

# SPECIAL CONFERENCE ISSUE!

The Journal  
Statewide Issue

EMPIRE STATE SUPERVISORS AND ADMINISTRATORS ASSOCIATION

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## OCT. 5 – ESSAA AND SYRACUSE U. COSPONSOR FIRST STATE CONFERENCE: “WHAT EVERY PUBLIC SCHOOL LEADER NEEDS TO KNOW”

After almost a year of preparation, ESSAA and Syracuse University’s Study Council have announced co-sponsorship of a state conference to be held Oct. 5, 2004.

The purpose of the October 5th Conference is to afford line public school administrators the opportunity to gather up to date information, practices, and procedures in issues directly related to their day to day responsibilities.

ESSAA committee members are Ed Keeler (Utica CSD, ret), Lynn Reney (OCM BOCES), Chuck Mitchell (Auburn CSD), Gary Robinson (Auburn CSD), Pam Quigley (East Syracuse-Minoa CSD), Karen Donohue (Camden CSD), and Tom Vasiloff (East Syracuse-Minoa CSD). Syracuse University’s Scott Shablak, Director of the Office of Professional Development, and Sandy Trento, Director of the Study Council have contributed a great deal to the efforts of the committee, which was chaired by ESSAA Vice President Tom Vasiloff, and ESSAA President John Sullivan.



Syracuse University and ESSAA will coordinate mailings. Syracuse University reaches over 160 school districts in the Central New York region, and ESSAA covers 176 school districts throughout the State. All public school administrators are welcomed to attend, including administrative interns.

Keynote addresses will be delivered by Jeffrey M. Stonecash, Professor and Chair, Political Science, of the Maxwell School of Citizenship and Public Affairs, Syracuse University, and by Kenneth Strike, Professor, Cultural Foundations of Education in Syracuse University’s School of Education. The focus of Prof. Stonecash’s address will be “Leadership and the NYS Public Education System,” and of Prof. Strike’s, “Ethics and School Leaders.”

Three concurrent 45 minute sessions will be offered throughout the day by four of ESSAA’s heaviest legal and political hitters. Attorneys Bob Sapperstein and Kevin Martin will give an overview of the Taylor Law, and an analysis of how the law can be used for the benefit of school administrators. Paul Derkash Esq, our attorney from Long Island, will speak on the increasing number of legal liabilities that confront both administrators and supervisors; and ESSAA attorney and lobbyist Bob Ungar will update participants about our most recent concerns in Albany and what he and we can do about them.

The conference was purposefully structured so that all participants will have an opportunity to involve themselves in every breakout session. Attendance is open to any interested administrator or supervisor in New York State. The cost is \$60 per person for ESSAA/ Study Council members, and \$90 per person for non-members. Registration deadline is October 1, 2004; Cancellation deadline is October 4.

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## President's Message: Enough Said!



Dear Colleagues,

Welcome back to another exciting school year. Our editor would love to devote five or six pages of this newsletter to boasting about how we saved tenure for administrators. But, that would be a waste of space, and dishonest. As we reported last spring and throughout the summer, the risk of losing tenure was very low from the moment the Zarb Report was released. Claiming victory for a non-existent battle is not our style.

Our biggest fear during the entire legislative session was that the constant cry of “wolf” from uninformed organizations might bring about the very thing we feared most i.e., a self-fulfilling prophecy. Fortunately, those heroic legislators who fight to protect our rights have a very thick skin, and are not yet offended by others who claim victory for their labors. To them we offer a very sincere and well-deserved Thank You. Hopefully, as we face future anti-public school administrator actions (and they will come), there will be less hysteria and hyperbole from others as fiction is separated from the facts.

I assure you that our lobbyist has his finger on the Albany pulse and will only sound the alarm when and if it needs sounding. Your job as a school administrator is far too stressful without adding more unwarranted concerns to your plate. Please remain calm; do not become part of a manufactured frenzy as we analyze the situation and advise you accordingly. We have been monitoring the Governor’s tenure assault for the past nine years, and our prognosis has been 100% accurate. The attack failed again in exactly the way we consistently reported that it would. On this topic, ENOUGH SAID!

This year ESSAA will expand in many directions. Your Executive Board has designed a calendar of projects, publications, and activities that have been tailored to meet your professional needs, the first of which will be our State Conference to be held in affiliation with Syracuse University on October 5. You will soon receive a separate mailing about this pragmatic and useful meeting.

We are also in the process of regionalizing our state membership to assist us in better meeting your specific needs, and to enhance our communication network . Part of this process will be an expanded program to publish additional state newsletters as well several regional ones. Our goal, as always, is to keep our membership informed about what is going on in the State of New York that is most important to us as school administrators .

Last year our rolls increased by more than 175 members. We must all help our new members have a smooth transition into an organization that understands their problems –those they face day in and day out in our public schools. ESSAA is a professional association of school supervisors and administrators FOR supervisors and administrators. We know what we are talking about, because we, like you, are practitioners who run the schools of New York.

Best wishes for a successful school year.

A handwritten signature in blue ink that reads "John F. Sullivan". The signature is written in a cursive, flowing style.

John F. Sullivan

**ESSAA WELCOMES**

**MAHOPAC ADMINISTRATORS ASSOCIATION**

# ESSAA LOBBYIST MAKES THE CALL: ADMINISTRATIVE TENURE SAFE – FOR NOW

By Bob Liftig

ESSAA lobbyist Bob Ungar called it right this spring when he told President John Sullivan that all the hoopla about eliminating administrative tenure would not add up to a hill of beans.

Sullivan was confident that Ungar's prediction was correct because of Bob's relationship with key state legislators. As John stated in his recent letter to ESSAA members:

Bob Ungar is a high powered lobbyist who represents several large labor organizations in addition to ESSAA. He can influence the expenditure of large sums of PAC monies to help fund the election campaigns of pro-labor candidates. His influence is large enough to give him direct access to some of the more powerful Assemblymen and Senators in Albany. He can speak directly with the powers that make certain things happen. In short, he has told us that Tenure is safe because powerful people in the know have told him so. ESSAA has fought the TENURE battle for years. Ungar's predictions have been correct 100% of the time

This has certainly been the summer for harrowing threats; even former Presidential candidate Howard Dean has publicly wondered about the power of calls to arms to rally the troops in times of organizational disarray and trouble. Of course, no one can blame either the American voter or more particularly some New York State administrators for being off balance by the hysteria of their leadership: Al Qaeda remains committed to pursuing its goals against the United States, and Governor Pataki certainly has thrown his political weight behind the Zarb Report's recommendation to do away with administrative tenure.

