

SPECIAL NEGOTIATIONS - LEGAL UPDATE ISSUE

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The

Journal



EMPIRE STATE
SUPERVISORS
AND
ADMINISTRATORS
ASSOCIATION

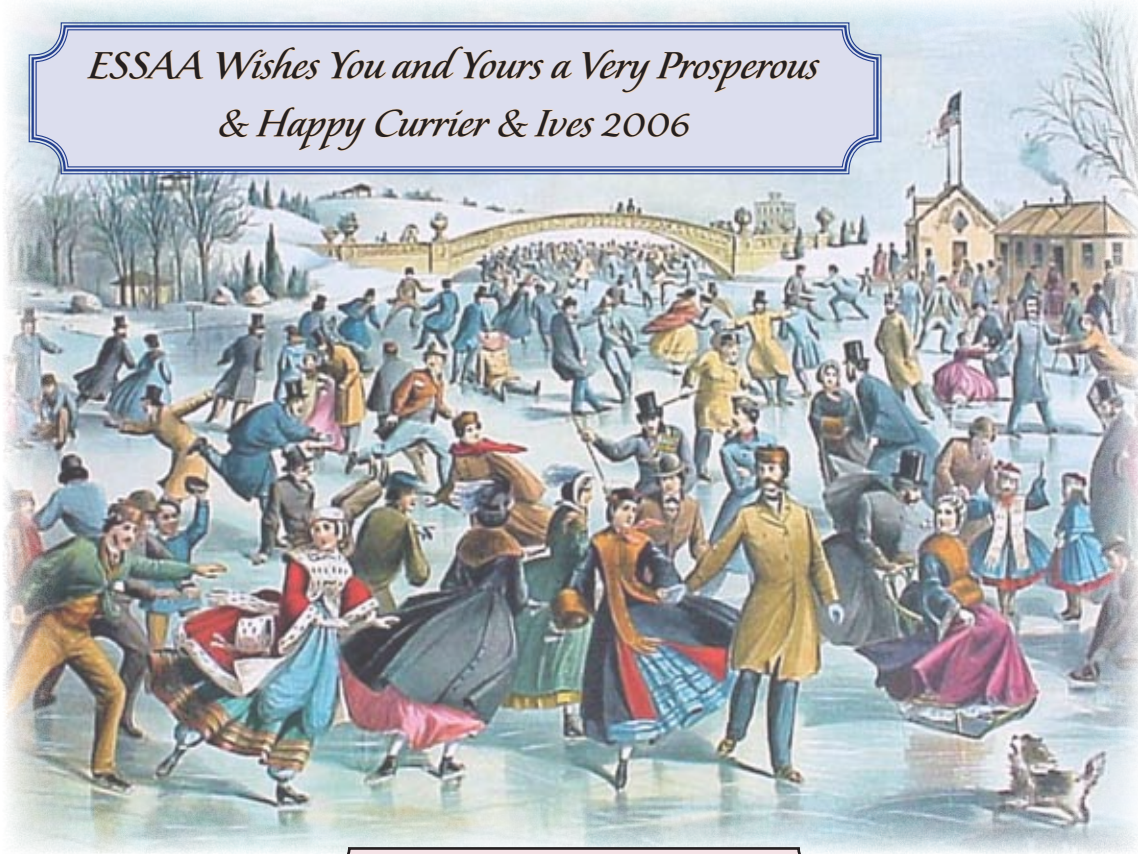


Winter Morning



Skating Scene - Moonlight

*ESSAA Wishes You and Yours a Very Prosperous
& Happy Currier & Ives 2006*



Central Park, Winter

President's Message

Think Twice Before You "Pass The Problem"



Dear Colleagues,

As we welcome the New Year, educators across the country prepare for the annual ritual of "musical staffing." This is the time when job vacancies of all shapes and sizes abound like sugarplums. Job applications for anything and everything fly around the State faster than kids exit school on the days before vacations.

This is also the season of anticipation and wishful thinking: anticipation because, to some, it may mean that the career break they have been working towards has finally arrived; wishful thinking, because it is also the time for school districts to unload superintendents, building administrators, and peripheral staff they judge aren't making the grade.

When it comes to unloading staff, there is a little bit of Pinocchio in all of us; and it is for this reason that I write this Message.

This is a plea for honesty. Year after year, superintendents and central office administrators wander from school district to school district, portfolios bulging with glowing letters of recommendations, all designed to grease their paths, not just into a new school district, but also out of an old one.

