



Pennsylvania Association of School Personnel Administrators

**Work to Rule, Status Quo, and
Potential Work Stoppage Issues
Webinar**

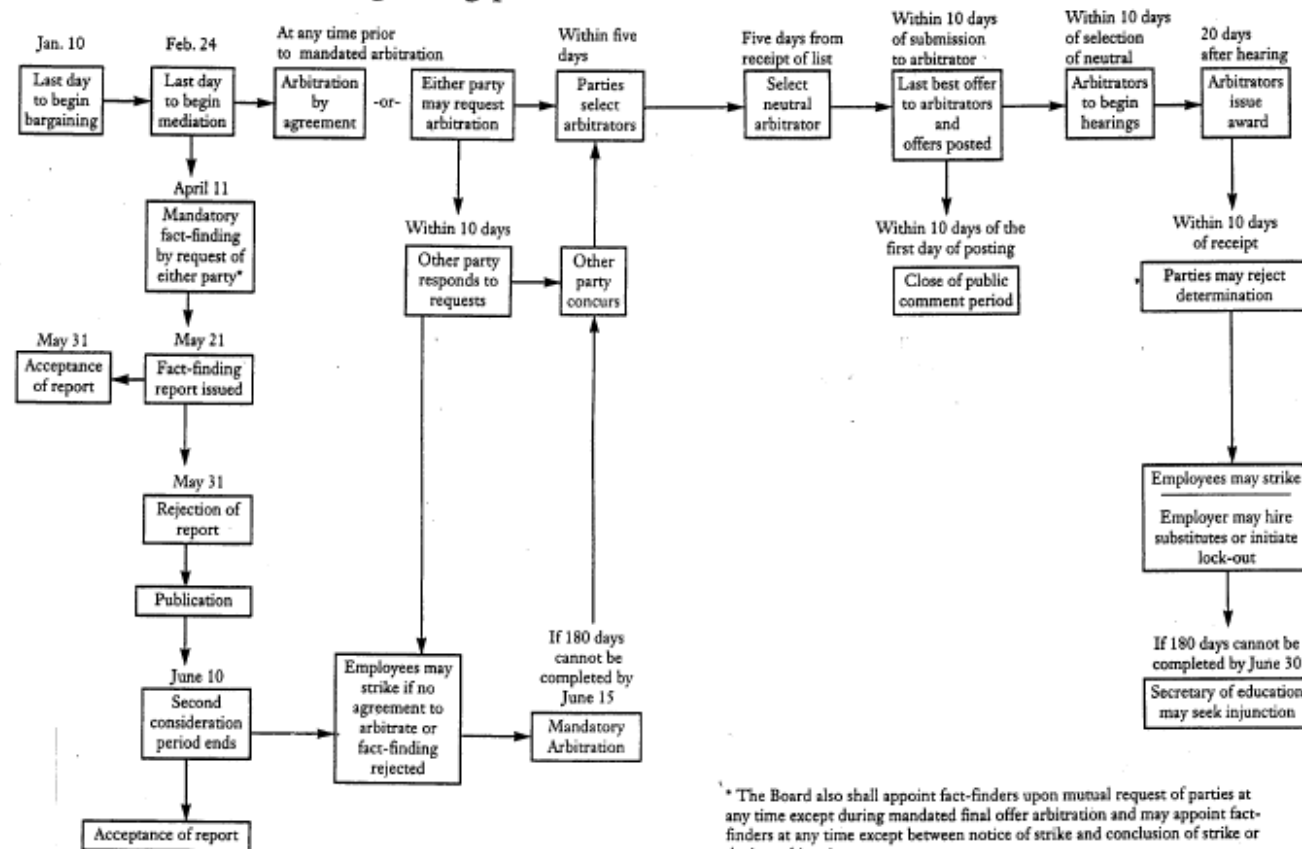
February 2, 2024

1:30-2:30 p.m.

Act 88 Timeline

Act 88 Timeline that applies to public school district collective bargaining agreements.

Bargaining procedure under Act 88 of 1992



* The Board also shall appoint fact-finders upon mutual request of parties at any time except during mandated final offer arbitration and may appoint fact-finders at any time except between notice of strike and conclusion of strike or during arbitration.

Work to Rule – What Does It Mean?

