procedures Engagement (LPE) of the Lower Merion School District (District) to determine its compliance with certain relevant state laws, regulations, policies, and administrative procedures (relevant requirements). The LPE covers the period July 1, 2012, through June 30, 2015, except for any areas of compliance that may have required an alternative to this period. The engagement was conducted pursuant to authority derived from Article VIII, Section 10 of the Constitution of the Commonwealth of Pennsylvania and The Fiscal Code (72 P.S. §§ 402 and 403), but was not conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

As we conducted our LPE procedures, we sought to determine answers to the following questions, which serve as our LPE objectives:

- Did the District have documented board policies and administrative procedures related to the following?
 - Internal controls
 - Budgeting practices
 - The Right-to-Know Law
 - The Sunshine Act
- Were the policies and procedures adequate and appropriate, and have they been properly implemented?
- Did the District comply with the relevant requirements in the Right-to-Know Law and the Sunshine Act?

- Additionally, we reviewed the District's financial position and budgeting practices during the 2012-13 through 2015-16 fiscal years. Our engagement included a review of the District's annual financial reports, independent auditor's reports, and General Fund budgets for these fiscal years. We used these financial reports to calculate each fiscal year's budget to actual trends and to assess the District's budgeted unassigned General Fund balance to budgeted total expenditures. Further, we also reviewed the accuracy of the District's budgets for each fiscal year by comparing them to actual revenue and expenditures and the effect on the District's General Fund balance during this time period. Finally, we reviewed the District's Certification of Utilization of Referendum Exceptions, otherwise known as Act 1 exceptions, that were completed by the District and submitted to the Pennsylvania Department of Education (PDE) during this time period.

Our engagement found that the District properly implemented policies and procedures for the areas mentioned above and complied, in all significant respects, with relevant requirements, except as detailed in the observation in this report.

The observation and our related recommendations have been discussed with the District's Board and management, and their response is included in the Appendix section of this letter. We appreciate the District's cooperation during the conduct of the engagement.

Sincerely,



Eugene A. DePasquale
Auditor General

October 23, 2017

cc: **LOWER MERION SCHOOL DISTRICT** Board of School Directors

Background Information

School Characteristics 2015-16 School Year ^A	
County	Montgomery
Total Square Miles	24.14
Resident Population^B	62,107
Number of School Buildings	10
Total Teachers	683
Total Full or Part-Time Support Staff	685
Total Administrators	74
Total Enrollment for Most Recent School Year	8,341
Intermediate Unit Number	23
District Vo-Tech School	Central Montco Technical High School

A - Source: Information provided by the District administration and is unaudited.

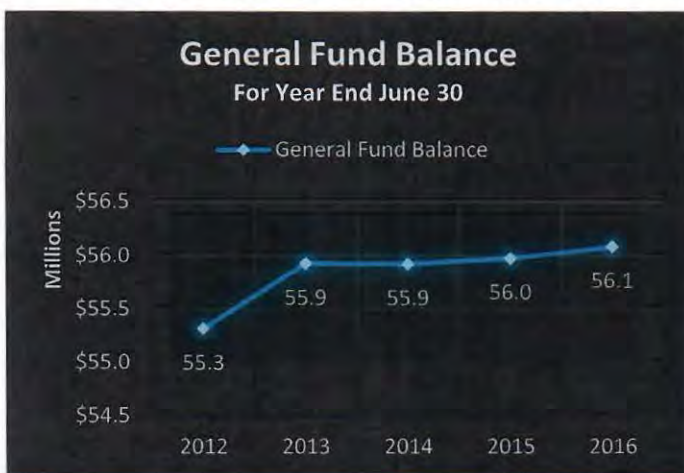
B - Source: United States Census
<http://www.census.gov/2010census>.

Mission Statement^A

Committed to excellent and continuous improvement, the Lower Merion School District strives to ensure that all students achieve their highest level of critical thinking and creativity, that they value themselves and the diversity of others, and that they are knowledgeable, contributing citizens capable of excelling in a rapidly changing world. This is accomplished by individuals engaging in innovative, active experiences tailored to the myriad ways of learning and in partnership with our community.

Financial Information

The following pages contain financial information about the District obtained from annual financial data reported to the PDE and available on PDE's public website. This information was not audited and is presented for **informational purposes only**.

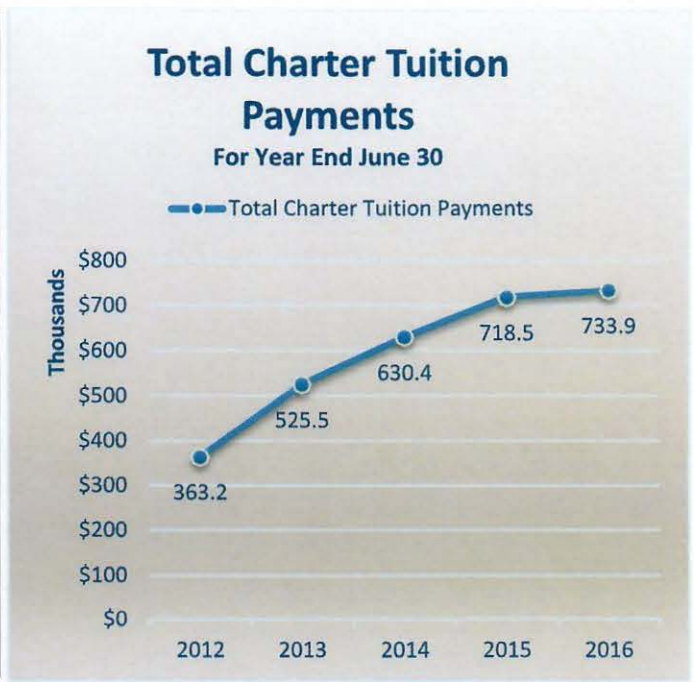
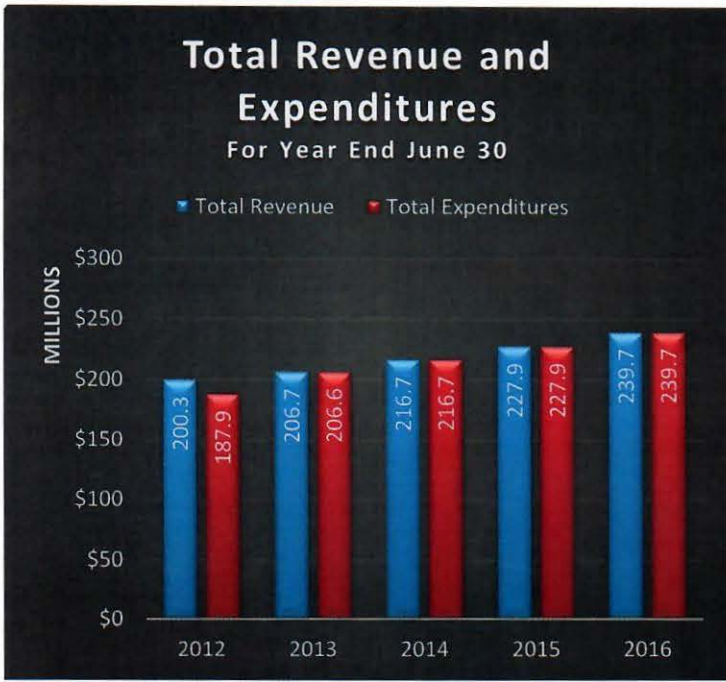


Note: General Fund Balance is comprised of the District's Committed, Assigned and Unassigned Fund Balances.



Note: Total Debt is comprised of Short-Term Borrowing, General Obligation Bonds, Authority Building Obligations, Other Long-Term Debt, Other Post-Employment Benefits and Compensated Absences.

Financial Information Continued



Academic Information

The graphs on the following pages present School Performance Profile (SPP) scores, Pennsylvania System of School Assessment (PSSA), Keystone Exam results, and 4-Year Cohort Graduation Rates for the District obtained from PDE's data files for the 2014-15 and 2015-16 school years.¹ These scores are provided in the District's report for **informational purposes only**, and they were not audited by our Department. Please note that if one of the District's schools did not receive a score in a particular category and year presented below, the school will not be listed in the corresponding chart.² Finally, benchmarks noted in the following graphs represent the statewide average of all public school buildings in the Commonwealth that received a score in the category and year noted.³

What is a SPP score?

A SPP score serves as a benchmark for schools to reflect on successes, achievements, and yearly growth. PDE issues a SPP score using a 0-100 scale for all school buildings in the Commonwealth annually, which is calculated based on standardized testing (i.e. PSSA and Keystone exams), student improvement, advance course offerings, and attendance and graduation rates. Generally speaking, a SPP score of 70 or above is considered to be a passing rate.

PDE started issuing a SPP score for all public school buildings beginning with the 2012-13 school year. For the 2014-15 school year, PDE only issued SPP scores for high schools taking the Keystone Exams as scores for elementary and middle scores were put on hold due to changes with PSSA testing.⁴ PDE resumed issuing a SPP score for all schools for the 2015-16 school year.

What is the PSSA?

The PSSA is an annual, standardized test given across the Commonwealth to students in grades 3 through 8 in core subject areas, including English and Math. The PSSAs help Pennsylvania meet federal and state requirements and inform instructional practices, as well as provide educators, stakeholders, and policymakers with important information about the state's students and schools.

¹ PDE is the sole source of academic data presented in this report. All academic data was obtained from PDE's publically available website.

² PDE's data does not provide any further information regarding the reason a score was not published for a specific school. However, readers can refer to PDE's website for general information regarding the issuance of academic scores.

³ Statewide averages were calculated by our Department based on individual school building scores for all public schools in the Commonwealth, including district schools, charters schools, and cyber charter schools.

⁴ According to PDE, SPP scores for elementary and middle schools were put on hold for the 2014-15 school year due to the state's major overhaul of PSSA exams to align with state Common Core standards and an unprecedented drop in public schools' PSSA scores that year. Since PSSA scores are an important factor in the SPP calculation, the state decided not to use PSSA scores to calculate a SPP score for elementary and middle schools for the 2014-15 school year. Only high schools using the Keystone Exam as the standardized testing component received a SPP score.

The 2014-15 school year marked the first year that PSSA testing was aligned to the more rigorous PA Core Standards.⁵ The state uses a grading system with scoring ranges that place an individual student's performance into one of four performance levels: Below Basic, Basic, Proficient, and Advanced. The state's goal is for students to score Proficient or Advanced on the exam in each subject area.

What is the Keystone Exam?

The Keystone Exam measures student proficiency at the end of specific courses, such as Algebra I, Literature, and Biology. The Keystone Exam was intended to be a graduation requirement starting with the class of 2017, but that requirement has been put on hold until at least 2020. In the meantime, the exam is still given as a standardized assessment and results are included in the calculation of SPP scores. The Keystone Exam is scored using the same four performance levels as the PSSAs, and the goal is to score Proficient or Advanced for each course requiring the test.

What is a 4-Year Cohort Graduation Rate?

PDE collects enrollment and graduate data for all Pennsylvania public schools, which is used to calculate graduation rates. Cohort graduation rates are a calculation of the percentage of students who have graduated with a regular high school diploma within a designated number of years since the student first entered high school. The rate is determined for a cohort of students who have all entered high school for the first time during the same school year. Data specific to the 4-year cohort graduation rate is presented in the graph.⁶

⁵ PDE has determined that PSSA scores issued beginning with the 2014-15 school year and after are not comparable to prior years due to restructuring of the exam. (Also, see footnote 4).

⁶ PDE also calculates 5-year and 6-year cohort graduation rates. Please visit PDE's website for additional information: <http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx>.

2014-15 Academic Data
School Scores Compared to Statewide Averages

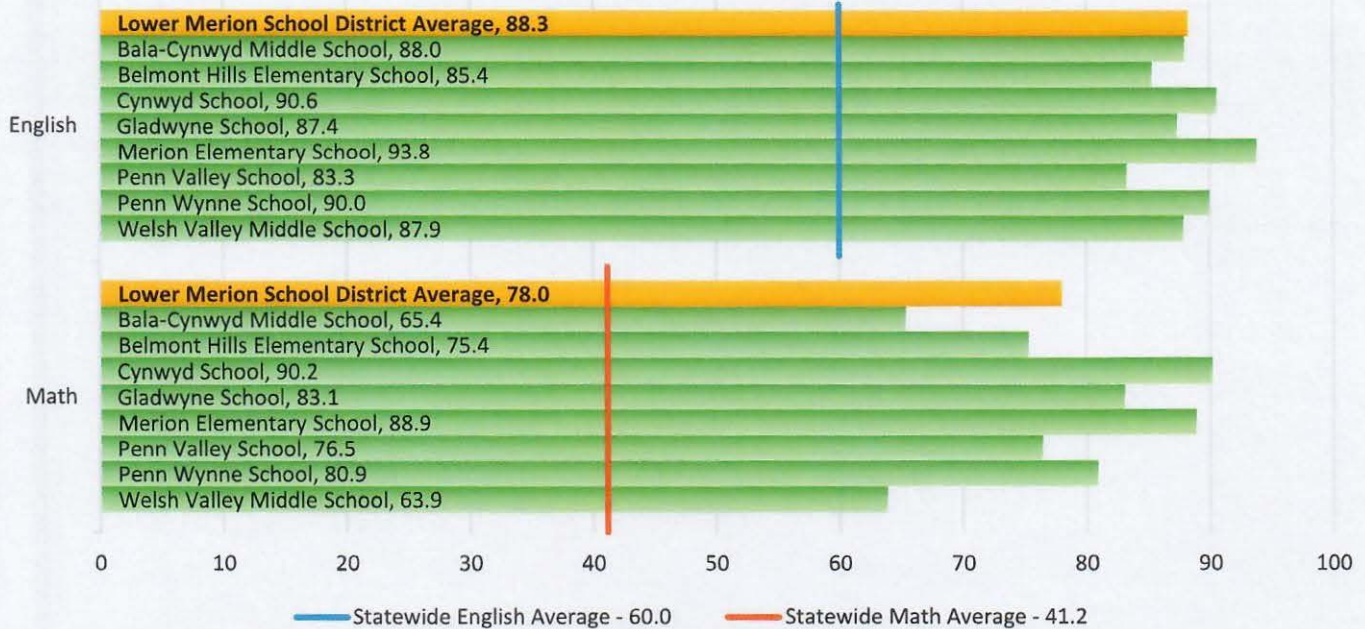
2014-15 SPP Scores



2014-15 Keystone % Advanced or Proficient

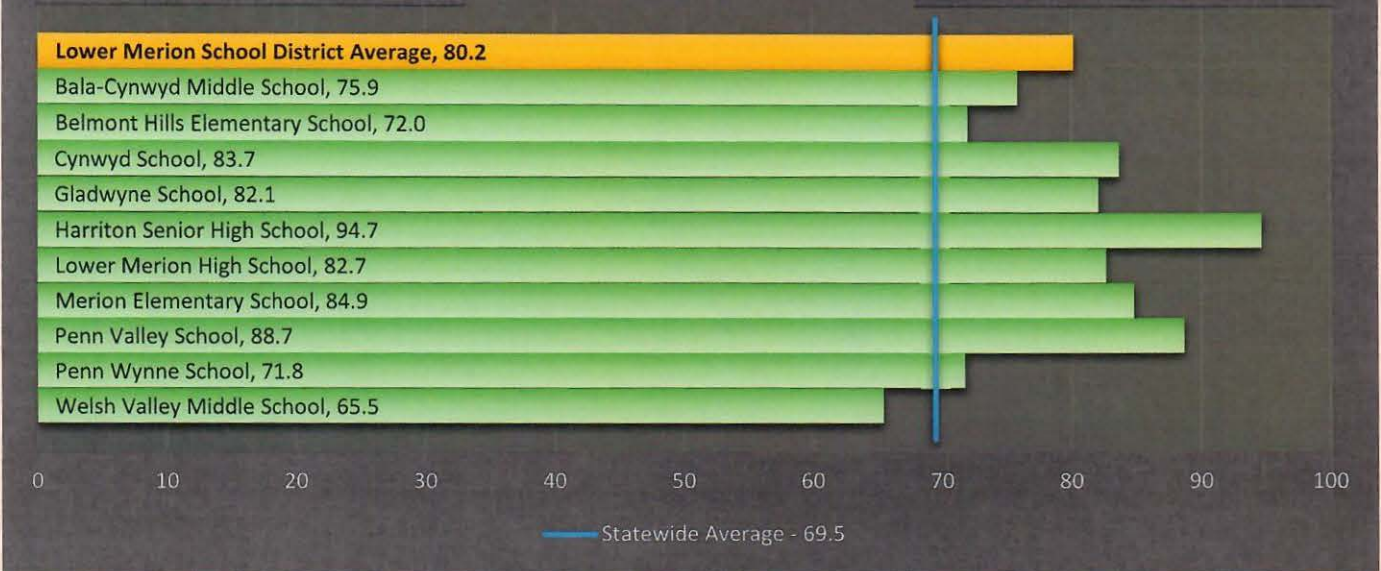


2014-15 PSSA % Advanced or Proficient

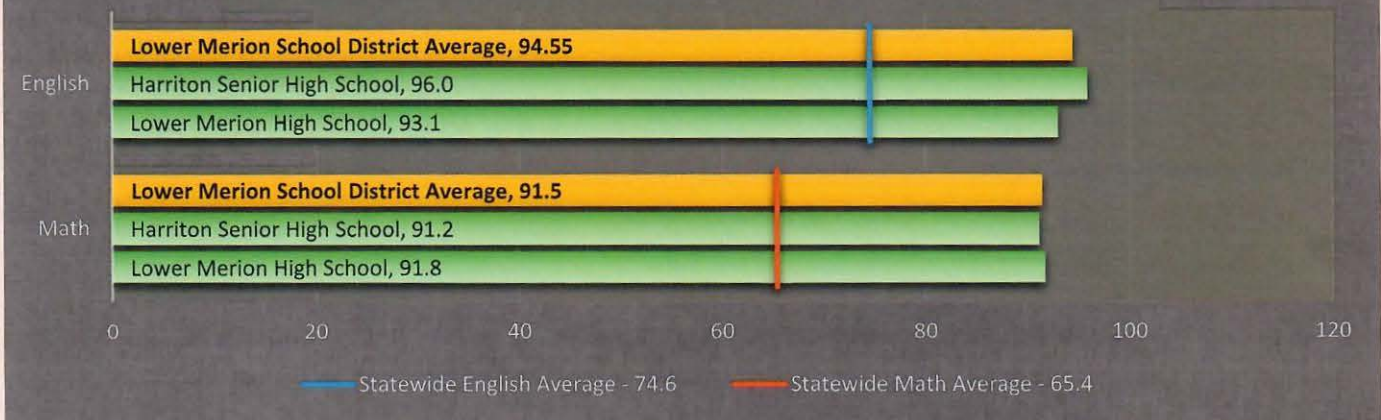


2015-16 Academic Data
School Scores Compared to Statewide Averages

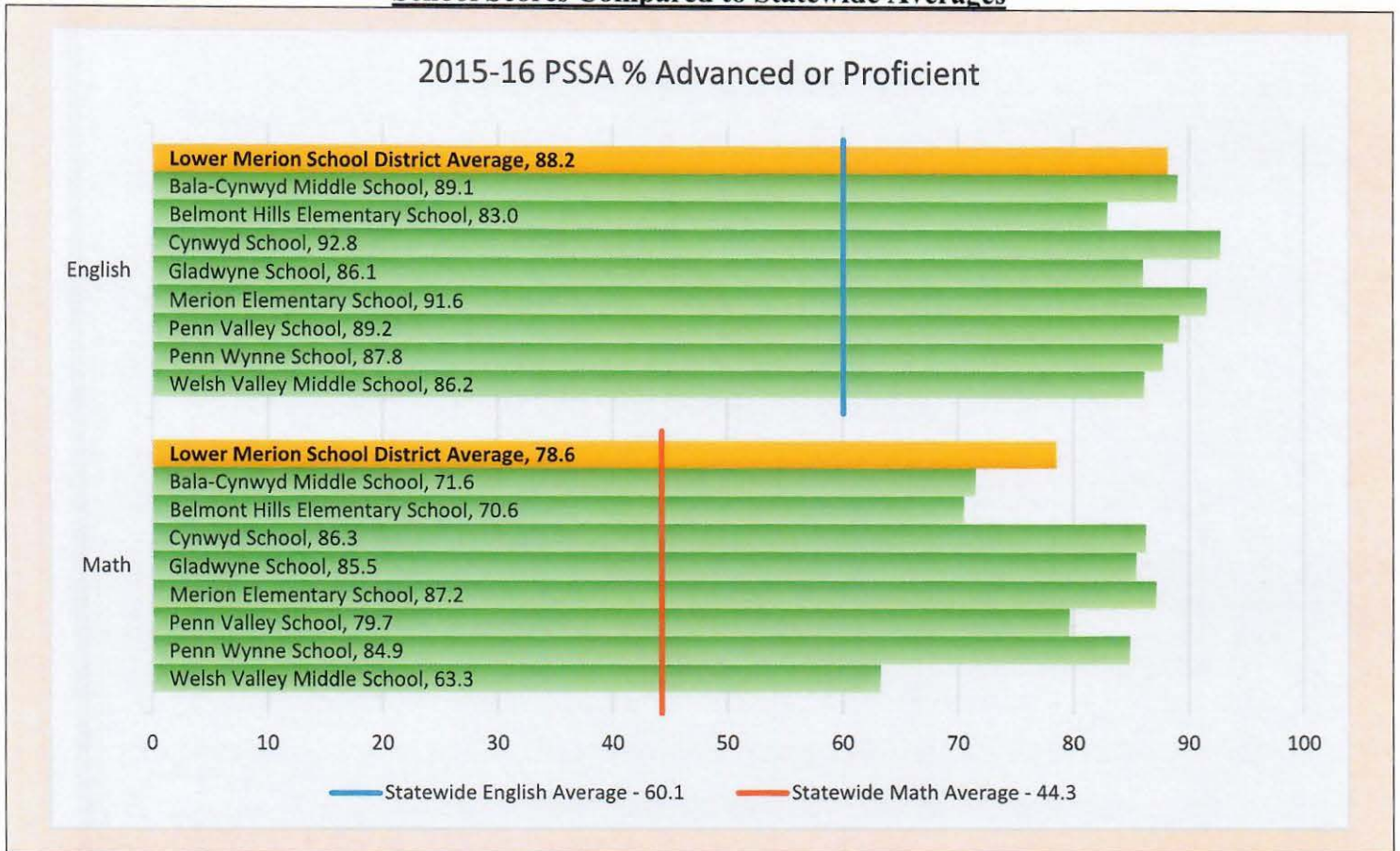
2015-16 SPP Scores



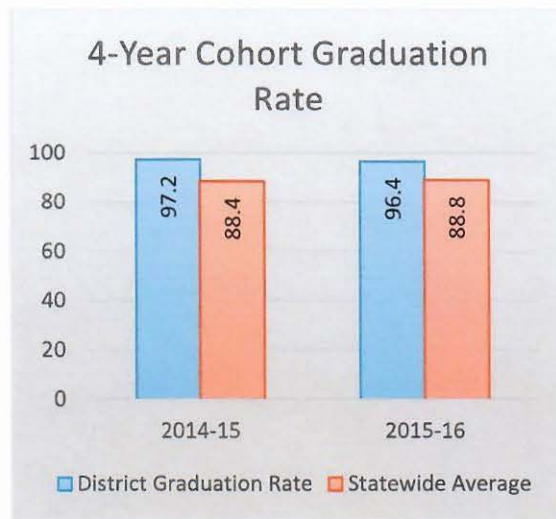
2015-16 Keystone % Advanced or Proficient



2015-16 Academic Data
School Scores Compared to Statewide Averages



4-Year Cohort Graduation Rates



Observation

Observation

The District Persistently Projected Annual Deficits Despite Realizing Annual Surpluses and Maintaining a Steady \$56 Million General Fund Balance

Criteria relevant to the observation:

Section 688(a) of the Public School Code (PSC) states, in part:

“... no school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance less than the percentages [as] set forth.” See 24 P.S. 6-688(a).

For school districts with total budgeted expenditures greater than or equal to \$19 million, the estimated ending unreserved, undesignated fund balance must be below 8 percent for it to be allowed to raise taxes under the aforementioned section of the PSC.

Section 688(b) of the PSC, states, in part:

“... each school district that approves an increase in real property taxes shall provide the Department of Education with information certifying compliance with this section. Such information shall be provided in a form and manner prescribed by the Department of Education and shall include information on the school district’s estimated ending unreserved, undesignated fund balance expressed as a dollar amount and as a percentage of the school district’s total budgeted expenditures for that school year.” See 24 P.S. 6-688(b).

For the five fiscal years ending June 30, 2016, the District’s annual budgets projected operating deficits even though, year after year, the District actually generated surpluses. The District’s budgets consistently overestimated operating costs and, as a result, underestimated ending fund balances. Contrary to its pessimistic forecasts, the District maintained a steady, substantial General Fund balance during the audit period while also transferring more than \$18 million in the last four fiscal years to a Capital Reserve Fund.⁷

Inaccurate Forecasts of Operations & Fund Balances

The District consistently developed General Fund budgets that projected and anticipated operating deficits, despite actually realizing annual surpluses. As Figure 1 below demonstrates, in every single year of the five-year period ending June 30, 2016, the operating variance was significant.⁸

Figure 1

Lower Merion School District Budgeted Deficits Despite Actual Surpluses			
Fiscal Year	Budgeted Operating Surplus/(Deficit)	Actual Operating Surplus/(Deficit)	Net Variance
2012	(\$5,101,371)	\$15,537,492	\$20,638,863
2013	(\$8,820,452)	\$5,168,620	\$13,989,072
2014	(\$7,522,634)	\$6,105,931	\$13,628,565
2015	(\$7,517,643)	\$4,117,736	\$11,635,379
2016	(\$8,513,255)	\$3,205,194	\$11,718,449
Total	(\$37,475,355)	\$34,134,973	\$71,610,328

⁷ The Capital Reserve Fund was one of two capital reserve funds maintained by the District during the audit period. The other fund is called the Capital Projects Fund.

⁸ Source: *The Required Supplementary Information, Budgetary Comparison Schedule, General Fund*, included as part of the District’s independently audited financial statements for each respective year. The budgeted amounts included here are the original budgets, rather than amended budgets, since the original budgets were used by the District in its applications for Act 1 (known as *Taxpayer Relief Act*) exceptions to PDE. The only year in the five-year period that had an amended budget was fiscal year 2016.

Criteria relevant to the observation (continued):

PDE's *Certification of Estimated Ending Fund Balance for the General Fund Budget*, accompanies a school district's Fund Budget (PDE Form 2028). The certification form is signed by the Superintendent and submitted to PDE along with the budget. The form itself refers, as follows, to the restrictions provided for in Section 688(b) of the PSC:

"No school district shall approve an increase in real property taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance (unassigned) less than or equal to the specified percentage of its total budgeted expenditures."

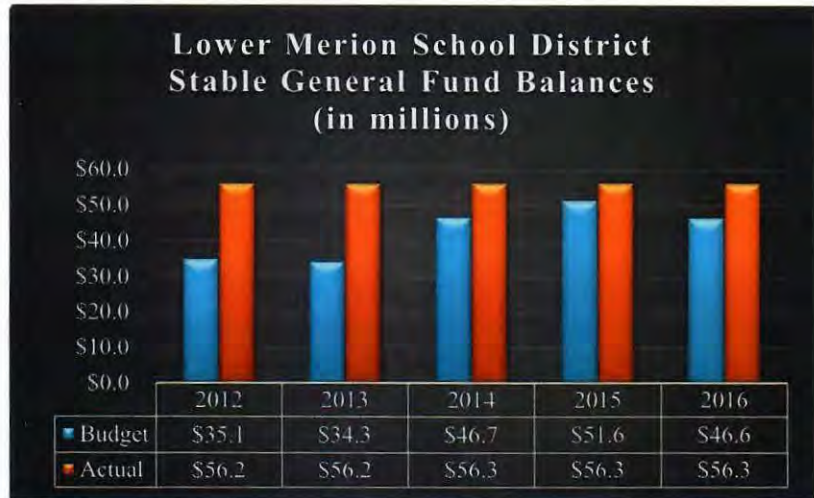
Furthermore, the signature by the Superintendent states that he/she certifies that the information regarding total budgeted expenditures and ending unassigned fund balance is accurate and complete.

The *Government Finance Officers Association (GFOA)* has developed budgeting best practices for school districts in its *Recommended Budget Practices*. Listed among the best practices are the following:

1. *General Fund Reserve.* School districts should establish a formal process on the level of the unrestricted fund balance that should be maintained in the general fund as a reserve to hedge against risk.
2. *Year-end Savings.* A district should have a policy to define what happens to year end funds that are not used by a department. The GFOA recommends that districts develop policies that encourage a more strategic use of these funds.

Due to continually projecting budgetary deficits for the five fiscal years, the District's General Fund was also consistently projected to decrease; however, actual fund balances remained stable and strong at \$56 million, as shown in the chart below.⁹ As of June 30, 2016, Lower Merion's General Fund balance was the third largest in the Commonwealth. Only the Pittsburgh and Philadelphia City school districts had General Fund balances greater than the Lower Merion School District.

Figure 2



The following section addresses the main reason for the District's over-budgeting of operating costs and under-budgeting of General Fund balances.

Consistent Over-Budgeting of Expenditures

During the five fiscal years between July 1, 2011, and June 30, 2016, the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent. Even as recently as fiscal year 2015-16, the District budgeted expenditures nearly \$10 million more than actual expenditures.

⁹ Ibid.

Criteria relevant to the observation (continued):

Act 1 of 2006 known as the *Taxpayer Relief Act*, states, in part:

“Providing for taxation by school districts, for the State funds formula, for tax relief in first class cities, for school district choice and voter participation, for other school district options and for a task force on school cost reduction; making an appropriation; prohibiting prior authorized taxation; providing for installment payment of taxes; restricting the power of certain school districts to levy, assess and collect taxes; and making related repeals.”

The *Taxpayer Relief Act* has a provision for the imposition of a tax under the PSC and defines the calculation of the index limiting tax increases.

See 53 P.S. § 6926.101 *et seq.*

Section 304(b) of Act states: “A school district which imposes a tax under this chapter is subject to section 688 [related to Limit of indebtedness] of the Public School Code.”

See 53 P.S. § 6926.304(b).