Failing to be candid is part of the problem.

I realize that there is liability in giving someone a bad recommendation, but this does not mean one should wax poetic about a candidate's imaginary qualifications. Perhaps the better position to take is to not say anything at all, and let the evaluator read between the lines.

Unloading poor administrators onto other school districts is a short term gain, but a long time loss for students, staff, and the reputation of our school systems. Unfortunately, we have all experienced this type of misrepresentation in one form or another. In the end, we all suffer, while those who should be driven out of our profession thrive and prosper within it.

In today's climate of professional uncertainty, those who serve on hiring committees must be sensitive to what is actually being communicated about a potential candidate. Sometimes, what is not said is much more meaningful than what is. Caveat Emptor. Let the buyer beware; and let us do unto others as we want others to do unto us.

On behalf of the ESSAA Executive Board, I wish you and your loved ones a happy and healthy New Year.

Very truly yours,

John F. Sullivan

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ESSAA's Legal Team Rocks!

Adirondack

3 years: 12%

Calculated at the highest paid administrator's rate (means settlement value is now 14.8%).

Increased pay for unused sick leave at retirement: \$50 per day (cap raised from \$300 to \$350 and for early retirement (age 55) payment is now at \$85 per day.

Auburn

3 years: 14.25%.

Health Care contributions limited. Important new contract language established.

Dobbs Ferry

3 years: 3% a year, plus 2% merit

Health insurance contribution goes from 100% to 95% to 94%.

This unit previously had only individual employment agreements.

New Rochelle

Three years: 3.6%, 3.65%

Longevities now become \$4,000 after six years administrative service in District, and \$7,000 after 12 years admin service in District, and are added to base salary.

Also, sick leave payout went into 403(b) plan.

Interesting committee set up to explore a reduction in the employee rate of contribution towards health premiums for administrators who hereafter retire, in exchange for an increased employee contribution toward health premiums while employed.

Niskayuna

Five year contract: 22.75%

Four longevity bonuses beginning in an administrator's 5th, 10th, 15th, and 20th year (\$500-\$1250)

Sick day accumulation raised from cap of 198 to 215 days

Retirement incentive for administrators age 55-63: \$2,000 per year of service (after 5 years in-district). 403b account language for tax free contribution from retirement incentive. After 2008, incentive available to ages 55-59.

Increased health care contribution from 20%-25% in the fifth year of the contract (80% of administrators will have retired by then)

Agreement between administrators and Board to work together on an evaluation system.

Oneonta City

3 Years: 12%.

GUARANTEED HEALTH INSURANCE FOR RETIREES. Increase to \$20,000 from \$18,000 for a retirement incentive in first year of administrator's eligibility under NYSTRS, and \$17,000 for the second and third year of eligibility.

Increase in payment for unused sick days to \$110 per day for up to 345 accumulated unused sick days. Time off to attend ESSAA meetings, and a payment of \$1250 for foregoing family coverage under the District's health insurance plan.

Pelham

3 years: 4.0%, 4.0%, 3.75%

Plus new longevity

After 10 years of service: \$2,000.00

After 15 years of service: \$1,000.00

After 20 years of service: \$1,500.00

Additionally, a \$10,000 stipend for any director or supervisor who has supervision over two (2) of the following departments: math; science; technology; language arts; social studies.

Increased health contribution: no change year 1 [stays at 94%] moves to 92% and 90% District contribution over life of contract.

Rockland County BOCES

3 years; Current maximum salary increased by \$1,000, then: 3%, 3%, 2.75%.

Members not at max get extra 3% per year unless they are found to be unmeritorious. Longevity structure based on all BOCES service amended to BOCES administrative service. New administrator longevity is: \$1,250 at 8th year, and \$2,000 at 14th year. Health contribution reduced to 35% - the same as present teacher contribution.

South Orangetown

2005-08 - 3.5%, 3.5%, 3.5%

Unit went from individual contracts to its first collective bargaining agreement.

Equity adjustments of \$5,600 to \$8,000 for 4 members of unit. All members in second and third years of employment, if not receiving enumerated adjustments, receive an adjustment with a minimum of \$2,000 and a maximum of \$4,000, depending on comparative data and discretion of Supt [who must give at least the \$2,000.]

ESSAA Team Rocks, cont'd. from previous page

Ability to cash-in up to 3 unused vacation days annually at per diem rate.

403(b) treatment for unused sick leave

Binding arbitration.