The Governor is certainly persistent, but – and this is in the opinion of a professional educator, mind you – he doesn't seem to learn. In fact, Pataki's press release of July 30, 2004 is entitled: "Governor Vows Not To Give Up." It is easy to see his intentions, despite the poor grammar in his declaration:

"I refuse to give up," Pataki said. "I will continue our fight to open the doors to a better and brighter future for millions of New York's schoolchildren and ensure that every child in New York receives the quality education they (sic) deserve ..."

If this statement isn't clear enough for any of us left who still believe in the infallibility of our elected officials, the press release continues: "The Governor indicated that he's begun to take the necessary and responsible step of submitting his educational reform plan to the State Supreme Court ..."

## Governor Pataki's plan includes the following:

### Enhancing Educational Leadership

- Requiring that school board members receive annual training on the powers and duties of their office to further enhance the skills and professionalism of local school board members in order to ensure that they are well prepared to meet the complex fiscal and managerial challenges they encounter on a regular basis.
- **Eliminating tenure for school principals and establishing a system of three to five year contracts that are renewable based upon school performance.**
- Creating an alternative route to teacher and administrator certification to enable well educated and experienced professionals to enter the teaching workforce.
- Providing mayors of the largest city school districts with greater governing authority of their city schools.
- Expediting "3020-a" disciplinary hearings for tenured school employees and setting up a new process to discipline incompetent teachers.

The Governor's press release came out just 10 days after he called legislators back from summer recess for an "extraordinary" session to consider Senate Bill S. 7684 – which was eventually passed and which did include the elimination of tenure for administrators.

We are sure that, because members of professional organizations across the state were notified, and, as a result, made phone calls, sent FAXs, and offered personal appeals – and through the work of lobbyists like ESSAA's own Bob Ungar – the Governor's attack on administrative tenure died – if only a temporary death – in the Assembly committee.

The Governor obviously believes that there are quite a few incompetent school administrators; not only does he want to strip away administrator tenure, but he says he needs to "expedite" 3020-a proceedings. It doesn't take much of an imagination to conjure up all the confusion this will cause in the minds of parents and the "millions of New York State schoolchildren" when their school administrators are brought up on charges in the Governors' Kangaroo Courts.

Don't New York's school children deserve a stable school environment in this time of national crisis?

*continued page 11*

# GO GOOGLE YOURSELF WITH ESSAA'S NEW METATAG SYSTEM

By Bob Liftig

As the contemporary saying goes, 20, or even 10 years ago we wouldn't have been "having this conversation," but WEBSITE Coordinator Joanna Keeler has enabled ESSAA to enter the 21st Century pretty much with the Millennium.

After experimenting with a number of Metatag enabling systems, Joanna has already begun to see the results of her efforts. Cross notations about ESSAA featuring the names of Executive Board members and the titles of articles in The Journal are beginning to appear on the WEB under a variety of headings.

Now, for the hard part: what all of this means to the membership.

Metatags are defined by GAPC.net Marketing Solutions of Elmsford, NY as:

**...lines of HTML code embedded into web pages that are used by search engines to store information about your web site. These "tags" contain keywords, descriptions, site author information, copyright information, site titles and more.**

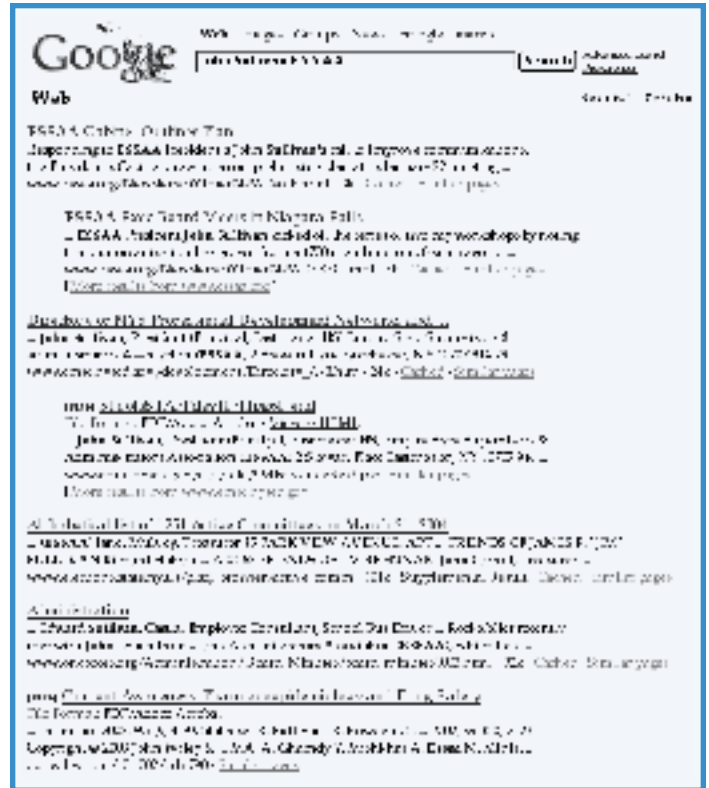
Search Engine Markers are other data that search engines used to index your site, and effectively display it in response to queries. These include Dublin Core tags, Alt tags, Comment tags, and other important tags that can be placed within the source code of your page for the search engines.

In addition, the GAPC.net, a service which ESSAA is currently interested in utilizing, automatically reviews content, generates formatted metatags and other search engine markers; automatically identifies WEB page weaknesses, submits to major search engines (like Google – hence, the title of this article), allows for unlimited submissions, and partners with major search engines to pay for inclusion submissions.

GAPC.net also promises that it will bring greater recognition to both our members and our organization: "an increase in relevant traffic by the second and third months of operation ... a change in the way people use their web site. Visitors will be more inquisitive about your products, services, and/or information."