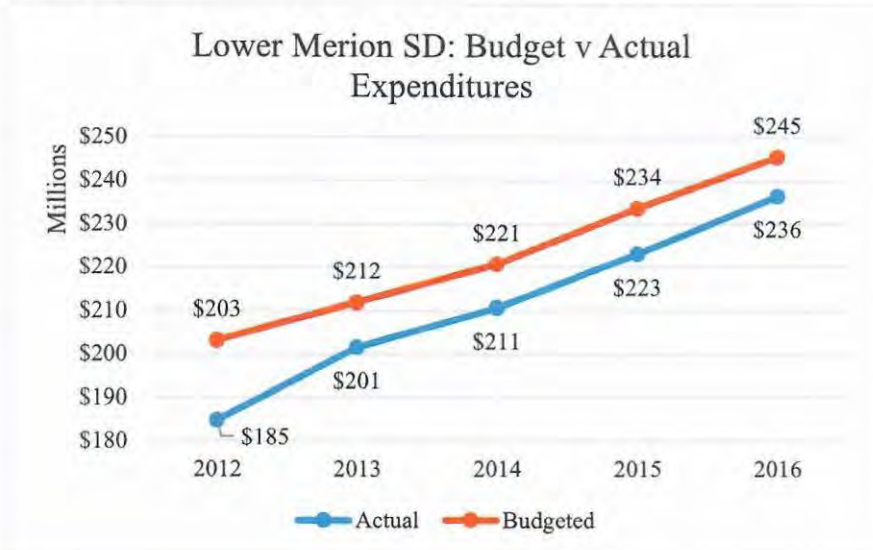
Section 333 of the Act, provides for the public referendum requirements for increasing certain taxes, and subsections (f) and (n) provides for referendum exceptions, as follows, in pertinent part:

“(f) Referendum exceptions.--A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

- (1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

The graph shown in Figure 3 below illustrates the District’s consistent disparity between budgeted and actual expenditures.¹⁰

Figure 3



The District stated that it did use historical data, where appropriate, in projecting costs in addition to using guidance obtained from multiple sources, including its financial advisor, insurance broker, energy consultant, county and local planners, various local and state purchasing consortiums, and internal staff. However, the consistency with which it overestimated its expenditures year after year results in the appearance of questionable budgeting practices.

Significant Capital Reserve Fund Transfers

The District maintained two major capital funds separate from the General Fund: the Capital Projects Fund and the Capital Reserve Fund.¹¹ In four of the last five years reviewed, the District transferred more than \$18.7 million from its General Fund to its Capital Reserve Fund.

¹⁰ Ibid.

¹¹ According to the independently audited financial statements, the Capital Projects Fund “is used to account for financial resources to be used for the acquisition or construction of major capital assets other than those financed by enterprise operations.” The Capital Reserve Fund “is used to account for proceeds of specific revenue sources that are legally restricted to expenditures for future capital projects.”

Criteria relevant to the observation (continued):

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following . . . (v) costs incurred in providing **special education programs and services**. . .

(n) Treatment of certain required payments.--

(1) The provisions of subsections (f) and (j) shall apply to a school district's share of **payments to the Public School Employees' Retirement System** as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the increase in estimated payments between the current year and the upcoming year, as determined by the department under this section, is greater than the index....”

(Emphases added.) See 53 P.S. § 6926.333(f) and (n).

The District's Board Policy #620, *Fund Balance*, states, in part:

“The school district will strive to maintain an unassigned general fund balance of less than eight percent (8%) of the budgeted expenditures for that fiscal year. The total fund balance, consisting of any nonspendable, restricted, committed, assigned and unassigned balances, may exceed eight percent (8%). The District's policy is to first apply expenditures toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances.

The District was able to transfer millions to the Capital Reserve Fund because it realized an operating surplus in each of the five years reviewed. Figure 4 shows the annual surplus and transfers to the Capital Reserve Fund.¹²

Figure 4¹³

Lower Merion SD Actual Operating Surplus and Transfers				
Fiscal Year	Actual Revenues	Actual Expenditures	Actual Operating Surplus	Transferred to Capital Reserve Fund
2012	\$200,290,317	\$184,752,825	\$15,537,492 ¹⁴	N/A ¹⁵
2013	\$206,660,839	\$201,492,219	\$5,168,620	\$5,000,000
2014	\$216,697,343	\$210,591,412	\$6,105,931	\$5,900,000
2015	\$227,079,805	\$222,962,069	\$4,117,736	\$4,770,000
2016	\$239,703,544	\$236,498,350	\$3,205,194	\$3,042,000
Totals	\$1,090,431,848	\$1,056,296,875	\$34,134,973	\$18,712,000

The District said that it made transfers to the Capital Reserve Fund to support its five-year plans for capital improvements, school bus replacements, and IT infrastructure improvements. But, it also maintained a significant portion of *committed* reserve funds in its General Fund for future, *capital* projects.

According to the District, in distinguishing from its Capital Reserve Fund, it stated that the separate funds in the General Fund *committed* for future capital projects “are intended to be used for future projects to address the District’s rapidly increasing enrollment.”

Substantial Committed Funds

Committed funds of \$35.8 million per year comprised nearly 64 percent of the total General Fund balance of \$56 million that was maintained in each of the five years reviewed.

¹² Source: For each respective fiscal year, the data was obtained from the *Statement of Revenues, Expenditures, and Changes in Fund Balances – Governmental Funds* of the independently audited financial statements.

¹³ Ibid.

¹⁴ According to Note 6 of the District’s June 30, 2012 independently audited financial statements, the District transferred \$3 million from its General Fund to its Debt Service Fund.

¹⁵ The Capital Reserve Fund is first reported on and noted in the financial statements of fiscal year 2013. According to the June 30, 2012 independently audited financial statements, the District reported a Capital Projects Fund, but not a Capital Reserve Fund.

The following table shows the District’s fund balances, by classification, for the five-year period reviewed.

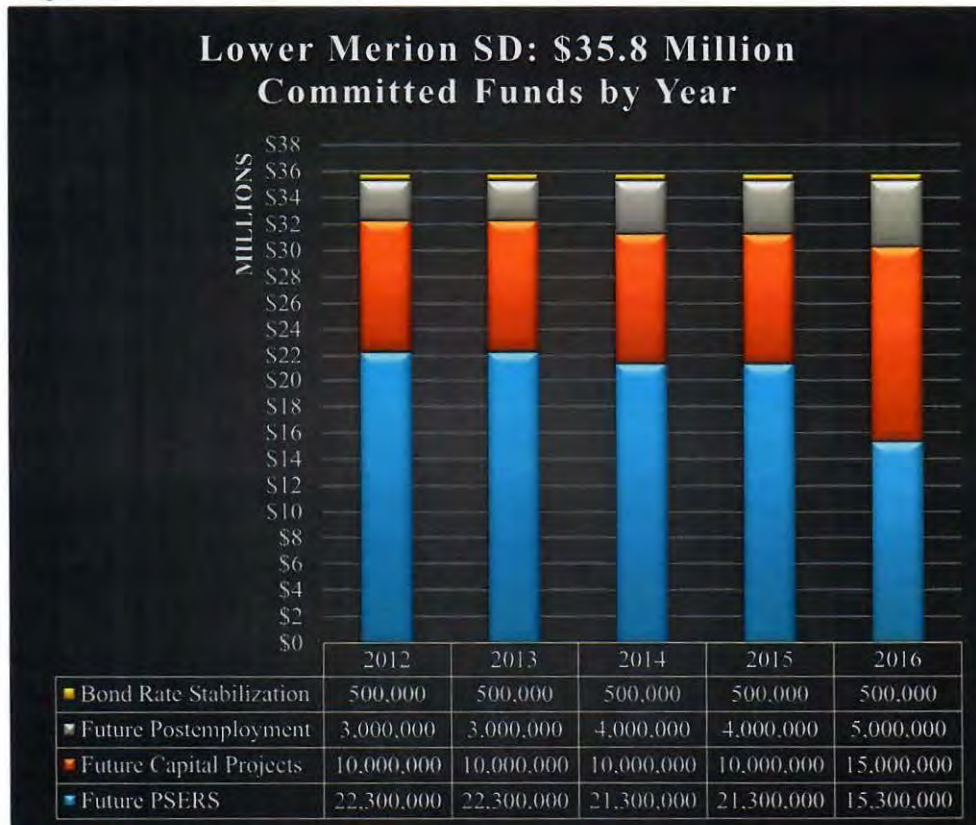
Figure 5

Lower Merion School District Analysis of General Fund Balance by Fiscal Year ¹⁶					
Category	2012	2013	2014	2015	2016
Unassigned	\$19,515,434	\$20,125,688	\$20,121,794	\$20,174,232	\$20,282,605
Committed	35,800,000	35,800,000	35,800,000	35,800,000	35,800,000
Non-spendable	896,100	314,433	336,199	288,103	180,286
Total Fund Balance	\$56,211,534	\$56,240,121	\$56,257,993	\$56,262,335	\$56,262,891

According to District officials, funds were committed for future capital projects, future Public School Employees’ Retirement System (PSERS) obligations, future post-employment healthcare costs, and variable rate bond stabilization.

The breakdown of the annual \$35.8 million fluctuated from year to year, although it totaled the same amount every year, as shown in Figure 6 below.

Figure 6



¹⁶ Source: For each respective fiscal year, the data was obtained from the *Balance Sheet – Governmental Funds* of the independently audited financial statements.

It is significant to note that the total amount committed for future use remained constant at \$35.8 million because, according to the District, no expenses were applied against these funds in any of the five years reviewed. More importantly, the District did not spend any of the funds it committed to cover rising pension costs and instead the District applied to PDE for the retirement cost exceptions which enabled it to increase real estate taxes above the Act 1 limit¹⁷ (more detail on this topic is provided later in the observation).

Best business practices recommend that school districts annually adopt a plan for usage of their committed funds and that they review these commitments for validity. During our review of board meeting minutes, we found that the District's Board only approved the committing of funds in two of the five fiscal years (2014 and 2016) and there was no apparent plan for usage or review for validity.

The Unassigned Fund Balance Issues

Section 688 of the Public School Code prohibits school districts from approving an increase in taxes if its *estimated* unassigned fund balance exceeds a certain threshold.¹⁸ For the District, that threshold is 8 percent of expenditures.¹⁹

In each of the last five fiscal years ending June 30, 2016, the District's budgets *forecasted* unassigned fund balances below 8 percent every year. Thus, the District technically complied with the PSC when it approved tax increases. However, over the five-year period, the *actual* unassigned fund balance as a percentage of total expenditures averaged more than 9.5 percent, which is above the PSC threshold of 8 percent.

If the District had estimated its unassigned balances more closely to what its actual unassigned fund balances were, it would not have been able to raise taxes because its unassigned fund balance as a percentage of expenditures would have been above the 8 percent threshold.

¹⁷ 53 P.S. § 6926.333(f)(2)(v), (n).

¹⁸ 24 P.S. § 6-688.

¹⁹ Pursuant to Section 688(a) of the PSC, an 8 percent limit applies to districts with estimated total expenditures equal to or exceeding \$19 million. In all five years reviewed in this observation, the District's total expenditures significantly exceeded that threshold.

In addition, the District's Board Policy #620, *Fund Balance*, instructs the District to "first apply expenditures toward restricted fund balances followed by committed fund balances and then to assigned fund balances before using unassigned fund balances."

We reviewed the District's budgets and found that the District did not plan to use committed funds, as directed by its own board policy. It never defined when or how far into the future it actually planned to use the committed funds. The District asserts that it has complied with its board policy and used its unassigned fund balance to fill budgetary holes.

The Impact of Budgeting Inaccuracies on Taxes

As stated earlier, the Lower Merion School District can only raise taxes if its estimated unassigned fund balance falls below 8 percent. Any time the District's estimated unassigned fund balance as a percentage of expenditures fell below 8 percent, it could approve tax increases up to a limit known as the Act 1 index.

However, a school district can also raise taxes beyond the Act 1 index, but it must seek approval through a public referendum or else obtain approval for exceptions from PDE. PDE has allowed for certain exceptions to the Act 1 limit, e.g., for estimated increases in special education costs and retirement costs.

The District not only raised taxes every year in the five-year period, it raised them beyond the Act 1 limit. However, it did so not through public referendum, but by obtaining approval for exceptions from PDE for special education and retirement costs.

The exceptions used by the District in each year are shown in Figure 7 below.²⁰

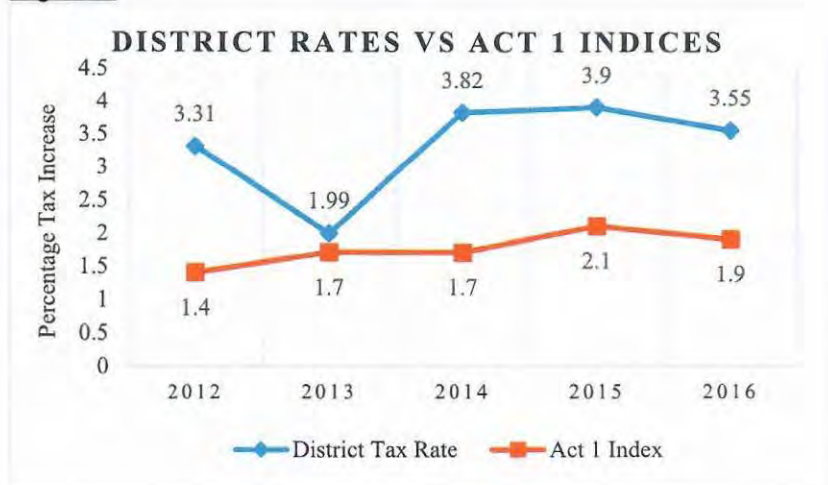
Figure 7

Lower Merion School District Use of Exceptions			
Fiscal Year	Special Education	Retirement	Total
2012	\$1,543,574	\$1,621,343	\$3,164,917
2013	\$486,768	-	\$ 486,768
2014	\$2,478,906	\$1,233,830	\$3,712,736
2015	\$1,592,463	\$1,714,965	\$3,307,428
2016	\$1,610,194	\$1,536,794	\$3,146,988
Total	\$7,711,905	\$6,106,932	\$13,818,837

Consistent over-budgeting of expenditures and the District’s maintenance of steady, substantial committed funds rendered the *estimated* unassigned fund balance low enough for the District to justify raising taxes in each of the five fiscal years. Figure 8 below illustrates the difference between the annual Act 1 index for the District and its actual tax rates.

As stated earlier, the Act 1 index would have been the allowable limit on tax increases for each year if the District had not obtained approval for exceptions from PDE.²¹

Figure 8



²⁰ Source: PDE forms for each year, entitled, *The Certification of Utilization of Referendum Exceptions*. The District noted that it could have increased taxes even more than it did in certain years because it had obtained approval from PDE for exceptions in amounts greater than what it actually used. For instance, in fiscal year 2013, the District applied for special education and retirement amounts totaling \$3.7 million, but only used \$486,000, as shown in Figure 7.

²¹ Source: For each respective fiscal year, the PDE 2028 – Final General Fund Budget.

According to our review, the total amount of the exceptions used for special education and retirement costs over the five-year period was \$13.8 million which was significantly less than the \$18.7 million the District transferred to the Capital Reserve funds due to the annual operating surpluses (See Figure 4 and 5). The District clearly had unassigned funds to cover these costs.

In addition, and of greater concern, despite having already committed funds—as much as \$22.3 million in 2012—for the express purpose of covering increasing retirement obligations, the District continued to request further tax increases, citing increasing retirement obligations, as opposed to using funds previously committed for this purpose. As stated previously, the District never spent any of the funds it set aside for retirement costs nor did it develop a timeline for when it intended to spend those funds.

Residents' Lawsuit²²

Annual tax increases coupled with the District's widely reported substantial General Fund balance led residents to file a lawsuit against the District. On March 11, 2016,²³ an amended “noncertified” class action complaint²⁴ was filed in the Montgomery County Court of Common Pleas on behalf of present and past residents of the District in an attempt to end the District's *alleged* practice of projecting budget deficits and to prevent the District from exceeding its Act 1 index for 2016-17.²⁵

The District filed preliminary objections to the amended complaint, and District management argues that “there is significant community opposition to the suit.” Meanwhile, with the preliminary objections pending before another judge, the residents filed the petition for injunctive relief, requesting that the District be enjoined from enacting any tax increase for the 2016–17 fiscal year. On August 29, 2016, the trial court issued an injunction ordering the District to revoke “that portion of the tax

²² This section is provided for informational purposes **only**.

²³ The initial complaint was filed on February 1, 2016.

²⁴ While the court dockets appear to indicate that the lawsuit has been proceeding as a “class action”, District management has noted that the matter was never officially certified as a class action suit. Therefore, we are referring to the matter as a “noncertified” class action.

²⁵ *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, Montgomery County Court of Common Pleas, August 29, 2016 (regarding to Injunctive relief).

increase that had been authorized by the Department [of Education] pursuant to Section 333 of Act 1²⁶ . . . to compensate for the increased costs of pension and special education obligations. The trial court further enjoined the District from collecting a tax increase for fiscal year 2016-17 of over 2.4 percent more than what was in effect for the prior fiscal year.”²⁷ As confirmed by the District, the lawsuit is still pending at the lower court level, and the District’s preliminary objections have not yet been ruled upon.²⁸

Conclusion

We reviewed the District’s financial data and found that in each of the past five fiscal years, the District:

- Repeatedly budgeted for operating deficits despite actually realizing operating surpluses.
- Consistently over-estimated expenditures.
- Transferred an average of \$3.7 million to its Capital Reserve Fund each year (in four of the last five years).
- Maintained a steady \$35.8 million in committed reserves.
- Maintained a \$56 million General Fund balance consisting of more than \$20 million in unassigned reserves, which exceeded 8 percent of total expenditures.
- Annually applied for and received exceptions from PDE so that it could raise taxes above the Act 1 index in lieu of using the committed funds specifically set aside for rising retirement costs.

The District’s conservative budgeting practices allowed it to raise taxes for each fiscal year from fiscal years 2012-16. Additionally, the District was able to obtain exceptions from PDE to increase taxes every year beyond the Act 1 index. These strategies were insufficiently transparent to

²⁶ 53 P.S. § 6926.333.

²⁷ The procedural history cited here is, in part, from the unreported opinion of the Pennsylvania Commonwealth Court issued April 20, 2017 (reargument denied June 19, 2017) regarding the District’s appeal of the lower court’s August 29, 2016, injunction order. *See Wolk et al. v. Lower Merion Sch. District*, 2017 WL 1418445, page 1 (2017). In its unreported opinion, the Commonwealth Court dismissed the District’s appeal for failure to preserve issues on appeal by failing to file post-trial motions. The District has requested an allowance of appeal, filed July 19, 2017, to the Pennsylvania Supreme Court (481 MAL 2017) on the lower court’s August 29, 2016, order.

²⁸ As of October 18, 2017, *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, is still pending at the lower court level.

the public because they painted a financial picture that did not reflect the District's actual financial condition.

Recommendations

The Board and District officials should:

1. Consider modification of the board policy governing the General Fund to include an annual review of the validity of its committed reserves and a requirement of the Board to approve a plan for using those committed funds.
2. As part of its annual budgeting process, determine whether its General Fund commitments and reserves should be maintained, increased, or used for their respective designated, authorized purposes.
3. Evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

Management Response:

The District disagreed with our observation and provided a lengthy response which can be found in its entirety in the appendix.

Auditor Conclusion

The following is our conclusion to those management comments that we deemed relevant to the facts of this observation. Our response is presented by topic area for clarity.

Summary

It is important to note that our audit period for the prior report was January 28, 2011, through November 26, 2013. Our review period for the financial objective in this engagement was July 1, 2012, through June 30, 2016. The information contained in our observation in this report resulted from District decisions and actions that occurred during our current review period.

Audit periods are integral since information changes over time and the District's statement that this information was previously reviewed by our office is inaccurate as evidenced by the distinct audit periods. It is also unfounded for the District to presume that previous audit reports without findings and/or observations are going to lead to future reports without findings or observations. Each audit engagement we conduct is an independent engagement that is not influenced by previous audits.

We disagree with the District's statement that the issues discussed in our observation are not worthy of being a reportable condition. During our review of the District's financial data for the 2012-13 through 2015-16 fiscal years, we identified continual and repeated operational surpluses, despite the District repeatedly budgeting for operational deficits. This was primarily due to the District consistently over-estimating expenditures. As a result, the District transferred an average of \$3.7 million to its Capital Reserve Fund while maintaining a \$56 million General Fund balance and \$35.8 million in committed fund balances.

During the time period reviewed, and despite healthy fund balances, the District raised taxes above the Act 1 index. The District stated these tax increases were necessary for future expenditures despite already committing funds for this purpose.

Key Considerations

We agree that each district has unique circumstances which create challenges for annually budgeting expenditures. However, our review of the District's budget showed the District annually budgeted total expenditures an average of \$12 million more than what the District actually spent during the period reviewed.

If budgeted expenditures were more accurate and more in line with actual expenditures, the District would have been limited in its ability to raise taxes over the Act 1 index.

Fund Balance

The District responded that the Office of the Auditor General [*sic*] took special note of the health of the District's fund balance in its last audit report, and offered no findings

or observations of concern. The District went on to say that is the same fund that the Auditor General is now viewing as “too high.” The District is correct that there were no findings in the prior audit report, however, there was not a special note regarding the health of the District’s fund balance in the prior audit report. Furthermore, the District’s assertion that we view the District’s fund balance as too high is inaccurate.

During our period of review, we observed that the District’s actual expenditures consistently were less than the budgeted amount. The overly pessimistic budgets allowed the District to raise taxes over the Act 1 index.

The District questioned why other school districts with similar fund balances did not have a similar observation. The District states that the General Fund balance percentages of other districts in the Commonwealth is misleading. As stated earlier, this observation is not solely based on the District’s General Fund balance. While other districts in the Commonwealth have a greater General Fund balance, in percentage terms, than the Lower Merion School District, the situations are not similar. The other districts cited in the District’s response did not consistently outperform budgets and raise taxes above the Act 1 index.

Variance

The District questioned our rationale for using the independent auditor’s report for the budgeted and actual amounts used in Figures 1, 3, and 4 of the observation, instead of using the final revised budget document that was submitted to PDE. The District’s chart in this section also included transfers out as an expenditure. Our rationale for using the original budgeted versus actual revenue and expenditure figures and not to include transfers out was to show the consistent variance from presentation of the original budget to what actually transpired at year end. This is important to show the need for a transparent budgetary process.

Furthermore, the original budgeted expenditures were used to apply for Act 1 exceptions, not the amended figures. The Business Manager and Superintendent confirmed on October 13, 2017, that our figures used in Figures 1, 3, and 4 were accurate and did not contain errors. The District had

a difference of opinion on which figures we should have presented to highlight the significant budgeting variances that occurred during our period of review. Our presentation of data will stand as presented in Figures 1, 3, and 4. It should also be noted that the figures used throughout the observation in this report were obtained from the independent auditor's report to ensure consistency and ensure the numbers we presented were audited as part of the District's annual independent financial audit.

The District noted budgeting variances due to circumstances beyond the District's control for specific account functions. While we acknowledge that this can occur, the pattern of outperforming budgetary amounts over our review period is concerning since Act 1 exceptions were based on the budgetary numbers. We continue to believe that using historical data for certain expenditures would have helped the District to budget more accurately.

Substantial Committed Funds

The District stated that our comment that "the District never spent any of the funds it set aside for retirement costs, nor did it develop a timeline for when it intended to spend those funds" was misleading. While the District did set aside funds for future increases in PSERS costs, there is no certainty that the District will expend these funds by 2020. In fact, our review of the District's committed funds over the review period showed that the District continued to set aside funds for retirement costs without expending funds for this purpose. Instead, the District continued to apply for and receive Act 1 exceptions.

We believe that the District should have considered using a portion of its committed fund balances for PSERS obligations prior to applying for and exercising the use of the Act 1 exception for retirement costs. Furthermore, the District's fund balance policy #620 noted committed funds should be used before unassigned fund balances. Review of the District's budgets noted unassigned fund balances were budgeted to be used before the committed funds for retirement obligations.

Referendum Exceptions/Act 1

The District applied for and received PDE's approval for Act 1 exceptions. As stated multiple times, request and approval for Act 1 exceptions was based on District prepared budgetary projections that were consistently pessimistic.

Our intent was to show that the District applied for exceptions each year while maintaining a large General Fund balance. We are recommending the District evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

Pending Residents' Lawsuit

We wish to note that our discussion regarding the residents' lawsuit in the observation was presented for informational purposes *only* (see related footnote). Further, we denoted that the District's alleged practice of projecting budget deficits and exceeding its Act 1 index for 2016-17 remains an *allegation* until the final lower court's decision is issued at least within this venue.²⁹

Conclusion

We have noted and responded to management's disagreement to our determinations, but our conclusions remain unchanged. As such, this observation stands as presented.

²⁹ Pending *Wolk et al. v. Lower Merion Sch. District*, No. 2016-01839, Montgomery County Court of Common Pleas (pending status of case was confirmed as of October 18, 2017).

Status of Prior Audit Findings and Observations

Our prior audit of the District resulted in no findings or observations.

Appendix

LOWER MERION SCHOOL DISTRICT MANAGEMENT COMMENTS

Summary

The Administration of Lower Merion School District appreciates the opportunity to respond to the draft Performance Audit received September 5, 2017. Our management comments are provided with the hope of addressing many of the assertions made throughout the report and to show the Auditor General the ways in which the principles that are in the draft report have been part and parcel of our already adopted standard and expanded operational methodology. Specifically, this document was prepared for two reasons:

1. The District believes that its financial practices and financial standing are sound and it has achieved **consistent budget approval by the Pennsylvania Department of Education, a history of strong audit reports from the office of the Auditor General and continued clean annual audit reports from independent auditors.** Much of the data identified in the draft audit has been previously reviewed and approved by the Auditor General's office.
2. The District believes that based on the methodology adopted by the Auditor General's office, the draft audit report does not rise to the level of a "finding" or an "observation."¹ A finding would indicate non-compliance with a "statute, regulation, policy, contract, grant requirement or administrative procedure." **The report in fact indicates that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District's accounting and budgeting practices have been generally affirmed in every audit report for at least the past 20 years.** Moreover, the recommendation that budgeting be based on historical amounts is not in keeping with mandated accounting policies for matters such as self-insurance (for which the District seeks actuarial analysis annually), PSERS, and special education expenditures (as to which the District cannot cap current expenditures at prior expenditure levels).

As a threshold matter, the District expresses its concern that the Auditor General appears to have been influenced by material presented by Arthur Wolk and Keith Knauss at an injunction hearing held in 2016. The District has been involved in litigation with Mr. Wolk, and that litigation is ongoing. The District believes that Mr. Wolk is wrong as to the merits of the case, but also disagrees with the public policy position that animates his litigation. Mr. Wolk believes that it is wrong to try to provide public education at a level commensurate with the best secondary schools in the region. His philosophy is readily apparent from his amended complaint, in which he states: "Public education is not courses, programs, activities, free laptop computers, and curriculums [*sic*] that are neither mandated nor normally part of a public education standard, and are normally provided only by private institutions at larger expense to individual patrons who

¹ According to the methodology outlined by the Auditor General, "Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not arising to the level of noncompliance with specific criteria."

prefer to afford their children education and opportunities that are neither required, nor offered, nor appropriate for public education paid for by taxpayers.” In the amended complaint, he also condemns teacher salaries as too high, and calls the “higher or continuing education” program for teachers “nothing but a theft of the Plaintiffs’ tax money and a scam.” The District believes that Mr. Wolk’s positions are at odds with those of most residents of the District; indeed, over 3,500 residents of the Lower Merion School District have signed a petition opposing Mr. Wolk and his lawsuit and supporting the District’s budgeting practices.

Key Considerations

Among the universal school district budgeting laws observed by LMSD that we wish to emphasize in this response is the requirement by the Pennsylvania Department of Education that districts budget on a line item basis. **This is and always has been our practice.** It is important to note, moreover, that while there are universal laws and standards for districts, no school district is the same and each must approach budgeting based on local circumstances and realities.

The Auditor General made multiple requests over the course of the past year for information, and some of that information is reattached, because it was not referenced in the Performance Audit draft that was provided to us.² The District notes as well that in questioning the acknowledged and undisputed consistency of the District’s accounting practices on the grounds that they have resulted in the appearance of questionable budgeting practices, the Auditor General seems to have departed from his own previous position that conservative accounting practices that are designed to maintain healthy fund balances and a good credit rating are laudable rather than blameworthy. As set forth in greater detail below, the Auditor General’s positions on adequate fund balances, community awareness of the purpose and timetable for using these balances, and the extent of permissible variances are not only at odds with best accounting practices but are actually inaccurate in some respects.

Enrollment Growth

No school district in Pennsylvania has been impacted more by enrollment growth in recent years than Lower Merion School District. **Since 2008, LMSD has had the largest growth in the Commonwealth by total number of students (nearly 1,500 additional students) and the second-fastest enrollment growth rate (more than 21%) according to the Pennsylvania Department of Education.** As the 2016-17 school year opened, enrollment in the District was nearly 8,400 students for the first time since the early 1970’s. The last time LMSD enrolled this many students, the District operated 15 schools (ten K-6 elementary schools, three 7-9 junior high schools and two 10-12 senior high schools). Today the District has just ten schools and has been making every effort to maximize limited space in an era of unprecedented growth.

LMSD’s growth is in direct contrast to that of most districts in the state. Of the 500 school districts in the Commonwealth, more than 400 are showing declining enrollment. Only 15 districts are showing growth in excess of 10% in the last eight years. It should be noted that

² This includes a 13-page response to supplemental questions from the Auditor General on 9/27/16 detailing our use of historical analysis in developing the budget, as well as a detailed written response to questions regarding committed fund balance and capital reserve transfers, sent 5/19/17.

enrollment growth is projected to continue in LMSD for the foreseeable future. Two recent independent enrollment studies (conducted by the Montgomery County Planning Commission and Sundance Associates) point to steady increases in enrollment through 2021 and beyond. Here are some statistics worth noting from these studies:

- Enrollment is projected to increase by approximately 1,000 students over the next six years.
- Middle schools will increase by more than 350 students.
- Growth will impact the high schools the most with the addition of 700 more students.
- The current second grade class of 687 started as a kindergarten class of 454 and will graduate as a 12th grade class of 908 students.

Enrollment growth continues to have a significant impact on the District's budget planning. An increasing number of students has resulted in the need for additional staff and expanded facilities and a reserve for future growth. Additionally, enrollment growth has required/is projected to require additional expenses with regard to transportation and other services to maintain existing programs. Staffing is the single biggest driver of the budget; more students result in the need for more staffing and thus, greater costs. During the 2005-06 school year, for example, there were 670 teachers in the LMSD; today, there are 779.

The District has a long history of proactively addressing enrollment growth despite challenges posed by limited space, lack of available land and the high cost of purchasing property in Lower Merion Township and Narberth Borough. The District has sought to make the best of its existing property and has expanded classroom capacity as needed following careful study and public planning. In recent years, the District has increased capacity at a cost of more than \$30M, completing additions at two elementary schools, two middle schools and re-purposing space in the District Administration Building for high school classroom use. Our demographic studies indicate that in the next few years we will need to – at minimum – add capacity at one middle school, one elementary school and one high school. The middle school project is currently underway with the installation of temporary modular classrooms this summer. We are holding \$15M dollars in committed fund balance in anticipation of needing those funds to expand classroom capacity in response to growing enrollment.