Employee health insurance contribution increased by 5% over life of contract [note cost to member = \$600, 3 vacation day cash in = \$1,600]

Waverly

One year rollover: 6.1% (avg.)

One year rollover due to budget distress. Average yearly increase: 6.1% (flat payment of \$5,000 each)

Health insurance contribution raised from 6% to 7%.

And In Other Negotiation News:

Rome and Utica File Impasse Petitions With PERB;
Negotiations Begin in East Syracuse, Queensbury, Guelderland,
Scotia-Glenville, ONC BOCES, Baldwinsville, and Cato Meridien

**ESSAA Wins IPs
and Grievances**

Contributions by:

Robert Saperstein • Paul Derkasch • Kevin Martin, *Attorneys for ESSAA*

**IP Charge Against OCM BOCES
Wins Removal of File Memo**

An Improper Practice charge was filed against OCM BOCES for violating ESSAA member's "Weingarten Rights."* An administrator had a memo placed in her file as a result of a meeting with the Superintendent and Human Resources officer. The administrator asked for representation, but OCM BOCES refused her request.

In a preliminary conference, the PERB judge reprimanded BOCES representatives and BOCES agreed to remove the offending memo from the administrator's personnel file.

ESSAA Wins Cato-Meridien Board Reversal

After the Board refused to recognize the administrators in Cato-Meridien (See Journal, November, 2006), ESSAA filed a representative petition. Following a preliminary conference with PERB, Cato agreed to recognize its ESSAA administrator's unit.

**Grievance Wins Back Pay for Rome Administrator,
and Removal of Memo From File**

ESSAA filed a grievance for a Rome administrator who was improperly removed from her summer school position. The District agreed that the removal was improper and will pay the administrator as promised WITH INTEREST.

A memo had also been placed in that administrator's file based on anonymous information, and ESSAA again filed a grievance. The District further agreed to remove that memo.

* *The rights of employees to have present a union representative during investigatory interviews was established by the U.S. Supreme Court in a 1975 case (NLRB vs. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689). These rights have become known as the "Weingarten Rights."*

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Paul's Corner:

Legal Curiosities Abound In New York State and Around the U.S.

By Paul Derkasch, Attorney, ESSAA



Same Sex Marriage: Yes, its legal; No, its not!

The caption above refers to gay marriage. In February, a New York judge struck down a law banning same sex marriages, saying it violated the State and U.S. constitutions. The court's finding was that "under the both the federal and New York State constitutions, it is beyond question that the right to liberty" extends to protect marriage. Beyond question??

Tell that to the State of Indiana which has a law which limits marriage to opposite-sex couples. When same sex couples applied for marriage licenses, they were denied and this precipitated a suit. The lower court dismissed the complaint for failure to state a claim upon which relief could be granted.

The Indiana court of appeals agreed! "Opposite sex-marriage furthers the legitimate state interest in encouraging opposite-sex couples to procreate responsibly and have and raise children in a stable environment. Regardless of whether recognizing same-sex marriage would harm this interest, neither does it further it.

The ability of opposite-sex couples to reproduce 'naturally' and unexpectedly is the characteristic that rationally distinguishes them from same-sex couples." It is this "rational distinction" that permits (in Indiana at least) the unequal treatment of "couples."

Defamation on the Internet*

What, if any, responsibility/liability do web-site operators have to control the postings on their web community bulletin boards? The facts in a recent New Jersey case, *Donato v. Moldow*, closely parallel those which school district personnel confront and therefore sheds some light on this gnawing issue.

The *Donato* plaintiffs were town officials who sued the web-site owner for defamation when anonymous third parties posted allegedly false statements about them on the website. The statements included claims that the plaintiffs engaged in improper sexual activities and were illegal drug users.

The plaintiffs argued that the site owner, because he exercised control over which items would be posted/rejected on the website, became a publisher of defamatory comments for which he should be held accountable.

Not so, said the court! § 230 of the federal Communications Decency Act states: "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Thus, since the website owner/operator fell within the meaning of "provider" or "user" in § 230, he is shielded from suit.