This is the most important reason Joanna Keeler and ESSAA's Executive Board are considering moving forward into the 21st Century with a metatag system – "Search Engine Optimization." (SEO). Here is another one of GAPC.net's clear, future-is-now explanations:

SEO is the process of configuring a web site for maximum exposure to the search engine spiders to ensure relevant placement within their databases. It is crucial to stay up-to-date with all of the latest search engine trends



and algorithms to maintain that placement. SEO in itself will not and should not guarantee you placement in the "top ten" or "top thirty" within the search engines. SEO is not a search engine placement or ranking. Instead, it will prepare every aspect of your web site for promotion to the search engines. This means that engine markers are put in place, and any search engine barriers are removed.

GAPC.net talks about SEO as a "crucial step in any web site marketing campaign," which is more or less what Joanna Keeler hopes will be one positive result, because ESSAA members are the "experts" about what we do, who we represent, and where our profession should be heading.

Whenever a Professor of Education Administration, or a State politician, or a labor relations researcher is looking for fresh and accurate information, we know most of them are like our membership – they turn first to the Internet and to the cross-referencing search engines that have become so much a part of our lives that the very name "Google" has been entered as a verb into Webster's Dictionary.

We want our membership's opinions and concerns to be heard by a wider audience, and there can be no wider audience today than the one that is accessed by metatags. Look for updates on our experiment with advanced technology in The Journal, and look forward to all of our opinions being heard across the WEB.

## Editor's Message: The Zarb Report, Dr. C, and the Wonders of American Education



This summer our older daughter received her MFA from Georgia State University, an exemplary institution that serves over 35,000 students in the Atlanta metro area. My wife and I were proud parents and attended eagerly, of course, but we were curious to see that GSU was awarding an Honorary Doctorate to the founder of the chain of restaurants called Chick Fil-A.

In his acceptance speech, the newly anointed Dr. Truett Cathy mused about how he had been just an average "C" student, but had learned more profitable lessons in the retail food business, which eventually earned him, not just pride in his accomplishments, but an impressive fortune to donate to GSU as well. When Dr. Cathy was finished, the President of the University graciously thanked him - over and over again - both for his comments, and for this prodigious support, and the audience - including my wife and I - stood and applauded.

Dr. Cathy is probably a Great American, and the President of GSU is certainly a successful educational administrator, but I had to wonder if the CEO of Chick Fil-A would have been more appropriately celebrated with a Lifetime Achievement Award rather than an Honorary Doctorate.

The American literary genius Mark Twain, on the other hand, clearly deserved his Honorary Masters degree from Yale University, as well as his Honorary Doctor of Letters from Oxford University. Twain's contributions to the Arts and Sciences on both sides of the Atlantic were indisputable, and for Academia to acknowledge him with its highest degree was both appropriate and pleasant.

This is not because Samuel Clemens was any better educated than the former Mr. Cathy - he wasn't - but simply because what he had accomplished as Mark Twain the Writer was something which both Yale and Oxford sought to promote through formal study.

Now, fast forward to the New York State Zarb Report of 2004, whose commissioner, Frank G. Zarb has a School of Business named after him at Hofstra University. His resume is also impressive - dwelling as it does in the worlds of law and investment - even to someone like myself, whose entire working life has been

spent within sniffing distance of classroom bulletin boards and the dust of chalk.

Zarb and the governor who appointed him want to do away with administrative tenure in a profession about which they know little or nothing. The State of New York has already created Charter Schools so that clumsy business corporations can take a crack at wringing private profit out of an underfunded public system. Our schools have already bowed to the computer conglomerates by stuffing classrooms full of advanced technology that is - more often than not - only used by the kids to carry on Chat Room conversations. And higher education has already conceded the battle about whether we should exchange the generous donations from businessmen like Dr. Cathy for distinguished recognition from the Halls of the Academy. Very little of this silliness, however, undermines the basic structure within which we continue to do our jobs as educators in the nations' schoolhouses.

On the other hand, would the distinguished President of Georgia State University turn over the administration of his school to the CEO of Georgia's Chick-Fil-A?

Of course not!

The elimination of administrative tenure as recommended by Governor George Pataki and Frank G. Zarb, however, is a horse of a different color. Donald Trump - as we all know - recently resigned from the Board that controls his bankrupt casino empire.

Trump failed as an administrator - but not before he set back the progress of human relations and traumatized a generation of wannabe business tycoons with his trademark dismissal: "You're fired!"

Both Zarb and the George Pataki now want to apply Trump's medicine to administrators and all that ails the public schools. It didn't work for Donald Trump's empire, and it won't work in public education, because such simplistic heavy handedness when the future of our nations' youth is considered, is both uninformed and vile.



*Dr. Truett Cathy,  
CEO of Chick-Fil-A*



*Frank G. Zarb  
NASDAQ*

*Bob Liftig*

Editor

*The Journal, and Regionals*

## **COMMENTARY: NYS SCHOOL BOARDS ASSOCIATION THINKS ZARB DOES NOT GO FAR ENOUGH**

Timothy G. Kremer, the Executive Director of the New York State School Boards Association, wrote in his regular commentary a few months ago that, while NYSSBA “has some problems with the reports” regarding its recommendations for funding, his organization supports Zarb’s conclusions.

Kremer says that he understands that “most commentators panned the report” when it was published in the beginning of April, 2004. But what Kremer seems most disturbed about is that the Zarb report does not go far enough: that, in its recommendations for redistributing funds, it does “little more than maintain the status quo.”

Director Kremer says he is aggravated that the “mayors of Buffalo, Rochester, Syracuse, and Yonkers” would retain too much “control of their school systems,” and criticizes Zarb for buying into “the myth that public education is sufficiently accountable for its operations and results when in fact it is less publicly open and accountable than any other governmental institution.”

On the other hand – and this impacts directly on our fellow ESSAA members – as recently as the end of July Kremer stated: “school boards enthusiastically (sic) endorse some elements of the governor’s (sic) proposal,” saying that: “Reforms to the Wick Law, administrative tenure, and teacher certification and discipline procedures must be enacted in order to permit school districts to operate more efficiently and effectively.”

I’d like to know what the different planets are named that Mr. Kremer and I have been inhabiting for the last 30 years! When many of us started our careers in education a generation ago, we were promised by boards of education that the bedrock of public education was then, and would always be, local control over their children’s schooling.

Thirty years ago there was little disagreement on this basic point, and in the intervening years, battalions of political candidates from both major parties have continued to be elected on the platform of “local control – once, now, and forever.”