The District has also invested another \$3M in safety accommodations and security infrastructure following the tragedy at Sandy Hook Elementary School – **a reminder that even the most accurate demographic projections and budget forecasts may not account for certain unforeseen and necessary expenditures.**

While expanding classroom capacity is one strategy to address enrollment growth, the Board of School Directors continues to be sensitive to the potential costs of temporary classrooms and new construction. Thus, the Board has implemented fiscally-responsible short-term strategies that have provided more time to review enrollment projections and plan for the future.

In an effort to maintain favorable class sizes, preserve programs, maximize existing resources and provide planning flexibility at the elementary level, for example, the District now utilizes a “partner school” plan. The plan caps certain sections of grade levels in elementary schools that

have reached class size targets. When those sections are capped, students who register thereafter will be enrolled at a “partner school” – a Lower Merion elementary school that can accommodate further enrollment in that class section. This strategy has helped minimize the need to open additional sections in the short term, maximizing existing classroom capacity and staff resources. This program along with other strategies allowed us to hold tax increases below the state index for the 2017-18 school year.

While the District must consider enrollment growth in its budget planning, it is impossible – even with detailed studies and projection data – to forecast the precise impacts and costs. Ten years ago, for example, it would have been difficult to fully predict trends like: significant growth in the number of students enrolling in public schools vs. private schools in our community (a swing of between 600-700 students); a greater draw rate (almost double in eight years) of public school students from multifamily homes and rental apartments; and the development of new housing in Lower Merion (464 new units in the last two years and almost 1800 expected over the next six years). One thing is certain, families are continuing to choose Lower Merion School District for the quality of its schools. The demographic studies have indicated that growth is most closely associated with “the overall quality, reputation, and appeal of the [District].”

As LMSD balances its commitment to fiscal responsibility with the needs of its students, the Board of School Directors has made clear their commitment to maintaining the quality of the educational experience. The commitment is manifested in the long-term strategic plans, developed with extensive input from the entire community, including specific stakeholders. The funding required to support annual strategic plan needs is a part of public budget discussions. **Funding decisions have been developed and endorsed by the community, as evidenced by the cross-party support for the current School Board and the involvement of a broad cross-section of the population in our strategic planning and budgeting processes.**

Fund Balance

Lower Merion School District carries approximately \$56M in total fund balance, which represents roughly 22.9% of 2016 budgeted expenditures. Most of this amount represents a “committed” fund balance, which means it serves a financially-prudent purpose as permitted by law. In fact, the Office of the Auditor General took special note of the health of the District’s fund balance in its last audit report, and offered no findings or observations of concern. Yet, that is the same fund balance that the Auditor General is now viewing as “too high.” The balance includes \$15.3M for PSERS (state pension system).³ While the District’s PSERS obligation for this year is currently about \$20M, the state projects that within five years this amount will increase to over \$23M, a point at which reserves will be needed to offset the increases, something that the District has anticipated and prepared for several years – well before the prior audit, which raised no concerns with this analysis. An additional \$15M is committed for future capital projects and will be used for ongoing facilities needs, decreasing the District’s reliance on borrowing, and carrying into effect the community-developed strategic plan. A total of \$5M is

³ PSERS is managed by the Commonwealth, and school districts are mandated by law to contribute based on a rate annually determined by the PSERS Board. Local districts have no control over current and future contribution rates. Per 2017 data from PSERS, the current unfunded liability for the pension system is over \$42B. It is no surprise that district contribution rates continue to rise almost every year. (See chart on p. 13)

committed for post-retirement benefits as determined by actuaries and an additional \$0.5M is assigned for rate stabilization on variable rate bonds (should interest rates rise, the District will be covered). The reliance on actuaries for projected uncertainty is a good accounting practice. The remaining \$20.3M in “unassigned” fund balance constitutes [*sic*] approximately 7.6% of the District’s budget and is **therefore well below the allowable 8% limit set by the PA School Code**. The District used \$6.3M to close its budget deficit and maintained \$13.9M in reserve. The \$13.9M represents 5.2% of the budget.

The Auditor General’s public pronouncements have affirmed the principles behind Lower Merion School District’s and certain other districts’ budgeting practices. In a December 2015 Performance Audit report of the Pittsburgh Public Schools (which were carrying the state’s largest fund balance as of December 31, 2014 of just over \$129.2M) the Auditor General explained, “It is important to note that **a generous fund balance is a necessary component of a fiscally healthy school district**. Fund balances are important to districts the same way a savings account is important to individuals. Just as individuals should maintain a savings account to deal with emergencies or other unforeseen events, districts should also have funds in reserve to pay for emergency repairs or interruptions to revenues...School districts must walk a fine line between being prepared for emergencies, increasing fixed costs, or interruptions to revenue and being responsible to their students and taxpayers.”

The Auditor General cited Pittsburgh as one of the state’s most “successful financially run districts” due in large part to its healthy reserves. According to Pittsburgh’s most recent audit, the district’s fund balance ratio to total budget was 24%, which is actually higher than Lower Merion’s.

Although the Auditor General has recently referred to “20%” as a possible threshold for appropriate fund balance percentages, we reviewed school district audits released by the Auditor General’s Office between January 1, 2017 and July 27, 2017 but found **no observations or findings regarding fund balance in any of the 67 school district audits. This list included 29 districts with fund balances above 20% and at least 23 districts that had higher fund balance percentages than LMSD in 2015-16**. For example, of the six school district audits released via the Auditor General website on February 2, 2017 four districts had fund balances greater than LMSD and one had a fund balance of more than 40%.⁴

At the same time, the Auditor General has continued to recognize that school districts that run low fund balances risk the fiscal health of the district. As part of a public release regarding a recent audit of Blackhawk School District, he noted the following⁵:

- “Just as individuals and families should maintain a savings account to deal with unforeseen events, school districts should also have funds in reserve.”

⁴ Windber 40.6%, Midd West 34.2%, Carmichaels 25.6%, and Wyomissing 23%. Information based on press releases and audits at <http://www.paauditor.gov/>

⁵ Auditor General DePasquale Says Poor Budget Planning Led to Blackhawk School District’s Nearly Depleted Fund Balance <http://www.paauditor.gov/press-releases/auditor-general-depasquale-says-poor-budget-planning-led-to-blackhawk-school-district%E2%80%99s-nearly-depleted-general-fund-balance>

- “Unbudgeted expenditures necessitated that the district use the general fund balance to cover these expenditures...This is an unsustainable practice that nearly depleted the district’s general fund and led to the district’s perilous financial condition.”

In an audit of Eastern York School District, he shared similar concerns about the District’s declining fund balance:

“Maintaining a healthy general fund for a school district is not unlike individuals and families stashing cash in a savings account to save for an emergency,” DePasquale said. He cautioned that a decreasing fund balance reduces a district’s ability to pay for unexpected repairs or cover unexpected interruptions in revenue — like the recent nine-month budget impasse — and could impact the district’s credit rating.⁶

According to a study by the Commonwealth Foundation, 167 districts (one-third of all districts in Pennsylvania) had a higher percentage of total fund balance to actual expenditures than Lower Merion School District in 2014-15.⁷ By 2015-16, this number had increased to 181 districts (more than 36% of PA districts), according to a report by Temple University.⁸ Additionally, more than 50 districts are operating with a total fund balance of less than 6%, including 17 districts completely in the red and operating in a deficit. The Temple report also found that 33% of Pennsylvania school districts (165 total) had an actual unassigned fund balance as a percentage of actual expenditures greater or equal to Lower Merion’s.

This statewide snapshot underscores our District’s fiscal vitality and illustrates that there is great variance in total fund balance percentages across the state and no guidelines, mandates, or even general consensus as to what an appropriate percentage should be. The Temple study confirmed the varied distribution of fund balances across the Commonwealth and noted that “fund balance is a point-in-time measure; they change from year to year. **The amount of fund balance is not necessarily an indicator that school districts are collectively, or even individually, irresponsibly hoarding a pot of gold that could or should be used to avoid tough budget decisions.**”

Districts with adequate and healthy fund balances can address short-term and long-term needs, demonstrate financial stability and preserve or enhance bond ratings, thereby lowering debt issuance costs. The ratings agency Moody’s affirmed LMSD’s Aaa credit rating last year, enabling the refinancing of general obligation bonds that will save taxpayers \$9.8M. Among Pennsylvania’s 500 school districts, LMSD is one of only five that carries the Moody’s Aaa credit rating. Moody’s specifically cited the District’s “strong and stable reserve levels” in its most recent report. In the best and worst of times, a strong credit profile serves a district well. **The facts clearly show that Lower Merion School District has observed both responsible**

⁶ Eastern York’s Emergency Fund Too Low, Audit Warns
<http://www.ydr.com/story/news/education/2016/07/21/audit-flags-eastern-york-fund-balance-drop/87399304/>

⁷ School Districts Amass Record Reserve Funds
<https://www.commonwealthfoundation.org/policyblog/detail/school-districts-amass-record-reserve-funds>. Lower Merion’s percentage was 24.56% for 2014-15, which was based upon \$55,974,232 of fund balance to \$237,893,842 actual expenditures.

⁸ Explaining School Fund Balances/Temple University Center for Regional Policy
<http://www.cla.temple.edu/corp/files/2017/07/Fund-Balance-Update-2017.pdf>

budgeting practices and the letter of the law with regard to maintaining an appropriate fund balance.

We find it puzzling that the Auditor General is suggesting that the District ought to spend down its fund balance, particularly in light of his recent public comments regarding the Pennsylvania budget crisis. In a June letter co-signed by State Treasurer Joseph Torsella, the Auditor General noted the dangers of the Commonwealth's declining fund balance and the implications with regard to the state's credit rating, ability to pay obligations, and chronic need for borrowing:

*"The continued drop in the average annual General Fund balance is indicative of a structural imbalance between revenues and expenditures. Without a correction to this imbalance, we anticipate the trend of lower General Fund average balances to continue to worsen in the coming years."*⁹

This month, Standard & Poor's Global Rating lowered its general obligation rating on the Commonwealth from "A+" to "AA-", citing the need for "additional liquidity and...the likely need for external borrowing." **The result is that the state -- and taxpayers -- will pay more to borrow money.**

The same principle holds here, only with the opposite result. The taxpayers of the Lower Merion School District have benefited from a strong credit rating and lower borrowing costs (which is particularly important given unprecedented enrollment growth and the need to expand capacity at our schools). A deliberate plan to reduce the District's fund balance would likely lead to a lower bond rating and an increased cost of borrowing. The District believes this is bad policy for the same reason that the Auditor General has advanced in other contexts.

Variance

The title of the audit report suggests that the District projects deficits and yet realizes surpluses. This is true and we believe it is the result of prudent, conservative budgeting and year-long efficiency and frugality, as well as the fact that the budgets are developed line-by-line, category-by-category, as the Department of Education requires. We do a careful analysis of each budget category every year, but that doesn't necessarily result in zero (0%) variance between budgeted expenditures and actual expenditures in each category.

Each year school districts prepare budgets that are an estimation of expenses for the following school year. In Pennsylvania, budgets are prepared almost a year in advance of implementation and must take into account numerous variables, including but not limited to:

- Enrollment changes
- Staffing needs
- State budgets (which often aren't determined until late in, or in many cases after the closing of, the budget cycle)

⁹ Auditor General DePasquale, Treasurer Torsella Warn Legislators of Dangerously Low General Fund Balance Going into Next Fiscal Year <http://www.paauditor.gov/press-releases/auditor-general-depasquale-treasurertorsella-warn-legislators-of-dangerously-low-general-fund-balance-going-into-next-fiscal-year>

- Fluctuations in the local real estate market and transfer tax revenues
- Special education costs
- Charter school costs
- Healthcare costs
- Facilities planning and emergency needs (winter weather, repairs, etc.)

This timetable can be particularly challenging to rapidly-growing districts like Lower Merion. The District makes a best estimate as to its projected costs using historical data and guidance obtained from multiple sources, including its financial advisor, insurance broker, energy consultant, county and local planners, various local and state purchasing consortiums and internal staff.

The budgeting process in LMSD begins in early fall with outlines and expectations given to administrators. The District utilizes a modified zero-based budgeting that relies on carefully-examined historical data. (See footnote #2 and attached documents). A variety of situations and scenarios, from union contract agreements to emergency situations are considered. The administration then follows a PDE timeline in submitting and presenting for public Board deliberation a series of budget documents.

In that regard, the District notes that in footnote 2, the Auditor General attempts to justify using “original” rather than “amended” budget data in Figure 1, “since the original budgets were used by the District in its applications for Act 1 ... exceptions to PDE.” But the numbers that the Auditor General are not from *any* budget that was submitted on a Department of Education form to the Department of Education. *See* 24 P.S. § 6-687, 24 P.S. § 6-688. Instead, the data came from a table in the Audited Financial Statements prepared for the District, which was not intended to and did not set forth either the preliminary estimates that were submitted to the Department of Education in applying for the exceptions or the statutory measure of final expenditures. If the correct budgeted and actual numbers are used, the story looks very different.

Expenditures	2012	2013	2014	2015	2016
Budgeted	\$204,571,449.00	\$212,809,404.00	\$221,634,342.00	\$234,520,559.00	\$246,266,565.00
Difference Between Actual and Budgeted	\$16,660,515.00	\$6,177,152.00	\$4,954,871.00	\$7,445,096.00	\$6,563,577.00
Percentage Difference	8.14%	2.90%	2.24%	3.17%	2.67%
Revenues					
Budgeted	\$197,986,495.00	\$202,930,116.00	\$213,062,872.00	\$226,063,700.00	\$236,931,310.00
Difference Between Actual and Budgeted	\$2,303,822.00	\$3,730,723.00	\$3,634,471.00	\$1,016,105.00	\$2,772,234.00
Percentage Difference	1.16%	1.84%	1.71%	0.45%	1.17%

It is worth noting that the largest variance by far was in 2012, a year that was previously audited by the Auditor General, who raised no concerns raised over that variance at that time. The subsequent variances have all been much lower. The errors in Figure 1 are carried over into Figures 3 and 4. Moreover, in Figure 7, the Auditor General misreported the amount of the special education exception that was not used, suggesting that the District forewent \$1,050, when in fact it forewent \$51,050.

In addition, the District can have and generally does have almost no variance between projected and actual expenditures in many areas (approximately 72% of line items were within a 2% variance in 201516) but nonetheless experiences surpluses based on a small subset of line items. That line item budgeting is preserved through the course of the year. Accordingly, if not all of the monies budgeted for an item are needed – whether because the winter was warmer than projected or healthcare expenditures were lower than the actuaries anticipated – the monies are not simply moved elsewhere to be spent in other categories; they are saved. Those savings add up to produce a surplus, and it could be that one or two line items could give rise to a significant surplus.

In the audited fiscal year of 2014-15, for example, the District realized a total surplus of approximately \$4M. The two main factors were a one-time bond refunding (similar to mortgage refinancing) and fewer employee healthcare claims (District is self-insured) that reduced expenses and together accounted for the surplus. **Without these non-recurring savings, the District would not have experienced a surplus for the year.** Following an accepted practice, these funds were transferred to LMSD's capital reserve account upon a public Board vote to be used as part of the District's five-year capital improvement plan, five-year technology/infrastructure plan and for the replacement of aging buses. These plans have been developed in recognition that deferring such projects indefinitely would eventually result in increased maintenance costs and the degradation of District facilities and operations. This is a snapshot of just one fiscal year, but it is telling in the context of variance and fund balance.

In 2015-16, the District realized a positive variance on a single line item of nearly \$439K due to lower-than-expected costs related to students who receive educational services through schools, programs, or agencies outside of the District (Budget Code 560/Tuition to Non-Public Schools). Per Federal regulations (Individuals with Disabilities Act and Section 504 of the Rehabilitation Act of 1973), the District is responsible for providing a free and appropriate public education (FAPE) to students with disabilities. To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met at no additional expense to the parent/guardian. Sometimes students' needs, due to their disability, exceed what can be provided within their home school, and outside educational services and placements are necessary to provide FAPE.

In preparing a budget, we need to ensure that enough funds are available to support all students with disabilities without knowing in advance all the specific services that will be required for every disabled child. As students' needs change, their educational program must be adapted to meet current needs. Administration also cannot predict the enrollment of new students with disabilities. The District has had new students enroll with complex needs that require highly specialized programs costing in excess of \$100,000. Furthermore, **the District does not control**

costs associated with out-of-district programs and we are not provided with exact tuition costs of programs until well after the final budget is approved. While our administration makes carefully considered recommendations based on an analysis of historical trends and current student population, it is not possible to know the exact dollar amount needed a year in advance.¹⁰

Likewise, there are a number of examples where actual costs exceeded historical budgeted costs, demonstrating additional challenges in relying on historical data. For several years, vo-tech expenditures were less than the budget of \$350,000, however when we received our final vo-tech school tuition for 2015-16, it was more than \$600,000 (See Table 1) resulting in an unfavorable variance of \$258,000. The vo-tech program sets tuition rates and the District has no input in the cost figures. Historical data would not have led the school district to budget for increased costs.

Transportation is another area of fluctuation, depending upon required transportation services as a result of student placement and needs. For the 2015-16 school year, the District budgeted a little more than \$12M, but spent more than \$13M. The variance was due in large part to specialized transportation services to meet the requirements of students with special needs (See Table 1). Generally speaking, when districts choose to contract with an intermediate unit to provide special education transportation, the IU submits a report to PDE at the end of the year and those expenditures are recorded in the following year. LMSD realized the cost increase in specialized transportation services and determined that the most fiscally-responsible way to provide them moving forward was through other contracted services. However, the District was still paying for IU transportation services provided in the prior year, while paying for contracted services in the current year. This is another example where historical data would not have determined our actual costs. See Table 1 below for additional examples of variance between budgeted and actual expenditures in the 2015-16 LMSD Budget.

Table 1: Examples of Variance in the 2015-16 LMSD Budget

Year End	Function	Budget	Actual	Difference
6/30/2016	1300 VoTech	\$350,000.00	\$608,022.00	(\$258,022.00)
	2300 Support Srvcs- Administration	\$12,980,919.00	\$13,052,231.00	(\$71,312.00)
	2700 Transportation	\$12,156,308.00	\$13,203,694.00	(\$1,047,386.00)
	2800 Central Sprt & Tech Srvcs	\$5,566,821.00	\$5,897,778.00	(\$330,957.00)
	3300 Community Svcs	\$197,500.00	\$198,566.00	(\$1,066.00)
Total		\$31,251,548.00	\$32,960,291.00	(\$1,708,743.00)

A greater focus on historical budgeting would not have helped the District budget more accurately and/or reduce variance in most situations. Areas of significant variance occur not

¹⁰ Approximately 13.5% of District students receive special education services and their individualized programs are developed and annually reviewed by each individual student’s IEP (Individualized Education Plan) team, which includes relevant school personnel, parents, and the student (if 14 years of age or older).

because of a failure to understand or look at historical information, but rather due to circumstances beyond the District’s control.

Finally, the fact is that LMSD’s conservative budgeting practices are common to districts across the Commonwealth. As noted by school budget expert Dr. William Hartman of Penn State, the majority of Pennsylvania school districts “underestimate revenues”, “overestimate expenditures” and “any resulting surplus goes to fund balance.” Dr. Hartman affirms these “conservative practices” as appropriate strategies for “prudent budget management to allow for future unknowns.”¹¹ The Auditor General has not previously taken issue with these practices.

Fund Transfers

The District appropriately, lawfully, and publicly authorized the transfer of funds to its capital reserve for each and every year under auditor review. According to the state accounting manual¹², the District’s practices are consistent with code; as referenced above, surpluses from the general operating fund may be transferred to capital reserve to fund budgeted capital reserve items. During the years 2012-16, the District transferred more than \$18M and spent more than \$19M in support of its five-year capital improvement plan, five-year bus replacement plan and five-year technology plan. Over the next five years, the District anticipates needing nearly \$22M to implement these ongoing plans.¹³

Substantial Committed Funds

The draft Performance Audit accurately notes that the District has maintained a relatively constant committed fund balance of around \$35.8M for the five fiscal years 2012-16. All budgeted items in the committed fund balance have been affirmed as appropriate by local auditors and reflect a measure of fiscal prudence for a district planning for future needs – particularly given uncertainties like enrollment growth and increasing PSERS obligations. That the number has remained constant is a reflection of sound fiscal policy and strategic budgeting decisions. For example, the District planned to utilize committed fund balance to support the financing of several recent classroom expansion projects. After careful review, the District determined that it could realize savings and maintain funds for future capital projects by taking advantage of historically low interest rates and issuing bonds for these projects. The result would be greater flexibility and security in the future; if enrollment growth continued and interest rates rose, the District would be able to save taxpayers by having more funds available (and issuing less debt service) for future capital projects as designated in the community-generated strategic long-term plans.

¹¹ “An Analysis of the Budgeting Process in Downingtown Area School District” by Dr. William T. Hartman, Professor of Education, Emeritus, the Pennsylvania State University 10/11/16

¹² Municipal Code P.L. 145, Act of April 30, 1943, also known as Purdon’s 53§1431 accounts for (1) moneys transferred during any fiscal year from appropriations made for any particular purpose which may not be needed, (2) surplus moneys in the General Fund of the treasury of the LEA at the end of any fiscal year, and (3) interest earnings of the fund itself.

¹³ The five-year facilities plan is presented to the Board Facilities & Purchasing Committee and reviewed on a consistent basis.

Neighboring school districts without modernized facilities will face significant challenges in renovating/building new schools in coming years due to Act 1 constraints and the rising costs of construction. Other districts will eventually need to incur debt – likely at much greater cost – to continue to provide safe, adequate facilities. Preserving high quality facilities is a priority for the District not only related to capacity needs. LMSD's commitment to consistent maintenance and upkeep yields long-term cost savings and value to the community. **Deferring these services would lead to costly repairs, renovations and impact the curb appeal of the community's public schools – potentially diminishing property values.**

The importance – and challenge – of maintaining adequate committed funds to mitigate future employee retirement obligations is illustrated by the table below (Table 2), which shows the most recent PSERS employer contribution projections through 2021-22. Every year PSERS provides new projections to school districts estimating what future obligations will be. For the year ending June 30, 2010, the 2021-22 rate was projected to be 27.03%. The most recent projection (as of June 30, 2016) for 2021-22 is 36.40%. In the current 2017-18 year, the actual employer contribution rate is already 32.57%. With rates continually being adjusted upward, the District is being prudent in appropriately planning for the uncertainty of PSERS employer contribution rate obligation.

Table 2: Historical PSERS Employer Contribution Projections

Year Ending	2021-22 Projection of Employer Contribution Rate %
6/30/2010	27.03
6/30/2011	27.58
6/30/2012	30.76
6/30/2013	32.01
6/30/2014	31.90
6/30/2015	33.51
6/30/2016	36.40

The draft Performance Audit’s assessment that “the District never spent any of the funds it set aside for retirement costs, nor did it develop a timeline for when it intended to spend those funds” is misleading. As noted above, the District has been very clear as to the purpose of its committed fund balance and the importance of maintaining these funds to cover increasing PSERS obligations and when that is projected to occur. To date, the District has utilized state subsidies and annual tax revenues to cover rising PSERS costs with that timeline in mind, recognizing that **it will be impossible to keep pace with projected increases without drawing from reserves.**

The Auditor General appears to be under a mistaken impression in this regard. The reason the fund balance was established in the first place was to respond to projections of future need. Those projections have been revisited at various points in time, and the evaluation of the timeline has been communicated to the Board and the public. During the 2015-16 school year, for

example, the District hosted a series of “community conversations” on the budget, including a February 22, 2016 presentation to local civic associations that described PSERS employer contribution projections and the forecasted need to draw from reserves as early as 2020.¹⁴ If the Auditor General had asked for information of this kind in any of the multiple requests he made during the course of the year, the District would certainly have provided it.

In that regard, we also note that in our review of a number of other school district audits this year, including those of districts that maintain a committed fund balance for PSERS, we could find no references to a timeline for drawing down PSERS reserves. We reviewed 2015-16 financial statements and budget presentations for several districts that have recently been audited (Windber and Midd-West, for example) and found no specific mention of how and when retirement funds held in reserve would be spent.¹⁵ We also note that the Auditor General has not sought a specific timeline for a PSERS reserve drawdown in past audits, and never before criticized the long-standing fund balance.

Finally, the Board approves the audited financial statements annually, and they contain a full description of committed reserves. In addition, there is a public vote any time an item in the committed fund balance changes.

In 2017, the District augmented its practices to include a Board motion to reconfirm commitments even if designations do not change. Although not required by law or code, the Board has updated its procedures to confirm committed fund balances whether they change or not.

Referendum Exceptions/Act 1

Under Act 1, the Pennsylvania Department of Education publishes an inflationary tax index that represents the maximum real estate property tax levy increase for each school district (without PDE exception or voter approval). Districts that seek to raise taxes above the index can only do so by submitting referendum exceptions to PDE or receiving approval from the local voters by referendum. The four referendum exceptions are school construction-grandfathered debt, school construction-electoral debt, special education expenditures and retirement contributions. Requests for exceptions are unique to each district. The General Assembly requires PDE approval before such exceptions can be taken, and while PDE does not approve all amounts requested for all districts, PDE has approved Lower Merion School District’s requests for exceptions in full, for each year of the draft Performance Audit. It should be noted, however, that it was rare for the District to take the full exceptions.

The draft audit seems to suggest that districts seeking exceptions to raise taxes above the Act 1 index are somehow violating the spirit of the law. We disagree. The narrow exceptions that the Lower Merion School District has applied for are **mandatory** expenditures; the District’s taxpayers cannot determine that they do not want to fund pensions or special education. The District has **always** used exceptions specifically for the purposes stated in its application to PDE.

¹⁴ 2016-17 LMSD Budget: A Community Conversation

http://www.lmsd.org/uploaded/documents/Departments/Business/ISC_Budget_Pres_Apr_2016.pdf¹⁵ If the data exists we could not find it online in audit reports, presentations, or financial reports.

Those exceptions do not cover the cost of the District’s contributions; they do not even cover the *increased* cost from one year to the next.

	LMSD Contributions to PSERS*	Difference Year over Year	Taxes Realized Through PSERS Exceptions
2011-12	\$4,403,139	\$1,634,365	\$1,621,343
2012-13	\$6,537,759	\$2,134,620	\$0
2013-14	\$9,231,888	\$2,694,130	\$1,233,830
2014-15	\$11,305,376	\$2,073,488	\$1,714,965
2015-16	\$14,373,465	\$3,068,089	\$1,536,794

*Half of the District’s total contribution is paid by the Commonwealth. Accordingly, only the half actually spent by the District is set forth here.

Even with funds obtained through exceptions, the District cannot fully cover its increasing annual special education and PSERS obligations without drawing from other sources. We find it particularly telling that the PSERS Board recently scaled back the number of years it includes in its employer contribution rate projections (from 20 years to five). Forecasts have been so consistently and egregiously low that they have been almost useless for school district planning purposes.

Moreover, the Auditor General has not taken issue with or identified a single concern with the District’s use of exceptions for special education. Similar to rising PSERS costs, the costs of providing appropriate special education services continue to increase while state support remains virtually unchanged. Since 2000, the District’s special education budget has increased from less than \$15M to nearly \$48M. At the same time, state contributions for special education have remained flat at less than \$3.5M/year. As a result, LMSD must rely more on local revenues to comply with federal and state mandates, such as IDEA. The learning environment in LMSD is considered by the Department of Education to be highly inclusive for students with special needs.

The fact is that none of the funds that make up the District’s fund balance were obtained through exceptions. All of the monies raised through the exceptions were spent on the costs covered by the exceptions. The entirety of the fund balances have come from other sources clearly defined and discussed during our budget process and, as the Auditor General observed, the fund balances have been in place for several years – since prior to the last audit.

Wolk Litigation

The Auditor General devotes an entire section of the report to the *Wolk* litigation. The amended complaint in that case seeks relief that includes but is not limited to \$55,000,000, plus interest and attorneys’ fees, suspension of the Board and appointment of a Trustee over the District, requiring the District and its Directors to attend courses in arithmetic and public finance, a

constructive trust, orders that certain employees be terminated, and a declaration that the method and mode of school tax assessment and collection in Pennsylvania is illegal. Whether or not the Auditor General is in sympathy with Mr. Wolk’s goals, the District respectfully suggests that the public policy opinion should be outside the scope of an audit.

Community Values

During the District’s most recent strategic planning process, the community affirmed its steadfast support for providing a rich, progressive curricular and co-curricular experience. Opportunity is at the heart of what defines us as a school system. LMSD offers a rigorous, comprehensive multi-disciplinary academic program, low class sizes, an array of world-class services for special needs and gifted children as well as community-based learning programs, early-intervention literacy support, an International Baccalaureate diploma program, a full menu of high school honors and AP courses, an extensive range of course offerings in music, technology and the arts. The District's world language program enables all students to receive uninterrupted foreign language instruction from first grade until the time they graduate from high school. More than 500 supervised academic, athletic, community outreach and performance-oriented co-curricular programs are available in the District, from elementary school technology clubs to high school varsity sports. In addition to serving student programs, the District's facilities are utilized by thousands of community members for enrichment programs, recreation and general use.

Opportunities yield results. Our schools rank among the highest in Pennsylvania for SAT and PSAT scores, AP participation rate, total number of National Merit Semifinalists, total number of International Baccalaureate diplomas granted and in numerous publications’ “top schools” lists. For the past three years, the District has been named one of the top ten school districts in the US by Niche.com and recently our schools earned recognition as among the top STEM schools in the country. We annually are recognized as among the nation’s Best Communities for Music Education by the NAMM Foundation. All ten schools have been recognized for excellence by the Commonwealth. Approximately 95% of high school graduates attend institutions of higher learning. Our students excel at the national level in co-curricular programs ranging from Science Olympiad to FIRST Robotics and our athletic teams have won numerous state championships.

In short, LMSD seeks to provide an extraordinary level of service and opportunity and a culture of student and staff excellence. This is what distinguishes our schools and serves as a point of pride for the community. The community consistently votes for school boards that share these values. They demand that the District deliver a world-class public education and they are willing to make the investments necessary as indicated by the Board members they choose to elect. And it should be noted that our schools are truly a Lower Merion community investment; more than 85% of our budget comes from local revenues. LMSD believes it serves as a model of how public schools can be successful with community support and adequate funding. We believe all districts should be able to provide the same level of opportunity and investment in their children. **The ability to do so requires sustained financial stability and budget stewardship as demonstrated (and affirmed by the voting public) over time by Lower Merion School District.**

Additional Considerations

- **Revenues:** More than 90% of the school districts in Pennsylvania levy an earned income or wage tax in addition to real estate taxes to generate revenue. Unlike these districts, Lower Merion does not have an earned income tax, so its reliance on real estate taxes is particularly pronounced. (As required by state law, Lower Merion's residents were presented the option and voted to rely on property taxes alone.) State and Federal subsidies account for just 14% of LMSD's total revenue – well below the state average. The result is that communities with different taxing authorities must take significantly different approaches to budgeting. **In Lower Merion, the heavy reliance on property taxes as a primary source of revenue forces more conservative budgeting.**

It should also be noted that school districts are required to operate by a different set of rules than other governmental entities (municipalities, for example) when it comes to generating revenue. Other governmental entities can establish budgets and cover projected expenses (and shortfalls) through other means like municipal service fees and have no fund balance limit. School districts do not have this opportunity, nor the same degree of flexibility.

