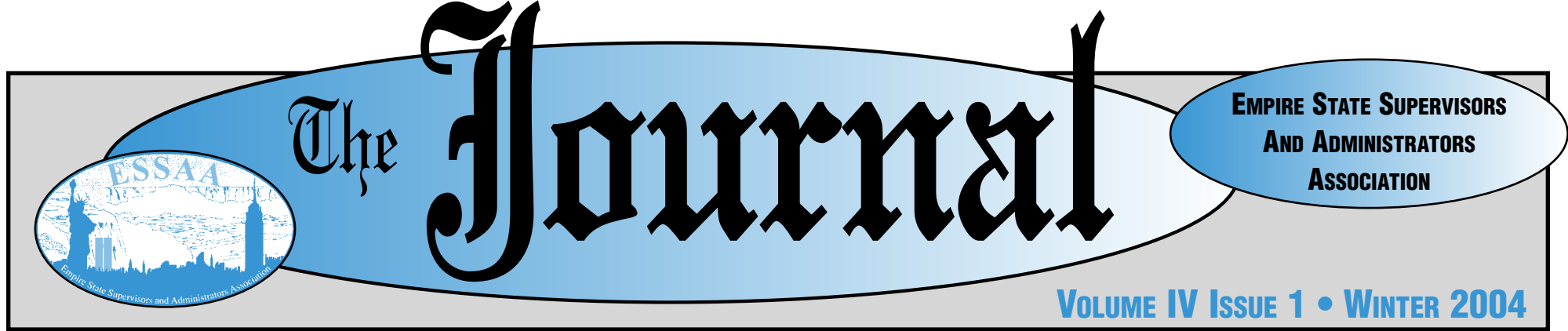


NEW TABLOID FORMAT



The Journal
EMPIRE STATE SUPERVISORS AND ADMINISTRATORS ASSOCIATION
VOLUME IV ISSUE 1 • WINTER 2004

GOVERNOR WANTS NEW YORK CITY MANDATE FOR ENTIRE STATE: "HURRICANE" EXPECTED

By Tony Laurino
Executive Vice President, ESSAA
Chairperson, Legislative Committee

I attended the Governor's State of the State address on January 7, 2004. The most positive thoughts that come to mind are that last year's budget fight was a cool breeze compared to the hurricane that we can expect this year.

The State's highest court has mandated a change in the funding of New York City education by July 30, 2004. The court's mandate was meant for New York City but the Governor and legislators will look at the entire educational funding system. All indications are that they will revamp it.

In his State of the State Address, the Governor said that he and the leader of the Senate, Joe Bruno, and the leader of the Assembly, Shelly Silver, were in

agreement not to raise taxes. He further stated that he was against any "Robin Hood" legislation that would move funding from the wealthy school districts to the poor ones. Some NYC school officials estimate it would take between 1.5 and 2 billion dollars in the first year to begin to heal the City's education problems.

The day after the Governor's address, Mayor Bloomberg announced a 400 dollar tax rebate to every homeowner in New York City. That's nice, but some of this money could be used for education. If he returned only 300 dollars to the 3 million homeowners in NYC, there would be enough money to alleviate NYC's problems.

Whether or not all this results in the Governor's fighting to raise taxes, attempting to allocate monies from richer school dis-

tricts to the poorer ones, or letting the school districts fend for themselves, every district in New York State will be affected.

Senator Bruno insists that this mandate can be met with money the State already has. He told reporters that the legislators must agree on the cost of educating students by June 30, though, he also said, "It is not necessary that we address it in this coming session."

Advocates for the redistribution of educational funding see the court order as a mandate which must be followed in its entirety by June 30. Bob Unger, ESSAA's lobbyist and representative to the legislature, myself, and the ESSAA leadership will be doing all we can to keep things in perspective. We will be meeting with legislators on both sides of the aisle in both the Senate and Assembly in order to make sure a

"Robin Hood" concept is not imposed.

This November the entire legislature is up for reelection, which means that elected officials will be looking toward friendly organizations for assistance. Your contribution to ESSAA's PAC fund is essential if you want us to be properly represented in Albany. We are requesting that each member contribute at least \$50. Your bargaining unit can vote to have your contribution taken out of your pay and sent to us as a unit check (a check drawn from dues money is illegal), or you can make a personal check to ESSAA-PAC and send it to: Janet Mulvey, ESSAA, Box 187, Eastchester, NY 10709.

This promises to be one heck of a year in Albany, and we need all the friends we can get.

Inside this Issue

- Gov. wants NY State Mandate 1
- Breaking News 1
- Wappinger Settles Contract 1
- Letter from President 2
- ESSAA Officers & Directors 2
- Century Clubs New Members 2
- Political Action Committee 2
- ESSAA Welcomes Admin Units 3
- FYI: School Funding 3
- ESSAA Agenda 3
- Editor's Message 4
- Surfing the WEB News Clips 4,5
- Exec. Board Meets in Niagara 5
- What They are Reading 6
- Response to Admin. Shortage 7
- Gov. Pataki's State of the State Excerpt . 7
- Congratulations to Sec. of Ed. Paige ... 7
- Facing Responsibility
for "Home Schooling" 8
- Admins Attend Legislative Workshop .. 8
- ESSAA News Briefs 9,10
- ESSAA Cabinet Makes Plans
for Better Communication10
- Charter Schools Dumped10
- ESSAA Wins Decision Over Utica11
- Updates11
- New Officers Elected 12
- Up-Coming Meetings 12

CITY OF ALBANY OPTS TO REMAIN COMPETITIVE SETTLES WITH ITS ADMINISTRATORS FOR 15.8% FOR 3 YEARS

By Robert Saperstein, *ESSAA Attorney*

The Albany Public School Administrators Association settled their contract for the period 2003-06 with a whopping 15.8% increase. The Albany Administrators adopted ESSAA's Executive Recruitment and Retention Compensation Plan.

The new compensation plan resulted in a 9% increase to the top of each of the old salary schedules before the percentage increase was added. The number of steps was also reduced from 10 to 7. The annual "public" percentage increase was only 3% a year, but the resultant calculations under the Executive Recruitment Plan yielded 15.8% over the three years.

Additionally, a length of service requirement for receiving the sick day buy out upon retirement was eliminated, a 3% contribution towards health insurance was agreed upon [but it reverts to 100% District paid upon retirement], and binding arbitration was added to the contract.

Albany, like most other school districts, has experienced difficulty in recruiting and retaining quality administrators. To their credit, the Superintendent and Board recognized that competitive salaries are the key to retaining experienced administrators and recruiting new ones.

WAPPINGERS SETTLES 4 YEAR CONTRACT FOR 19.25% +

By Robert Saperstein, *ESSAA Attorney*

The Wappingers Administrators Association settled its four year contract for the period July 1, 2003 through June 30, 2007 with significant salary gains. The contract provided 5% in the first year, 2% of which was used to adjust inequities within the unit. Each of the next three years provided a 4.75% increase, with a minimum of 3% guaranteed to each member, and the 1.75% balance to be used either to address any remaining inequities or to be distributed to everyone, or a combination of the two, as determined by the Association and the District. If the parties cannot agree on the distribution, it goes to binding arbitration.

cont'd. page 5

President's Message: A Two Way Street

Dear Colleagues,

ESSAA began in 1996. Its commitments to the membership have not wavered since its beginning. First and foremost, the founders were committed to collaborative leadership and wrote a constitution that placed the governance of the Association in the hands of an Executive Board (EB). Thirty-Eight (38) public school supervisors and administrators from across the state meet three (3) times a year to chart ESSAA's annual course. In addition, a sub-group (President's Cabinet) of the EB meets in January and July to monitor all of the Association's components such as legal & legislative Services, communications, and workshops and conferences. But throughout the entire process, it is clear to all that they are responsible for charting ESSAA's course.

The concern of every meeting is to take whatever steps are necessary to insure that our membership is being serviced effectively and efficiently. Part of that commitment is to keep members "current" on all educational issues impacting supervisors and administrators across the state. The first part of this equation, i.e. acquiring the needed information for our membership, is something that we have grown extremely proficient in doing. The second part, communication, is something that we need to focus on as we face the Association needs of 2004.

This year we plan to make better use of our e-mail program and our web-site www.essaa.org so that we can pass on vital information to all members in a timely manner. There have already been major changes to our newsletter *The Journal* which we plan to go to press with at least four times a year. We have also launched our first regional newsletter (Central NYS) and plan to go to press at least one a year for each of our five membership regions. In January, the President's Cabinet will meet. Communications will be at the top of the list for discussion. Other topics, such as adding additional workshops and conferences, and the possibility of launching a statewide convention, may develop into recommendations for the entire EB to consider when it meets in February.