Meanwhile, seemingly while we slept, we have witnessed a titanic siphoning of power away from town and city boards of education and toward the State and Federal Governments – and neither No Child Left Behind nor the Zarb Report gives us any reason to believe that this movement has ended.

No one can blame Executive Director Timothy Kremer of the New York School Boards Association for being solely responsible for what amounts to a betrayal of the American schoolhouse dream, but it remains peculiar that Boards of Education – once the energetic cheer leading squads for neighborhood schools that reflect local and community values – now complain the loudest that their local schools are not controlled more tightly by the State and Federal governments.

And now their representatives want to surrender even more of their power to Big Government.

As Shakespeare said: “O, Brave New World, that has such people in it!”

Quo Vadis, guys? What gives?

— R. A. L.

## **JOURNAL RECEIVES APPROVAL FROM NATIONAL SCHOOL BOARDS ASSOCIATION**

Those of you who have read *The Journal* closely over the last year must have noticed that we rely on two excellent resources for our legal information: our ESSAA attorneys, of course, for Statewide updates on law and negotiations, and the National School Boards Association website, at [www.nsba.org/legal](http://www.nsba.org/legal) clips, for more national legal coverage.

NSBA’s Legal Briefs have proven to be an outstanding resource for monitoring the most recent lawsuits, court decisions, legal victories, and flops in the always curiously whacky and litigious world of American education. The NSBA, based in Arlington, Virginia, offers free subscriptions to its Legal Briefs – in fact, if you sign up with NSBA, you will receive bi-weekly eBlasts containing the same current information we receive at *The Journal*.

In a recent communication between *The Journal* and the NSBA Staff Attorney, Thomas Hutton mentioned that he had looked at our ESSAA website and “noted that

(ESSAA is) also in the business of trying to counter some of the frustrating political trends when it comes to public education.” NSBA’s attention, Mr. Sutton wrote us, is much the same as ours: to “... balance out some of the noise and undo the myths.”

Attorney Hutton also recommends NSBA’s “daily blog,” BoardBuzz, to our members, and we think those of you who want to be the best informed on legal matters will welcome this opportunity to compare your situations here in New York State with others throughout the United States.

*The Journal* thanks NSBA for its encouraging words, and for its permission to directly reprint the excellent articles it gleans from news sources throughout the country - with the sole addition being the use of our own titles which we will provide to capture what we think are the essentials of the stories that appear below them.

# NYS SUPERINTENDENTS OF BUILDINGS AND GROUNDS

## ENDORSE ZARB'S CALL FOR ABOLITION OF WICKS LAW

In an open "Alert" to "All Members of the NYS Association For Superintendents of School Buildings and Grounds," Albany legislators were called upon to pass "reforms to the 100 year old Wicks Law which adds as much as 15% to the cost of school construction projects."

Members were asked to contact their State Senators and Assembly members and provide feedback to Peter Mannella of Carr Public Affairs, the lobbyist for the Albany-based NYSSSBG.

But first, the Superintendent's organization asked its members to "thank" the legislators for "restoring funding to Building Aid and Minor Maintenance Aid," and then to address Wicks Law reforms, which the "Alert" says "are already contained in the bills A 3176 by Assemblyman Sanders, and S. 1607 by Senator Spano:"

These reforms provide schools with an OPTION to use a single prime contractor rather than multiple primes for school construction projects. If schools take the option, the bidders must address the issue of prompt payment to subcontractors as well as list the subcontractors and prices in their bids. These provisions will address issues that have been problems in school construction over the years.

ESSAA members should note that the educational community in New York State – including ESSAA – uses similar personnel and procedures for informing the legislators in Albany: lobbyists, phone calls, "alerts" to their memberships, and calls to target particular areas of organizational concern – such as fighting the elimination of tenure for school administrators.

*(Editor's Note: The Governor's Zarb Report called for the elimination of the Wicks Law).*

## SPOTLIGHT ON: HARRISON, NEW YORK (WESTCHESTER COUNTY)

There are 24,154 people, 8,394 households, and 6,186 families residing in the village. The population density is 554.1/km<sup>2</sup> (1,435.2/mi<sup>2</sup>). There are 8,680 housing units at an average density of 199.1 persons/km<sup>2</sup>(515.8 persons/mi<sup>2</sup>). The racial makeup of the village is 89.78% White, 1.43% African American.

There are 8,394 households out of which 35.3% have children under the age of 18 living with them, 62.4% are married couples living together, 8.7% have a woman whose husband does not live with her, and 26.3% are non-families. 22.1% of all households are made up of individuals and 8.7% have someone living alone who is 65 years of age or older. The average household size is 2.72 and the average family size is 3.20.

In the village the population is spread out with 24.5% under the age of 18, 9.6% from 18 to 24, 29.4% from 25 to 44, 21.9% from 45 to 64, and 14.6% who are 65 years of age or older. The median age is 37 years. For every 100 females there are 89.2 males. For every 100 females age 18 and over, there are 85.2 males.

The median income for a household in the village is \$80,738, and the median income for a family is \$98,167. Males have a median income of \$63,871 versus \$41,581 for females. The per capita income for the village is \$49,652. 5.6% of the population and 4.2% of families are below the poverty line. Out of the total people living in poverty, 5.3% are under the age of 18 and 7.8% are 65 or older.

Source: <http://encyclopedia.thefreedictionary.com/Harrison,%20New%20York>

TheFreeDictionary.com



**ESSAA Welcomes the 25 member  
Harrison Administrators Association**

# CHARTER SCHOOL SCORES STUMBLE: NCLB HOPES DIM

By Bob Liftig

The same Education Department that pinned its hopes on the Charter Schools provision of its NCLB legislation found it had to wait until the Dog Days of August before it could safely release the dismal results of its first national comparison of charter school students to comparable students in the public schools.

*The New York Times* reported in Diana Schemo's lead story, "Charter Schools Trail In Results, U.S. Data Reveals," (Aug. 14, 2004) that the Education Department's study was "buried in mountains of data" released "without public announcement" and that this "dealt a blow to supporters of the charter school movement, including the Bush administration."

Charter School fourth graders scored six months behind other public schools in both reading and math. According to *The Times*, only 25 percent of the fourth graders attending charters were proficient in reading and math, while almost a third of those attending non-Charters were proficient under the traditional public school format.