- **State accounting changes:** In recent years, the state has changed its accounting manual with regard to account reporting. This has created some challenges in using historical budgeting to accurately track longitudinal data in certain accounting locations. For example, software used to be recorded as object code 618. At the end of the 2016 school year, this code was changed to object code 650. So when looking at historical numbers for software, an item/budget code that might have previously been reported as an expense now appears as a zero in the budget. The District has worked hard to reconcile previous and current budgets, but given that the LMSD budget has more than 8000 expenditure accounts, the state changes have made it more challenging to track historical numbers as items have been reported in different locations in different years.
- **Public process:** The LMSD budget reflects public input received through a variety of forums, including regular Board meetings, public budget workshops, committee meetings and community comments. In 2016-17, the District's Finance Committee hosted a series of detailed, in-depth presentations on key areas of the budget, including curriculum and instruction, facilities, transportation, staffing and special education. The District also maintains [*sic*] online and video resources related to the budget, which can be found in the budget section of the District website.
- **Common Practices:** The District utilizes accounting and budgeting practices that are standard for school districts across the Commonwealth. **In fact, every state and independent audit of the District over the past five years (seven total) has affirmed the District's full compliance with budgeting and accounting standards. The District has consistently been lauded for strong fiscal management by credit ratings agencies.** Both the Pennsylvania School Boards Association and Pennsylvania Association of School Business Officials affirmed the District's practices during the

past school year. PASBO issued a school budgeting fact sheet and the following statement¹⁵ in response to the ongoing Wolk lawsuit (referenced in the draft Performance Audit):

“Despite the fact that Lower Merion adhered to all applicable laws, provided appropriate transparency regarding financial decisions, engaged in careful, long-term financial planning and budgeted conservatively in light of the myriad of fluctuating issues that are beyond their control, they are being criticized and penalized for coming in under budget and planning for future taxpayer savings.”

Conclusion

By all accounts the District’s sound, lawful, and responsible financial practices have enabled the preservation of high-quality educational programs in the face of unprecedented enrollment growth, perennial state budget uncertainty and the rising costs of mandates like pensions and special education. We believe the pressing question with regard to reserves and a healthy fund balance is whether the District should spend down such surpluses or prudently set them aside for anticipated needs.

Lower Merion School District is in a fortunate position to have broad community support for high-quality public education. The community, through its elected school board, has made significant investments in program, infrastructure, staffing and has prioritized saving for the future. **Decision-making has occurred in public, with thoughtful deliberation and complete transparency.**

Ultimately, doing as the Auditor General recommends will result not just in reduced fund balances, but in a reduction of services. Because of the line item budget, and because a district cannot spend at a deficit, the inevitable shortfalls in critical areas will lead – as they did for many districts during the recent budget impasse – to borrowing money at high interest rates, requiring more tax increases to cover the interest than if the needs had been properly anticipated up front. As noted previously, due solely to fixed costs and mandates (salaries, PSERS, special education, etc.) and not accounting for the fastest enrollment growth in the region, our district (and many others) will – by drawing down its reserves – be forced to grapple with budgetary shortfalls and likely a diminished bond rating. Over the long term, this would most certainly have a negative impact on the quality of LMSD schools and real estate in Lower Merion and Narberth.

The draft Performance Audit suggests that a school district that does what the law allows (through Act 1 exceptions) is utilizing a loophole in the law. **LMSD has never exceeded the legally-approved Act I tax rate (index and approved exceptions).** The General Assembly permitted only certain narrow areas of increased expenditures, and the only two that the District has invoked are for areas in which expenditures cannot be compromised, but state and federal funding does not cover the costs of complying with the statutes that give rise to the expenditures. As those costs go up, the General Assembly wanted to ensure that districts can meet those needs. Voters cannot by referendum decide not to fund pensions or special education. LMSD has actively solicited continuous and ongoing public input on its expenditures and long-term

¹⁵ Recent Court Decision Has Statewide Implications http://www.pasbo.org/blog_home.asp?Display=84

strategic plans, and it has always followed Board-enacted policies concerning assigning surplus to appropriate accounts. LMSD maintains an appropriate fund balance based on generally accepted accounting standards and laws governing school districts.

We understand that some might choose to make different budgeting decisions. One district might place less emphasis on maintaining capital reserve funds and instead borrow funds when interest rates are low. Other districts may fund building projects mostly with reserves and reduce public exposure to interest rate increases. Others might use a combination of several strategies. Given that our district continues to grow at a rate far faster than any other school district in the region, our practice has been to maintain a variety of fiscal strategies in an effort to grow in the most responsible manner. **Our Aaa bond rating enables our community to maintain a reliable combination of options for addressing growth while preserving our programs.**

We would refer the Auditor General to strategies employed by local municipalities as examples of responsible, realistic and appropriate approaches to budgeting. In 2015 Lower Merion Township proudly shared with taxpayers that it had realized a budget surplus instead of a planned deficit due to positive budgetary performance and expenditures that were less than what had been budgeted. The Township's fund balance policy, which it deems its "fiscal safety net", requires a minimum year-end General Fund undesignated fund balance no less than 12% of that year's total General Fund operating expenditures. Further [*sic*], the policy has a goal to maintain a year-end General Fund undesignated fund balance within a minimum of 15% and a maximum of 18% of the General Fund expenditures. In recent years, the Township has adopted General Fund budgets with structural imbalance anticipating a drawdown of fund balance to finish the year closer to the policy goal range. Fund balance was reduced in 2014 but due to better than projected financial performance in 2015, the fund balance actually increased. At year-end 2015, the General Fund undesignated fund balance was 35%, up from 34% the previous year. In turn, the Township has been able to maintain its AAA rating from Standard & Poor's Rating Service and its Aaa rating from Moody's Investors Service. The high credit rating means the Township's general obligation bonds are considered excellent investment quality, allowing the Township to borrow at the lowest possible interest rates, which translates to tangible savings for taxpayers. Likewise, this is and has been the goal of Lower Merion School District.

The Lower Merion School District appreciates the Auditor General's consideration in reviewing this information and taking the time to understand some of the factors unique to budgeting in our District.

Distribution List

This letter was initially distributed to the Superintendent of the District, the Board of School Directors, and the following stakeholders:

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This letter is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the letter can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: News@PaAuditor.gov.

CERTIFICATE OF SERVICE

I, Arthur Alan Wolk, hereby certify that on May 28, 2019, I am serving by First Class Mail, postage prepaid, the foregoing Motion to Take Judicial Notice, which service satisfies the requirements of Pa.R.A.P. 121.

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THE WOLK LAW FIRM

By: /s/ Arthur Alan Wolk
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, : 1465 CD 2016
and Catherine Marchand :
v. :
The School District of Lower Merion, :
Appellant

PROOF OF SERVICE

I hereby certify that this 28th day of May, 2019, I have served the attached document(s) to the persons on the date(s)
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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(Continued)

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/s/ Arthur A. Wolk

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Appellee Marchand, Catherine
Appellee Wolk, Arthur Alan

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**SCHOOL DISTRICT OF LOWER MERION'S ANSWER TO
PLAINTIFFS-APPELLEES' MOTION TO TAKE JUDICIAL NOTICE
OF PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL
REPORT ON THE LOWER MERION SCHOOL DISTRICT DATED
OCTOBER 23, 2017**

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The School District of Lower Merion (the District) now answers Plaintiffs-Appellees' latest motion asking this Court to take judicial notice of certain matters not in the record below—in this case an October 2017 Report of the Auditor General. In response to the numbered paragraphs set forth in Plaintiffs-Appellees' motion, the District states:

1-5. These paragraphs state legal conclusions and do not require a response. Insofar as they refer to § 201 of the Pennsylvania Code, that statute—and the case law construing it—speaks for itself, and characterizations of it are denied.

6. Admitted that the Pennsylvania Department of the Auditor General published a report regarding the District's compliance with certain state laws and regulations on October 23, 2017. The Auditor General conducts reviews of this kind on a regular basis (usually every three years). True and correct copies of the 2011 and 2014 reports are attached hereto as Exhibits "A" and "B," respectively. The October 2017 Report concluded that the District had complied with all relevant legal requirements during the three previous budget years. It also included an "observation" and recommendations about certain of the District's practices, particularly with reference to the District's fund balance. The Auditor General's October 2017 Report, which includes the District's comments in response to it,

was promptly published on the Auditor General’s website in the fall of 2017 and remains accessible at that site:

<https://www.paauditor.gov/Media/Default/Reports/schLowerMerionSchoolDistrict102617.pdf>.

On November 22, 2017, the Department of Education, which is the agency charged with evaluating and implementing an Auditor General’s report regarding a school district, sent a letter to the District asking it to “review, evaluate and respond” to the Report and to include a “Corrective Action Plan” that contains “a statement indicating concurrence or nonconcurrence” with the Report’s observation and recommendations. *See* Nov. 22, 2017 Ltr. from Dept. of Education at 1 (attached hereto as Exhibit “C”). This is the standard procedure for evaluating findings, observations, and recommendations in audit reports, as is reflected in the Department of Education’s “Audit Review Procedures” that were attached to the November 22 letter. Ex. C at 3. The District promptly prepared the required response and Corrective Action Plan, which was debated and approved at a public meeting of the Board on December 18, 2017. It was then sent to the Department of Education on December 27, 2017 and posted on the District’s Board Docs webpage where it remains accessible: [https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/\\$file/12-27-17%20AG%20Response.pdf](https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/$file/12-27-17%20AG%20Response.pdf). For the convenience of the Court, a copy is also attached as Exhibit “D.”

7. The District agrees that October 23, 2017 came after August 29, 2016.

8. The District agrees that the October 2017 Report was published on the internet and remains accessible there. The District denies that a May 6, 2019 letter is attached to the motion. The District notes that the Exhibit that is attached to Plaintiffs-Appellees' motion (the October 2017 Report) includes certain "highlighting" that does not appear in the original Report. The District denies that the Court either "may" or "must" take judicial notice that statements made in the Report are true; some are and some aren't. None are findings of fact. The District agrees that the Court may take notice of the Report itself—and the District's response to it—insofar as the filing of those documents is relevant to the issues raised in this case.

9. The District admits that the purpose of the Auditor General's 2017 audit was "to determine [the District's] compliance with certain relevant state laws, regulations, policies and administrative procedures (relevant requirements)." By way of further answer, this is one of the duties of the Department of the Auditor General and the Department's regular review of a school district's compliance with "relevant requirements" is an accepted part of the governmental oversight of local school boards.

10. Denied. To the contrary, Plaintiffs-Appellees have mischaracterized both the Report and its conclusions. When the Auditor General issues a report of

this kind, he may make either a “finding” or an “observation.” According to the standard used by the Auditor General:

Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. *Observations* are reported when [the Department of the Auditor General] believe[s] corrective action should be taken to remedy a potential problem *not rising to the level of noncompliance* with specific criteria.

Ex. A (2011 Report) at 3 (emphases added); Ex. B (2014 Report) at 3 (emphases added). Plaintiffs-Appellees’ statements to the contrary notwithstanding, the Auditor General made no “findings” in his October 2017 Report. He therefore concluded that the District was in compliance with the law. Indeed, he expressly so stated in the Report:

Our engagement found that the District properly implemented policies and procedures for the areas mentioned above and complied, in all significant respects, with relevant requirements, except as detailed in the *observation* in this report.

October 2017 Report at 2 (emphasis added). In other words, while the Report included a single “observation” and recommended corrective action regarding that subject matter, it did not find any actual noncompliance with any relevant legal requirement or procedure. Plaintiffs-Appellees’ assertions to the contrary are false and reveal an ignorance of the Auditor General’s procedures and practices.

11. It is admitted that Mr. Wolk has made a series of sometimes conflicting statements over time regarding the nature of this litigation. Otherwise denied; the Report of the Auditor General does not, in fact, “confirm” any of Mr. Wolk’s theories of this case nor does it “confirm” any of the supposed “bases” for Judge Smyth’s erroneous order below.

12. Admitted that the Report includes various statements of facts and that many of those statements are accurate. It is denied, however, that the Report consists of “adjudicated facts that cannot reasonably be disputed.” To the contrary, an audit is not an adjudication. Moreover, the Auditor General made a number of comments in the Report, and the School District responded to those comments in a submission to the Auditor General, which submission is attached to the Auditor General’s Report. Many of the Auditor General’s statements were not statements of fact and many were (and still are) disputed. More to the point, Plaintiffs-Appellees’ description of the Report and its contents is not accurate, and their characterization of its conclusions is false and misleading.

13. The District admits that it received a copy of the Report. Indeed, it commented on it and conducted a public meeting regarding the recommendations set forth in the Report. The Report and the District’s response thereto have been matters of public record since December of 2017 and are published on the Auditor General’s website. The merits of the recommendations that the Auditor General

made were discussed at length at a public meeting of the School District Board on December 18, 2017. The idea that the District somehow “failed to disclose” the Report to Plaintiffs-Appellees or anyone else is preposterous. Moreover, the substance of the Report does not support Mr. Wolk’s case; to the contrary, it is entirely consistent with what the District has said throughout this litigation and its briefs—and those of its *amici*—have always complied with the Rules of Professional Conduct.

14. Denied that Appellant or its *amici* have made any false statements of fact to the trial court or to this Court. Lest there be any doubt, the District repeats its assertion that Plaintiffs-Appellees should have proceeded before the Department of Education if, indeed, they wished to raise questions about the Department’s approval of the exceptions in this case. Similarly, if the Plaintiffs-Appellees wished to raise questions regarding the performance of the Department of Education in its consideration of the recommendations of the Auditor General and the District’s response to those recommendations, they should have filed a complaint or protest with that Department. They have no cause of action that can be asserted in a Court of Common Pleas.

15. Denied. This paragraph is a mischaracterization of the District’s argument and the facts of this case. The Department of Education did not “make” the District do anything. To the contrary, the Department considered exceptions

requested by the District and ultimately approved those requests. It also had the obligation to evaluate the corrective actions the District has taken in response to the Auditor General's 2017 recommendations. The Plaintiffs-Appellees did not seek to contest the exceptions or to protest the granting of them, nor did they complain to the Department of Education about any other action taken by the District.

16. The Court is certainly free to take judicial notice of an official report of the Auditor General of Pennsylvania, which report was duly published on the Department's website at the time it was issued. While the Court is free to note the existence of that report and may note certain statements made in the report, it cannot "notice" those statements for the truth of the matter asserted.

17. It is denied that the October 2017 Report of the Department of the Auditor General is a "revelation" to anybody. It has been public knowledge for over eighteen months. It is also denied that the Report is in conflict with the arguments that the District has made in this case. Indeed, insofar as the Report demonstrates anything, it is that the government of the Commonwealth of Pennsylvania has administrative mechanisms to address questions of the kind Mr. Wolk has tried—wrongly—to raise in the Court of Common Pleas.

Wherefore, except to the extent described above, the District respectfully asks this Court to DENY the application for judicial notice, given that the fact of

the Auditor General's Report is immaterial to the narrow question before this Court and the contents of the Report are not judicially noticeable and are disputed, and given that Mr. Wolk's assertions in support of his application are false.

Dated: June 11, 2019

Respectfully Submitted,

/s/ Alfred W. Putnam, Jr.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 11, 2019

/s/ Alfred W. Putnam, Jr.
Alfred W. Putnam, Jr.

PROOF OF SERVICE

I, Alfred W. Putnam, Jr., certify that I am this day serving by First Class Mail, postage prepaid, the foregoing Answer to Motion to take Judicial Notice of Pennsylvania Department of the Auditor General Report on the Lower Merion School District Dated October 23, 2017, together with its associated Memorandum of Law, which service satisfies the requirements of Pa.R.A.P. 121.

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Dated: June 11, 2019

/s/ Alfred W. Putnam, Jr. _____
Alfred W. Putnam, Jr.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**MEMORANDUM OF LAW IN SUPPORT OF
APPELLANT SCHOOL DISTRICT OF LOWER MERION'S
ANSWER TO PLAINTIFFS-APPELLEES'
MOTION TO TAKE JUDICIAL NOTICE OF PENNSYLVANIA
DEPARTMENT OF THE AUDITOR GENERAL REPORT ON THE
LOWER MERION SCHOOL DISTRICT DATED OCTOBER 23, 2017**

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ARGUMENT

Mr. Wolk's latest motion, like his last motion, takes an expansive view of what this Court can (or "must") do when asked to take judicial notice of a document that is not part of the record below. As it happens, the District does not disagree with him on the proposition that the Court may take judicial notice of such a document, particularly where, as here, it is an official report published by a Commonwealth agency (the Department of the Auditor General). Nevertheless, it bears pointing out (once again) that the position Mr. Wolk now takes on this subject is diametrically opposed to the position he has taken in his still-pending motion to strike the District's brief in this Court. *See* May 9, 2019 Order (referring issue to merits panel). There, he argues that the Court cannot even consider statutes and case law not cited below, much less a published report of a Commonwealth agency (the Department of Education). What is consistent in his various filings, however, is a willingness to distort and misrepresent both the underlying facts and the operative law—which is exactly what he has done in his motion regarding the Auditor General's October 2017 Report.

I. FACTS

Mr. Wolk's description of the October 2017 Auditor General's Report is inaccurate and misleading and reflects what one can only assume to be complete unfamiliarity with the subject matter. Accordingly, a brief review of the Report—

and the roles of the Auditor General and the Department of Education in reviewing the conduct and accounting policies of local school boards—may be useful.

1. The 2017 Audit Was Neither a Secret Nor a Surprise.

Mr. Wolk says that it wasn't until last month—May of 2019—that he first learned about the Auditor General's October 2017 Report¹ on its audit of the Lower Merion School District. He does not explain how or why that could be. The Report has been public knowledge since late 2017 when it was published on the Auditor General's website. Nor had the audit come as some kind of a surprise. In fact, the Department of the Auditor General audits all school districts in the Commonwealth on a regular basis. In the case of the Lower Merion School District, these audits have generally been on a three-year cycle. Thus, there was an audit in 2011 (the report from which is attached to the District's Answer as Exhibit A). And there was an audit in 2014 (the report from which is attached to the District's Answer as Exhibit B). To the extent he or she took an interest in the subject, any informed resident of Lower Merion Township knew that there would be an audit in 2017 and that a report on that audit would be duly published (as they

¹ The 2017 Report is labeled a "Limited Procedures Engagement." Typically, the Auditor General's reviews are styled as "performance audits." A "performance audit" "[g]auges whether or not government programs and activities are meeting stated goals and objectives, and if tax dollars are being spent efficiently and effectively." PA. Dept. of the Auditor General, *About the Department*, available at <https://www.paauditor.gov/about-the-department>. By contrast (and as the name suggests), a "Limited Procedures Engagement" is more limited in scope; the 2017 audit focused on the existence and adequacy of the District's internal controls, budgeting practices, Right-to-Know Law compliance, and adherence to the Sunshine Act. October 2017 Report at 1.

invariably are). If Mr. Wolk took no interest in this subject until the spring of 2019, that was his choice. Nothing was being hidden from him.

2. Mr. Wolk Confuses the Auditor General’s “Observation” With a “Finding.”

It is also clear that Mr. Wolk is unfamiliar with the terminology customarily used by the Department of the Auditor General. Of obvious significance for present purposes is the distinction the Department draws between “findings” and “observations.” According to the Department:

Our performance audits may contain findings and/or observations related to our audit objectives. *Findings* describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. *Observations* are reported when we believe corrective action should be taken to remedy a potential problem not rising to the level of noncompliance with specific criteria.

See Ex. A at 3 (emphases added); Ex. B at 3 (emphases added); *see also* Ex. D at 26 n.1.

The District’s audit history demonstrates the Auditor General’s usage of these terms as well as the process whereby a school district is required to address the recommendations the Auditor General makes in a report. For instance, the 2011 audit included one “observation” relating to internal control weaknesses in administrative policies regarding bus drivers. Ex. A at 6. That report also noted that the previous audit of the District had resulted in one “finding” and two

“observations.”² *Id.* at 9. According to the 2011 audit report, the District had implemented the Auditor General’s recommendations with respect to the finding and the first observation but had not implemented the Department’s recommendation regarding the second observation. *Id.* For that reason, the Auditor General repeated that observation in the 2011 audit. By the 2014 audit, however, the Auditor General was evidently satisfied that the District had implemented his prior recommendations and had no additional comments to make. Accordingly, there were no “findings” and no “observations” included in that report. *See* Ex. B.

Although you would not know it from reading Mr. Wolk’s latest motion, the October 2017 Report that is the subject of Mr. Wolk’s motion contains no “findings” of noncompliance with any law or other relevant requirement. It does contain one “observation,” October 2017 Report at 10, and three recommendations for addressing that observation, *id.* at 20.

² The finding related to errors in the reporting of non-public school pupils transported by the District. The observations related to (1) unmonitored vendor system access, and (2) internal control weaknesses in administrative policies regarding bus drivers’ qualifications.

3. There is an Established Procedure for Addressing Recommendations Made By the Auditor General and That Process Has Been Followed With Respect to the October 2017 Report.

The Auditor General afforded the District's administration an opportunity to comment on his conclusions before the October 2017 Report was published. The administration did so, and its response was attached to the Auditor General's October 2017 Report at pages 26 to 43. That response reveals certain differences of opinion between the Auditor General's staff and the District's administration.

In particular:

The District believes that based on the methodology adopted by the Auditor General's office, the draft audit does not rise to the level of a "finding" or an "observation." A finding would indicate non-compliance with a "statute, regulation, policy, contract, grant requirement or administrative procedure." **The [R]eport in fact indicates that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District's accounting and budgeting practices have been generally affirmed in every audit report for at least the past 20 years.** Moreover, the recommendation that budgeting be based on historical amounts is not in keeping with mandated accounting policies for matters such as self-insurance (for which the District seeks actuarial analysis annually), PSERS, and special education expenditures (as to which the District cannot cap current expenditures at prior expenditure levels).

October 2017 Report at 26 (emphasis in original); *see also* Ex. D at 26. The District administration also took issue with some of the budget data that the Auditor General used. *See, e.g., id.* at 33 (criticizing the Department's use of the

District’s “original” rather than its “amended” budget figures).³ And it expressed some policy disagreements with the Auditor General about what constitutes prudent management of the District’s funds. *See, e.g., id.* at 29-32 (finding it “puzzling” that the Auditor General is suggesting that the District ought to spend down its fund balance). On this latter point, it is worth observing that the District is audited by an independent auditor every year, and all of its budgeting practices—even those that were the subject of the Auditor General’s recommendations—are in accord with generally accepted accounting principles. R.990a, R.1163a.

The October 2017 Report also reflects (at pages 20-24) the Auditor General’s reaction to the points the District administration had made in its comments. In particular, although the Auditor made no finding of any noncompliance, he disagreed with the District’s statement that the issues raised in his observation were “not worthy of being a reportable condition.” October 2017

³ The District’s “original” budget is its initial projection for the year’s revenues and expenses and is issued prior to the start of the fiscal year. The figures in the original budget are necessarily predicated on historical data, which—in some instances (*e.g.*, cost of external special-education placements)—do not reliably predict the costs in future years. By contrast, the amended budget is an intra-fiscal-year revision that updates the District’s projections based on how certain variables (number and location of external special-education placements, fuel costs, etc.) are actually playing out in that particular year. *See* LMSD Supp. Br. at 26-27. More to the point, because the amended budget is based on actual (albeit preliminary) revenue and cost numbers, it enables the District to predict its final, year-end numbers with much greater accuracy than is possible with its original budget. The District pointed this out in its comments on the Auditor General’s draft report, *see* October 2017 Report at 33-34, but the Auditor General persisted in using the original figures, *id.* at 10 n.8.

Report at 21. The Auditor General also acknowledged certain differences of opinion, defending his use of the numbers he used, *id.* at 22, and denying that he viewed the District's fund balance as "too high," *id.* All of this was published on the Auditor General's website.

Once the Auditor General publishes an audit of a school district, it is the practice of the Department of Education to direct that district to submit to it a formal response to the audit report and a "Corrective Action Plan" "indicating the [district's] concurrence or nonconcurrence with the [a]udit report's [f]inding[s] or [o]bservation[s] and [r]ecommendations" and addressing "specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary." *See* Ex. C at 1. The District prepared such a response and Corrective Action Plan, which it debated at a public meeting of the Board on December 18, 2017. The proposal was approved at that meeting and sent to the Department of Education on December 27, 2017. *See* Ex. D. In its Statement of Concurrence or Nonconcurrence, the District said:

The District concurs with the Auditor General's report to the extent it recognizes that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District's accounting and budgeting practices have been affirmed in every audit report for at least the past 20 years. To the extent that the Auditor General is suggesting that budgeting should be done on an overall basis rather than by line items, the District does not concur with the Auditor General's report. The District believes that its financial practices and financial standing are sound and that by using the line item approach integral to the Department of Education, the District has achieved consistent

budget approval by the Pennsylvania Department of Education, as well as maintaining a history of strong audit reports from the office of the Auditor General and continued clean annual audit reports from independent auditors. In this regard, the District notes that much of the data identified in the Audit Report has been previously reviewed and approved by the Auditor General's office.

Ex. D. at 2. The District then went on to address (and essentially accept) each of the Auditor General's three recommendations, noting that each of them accorded with the principles that already underlay the District's approach to managing its annual budget. *Id.* at 2-3.

A copy of the response and corrective action plan that the Board adopted plan appears on the District's website: [https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/\\$file/12-27-17%20AG%20Response.pdf](https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/$file/12-27-17%20AG%20Response.pdf). *See also* Ex. D. The Department of Education has given no indication that it was or is unsatisfied with the District's response and plan. Nor has the Department of the Auditor General—although, in fairness, it should be noted that if the Department concludes in the course of its next audit (in 2020) that the District has not appropriately addressed the “observation” and recommendations it made in the October 2017 Report, it will likely say so. That, in any event, is what it did in the 2011 audit.

4. The District Did Not Make Any Misrepresentations to the Auditor General (And the Auditor General Has Not Asserted That He Was Misled or Misinformed).

In the memorandum he filed in support of his motion, Mr. Wolk asserts that the District made “false representations” with respect to its committed reserve funds. Wolk Memorandum at 3. He also says the District made “misrepresentations” to the Department of Education. *Id.* at 4. Although Mr. Wolk refers to specified pages in the October 2017 Report when making these claims, the fact is that the Auditor General does not even suggest that the District misled him or his Department with respect to anything. To the contrary, his Report is careful to note that it is using figures provided by the District and/or by its independent auditors. October 2017 Report at 22-23.

Similarly, the Auditor General did *not* say that the District’s “misrepresentations to the Department of Education” had allowed it to obtain exceptions to increase taxes beyond the Act 1 index. To the contrary, the Auditor General said that it was the District’s “conservative budget practices” that led to the granting of exceptions. While the Auditor General recommended that those practices be made more transparent (and, in some respects, less conservative), he did not conclude (and could not have concluded) that they were illegal or improper. Moreover, insofar as the Auditor General and the District disagree about certain specific budgeting practices (with the District favoring a more

conservative approach), their policy dispute is exactly that—a policy dispute—and will presumably be ultimately resolved either by the Commonwealth agency with the jurisdiction to address it (in this case by the Department of Education) or else by the General Assembly. There is no reason to think it is a subject that has been left to the considered judgment of a Court of Common Pleas.

II. LEGAL ARGUMENT

1. **The Auditor General Did Not Conclude that Any Action or Practice of the District Was “Illegal;” Indeed, He Concluded the Opposite.**

In the “verification” of his motion to take judicial notice, Mr. Wolk asserts that the Auditor General’s Report “uncovered . . . illegal conduct by the [the District] for [the] entire period, a practice which, even after found illegal by Judge Smyth and the Auditor General continues today.” Wolk Verification ¶ 5. In fact, the Auditor General did not find *any* of the District’s conduct or practices to be illegal. The “observation” in his October 2017 Report is just that—an observation. It is not a “finding” of noncompliance with any legal requirement. As noted above, the Department of the Auditor General is careful to distinguish between a finding and an observation. If the Department thought that it had uncovered any illegal—or even any noncompliant—conduct, it would have made a “finding” to that effect. But that is precisely what it did *not* do. Instead, even though the Department disagreed with the District on some of its budgeting practices (and

made recommendations on that subject), it concluded that it was addressing a “potential problem not rising to the level of noncompliance.”

Mr. Wolk also cites to the October 2017 Report for the proposition that “[t]he District violated § 688 of the Public School Code.” *See* Wolk Memorandum at 3. But the Auditor General found no such thing. By definition, a violation of § 688 of the Public School Code would constitute “noncompliance with a law, regulation, contract, grant requirement or administrative procedure.” Such noncompliance would necessarily constitute a “finding” by the Auditor General. The October 2017 Report is clear on its face, however, that it is making an “observation”—not a “finding.” Which is to say that the Auditor General expressly identified his disagreement with the District as constituting a “potential problem not rising to the level of noncompliance,” but on which, in his view, corrective action should be taken. In other words, the October 2017 Report that Mr. Wolk wants this Court to notice actually states that the District did *not* violate § 688 or any other law or legal requirement. Mr. Wolk’s statement to the contrary is simply false.

2. The Process and Procedures Followed in Connection the 2017 Audit Were in Accord with Pennsylvania Law.

Once the Auditor General has completed a report on an audit, he sends copies to the agency head that oversees the audited entity (in this case, the

Department of Education) as well as the Governor and the Director of the Bureau of Audits. See Pa. Governor's Office, *Management Directive: Review of Auditor General* at 7 (2009), available at https://www.oa.pa.gov/Policies/md/Documents/325_10.pdf. When noncompliance with an audit requirement is identified, it becomes the responsibility of the supervising agency (not the Auditor General) to take remedial action. See generally Pa. Governor's Office, *Management Directive: Remedies for Recipient Noncompliance with Audit Requirements* (2014), available at https://www.oa.pa.gov/Policies/md/Documents/325_8.pdf. The appropriate agency (in this case, the Department of Education) will initiate remedial action in accordance with agency-specific policies. See *id.* at 3, 6. In the present case, the Department of Education has a procedure for addressing findings, observations, and recommendations appearing in an Auditor General report, and it (and the District) followed that procedure here. See Ex. C; Ex. D; see also Answer ¶ 6.