When work to rule may become a strike under Act 88.

Definition of Strike Under Act 88

“**Strike**’ shall mean concerted action in failing to report for duty, the willful absence from one’s position, the stoppage of work, slow down, or the abstinence, in whole or in part, from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment ...”

What Constitutes the Duties of Employment?

Pennridge School District v. Pennridge Education Association – CCP
Bucks County No. 93-8787-13-5 (November 9, 1993).

What Constitutes the Duties of Employment?

Pennridge School District filed a Motion for Preliminary Injunction against the Pennridge Education Association regarding the decision of the Pennridge Education Association to work to the Contract.

What Constitutes the Duties of Employment?

The parties stipulated that the teachers did continue to perform a number of non-classroom activities, including open houses, staffing detention duty, organizing certain programming, physical education programming, so long as it took place during the regular contractual day. The teachers, however, no longer performed certain club activities, student of the month programs, student recognition programs, and honor roll dinner.

What Constitutes the Duties of Employment?

The court ruled that the duties that were not performed did not necessarily constitute duties of employment.

Job Descriptions

Review job descriptions.

Elementary Teacher

ESSENTIAL DUTIES AND RESPONSIBILITIES:

Creates a classroom and/or instructional environment that is attractive, safe, supportive, and conducive to learning and appropriate to the maturity, interest and abilities of students. Risk-taking is encouraged, students feel free to contribute their ideas, and teacher and student interactions are respectful and polite to promote a positive learning environment for all students.

Creates a classroom and/or instructional environment that have materials in good condition and accessible to students, including but not limited to creating educational bulletin boards, web pages, parent/student newsletters, and other similar communication vehicles consistent with district practice.

Teaches District approved curriculum.

Guides the learning process toward the achievement of established District curriculum goals and establishes and communicates clear objectives to the students for all lessons, units, and projects.

Elementary Teacher (continued)

Strives by instruction and action to employ the District's philosophy of education, instructional goals and objectives, and performance expectations.

Prepares for classes and shows written evidence of preparation upon request of immediate supervisor.

Develops lesson plans and instructional materials and employs a variety of instructional techniques and teaching strategies to meet different aptitudes, interests and abilities of students, including current technology and whole-group/small-group learning.

Translates lesson plans into developmentally appropriate learning experiences to best utilize the available time for instruction.

Designs activities to engage students in cognitively challenging work aligned to standards.

Elementary Teacher (continued)

Manages allotted learning time to maximize student achievement.

Uses resources that will promote high levels of learning and student engagement in the classroom environment.

Reflects on practice and student work to determine what went well and what changes could improve instruction and uses reflection to inform future instruction.

Assesses students' academic and social growth on a regular basis, keeps appropriate records and prepares progress reports as required, and communicates with parents as deemed necessary or when directed by the principal.

Maintains accurate, complete, and correct records as required by the District Policy, Administrative Policy, and Pennsylvania law.

Elementary Teacher (continued)

Closely monitors student learning in order to understand how students are progressing toward the learning objectives and provides age-appropriate communication with students on instructional expectation and keeps them informed of their progress in meeting those expectations.

Seeks the support of district specialists when concern regarding student progress arises. Cooperates with other professional staff members in assessing and developing strategies to help students solve health, attitude, and learning problems. Follows the District multi-tiered system of supports and develops strategies for individual education plans.

Develops a code of conduct for the classroom which is consistent with established Administrative Policies and develops rules of classroom behavior which are enforced in a fair and just manner.

Elementary Teacher (continued)

Provides clear behavior expectations for students and monitors student behavior throughout the class and school.

Communicates regularly with parents/guardians during and outside normal classroom day to create partnership around student learning by means of newsletters, notes, phone calls, conferences, and other means to discuss student's progress and the school program.

Attends IEP, Section 504, or other related meetings necessary for student assessment and/or compliance with federal and/or state law.

Attends district department and faculty meetings and serves on district committees as required.

Elementary Teacher (continued)

Attends established traditional school-sponsored activities (i.e.: back-to-school night, open house, and other activities customarily attended by classroom teachers and/or faculty members).

Actively participates in building or district educational experiences such as science fairs, mathematic competitions, programs associated with the arts and other student activities.