Finally, I want to remind the membership of the fact that ESSAA publishes and distributes to its members a Directory with several ways to contact each and every member of the decision making team. The goal is to make communication a two way street so members are comfortable seeking help or offering suggestions to make us even better as we continue to grow.

In 1996 we were 1700 strong. Now we are 2700. There is strength in size, as long as the size is used effectively. And to a very large extent, our effectiveness is measured by membership satisfaction.

As we begin 2004, with COMMUNICATION as our New Year's resolution, I encourage you to contact us if there is any problem we can assist you in resolving. Every time ESSAA helps one of its members, our organization's effectiveness and reputation rises, and another administrator has a peaceful night's sleep.

Here's to a great 2004 for all of us!

Sincerely,



John F. Sullivan



ESSAA Officers

JOHN F. SULLIVAN

President
888-88-ESSAA
Westchester

ANTHONY LAURINO

Executive Vice President
888-363-8797
Long Island

TOM VASILOFF

Vice President
315-656-7242
East Syracuse-Minoa

EDWARD KEELER

Vice President
315-736-0629
Utica

JERRY SPICER

Vice President
518-462-7185
Albany

JANET MULVEY

Vice President
914-779-3806
Westchester

CHUCK SMITH

Treasurer
518-399-7480
Schenectady

ROBERT DARCANGELO

Secretary
607-762-8282
Binghamton

ESSAA Directors

HERBERT DICKSON

Director of
Organizational Development
607-748-8683

ROBERT A. LIFTIG

Director of Communications
Editor, The Journal
203-226-3437

INEZ LIFTIG

Assistant Editor
The Journal

JAN YABLOW

Director of Research &
Development
914-693-7564

ESSAA Attorneys

PAUL DERKASCH, ESQ.

888-363-8797

KEVIN MARTIN, ESQ.

888-332-3986

ROBERT SAPERSTEIN, ESQ.

888-363-8797
888-294-8282

ROBERT UNGAR, ESQ.

Legislative Counsel
516-227-2400

Website Coordinator

JOANNA KEELER

315-736-0629

THE CENTURY CLUB
(PAC DONATIONS OF \$100 OR MORE)
IS PROUD TO ANNOUNCE
ITS NEW MEMBERS:

**Theresa Cherry
Carol Fisher
Jacqueline Figueroa
Richard Herlihy
Ed Keeler
Stephen Lieber
Walter Moran III
Janet Mulvey
Patricia Principio
Susan Strauss
John Sullivan
Theresa Sullivan
Tom Vasiloff**

POLITICAL ACTION COMMITTEES — JANET MULVEY AND ESSAA AND EVERY OTHER IMPORTANT GROUP IN THE STATE BELIEVES IN THEM

Legislators grant preferable access and are more responsive to those of their constituents who support their legislative efforts – and they hope, their reelection. We can pledge our votes privately and our PAC donations publicly to our allies in Albany. We may not like the system, but we can learn to use it for the benefit of our membership. NYSUT's VOTE/ COPE surely does: its multi-million dollar yearly campaign has fended off teacher-unfriendly legislation for years, has held the line for teacher tenure, and lobbied for improved retirement benefits – just as ESSAA's PAC is doing.

Contributions to the ESSAA PAC can help us exercise our collective power.

We salute our Century Club contributors (those who have donated \$100 or more), and urge you to mail your own contributions to:

Jan Mulvey
PAC Treasurer
35 Parkview Avenue 5F
Bronxville, NY 10708

Seen Our Site Lately? www.essaa.org

Check it for the latest news and information on ESSAA events statewide.

ESSAA WELCOMES NEW ADMINISTRATIVE UNITS FROM CENTRAL AND WESTERN NEW YORK

By Ed Keeler, *Administrative Recruitment Programs*

Since the end of the last school year, administrators from eight school districts have chosen to join ESSAA. However, it is in central and western New York where ESSAA continues to experience the greatest growth. The new units from upstate are Batavia City School District, Frankfort-Schuyler Central School District, Mohawk Central School District, Otsego Northern Catskills BOCES and the Onondaga Central School District. Each of these new administrative units had their own reasons for deciding that ESSAA was the best choice, but the desire for quality legal help was a common need.

John Brankacz, the president of the Frankfort-Schuyler Administrators Association, contacted ESSAA after the position of

Director of Special Education was abolished and those duties were assigned to building administrators. He needed legal help with impact bargaining and other issues. Mr. Brankacz and the members of his unit liked what ESSAA had to offer, especially having an attorney right in central New York.

With Ronald Behe, president of the Mohawk Administrators Association, it was again personnel issues that brought him to ESSAA. His unit also realized that it was a great advantage having an attorney close by to assist with negotiations and legal concerns.

Onondaga Central School Districts administrators contacted ESSAA after hearing positive reports about ESSAA from fellow administrators in the

Baldwinsville school district. The principal of Onondaga High School, William Rasbeck Jr., told me that while they had a contract with the district, they were loosely organized and not affiliated with any statewide organization. They were looking for help to strengthen their organization and contract, and ESSAA provided it.

ONC BOCES administrators were introduced to ESSAA through the efforts of the Oneonta Administrators Association. Oneonta administrators, new to ESSAA themselves, made the effort to help us set up a meeting with the ONC BOCES administrators. The administrators of ONC BOCES were neither organized nor had a contract with their district. ESSAA attorney Kevin Martin took the

actions necessary to petition PERB for formal recognition of the bargaining unit. We are currently waiting for PERB to recognize their group as the bargaining unit for the ONC BOCES administrators. This decision is expected in the near future. Once recognized, Kevin will help them negotiate their first formal contract.

The executive board of ESSAA was especially pleased when Sandy Griffin, president of the Batavia Administrators Association, called to tell us that his unit had decided to affiliate with ESSAA. We are always delighted when new units join us and the addition of Batavia will help further highlight the excellent support ESSAA offers to its members in Western New York.

FYI: PRESS RELEASE ON SCHOOL FUNDING FROM THE SED

The State Board of Regents today proposed a major reform of State aid to the schools that they said should result in a fair and equitable level of spending for each district.

"This is a new approach to funding the schools that will help meet a fundamental goal the Regents have worked toward this past decade: to provide greater equity for children and close the achievement gap," Regents Chancellor Robert M. Bennett said. "This approach is designed to get beyond the status quo and provide enough funding where it's needed."

"If New York enacts this proposal, our neediest students will get the resources they need to succeed in this increasingly complex society and economy," State Education Commissioner Richard Mills said.

Foundation Formula

The new approach, called a "Foundation Formula," calculates the cost of educating each student to the State's learning standards.

Under this proposal, the State Aid foundation formula is much simpler than the current State Aid formula:

District's State Aid = (Foundation Cost x Pupil Need x Regional Cost Index) - Expected Local Contribution

Here is what makes up a District's State Aid:

Foundation Cost: This is the cost of educating the average student to the learning standards, based on a study of successful schools, using instructional costs and adjusting for regional cost, efficiencies, and number of needy pupils.

Pupil Need: High need students require more help, so the Regents proposed a weighting that increases spending for them.

Regional Cost Index: Additional funds would go to schools in areas where wages and the cost of living are higher.

Expected Local Contribution: Funding is a State and local partnership. The expected local contribution is based on the district tax base multiplied by the expected local tax rate. The district tax base is the total property value of the district. The expected local tax rate is based on local ability to pay, as measured by the district income per child. Lower income communities would be

expected to contribute less. Higher income communities would be expected to contribute more. However, the expected local contribution is not mandatory.

The Foundation Formula includes most of the State funding of schools, but not all. Important categorical aids that are still kept separate include building aid, transportation aid, aid for special education students, textbook aid, aid for limited English proficient students, BOCES aid and universal pre-K.

The Impact

Under the Regents proposal, full funding in the Foundation Formula would be phased in over 7 years. When fully funded, State Aid in the Foundation Formula would need to increase by \$5.98 billion at the end of the 7 years. This does not include possible increases in other aids, such as building aid, that are not included in the foundation formula.

The Regents proposed the total State Aid increase for 2004-2005 should be \$880 million, including \$508 million from the foundation formula.

INSURANCE, CONVENTION ON AGENDA

Vice President Tom Vasiloff has indicated that ESSAA is investigating offering term life insurance as part of the ESSAA membership package, and is polling its members to "cost out" the proposed plan.