Chester E. Finn, President of the Thomas B. Fordham Foundation, a former Assistant Secretary of Education, and one of those who led the team that conducted the study, was quoted by *The Times* as saying, "The scores are low, dismayingly low... A little more 'tough love' is needed for these schools."

Finn's study group compared the scores of urban fourth graders in both Charter and non-Charter schools. Low-income inner

city school children have traditionally been the target clientele of the privately run/ publicly funded Charter Schools movement. Testing results were broken down by ethnicity as well as race in both school settings.

Considering the high hopes the Bush administration had for Charter Schools, Mr. Finn is perhaps to be forgiven for trying to put the test results in the best light possible when he said it was his hope they would only be considered as "baseline data" for future comparisons.

Even so, the former Assistant Secretary concluded that. "Somebody needs to be watching over their (the Charter Schools') shoulders." It's at least ironic, if not unfortunate that, that "somebody" is the very Department of Education that continues to press for more private industry involvement in the public sector.

Neither Charter School nor traditional public school advocates should rejoice over the central findings, however, as at least two thirds of urban fourth graders in the study were concluded to be non-proficient in both math and reading. Obviously, the root causes of these failures have yet to be addressed. The results so far suggest that the origins may not be systemic.

## Ed Stein's View



Reprinted with permission from Ed Stein, Rocky Mountain News

# WHEN BAD THINGS HAPPEN TO GOOD ESSAA MEMBERS

By Herb Dickson

Director of Organization & Planning, ESSAA

From time to time I hear about a member who, due to accident or disease, is critically ill and facing death. Certainly this is tragic, but a greater tragedy would be to not maximize the benefits available from the Retirement system to your family.

To do this, the administrator would file for either a regular retirement or a disability retirement depending on which he or she are eligible for. The first example is for an employed Tier 1 person over the age of 55. You can maximize your estate by retiring and selecting the lump sum option.

**The NYSTRS web site states that:**

## *Lump Sum Options*

- Tier 1 Declining Reserve. The balance of your total reserve (the pension reserve and any Annuity Savings Fund) will be paid to your beneficiary(ies) if you die before you receive the total reserve. If you have a life-threatening illness, consider choosing the Declining Reserve (4%) since it provides the largest payment to your beneficiary if you die early in retirement.
- Tiers 1 and 2 Annuity Reserve. If you have an Annuity Savings Fund and leave it in the System at retirement, the balance will be paid to your beneficiary(ies) if you die before you receive it yourself.
- Largest Non-Declining Lump Sum. This option enables all members to provide the largest possible fixed payment to a beneficiary. It is not available to Tier 3 members retiring under Article 14 (Tier 3).

Please note, the Internal Revenue Service is considering a regulation eliminating retirement options providing a lump sum payment to a beneficiary.

By selecting a Lump Sum Option, you may name multiple primary and/or contingent beneficiary(ies) who may be changed at any time.

If you are not eligible for a regular retirement, you should choose the disability retirement option.

**The NYSTRS web site states that:**

If you are forced to stop working because of a serious illness or injury, you and your family will be faced with some important and sometimes complex decisions. You should call the Retirement System as soon as possible at 800-348-7298, Ext. 6010. Our staff is available to guide you through the retirement process and to help you make informed decisions about your benefits.

## **If You are Critically Ill**

### **The Question:**

If you are critically ill, have a life expectancy of less than one year and meet the disability retirement eligibility requirements, should you stay on the payroll and be covered by an in-service death benefit or retire and select an option providing a payment to your beneficiary?

### **The Answer:**

With few exceptions, you should file for retirement immediately.

By retiring and selecting the appropriate option for your tier, you will provide a greater payment to your beneficiary than by staying on payroll.

Under Tier 1, the appropriate option to select is the Declining Reserve Option (4%). Under Tiers 2, 3 & 4, in most cases you should select the Largest Non-Declining Lump Sum Option. Contact STRS before making your final decisions.

### **The Difference**

#### *Staying on Payroll vs. Retiring*

Depending on your tier, the disparities between an in-service death benefit (obtainable by staying on payroll) and an option payment (available by retiring) can be substantial. Following are some examples of the difference:

For a Tier 1 member age 50, with 27 years of service and a salary of \$65,000, who stays on payroll and dies in service, the death benefit is \$146,250.

If the member retires, selects the "Declining Reserve Option (4%)" and dies soon into retirement, the payment to the beneficiary is \$416,700.

By retiring, the payment to the beneficiary is increased by \$270,450.

For a Tier 4 member age 50, with 21 years 6 months of service and a salary of \$55,000, who stays on payroll and dies in service, the death benefit is \$165,000. If the member retires, selects the Largest Non-Declining Lump Sum Option and dies in retirement, the payment to the beneficiary is \$148,000.

In addition, the Paragraph 2 death benefit (see below), paid if death occurs during the first year of retirement, is \$82,500. The total payment is approximately \$230,500.

By retiring the payment to the beneficiary is increased by \$65,500.

Note: In lieu of either benefit, you may receive an accelerated death benefit that would pay you an amount equal to the death benefit payable if you died on the last day of reportable service. To be eligible, you must qualify for a disability retirement benefit (although the service requirement would be waived) and have either a) a terminal illness resulting in a life expectancy of no more than 12 months, or b) a medical condition requiring extraordinary care or treatment. Before making a decision, we strongly urge you to discuss your situation with STRS by calling 800-348-7298, Ext. 6010.

For all the years I worked, I kept a completed and notarized application for retirement on hand. One of my children had strict instructions that upon hearing of a medical emergency, she was to drive immediately to the Post Office and mail it before she came to the hospital. Should the emergency pass with a favorable outcome, the application could always be rescinded.

**The NYSTRS also recommends that you prepare a:**

***Power-of-Attorney***

With a power-of-attorney you name an agent to act on your behalf in a broad range of personal, legal, financial and other affairs, including STRS matters. Under a durable power-of-attorney, the agent can act for you even if you become legally incapacitated.

Although a durable power-of-attorney is revocable before someone becomes incapacitated, banks or other third parties that are not notified when a power-of-

attorney is revoked are generally entitled to rely on their good-faith belief as to the power's continued validity. In any event, a durable power-of-attorney ends upon death unless revoked earlier.