Participates in curriculum related and programmatic activities that are a part of the regular District program, including but not limited to field trips or overnight camping trips that have been historically part of the school curriculum and programming.

Participates in in-services and staff development activities and staff meetings as required or assigned.

Elementary Teacher (continued)

Maintains an ongoing program of professional growth that satisfies District requirements but also satisfies personal expectation as a professional.

Provides, when appropriate, information and recommendations (verbal and written) when requested for student placement, course selection, awards, scholarships and in pursuit of other academic, extra-curricular endeavors or employment.

Establishes partnerships with the community as appropriate in support of the academic program.

Demonstrates professionalism and adheres to the Professional Code of Conduct.

Elementary Teacher (continued)

Administers group standardized tests in accordance with District testing program.

Plans and coordinates the work of paraprofessionals, parents/guardians, and volunteers in the classroom and on field trips.

Selects and requisitions books and instructional materials.

Follows established policies and procedures for reporting incidents (e.g., child abuse, substance abuse, harassment, and violence).

Other duties as assigned by the Building Principal and/or Administration.

Secondary Teacher

ESSENTIAL DUTIES AND RESPONSIBILITIES:

Creates a classroom and/or instructional environment that is attractive, safe, supportive, and conducive to learning and appropriate to the maturity, interest and abilities of students. Risk-taking is encouraged, students feel free to contribute their ideas, and teacher and student interactions are respectful and polite to promote a positive learning environment for all students.

Creates a classroom and/or instructional environment that have materials in good condition and accessible to students, including but not limited to creating educational bulletin boards, web pages, parent/student newsletters, and other similar communication vehicles consistent with district practice.

Teaches skills and knowledge of subject matter in middle and secondary schools in accordance with the requirements of approved courses of study using District approved curriculum and other appropriate learning activities.

Secondary Teacher (continued)

Teaches District approved curriculum.

Guides the learning process toward the achievement of established District curriculum goals and establishes and communicates clear objectives to the students for all lessons, units, and projects.

Strives by instruction and action to employ the District's philosophy of education, instructional goals and objectives, and performance expectations.

Prepares for classes and shows written evidence of preparation upon request of immediate supervisor.

Secondary Teacher (continued)

Develops lesson plans and instructional materials and employs a variety of instructional techniques and teaching strategies to meet different aptitudes, interests and abilities of students, including current technology and whole-group/small-group learning.

Translates lesson plans into developmentally appropriate learning experiences to best utilize the available time for instruction.

Designs activities to engage students in cognitively challenging work aligned to standards.

Manages allotted learning time to maximize student achievement.

Secondary Teacher (continued)

Uses resources that will promote high levels of learning and student engagement in the classroom environment.

Reflects on practice and student work to determine what went well and what changes could improve instruction and uses reflection to inform future instruction.

Assesses students' academic and social growth on a regular basis, keeps appropriate records and prepares progress reports as required, and communicates with parents as deemed necessary or when directed by the principal.

Maintains accurate, complete, and correct records as required by the District Policy, Administrative Policy, and Pennsylvania law.

Secondary Teacher (continued)

Closely monitors student learning in order to understand how students are progressing toward the learning objectives and provides age-appropriate communication with students on instructional expectation and keeps them informed of their progress in meeting those expectations.

Seeks the support of district specialists when concern regarding student progress arises. Cooperates with other professional staff members in assessing and developing strategies to help students solve health, attitude, and learning problems. Follows the District multi-tiered system of supports and develops strategies for individual education plans.

Develops a code of conduct for the classroom which is consistent with established Administrative Policies and develops rules of classroom behavior which are enforced in a fair and just manner.

Secondary Teacher (continued)

Provides clear behavior expectations for students and monitors student behavior throughout the class and school.

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Attends district department and faculty meetings and serves on district committees as required.

Secondary Teacher (continued)

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Participates in curriculum related and programmatic activities that are a part of the regular District program, including but not limited to field trips or overnight camping trips that have been historically part of the school curriculum and programming.

Participates in in-services and staff development activities and staff meetings as required or assigned.

Secondary Teacher (continued)

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Provides, when appropriate, information and recommendations (verbal and written) when requested for student placement, course selection, awards, scholarships and in pursuit of other academic, extra-curricular endeavors or employment.