ESSAA already provides its members with free personal injury consultation and a reduced rate on all personal legal services, in addition to a \$10,000 accidental death and dismemberment policy through the First Reliance Insurance Company. Other optional insurance includes: major medical catastrophe, term life, home owners and auto (except Long Island), disability income, and 50+ long term care.

As many of us know, ESSAA prides itself on being BETTER than the State's "other" association, and certainly no one can doubt that in matters of legal representation and negotiations. ESSAA provides representation in all phases of collective bargaining and protection against illegal actions taken against administrators. PERB and 3020-A's are handled by our attorneys. With the likely introduction of term life plans, ESSAA will be a better bet in EVERY aspect of representation.

cont'd. page 7



EDITOR'S MESSAGE: IT'S ABOUT RIDING CAMELS

There is a popular saying that the only way to explain why the camel looks so odd is that it must have been designed by a committee. In what *The Journal* hopes will be a regular feature – “Surfing The Web: What’s Out There,” – we present to the membership excerpts, snippets, and slices of educational life from around the state and nation. To us, this is the best proof that American educational policy is determined more and more by special interest groups, and, that with every government “initiative,” we look more and more like the preposterous camel.

It seems everyone, these days, either establishes or sits on an educational committee, with each group doing whatever it can to get a piece of the educa-

tional action. President Bush is already claiming that NCLB has transformed American education – a “victory,” no doubt, for his committee. Governor Pataki touts his Commission On Education Reform in his State of the State message, and his Board of Regents proposes a major reform of state school funding. The Special Education lobby has its committees too, and there are the Congressional Commissions, and, of course, the courts – perhaps the most powerful committees of all.

The “innovations” and “reforms” these committees rain down on us as administrators today are often contradictory. The government – if it thinks about administrators at all – wants us to believe that its crazy quilt of politically-motivated special interest appeasements, is really a time-tested and reliable educational policy, and that all

we as administrators have to do is plug in their beautiful machine and observe how well it produces improved student performance (you can already hear their crowing about NCLB as you read the “Surfing The Web” snippets).

There are other committees around these days, and sometimes their work can give us hope. The 6 million member PTA has called on Congress to reject private school vouchers. The Advertising Council of America has encouraged parents to become more involved in their children’s schools and education. And ESSAA has a growing PAC committee that lobbies for our interests in Albany.

If there is good news in all this anywhere, it’s that the history of “reforms” and “innovations” in this country is a dismal one. Radical and destructive changes often fall down and die out of sheer exhaustion –

thankfully before they are allowed to kill the supposedly ailing animal they intend to cure.

As long as politics is involved in educational policy, education in America will never be a thoroughbred. We’re a camel – make no mistake about it. And the system we have to work within is increasingly problematic. But because we care about our kids and because we’ve already educated so many of them, we still think we can get this committee-crippled quadruped up on its clumsy feet again, and ride it across the educational Sahara. Have a great 2004!

Robert A. Liftig
Editor, “*The Journal*”

SURFING THE WEB: WHAT’S OUT THERE

U.S. DEPARTMENT OF EDUCATION SECRETARY RON PAIGE ON THE GOALS OF NCLB

The goal of No Child Left Behind is to help schools ensure that 100 percent of their students achieve proficiency on state defined standards. Why 100 per cent? Because to demand anything less is to assume from the outset that some children will inevitably be left behind, and that is not a concession President Bush or Congress is willing to make. And I doubt many parents ... are willing to make that concession either.

There is no doubt NCLB is a tough law. True reform is never easy. But with the unprecedented levels of federal funding for education, new options for parents, historic amounts of flexibility for state and local leaders to target resources where they are needed most, and an emphasis on teaching methods and programs that have been scientifically proven to work, we’re already off to a great start.

From a letter published in a Nevada newspaper reprinted at the U.S. Department of Education website: ED.gov

NATIONAL PTA CALLS ON CONFEREES TO REJECT D.C. VOUCHERS

National PTA and other public education supporters denounce efforts by congressional leaders to force the DC voucher program through Congress. Such actions undermine the voice of the Senate and DC

residents who have called for public school reform instead of unproven solutions that weaken the already struggling public schools. The solution for improving education for all children is not in the creation of programs that encourage the abandonment of public schools. Programs such as the DC voucher proposal are highly detrimental to the public education system, do not expand parents’ education, option, and do not raise student achievement levels.

From the National PTA’s Press Room Website: aboutnationalpta.com

VOUCHERS TO BE INCLUDED IN OMNIBUS SPENDING BILL

Congressional leaders have included a controversial experimental private school voucher program for Washington DC’s schools in the massive omnibus FY04 spending bill. The move comes over the objections of Senate Democrats who threatened filibuster to prevent the voucher bill from being voted on and now forces them to approve the vouchers by passing the must-pass spending measure for critical government programs. Democrats concede they cannot sustain a filibuster on the giant spending package, so passage of the voucher plan seems assured.

In its final form, the voucher program will provide vouchers of up to \$7,000 to 1,700 low income students, with a priority given to students in performing schools. Private schools will have to administer the same tests to their voucher students as those used by the district’s public schools to measure student performance. According to Wash-

ington delegate Eleanor Holmes Norton (D-DC), the vouchers will be administered not by the city, but will be approved and disseminated by the U.S. Department of Education.

From the Website of the National Association of School Boards of Education – nasbe.org (1/7/04)

SCHOOL VOUCHERS

UNCONSTITUTIONAL, JUDGE RULES

A Denver judge declared Colorado’s fledgling school voucher program unconstitutional today, saying it illegally strips local school boards of control over education.

Denver District Judge Joseph Meyer issued an injunction barring implementation of the voucher law, the first in the nation since the U.S. Supreme Court upheld a voucher program in Cleveland last year.

“I see no way to interpret the voucher program statute in a way that does not run afoul of the principle of local control,” Meyer wrote. “The goals of the voucher program are laudable. However, even great ideas must be implemented within the framework of the Colorado Constitution.”

From the National PTA Press Room; Excerpt taken from the Denver Post.

cont’d. next page

“The important thing is not so much that every child should be taught, as that every child should be given the wish to learn.”

John Lubbock, 1887

FEWER SCHOOLS "IN NEED OF IMPROVEMENT" CREDITED TO NCLB

... the number of schools identified as "in need of improvement" as defined by the No Child Left Behind Act has declined. According to a count performed by the National Education Association based on state department of education data this week, there are now more than 5,600 schools nationwide that have failed to make adequate yearly progress (AYP) in at least two consecutive years. This figure is down from almost 9,000 schools that were listed by the U.S. Department of Education before the beginning of the 2002-3 school year. Still, while the overall number has dipped, it could be ready to go higher before the next school year. Based on NASBE calculations, there are currently more than 24,000 schools on state warning lists because they have made AYP for one year.

From the NASBE Website: nasbe.org

NAEP 4TH AND 8TH GRADE MATH SCORES RISE: READING SCORES ENCOURAGING

The 2003 NAEP mathematics scores for 4th and 8th graders were higher than all previous NAEP results measured by scale scores or proficiency levels from either grade, according to NAEP results released last week. Equally encouraging, gains were made across the board and among all demographic subgroups helping to narrow the achievement gap...

Incredibly, every state showed an increase in the 4th grade math scores from the 2000 results. And only three states did not improve over the 4th grade 2003 assessment (Alabama had a two point decline, Michigan a one point decline, and Indiana remained the same). Nearly every state experienced an increase in the percentage of students proficient at both the 4th and 8th grade levels since 2000.*

* Administrators should note how easy it has been for the politicians to raise student scores.

From the NABE Website: nasbe.org

"VERBAL ASSAULT" LAW TOSSED

A federal judge has ruled unconstitutional a state law that requires schools to suspend students who "verbally assault" teachers, volunteers and administrators.

U.S. District Court Judge David Lawson said the law violated the First Amendment in a ruling on a case of a student in Mount Pleasant who was suspended for 10 days for reading out loud his commentary about the school's policy on tardiness.

Alexander Smith, then a junior at Mount Pleasant High School, was suspended in 2000 after he read, in the school cafeteria, a three page typewritten commentary on the tardiness policy. The commentary also made lewd remarks about school officials, including the school's principal and assistant principal.

The school cited Michigan's law on verbal abuse in schools, which makes it mandatory to suspend students in the sixth grade or above for speech that is deemed abusive to teachers, volunteer and administrators.

In September, 2001, the American Civil Liberties Union sued in federal court in Detroit on behalf of Smith, gaining nationwide attention for the case.

In his ruling, Lawson upheld Smith's suspension, which later was reduced by the school board to four days after he wrote letters of apology, and underwent a psychological examination. But the judge declared the state law unconstitutional.