A durable power-of-attorney may make it possible to avoid the expense and formality of a court-ordered guardianship should you subsequently become incompetent. A guardianship, however, affords a stricter accountability and more stringent controls on conflicts of interest.

The use of a durable power-of-attorney is a personal decision that should be based upon your particular needs and objectives. Due to the high degree of control vested in the person named to act on your behalf by the durable power-of-attorney, only a trusted person should be named. In any case, because it is a powerful document, the System strongly recommends that you consult with an attorney before executing a durable power-of-attorney.

This article is meant to increase ESSAA members' knowledge of the options available to you. I strongly urge you to review this distasteful but possible scenario with your family. Contact the Retirement system and find out what is available to you and take the necessary steps to provide the maximum amounts to your family. While I sincerely hope that this is strictly an academic exercise and a complete waste of your time, you just don't know.

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## **ESSAA WELCOMES THE CLINTON ADMINISTRATORS ASSOCIATION**

*E.S.S.A.A. Now Represents —*

*All Dutchess County Administrators Associations*

*E.S.S.A.A. Now Represents —*

*All But 3 Westchester County Administrators Associations*

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## **ESSAA WELCOMES THE RED HOOK ADMINISTRATORS ASSOCIATION**

The conference, which will run all day, is the result of months of hard work by ESSAA Vice President Tom Vasiloff and Syracuse University's Scott Shablak. All activities will be held at the Drumlins Golf and Country Club, Syracuse, New York.

The conference was called in response to a growing urgency among public school administrators across New York State and the nation as an increasingly litigious society collides with the growing accountability and responsibility that has been thrust upon the public schools in the last generation.

ESSAA has traditionally attracted new members because of its outstanding legal defense team – the same gentlemen who will be leading the breakout sessions at the conference. In fact, ESSAA advertises the paramount nature of its response to legal challenges in its Mission Statement, when it says that the organization's goal is not only "to champion the cause of public school education," but "to provide extensive and comprehensive legal support and direct legislative representation to its members."

Attorney Sapperstein, who is an expert negotiator, and Attorney Derkash, who pioneered association representation on Long Island, have been instrumental in taking on and winning the toughest legal cases against administrators in New York State for almost 30 years, and Kevin Martin is becoming well known as an aggressive defender of employee rights – especially in Central New York where he is based. ESSAA lobbyist and attorney Bob Ungar has most recently been active fighting against the loss of administrative tenure as a result of Governor Pataki's support for the Zarb Report (see accompanying article).

ESSAA is offering this important professional development opportunity to its membership because of its firm commitment to a strong professional organization. Syracuse University's Office of Professional Development and its Study Council are recognized throughout the State and nation.

All those interested in attending the ESSAA/ Syracuse U. conference are urged to get their reservations in as soon as possible. You may FAX your registration to: 315-443-5845, or mail it with your payment to: The Study Council at SU, 250 Huntington Hall, Syracuse, NY, 13244.

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*ESSAA Lobbyist, continued from page 3*

In addition, school administrators – like everyone else in our litigious society – are more likely than ever to counter sue their districts because their attorneys more and more are distinguished counsel who specialize in the defense of embattled school administrators. It is hard to imagine ESSAA's own precedent setting lawyers – Bob Sapperstein, Paul Derkash, and Kevin Martin – letting an overnight jerry-built expedited disciplinary system get in the way of the full defense of our members.

Perhaps the Governor himself has been so diverted by all the attention to the more serious threats of terrorism to our cities, states, and nation, that he has not thought beyond what he believes will be a "quick fix" for the State school systems' problems.

Now is not the time to be playing ping pong with our citizens' already overstretched emotions. We call on the Governor to rethink an admittedly complicated question – but one that every one of us has an important stake in answering: How can all of us – working together – improve the administration of the schools in New York State, which will – to some degree – improve the education of New York's children?

**Be sure to visit the ESSAA web site for additional information,  
upcoming events, and Links to other related sites.**

**[www.essaa.org](http://www.essaa.org)**

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# LEGAL BRIEFS FROM THE NASBE

*Legal Briefs is furnished to you by way of the “NSBA Legal Clips”, a weekly e-newsletter from the National School Boards Association. Free subscriptions to this e-newsletter are available at: [www.nsba.org/legalclips](http://www.nsba.org/legalclips).*

## AUGUST 19, 2004

### Rural Schools Get Help Complying With NCLB

“Too often, rural education is overlooked or an afterthought when it comes to school reform... State boards of education, at least, have not forsaken small, rural schools.”

Alexandria, VA - A comprehensive compliance manual specially designed to help rural and small schools comply with the legal requirements of the No Child Left Behind Act is being issued by the National Association of State Boards of Education (NASBE). The 335-page guide includes the relevant statutory provisions of NCLB, the implications for rural communities, and practical advice schools can follow to ensure that they are meeting the letter of the federal education reform law. The how-to manual, *No Child Left Behind and Rural Education: Implications for Policy and Practice*, is being nationally distributed.

Senator Michael Enzi (R-WY) will present the manual at a press conference on July 22, 2004 commencing at 10:00 am in the Senate Dirksen Building room 116. Senator Enzi is head of the Senate Rural Education Caucus and a passionate supporter of rural and small schools.

Brenda Welburn, NASBE Executive Director, has said, “Too often, rural education is overlooked or an afterthought when it comes to school reform. Clearly, the requirements of the No Child Left Behind Act were developed with a more urbanized school setting in mind.”

“State boards of education, at least, have not forsaken small, rural schools. We have established a Center on Rural Education that works with states and rural districts to solve their unique challenges, such as limited resources and remote locations, to not only comply with the No Child Left Behind Act but to deliver the best possible educational and instructional services to students. This policy manual is the most recent example of the comprehensive and quality assistance NASBE continues to provide rural schools,” said Welburn.

12 million students, or approximately 27% of the national school enrollment, attend a rural or small school. About one-third (4,700) of the nation’s local school districts are considered rural. There has been a growing appreciation among federal lawmakers of the difficulties the No Child Left Behind Act’s (NCLB) reforms pose for rural schools. The vast distances between rural schools, for instance, often make the law’s school choice options unrealistic, and small, isolated communities find it difficult to attract and retain teachers that meet the law’s definition of “highly qualified.”

The rural policy guide and the Center on Rural Education were supported with funds from the U.S. Department of Education and Texas Instruments.