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Demonstrates professionalism and adheres to the Professional Code of Conduct.

Secondary Teacher (continued)

Administers group standardized tests in accordance with District testing program.

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Follows established policies and procedures for reporting incidents (e.g., child abuse, substance abuse, harassment, and violence).

Other duties as assigned by the Building Principal and/or Administration.

What are the Remedies for a Work to Rule Violation?

Hatboro-Horsham Education Association Example

Dear Parents,

This email blast is being sent to notify you about significant developments that are occurring with respect to the Hatboro-Horsham School District's teacher contract negotiations. As you may know, the School Board Negotiating Team and the Hatboro-Horsham Education Association (HHEA) held their most recent negotiations session last week on Nov. 11th. At that session, the School Board Negotiating Team presented a revised proposal, which included more money for salaries and more definition about the proposed performance-based compensation plan.

Hatboro-Horsham Education Association Example

Following this November 11 session, the district learned that the HHEA's teacher union leaders have called for their membership to institute a work-to-rule action. Work-to-rule is a negotiation strategy in which the union leadership calls upon members to complete only contractual duties. For example, teachers would "work to the clock," coming in only to meet the demands of their contracted day, and to perform extra duties and responsibilities only if they are contracted or paid to do so. While this work-to-rule action is occurring, the teachers of the Hatboro-Horsham School District are still working under the conditions of the expired contract. These conditions include last year's salaries and the associated fringe benefits.

Hatboro-Horsham Education Association Example

What exactly does this work-to-rule strategy mean for day-to-day life in the district? Simply put, it means certain activities may cease or may operate in limited fashion while the work-to-rule strategy is in place. The directives, with respect to those things that are to be done (or not done), come directly from the union leadership to its teacher members.

Hatboro-Horsham Education Association Example

Here are some examples of these directives:

Hatboro-Horsham Education Association Example

Study groups, guidance groups or extra help sessions for students – Teachers were instructed by the union leadership not to participate if the groups meet before or after the contracted school day.

Hatboro-Horsham Education Association Example

Recommendation letters for high school students – Teachers were instructed to complete only those letters that they committed to writing prior to Nov. 4, 2009. Guidance counselors, however, must continue to complete these for students.

Hatboro-Horsham Education Association

Example

Evening meetings and Special Events– Teachers were instructed not to participate in or attend a number of evening meetings and special events. Examples would include Home and School meetings/events and Title I meetings as well as Math Nights, Hatboro-Horsham Olympics, Barnes & Noble Nights or Curriculum Nights. Evening meetings to discuss student Individualized Education Plans (IEPs), however, are required by contract and would not be affected.

Hatboro-Horsham Education Association

Example

Field trips – Teachers were instructed not to participate in planning or chaperoning.

Hatboro-Horsham Education Association Example

Attendance at School Events – Teachers were instructed not to attend voluntarily or chaperone student events such as concerts, dances, fun nights, awards nights, Red and Black events, fundraisers, plays and athletic events.

Hatboro-Horsham Education Association Example

Mentoring for Senior Projects – Teachers were instructed not to serve in this role.

Hatboro-Horsham Education Association

Example

In most cases, it appears that this work-to-rule action will not affect extra-curricular activities for which teachers have been contracted to serve as coaches or advisors. At this time, it appears that scheduled athletic activities will continue in an uninterrupted manner, since the teachers who serve as coaches are receiving compensation for doing so.

Preliminary Considerations Prior to Commencing Bargaining

School Calendar Development Before July 1

Section 1502

Section 1502 states that “no school shall be kept open on any Saturday for the purpose of ordinary instruction, except when Monday is fixed by the board of school directors as the weekly holiday, or on Sunday, Memorial Day, Fourth of July, Christmas, Thanksgiving, the First of January, and up to five additional days designated as local holidays in the adopted school calendar by the board of school directors as official local school district holidays, nor shall any school be kept open in any district during the time of holding the teachers' institute for such district. The board of school directors may cancel any day designated as a local holiday in the event of a weather emergency or natural disaster.”

School Calendar Development Before July 1

Section 1502

No school shall be kept open on any Saturday for the purpose of ordinary instruction, except when Monday is fixed by the board of school directors as the weekly holiday (which would require that school be scheduled Tuesday through Saturday for the entire school term).