From The Detroit News, November 4, 2003

ESSAA EXEC BOARD MEETS IN NIAGARA FALLS: STRONG GROWTH CITED

ESSAA's Executive Board met in Niagara Falls, Canada, October 23 through 25, 2003. ESSAA President John Sullivan kicked off the series of two day workshops by noting that our organization has grown from a 1700 member group 8 years ago, to approximately 2600 members in 167 Districts State-wide today. In addition, President Sullivan reported on Strategic Planning, Scheduling, and Statewide Legal Workshops, gave an update on the Directory and Newsletter, and spoke about expanding our data base.

President Sullivan stated that ESSAA continues to represent line administrators only: building principals, assistant principals, guidance directors, and other administration-certified school officials. ESSAA does not represent district office administrators such as superintendents, assistant superintendents, and other "Confidential" school officials, and is not affiliated with any labor union.

PAC Fund efforts under Vice President Janet Mulvey's direction, and recruitment of new members under Vice President Ed Keeler's, are developing areas of interest. Improved communications and information alerts are also being explored with renewed attention to updating the ESSAA web site and expanding our quarterly Journal; Yearly regional issues of *The Journal*, such as this one, will be published.

At the Exec Bd meeting, Chuck Mitchell also updated members on Project Save – how to report violent incidents to the proper officials – and what protocol should be followed on both the local and state level. Vice Presidents Tom Vasiloff

and Ed Keeler showcased their new CD Recruitment Power Point presentation which outlines both the history of ESSAA's formation in 1996, and the benefits it provides for its members.

One of the other highlights of the meeting was Research and Development specialist Jan Yablow's report on "The Teach At Home Movement" – especially under the current No Child Left Behind legislation – and its impact on school administrators across the state and nation (see upcoming feature in the January Journal).

There were also updates from regional organizations: Vice President Jerry Spicer, representing CAPSA (Capital District), President John Sullivan, RASA (Westchester and Rockland), and Vice President Tom Vasiloff, NYSCR (Central New York).

As always, ESSAA representatives were most interested in legislative initiatives and legal services, which were discussed by ESSAA attorney Kevin Martin (look for his upcoming column in the Statewide Journal in January). Herb Dickson spoke promisingly about our progress in increasing member insurance benefits; Robert Unger, Esq., our lobbyist in Albany, gave an upbeat report, and David Wagner spoke on SED/ Regents. Bob Darcangelo and Chuck Smith reported on efforts as Secretary and Treasurer respectively.

And in other news from Niagara Falls, the Maid of the Mist stopped running for the season, but not until it safely deposited ESSAA members and their chosen companions on the Canadian shore!

WAPPINGERS *cont'd. from page 1*

It is anticipated that most of the money will be distributed across-the-board. A merit pay plan in the previous contract was also eliminated.

Additionally, the District will contribute 0.5% of salary into a tax deferred annuity for each administrator. Contributions towards health insurance were increased to 12.5% over the life of the contract, but an IRC § 125 plan was implemented so the contributions were in pre-tax dollars. Welfare fund contributions by the District were increased by \$300 a member over the contract.

WHAT ARE THEY READING?

What's on NYSSBA members' bookshelves

- ⇒ Adler, Mortimer J., *The Paideia Proposal: An Educational Manifesto*, MacMillan, 1982.
- ⇒ Beals, Melba, *Warriors Don't Cry*, Washington Square Press, 1988.
- ⇒ Bell, Terrel H. and Donna L. Elmquist, *How to Shape Up Our Nation's Schools: Three Crucial Steps for Renewing American Education*, Terrel Bell & Associates, 1991.
- ⇒ Black, Theodore M., *Straight Talk About American Education*, Harcourt Brace Jovanovich, 1982.
- ⇒ Bracey, Gerald W., *Setting the Record Straight: Responses to Misconceptions About Public Education in the United States*, Association for Supervision and Curriculum Development, 1997.
- ⇒ Careful Comparisons: *Public and Private Schools in America*, National School Boards Association and School Board Advocacy for Public Education, 1997.
- ⇒ Carver, John, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, Jossey-Bass, 1997.
- ⇒ Coles, Robert, *The Spiritual Lives of Children*, Houghton-Mifflin, 1990.
- ⇒ Comer, James P., *Waiting for a Miracle*, Dutton, 1997.
- ⇒ Copperman, Paul, *The Literacy Hoax: The Decline of Reading, Writing, and Learning in Public Schools and What We Can Do About It*, Morrow-Quill Paperback, 1980.
- ⇒ Danzberger, Jacqueline P., and Michael W. Kirst and Michael D. Usdan, *Governing Public Schools: New Times, New Requirements*, Institute for Educational Leadership, Inc, 1992.
- ⇒ Darling-Hammond, Linda, *The Right to Know: A Blueprint for Creating Schools That Work*, Jossey-Bass, 1997.
- ⇒ Edelman, Marian Wright, *The Measure of Our Success: A Letter to My Children and Yours*, Harper Collins, 1993.
- ⇒ Elam, Stanley, ed., *The State of the Nation's Public Schools: A Conference Report*, Phi Delta Kappa, 1993.
- ⇒ Facing the Challenge: *The Report of the Twentieth Century Fund Task Force on School Governance*, Twentieth Century Fund Press, 1992.
- ⇒ Financing Student Success: *Beyond Equity and Adequacy*, Report of the NASB Study Group on Funding Education in the 21st Century, National Association of State Boards of Education, 1997.
- ⇒ The Full Measure: *Report of the National Association of State Boards of Education Study Group on Statewide Assessment Systems*: National Association of State Boards of Education, 1997.
- ⇒ Garbarino, James, *Raising Children in a Socially Toxic Environment*, Jossey-Bass, 1995.
- ⇒ Goodlad, John I., *A Place Called School: Prospects for the Future*, McGraw-Hill, 1984.
- ⇒ Hebdon, Robert, *The Perils of Privatization: Lessons for New York State*, Cornell University, December 1994.
- ⇒ Hirsch, E.D. Jr., *Cultural Literacy: What Every American Needs to Know*, Houghton-Mifflin, 1987.
- ⇒ Hirsch, E.D. Jr., *The Schools We Need and Why We Don't Have Them*, Doubleday, 1996.
- ⇒ Hrabowski, Freeman, *Beating the Odds*, Oxford University Press, 1998.
- ⇒ Holding Effective Board Meetings, American Association of School Administrators and National School Board Association, 1984.
- ⇒ "K-8 Science and Mathematics Education," *The ERIC Review*, Vol 6, Issue 2, Fall 1999, US Dept of Education.
- ⇒ Kohn, Alfie, *The Schools Our Children Deserve*, Houghton-Mifflin, 1999.
- ⇒ Kozol, Jonathan, *Amazing Grace: The Lives of Children and the Conscience of a Nation*, Harper Perennial Library, 1996.
- ⇒ Kozol, Jonathan, *Death at an Early Age: The Destruction of The Hearts and Minds of Negro Children in The Boston Public Schools*, New American Library Trade, 1990.
- ⇒ Kozol, Jonathan, *The Night Is Dark and I Am Far from Home*, Simon & Schuster, 1991, 1995. Out of print. Amazon.com will query.
- ⇒ Kozol, Jonathan, *Savage Inequalities*, Crown, 1991.
- ⇒ "Lessons of a Century: Opening the Doors," *Education Week*, Jan 27, 1999.
- ⇒ Marshall, Ray and Marc Tucker, *Thinking for a Living: Education and the Wealth of Nations*, Basic Books, 1992.
- ⇒ New York's Commitment: *Teaching to Higher Standards*, New York State Board of Regents and New York State Education Department, July 1998.
- ⇒ Nyquist, Ewald B., "School Board Leadership and the Quality of Discontent," *NYSSBA Journal*, December 1969.
- ⇒ Oakes, Jeannie, *Keeping Track: How Schools Structure Inequality*, Yale Univ. Press, 1985.
- ⇒ Orfield, Gary and Carol Ashkinaze, *The Closing Door*, Univ. of Chicago Press, 1991.
- ⇒ Orfield, Gary, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education*, New Press, 1997.
- ⇒ Peoples, David, *Presentations Plus: Proven Techniques*, John Wiley & Sons, 1992.
- ⇒ Possibilities Catalog: *The Quest for Excellence and Equity in Education*, New York State Education Department and NYNEX Corp, 1994.
- ⇒ Prisoners of Time, National Education Commission on Time and Learning, April 1994.
- ⇒ Putting Children First: *The Report of the New York State Special Commission on Educational Structure, Policies and Practices*, December 1993.
- ⇒ Raber, Suzanne and Virginia Roach, Katherine Fraser, ed., *Designing and Implementing Standards-Based Accountability Systems*, Education Commission of the States, 1998.
- ⇒ Resnick, Michael A., *Why Vouchers Won't Work: A Tool Kit for School Board Members*, National School Boards Association, 1988.
- ⇒ Saks, Judith B., *The Basics of Charter Schools: A School Board Primer*, National School Boards Association/Council of Urban Boards of Education, 1997.
- ⇒ Schlechty, Phillip C., *Schools for the Twenty-First Century: Leadership Imperatives for Educational Reform*, Jossey-Bass, 1991.
- ⇒ The School Board Member Handbook, NYSSBA, 1995.
- ⇒ School Boards: *Strengthening Grass Roots Leadership*, Institute for Educational Leadership, November 1986.
- ⇒ School Employment Issues: *Collective Bargaining*, NYSSBA, 1999.
- ⇒ School Law, 28th Edition, NYSSBA and New York State Bar Association, 2000.
- ⇒ School Technology and Readiness Report: *From Pillars to Progress*, CEO Forum on Education and Technology, 1997.
- ⇒ Shannon, Thomas A., *The National School Boards Association: Reflections on the Development of an American Idea*, National School Boards Association, 1997.
- ⇒ Sheffield and Frankel, eds., *When I Was Young, I Loved School*, Children's Express Foundation, Inc., 1988.
- ⇒ Sizer, Theodore, *Horace's Compromise*, Houghton-Mifflin, 1984.
- ⇒ Sizer, Theodore, *Horace's Hope*, Houghton-Mifflin, 1996.
- ⇒ Sizer, Theodore, *Horace's School: Redesigning the American High School*, Houghton-Mifflin, 1992.
- ⇒ Special Report: *The \$11 Billion Mystery*, Public Policy Institute, February 1992.
- ⇒ Tucker, Marc S. and Judy B. Coddling, *Standards for Our Schools: How to Set Them, Measure Them, and Reach Them*, Jossey-Bass, 1998.
- ⇒ What Makes a Great School: *Visions of the Past, Present, and Future*, Edison Project, 1993
- ⇒ Vision 21: *Recommendations for Change in K-12 Public Education in New York State*, New York State Legislative Commission on Rural Resources, Senator Charles D. Cook, Chairman, 1998.
- ⇒ Wurzel, James ed., *Toward Multiculturalism*, Intercultural Press, 1988.