While the Auditor General has the power to make findings and issue recommendations in the course of auditing, he generally does not have enforcement power with respect to his conclusions. See *Ne. Educ. Intermediate Unit No. 19 v. Commonwealth*, 489 A.2d 966, 967-68 (Pa. Cmwlth. 1985) (noting that "Auditor General's authority extends only to issuing of recommendations which are subject to final approval by the Department of Education."); see also

Reich v. Berks Cty. Intermediate Unit No. 14, 861 A.2d 1005, 1011-12 (Pa. Cmwlth. 2004) (acknowledging that procedurally, Auditor General “has authority to inspect the financial records of a[] [school] and recommend enforcement action against it . . .” but that the Secretary of Education is the individual that will ultimately withhold future subsidies).

Mr. Wolk appears to believe that an Auditor General’s audit report is some kind of an “adjudication” that this Court is somehow bound to accept. In fact, the recommendations made in an Auditor General’s audit report are just that—recommendations. The school district that was audited is obliged to respond to them but it is not obliged to agree with them. Questions regarding the implementation or enforcement of the recommendations are left to the Department of Education. An appeal to this Court may be taken from a decision of the Department of Education but not from the Auditor General’s “findings” or “observations,” which are not adjudications. *Boyertown Area Sch. Dist. v. Dep’t of Educ.*, 797 A.2d 421, 424, 426-27 (Pa. Cmwlth. 2002) (en banc), *superseded by statute on other grounds*, 24 P.S. § 17-1725-A(a)(5), *as recognized in Chester Cmty. Charter Sch. v. Commonwealth Dep’t of Educ.*, 996 A.2d 68 (Pa. Cmwlth. 2010); *Sch. Dist. of Lancaster v. Office of the Aud. Gen.*, 489 A.2d 963, 965-66 (Pa. Cmwlth. 1985) (en banc).

In the present case, the District followed the prescribed procedure and submitted to the Department of Education its response to the Auditor General's Report. That response included (as required) both a statement of concurrence and nonconcurrence and a Corrective Action Plan, which not only addressed but essentially accepted all three of the Auditor General's recommendations. All of that happened a year and a half ago. Since that time, the District has completed one annual budgeting process and has nearly completed another, and at no time has the Department of Education suggested that the corrective actions the District adopted in late 2017 were insufficient to satisfy the concerns identified in the Auditor General's October 2017 Report. This is exactly how Pennsylvania's auditing procedure is supposed to work. Mr. Wolk's description of it—and, in particular, his evidently unshakable belief that these kinds of questions can be litigated in a Court of Common Pleas—is simply wrong.

3. The Judicial Notice That the Court May Take of the Auditor General's October 2017 Report and the District's Response Thereto Is Limited and Does Not Extend to the Truth of Statements Made in Those Documents.

The District agrees that this Court can take judicial notice of the October 2017 Report of the Department of the Auditor General (including the District's response of that Report, which is attached to it). The District also agrees the Court can take notice of the subsequent response and corrective action plan that was

adopted at a public meeting of the School Board and was sent to the Department of Education on December 27, 2017. *See* Ex. D. Those documents were duly filed and are official records of the actions of a Commonwealth or local agency. The Court may note the existence of such documents, and, if there is reason to do so, note what the documents say. What the Court may not do, however, is treat all of the statements made in those documents as if they were “adjudicated facts.”

There are at least three separate, albeit related, reasons why this is so. *First*, a court cannot take judicial notice of a fact unless that fact “is not subject to reasonable dispute.” Pa.R.E. 201(b). Accordingly, our courts have held that even if a party seeks to have a court take judicial notice of a document, “facts” within that document may not be noticed if they are subject to dispute or would require consideration of other evidence. *See 220 P’ship v. Phila. Elec. Co.*, 650 A.2d 1094, 1097 (Pa. Super. 1994) (“Where material facts are in dispute, judicial notice may not be used to deny a party an opportunity to present contrary evidence.”). In *Craig v. Dulcey*, No. 09-1880, 2011 WL 7110397 (Pa. Ct. Com. Pls. Carbon Cnty. Apr. 27, 2011), for example, a party asked the court to take judicial notice of the contents of a deed. The court held that “we do not believe the information which the Dulceys ask to be judicially noted can stand on its own as a statement of undisputed fact for the purposes proffered. To be sure, the existence of the deed

itself is not in question. But whether its effect is what the Dulceys contend . . . requires reference to even other documents not in evidence.” *Id.*

So too here, where the documents to be noticed reveal on their face a reasonable disagreement and ongoing dispute with respect to budgeting practices and policies—and where resolving that dispute would require introducing reams of additional evidence outside the existing record.

Second, Mr. Wolk’s present motion is an effort to offer certain statements made in these documents as if they were proof of the truth of the matter asserted in those statements. That is not the way judicial notice works. *See Hyer v. Com., Dep’t of Transp.*, 957 A.2d 807, 809-10 (Pa. Super. 2008) (affirming the trial court’s decision to take judicial notice of the American Association of Motor Vehicle Administrators Code Dictionary because it “was only offered to explain what conduct fell within a [certain] violation” and not “to prove the truth of the matter asserted—that Hyer had been convicted of driving without a CDL in the state of Maine”).⁴

⁴ On a related note, “facts” are not subject to judicial notice if the premises being asserted require the court “to reach conclusions of law.” *Commonwealth v. Covert*, 469 A.2d 248, 251 (Pa. Super. 1983) (affirming a trial court’s determination not to take judicial notice of a “fact” when the party’s “premise went ‘well beyond a **fact**’, and required that tribunal to not only ‘find a number of facts, but, also, to reach conclusions of law’” (citation omitted)). Additionally, courts “may not ordinarily take judicial notice in one case of the records of another case whether in another court or its own, even though the contents of those records may be known to the court.” *220 Partnership*, 650 A.2d at 1097 (quoting *Naffah v. City Deposit Bank*, 13 A.2d 63, 64 (Pa. 1940) (internal quotation marks omitted)). *But see In re S.L.*, No. 1083 WDA 2016, 2016 WL 7220196, at *9 (Pa. Super. Dec. 13, 2016) (“A Court may not take judicial notice that the

Third—and worst, from Mr. Wolk’s point of view—the assertions he is making about what the Auditor General’s Report says are actually wrong. He is trying to use that Report as proof that the District committed the legal violations he alleges. He could not use the Report in this way even if that is what the Report said. But it is *not* what the Report says. To the contrary, as noted above, the Report expressly states that it found no legal violation. To be sure, the Court, can, if it wishes, take judicial notice of that (which is to say, it can take judicial notice that that is what the Report says). It cannot treat that statement either as a fact, however (after all, it is a legal conclusion), nor can it adopt the Report’s statement as proof that that conclusion is “true” or “correct.” Said otherwise, the Court can notice what reports say, but it cannot treat statements made therein as adjudicated or undisputed facts.

CONCLUSION

Is there any reason why this Court should take notice of the Auditor General’s October 2017 audit Report of the Lower Merion School District? Mr. Wolk seems to think so, but he is confused about what that audit shows and what

factual findings that led to the prior rulings are true unless the party against whom judicial notice is taken was a party to the prior litigation.”). Here, Mr. Wolk is treating the Auditor General’s Report as though it were a judicial record and determination and using it to try to convince the Superior Court to reach conclusions of law in this matter. Thus, although the District disputes Mr. Wolk’s characterization of the Report, even if it were a judicial record/determination, it would not be properly subject to judicial notice under Pennsylvania law.

the role of the Auditor General is. In fact, if the Court wanted to take some notice of the Report, it would have ample basis to conclude:

1. The October 2017 Report does not purport to identify any illegal or noncompliant act or practice of the District;
2. The October 2017 Report did contain one observation and three recommendations relating to the District's budgeting practices, but none of these rose to the level of noncompliance;
3. On November 22, 2017, the Department of Education directed the District to respond to the Auditor General's observation and recommendations in accordance with standard Department practice;
4. On December 27, 2017, the District provided the Department of Education with its response to the Auditor General's observation and outlined a Corrective Action Plan for addressing each of his recommendations; and
5. As of June of 2019, neither the Department of Education nor the Department of the Auditor General has made any complaint or raised any question regarding the District's Corrective Action Plan.

The relevance of these "facts" to the present appeal may perhaps be questioned. What they do tend to show, however, is the way the auditing process is meant to work in the Commonwealth and who is supposed to do what in the course of that process. What is described above is the structure the General Assembly prescribed for the consideration of this subject matter. It is the way our government is designed to work—and has worked here. The process that Mr. Wolk has tried to invoke instead—litigation in the Court of Common Pleas—is *not* a process that the General Assembly has authorized and is *not* the way school

district budgets are supposed to be evaluated and decided upon. Judge Smyth's exercise of jurisdiction over this subject matter was an attempt to seize a power that has been given to other agencies of the Commonwealth. It is also an affront to the electorate of Lower Merion Township, which plainly prefers the views and policies of its elected School Board to the views and policies espoused by the Plaintiffs-Appellees here. That should have been clear in 2016. But it is even clearer now.

Dated: June 11, 2019

Respectfully Submitted,

/s/ Alfred W. Putnam, Jr.

Alfred W. Putnam, Jr.

Pa. ID No. 28621

D. Alicia Hickok

Pa. ID No. 87604

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Counsel for Appellant

School District of Lower Merion

EXHIBIT A

LOWER MERION SCHOOL DISTRICT
MONTGOMERY COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT

AUGUST 2011

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Mr. David A. Ebby, Board President
Lower Merion School District
301 West Ardmore Avenue
Ardmore, Pennsylvania 19003

Dear Governor Corbett and Mr. Ebby:

We conducted a performance audit of the Lower Merion School District (LMSD) to determine its compliance with applicable state laws, regulations, contracts, grant requirements and administrative procedures. Our audit covered the period through August 17, 2007 through January 28, 2011, except as otherwise indicated in the report. Additionally, compliance specific to state subsidy and reimbursements was determined for the school years ended June 30, 2008 and June 30, 2007. Our audit was conducted pursuant to 72 P.S. § 403 and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found that the LMSD complied, in all significant respects, with applicable state laws, regulations, contracts, grant requirements, and administrative procedures. However, we identified one matter unrelated to compliance that is reported as an observation. A summary of these results is presented in the Executive Summary section of the audit report.

Our audit observation and recommendations have been discussed with LMSD's management and their responses are included in the audit report. We believe the implementation of our recommendations will improve LMSD's operations and facilitate compliance with legal and administrative requirements. We appreciate the LMSD's cooperation during the conduct of the audit.

Sincerely,

/s/
JACK WAGNER
Auditor General

August 29, 2011

cc: **LOWER MERION SCHOOL DISTRICT** Board Members



Table of Contents

	Page
Executive Summary	1
Audit Scope, Objectives, and Methodology	3
Findings and Observations	6
Observation – Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers’ Qualifications	6
Status of Prior Audit Findings and Observations	9
Distribution List	13



Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the Lower Merion School District (LMSD). Our audit sought to answer certain questions regarding the District's compliance with applicable state laws, regulations, contracts, grant requirements, and administrative procedures; and to determine the status of corrective action taken by the LMSD in response to our prior audit recommendations.

Our audit scope covered the period August 17, 2007 through January 28, 2011, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidy and reimbursements was determined for school years 2007-08 and 2006-07.

District Background

The LMSD encompasses approximately 24 square miles. According to 2000 federal census data, it serves a resident population of 64,083. According to District officials, in school year 2007-08 the KCSD provided basic educational services to 6,920 pupils through the employment of 695 teachers, 560 full-time and part-time support personnel, and 70 administrators. Lastly, the LMSD received more than \$15.7 million in state funding in school year 2007-08.

Audit Conclusion and Results

Our audit found that the LMSD complied, in all significant respects, with applicable state laws, regulations, contracts, grant requirements, and administrative procedures. However, as noted below, one matter unrelated to compliance is reported as an observation.

Observation: Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications.

Our current audit found that the LMSD had not implemented our prior audit recommendations regarding bus drivers' qualifications (see page 6).

Status of Prior Audit Findings and

Observations. With regard to the status of our prior audit recommendations to the LMSD from an audit we conducted of the 2005-06 and 2004-05 school years, we found the LMSD had taken appropriate corrective action in implementing our recommendations pertaining to pupil transportation reporting errors (see page 9) and largely implemented our recommendations pertaining to vendor system access and logical access control weaknesses (see page 10). However, LMSD did not take appropriate corrective action pertaining to bus driver qualifications (see page 11).



Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

School performance audits allow the Department of the Auditor General to determine whether state funds, including school subsidies, are being used according to the purposes and guidelines that govern the use of those funds. Additionally, our audits examine the appropriateness of certain administrative and operational practices at each Local Education Agency (LEA). The results of these audits are shared with LEA management, the Governor, the PA Department of Education, and other concerned entities.

Our audit, conducted under authority of 72 P.S. § 403, is not a substitute for the local annual audit required by the Public School Code of 1949, as amended. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period August 17, 2007 through January 28, 2011.

Regarding state subsidy and reimbursements, our audit covered school years 2007-08 and 2006-07.

While all districts have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with Department of Education (DE) reporting guidelines, we use the term school year rather than fiscal year throughout this report. A school year covers the period July 1 to June 30.

Objectives

What is the difference between a finding and an observation?

Our performance audits may contain findings and/or observations related to our audit objectives. Findings describe noncompliance with a law, regulation, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not rising to the level of noncompliance with specific criteria.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as, laws, regulations, and defined business practices. Our audit focused on assessing the LMSD's compliance with applicable state laws, regulations, contracts, grant requirements and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

- ✓ Is the District's pupil transportation department, including any contracted vendors, in compliance with applicable state laws and procedures?
- ✓ Are there any declining fund balances which may impose risk to the fiscal viability of the District?
- ✓ Did the District pursue a contract buyout with an administrator and if so, what was the total cost of the buy-out, reasons for the termination/settlement, and do the current employment contract(s) contain adequate termination provisions?

- ✓ Were there any other areas of concern reported by local auditors, citizens, or other interested parties which warrant further attention during our audit?
- ✓ Is the District taking appropriate steps to ensure school safety?
- ✓ Did the District use an outside vendor to maintain its membership data and if so, are there internal controls in place related to vendor access?
- ✓ Did the District take appropriate corrective action to address recommendations made in our prior audits?

Methodology

What are internal controls?

Internal controls are processes designed by management to provide reasonable assurance of achieving objectives in areas such as:

- Effectiveness and efficiency of operations;
- Relevance and reliability of operational and financial information;
- Compliance with applicable laws, regulations, contracts, grant requirements and administrative procedures.

Government Auditing Standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

LMSD's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the District is in compliance with applicable laws, regulations, contracts, grant requirements, and administrative procedures. Within the context of our audit objectives, we obtained an understanding of internal controls and assessed whether those controls were properly designed and implemented.

Any significant deficiencies found during the audit are included in this report.

In order to properly plan our audit and to guide us in possible audit areas, we performed analytical procedures in the areas of state subsidies/reimbursement and pupil transportation.

Our audit examined the following:

- Records pertaining to pupil transportation, bus driver qualifications, and financial stability
- Items such as Board meeting minutes.

Additionally, we interviewed selected administrators and support personnel associated with LMSD operations.

Lastly, to determine the status of our audit recommendations made in a prior audit report released on September 19, 2008, we reviewed the LMSD's response to DE dated November 17, 2008. We then performed additional audit procedures targeting the previously reported matters.

Findings and Observations

Observation

Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications

Criteria relevant to the observation:

Public School Code, Section 111 (24 P.S. § 1-111) provides:

Prospective school employees who would have direct contact with children, including independent contractors and their employees, to submit a report of criminal history record information obtained from the Pennsylvania State Police. Section 111 lists convictions of certain criminal offenses that, if indicated on the report to have occurred within the preceding five years, would prohibit the individual from being hired.

Similarly, Section 6355 of the Child Protective Services Law, (CPSL), 23 Pa. C.S. § 6355, requires prospective school employees to provide an official child abuse clearance statement obtained from the Pennsylvania Department of Public Welfare. The CPSL prohibits the hiring of an individual determined by a court to have committed child abuse.

Our current audit found that the District had not implemented our prior audit recommendations regarding bus drivers' qualifications (see page 11). We made our recommendations in the interest of the protection of students, and here reiterate those recommendations.

The ultimate purpose of the requirements of the Public School Code and CPSL cited in the box to the left is to ensure the protection of the safety and welfare of the students transported in school buses. To that end, we believe there are other serious crimes that school districts should consider, on a case-by-case basis, in determining a prospective employee's suitability to have direct contact with children. Such crimes would include those listed in Section 111 but which were committed beyond the five-year look-back period, as well as other crimes of a serious nature that are not on the list at all. School districts should also consider implementing written policies and procedures to ensure that the District is immediately informed of any charges and convictions that may have occurred after the commencement of employment.

The District had not adopted written policies or procedures, as we recommended in the prior audit, to ensure that they are notified if current employees have been charged with or convicted of serious criminal offenses which should be considered for the purpose of determining an individual's continued suitability to be in direct contact with children. This lack of written policies and procedures is an internal control weakness that could result in the continued employment of individuals who may pose a risk if allowed to continue to have direct contact with children.

Recommendations

The *Lower Merion School District* should:

1. Develop a process to determine, on a case-by-case basis, whether prospective and current employees of the District have been charged with or convicted of crimes that, even though not disqualifying under state law, affect their suitability to have direct contact with children.
2. Implement written policies and procedures to ensure that the District is notified when current employees of the District's transportation contractors are charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children and to ensure that the District considers on a case-by-case basis whether any conviction of a current employee should lead to an employment action.

Management Response

Management stated the following:

At this time, the District remains in compliance with all laws and regulations pertaining to Criminal Background Checks (Act 34) and Child Abuse Reports (Act 151). Indeed, the audit report merely indicates in its observation that school districts generally "*should* also consider reviewing" the criminal history and child abuse reports for current bus drivers. While not in any way diminishing the District's continuing commitment to the safety and security of all students, there is no current legal requirement or authority to enable the District to unilaterally review criminal record[s] of bus drivers after they are hired by the school district. In fact, it is inconsistent and, arguably discriminatory, to do so for only one group of employees. That having been said, the District has initiated discussions with its bargaining unit to discuss potential changes to the procedures currently in place for bus drivers to address this issue.

Auditor Conclusion

Management is correct that the District is in compliance with laws and regulations; for that reason our recommendations are presented in an observation rather than a finding.

Our audit procedures focused on bus drivers qualifications, but as management's response suggests our recommendations could be extended to include any individuals who have direct contact with children.

Status of Prior Audit Findings and Observations

Our prior audit of the Lower Merion School District (LMSD) for the school years 2005-06 and 2004-05 resulted in one finding and two observations. The finding pertained to pupil transportation reporting errors; the observations pertained to unmonitored vendor system access and logical access control weaknesses and internal control weaknesses in regarding bus drivers' qualifications. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior recommendations. We analyzed the LMSD Board's written response provided to the Department of Education (DE), performed audit procedures, and questioned District personnel regarding the prior finding and observations. As shown below, we found that the LMSD did implement recommendations related to the finding, largely implemented our recommendations pertaining to the unmonitored vendor system access and logical access control weaknesses observation, and did not implement our recommendations pertaining to the bus driver qualifications observation.

School Years 2005-06 and 2004-05 Auditor General Performance Audit Report

Finding:	Pupil Transportation Reporting Errors Resulting in Net Subsidy Underpayment of \$176,029
<u>Finding Summary:</u>	Our prior audit found errors in the reporting of the number of nonpublic pupils transported by the District to DE for the 2005-06 and 2004-05 school years, resulting in the net underpayment of \$176,029.
<u>Recommendations:</u>	<p>Our audit finding recommended that the LMSD:</p> <ol style="list-style-type: none">1. Review controls to ensure the accurate reporting of nonpublic pupils transported2. Reconcile all transportation data for accuracy prior to submission of reports to DE. <p>We also recommend that DE:</p> <p>Adjust the District's allocations to resolve the net underpayment of \$176,026.</p>
<u>Current Status:</u>	Our current audit found that the District implemented our recommendations. Additionally, DE made adjustments to the District's allocations to resolve the net underpayment in February and April 2010.

Observation No. 1: Unmonitored Vendor System Access and Logical Access Control Weaknesses

Observation Summary: Our prior audit found that the LMSD uses software purchased from an outside vendor for its critical student accounting applications. The software vendor has remote access into the District's network servers. We determined that a risk existed that unauthorized changes to the District's data could occur and not be detected because the District was unable to provide supporting evidence that it was adequately monitoring all vendor activity in its system.

Recommendations: Our audit observation recommended that the LMSD:

1. Generate monitoring reports (including firewall logs) of the vendor and employee remote access and activity on their system. Monitoring reports should include the date, time, and reason for access, change(s) made and who made the change(s). The District should review these reports to determine that the access was appropriate and that data was not improperly altered. The District should also ensure it is maintaining evidence to support this monitoring and review.
2. Require the vendor to assign unique userIDs and passwords to vendor employees authorized to access the district system. Further, the District should obtain a list of vendor employees with remote access to its data and ensure that changes to the data are made only by authorized vendor representatives.
3. Maintain documentation to evidence that terminated employees are properly removed from the system in a timely manner.
4. Store back-up tapes in a secure, off site location.
5. Establish separate information technology policies and procedures for controlling the activities of vendors/consultants and have the vendor sign this policy, or require the vendor to sign the District's Acceptable Use Policy.
6. The District's Acceptable Use Policy should include provisions for authentication (e.g., password security and syntax requirements) and violations (what is to be reported and to whom).

7. Implement a security policy and system parameter settings to require all users, including the vendor to change their passwords on a regular basis (i.e. every 30 days). Passwords should be a minimum length of eight characters and include alpha, numeric, and special characters. Also, the District should maintain a password history that will prevent the use of a repetitive password (i.e. last ten passwords), lock out users after three unsuccessful attempts and log users off the system after a period of inactivity (i.e. 60 minutes max).

Current Status: Our current audit found that the LMSD implemented our recommendations; however, the maximum password age is 120 days, users are locked out after ten unsuccessful attempts and there is no automatic log off settings. We again recommend that the District consider the more stringent logical access controls.

Observation No. 2: Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications

Observation Summary: Our prior audit found that the District did not have written policies or procedures in place to ensure that they were notified if current employees were charged with or convicted of serious criminal offenses which should be considered for the purpose of determining an individual's continued suitability to be in direct contact with children. We considered this lack of written policies and procedures to be an internal control weakness that could result in the continued employment of individuals who may pose a risk if allowed to have direct contact with children.

Recommendations: Our audit observation recommended that the LMSD:

1. Implement written policies and procedures to ensure the District is notified when drivers are charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children.
2. Develop a process to determine, on a case-by-case basis, whether prospective and current employees of the District have been charged with or convicted of crimes that, even though not disqualifying under state law, affect their suitability to have direct contact with children.

Current Status: Our current audit found that LMSD has not complied with our recommendations. As of our fieldwork completion date, the District had not adopted any policies or procedures to address our concerns (see observation, page 6).

Distribution List

This report was initially distributed to the superintendent of the school district, the board members, our website address at www.auditorgen.state.pa.us, and the following:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Ronald J. Tomalis
Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Robert M. McCord
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Ms. Lori A. Graham
Assistant Director, Bureau of Budget and
Fiscal Management
Department of Education
4th Floor, 333 Market Street
Harrisburg, PA 17126

Dr. David Wazeter
Research Manager
Pennsylvania State Education Association
400 North Third Street - Box 1724
Harrisburg, PA 17105

Dr. David Davare
Director of Research Services
Pennsylvania School Boards Association
P.O. Box 2042
Mechanicsburg, PA 17055

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.



EXHIBIT B



**LOWER MERION SCHOOL DISTRICT
MONTGOMERY COUNTY, PENNSYLVANIA
PERFORMANCE AUDIT REPORT**

JUNE 2014

COMMONWEALTH OF PENNSYLVANIA
EUGENE A. DEPASQUALE - AUDITOR GENERAL
DEPARTMENT OF THE AUDITOR GENERAL



Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, PA 17120-0018
Facebook: Pennsylvania Auditor General
Twitter: @PAAuditorGen

EUGENE A. DEPASQUALE
AUDITOR GENERAL

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

Dr. Melissa R. Gilbert, Board President
Lower Merion School District
301 East Montgomery Avenue
Ardmore, Pennsylvania 19003

Dear Governor Corbett and Dr. Gilbert:

We conducted a performance audit of the Lower Merion School District (District) to determine its compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures (relevant requirements). Our audit covered the period January 28, 2011 through November 26, 2013, except as otherwise indicated in the report. Additionally, compliance specific to state subsidies and reimbursements was determined for the school years ended June 30, 2009, 2010, 2011, and 2012. Our audit was conducted pursuant to Section 403 of The Fiscal Code, 72 P.S. § 403, and in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit found that the District complied, in all significant respects, with relevant requirements.

We appreciate the District's cooperation during the conduct of the audit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene A. DePasquale".

EUGENE A. DEPASQUALE
Auditor General

June 5, 2014

cc: **LOWER MERION SCHOOL DISTRICT** Board of School Directors

Table of Contents

	Page
Executive Summary	1
Audit Scope, Objectives, and Methodology	2
Findings and Observations	5
Status of Prior Audit Findings and Observations	6
Distribution List	7

Executive Summary

Audit Work

The Pennsylvania Department of the Auditor General conducted a performance audit of the Lower Merion School District (District) in Montgomery County. Our audit sought to answer certain questions regarding the District's compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures and to determine the status of corrective action taken by the District in response to our prior audit recommendations.

Our audit scope covered the period January 28, 2011 through November 26, 2013, except as otherwise indicated in the audit scope, objectives, and methodology section of the report. Compliance specific to state subsidies and reimbursements was determined for the 2008-09, 2009-10, 2010-11, and 2011-12 school years.

District Background

The District encompasses approximately 24 square miles. According to 2010 federal census data, it serves a resident population of 62,198. According to District officials, the District provided basic educational services to 7,360 pupils through the employment of 702 teachers, 589 full-time and part-time support personnel, and 69 administrators during the 2011-12 school year. The District received \$20.9 million in state funding in the 2011-12 school year.

Audit Conclusion and Results

Our audit found that the District complied, in all significant respects, with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures. We report no findings or observations in this report.

Status of Prior Audit Findings and Observations. With regard to the status of our prior audit recommendations to the Lower Merion School District (District) from an audit released on August 29, 2011, we found that the District had taken appropriate corrective action in implementing our recommendations pertaining to internal control weaknesses in administrative policies regarding bus drivers' qualifications (see page 6).

Audit Scope, Objectives, and Methodology

Scope

What is a school performance audit?

School performance audits allow the Pennsylvania Department of the Auditor General to determine whether state funds, including school subsidies, are being used according to the purposes and guidelines that govern the use of those funds. Additionally, our audits examine the appropriateness of certain administrative and operational practices at each local education agency (LEA). The results of these audits are shared with LEA management, the Governor, the Pennsylvania Department of Education, and other concerned entities.

Our audit, conducted under authority of Section 403 of The Fiscal Code, 72 P.S. § 403, is not a substitute for the local annual audit required by the Public School Code of 1949, as amended. We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Our audit covered the period January 28, 2011 through November 26, 2013, except for the verification of professional employee certification, which was performed for the period July 1, 2008 through November 14, 2013.

Regarding state subsidies and reimbursements, our audit covered the 2008-09, 2009-10, 2010-11, and 2011-12 school years.

While all districts have the same school years, some have different fiscal years. Therefore, for the purposes of our audit work and to be consistent with Pennsylvania Department of Education (PDE) reporting guidelines, we use the term *school year* rather than fiscal year throughout this report. A school year covers the period July 1 to June 30.

Objectives

What is the difference between a finding and an observation?

Our performance audits may contain findings and/or observations related to our audit objectives. Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not rising to the level of noncompliance with specific criteria.

Performance audits draw conclusions based on an evaluation of sufficient, appropriate evidence. Evidence is measured against criteria, such as laws and defined business practices. Our audit focused on assessing the District's compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures. However, as we conducted our audit procedures, we sought to determine answers to the following questions, which serve as our audit objectives:

- ✓ Were professional employees certified for the positions they held?
- ✓ Did the District, and any contracted vendors, ensure that current bus drivers were properly qualified, and did they have written policies and procedures governing the hiring of new bus drivers?

- ✓ Did the District pursue a contract buy-out with an administrator and if so, what was the total cost of the buy-out, what were the reasons for the termination/settlement, and did the current employment contracts contain adequate termination provisions?
- ✓ Did the District have sufficient internal controls to ensure that the membership data it reported to PDE through the Pennsylvania Information Management System was complete, accurate, valid, and reliable?
- ✓ Were there any declining fund balances that may pose a risk to the District's fiscal viability?
- ✓ Did the District take appropriate steps to ensure school safety?
- ✓ Did the District have a properly executed and updated Memorandum of Understanding with local law enforcement?
- ✓ Were there any other areas of concern reported by independent auditors, citizens, or other interested parties?
- ✓ Did the District take appropriate corrective action to address recommendations made in our prior audit?

Methodology

What are internal controls?

Internal controls are processes designed by management to provide reasonable assurance of achieving objectives in areas such as:

- Effectiveness and efficiency of operations.
- Relevance and reliability of operational and financial information.
- Compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures.

Government Auditing Standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our results and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our results and conclusions based on our audit objectives.

The District's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the District is in compliance with certain relevant state laws, regulations, contracts, grant requirements, and administrative procedures (relevant requirements). In conducting our audit, we obtained an understanding of the District's internal controls, including any information technology controls, as they relate to the District's compliance with relevant requirements that we consider to be significant within the context of our audit

objectives. We assessed whether those controls were properly designed and implemented. Any deficiencies in internal controls that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

In order to properly plan our audit and to guide us in possible audit areas, we performed analytical procedures in the areas of state subsidies and reimbursements, pupil transportation, pupil membership, and comparative financial information.

Our audit examined the following:

- Records pertaining to pupil transportation, pupil membership, bus driver qualifications, professional employee certification, state ethics compliance, financial stability, reimbursement applications, tuition receipts, and deposited state funds.
- Items such as board meeting minutes and policies and procedures.

Additionally, we interviewed select administrators and support personnel associated with the District's operations.

To determine the status of our audit recommendations made in a prior audit report released on August 29, 2011, we performed additional audit procedures targeting the previously reported matters.

Findings and Observations

For the audited period, our audit of the Lower Merion School District resulted in no findings or observations.

Status of Prior Audit Findings and Observations

Our prior audit of the Lower Merion School District (District) released on August 29, 2011, resulted in one (1) observation. The observation pertained to internal control weaknesses in administrative policies regarding bus drivers' qualifications. As part of our current audit, we determined the status of corrective action taken by the District to implement our prior audit recommendations. We performed audit procedures and interviewed District personnel regarding the prior observation. As shown below, we found that the District did implement our recommendations related to internal control weaknesses in administrative policies regarding bus drivers' qualifications.