Official Local School District Holidays

If a board of school directors chooses to identify up to five “official local school district holidays” pursuant to Section 1502, these dates must be specifically designated as Section 1502 holidays within the resolution approving the school calendar (for example, Section 1502 holidays: November 14, 2003, January 20, 2004, February 14, 2004, etc.). This resolution must be passed by the school directors prior to the start of the school year. Once designated, Section 1502 “official local school district holidays” cannot be rescheduled and can only be canceled in the event of a weather emergency or natural disaster.

School Entities that Have Contracts that End in August of the School Year (Typically August 31)

In the event that your school entity has a Contract that ends as of August 31, the school entity should not start its next school year work prior to that time based upon the Northwest decision. Some school entities do like to start their school year prior to Labor Day. If a school entity does that within the temporal limits of the soon to be expiring Contract, the school entity will be required to provide for vertical step movement and horizontal step movement for Bargaining Unit Members. Depending upon the school entity, this can be a costly concession.

Obligation to Keep the Status Quo

The “maintenance of the status quo” standard.

Obligation to Keep the Status Quo

Hard-line taken by Appeals Board. Generally even minor changes in status quo could result in a lockout.

Obligation to Keep the Status Quo

The test for determining whether a work stoppage is the result of a lockout or a strike was set forth in *Vrotney Unemployment Compensation Case*, 400 Pa. 440, 163 A.2d 91 (1960); *Philco Corp. v. Unemployment Compensation Board of Review*, 242 A.2d 454 (1968). Under the *Vrotney/Philco* test, the analysis which the Appeals Board and the Courts use is: Have the employees offered to continue working for a reasonable time under the pre-existing terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations ...

Obligation to Keep the Status Quo

Since the purpose of the State's unemployment compensation system is to compensate an individual when work has been denied him through no fault of his own, logically the test of whether a work stoppage resulted from a strike or a lockout requires the court to determine which side, union or management, first refused to continue operations under the status quo after the contract had technically expired, but while negotiations were continuing.

Obligation to Keep the Status Quo

Local 730, United Association of Journeymen and Apprentices of the Plumbing and Pipe-fitting Industry v. Unemployment Compensation Board of Review, Pa. 480 A.2d 1000, 1002-1003 (1984) (quoting *Vrotney*, 400 Pa. at 444, 163 A.2d at 93, and *Philco*), 430 Pa. at 103, 242 A.2d at 455.

Obligation to Keep the Status Quo

The Pennsylvania Supreme Court has consistently defined the status quo as “the last actual peaceable and lawful non-contested status which preceded the controversy. *Fairview School District v. Unemployment Compensation Board of Review*, 454 A.2d 517 (1982).

Obligation to Keep the Status Quo

The Commonwealth Court has held de minimis actions taken by school districts violate the status quo. *Chichester Area School District v. Unemployment Compensation Board of Review*, 415 A.2d. 997 (1980). For instance, in *New Castle Area School District v. Unemployment Compensation Board of Review*, 24 PPER 24182 (1993), the Commonwealth Court held altering class schedules for one school building out of 10, which did not result in a change in the length of the work day, contact time with students, and the like still resulted in a status quo violation.

Obligation to Keep the Status Quo

In *New Castle*, the District argued, albeit unsuccessfully, a de minimis change does not result in a lock out. Not surprisingly, the Court did not buy such an argument. Repeatedly, both the Appeals Board and the Commonwealth Court have taken a hardline approach that any change, even de minimis, will result in a lockout.

Obligation to Keep the Status Quo

There are instances, albeit rare, that claimed alterations to the status quo did not result in a successful claim for unemployment benefits. In *Michael Hopkins and Arthur Clark v. Unemployment Compensation Board of Review*, 29 PPER 29133, in affirming the Appeals Board, the Commonwealth Court noted failure on the District's part not to issue activity passes for new teachers did not result in a violation of the status quo due to the fact such an oversight, which was corrected, did not have an effect on the teachers and did not deprive them of any rights.

Obligation to Keep the Status Quo

Managerial prerogative far more important in Labor Board analysis when unilateral change does not touch upon mandatory subject of bargaining.