Compiled as a developmental tool for members by the NYSSBA Board Development Department. What books, periodicals, articles, videotapes, CD-ROMs, etc. have been most helpful to you? Please send your recommendations for future editions.

New York State School Boards Association
 24 Century Hill Drive - Suite 200 • Latham, New York 12110 - 2125
 Voice - (518) 783-0200 • Fax - (518) 783-0211 • Email - info@nyssba.org
 © 2003 New York State School Boards Association. All rights reserved.

NOT ALL DISTRICTS RESPONDING TO ADMINISTRATOR SHORTAGE

By Robert Saperstein, *ESSAA Attorney*

While the majority of school districts are reacting to the administrator shortage with more equitable compensation, this response is not universal. A number of ESSAA units are in prolonged negotiations, including mediation and fact-finding. Even excellent settlements, such as Wappingers, resulted only after impasse was declared and a mediator brought in to resolve the contract.

One thing units can do is educate their own boards of education. In non-contract years, the Association should try and make a presentation to

“...ESSAA exists to insure that administrators receive the finest legal and negotiating services possible.”

the board highlighting what the administrators have accomplished. Too often central office takes credit for positive accomplishments, while blaming administrators for problems. As educators, educating the board should be our first priority. If a meeting isn't feasible, send the board members a written report outlining the unit's accomplishments.

Knowing what the comparative data show is also of great importance. Are the positions in your unit disproportionate to the county, to comparable districts [however that is defined], or to the rankings of your teachers or central office administrators? By knowing as much of that information as possible, your unit can attempt to select the most favorable rationale in support of its proposals.

However, sometimes neither logic nor fairness prevail. The job of your negotiating team is to

bring the Association membership [agency fee payers cannot vote or otherwise participate in contract negotiations] the best package they can negotiate. Once the negotiating team comes to the conclusion that further negotiations will not result in a better settlement, and the settlement is one under the prevailing circumstances that they could support, they should bring the settlement to the membership. As the process is democratic, each member must then decide whether, given the economic and political climate in their district, he or she wishes to vote for the settlement.

On occasion, circumstances dictate that a unit must accept a contract that is less than equitable. Never let the board or superintendent forget it. In the experience of our attorneys, in most cases [a few districts appear permanently anti-administrator] the next settlement makes up for the previous poor one. It is important to continually agitate over the life of that settlement about how unhappy the administrators are over their treatment.

The final point to remember is that ESSAA exists to insure that administrators receive the finest legal and negotiating services possible. To that end, ESSAA has retained three of the most experienced labor attorney/negotiators in the state. Always involve your ESSAA attorney in negotiations, even if your unit negotiates directly with your district. The attorneys have both broad experience in developing proposals and the rationale to support them. More importantly, the attorneys can assist in devising a negotiating strategy based upon the particular circumstances of your unit.

It is repetition, like cabbage served at every meal, that wears out the schoolmaster's life.

—*Juvenal Satires*

“In 2001 I stood before you and called our school finance system a dinosaur. I said we should scrap it altogether and create a new school aid formula that is fair, simple, and sustainable. This year we are presented with an historic opportunity to answer that call, and indeed, we must do so by July 30th. To assist in this effort, we have assembled a group of our most capable, talented, and creative minds from across the State. This Commission On Education Reform will develop sweeping changes so that all our children have the opportunity to receive the first class education they need to meet the challenges of the 21st century...”

First, we must finally throw out our archaic system of education finance. This year, let's replace it with a new formula that is fair, sustainable, and understandable.

Second, our new education finance system must appropriately focus resources, as they become available, on New York City and our other high need school districts.

Third, our efforts must not pit one family against another in a divisive Robin Hood approach. We cannot be taking resources from one school district to meet the needs of another. Fourth, recognizing the fiscal challenges the State faces this year, working together with each of you, and with educators, parents, and community leaders, we need to build consensus on a multi-year commitment of resources that will ensure that our reform effort is sustainable and successful in the years to come. And finally, New York's new funding system must be linked to reforms in the education system as a whole.

Reform is the key to our effort to provide every child in New York with the best possible education. We cannot simply provide additional resources and maintain business as usual. Rather, we must enact broad based reforms that ensure more of the money we spend on education makes it to the classroom, and that someone is accountable for how it's spent and how it helps our children.”

*Gov. Pataki.
State of the State Message.
Jan. 8, 2004*

“The tax which will be paid for the purpose of education is not more than the thousandth part of what will be paid to kings, priests, and nobles who will rise up among us if we leave the people in ignorance.”

—*Thomas Jefferson: Letter to George Wythe, 1786*

“I hate by-roads in education. Education is as well known, and has long been well known, as ever it can be.”

—*Samuel Johnson: Boswell's Life, 1775*

THE EXECUTIVE DIRECTOR OF NASBE CONGRATULATES SECRETARY OF EDUCATION PAIGE

We appreciate Secretary Paige's leadership and the U.S. Department of Education's efforts to provide states with assistance and guidance in implementing the No Child Left Behind Act.

Today's regulation strikes a fair balance that allows for the inclusion of the most cognitively disabled students in state assessments through the use of alternative tests while affording states and districts some flexibility in measuring these students'

performance in the adequate yearly progress calculations.

NASBE has been in the forefront of advocating the inclusion of students with disabilities in all aspects of public education, for setting high expectations for students, and for promoting rigorous accountability measures in every facet of the education system...

***From the NASBE Website.*
NASBE represents America's state and territorial boards of education.**

AGENDA *cont'd. from page 3*

Tom Vasiloff also reports that ESSAA is looking forward to planning its first State Convention for the spring or summer of 2004. The convention will offer workshops to update members on ESSAA's specialties: legal defense and political action, but it will also provide career networking opportunities for our 2500 members. Lobbyists, politicians, and other important players in the education “matrix” can also be expected to attend.

ADMINISTRATORS FACE RESPONSIBILITIES OF INCREASED “HOME SCHOOLING”

By Jan W. Yablow
Director of Pupil Personnel Services
Ardsley, New York
Director, Staff Development, ESSAA

ESSAA members increasingly find their schools in a competition for students with the “home schooling” movement. At a minimum, 850,000 students nationwide are educated at home, compared to 360,000 ten years ago, according to the New York Times. Most of these children are white, from two parent, but single-income homes, and from homes with three or more children.