As for the discretion website owners exercise over the content appearing on their site's boards, the court said such discretion is "nothing more than the exercise of a publisher's traditional editorial functions: namely, whether to publish, withdraw, postpone, or alter content provided by others. ... This is the very conduct Congress chose to immunize by § 230."*

**This decision has unfortunate implications for those teachers and administrators who have been plagued by sites such as: ratemyteacher.com, or ratemy-professor.com, or a new one, entitled, myprofessorsucks.com As of now, it appears, the courts are giving the gatekeepers "full steam ahead" for what many in our profession believed to be legalized libel.*

Supreme Court Rules In Favor Of School Districts On Special Education

The United States Supreme Court ruled in favor of school districts in a major special education decision. The case, *Schaffer v. Weist*, which was decided on November 14, 2005, provides that "the burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief."

This means that when a parent challenges an IEP, the parent must prove that the IEP does not provide an appropriate education under the statute. While a procedural issue, the burden of proof frequently decides who wins and who loses a case, particularly when the merits of the case are close.

This decision should make life a little easier for overworked special education administrators, a group that has one of the toughest jobs in school districts. It is anticipated that this decision will curtail some of the special education litigation which has been draining resources from school districts.

In a rare but important reaffirmation of the jobs school administrators perform daily, Justice Stevens in his concurring opinion stated: "I believe that we should presume that public school officials are properly performing their difficult responsibilities under this important statute."

It is a certainty that this helpful quote will find itself inserted into numerous legal briefs supporting the actions of school administrators in the coming years, in all types of litigation.

While the dust is still clearing on this decision, we anticipate that special education advocacy groups will attempt to have Congress amend the law to undo this ruling. As the Bush administration supported the school district in this litigation, it is not expected that such efforts will succeed. We will keep you posted.

Aftermath: Hurricane Katrina's Challenge To School Administrators

By Charles Mitchell, ESSAA Project S.A.V.E,

This past summer I had several opportunities that tie directly into a school administrator's role with school safety. I took the time to be trained at the Homeland Security's Center for Domestic Preparedness in Anniston, Alabama in the national Incident Command System mandated by Presidential Executive Order after 911. I also took an on-line course in Multi-Hazard Planning for Schools from FEMA, as well an on-line course in "Understanding and Planning for School Bomb Incidents" from Homeland Security's program at New Mexico Tech.

My experiences as a volunteer disaster worker for the American Red Cross assigned to the headquarters facility in Montgomery, Alabama (where we responded to the impact of Katrina in Mississippi, Alabama, and Northern Florida) solidified my thoughts about the importance of having plans in place for emergencies, practicing those plans, and implementing them when needed.

Murphy's Law set in quickly, as did the weaknesses of local, state, and federal responses. Poor planning, poor practice, and not following a unified command structure, all played a part in response inadequacies.

What does the Katrina response have to do with your individual school's response to a crisis?

Some basic questions for you as an administrator:

1. Do you have a real threat assessment process in place that is practiced?
2. Have you trained your staff in this plan?
3. Are your emergency plans complete?
4. Are you personally trained in conducting a "sweep" or "scan" to determine a possible threat in an area of your building or classroom? If you are trained, have you trained your staff?
5. Have you established a "buddy system" for your staff for an emergency situation?
6. Do you have a unified command system for your building to deal with any emergency?
7. Are you prepared to "shelter in place" for 72 hours, if need be, without outside assistance? Do you have adequate food and water on site to accomplish this task?
8. What are your alternative locations to shelter your students/staff in an emergency? Have you practiced moving your students/staff to this location?
9. In a bomb threat scenario, do you know how far from the possible threat you need to move your students/staff based on the nature of the threatening device, if known? Do you take barriers into account in your decision to move students? Do you know what a "cricket" is – you should! *
10. Can you force yourself to "think like a terrorist"? The threat maker who is thinking of committing a violent act against your school is doing extensive planning. If you don't think like he/she does, the threat maker might succeed!

I suggest strongly that the following free training opportunities be utilized:

- a. Online Course – Understanding and Planning for School Bomb Incidents – <http://emrtc.nmt.edu> - 4 hr course
- b. Online Course – Multi—Hazard Planning for Schools – <http://training.fema.gov> - 8 hr course
- c. Center for Domestic Preparedness Training Center – Homeland Security – Anniston, Alabama – all expenses paid [air/land transportation/food/materials] Fly to [through Atlanta on Sunday, fly home on Thursday] – WMD Incident Command Course – <http://cdp.dhs.gov>

ESSAA can provide on-site consultation for building administrators and school districts planning for emergencies, "table-top" scenarios to test your emergency preparedness, and on-site advice during an emergency. Contact John Sullivan, ESSAA President, for assistance.