Obligation to Keep the Status Quo

With some confidence, the Labor Board will balance management's interests in running a successful operation versus the union's claim of a violation of the status quo.

Obligation to Keep the Status Quo

A relatively new line of cases seems to deviate from the hardline standards discussed, thus providing some enhanced flexibility to the District while in status quo. In *Greer v. Unemployment Compensation Review Board*, 4 A.3d 733 (Pa. Cmwlth. Ct. 2010), the Commonwealth Court clarified and firmly reiterated the limitation on the status quo obligations for employers.

Obligation to Keep the Status Quo

Greer noted, “Our Supreme Court has discouraged looking beyond the language of a CBA to determine the terms and conditions of employment in the context of unemployment compensation.”

Obligation to Keep the Status Quo

In making this conclusion, *Greer* reiterates the holding in *Miceli v. Unemployment Compensation Board of Review*, 519 A.2d 113 (1988), where the Supreme Court addressed the question of whether a work stoppage after the expiration of a CBA was the result of a strike or a lockout under Section 402(d) of the Law. Utilizing the *Vrotney* test, the Supreme Court's analysis was dependent on which party, the labor union or the employer, first altered the "status quo." *Id.* at 520, 549 A.2d at 115.

Obligation to Keep the Status Quo

Consequently, it was necessary for the Supreme Court to determine what constituted the “status quo” between the parties. In our opinion, this Court concluded that “the status quo consisted not only of the terms and conditions of employment under the expired [CBA], but also the previous conduct of the parties.” *Id.* at 525-26, 549 A.2d at 118.

Obligation to Keep the Status Quo

The Supreme Court disagreed, finding that the Court erred by considering past practices, and held that a court may not look beyond the terms and conditions of employment, *as embodied in the CBA*, in determining what constitutes the status quo in an unemployment compensation case. *Id.* at 525-27, 549 A.2d at 118.

Obligation to Keep the Status Quo

Greer also notes the holding in *Behers v. Unemployment Compensation Board of Review*, 557 Pa. 55, 842 A.2d 359 (2004), where the Supreme Court was again asked to determine if the Commonwealth Court erred by looking beyond the terms and conditions of a CBA in determining what constitutes the status quo in the context of unemployment compensation.

Obligation to Keep the Status Quo

Reaffirming its decision in *Miceli*, the Supreme Court again held that the Commonwealth Court had erred by considering past practice, stating: “The Commonwealth Court erred in interpreting *Miceli* to permit the consideration of “past practices” beyond the express terms of the parties’ CBA in determining what constitutes the status quo. Indeed, to consider “past practices” not memorialized in the parties’ written agreement would eviscerate the clear and simple rule articulated in *Miceli*.”

Work Stoppage Issues and Development of Work Stoppage Plan

Childcare program.

Handling of athletics and other extra duty activities.

Guidance and college counseling.

Testing of students.

Support staff services during the course of a work stoppage.

Security issues.

Work Stoppage Issues and Development of Work Stoppage Plan

Vocational-technical school.

IU and out-of-district placed students.

Any proposed changes that are taking place over the summer.

Summer athletic training and summer programs.

Seniors' program.

Type of notice given to the Superintendent.

Decision to cancel school.

Work Stoppage Issues and Development of Work Stoppage Plan

Communication issues – phone lines; website; public relations.

Compensation during work stoppage.

Healthcare during work stoppage.

Possibility of injunction and need to take photographs.

Teachers desiring to cross the picket line and reason why we need to refuse.

Work Stoppage Issues and Development of Work Stoppage Plan

Interfacing with media in the event of a work stoppage.

Responsibilities of District administrators, custodial/maintenance, and 12-month clerical during the course of a work stoppage.

Questions

How does work to rule affect the supplemental contracts of head teachers, club advisors, math/science advocates, tech liaisons, etc.?
Will they still meet their responsibilities outside of the school day since they are paid extra for it?

Questions

Can we ask teachers to participate in professional duties outside of the contractual day if we are in “status quo”?

Contact Information

Jeffrey T. Sultanik, Esquire

Co-Chair, Education Law Department

Fox Rothschild LLP

980 Jolly Road, Suite 110

Blue Bell, PA 19422

(610) 397-6515 (direct)

(215) 582-0714 (cell)

jsultanik@foxrothschild.com