The Times survey also reports that 49% of parents say they chose “home schooling” to obtain a better education for their children, while 38% cited religious reasons. 26% also mentioned a “troublesome learning environment” in their children’s public school. (Yes. This adds up to more than 100%; respondents were permitted multiple responses.)

A November 15, 2003 New York Times article blasted New Jersey and eight other states, for allowing parents to remove their youngsters from school without any prior notification. Currently, 14 states require only that parents report that their children are being “home schooled”; parents are not required to provide attendance information or academic documentation.

Despite – or perhaps because of – the lack of legal constraints on “home school-

ing”, the movement continues to grow. Critics note that “home schooling” undermines compulsory education mandates, and makes a mockery both of the standards movement, and Federal child-find requirements for children suspected of having disabilities.

According to the Times - there are over 67 “cyberschools” operating in 17 states “educating” over 15,000 students. Parents are now using the Internet to connect with on-line charter schools (sometimes with their state’s funding and blessings) to educate their children at home, where the students can communicate with other students or with privately hired “teachers” while still in their “jammies.”

In New York State, however, administrators have certain NYSED mandated responsibilities for “home schooled” students under Section 100.10 of the Commissioner’s Regulations:

- Monitor the submission of specific timelines. Parents must notify their districts of their decision to “home school” by either July 1, or within 14 days, if the home schooling decision is made mid-year.
- Forward an Individual Home Instruction Plan (IHIP) to the Superintendent, delineating syllabi, curricula materials, and plans to instruct the “home schooled” student in four or more major subjects.

- Maintain attendance records equivalent to 180 days of instruction, and obtain quarterly reports filed which detail what was taught and for how many minutes.
- Obtain annual assessments by June 30, and these must include the children’s test results, or written evaluations by certified teachers.

Administrators also have the responsibility of reporting any suspicions of educational neglect or child abuse to the appropriate authorities. As a Teachers College, Columbia, spokesman said, “Having children show up at a public place – like school – is one way to see that this type of mistreatment does not happen.”

“Home schooled” youngsters may participate in clubs or intramural sports at the local Board of Education’s discretion. On the other hand, neither parents nor tutors are required to produce credentials in order to provide services. No proof of immunization is required, and, though schools are not required to offer remediation, Special Education requirements must be met as per the child’s IEP.

As if all of this wasn’t enough for a public school administrator to deal with, some expect that the bombardment of testing from the NYSED – supposedly instituted to maintain and raise the quality of in-school instruction – may actually increase the abandonment of the public schools by children whose parents want to “home school” them.

CENTRAL NEW YORK ADMINISTRATORS ATTEND ESSAA SPONSORED LEGISLATIVE WORKSHOP

By Tom Vasiloff, Vice President, ESSAA

ESSAA sponsored a legislative workshop for its regional group, the Central New York Administrators and Supervisors Association, at the Syracuse Wyndham Hotel, Tuesday, September 30, 2003. The guest speakers were Anthony Laurino, Executive Vice President, ESSAA, and ESSAA attorneys Paul Derkasch and Kevin Martin.

Tony Laurino discussed a number of bills under consideration by the New York State Assembly, some of which cover such issues as retired administrators being re-employed as educators, the question of credit being given for government teaching service (i.e.. VISTA), and whether 10 month employees should receive the same yearly credit toward retirement as 12 month administrators.

Attorneys Derkasch and Martin also addressed legal and negotiations topics such as current contract settlements (average state-wide increase 4%) and developments in gaining compensation and “Comp Time” for administrators who work beyond the regular school day.

Janet Mulvey, ESSAA’s Vice President and PAC coordinator, reported in her November 15, 2003 update for ESSAA Unit Presidents, that the Central New York workshop was one of five held around the state. Last year, Janet noted, the legislature was bogged down with the budget, and very little was accomplished in actual legislation. In response, ESSAA’s PAC group has reenergized its campaign this year to support pro-administration legislation, including the following:

- A3081, which permits members of state and city teachers; retirement systems to receive credit for prior teaching service with the Association of Retarded Citizens.
- A6846, which provides that a member of the retirement system may retire without reduction in benefits upon completion of 20 years of work.
- S2608, which grants retirement credit for certain private school teaching.
- S3250, which permits NY State and City retirement system members to claim credit

for up to 10 years of federal teaching service, (VISTA, HEAD START, PEACE CORPS, etc..).

- S3475, which allows credit for out of state teaching service for members of NY State and City teachers’ retirement systems.
- S5023, which provides for the calculation of fiscal averages for members of NYSTRS making the 5 or 3 year calculation an option for all members, and which adds provisions relating to use of termination retirement bonuses, unused sick leave and accumulated vacation for calculation of final average salary.

PLEASE NOTE:

ESSAA vigorously opposes S290, which relates to the practice and licensure of school administrators and supervisors. The objective of the bill is to require licensing followed by 3 or 5 contracts based upon the licensing – what we view as a back door to the abolition of tenure for administrators and supervisors.

BLONDS MAY HAVE MORE FUN, BUT NOT MORE RIGHTS.

This case takes hostile work environment to the next level. In *Shramban v. Aetna*, the plaintiff's supervisor told her that if she didn't want to work overtime, than she should quit! The solution to this personality conflict was to transfer the plaintiff to another work site. This caused the Plaintiff to suddenly remember that her supervisor also made discriminatory remarks about her ethnicity, personal relationships, and, oh yes, about her being blond (a plethora of blond jokes?). On a motion to dismiss, the Judge found that the comments regarding the worker's personal relationships and national origin weren't sufficient to create a hostile work environment; and he further expressly noted that being blond was not a protected category under Title VII!

RED LIGHT, GREEN LIGHT – SHOULD BUS DRIVERS BE ABLE TO TELL THE DIFFERENCE?

Consider the typical traffic light... red on top/yellow/green on the bottom. Everyone knows that and you do not have to "see" the colors to respond appropriately. Using that argument a bus driver sued under the Americans with Disability Act (ADA) when he was let go after his company found out he was color blind. That the Second Circuit Court of Appeals ultimately threw the case (*Shannon v. New York City Transit Authority*) out is no surprise (think of a flashing light intersection -- one side flashes yellow, for caution, the other side flashes red, or was it yellow?-- and requires a driver to make a full stop) but the cranial gymnastics the court went through to reach that result is. Rather than simply using the flashing light example and saying that of course being able to tell red from yellow and green is a bona fide, and essential, requirement to hold a driver's position, they danced through vehicle and traffic law regulations regarding licensing of drivers, and Federal and State DOT regulations relating to vision requirements to reach the same conclusion. (Are judges now being paid by the word; or are they too timid to rely upon common sense?)

*CAPABLE, COMPETENT, BUT CONTRARY IS THE TICKET TO....UNEMPLOYMENT!

Matter of *Mataraza v. Newburgh Enlarged City Sch. Dist. (S.D.N.Y.)*, reminds us that free speech carries costs. The plaintiff was one of several program specialists who were excessed. All of them applied for assistant principal vacancies; all were appointed except Mr. Mataraza. He was found to have been at least as qualified as his peers who got the assistant principal positions, he had sufficient seniority, and his job evaluations were all good. Of course he sued... but lost! It turns out that while Mr. Mataraza performed his duties as program specialist properly, he was quite vocal, and public, in his criticism about the District's curriculum alignment policy. That was the basis for denying him the assistant principal position. His First Amendment retaliation claim failed because, in light of his publicly expressed opposition to the District's policy decision, it was felt that he, or his expressed opposition, would disrupt the District's ability to deliver services. But would it? Mr. Mataraza argued that unless the District could show actual disruption rather than a likely interference, he should get the appointment. The Court disagreed. Plaintiff's public criticisms were "precisely the sort of remarks that could cause a reasonable employer to conclude that the maker was not wholeheartedly with the program, and that he might well become either the focal point of dissent and/or a sympathizer with dissenters."

A PRINCIPAL IN EVERY SCHOOL

The Bedford Central School District started the 2002 school year short one principal. To address the situation the Board designated the Superintendent as the principal for the building, and also appointed a teacher to serve as "teacher in charge".

Even though the "teacher in charge" immediately enrolled in courses to get administrative certification, a resident brought suit, contending that there should be a fully certified administrator in charge of the building at all times. By the time the Commissioner decided this case (SED. Dec # 14,959) the teacher-in-charge was certified, and had been

appointed as principal. The case was dismissed on grounds of mootness, but none-the-less made it a point to opine that: (1) A board of education must assign a full-time principal holding the appropriate certification to each school, and therefore, a superintendent could not serve as both full time superintendent and full time principal the same time; and, (2) A principal must possess the requisite certification at the time of appointment; subsequent completion of academic requirements and application for certification do not comply with the law.