*No Child Left Behind and Rural Education: Implications for Policy and Practice* can be ordered for \$35 by calling 800/220-5183.

For additional information on recent school law developments, visit NSBA’s Council of School Attorneys (COSA) website at: <http://www.nsba.org/cosa/>.

### School Board Bills US Dept of Ed

By Damian J. Troise; *Foster’s Daily Democrat*

The Barrington School Board (NH) has billed the U.S. Department of Education (ED) in the amount of \$2 million for “services rendered” to express its dissatisfaction with the level of federal funding provided for special education. The board also sent a letter to both of its U.S. Senators, Judd Gregg and John Sununu, criticizing Congress for not doing enough to assist school districts in obtaining the funding they need to meet federal requirements. When

## LEGAL BRIEFS CONTINUED

the Individuals with Disabilities Education Act (IDEA) was enacted in 1975, Congress promised to fund 40% of the per pupil costs for students in the program. However, according to special education experts, the federal contribution currently amounts to only about 18% to 20% of the costs. Barrington spent \$1.9 million on special education this year, but received only \$67,929 in federal IDEA funding, well short of the 40% reimbursement. "Year after year, after year, local taxpayers are forced to compensate for the inadequacies of Congressional funding," the board's letter states. "Year after year, politicians make promises and still do not properly fund these mandated services." Senator Gregg's office said that he has helped increase federal funding of special education nationally from \$2 billion to \$11 billion and that federal special education funding for New Hampshire has increased by 477% during his term. However, Senator Gregg voted against an amendment this year that would have increased IDEA funding levels, saying it would increase the federal deficit. The board's letter points out that the result is that the burden falls unfairly on residents in the form of higher local property taxes.

for the full story go to: [http://www4.fosters.com/July2004/07.16.04/news/ro\\_0716b.asp](http://www4.fosters.com/July2004/07.16.04/news/ro_0716b.asp)

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### Florida Court Stikes Down Vouchers

A Florida state court of appeals has ruled that the state's "Opportunity Scholarship" voucher program violates the state constitution's "no-aid" provision, which prohibits the expenditure of public funds "directly or indirectly" to aid sectarian institutions. To the extent the program authorizes state funds to be paid to sectarian schools, it is unconstitutional, the court held. The court rejected the state's argument that the Florida constitution provides no greater restrictions on taxpayer support of public institutions than does the federal Establishment Clause. The language of the state and federal provisions is not synonymous, the court noted: "For a court to interpret the no-aid provision of article I, section 3 as imposing no further restrictions on the state's involvement with religious institutions than the Establishment Clause, it would have to ignore both the clear meaning and intent of the text and the unambiguous history of the no-aid provision." The court also rejected the state's argument that the state constitution violates the Free Exercise of the U.S. Constitution, taking note of the recent U.S. Supreme Court ruling in *Locke v. Davey*, 124 S. Ct. 1307 (2004), that the U.S. Constitution does not require a state government to subsidize religious instruction whenever it subsidizes non-religious instruction. The court certified its decision to the state supreme court as a "question of great public importance."

Bush v. Holmes, Nos. 1D02-3160, 1 D02-3163, 1D02-3199 (Fla. Dist. Ct. App. August 16, 2004)

For the full opinion the PDF can be accessed at:

<http://www.1dca.org/opinion/opinions2004/8-16-04/02-3160.pdf>

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### NCLB Requires Schools Submit Student Names To Military Recruiters.

*Lexington Herald-Leader*, By Associated Press

The No Child Left Behind Act (NCLB) requirement that public high schools provide military recruiters with student names, addresses, and telephone numbers has Louisville, Kentucky school officials at odds with some parents and peace activists. The protesters object to the schools giving the recruiters the information without notifying parents they can request that a child's contact information be kept private. While some schools provide parents with a written explanation regarding the military recruiting provisions of NCLB, other schools inform students at assemblies that they can submit a form to stay off the list. A 2002 Army survey reported that almost 50% of recruits said they, and not a recruiter, initiated the first contact, while about 33% said they first were contacted by recruiters. Grayson County High School Principal Mic Huffman, who supports the military and complies with the law, questions the need for recruiters to contact high school students without parental involvement. "We've had parents call after the Army has contacted their sons directly and tell us they don't want that to happen," he says. "That has happened. It puts us in a hard position between the parents and the military."

for full story go to: <http://www.kentucky.com/mld/kentucky/news/local/9299560.htm>

[Editor's Note: NCLB requires notice to parents, and federal guidance indicates that the school district's notification method must be reasonably calculated to reach parents. For a summary of the military recruiter and opt-out provisions, see below.]

<http://www.nsba.org/site/docs/32500/32420.pdf>

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## Parents Denied Access To Their Childrens' Records.

The Indiana Court of Appeals has ruled that a state law that defines the circumstances under which a school may disclose a student's educational records without parental consent does not imply that a parent has a right to access the records. A.R. was attending the private Canterbury School when his mother became involved in a dispute with the school regarding her son's medical condition. She requested access to A.R.'s education records. When the school denied the request, she sued, alleging that the state statute provides a parent with the implied right of access to the student's education records. The trial court dismissed the mother's claim. After reviewing the statutory language in question, the appellate court affirmed, concluding that the statute's scope is clearly and unambiguously limited to addressing the right of noncustodial parents to the same access to their children's education records as custodial parents. The fact that a school may, under certain circumstances, release information contained in a student's education records without parental consent was irrelevant to the mother's claim, the court held.

Robbins v. Canterbury School, Inc., 2004 WL 1598299 (Ind. App. July 19, 2004)

For the full opinion: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=in&vol=app\07190404.jsk&invol=2>

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## Teachers Flunk Tests: Sue ETS As Monopoly

*Plain Dealer*, By Associated Press

Two teaching candidates who lost their positions after they mistakenly received failing grades on their licensing examinations are suing the testing company. The plaintiffs allege that Educational Testing Services (ETS) is violating federal antitrust laws. The lawsuit alleges that ETS holds a monopoly because it is the only company that administers the test of teaching skills and general knowledge that prospective educators must pass. There are at least four other suits around the nation that accuse ETS of having an illegal monopoly. Phyllis Brown, the attorney representing the two teacher candidates, has requested the court to certify the case as a class action. She says 4,100 people were affected by incorrect grading in nineteen states that use the test for prospective teachers of grades seven through twelve. While ETS declined to comment on the suit directly, it did say that incorrect scores were issued to about 10 percent of the 40,000 people who took the Praxis Principles of Learning and Teaching test from January 2003 through April 2004. Company officials added that they are tracking down each person who received a faulty score to apologize and refund the \$115 test fee and other expenses.