Auditor General Performance Audit Report Released on August 29, 2011

Observation: **Internal Control Weaknesses in Administrative Policies Regarding Bus Drivers' Qualifications**

Observation Summary: Our prior audit found that the District had not implemented our previous audit recommendations regarding bus drivers' qualifications. The District had not adopted written policies or procedures to ensure that they are notified if current employees have been charged with or convicted of serious criminal offenses, which should be considered for the purpose of determining an individual has continued suitability to be in direct contact with children.

Recommendations: Our audit observation recommended that the District should:

1. Develop a process to determine, on a case-by-case basis, whether prospective and current employees of the District have been charged with or convicted of crimes that, even though not disqualifying under state law, affect their suitability to have direct contact with children.
2. Implement written policies and procedures to ensure that the District is notified when current employees of the District's transportation contractors were charged with or convicted of crimes that call into question their suitability to continue to have direct contact with children and to ensure that the District considers on a case-by-case basis whether any conviction of a current employee should lead to an employment action.

Current Status: During our current audit, we found that the District did implement our prior recommendations. On November 11, 2011, the District approved policies 320, 420, and 520: *Reporting of Arrests and Convictions*.

Distribution List

This report was initially distributed to the Superintendent of the District, the Board of School Directors, our website at www.auditor.gen.state.pa.us, and the following stakeholders:

The Honorable Tom Corbett
Governor
Commonwealth of Pennsylvania
Harrisburg, PA 17120

The Honorable Carolyn Dumaesq
Acting Secretary of Education
1010 Harristown Building #2
333 Market Street
Harrisburg, PA 17126

The Honorable Robert M. McCord
State Treasurer
Room 129 - Finance Building
Harrisburg, PA 17120

Ms. Lori Graham
Acting Director
Bureau of Budget and Fiscal Management
Pennsylvania Department of Education
4th Floor, 333 Market Street
Harrisburg, PA 17126

Dr. David Wazeter
Research Manager
Pennsylvania State Education Association
400 North Third Street - Box 1724
Harrisburg, PA 17105

Mr. Lin Carpenter
Assistant Executive Director for Member Services
School Board and Management Services
Pennsylvania School Boards Association
P.O. Box 2042
Mechanicsburg, PA 17055

This report is a matter of public record and is available online at www.auditor.gen.state.pa.us. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: news@auditor.gen.state.pa.us.

EXHIBIT C



November 22, 2017

Mr. Robert L. Copeland
Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, PA 19003

Re: Auditor General's Performance Audit Report
Fiscal Years Ending June 30, 2015, 2014 and 2013

Dear Mr. Copeland:

The Department of Education (Department) has received the Lower Merion School District Performance Audit Report for years ended June 30, 2015, 2014 and 2013 issued by the Department of the Auditor General.

Please review, evaluate, and respond to the Performance Audit Report Prior Year Finding/Observation using the attached Audit Review Procedures (Attachment A). Your response shall also include a **Corrective Action Plan (CAP)** with the description of the Finding or Observation, a statement indicating the concurrence or nonconcurrence with the Audit Report's Findings/Observations and Recommendations, specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary, a timetable for the implementation of each corrective action step, and a description of monitoring procedures performed to ensure implementation of the corrective action steps. Your response/CAP will be forwarded to the Department of the Auditor General and any other applicable Commonwealth Agency.

Please Note – If the Performance Audit Report identifies a potential educator certification violation, you will be contacted directly by the Department's Bureau of School Leadership and Teacher Quality (BSLTQ). Please direct any questions regarding the Certification Irregularity Findings to the BSLTQ.

The response along with the **Corrective Action Plan** is to be signed by you and the original and **two (2)** copies are to be transmitted on the Lower Merion School District's official stationery within **forty-five (45)** days of receipt of this letter to the following address:

Ms. Connie L. Derr, Audit Coordinator
Bureau of Budget and Fiscal Management
Department of Education
333 Market Street – 4th Floor
Harrisburg, Pennsylvania 17126-0333

Mr. Robert L. Copeland
Page 2
November 22, 2017

Audit Reports are available under the Pennsylvania Department of the Auditor General's website, www.paauditor.gov. If you have any questions, please contact Lynda Thompson at (717) 265-7496.

Sincerely,



Connie L. Derr, Audit Coordinator

CLD:ac

Attachment

cc: Dr. Robin Van Lynch, Board President
Ms. Denise LaPera, Board Secretary

**PENNSYLVANIA DEPARTMENT OF EDUCATION
AUDIT REVIEW PROCEDURES
AUDITOR GENERAL'S LOCAL EDUCATIONAL AGENCIES PERFORMANCE AUDIT REPORTS**

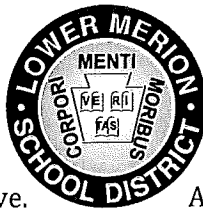
<u>ACTION BY:</u>	<u>STEP</u>	<u>ACTION</u>
Secretary of Education	1.	Receives copy of Performance Audit Report for each Local Educational Agency (LEA) from the Office of the Auditor General.
Audit Coordinator Department of Education	2.	Requests response/corrective action from the LEA when report contains findings, observations or recommendations to the auditee. Forwards request to the LEA Administrator ¹ with a copy to the President/Chair of the LEA's Board of Directors and the Secretary.
LEA Administrator ¹	3.	Forwards LEA Performance Audit Report for response to established Audit Review Committee or the Board acting as a whole.
LEA Audit Review Committee or Board of Directors	4.	Prepares response to each finding, observation and recommendation including a Corrective Action Plan addressing each determination. Forwards response to President/Chair of the Board for Board action.
LEA Board of Directors	5.	Passes resolution adopting and approving the response and the Corrective Action Plan . Forwards response and any supporting documentation to LEA Administrator ¹ .
LEA Administrator ¹	6.	Forwards ORIGINAL and TWO (2) copies of Audit Response Package to the Pennsylvania Department of Education, Bureau of Budget and Fiscal Management, Division of Budget, 333 Market Street – 4 th Floor, Harrisburg, Pennsylvania 17126-0333. The Audit Response Package should include: <ul style="list-style-type: none"> • Date of Board Meeting/Board Certification/Adopting the Response and Corrective Action Plan • Description of Finding or Observation • Statement of Concurrence or Nonconcurrence • LEA's Response, Corrective Action Plan, Resolution, Supporting Documentation • Implementation Dates of Each of the Corrective Action Steps • Description of Monitoring Procedures to Ensure Implementation of the Corrective Action • Signature of the LEA Administrator¹

The Audit Response Package is due at the Department of Education within **45 days** of receipt of the PDE's request.

¹LEA Administrator is:

- Superintendent of a School District;
- Executive Director of an Intermediate Unit;
- Superintendent of Record for an Area Vocational Technical School;
- Chief Administrative Officer for Charter School;
- President of Postsecondary Educational Agencies.

EXHIBIT D



Lower Merion School District

301 East Montgomery Ave.

Ardmore, PA 19003-3399

Phone: 610-645-1930 ♦ Fax: 610-645-0603 ♦ www.lmsd.org

Robert L. Copeland ♦ Superintendent of Schools

December 27, 2017

Ms. Connie L. Derr, Audit Coordinator
Bureau of Budget and Fiscal Management
Department of Education
333 Market Street – 4th Floor
Harrisburg, Pennsylvania 17126-0333

**Re: Lower Merion School District Auditor General Performance Audit Report
Fiscal Years Ending June 30, 2015, 2014 and 2013**

Dear Ms. Derr:

The Lower Merion School District (“District”) is in receipt of your November 22, 2017 letter requesting that the District review, evaluate, and respond to the Performance Audit Report prepared by the Pennsylvania Department of the Auditor General for the fiscal years ending June 30, 2015, 2014, and 2013.

Your letter indicated that the District’s response should include a Corrective Action Plan (“CAP”) with a description of the Auditor General’s Finding or Observation, a statement indicating the District’s concurrence or non-concurrence with the Audit Report’s Findings/Observations and Recommendations, with specific steps to be taken to correct the situation or specific reasons why corrective active action is not necessary, a timetable for the implementation of each corrective action step, and a description of monitoring procedures performed to ensure implementation of the corrective action steps.

Please find enclosed the District’s response. Please further be advised that at the regular public meeting of the Board of School Directors on December 18, 2017, the Board approved the enclosed response and corrective action plan.

Sincerely,

Mr. Robert Copeland
Superintendent of Schools

Enclosure

cc: Kenneth A. Roos, Solicitor

**Lower Merion School District
Corrective Action Plan
Auditor General Report – Fiscal Years Ending June 30, 2015, 2014 and 2013**

Findings: The Auditor General’s report noted no findings. The Auditor General’s report concluded as follows: “Our engagement found that the District properly implemented policies and procedures for the areas mentioned above and complied with, in all significant respects, with the relevant requirements, excepts as detailed in the observation in this report.”

Observation: The Auditor General’s report observed that the District utilized fund balance to balance its annual budget, but that the District also realized surpluses and maintained its \$56 million general fund balance.

Statement of Concurrence or Non-Concurrence

The District concurs with the Auditor General’s report to the extent it recognizes that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District’s accounting and budgeting practices have been generally affirmed in every audit report for at least the past 20 years. To the extent that the Auditor General is suggesting that budgeting should be done on an overall basis rather than by line items, the District does not concur with the Auditor General’s report. The District believes that its financial practices and financial standing are sound and that by using the line item approach integral to the Department of Education, the District has achieved consistent budget approval by the Pennsylvania Department of Education, as well as maintaining a history of strong audit reports from the office of the Auditor General and continued clean annual audit reports from independent auditors. In this regard, the District notes that much of the data identified in the Audit Report has been previously reviewed and approved by the Auditor General’s office.

District Response:

The District’s comprehensive response to the Auditor General’s Observation noted above is attached hereto in its entirety as **Attachment 1**.

Auditor General Recommendations & District Action Plan:

Recommendations:

1. Consider modification of the board policy governing the General Fund to include an annual review of the validity of its committed reserves and a requirement of the Board to approve a plan for using those committed funds.

District Action Plan:

This recommendation is already in place, as the District has a practice of conducting an annual review of the committed reserves and proposed plan for the use of such funds. As an additional measure, to further document this annual review and approval, the Board will revise the applicable School Board Policy to designate a specific Board or Finance Committee meeting during which the review/approval process that is already occurring will be a separate agenda item.

2. As part of its annual budgeting process, determine whether its General Fund commitments and reserves should be maintained, increased, or used for their respective designated, authorized purposes.

District Action Plan:

The School Board will continue to periodically review general fund commitments and reserves as part of the annual budget process. The revised Board Policy referenced immediately above will also incorporate a provision regarding the review of general fund commitments and reserves to more formally document existing practice.

3. Evaluate the need for taking the Act 1 exception for retirement costs while it still retains significant funds committed for this express purpose.

District Action Plan:


The School Board will continue to evaluate the need for Act 1 exceptions during the budget process. There have been years where the School Board has not utilized the Act 1 exception for retirement costs. For the 2017-18 school year, the District did not utilize any of the Act 1 exceptions.

Implementation Dates of Correction Action:

1. The annual review of committed reserves and a plan for using such committed funds is already currently implemented. The anticipated revisions of Board Policy will begin during the 2017-18 school year.
2. Review of general fund commitments and reserves is currently implemented. The anticipated revision of Board Policy will begin during the 2017-18 school year.
3. Evaluation of Act 1 exceptions is currently implemented as part of the annual budget process.

Description of Monitoring Procedures to Ensure Implementation of Corrective Action:

School District Administration and School Board will monitor compliance with the Auditor General's recommendations.



Robert Copeland, Superintendent

Appendix

LOWER MERION SCHOOL DISTRICT MANAGEMENT COMMENTS

Summary

The Administration of Lower Merion School District appreciates the opportunity to respond to the draft Performance Audit received September 5, 2017. Our management comments are provided with the hope of addressing many of the assertions made throughout the report and to show the Auditor General the ways in which the principles that are in the draft report have been part and parcel of our already adopted standard and expanded operational methodology. Specifically, this document was prepared for two reasons:

1. The District believes that its financial practices and financial standing are sound and it has achieved **consistent budget approval by the Pennsylvania Department of Education, a history of strong audit reports from the office of the Auditor General and continued clean annual audit reports from independent auditors.** Much of the data identified in the draft audit has been previously reviewed and approved by the Auditor General's office.
2. The District believes that based on the methodology adopted by the Auditor General's office, the draft audit report does not rise to the level of a "finding" or an "observation."¹ A finding would indicate non-compliance with a "statute, regulation, policy, contract, grant requirement or administrative procedure." **The report in fact indicates that the District was in compliance with the Public School Code in enacting its tax increases. Further, the District's accounting and budgeting practices have been generally affirmed in every audit report for at least the past 20 years.** Moreover, the recommendation that budgeting be based on historical amounts is not in keeping with mandated accounting policies for matters such as self-insurance (for which the District seeks actuarial analysis annually), PSERS, and special education expenditures (as to which the District cannot cap current expenditures at prior expenditure levels).

As a threshold matter, the District expresses its concern that the Auditor General appears to have been influenced by material presented by Arthur Wolk and Keith Knauss at an injunction hearing held in 2016. The District has been involved in litigation with Mr. Wolk, and that litigation is ongoing. The District believes that Mr. Wolk is wrong as to the merits of the case, but also disagrees with the public policy position that animates his litigation. Mr. Wolk believes that it is wrong to try to provide public education at a level commensurate with the best secondary schools in the region. His philosophy is readily apparent from his amended complaint, in which he states: "Public education is not courses, programs, activities, free laptop computers, and curriculums [*sic*] that are neither mandated nor normally part of a public education standard, and are normally provided only by private institutions at larger expense to individual patrons who

¹ According to the methodology outlined by the Auditor General, "Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. Observations are reported when we believe corrective action should be taken to remedy a potential problem not arising to the level of noncompliance with specific criteria."

prefer to afford their children education and opportunities that are neither required, nor offered, nor appropriate for public education paid for by taxpayers.” In the amended complaint, he also condemns teacher salaries as too high, and calls the “higher or continuing education” program for teachers “nothing but a theft of the Plaintiffs’ tax money and a scam.” The District believes that Mr. Wolk’s positions are at odds with those of most residents of the District; indeed, over 3,500 residents of the Lower Merion School District have signed a petition opposing Mr. Wolk and his lawsuit and supporting the District’s budgeting practices.

Key Considerations

Among the universal school district budgeting laws observed by LMSD that we wish to emphasize in this response is the requirement by the Pennsylvania Department of Education that districts budget on a line item basis. **This is and always has been our practice.** It is important to note, moreover, that while there are universal laws and standards for districts, no school district is the same and each must approach budgeting based on local circumstances and realities.

The Auditor General made multiple requests over the course of the past year for information, and some of that information is reattached, because it was not referenced in the Performance Audit draft that was provided to us.² The District notes as well that in questioning the acknowledged and undisputed consistency of the District’s accounting practices on the grounds that they have resulted in the appearance of questionable budgeting practices, the Auditor General seems to have departed from his own previous position that conservative accounting practices that are designed to maintain healthy fund balances and a good credit rating are laudable rather than blameworthy. As set forth in greater detail below, the Auditor General’s positions on adequate fund balances, community awareness of the purpose and timetable for using these balances, and the extent of permissible variances are not only at odds with best accounting practices but are actually inaccurate in some respects.

Enrollment Growth

No school district in Pennsylvania has been impacted more by enrollment growth in recent years than Lower Merion School District. **Since 2008, LMSD has had the largest growth in the Commonwealth by total number of students (nearly 1,500 additional students) and the second-fastest enrollment growth rate (more than 21%) according to the Pennsylvania Department of Education.** As the 2016-17 school year opened, enrollment in the District was nearly 8,400 students for the first time since the early 1970’s. The last time LMSD enrolled this many students, the District operated 15 schools (ten K-6 elementary schools, three 7-9 junior high schools and two 10-12 senior high schools). Today the District has just ten schools and has been making every effort to maximize limited space in an era of unprecedented growth.

LMSD’s growth is in direct contrast to that of most districts in the state. Of the 500 school districts in the Commonwealth, more than 400 are showing declining enrollment. Only 15 districts are showing growth in excess of 10% in the last eight years. It should be noted that

² This includes a 13-page response to supplemental questions from the Auditor General on 9/27/16 detailing our use of historical analysis in developing the budget, as well as a detailed written response to questions regarding committed fund balance and capital reserve transfers, sent 5/19/17.

enrollment growth is projected to continue in LMSD for the foreseeable future. Two recent independent enrollment studies (conducted by the Montgomery County Planning Commission and Sundance Associates) point to steady increases in enrollment through 2021 and beyond. Here are some statistics worth noting from these studies:

- Enrollment is projected to increase by approximately 1,000 students over the next six years.
- Middle schools will increase by more than 350 students.
- Growth will impact the high schools the most with the addition of 700 more students.
- The current second grade class of 687 started as a kindergarten class of 454 and will graduate as a 12th grade class of 908 students.

Enrollment growth continues to have a significant impact on the District's budget planning. An increasing number of students has resulted in the need for additional staff and expanded facilities and a reserve for future growth. Additionally, enrollment growth has required/is projected to require additional expenses with regard to transportation and other services to maintain existing programs. Staffing is the single biggest driver of the budget; more students result in the need for more staffing and thus, greater costs. During the 2005-06 school year, for example, there were 670 teachers in the LMSD; today, there are 779.

The District has a long history of proactively addressing enrollment growth despite challenges posed by limited space, lack of available land and the high cost of purchasing property in Lower Merion Township and Narberth Borough. The District has sought to make the best of its existing property and has expanded classroom capacity as needed following careful study and public planning. In recent years, the District has increased capacity at a cost of more than \$30M, completing additions at two elementary schools, two middle schools and re-purposing space in the District Administration Building for high school classroom use. Our demographic studies indicate that in the next few years we will need to – at minimum – add capacity at one middle school, one elementary school and one high school. The middle school project is currently underway with the installation of temporary modular classrooms this summer. We are holding \$15M dollars in committed fund balance in anticipation of needing those funds to expand classroom capacity in response to growing enrollment.

The District has also invested another \$3M in safety accommodations and security infrastructure following the tragedy at Sandy Hook Elementary School – **a reminder that even the most accurate demographic projections and budget forecasts may not account for certain unforeseen and necessary expenditures.**

While expanding classroom capacity is one strategy to address enrollment growth, the Board of School Directors continues to be sensitive to the potential costs of temporary classrooms and new construction. Thus, the Board has implemented fiscally-responsible short-term strategies that have provided more time to review enrollment projections and plan for the future.

In an effort to maintain favorable class sizes, preserve programs, maximize existing resources and provide planning flexibility at the elementary level, for example, the District now utilizes a "partner school" plan. The plan caps certain sections of grade levels in elementary schools that

have reached class size targets. When those sections are capped, students who register thereafter will be enrolled at a “partner school” – a Lower Merion elementary school that can accommodate further enrollment in that class section. This strategy has helped minimize the need to open additional sections in the short term, maximizing existing classroom capacity and staff resources. This program along with other strategies allowed us to hold tax increases below the state index for the 2017-18 school year.

While the District must consider enrollment growth in its budget planning, it is impossible – even with detailed studies and projection data – to forecast the precise impacts and costs. Ten years ago, for example, it would have been difficult to fully predict trends like: significant growth in the number of students enrolling in public schools vs. private schools in our community (a swing of between 600-700 students); a greater draw rate (almost double in eight years) of public school students from multifamily homes and rental apartments; and the development of new housing in Lower Merion (464 new units in the last two years and almost 1800 expected over the next six years). One thing is certain, families are continuing to choose Lower Merion School District for the quality of its schools. The demographic studies have indicated that growth is most closely associated with “the overall quality, reputation, and appeal of the [District].”

As LMSD balances its commitment to fiscal responsibility with the needs of its students, the Board of School Directors has made clear their commitment to maintaining the quality of the educational experience. The commitment is manifested in the long-term strategic plans, developed with extensive input from the entire community, including specific stakeholders. The funding required to support annual strategic plan needs is a part of public budget discussions. **Funding decisions have been developed and endorsed by the community, as evidenced by the cross-party support for the current School Board and the involvement of a broad cross-section of the population in our strategic planning and budgeting processes.**

Fund Balance

Lower Merion School District carries approximately \$56M in total fund balance, which represents roughly 22.9% of 2016 budgeted expenditures. Most of this amount represents a “committed” fund balance, which means it serves a financially-prudent purpose as permitted by law. In fact, the Office of the Auditor General took special note of the health of the District’s fund balance in its last audit report, and offered no findings or observations of concern. Yet, that is the same fund balance that the Auditor General is now viewing as “too high.” The balance includes \$15.3M for PSERS (state pension system).³ While the District’s PSERS obligation for this year is currently about \$20M, the state projects that within five years this amount will increase to over \$23M, a point at which reserves will be needed to offset the increases, something that the District has anticipated and prepared for several years – well before the prior audit, which raised no concerns with this analysis. An additional \$15M is committed for future capital projects and will be used for ongoing facilities needs, decreasing the District’s reliance on borrowing, and carrying into effect the community-developed strategic plan. A total of \$5M is

³ PSERS is managed by the Commonwealth, and school districts are mandated by law to contribute based on a rate annually determined by the PSERS Board. Local districts have no control over current and future contribution rates. Per 2017 data from PSERS, the current unfunded liability for the pension system is over \$42B. It is no surprise that district contribution rates continue to rise almost every year. (See chart on p. 13)

committed for post-retirement benefits as determined by actuaries and an additional \$0.5M is assigned for rate stabilization on variable rate bonds (should interest rates rise, the District will be covered). The reliance on actuaries for projected uncertainty is a good accounting practice. The remaining \$20.3M in “unassigned” fund balance constitutes [sic] approximately 7.6% of the District’s budget and is **therefore well below the allowable 8% limit set by the PA School Code**. The District used \$6.3M to close its budget deficit and maintained \$13.9M in reserve. The \$13.9M represents 5.2% of the budget.

The Auditor General’s public pronouncements have affirmed the principles behind Lower Merion School District’s and certain other districts’ budgeting practices. In a December 2015 Performance Audit report of the Pittsburgh Public Schools (which were carrying the state’s largest fund balance as of December 31, 2014 of just over \$129.2M) the Auditor General explained, “It is important to note that a **generous fund balance is a necessary component of a fiscally healthy school district**. Fund balances are important to districts the same way a savings account is important to individuals. Just as individuals should maintain a savings account to deal with emergencies or other unforeseen events, districts should also have funds in reserve to pay for emergency repairs or interruptions to revenues...School districts must walk a fine line between being prepared for emergencies, increasing fixed costs, or interruptions to revenue and being responsible to their students and taxpayers.”

The Auditor General cited Pittsburgh as one of the state’s most “successful financially run districts” due in large part to its healthy reserves. According to Pittsburgh’s most recent audit, the district’s fund balance ratio to total budget was 24%, which is actually higher than Lower Merion’s.

Although the Auditor General has recently referred to “20%” as a possible threshold for appropriate fund balance percentages, we reviewed school district audits released by the Auditor General’s Office between January 1, 2017 and July 27, 2017 but found **no observations or findings regarding fund balance in any of the 67 school district audits. This list included 29 districts with fund balances above 20% and at least 23 districts that had higher fund balance percentages than LMSD in 2015-16**. For example, of the six school district audits released via the Auditor General website on February 2, 2017 four districts had fund balances greater than LMSD and one had a fund balance of more than 40%.⁴

At the same time, the Auditor General has continued to recognize that school districts that run low fund balances risk the fiscal health of the district. As part of a public release regarding a recent audit of Blackhawk School District, he noted the following⁵:

- “Just as individuals and families should maintain a savings account to deal with unforeseen events, school districts should also have funds in reserve.”

⁴ Windber 40.6%, Midd West 34.2%, Carmichaels 25.6%, and Wyomissing 23%. Information based on press releases and audits at <http://www.paauditor.gov/>

⁵ Auditor General DePasquale Says Poor Budget Planning Led to Blackhawk School District’s Nearly Depleted Fund Balance <http://www.paauditor.gov/press-releases/auditor-general-depasquale-says-poor-budget-planning-led-to-blackhawk-school-district%E2%80%99s-nearly-depleted-general-fund-balance>

- “Unbudgeted expenditures necessitated that the district use the general fund balance to cover these expenditures...This is an unsustainable practice that nearly depleted the district’s general fund and led to the district’s perilous financial condition.”

In an audit of Eastern York School District, he shared similar concerns about the District’s declining fund balance:

“Maintaining a healthy general fund for a school district is not unlike individuals and families stashing cash in a savings account to save for an emergency,” DePasquale said. He cautioned that a decreasing fund balance reduces a district’s ability to pay for unexpected repairs or cover unexpected interruptions in revenue — like the recent nine-month budget impasse — and could impact the district’s credit rating.⁶

According to a study by the Commonwealth Foundation, 167 districts (one-third of all districts in Pennsylvania) had a higher percentage of total fund balance to actual expenditures than Lower Merion School District in 2014-15.⁷ By 2015-16, this number had increased to 181 districts (more than 36% of PA districts), according to a report by Temple University.⁸ Additionally, more than 50 districts are operating with a total fund balance of less than 6%, including 17 districts completely in the red and operating in a deficit. The Temple report also found that 33% of Pennsylvania school districts (165 total) had an actual unassigned fund balance as a percentage of actual expenditures greater or equal to Lower Merion’s.

This statewide snapshot underscores our District’s fiscal vitality and illustrates that there is great variance in total fund balance percentages across the state and no guidelines, mandates, or even general consensus as to what an appropriate percentage should be. The Temple study confirmed the varied distribution of fund balances across the Commonwealth and noted that “fund balance is a point-in-time measure; they change from year to year. **The amount of fund balance is not necessarily an indicator that school districts are collectively, or even individually, irresponsibly hoarding a pot of gold that could or should be used to avoid tough budget decisions.**”

Districts with adequate and healthy fund balances can address short-term and long-term needs, demonstrate financial stability and preserve or enhance bond ratings, thereby lowering debt issuance costs. The ratings agency Moody’s affirmed LMSD’s Aaa credit rating last year, enabling the refinancing of general obligation bonds that will save taxpayers \$9.8M. Among Pennsylvania’s 500 school districts, LMSD is one of only five that carries the Moody’s Aaa credit rating. Moody’s specifically cited the District’s “strong and stable reserve levels” in its most recent report. In the best and worst of times, a strong credit profile serves a district well. **The facts clearly show that Lower Merion School District has observed both responsible**

⁶ Eastern York’s Emergency Fund Too Low, Audit Warns

<http://www.ydr.com/story/news/education/2016/07/21/audit-flags-eastern-york-fund-balance-drop/87399304/>

⁷ School Districts Amass Record Reserve Funds

<https://www.commonwealthfoundation.org/policyblog/detail/school-districts-amass-record-reserve-funds>. Lower Merion’s percentage was 24.56% for 2014-15, which was based upon \$55,974,232 of fund balance to \$237,893,842 actual expenditures.

⁸ Explaining School Fund Balances/Temple University Center for Regional Policy

<http://www.cla.temple.edu/corp/files/2017/07/Fund-Balance-Update-2017.pdf>

budgeting practices and the letter of the law with regard to maintaining an appropriate fund balance.

We find it puzzling that the Auditor General is suggesting that the District ought to spend down its fund balance, particularly in light of his recent public comments regarding the Pennsylvania budget crisis. In a June letter co-signed by State Treasurer Joseph Torsella, the Auditor General noted the dangers of the Commonwealth's declining fund balance and the implications with regard to the state's credit rating, ability to pay obligations, and chronic need for borrowing:

*"The continued drop in the average annual General Fund balance is indicative of a structural imbalance between revenues and expenditures. Without a correction to this imbalance, we anticipate the trend of lower General Fund average balances to continue to worsen in the coming years."*⁹

This month, Standard & Poor's Global Rating lowered its general obligation rating on the Commonwealth from "A+" to "AA-", citing the need for "additional liquidity and...the likely need for external borrowing." **The result is that the state -- and taxpayers -- will pay more to borrow money.**

The same principle holds here, only with the opposite result. The taxpayers of the Lower Merion School District have benefited from a strong credit rating and lower borrowing costs (which is particularly important given unprecedented enrollment growth and the need to expand capacity at our schools). A deliberate plan to reduce the District's fund balance would likely lead to a lower bond rating and an increased cost of borrowing. The District believes this is bad policy for the same reason that the Auditor General has advanced in other contexts.

Variance

The title of the audit report suggests that the District projects deficits and yet realizes surpluses. This is true and we believe it is the result of prudent, conservative budgeting and year-long efficiency and frugality, as well as the fact that the budgets are developed line-by-line, category-by-category, as the Department of Education requires. We do a careful analysis of each budget category every year, but that doesn't necessarily result in zero (0%) variance between budgeted expenditures and actual expenditures in each category.

Each year school districts prepare budgets that are an estimation of expenses for the following school year. In Pennsylvania, budgets are prepared almost a year in advance of implementation and must take into account numerous variables, including but not limited to:

- Enrollment changes
- Staffing needs
- State budgets (which often aren't determined until late in, or in many cases after the closing of, the budget cycle)

⁹ Auditor General DePasquale, Treasurer Torsella Warn Legislators of Dangerously Low General Fund Balance Going into Next Fiscal Year <http://www.paauditor.gov/press-releases/auditor-general-depasquale-treasurertorsella-warn-legislators-of-dangerously-low-general-fund-balance-going-into-next-fiscal-year>

- Fluctuations in the local real estate market and transfer tax revenues
- Special education costs
- Charter school costs
- Healthcare costs
- Facilities planning and emergency needs (winter weather, repairs, etc.)

This timetable can be particularly challenging to rapidly-growing districts like Lower Merion. The District makes a best estimate as to its projected costs using historical data and guidance obtained from multiple sources, including its financial advisor, insurance broker, energy consultant, county and local planners, various local and state purchasing consortiums and internal staff.

The budgeting process in LMSD begins in early fall with outlines and expectations given to administrators. The District utilizes a modified zero-based budgeting that relies on carefully-examined historical data. (See footnote #2 and attached documents). A variety of situations and scenarios, from union contract agreements to emergency situations are considered. The administration then follows a PDE timeline in submitting and presenting for public Board deliberation a series of budget documents.

In that regard, the District notes that in footnote 2, the Auditor General attempts to justify using “original” rather than “amended” budget data in Figure 1, “since the original budgets were used by the District in its applications for Act 1 ... exceptions to PDE.” But the numbers that the Auditor General are not from *any* budget that was submitted on a Department of Education form to the Department of Education. See 24 P.S. § 6-687, 24 P.S. § 6-688. Instead, the data came from a table in the Audited Financial Statements prepared for the District, which was not intended to and did not set forth either the preliminary estimates that were submitted to the Department of Education in applying for the exceptions or the statutory measure of final expenditures. If the correct budgeted and actual numbers are used, the story looks very different.