COLLECTIVE BARGAINING RIGHTS VS. AMERICANS WITH DISABILITIES ACT

In *Stamos v. Glen Cove Sch. Dist. (No. 02-9300 (2nd Cir.))* a teacher's request to be transferred to another building was denied while the requests of other teachers who were younger than she were granted. The teacher sued and claimed requests for transfers were "routinely" granted when made, so the denial of her transfer violated the ADA (she claimed she was disabled) as well as the Age Discrimination in Employment Act (ADEA). The Court dismissed the ADEA claim and pointed out that the Plaintiff failed to provide any proof that transfers were "routinely" granted to rebut the District's statement that albeit frequent, they were not a matter of routine. Indeed, the District demonstrated that the teachers who were transferred had more seniority than the Plaintiff did. The Court would not force the District to violate its seniority system. As to the ADA claim, that fared no better. The Court noted that "the ADA mandates reasonable accommodation of people with disabilities... it does not authorize a preference for disabled people generally."

DOT YOUR I'S AND CROSS YOUR T'S

The procedural requirements before suspending a student for 5 days or less by now should be clearly understood by all, but apparently that is not universally true. A case in point arose in the North Colonie C.S.D. (Dec.# 14934). While chaperoning an overnight girls athletic contest, teachers making a bed check sus-

pected some girls had been smoking marijuana; and, according to the coaches they admitted to it. Upon their return to school the girls were called out into the corridor by the hall principal who told them of the coaches report and the suspension penalty that he would impose. That same day the parents of one of the girls went to school and discussed the matter with the hall principal and head coach and were told of the 5-day suspension which was to begin the following day.

Written notice of the suspension was sent via registered mail, but it went to the wrong address. By the time the notice got to the proper house the suspension had already been served. The parents of the girl asked the Commissioner to annul the suspension and expunge it from the student's record.

The Commissioner agreed. The failure to properly give written notice to the parents within 24 hours was the obvious error committed by the district. The District also failed to provide the student with a proper opportunity to question complaining witnesses (the coaches) in the presence of the principal. Furthermore, the recent changes in the law do not empower a hall principal to make a suspension decision; and, finally, since the decision to suspend was within the authority of the building principal the parents meeting with the coaches should have been held in his presence.

PLEDGE OF ALLEGIANCE

The Elk Grove Unified School District v *Newdow* case regarding the phrase "under God" in the Pledge of Allegiance is one that excites the political passions. How the U.S. Supreme Court will deal with this issue, and how in this election cycle our politicians will react to the Court's decision, is anyone's guess.

The facts of the case are really quite simple but some of the underlying nuances have not been given sufficient airing. We remedy that by this writing.

1. The father, Plaintiff, who brought this suit on behalf of his non-custodial, out-of-wedlock daughter is a self-professed atheist.

2. The child's mother said her reciting the pledge troubled neither her nor her daughter.

3. Although the school district's policy requires teachers to lead their class in the Pledge at the beginning of each day, the father was told that his daughter was not required to join her classmates in reciting it.

4. The father argued, and both the district court and 9th Circuit Court of Appeals agreed, that his daughter was injured because she had to watch and listen as her teacher led her classmates in the Pledge, which he described as a ritual proclaiming there is a God.

The author of this piece sees three options open to the Supreme Court in resolving this case:

Option 1. Dismiss the case on procedural grounds since at

the time he started the suit the plaintiff was a non-custodial parent. While the Pledge bothered him, it was apparently of no concern to the custodial parent or to the student herself.

Option 2. Decide that the reference "under God" is merely an acknowledgement of America's historical religious heritage and therefore not an unconstitutional establishment of religion.

Option 3. Deny reality and hold that the mere phrase "under God" constitutes the establishment of a religion.

[Note: The above is how your writer sees the case, your contrary views and opinions are invited.]

AND THIS JUST IN:

DEPARTMENT OF EDUCATION SECRETARY PAIGE BLASTS EDUCATORS!

"I find it staggering that the very critics and organizations that fought so hard for civil rights could leave our African American, Hispanic American, and special needs children behind. Some of the very people and organizations that applauded Brown and worked to implement it are now opposing No Child Left Behind: unions, teachers, civil libertarians, liberal politicians, and education advocates. Why? Because it exposes their special interests. Their opposition is about power, politics, and pride, not the best interests of our children."

- From a speech to the American Enterprise Institute marking the 50th Anniversary of Brown v. the Board of Education. St. Louis, Jan. 7, 2004

"I think we have more machinery of government than is necessary, too many parasites living on the labor of others."

Thomas Jefferson: Letter to Charles Yancey, 1824

ESSAA CABINET OUTLINES PLAN FOR IMPROVED COMMUNICATIONS

Responding to ESSAA President's John Sullivan's call to improve communications, the President's Cabinet drew up a comprehensive plan at its January 22 meeting in Newburgh

Effective immediately, a complete set of minutes of Executive Board meetings will be sent to each unit president; highlights of meetings will be e-mailed soon to each member. More detailed communications will be placed on the website by Joanna Keeler after being reviewed by Director of Communications, Bob Liftig, and ESSAA President John Sullivan. Material not requiring revision should be sent directly to John Sullivan.

The President's Cabinet has

also given Regional Presidents the responsibility of communicating EB efforts to their individual units; designated unit presidents will communicate with non-regionalized units.

Mini-Regional meetings, a Statewide convention, and the possibility of a Summer Leadership Workshop were proposed and are under consideration. Regional and Statewide ESSAA publications will be expanded to include districts which might be interested in joining us. Copies of Regional issues will be sent to unit presidents around the state, and copies of *The Journal* will be sent to keep members of the State Education Department and the Board of Regents.

SPECIAL EDUCATION

HEAD RESIGNS

Robert Pasternak, U.S. Assistant Secretary for Special Education, announced his resignation this week, effective, January 2, 2004. In a short statement, Secretary Paige thanked Pasternak for his public service and commended him as an effective advocate on behalf of the 6.5 million youth with disabilities. Pasternak will enter the private sector, although his future plans are unavailable.

Federal Update, NASBE

NO VOUCHER SYSTEM LEFT BEHIND?

We must wonder how voucher proponents in the District or in the Congress could accept a bill that has been stripped of requirements that private school teachers have a college degree, that the standard tests used for evaluation of voucher students be the same as those used for DCPS students, and that evaluation of these students be performed by an independent entity, as such alterations and deletions show the fix is screwed in tight. The bill was never a pilot to be used to test vouchers, as claimed. The changes show that the bill's sole purpose always has been to impose vouchers permanently, whether they succeed or fail.

Rep. Eleanor Holmes Norton (D-DC)

CHARTER SCHOOLS DUMPED

A January 13, 2004 article by the Associated Press reported that none of the three charters for the original three Charter Schools in New York has been recommended for full renewal. The SUNY institute responsible for renewing charters – the New York Charter Schools Association - has declared that the John A. Reisenbach Charter School in NYC "is not an academic success, that it is not an effective, viable organization, and that its fiscal soundness is marginal." One of the other charter schools was told to close its seventh and eighth grades, and the other's charter was renewed for two years instead of the full five. These institute recommendations must soon acted upon by SUNY trustees.

Governor George Pataki called the Charter Schools Act the "single greatest improvement in education in New York State history" when he approved it in 1998 (nice call, George). According to their own website (nycharters.org) there are currently 51 public charter schools in New York "educating" [editor's quotes] over 16,000 students. Of those, the State University of New York has authorized 30, with another four schools set to open in 2004.

The Charter Schools site advertises that they are "free to deploy their resources to best address the needs of the students they teach, to hire a staff that is dedicated to the mission of academic excellence, and to design (and amend) their curriculum and pedagogical approach to improve student teaching and learning." [and that's just some of it]

As of October, 2003, the Charter Schools Institute of the State University of New

York has received ten applications to open new schools at proposed locations. These are:

- Capital Academy – Troy
- School for the Arts – Buffalo
- Dr. William Knox School for Experiential Learning – Rochester
- Franklin Academy – Rochester
- Girls Prep – Manhattan

ESSAA WINS DECISION AGAINST UTICA BOARD

In a decision involving the Utica Administrators' Association, a PERB Administrative Law Judge recently ruled that a school district's attempt to extend its administrators' work day violated the Taylor Law. The decision by Judge David P. Quinn invalidated a directive to administrators to attend monthly meetings of the Utica City School District Board of Education.