The link below to the full story has a brief "pre-screen" that asks you for simple demographic information.

<http://www.cleveland.com/news/plaindealer/index.ssf:/base/news/1091703315293470.xml>

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## Maternity Leaves Nixed For Probationary Teacher.

The U.S. Court of Appeals for the Eleventh Circuit has ruled that a school district did not engage in retaliation under the Family and Medical Leave Act (FMLA) when it decided not to renew the teaching contract of a teacher who requested maternity leave before she was an "eligible" employee within the meaning of the FMLA. The Elmore County School Board hired Brandi Walker as an elementary school teacher under a one-year contract. The contract was to be renewed automatically at the end of the school year unless the board voted not to renew it. In December, Ms. Walker informed her principal that she was pregnant. In April, she indicated that she was due in August and asked the principal how to go about obtaining maternity leave. The principal informed her that the request should be made to the school board, but advised her to wait until the board decided whether to renew her contract. In May, the board voted not to do so. Ms. Walker sued, alleging that (1) as an "eligible" employee, she was entitled to maternity leave, and (2) the board's decision not to renew her contract was in retaliation for her exercising her rights under the FMLA. The district court granted the board summary judgment on both claims, concluding that (1) Ms. Walker was not an "eligible" employee within the meaning of the FMLA at the time she made the request, and (2) although she still had a valid claim because most of her leave period would have occurred after she became eligible, her claim nonetheless failed on the merits. The Eleventh Circuit affirmed but did not reach the merits of the claim. The court concluded that to state a claim for retaliation under the FMLA, the employee at the very least must be eligible for leave at the time the requested leave would commence. It left undecided whether the FMLA "protects a pre-eligibility request for post-eligibility maternity leave." The court also overruled the district court's holding that the FMLA "can protect someone who mistakenly asks for FMLA leave although they are ineligible." Instead, the Eleventh Circuit held that "the statute does not protect an attempt to exercise a right that is not provided by FMLA, i.e., the right to leave before one becomes eligible therefor."

Walker v. Elmore County Board of Education, No. 02-16509 (11th Cir. August 5, 2004)

Link to full opinion can be found at: <http://caselaw.lp.findlaw.com/data2/circs/11th/0216509p.pdf>

*continued next page*

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## US Court Hears Race Biased Case In Student Assignment

By Anand Vaishnav, *Boston Globe*

The U.S. Court of Appeals for the First Circuit has completed hearing oral arguments in the Lynn, Massachusetts student assignment case, *Comfort v. Lynn*. After the federal district court ruled that the Lynn School Committee could use race as a factor in assigning students to schools to achieve the goal of racial and ethnic diversity, the plaintiff parents of students who were denied their choice of school appealed to the First Circuit. Coming on the heels of the U.S. Supreme Court's rulings in the *Grutter* and *Gratz* cases that universities and colleges may use race as a factor in admissions policies, *Comfort* and a Ninth Circuit ruling last week against Seattle's diversity plan are among the few K-12 cases testing the use of race in admitting and assigning students. In *Lynn*, the parents' attorney, Michael Williams, argued that the racial makeup of schools contributes nothing to their quality and that the plan is nothing more than a unconstitutional racial quota. Assistant Massachusetts Attorney General Richard W. Cole, representing Lynn, contended the plan has produced the results that city leaders wanted: smoother race relations, better-performing schools, and well-rounded students who learned the value of racial harmony beginning in elementary school. Thirty-eight groups, including the attorneys general from Iowa, Maine, New York, and Utah, filed briefs supporting Lynn's plan.

For the full story visit:

[http://www.boston.com/news/education/k\\_12/articles/2004/08/06/court\\_eyes\\_race\\_in\\_school\\_assigning/](http://www.boston.com/news/education/k_12/articles/2004/08/06/court_eyes_race_in_school_assigning/)

[Editor's Note: NSBA, along with four other educational organizations, joined the Council of the Great City Schools in filing an amicus brief in support of the school board. See below. The Legal Clips summary of *Parents Involved in Community Schools v. Seattle School District No. 1* also is linked below.]

[Great City Schools amicus brief]

[NSBA School Law pages on Seattle decision]

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## NJ Parents Sue District For Building Mold Problem

By Angela Delli Santi, *New York Newsday*

A group of parents is suing the Washington Township Board of Education (NJ), alleging that the district has mishandled chronic mold problems at middle schools and that toxic levels of mold are making their children seriously ill. The parents are requesting the court to order the district to (1) transfer their children to another school until the mold problem is eliminated; (2) pay for medical monitoring for affected students and obtain a new evaluation of the schools' air quality; and (3) allow any student who becomes ill after classes resume to transfer. The suit claims that students and teachers at both schools have complained of headaches, rashes, fatigue, difficulty breathing, and other symptoms, with toxic conditions reaching "epic proportions" in the last school year. Washington Township has spent \$600,000 on air-quality improvements at the two schools since 1999 and is scheduled to spend another \$1 million this summer. However, the parents' attorney claims the district's remediation effort has been slipshod. He cites a report by an engineer hired by the parents that concludes that the mold source has yet to be identified definitively and that recommends a new evaluation before more money is spent. Superintendent Thomas Flemming disagrees that the remediation efforts have been unsuccessful. State health department inspectors expressed satisfaction with the work done to date, he says. "What we've done is controlled the humidity and thoroughly cleaned the building. That should assure that we will not have a mold problem."

For the complete story, visit:

<http://www.nynewsday.com/news/local/ny-bc-nj--moldsuit0810aug10.0,3938045.story?coll=nyc-regionhome-headlines>

[Editor's Note: NSBA's *BoardBuzz* cautions schools about another challenge: reports that unscrupulous mold consultants are taking advantage of school districts concerned about situations like that described here to defraud them of huge fees. The item, with links to additional resources, is linked below.]

<http://www.nsba.org/site/doc.asp?CID=1548&DID=34240#aug0304-1>

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