Expenditures	2012	2013	2014	2015	2016
Budgeted	\$204,571,449.00	\$212,809,404.00	\$221,634,342.00	\$234,520,559.00	\$246,266,565.00
Difference Between Actual and Budgeted	\$16,660,515.00	\$6,177,152.00	\$4,954,871.00	\$7,445,096.00	\$6,563,577.00
Percentage Difference	8.14%	2.90%	2.24%	3.17%	2.67%
Revenues					
Budgeted	\$197,986,495.00	\$202,930,116.00	\$213,062,872.00	\$226,063,700.00	\$236,931,310.00
Difference Between Actual and Budgeted	\$2,303,822.00	\$3,730,723.00	\$3,634,471.00	\$1,016,105.00	\$2,772,234.00
Percentage Difference	1.16%	1.84%	1.71%	0.45%	1.17%

It is worth noting that the largest variance by far was in 2012, a year that was previously audited by the Auditor General, who raised no concerns raised over that variance at that time. The subsequent variances have all been much lower. The errors in Figure 1 are carried over into Figures 3 and 4. Moreover, in Figure 7, the Auditor General misreported the amount of the special education exception that was not used, suggesting that the District forewent \$1,050, when in fact it forewent \$51,050.

In addition, the District can have and generally does have almost no variance between projected and actual expenditures in many areas (approximately 72% of line items were within a 2% variance in 201516) but nonetheless experiences surpluses based on a small subset of line items. That line item budgeting is preserved through the course of the year. Accordingly, if not all of the monies budgeted for an item are needed – whether because the winter was warmer than projected or healthcare expenditures were lower than the actuaries anticipated – the monies are not simply moved elsewhere to be spent in other categories; they are saved. Those savings add up to produce a surplus, and it could be that one or two line items could give rise to a significant surplus.

In the audited fiscal year of 2014-15, for example, the District realized a total surplus of approximately \$4M. The two main factors were a one-time bond refunding (similar to mortgage refinancing) and fewer employee healthcare claims (District is self-insured) that reduced expenses and together accounted for the surplus. **Without these non-recurring savings, the District would not have experienced a surplus for the year.** Following an accepted practice, these funds were transferred to LMSD's capital reserve account upon a public Board vote to be used as part of the District's five-year capital improvement plan, five-year technology/infrastructure plan and for the replacement of aging buses. These plans have been developed in recognition that deferring such projects indefinitely would eventually result in increased maintenance costs and the degradation of District facilities and operations. This is a snapshot of just one fiscal year, but it is telling in the context of variance and fund balance.

In 2015-16, the District realized a positive variance on a single line item of nearly \$439K due to lower-than-expected costs related to students who receive educational services through schools, programs, or agencies outside of the District (Budget Code 560/Tuition to Non-Public Schools). Per Federal regulations (Individuals with Disabilities Act and Section 504 of the Rehabilitation Act of 1973), the District is responsible for providing a free and appropriate public education (FAPE) to students with disabilities. To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met at no additional expense to the parent/guardian. Sometimes students' needs, due to their disability, exceed what can be provided within their home school, and outside educational services and placements are necessary to provide FAPE.

In preparing a budget, we need to ensure that enough funds are available to support all students with disabilities without knowing in advance all the specific services that will be required for every disabled child. As students' needs change, their educational program must be adapted to meet current needs. Administration also cannot predict the enrollment of new students with disabilities. The District has had new students enroll with complex needs that require highly specialized programs costing in excess of \$100,000. Furthermore, **the District does not control**

costs associated with out-of-district programs and we are not provided with exact tuition costs of programs until well after the final budget is approved. While our administration makes carefully considered recommendations based on an analysis of historical trends and current student population, it is not possible to know the exact dollar amount needed a year in advance.¹⁰

Likewise, there are a number of examples where actual costs exceeded historical budgeted costs, demonstrating additional challenges in relying on historical data. For several years, vo-tech expenditures were less than the budget of \$350,000, however when we received our final vo-tech school tuition for 2015-16, it was more than \$600,000 (See Table 1) resulting in an unfavorable variance of \$258,000. The vo-tech program sets tuition rates and the District has no input in the cost figures. Historical data would not have led the school district to budget for increased costs.

Transportation is another area of fluctuation, depending upon required transportation services as a result of student placement and needs. For the 2015-16 school year, the District budgeted a little more than \$12M, but spent more than \$13M. The variance was due in large part to specialized transportation services to meet the requirements of students with special needs (See Table 1). Generally speaking, when districts choose to contract with an intermediate unit to provide special education transportation, the IU submits a report to PDE at the end of the year and those expenditures are recorded in the following year. LMSD realized the cost increase in specialized transportation services and determined that the most fiscally-responsible way to provide them moving forward was through other contracted services. However, the District was still paying for IU transportation services provided in the prior year, while paying for contracted services in the current year. This is another example where historical data would not have determined our actual costs. See Table 1 below for additional examples of variance between budgeted and actual expenditures in the 2015-16 LMSD Budget.

Table 1: Examples of Variance in the 2015-16 LMSD Budget

Year End	Function	Budget	Actual	Difference
6/30/2016	1300 VoTech	\$350,000.00	\$608,022.00	(\$258,022.00)
	2300 Support Svcs- Administration	\$12,980,919.00	\$13,052,231.00	(\$71,312.00)
	2700 Transportation	\$12,156,308.00	\$13,203,694.00	(\$1,047,386.00)
	2800 Central Sprt & Tech Svcs	\$5,566,821.00	\$5,897,778.00	(\$330,957.00)
	3300 Community Svcs	\$197,500.00	\$198,566.00	(\$1,066.00)
Total		\$31,251,548.00	\$32,960,291.00	(\$1,708,743.00)

A greater focus on historical budgeting would not have helped the District budget more accurately and/or reduce variance in most situations. Areas of significant variance occur not

¹⁰ Approximately 13.5% of District students receive special education services and their individualized programs are developed and annually reviewed by each individual student's IEP (Individualized Education Plan) team, which includes relevant school personnel, parents, and the student (if 14 years of age or older).

because of a failure to understand or look at historical information, but rather due to circumstances beyond the District's control.

Finally, the fact is that LMSD's conservative budgeting practices are common to districts across the Commonwealth. As noted by school budget expert Dr. William Hartman of Penn State, the majority of Pennsylvania school districts "underestimate revenues", "overestimate expenditures" and "any resulting surplus goes to fund balance." Dr. Hartman affirms these "conservative practices" as appropriate strategies for "prudent budget management to allow for future unknowns."¹¹ The Auditor General has not previously taken issue with these practices.

Fund Transfers

The District appropriately, lawfully, and publicly authorized the transfer of funds to its capital reserve for each and every year under auditor review. According to the state accounting manual¹², the District's practices are consistent with code; as referenced above, surpluses from the general operating fund may be transferred to capital reserve to fund budgeted capital reserve items. During the years 2012-16, the District transferred more than \$18M and spent more than \$19M in support of its five-year capital improvement plan, five-year bus replacement plan and five-year technology plan. Over the next five years, the District anticipates needing nearly \$22M to implement these ongoing plans.¹³

Substantial Committed Funds

The draft Performance Audit accurately notes that the District has maintained a relatively constant committed fund balance of around \$35.8M for the five fiscal years 2012-16. All budgeted items in the committed fund balance have been affirmed as appropriate by local auditors and reflect a measure of fiscal prudence for a district planning for future needs -- particularly given uncertainties like enrollment growth and increasing PSERS obligations. That the number has remained constant is a reflection of sound fiscal policy and strategic budgeting decisions. For example, the District planned to utilize committed fund balance to support the financing of several recent classroom expansion projects. After careful review, the District determined that it could realize savings and maintain funds for future capital projects by taking advantage of historically low interest rates and issuing bonds for these projects. The result would be greater flexibility and security in the future; if enrollment growth continued and interest rates rose, the District would be able to save taxpayers by having more funds available (and issuing less debt service) for future capital projects as designated in the community-generated strategic long-term plans.

¹¹ "An Analysis of the Budgeting Process in Downingtown Area School District" by Dr. William T. Hartman, Professor of Education, Emeritus, the Pennsylvania State University 10/11/16

¹² Municipal Code P.L. 145, Act of April 30, 1943, also known as Purdon's 53§1431 accounts for (1) moneys transferred during any fiscal year from appropriations made for any particular purpose which may not be needed, (2) surplus moneys in the General Fund of the treasury of the LEA at the end of any fiscal year, and (3) interest earnings of the fund itself.

¹³ The five-year facilities plan is presented to the Board Facilities & Purchasing Committee and reviewed on a consistent basis.

Neighboring school districts without modernized facilities will face significant challenges in renovating/building new schools in coming years due to Act 1 constraints and the rising costs of construction. Other districts will eventually need to incur debt – likely at much greater cost – to continue to provide safe, adequate facilities. Preserving high quality facilities is a priority for the District not only related to capacity needs. LMSD's commitment to consistent maintenance and upkeep yields long-term cost savings and value to the community. **Deferring these services would lead to costly repairs, renovations and impact the curb appeal of the community's public schools – potentially diminishing property values.**

The importance – and challenge – of maintaining adequate committed funds to mitigate future employee retirement obligations is illustrated by the table below (Table 2), which shows the most recent PSERS employer contribution projections through 2021-22. Every year PSERS provides new projections to school districts estimating what future obligations will be. For the year ending June 30, 2010, the 2021-22 rate was projected to be 27.03%. The most recent projection (as of June 30, 2016) for 2021-22 is 36.40%. In the current 2017-18 year, the actual employer contribution rate is already 32.57%. With rates continually being adjusted upward, the District is being prudent in appropriately planning for the uncertainty of PSERS employer contribution rate obligation.

Table 2: Historical PSERS Employer Contribution Projections

Year Ending	2021-22 Projection of Employer Contribution Rate %
6/30/2010	27.03
6/30/2011	27.58
6/30/2012	30.76
6/30/2013	32.01
6/30/2014	31.90
6/30/2015	33.51
6/30/2016	36.40

The draft Performance Audit’s assessment that “the District never spent any of the funds it set aside for retirement costs, nor did it develop a timeline for when it intended to spend those funds” is misleading. As noted above, the District has been very clear as to the purpose of its committed fund balance and the importance of maintaining these funds to cover increasing PSERS obligations and when that is projected to occur. To date, the District has utilized state subsidies and annual tax revenues to cover rising PSERS costs with that timeline in mind, recognizing that **it will be impossible to keep pace with projected increases without drawing from reserves.**

The Auditor General appears to be under a mistaken impression in this regard. The reason the fund balance was established in the first place was to respond to projections of future need. Those projections have been revisited at various points in time, and the evaluation of the timeline has been communicated to the Board and the public. During the 2015-16 school year, for

example, the District hosted a series of “community conversations” on the budget, including a February 22, 2016 presentation to local civic associations that described PSERS employer contribution projections and the forecasted need to draw from reserves as early as 2020.¹⁴ If the Auditor General had asked for information of this kind in any of the multiple requests he made during the course of the year, the District would certainly have provided it.

In that regard, we also note that in our review of a number of other school district audits this year, including those of districts that maintain a committed fund balance for PSERS, we could find no references to a timeline for drawing down PSERS reserves. We reviewed 2015-16 financial statements and budget presentations for several districts that have recently been audited (Windber and Midd-West, for example) and found no specific mention of how and when retirement funds held in reserve would be spent.¹⁵ We also note that the Auditor General has not sought a specific timeline for a PSERS reserve drawdown in past audits, and never before criticized the long-standing fund balance.

Finally, the Board approves the audited financial statements annually, and they contain a full description of committed reserves. In addition, there is a public vote any time an item in the committed fund balance changes.

In 2017, the District augmented its practices to include a Board motion to reconfirm commitments even if designations do not change. Although not required by law or code, the Board has updated its procedures to confirm committed fund balances whether they change or not.

Referendum Exceptions/Act 1

Under Act 1, the Pennsylvania Department of Education publishes an inflationary tax index that represents the maximum real estate property tax levy increase for each school district (without PDE exception or voter approval). Districts that seek to raise taxes above the index can only do so by submitting referendum exceptions to PDE or receiving approval from the local voters by referendum. The four referendum exceptions are school construction-grandfathered debt, school construction-electoral debt, special education expenditures and retirement contributions. Requests for exceptions are unique to each district. The General Assembly requires PDE approval before such exceptions can be taken, and while PDE does not approve all amounts requested for all districts, PDE has approved Lower Merion School District’s requests for exceptions in full, for each year of the draft Performance Audit. It should be noted, however, that it was rare for the District to take the full exceptions.

The draft audit seems to suggest that districts seeking exceptions to raise taxes above the Act 1 index are somehow violating the spirit of the law. We disagree. The narrow exceptions that the Lower Merion School District has applied for are **mandatory** expenditures; the District’s taxpayers cannot determine that they do not want to fund pensions or special education. The District has **always** used exceptions specifically for the purposes stated in its application to PDE.

¹⁴ 2016-17 LMSD Budget: A Community Conversation
http://www.lmsd.org/uploaded/documents/Departments/Business/ISC_Budget_Pres_Apr_2016.pdf ¹⁵ If the data exists we could not find it online in audit reports, presentations, or financial reports.

Those exceptions do not cover the cost of the District's contributions; they do not even cover the *increased* cost from one year to the next.

	LMSD Contributions to PSERS*	Difference Year over Year	Taxes Realized Through PSERS Exceptions
2011-12	\$4,403,139	\$1,634,365	\$1,621,343
2012-13	\$6,537,759	\$2,134,620	\$0
2013-14	\$9,231,888	\$2,694,130	\$1,233,830
2014-15	\$11,305,376	\$2,073,488	\$1,714,965
2015-16	\$14,373,465	\$3,068,089	\$1,536,794

*Half of the District's total contribution is paid by the Commonwealth. Accordingly, only the half actually spent by the District is set forth here.

Even with funds obtained through exceptions, the District cannot fully cover its increasing annual special education and PSERS obligations without drawing from other sources. We find it particularly telling that the PSERS Board recently scaled back the number of years it includes in its employer contribution rate projections (from 20 years to five). Forecasts have been so consistently and egregiously low that they have been almost useless for school district planning purposes.

Moreover, the Auditor General has not taken issue with or identified a single concern with the District's use of exceptions for special education. Similar to rising PSERS costs, the costs of providing appropriate special education services continue to increase while state support remains virtually unchanged. Since 2000, the District's special education budget has increased from less than \$15M to nearly \$48M. At the same time, state contributions for special education have remained flat at less than \$3.5M/year. As a result, LMSD must rely more on local revenues to comply with federal and state mandates, such as IDEA. The learning environment in LMSD is considered by the Department of Education to be highly inclusive for students with special needs.

The fact is that none of the funds that make up the District's fund balance were obtained through exceptions. All of the monies raised through the exceptions were spent on the costs covered by the exceptions. The entirety of the fund balances have come from other sources clearly defined and discussed during our budget process and, as the Auditor General observed, the fund balances have been in place for several years -- since prior to the last audit.

Wolk Litigation

The Auditor General devotes an entire section of the report to the *Wolk* litigation. The amended complaint in that case seeks relief that includes but is not limited to \$55,000,000, plus interest and attorneys' fees, suspension of the Board and appointment of a Trustee over the District, requiring the District and its Directors to attend courses in arithmetic and public finance, a

constructive trust, orders that certain employees be terminated, and a declaration that the method and mode of school tax assessment and collection in Pennsylvania is illegal. Whether or not the Auditor General is in sympathy with Mr. Wolk's goals, the District respectfully suggests that the public policy opinion should be outside the scope of an audit.

Community Values

During the District's most recent strategic planning process, the community affirmed its steadfast support for providing a rich, progressive curricular and co-curricular experience. Opportunity is at the heart of what defines us as a school system. LMSD offers a rigorous, comprehensive multi-disciplinary academic program, low class sizes, an array of world-class services for special needs and gifted children as well as community-based learning programs, early-intervention literacy support, an International Baccalaureate diploma program, a full menu of high school honors and AP courses, an extensive range of course offerings in music, technology and the arts. The District's world language program enables all students to receive uninterrupted foreign language instruction from first grade until the time they graduate from high school. More than 500 supervised academic, athletic, community outreach and performance-oriented co-curricular programs are available in the District, from elementary school technology clubs to high school varsity sports. In addition to serving student programs, the District's facilities are utilized by thousands of community members for enrichment programs, recreation and general use.

Opportunities yield results. Our schools rank among the highest in Pennsylvania for SAT and PSAT scores, AP participation rate, total number of National Merit Semifinalists, total number of International Baccalaureate diplomas granted and in numerous publications' "top schools" lists. For the past three years, the District has been named one of the top ten school districts in the US by Niche.com and recently our schools earned recognition as among the top STEM schools in the country. We annually are recognized as among the nation's Best Communities for Music Education by the NAMM Foundation. All ten schools have been recognized for excellence by the Commonwealth. Approximately 95% of high school graduates attend institutions of higher learning. Our students excel at the national level in co-curricular programs ranging from Science Olympiad to FIRST Robotics and our athletic teams have won numerous state championships.

In short, LMSD seeks to provide an extraordinary level of service and opportunity and a culture of student and staff excellence. This is what distinguishes our schools and serves as a point of pride for the community. The community consistently votes for school boards that share these values. They demand that the District deliver a world-class public education and they are willing to make the investments necessary as indicated by the Board members they choose to elect. And it should be noted that our schools are truly a Lower Merion community investment; more than 85% of our budget comes from local revenues. LMSD believes it serves as a model of how public schools can be successful with community support and adequate funding. We believe all districts should be able to provide the same level of opportunity and investment in their children. **The ability to do so requires sustained financial stability and budget stewardship as demonstrated (and affirmed by the voting public) over time by Lower Merion School District.**

Additional Considerations

- **Revenues:** More than 90% of the school districts in Pennsylvania levy an earned income or wage tax in addition to real estate taxes to generate revenue. Unlike these districts, Lower Merion does not have an earned income tax, so its reliance on real estate taxes is particularly pronounced. (As required by state law, Lower Merion's residents were presented the option and voted to rely on property taxes alone.) State and Federal subsidies account for just 14% of LMSD's total revenue – well below the state average. The result is that communities with different taxing authorities must take significantly different approaches to budgeting. **In Lower Merion, the heavy reliance on property taxes as a primary source of revenue forces more conservative budgeting.**

It should also be noted that school districts are required to operate by a different set of rules than other governmental entities (municipalities, for example) when it comes to generating revenue. Other governmental entities can establish budgets and cover projected expenses (and shortfalls) through other means like municipal service fees and have no fund balance limit. School districts do not have this opportunity, nor the same degree of flexibility.

- **State accounting changes:** In recent years, the state has changed its accounting manual with regard to account reporting. This has created some challenges in using historical budgeting to accurately track longitudinal data in certain accounting locations. For example, software used to be recorded as object code 618. At the end of the 2016 school year, this code was changed to object code 650. So when looking at historical numbers for software, an item/budget code that might have previously been reported as an expense now appears as a zero in the budget. The District has worked hard to reconcile previous and current budgets, but given that the LMSD budget has more than 8000 expenditure accounts, the state changes have made it more challenging to track historical numbers as items have been reported in different locations in different years.
- **Public process:** The LMSD budget reflects public input received through a variety of forums, including regular Board meetings, public budget workshops, committee meetings and community comments. In 2016-17, the District's Finance Committee hosted a series of detailed, in-depth presentations on key areas of the budget, including curriculum and instruction, facilities, transportation, staffing and special education. The District also maintains [sic] online and video resources related to the budget, which can be found in the budget section of the District website.
- **Common Practices:** The District utilizes accounting and budgeting practices that are standard for school districts across the Commonwealth. **In fact, every state and independent audit of the District over the past five years (seven total) has affirmed the District's full compliance with budgeting and accounting standards. The District has consistently been lauded for strong fiscal management by credit ratings agencies.** Both the Pennsylvania School Boards Association and Pennsylvania Association of School Business Officials affirmed the District's practices during the

past school year. PASBO issued a school budgeting fact sheet and the following statement¹⁵ in response to the ongoing Wolk lawsuit (referenced in the draft Performance Audit):

“Despite the fact that Lower Merion adhered to all applicable laws, provided appropriate transparency regarding financial decisions, engaged in careful, long-term financial planning and budgeted conservatively in light of the myriad of fluctuating issues that are beyond their control, they are being criticized and penalized for coming in under budget and planning for future taxpayer savings.”

Conclusion

By all accounts the District’s sound, lawful, and responsible financial practices have enabled the preservation of high-quality educational programs in the face of unprecedented enrollment growth, perennial state budget uncertainty and the rising costs of mandates like pensions and special education. We believe the pressing question with regard to reserves and a healthy fund balance is whether the District should spend down such surpluses or prudently set them aside for anticipated needs.

Lower Merion School District is in a fortunate position to have broad community support for high-quality public education. The community, through its elected school board, has made significant investments in program, infrastructure, staffing and has prioritized saving for the future. **Decision-making has occurred in public, with thoughtful deliberation and complete transparency.**

Ultimately, doing as the Auditor General recommends will result not just in reduced fund balances, but in a reduction of services. Because of the line item budget, and because a district cannot spend at a deficit, the inevitable shortfalls in critical areas will lead – as they did for many districts during the recent budget impasse – to borrowing money at high interest rates, requiring more tax increases to cover the interest than if the needs had been properly anticipated up front. As noted previously, due solely to fixed costs and mandates (salaries, PSERS, special education, etc.) and not accounting for the fastest enrollment growth in the region, our district (and many others) will – by drawing down its reserves – be forced to grapple with budgetary shortfalls and likely a diminished bond rating. Over the long term, this would most certainly have a negative impact on the quality of LMSD schools and real estate in Lower Merion and Narberth.

The draft Performance Audit suggests that a school district that does what the law allows (through Act 1 exceptions) is utilizing a loophole in the law. **LMSD has never exceeded the legally-approved Act I tax rate (index and approved exceptions).** The General Assembly permitted only certain narrow areas of increased expenditures, and the only two that the District has invoked are for areas in which expenditures cannot be compromised, but state and federal funding does not cover the costs of complying with the statutes that give rise to the expenditures. As those costs go up, the General Assembly wanted to ensure that districts can meet those needs. Voters cannot by referendum decide not to fund pensions or special education. LMSD has actively solicited continuous and ongoing public input on its expenditures and long-term

¹⁵ Recent Court Decision Has Statewide Implications http://www.pasbo.org/blog_home.asp?Display=84

strategic plans, and it has always followed Board-enacted policies concerning assigning surplus to appropriate accounts. LMSD maintains an appropriate fund balance based on generally accepted accounting standards and laws governing school districts.

We understand that some might choose to make different budgeting decisions. One district might place less emphasis on maintaining capital reserve funds and instead borrow funds when interest rates are low. Other districts may fund building projects mostly with reserves and reduce public exposure to interest rate increases. Others might use a combination of several strategies. Given that our district continues to grow at a rate far faster than any other school district in the region, our practice has been to maintain a variety of fiscal strategies in an effort to grow in the most responsible manner. **Our Aaa bond rating enables our community to maintain a reliable combination of options for addressing growth while preserving our programs.**

We would refer the Auditor General to strategies employed by local municipalities as examples of responsible, realistic and appropriate approaches to budgeting. In 2015 Lower Merion Township proudly shared with taxpayers that it had realized a budget surplus instead of a planned deficit due to positive budgetary performance and expenditures that were less than what had been budgeted. The Township's fund balance policy, which it deems its "fiscal safety net", requires a minimum year-end General Fund undesignated fund balance no less than 12% of that year's total General Fund operating expenditures. Further [*sic*], the policy has a goal to maintain a year-end General Fund undesignated fund balance within a minimum of 15% and a maximum of 18% of the General Fund expenditures. In recent years, the Township has adopted General Fund budgets with structural imbalance anticipating a drawdown of fund balance to finish the year closer to the policy goal range. Fund balance was reduced in 2014 but due to better than projected financial performance in 2015, the fund balance actually increased. At year-end 2015, the General Fund undesignated fund balance was 35%, up from 34% the previous year. In turn, the Township has been able to maintain its AAA rating from Standard & Poor's Rating Service and its Aaa rating from Moody's Investors Service. The high credit rating means the Township's general obligation bonds are considered excellent investment quality, allowing the Township to borrow at the lowest possible interest rates, which translates to tangible savings for taxpayers. Likewise, this is and has been the goal of Lower Merion School District.

The Lower Merion School District appreciates the Auditor General's consideration in reviewing this information and taking the time to understand some of the factors unique to budgeting in our District.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, : 1465 CD 2016
and Catherine Marchand :
v. :
The School District of Lower Merion, :
Appellant :

PROOF OF SERVICE

I hereby certify that this 11th day of June, 2019, I have served the attached document(s) to the persons on the date(s)
and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Arthur A. Wolk
Service Method: eService
Email: courtfilings@airlaw.com
Service Date: 6/11/2019
Address: 1710-12 Locust street
Philadelphia, PA 19103
Phone: 215--54-5-4220
Representing: Appellee Arthur Alan Wolk
Appellee Catherine Marchand
Appellee Philip Browndies

Served: Arthur A. Wolk
Service Method: First Class Mail
Service Date: 6/11/2019
Address: 1710-12 Locust Street
Philadelphia, PA 19103
Phone: 215-545-4220
Representing: Appellee Arthur Alan Wolk
Appellee Catherine Marchand
Appellee Philip Browndies

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

Served: Clarence C. Kegel Jr.
Service Method: First Class Mail
Service Date: 6/11/2019
Address: Kegel Kelin Almy ET AL
24 N Lime St
Lancaster, PA 176022913
Phone: 717-392-1100
Representing: Amicus Curiae Pennsylvania Association of School Business Officials
Amicus Curiae Pennsylvania Association of School Business Officials

Served: John Jacob Hare
Service Method: eService
Email: jjhare@mdwccg.com
Service Date: 6/11/2019
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Philadelphia, PA 19103
Phone: 215--57-5-2609
Representing: Amicus Curiae Pennsylvania Defense Institute

Served: John Jacob Hare
Service Method: First Class Mail
Service Date: 6/11/2019
Address: 2000 Market Street, Suite 2300
Philadelphia, PA 19103
Phone: 215-575-2609
Representing: Amicus Curiae Pennsylvania Defense Institute

Served: Stuart Lee Knade
Service Method: eService
Email: stuart.knade@psba.org
Service Date: 6/11/2019
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Mechanicsburg, PA, PA 17050-1873
Phone: 717--50-6-2450
Representing: Amicus Curiae Pennsylvania School Boards Association, Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Stuart Lee Knade
Service Method: First Class Mail
Service Date: 6/11/2019
Address: PA School Boards Association
400 Bent Creek Blvd
Mechanicsburg, PA 170551873
Phone: 717-506-2450
Representing: Amicus Curiae Pennsylvania School Boards Association, Inc.

Served: Thomas W. Scott
Service Method: eService
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Alfred W. Putnam Jr.

(Signature of Person Serving)

Person Serving: Putnam, Alfred W., Jr.
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Philadelphia, PA 19103
Representing: Appellant School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT

V.

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

APPELLEES' MOTION TO TAKE JUDICIAL NOTICE OF PENNSYLVANIA
DEPARTMENT OF EDUCATION LETTER DATED NOVEMBER 22, 2017

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ARTHUR ALAN WOLK, PHILIP BROWNDIES :	:
and CATHERINE MARCHAND,	:
Appellees	:
	:
v.	:
	:
	: No. 1465 CD 2016
THE SCHOOL DISTRICT OF FLOWER MERION,	:
	:
Appellant	:

ORDER

Now, _____, 2019, upon consideration of the Appellees' Motion to Take Judicial Notice of the Pennsylvania Department of Education Letter Dated November 22, 2017, the Court GRANTS the relief requested in the Motion.

It is ORDERED and DECREED that

1. The Court takes judicial notice of the Pennsylvania Department of Education letter, dated November 22, 2017, attached to Appellees' Motion as Exhibit A.
2. The Court takes judicial notice of the matters stated within the Pennsylvania Department of Education letter, dated November 22, 2017, attached to Appellees' Motion as Exhibit A.

J.

**APPELLEES' MOTION TO TAKE JUDICIAL NOTICE OF
PENNSYLVANIA DEPARTMENT OF EDUCATION LETTER
DATED NOVEMBER 22, 2019**

Appellees file this Motion to Take Judicial Notice and, in support thereof, they rely upon the accompanying memorandum of law, the one attached exhibit and the verification of Arthur Alan Wolk, which are all incorporated by reference herein and they aver as follows:

1. The Title 225 of the Pennsylvania Code, Section 201 sets forth the criteria for "Judicial Notice of Adjudicative Facts." The court may take judicial notice of a fact that is "not subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." 225 Pa. Code § 201(b).

2. The Court "**must** take judicial notice if a party requests it and it is supplied with the necessary information." 225 Pa. Code § 201(c) (emphasis added).

3. The court may take judicial notice without notice to a party, though if a party makes a timely request it is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. 225 Pa. Code § 201(e).

4. The court may take judicial notice "at any stage of the proceeding." 225 Pa. Code § 201(d). Appellate Courts are to take judicial notice of extra-record materials where it is appropriate to do so and where notice could not have been taken by the trial court. *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Commw. 2017).

5. In addition to facts, the Court may take judicial notice of entire documents. *Thomas v. Grimm*, 155 A.3d at 134 (taking judicial notice of an entire document, a revised Code of Conduct, which was published after the trial court's record).

6. The Pennsylvania Department of Education (“PDE”) sent a letter, dated November 22, 2017, which contains adjudicative facts that occurred after the trial court's record and the accuracy of this document cannot be reasonably disputed. The letter is on PDE letterhead and signed by an official who has authority to act on behalf of the Department. A true and correct copy of the PDE’s November 22, 2017 letter is attached at Exhibit A. The Court "must" take judicial notice of the letter and the adjudicative facts contained therein. 225 Pa. Code § 201(c).

7. The Pennsylvania Department of Education's November 22, 2017 letter states that the District’s Board of Directors are required to

Prepare[a] response to each finding, observation and recommendation including a **Corrective Action Plan**. Forward[] response and supporting documentation to [the District] Administrator.

(Ex. A at Attachment A, Step 4) (emphasis in original). The District’s Board must then pass a “resolution adopting and approving the response and the **Corrective Action Plan**.” (Ex. A at Attachment A, Step 5) (emphasis in original). The District Administrator must forward an original and two (2) copies of a “Audit Response Package” which includes the “**Corrective Action Plan**.” (*Id.* at Step 6).

8. The letter was sent on November 22, 2017, which is after the August 29, 2016 Order of the Court below.

9. The letter contains adjudicative facts which were published after the trial court's record and the accuracy of letter cannot be reasonably disputed. The Court "must" take judicial notice. 225 Pa. Code § 201(c).