The essential facts are as follows: On July 3, 2001 the Utica City School District Board of Education passed a resolution to conduct regular meetings on the fourth Tuesday of every month, and requested that its Superintendent instruct department heads to attend those meetings. The Superintendent, by memorandum, dated July 6, 2001 notified directors and department heads that they were to adjust their schedule to be at each of the Regular Meetings. The imposition on administrators' time was significant as these meetings often extended late into the night. The bulk of these meetings were irrelevant to the work of administrators yet the Superintendent required administrators to stay throughout the entire meeting. The Utica Administrators Association filed a charge complaining that the terms and conditions of employment had been unilaterally modified by the District without bargaining.

The District responded with fairly predictable arguments. First, the District claimed that administrators' job descriptions required them to "perform such other and further duties as the superintendent and deputy superintendent deem appropriate." It is well established that, while the assignment of duties that are inherent to a job is not subject to negotiation, the length of a work day is. Thus, the District was not free to extend the work day because of the job descriptions. Because the July 6th directive required administrators to attend meetings that they did not have to attend before, it constituted a unilateral increase in the directors' hours of work.

The District also argued that because the collective bargaining agreement does not define the administrators' hours of work it was free to assign work as it saw fit. Wrong. The judge rejected the argument indicating that in the absence of a specific contractual provision, the recognized, normal work day (past practice) governed. The evidence showed that the administrators were not required to appear at Board meetings in the past, and that attending these meetings impermissibly extended the work day.

The District also argued that administrators frequently attended Board meetings anyway. The

judge found that voluntary appearance at board meetings, as a part of an administrators' discretionary performance of his or her professional duties, does not obviate the school district from bargaining over a mandatory extension of the work day.

The judge ordered as the remedy that the District rescind the memorandum requiring attendance at board meetings, and employees for attending meetings of the Board at an hourly rate (an average of \$48 per hour), plus interest at the maximum legal rate (9%).

In sum, if you only know one thing about the Taylor Law it should be this: The terms and conditions of employment are mandatorily negotiable, and cannot be changed unilaterally by the school district or the union. Copies of the decision are available from Kevin G. Martin, Esq.

Kevin Martin, Bob Saperstein, and Paul Derkash are the ESSAA attorneys who provide a full array of legal services, including conducting arbitrations, negotiations, and 3020-A defense.

SUBCONTRACTING

Districts faced with budget concerns are increasingly turning to outsourcing in an attempt to save money. When a District assigns bargaining-unit work to a third-party it can be "subcontracting" that violates the Taylor Law.

The leading case involving the question of whether a public sector employer has subcontracted work is Niagara Frontier Transportation Authority and Niagara Frontier Transportation Authority Public Safety Officers Benevolent Association, 18 PERB ¶3083 (1985). In that case, PERB held that the decision to subcontract work is a mandatory subject of bargaining because it states at the core of a union's strength—its membership. PERB fashioned a test to determine whether a transfer of unit work is a mandatory subject of bargaining: 1) whether the work was performed exclusively by bargaining unit employees, 2) whether the reassigned tasks are substantially the same as those previously performed by unit employees, and 3) whether the qualifications for performing the work have changed. If no significant change in qualifications have occurred, and the other two factors are met there will be a duty to bargain over the decision to subcontract the work. In cases

where unit work involves multiple tasks, multiple function jobs or multiple locations, PERB has created a "discernable boundary" test. As long as the "core components" of the work at issue are exclusively performed by unit employees, that work may not be reassigned outside the bargaining unit without bargaining.

PERB has recently rejected

These "savings" are purely theoretical, and outsourcing is cyclical in nature.

several challenges to sub-contracting. For example, in one recent decision, when a district blended tasks among employees, and left an administrative position vacant for a three-month period, the union was unable to claim that the duties were exclusive.

When the city of Niagara Falls decided to turn the entire maintenance of a football stadium over to the school district, city workers, who that had formerly performed that work were unable to make a sub contracting argument. PERB held that the City of Niagara Falls had the right to get out of the business of football stadium maintenance entirely.

In one district we represent, the district abolished the position

of Special Education Director. The superintendent absorbed a small portion of the duties, and building principals were assigned the job of overseeing special education committees, preparing reports and running and acting as the chairman of IEP committees. The remaining duties were assigned to a part-time BOCES employee who worked at the school two days per week. Because a majority of the work was absorbed by the building principals, the district was within its rights to abolish the position. However, ESSAA demanded "effects bargaining" over the decision to ask the building principals to perform additional duties. During the effects bargaining sessions, the ESSAA administrators requested additional pay for additional work. The district indicated that many of the duties were going to be reassigned from the principals to the BOCES employee, thereby undercutting the administrators' request for additional pay for additional work. In other words, the majority of duties formerly performed by a unit member were now going to be performed by the BOCES employee. ESSAA has filed a notice of claim and plans to file a PERB charge on the ground that the district's actions violated the Taylor Law prohibition against sub-contracting.

These "savings" are purely theoretical, and outsourcing is

cyclical in nature. Once the school districts realize that the in-house administrators can perform the job more efficiently than a third-party contractor, the work actually returns to a bargaining unit.

HOLIDAY DISPLAYS & DIXIE

Some questions have come in regarding holiday displays in public schools. In general, displays about religious holidays must be made in a teaching environment. In order to avoid trouble, make sure that the holiday activity relates adequately to the written curriculum and that all religions are treated evenhandedly. Do not limit religious holidays to December or other primarily Christian dates. Holidays such as Christmas and Easter not only have religious symbols, but are better known than other holidays. If you emphasize only these holidays, you run the risk under the Establishment Clause of overlooking other religions and violating "the even handedness" requirement.

The Supreme Court will have an opportunity to provide additional guidance when it reviews a Ninth U.S. Circuit Court of Appeals case from California called *Newdow v. U.S. Congress*. This summer, the Ninth Circuit ruled that a California school district's practice of teacher-lead recitation of the pledge was

cont'd. page 12

NEXT EXECUTIVE BOARD MEETING: SARATOGA, FEBRUARY 6-7



RASA, the Westchester/Putnam regional affiliate of ESSAA recently elected new officers. They are (L. to R.): Carmine Machia (Secretary), Corwith Hansen (Executive Vice President), Theresa Sullivan (Treasurer), Bill Evans (President) and H. Evan Powderly (Vice President).

NEXT MEETING OF THE PRESIDENT'S CABINET: NEWBURGH, JUNE 29 2004

Holiday & Dixie *cont'd. from page 11*
unconstitutional on grounds that the statement "under god" was an endorsement of Christian religion in violation of the Establishment Clause. The Supreme Court will determine whether the school policy that requires teachers to lead students in reciting the pledge constitutes an impermissible entanglement between church and state.

Two other cases involving religion and free speech were not granted Supreme Court review, including a decision by the Ninth Circuit in which school officials censored certain parts of the school salutatorian speech at a graduation ceremony that contained proselytizing for religion. The Court turned down a case from the Eleventh U.S. Circuit Court of Appeals from Florida, in which a school district's policy that banned the display of Confederate symbols on school grounds did not violate students' free speech rights. The lower court had concluded that the symbol was likely to create a substantial disruption to the school's operation, which formed a rational basis for the decision to ban the symbol on school property.

Charter Schools *cont'd. from page 10*

- Grand Concourse Academy for Boys
– Bronx
- KIPP Tech Valley
– Albany
- Manhattan
– Manhattan
- Oracle
– Buffalo
- Young Women's Leadership
– Buffalo

James D. Merriman IV, Executive Director of the Institute notes that "The number and variety of charter applications the Institute and other authorizers have received are notable. Parents, teachers and community leaders continue to hunger for school choice, especially if it means schools that are accountable for results. Public charter schools give them that choice."

The ghost of P.T. Barnum must have moved up to Albany where, we hope, he is enjoying a good laugh putting words like these into Director Merriman IV's mouth. The Journal hopes to tell you more about the "progress" of New York's charter schools in our April issue.

We view charter schools as a national and state attempt to undermine public education. We urge the Commissioner and the legislature to hold charter schools to the same high standards and requirements as the public schools.

— RAL

*Would you like more information about
ESSAA? Please contact Ed Keeler.
Telephone 315-736-0629 or
e-mail: e.keeler@verizon.net*

Empire State Supervisors
And Administrators Association
Box 187
Eastchester, NY 10709

PSRRT STD
US POSTAGE
PAID
SCHENECTADY, NY
PERMIT #11