**Editor's Note: Paul Derkasch informs us that "cricket..."*

...does not refer to the noisy and leaping member of the orthopteran insect family. The word is a bastardization of 'Cretio' (Lat.), which is, in civil law, the certain number of days allowed an heir to deliberate whether they would accept or reject an inheritance. For those legatees, or devisees, who failed to choose within the time limitation but later came back to make their claim, the cry from those who had already chosen was: 'that violates cretio,' which became, over the years, 'That ain't cricket!' ”



From “Captain Underpants” To “Harry Potter”: NYC Principal Turns Press Around

By Bob Liftig

When NY Times reporter Michael Winerip “ripped” into New York City’s Special Ed program in one of his columns, he didn’t expect PS 75’s principal Robert O’Brien to be listening. But in a Nov. 30, 2005 “apologia,” Winerip admitted he had agreed too hastily with a recent independent study which panned the City’s special education system.

The study praised Chancellor Joel I. Klein’s special education “model,” but blamed principals and teachers for poor administration and practice, claiming that “too often, the classes are poorly run, resisted by parents of general ed students, and become ‘dumping grounds’ for the lowest tracked students.”

Winerip had apparently been tipped off about “troubles” in a PS 75 kindergarten classroom last year, and referred to them in his column. Principal O’Brien, however, decided not to let the criticism go unanswered, and fired off “an angry email” to the Times reporter, inviting him to come to PS 75 and see for himself.

What Winerip saw changed his mind about the possibilities of special education working well with students from culturally, academically, and economically diverse backgrounds.

Winerip describes the “invisible help” offered to mainstreamed special ed students during a math lesson at PS 75 on the Upper West Side:

While Ms. Lopez taught a math lesson, Ms. Martindale sat beside the most distracted girl and boy, and with a few whispered words, kept them on task. When a boy who has retardation couldn’t answer a question, Ms. Martindale had the child call on a helper for the answer, and the class moved along briskly.

Because special ed children have trouble copying homework assignments off the board, every PS 75 child gets a red folder with a nightly homework list from the teacher... Teachers take on challenges at PS 75 that few schools attempt. Katherine Baldwin and Liz Ciotti work together in a second grade that they also teach in two languages... One day they teach in English, the next Spanish. Every child gets a chance to shine: on Spanish days, Hispanic special ed children help general ed.

The special education model employed at PS 75 – which involves thus far only 10% of the City’s special ed population – is “collaborative”: a general ed and special ed teacher are paired in classrooms that may include up to 40 percent special ed. The model also relies on supervision provided by parent “volunteers” (PS 75 has at least 100). One volunteer, a retired high school math teacher, has organized an algebra tutorial for the 10 brightest fourth graders, while other volunteers run chess and book clubs.

Winerip also claims that: “Classwork is so individualized, students can be reading books on a dozen levels at once.” “Jed,” a nine year old student, is one of the reading program’s success stories. His mother says that at his former private school, Jed began reading “Captain Underpants” in kindergarten, and was still reading “Captain Underpants” when she pulled him out three years later. She enrolled him in the fourth grade at PS 75, where the reading program was so well organized, Jed has now “gone from ‘Captain Underpants’ to ‘Harry Potter.’”

PS 75 special ed students now “consistently score better on state tests than (special ed children) City wide,” though they still “lag far behind PS 75’s general ed students.”

Even so, Principal O’Brien seems to have won at least two important points. First, he has called a reporter (admittedly an open minded and responsive one) to task for blindly parroting the condemnation leveled at his students’ by bean counters who have never worked in a classroom. Second, by inviting the critical press inside PS 75, O’Brien has sensitized Times readers to the complexities administrators face when they carry out difficult local, State, and Federal educational mandates.

Principal O’Brien is to be congratulated for his grit and guts, and for the confidence he rightfully has in his staff and students program, staff, and students. And reporter Michael Winerip should be applauded for his willingness to admit that his visit to PS 75 changed how he thinks about public education.

Perhaps the Times reporter could have done one more service to public education if he had recognized how much effort it must have taken for Principal O’Brien to organize those 100 volunteers; for collaborating teachers to coordinate bi-lingual teaching, and for parents like “Jed’s” to ignore all the scare talk about failing public schools, and place their trust once again in the public schools’ administrators and teachers.



U.S. Schools Welcome “Generation Rx”

By Bob Liftig

ESSAA members are encouraged to download any of the National Survey on Drug Use and Health (NSDUH) comprehensive and “sobering” reports about the linkage between alcohol abuse and delinquency.