10. The letter addresses adjudicative facts because the appellant and the amici have both falsely contended that the Auditor General's "observations" should be dismissed because they do not rise to the level of "findings." However, the letter informs the Court that the PDE does not dismiss the "observations" of the Auditor General. The District's actions have consequences and the PDE required that the District submit a "**Corrective Action Plan**" that responds to the Auditor General's observations. (Ex. A at p.1) (emphasis in original).

11. This Court should take judicial notice of the fact of the Pennsylvania Auditor General's Report resulted in the PDE requiring a "**Corrective Action Plan**" by the Appellant/District. The Auditor General's observations, the PDE's requirement for corrective action and Judge Smyth's findings of fact and conclusions of law all show the same thing and that is not a coincidence. The District violated the law and was required to correct itself – and it has not yet done that. (Ex. A).

12. The lower Court's Order should be affirmed.

13. The District and its attorneys should be sanctioned.

14. The District's attorneys should withdraw from this case.

15. This matter should be referred to the Pennsylvania Attorney General.

WHEREFORE Appellees respectfully request this Honorable Court to take judicial notice of the letter by the Pennsylvania Department of Education of November 22, 2017 with consequences for the Appellant and its Amici to be addressed by this Court's Merits Panel at oral argument *sec. leg.*

Dated: June 21, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT

V.

ARTHUR ALAN WOLK,
PHILIPP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

MEMORANDUM OF LAW IN SUPPORT OF APPELLEES' MOTION TO
TAKE JUDICIAL NOTICE OF PENNSYLVANIA DEPARTMENT OF
EDUCATION LETTER DATED NOVEMBER 22, 2017

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RELIEF REQUESTED	1
III. BASIS FOR THIS MOTION	1
IV. LEGAL ARGUMENT	2
V. CONCLUSION	4

TABLE OF AUTHORITIES

Cases

<i>Thomas v. Grimm</i> , 155 A.3d 128, 134 (Pa. Commw. 2017)	5, 6
--	------

Rules

Pa. R.A.P. 1921.....	5
----------------------	---

Regulations

225 Pa. Code § 201	4, 5, 6
--------------------------	---------

I. INTRODUCTION

Appellees file this Motion to Take Judicial Notice of the official position of the Pennsylvania Department of Education in requiring a response and a “Corrective Action Plan” as a result of the Auditor General’s Report that was the subject of a previous Motion to Take Judicial Notice. Both the Auditor General’s Report and the letter at issue here post-date the lower court’s August 2016 Order.

II. RELIEF REQUESTED

Appellees respectfully request:

1. That the Court takes judicial notice of the Pennsylvania Department of Education letter, dated November 22, 2017, attached to Appellees’ Motion as Exhibit A.

2. That the Court takes judicial notice of the matters stated within the Pennsylvania Department of Education letter, dated November 22, 2017, attached to Appellees’ Motion as Exhibit A.

III. BASIS FOR THIS MOTION

The basis for this motion is published official statements of the Pennsylvania Department of Education, on letterhead, dated November 22, 2017. Those statements include the **requirement** that the Appellant/School District submit a “**Corrective Action Plan**” to address the Pennsylvania Auditor General’s Report that outlined numerous deficiencies and falsehoods perpetrated by the Appellant/District. (Ex. A) (emphasis in original). This motion is also based upon

the attached verification of Arthur Alan Wolk which attaches and authenticates Exhibit A.

IV. LEGAL ARGUMENT

The Pennsylvania Code sets for the requirements for a Court to take Judicial Notice. 225 Pa. Code § 201. Section 201 states:

Judicial Notice of Adjudicative Facts

- (a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:
 - (1) is generally known within the trial court's territorial jurisdiction; or
 - (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) *Taking Notice.* The court:
 - (1) may take judicial notice on its own; or
 - (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) *Timing.* The court may take judicial notice at any stage of the proceeding.
- (e) *Opportunity to Be Heard.* On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (f) *Instructing the Jury.* The court must instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

225 Pa. Code § 201.

When a case is on appeal, generally an appellate court may consider only the facts which have been certified in the record on appeal and extra-record documents cannot become part of the record on appeal merely by appending them to a brief. *Thomas v. Grimm*, 155 A.3d 128, 134 (Pa. Commw. 2017) (citing Pa. R.A.P. 1921). However, appellate courts may take notice of extra record materials where 1) it is “appropriate to do so” and 2) “where notice could not have been taken by the trial court.” *Id.* (citation omitted). When considering whether it is “appropriate” to take judicial notice the appellate court looks to the requirements of 25 Pa. Code § 201(b) which ensure that the fact to be noticed “is not subject to reasonable dispute” *Id.* at 133.

The *Thomas* case arose out of a whistleblower claim by a former judicial employee against the court administrator and others. *Id.* at 129-130. After the proceedings in the trial court were complete, the court system revised the employee Code of Conduct and the revisions were material to the appellant’s argument. *Id.* at 133. On appeal this Court took “judicial notice of the revised Code of Conduct, the accuracy of which is undisputable and which occurred after the common pleas certified the record.” *Id.* at 134. The revised Code of Conduct was material to the argument because the previous version contained references to the Whistleblower Law and the revised version did not. *Id.* This Court took judicial notice of the entire document. *Id.*

This Court should judicial take notice of the Department of Education's official letter. (Ex. A). There cannot be a reasonable dispute about the facts contained within these documents because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. 225 Pa. Code § 201(b); (Verification Wolk). When a party requests the court take judicial notice and the necessary information is supplied, the Court must take judicial notice. 225 Pa. Code § 201(c)(2).

V. CONCLUSION

This Court should take judicial notice of the adjudicative facts contained within the Pennsylvania Department of Education letter because they occurred after the common pleas record was certified for appeal and they cannot be subject to reasonable dispute because they originate from a source whose accuracy cannot be reasonably questioned.

Dated: June 21, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
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Attorney for Appellees/Pro Se

Exhibit A



November 22, 2017

Mr. Robert L. Copeland
Superintendent
Lower Merion School District
301 East Montgomery Avenue
Ardmore, PA 19003

Re: Auditor General's Performance Audit Report
Fiscal Years Ending June 30, 2015, 2014 and 2013

Dear Mr. Copeland:

The Department of Education (Department) has received the Lower Merion School District Performance Audit Report for years ended June 30, 2015, 2014 and 2013 issued by the Department of the Auditor General.

Please review, evaluate, and respond to the Performance Audit Report Prior Year Finding/Observation using the attached Audit Review Procedures (Attachment A). Your response shall also include a **Corrective Action Plan** (CAP) with the description of the Finding or Observation, a statement indicating the concurrence or nonconcurrence with the Audit Report's Findings/Observations and Recommendations, specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary, a timetable for the implementation of each corrective action step, and a description of monitoring procedures performed to ensure implementation of the corrective action steps. Your response/CAP will be forwarded to the Department of the Auditor General and any other applicable Commonwealth Agency.

Please Note – If the Performance Audit Report identifies a potential educator certification violation, you will be contacted directly by the Department's Bureau of School Leadership and Teacher Quality (BSLTQ). Please direct any questions regarding the Certification Irregularity Findings to the BSLTQ.

The response along with the **Corrective Action Plan** is to be signed by you and the original and **two (2)** copies are to be transmitted on the Lower Merion School District's official stationery within **forty-five (45)** days of receipt of this letter to the following address:

Ms. Connie L. Derr, Audit Coordinator
Bureau of Budget and Fiscal Management
Department of Education
333 Market Street – 4th Floor
Harrisburg, Pennsylvania 17126-0333

Mr. Robert L. Copeland
Page 2
November 22, 2017

Audit Reports are available under the Pennsylvania Department of the Auditor General's website, www.paauditor.gov. If you have any questions, please contact Lynda Thompson at (717) 265-7496.

Sincerely,



Connie L. Derr, Audit Coordinator

CLD:ac

Attachment

cc: Dr. Robin Van Lynch, Board President
Ms. Denise LaPera, Board Secretary

**PENNSYLVANIA DEPARTMENT OF EDUCATION
AUDIT REVIEW PROCEDURES
AUDITOR GENERAL'S LOCAL EDUCATIONAL AGENCIES PERFORMANCE AUDIT REPORTS**

<u>ACTION BY:</u>	<u>STEP</u>	<u>ACTION</u>
Secretary of Education	1.	Receives copy of Performance Audit Report for each Local Educational Agency (LEA) from the Office of the Auditor General.
Audit Coordinator Department of Education	2.	Requests response/corrective action from the LEA when report contains findings, observations or recommendations to the auditee. Forwards request to the LEA Administrator ¹ with a copy to the President/Chair of the LEA's Board of Directors and the Secretary.
LEA Administrator ¹	3.	Forwards LEA Performance Audit Report for response to established Audit Review Committee or the Board acting as a whole.
LEA Audit Review Committee or Board of Directors	4.	Prepares response to each finding, observation and recommendation including a Corrective Action Plan addressing each determination. Forwards response to President/Chair of the Board for Board action.
LEA Board of Directors	5.	Passes resolution adopting and approving the response and the Corrective Action Plan . Forwards response and any supporting documentation to LEA Administrator ¹ .
LEA Administrator ¹	6.	Forwards ORIGINAL and TWO (2) copies of Audit Response Package to the Pennsylvania Department of Education, Bureau of Budget and Fiscal Management, Division of Budget, 333 Market Street – 4 th Floor, Harrisburg, Pennsylvania 17126-0333. The Audit Response Package should include: <ul style="list-style-type: none"> • Date of Board Meeting/Board Certification/Adopting the Response and Corrective Action Plan • Description of Finding or Observation • Statement of Concurrence or Nonconcurrence • LEA's Response, Corrective Action Plan, Resolution, Supporting Documentation • Implementation Dates of Each of the Corrective Action Steps • Description of Monitoring Procedures to Ensure Implementation of the Corrective Action • Signature of the LEA Administrator¹

The Audit Response Package is due at the Department of Education within **45 days** of receipt of the PDE's request.

¹LEA Administrator is:

- Superintendent of a School District;
- Executive Director of an Intermediate Unit;
- Superintendent of Record for an Area Vocational Technical School;
- Chief Administrative Officer for Charter School;
- President of Postsecondary Educational Agencies.

**VERIFICATION OF ARTHUR ALAN WOLK IN SUPPORT
OF APPELLEES' MOTION TO TAKE JUDICIAL NOTICE AND
MOTION FOR SANCTIONS**

Arthur Alan Wolk states that he is a Plaintiff in this action, that he takes this verification as counsel for the Plaintiffs/Appellees and for his law firm, and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

1. On June 3, 2019, I received, via an email from Keith Knauss, the Pennsylvania Department Education's Letter dated November 22, 2017 (the "Letter).

2. That Letter, which was a follow-up to the Pennsylvania Auditor General's Report finding the District had violated the Taxpayer relief Act repeatedly and accumulated huge surpluses illegally, was never disclosed to any Court, any Appellate Court, not this Court, not Plaintiffs or their counsel and not to the public.

3. There was no debate where the letter was disclosed and it made it to the District's website days after it claimed there was debate, but there was in truth none.

4. Keith Knauss was Plaintiffs' witness at the hearing in the Court below that resulted in Judge Smyth's well-reasoned Order and Opinion finding that the Lower Merion School District committed fraud.

5. A true and correct copy of the Letter is attached at Exhibit A to this Motion to Take Judicial Notice and to Appellees' Reply Supporting their Motion for Sanctions.

6. According to the Letter, it was sent to Appellant in November 2017.

7. The Letter confirms all factual bases of the lower court's Order and requires the District/Appellant to submit a "**Corrective Action Plan**" to address the Pennsylvania Auditor General's Report that showed the fraudulent conduct of the Appellant/District, its Board and its Superintendent.

8. The Auditor General's Report referenced in the Letter was the subject of Appellees' previous Motion to Take Judicial Notice.

The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in blue ink, appearing to read 'Arthur Alan Wolk', written over a horizontal line.

Arthur Alan Wolk

Date: June 21, 2019

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 21, 2019

Respectfully submitted:

/s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)

CERTIFICATE OF SERVICE

I, Arthur Alan Wolk, hereby certify that on June 21, 2019, I am this day serving by First Class Mail, postage prepaid, the foregoing Motion to Take Judicial Notice, which service satisfies the requirements of Pa.R.A.P. 121.

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THE WOLK LAW FIRM

By: /s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)
Attorney for Appellees/Pro

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, and Catherine Marchand	:	1465 CD 2016
v.	:	
The School District of Lower Merion, Appellant	:	

PROOF OF SERVICE

I hereby certify that this 21st day of June, 2019, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Courtesy Copy

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Amicus Curiae Pennsylvania Association of School Administrators

/s/ Arthur A. Wolk

(Signature of Person Serving)

Person Serving: Wolk, Arthur A.
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Law Firm: The Wolk Law Firm
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Representing: Appellee Browndies, Philip
Appellee Marchand, Catherine
Appellee Wolk, Arthur Alan

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**SCHOOL DISTRICT OF LOWER MERION'S ANSWER TO
PLAINTIFFS-APPELLEES' MOTION TO TAKE JUDICIAL NOTICE
OF PENNSYLVANIA DEPARTMENT OF EDUCATION LETTER DATED
NOVEMBER 22, 2017**

Alfred W. Putnam, Jr., Pa. ID No. 28621
D. Alicia Hickok, Pa. ID No. 87604
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*Counsel for Appellant
School District of Lower Merion*

The School District of Lower Merion (the “District”) now answers Mr. Wolk’s third motion asking this Court to take judicial notice of one or more documents not of record in this case. The subject this time is a November 22, 2017 letter from the Pennsylvania Department of Education to the District. In response to the numbered paragraphs set forth in the motion, the District states:

1-5. These paragraphs state legal conclusions and do not require a response. Insofar as they refer to § 201 of the Pennsylvania Code, that statute—and the case law construing it—speaks for itself, and characterizations of it are denied.

6. Admitted that the Pennsylvania Department of Education sent the letter to the District on November 22, 2017. The letter speaks for itself, and Mr. Wolk’s characterizations of it are denied. A copy of that letter has already been submitted to the Court as Exhibit “C” to the District’s Answer to Plaintiffs-Appellees’ Motion to Take Judicial Notice of the Auditor General’s October 2017 Report. The remainder of this paragraph states a legal conclusion that does not require a response. To the extent a response is required, the District denies that the Court “must” take judicial notice of the letter and its contents. The District agrees, however, that the Court may take notice of the letter itself—and the District’s response to it—insofar as the filing of those documents is relevant to the issues raised in this case.

7. The averments in this paragraph purport to quote from the Department of Education's November 22, 2017 letter, which speaks for itself. The District notes, however, that this paragraph fails to quote that letter accurately. Mr. Wolk's characterizations of that letter are denied.

8. The District agrees that November 22, 2017 came after August 29, 2016.

9. Denied. The District denies that the letter contains "adjudicative facts" and further denies that Mr. Wolk's interpretation of the letter is "accurate" and that his description of it "cannot be reasonably disputed." To the contrary, neither the letter nor the audit to which it refers are "adjudications." The letter is the standard Department of Education inquiry that is triggered by a finding, observation, or recommendation in an Auditor General's audit, and the District timely responded to it. The remaining averment in this paragraph states a legal conclusion as to which no response is required.

10. Denied. The letter attached to Mr. Wolk's motion speaks for itself; his characterizations of it are denied. The District further notes that both the transmission of such a letter and its directive to prepare a "Corrective Action Plan" are the Department of Education's standard practice when an Auditor General's report on a school district audit contains a finding, observation, or recommendation. Mr. Wolk's contrary suggestion—*i.e.*, that the requirement of a

Corrective Action Plan somehow corroborates his homebrewed (and half-baked) theory of fraud and thievery on the part of the District’s officers, directors, and counsel—is therefore denied.

11. Denied. The District denies that it has made any “false contentions,” that it has violated the law, and that the Auditor General’s October 2017 Report and the Department of Education’s November 22, 2017 letter “show” otherwise. By way of further response, Mr. Wolk grossly mischaracterizes the District’s position, as the District has never argued that the “observation” in the Auditor General’s October 2017 Report “should be dismissed.” Rather, the District has repeatedly corrected Mr. Wolk’s misrepresentations regarding that Report and its conclusions. As the District has stated in response to numerous filings now, the Auditor General’s October 2017 Report contained no “findings,” and therefore concluded that the District was in compliance with the law.¹ While the Report did

¹ According to the standard used by the Auditor General:

Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. *Observations* are reported when [the Department of the Auditor General] believe[s] corrective action should be taken to remedy a potential problem *not rising to the level of noncompliance* with specific criteria.

Answer to Motion to Take Judicial Notice of Pennsylvania Department of the Auditor General Report on the Lower Merion School District Dated October 23, 2017 Ex. A at 3 (emphases added); Answer to Motion to Take Judicial Notice of Pennsylvania Department of the Auditor General Report on the Lower Merion School District Dated October 23, 2017 Ex. B at 2 (emphases added).

include an “observation” and recommended corrective action regarding that subject matter, the Auditor General did not find any noncompliance with any relevant legal requirement or procedure. Furthermore, upon receiving the Department of Education’s November 22, 2017 letter, the District promptly prepared the required response and Corrective Action Plan, which was presented and approved at a public meeting of the Board on December 18, 2017. It was then sent to the Department of Education on December 27, 2017 and posted on the District’s Board Docs webpage where it remains accessible: [https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/\\$file/12-27-17%20AG%20Response.pdf](https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/$file/12-27-17%20AG%20Response.pdf).

Neither the Department of Education nor the Office of the Auditor General has expressed any dissatisfaction with that response and plan.

12-15. The conclusory (and, frankly, unmoored) allegations of these paragraphs are denied.

Wherefore, except to the extent described above, the District respectfully asks this Court to DENY the application for judicial notice.

Dated: July 2, 2019

Respectfully Submitted,

/s/ Alfred W. Putnam, Jr.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 2, 2019

/s/ Alfred W. Putnam, Jr.
Alfred W. Putnam, Jr.

PROOF OF SERVICE

I, Alfred W. Putnam, Jr., certify that I am this day serving by First Class Mail, postage prepaid, the foregoing Answer to Motion to Take Judicial Notice of Pennsylvania Department of Education Letter Dated November 22, 2017, together with its associated Memorandum of Law, which service satisfies the requirements of Pa.R.A.P. 121.

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/s/ Alfred W. Putnam, Jr. _____
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1465 CD 2016

SCHOOL DISTRICT OF LOWER MERION,

APPELLANT,

v.

ARTHUR ALAN WOLK,
PHILIP BROWNDIES, AND
CATHERINE MARCHAND

APPELLEES.

**MEMORANDUM OF LAW IN SUPPORT OF
APPELLANT SCHOOL DISTRICT OF LOWER MERION'S
ANSWER TO PLAINTIFFS-APPELLEES' MOTION TO TAKE JUDICIAL
NOTICE OF PENNSYLVANIA DEPARTMENT OF EDUCATION
LETTER DATED NOVEMBER 22, 2017**

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ARGUMENT

I. While the Court May Take Judicial Notice of the November 22, 2017 Letter, It May Not—Under the Guise of That Doctrine—Credit Mr. Wolk’s Erroneous Characterizations of That Letter.

Mr. Wolk’s memorandum of law asks this Court to take judicial notice of both the November 22, 2017 letter and “the matters stated within the . . . letter.” Wolk Mem. at 1. Consistent with its responses to Mr. Wolk’s prior motions for judicial notice, the District agrees that this Court can take judicial notice of the existence of the November 22, 2017 letter and, if there is reason to do so, what the document says. Indeed, the District itself has already presented this very document to the Court as Exhibit “C” to the District’s Answer to Mr. Wolk’s Second Motion for Judicial Notice.

Mr. Wolk, however, is actually asking for much more, including for the Court to (1) infer that the letter reflects a conclusion by the Department that the District has violated the law; and (2) defer to and adopt that conclusion. *See, e.g.*, Wolk’s Mot. ¶¶ 10-11; *see also* Wolk Verification ¶ 7. He argues that judicial notice is warranted because “[t]he letter addresses adjudicative facts” and suggests that the “Corrective Action Plan” called for in the letter somehow corroborates his otherwise-unsupported theories of fraud and thievery on the part of the District’s officers, directors, and counsel. Wolk’s Mot. ¶ 10. While it is unclear what “adjudicative facts” Mr. Wolk is referring to, it is evident that he misunderstands

the purpose of and directives in the letter. Contrary to his implication, the transmission of communications such as the November 22, 2017 letter and its directive to prepare a “Corrective Action Plan” are the Department of Education’s standard practice when an Auditor General’s report on a school district audit contains a finding, observation, or recommendation.

As the District has stated in response to numerous filings now, the Auditor General’s October 2017 Report—to which the November 22, 2017 letter relates—contained no “findings,” and therefore concluded that the District was in compliance with the law.¹ While the Report did include an “observation” and recommended corrective action regarding that subject matter, the Auditor General did not find any noncompliance with any relevant legal requirement or procedure. Furthermore, upon receiving the Department of Education’s November 22, 2017 letter, the District promptly prepared the required response and Corrective Action Plan, which was thereafter approved at a public meeting of the Board on December 18, 2017. It was then sent to the Department of Education on December 27, 2017

¹ According to the standard used by the Auditor General:

Findings describe noncompliance with a statute, regulation, policy, contract, grant requirement, or administrative procedure. *Observations* are reported when [the Department of the Auditor General] believe[s] corrective action should be taken to remedy a potential problem *not rising to the level of noncompliance* with specific criteria.

District’s Answer to Wolk’s Second Motion for Judicial Notice Ex. A at 3 (emphases added); District’s Answer to Wolk’s Second Motion for Judicial Notice Ex. B at 2 (emphases added).

and posted on the District's Board Docs webpage where it remains accessible:

[https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/\\$file/12-27-17%20AG%20Response.pdf](https://go.boarddocs.com/pa/lmsd/Board.nsf/files/AUUSBL6E0EDA/$file/12-27-17%20AG%20Response.pdf). Neither the Department of Education nor the

Auditor General has expressed any dissatisfaction with that response and plan.

Mr. Wolk also misapplies the doctrine of judicial notice by arguing that this Court should take “judicial notice” of the *legal conclusions* he has drawn from the November 22, 2017 letter. This request is problematic on at least three fronts.

First, courts can take judicial notice of *facts* only, not legal conclusions. See Pa.R.E. 201. *Second*, and relatedly, even if the letter did contain “adjudicative facts,” such “facts” cannot be judicially noticed if, in the process of doing so, the court would be required “to reach conclusions of law.” *Commonwealth v. Covert*, 469 A.2d 248, 251 (Pa. Super. 1983). *Third*, even if there were adjudicative facts at issue and even if noticing them did not require the court to also draw legal conclusions, Mr. Wolk's request would remain meritless because a party may not use judicially noticed “facts” as proof of the matter asserted. See *Hyer v. Com., Dep't of Transp.*, 957 A.2d 807, 809-10 (Pa. Super. 2008).

It follows that although the Court may take notice of the existence of the November 22, 2017 letter and, if necessary, what the document says, there is no basis for “noticing” the (hyperbolic and, as it happens, erroneous) conclusions that Mr. Wolk draws from that document.

II. Mr. Wolk’s Serial Motions for Judicial Notice Are Meritless, Internally Inconsistent, But Do Illustrate Why This Case Should Be Dismissed.

As of this writing, Mr. Wolk has asked the Court to “take judicial notice” of the following “adjudicative facts”: (1) the Pennsylvania Department of Education has no power to deny or limit a school district’s request for a referendum exception;² (2) the Department actually approves *all* such applications as a ministerial act;³ (3) the Pennsylvania Auditor General conducted an audit that concluded that the District deceived and defrauded its taxpayers;⁴ and (4) the Department of Education has concluded that the accounting practices of the District have been fraudulent and illegal such that it has had to exercise its very real power to compel the District to correct such practices.⁵

In point of fact, none of these supposed “adjudicative facts” is even arguably true. To the contrary, (1) as a matter of law, the Department of Education is the Commonwealth agency empowered to review requests for referendum exceptions;⁶ (2) the historical record clearly shows the Department does in fact review all such requests and frequently approves less—and sometimes far less—than the amount

² See Wolk’s First Motion for Judicial Notice (filed May 14, 2019) ¶¶ 6-7, 9-10.

³ *Id.* ¶¶ 11, 14.

⁴ See Wolk’s Second Motion for Judicial Notice (filed May 28, 2019) ¶¶ 10-12.

⁵ See Wolk’s Third Motion for Judicial Notice (filed June 21, 2019) ¶¶ 7, 9-11.

⁶ See Appellant’s Supplemental Br. at 16-17 (discussing the requirement to apply to the Department of Education for permission to use referendum exceptions).

the applicant district is asking for;⁷ (3) the Auditor General’s October 2017 Report concluded that the District was in compliance with the law;⁸ and (4) even though it is also the Commonwealth agency empowered to consider the merits of questions regarding a school district’s accounting practices, the Department of Education has *not* written or said a single word in this case even suggesting that it has found Lower Merion’s practices to be in violation of Pennsylvania law.

What is really happening here, in other words, is that Mr. Wolk is asking—actually demanding—that the Court take “judicial notice” of and treat as true a series of false assertions that he claims to derive from documents that he (quite obviously) does not understand. As already explained above, however, that demand reflects a fundamental misunderstanding of how judicial notice works: that doctrine cannot be used to adopt legal conclusions or to take as true statements in documents. *See supra* at 3. And it should go without saying that neither “judicial notice” nor any other legal precept allows this Court to adopt as true a *false* statement of fact or an *incorrect* conclusion of law.

⁷ See District’s Answer to Wolk’s First Motion for Judicial Notice ¶ 11 & n.1

⁸ See *supra* at 2-3; see also Memorandum of Law in Support of the District’s Answer to Wolk’s Second Motion for Judicial Notice at 10-11.

That being said, the documents Mr. Wolk has presented are not wholly irrelevant to the case at bar (as the District has noted before⁹). For example, the Auditor General’s October 2017 Report is relevant because it shows that the Auditor General did not identify—or claim to identify—any illegal or noncompliant act or practice of the District. Similarly, the Department of Education’s November 22, 2017 letter—and the Department’s complete silence since the December 27, 2017 submission of the District’s response—shows that the Department’s inquiry to the District was routine and not indicative of a finding of illegality.

Of even greater importance to the actual issues presented in this appeal, the Court may also note, if it wishes, that when a taxpayer wants to challenge a budgeting or accounting decision by a school district, he or she does so by filing a formal complaint under 1 Pa. Code §35.9 and 1 Pa. Code §35.23. That, after all, is what the taxpayers did in *Clarke v. Tredyffrin Easttown School District*—the case that Mr. Wolk advanced as a candidate for this Court’s “judicial notice” in his first such motion¹⁰—and it is what Mr. Wolk and his fellow Plaintiffs-Appellees failed to do here. As the District has already (and repeatedly) pointed out, that failure to

⁹ See, e.g., Memorandum of Law in Support of the District’s Answer to Wolk’s Second Motion for Judicial Notice at 18.

¹⁰ See Wolk’s First Motion for Judicial Notice Ex. A. The District attached Mr. Clarke’s complaint to the Department of Education as Exhibit 1 to its Answer to Mr. Wolk’s First Motion for Judicial Notice.

exhaust administrative remedies should signal the end of this litigation. *See, e.g.*, Memorandum of Law in Support of District’s Answer to Wolk’s First Motion for Judicial Notice at 2-3, 5-6; Appellant’s Supplemental Br. at 35-44.

The *Clarke* complaint, and the Department’s resolution of it, are also relevant because they place in stark relief Mr. Wolk’s whack-a-mole approach to the Department of Education. In his motion proffering the *Clarke* case for judicial notice, Mr. Wolk suggested that the *Clarke* taxpayers’ failure to prevail on their complaint proves that the Department of Education is for all practical purposes a powerless “rubber stamp.”¹¹ But that perception is obviously inconsistent with the (equally false) picture he paints in his third motion for judicial notice where he tries to persuade the Court that when the Department issues a notice to respond, it is in fact finding noncompliant conduct and ordering the District to correct fraudulent or illegal acts.¹² That unexplained about-face leaves the reader to wonder what happened to the supposedly powerless rubber stamp that approves all the District’s requests “as a ministerial act.” If Mr. Wolk cannot even agree with himself about which (false) picture of the Department he thinks his documents depict, what can the Court be expected to “notice”?

¹¹ Of course, it proves no such thing. In fact, the Department’s statistics show that school districts are often obliged to make changes in their requests for referendum exceptions. *See supra* at 4-5 & n.7.

¹² Wolk’s Third Motion for Judicial Notice ¶¶ 10-11.

CONCLUSION

Mr. Wolk's latest flurry of motions on the subject of judicial notice shows that he has begun to learn about how Pennsylvania's government is structured and what it is that the Commonwealth's various agencies do. He now knows—or at least purports to know—something about the Department of Education and the procedure whereby interested parties may challenge its decisions on referendum exceptions. He now knows—or at least purports to know—something about the Department of the Auditor General and the mechanisms the General Assembly has put in place to ensure appropriate oversight of public budget and accounting decisions. And he has evidently just recently learned about the legally required process whereby the Department of Education directs local school boards to respond to recommendations made by the Auditor General.

All of which is to the good—although it would have been better if he had known some of this before he brought this lawsuit in a Court of Common Pleas. Because a Court of Common Pleas is *not* a forum in which a dispute over a local school budget and/or the propriety of an Act 1 exception on tax rates can be addressed. To be sure, there was a time when the Courts of Common Pleas had jurisdiction over at least some Act 1 exceptions (albeit, even then, not over those at issue in this case), but the General Assembly ended even that limited jurisdiction in 2011. The General Assembly has given the Department of Education—and *only*

the Department—the power to review and approve or disapprove the tax increase that Mr. Wolk has challenged in this case.

It would have been nice if Mr. Wolk had known that before he filed his Complaint in this case. And it would have been nice if the Court of Common Pleas had been willing to rule on the District's still pending Preliminary Objections to that Complaint, which were filed more than three years ago on March 31, 2016. But here we are.

The short of the matter is this: the Court can and should notice whatever public documents it considers relevant to the matters before it. And then it should order this case dismissed.

Dated: July 2, 2019

Respectfully Submitted,

/s/ Alfred W. Putnam, Jr.

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Counsel for Appellant

School District of Lower Merion

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Arthur Alan Wolk, Philip Browndies, : 1465 CD 2016
and Catherine Marchand :
v. :
The School District of Lower Merion, :
Appellant :

PROOF OF SERVICE

I hereby certify that this 2nd day of July, 2019, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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PROOF OF SERVICE

I, Arthur Alan Wolk, hereby certify that, on this day, I caused true and correct copies of the foregoing Answer and Motion to Strike the Petition for Allowance of Appeal, together with the associated exhibits thereto, to be served upon the following via email and United States First Class Mail, postage prepaid, which service satisfies the requirements of Pa.R.A.P. 121:

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Dated: April 8, 2020

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