As the April 1, 2005 issue of NSDUH points out, results of the studies it has done are in, and they are definitive: the higher the regular alcohol use and abuse by minors, the greater their participation in delinquent behaviors – including problems in school.

- In 2003, almost 8.6 million (34.3 percent) youths aged 12 to 17 had used alcohol in the past year.
- An estimated 9 million (36.1 percent) youths aged 12 to 17 had engaged in at least one delinquent behavior (such as stealing, illicit drug use, and problems in school) in the past year.
- Youths aged 12 to 17 who reported heavy alcohol use in the past month were the most likely to have participated in any delinquent behavior.
- In 2002 and 2003, 21 percent of persons aged 16 to 20 reported that they had driven in the past year while under the influence of alcohol or illicit drugs.
- Among persons aged 16 to 20, whites and American Indians/ Alaska Natives were more likely to report DUI than other racial/ethnic groups.

What’s Next?

New York, California, and New Jersey have introduced legislation to prohibit the sale of DXM containing products to minors. According to a New York Times article by Mindy Sink, Dextromethorphan, an ingredient in more than 125 nonprescription cough and cold medications, while extraordinarily safe in recommended dosages, can cause hallucinations, feelings of unreality, high fever, seizures, and other adverse reaction in larger doses. Interaction with other drugs, such as antidepressants and antihistamines, can lead to coma and death.

DXM abuse is referred to as “robotripping” or “skittling,” and teen abusers call the product Red Devils, Skittles, Robo, or Triple C. It can be found in over the counter cough medications such as Robitussin, Coricidin, and Vicks, and is used as a cough suppressant. Signs of DXM abuse include: confusion, impaired judgment, blurred vision, dizziness, nausea and vomiting.

Skittling represents a new and increasing trend in substance abuse among teens: one in five teenagers has abused a prescription painkiller to get high, and one in 11 has abused over the counter products.

Roy Bostock, chairman of the Partnership Attitude Tracking Study, says, “A new category of substance abuse is emerging in America: increasingly, teenagers are getting high through the intentional abuse of medications. For the first time, our national study finds that today’s teens are more likely to have abused a prescription painkiller to get high, than they are to have experimented with a variety of illicit drugs... ‘Generation Rx’ has arrived.”

According to the 2004 PATS survey of more than 7,300 teenagers:

- One in five teenagers report abusing the painkiller Vicodin; one in 10, OxyContin.
- One in 10 teens have tried prescription stimulants like Ritalin and/or Adderall without a doctor’s order.
- One in 11 teens has abused OTC cough medications.
- Abuse of OTC medications is at least as high or higher than abuse of illicit drugs such as cocaine, Ecstasy, methamphetamine, LSD, ketamine, heroin, and GHB.
- Abuse of medications has penetrated teen culture. 37% of teens say they have close friends who have abused prescription painkillers.
- Teens who abuse or have abused an Rx or OTC medication are more likely to report having abused drugs such as Ecstasy and marijuana.

The Journal has undertaken a Google search for studies attempting to describe the percentage of students in New York State who come to school under the influence of alcohol or drugs. Interviews with substance abuse counselors provided anecdotal evidence that students tend to use and abuse drugs and alcohol more outside of school than in school, yet there are no studies we can find defining to what degree substance use and abuse is a behavioral problem during the school day. The Journal welcomes helpful input from the membership (Doctoral dissertation, anyone?)

Thanks to ESSAA’s Director of Research Jan Yablow for providing this information.

New York's Progress vs. National Stagnation: Two Assessments

By Bob Liftig

The View From Washington

Louis Romano writing in the Washington Post at the end of October, points to the “slow gains in math nationally during the past two years” – especially among 4th and 8th graders - as evidence of the failure of the Bush administration’s federal education testing law.

Romano cites statistics from the National Assessment of Education Progress (NAEP) organization, “which has been testing students for three decades and bills itself as ‘the nation’s report card,’” and to a statement by David Winick, chairman of the National Assessment Governing Board,” which oversees the testing: “There is no rationale on eighth grade reading other than we are not making progress.”

The percentage of fourth graders scoring proficient in math rose eight percentage points between 2000 (before the federal law took full effect) and 2003. Jack Jennings, President of the Center on Educational Policy,” has already concluded that: “The rate of improvement was faster before the law. There’s a question as to whether No Child is slowing down our progress nationwide.”

On the other hand, most observers agree that the gap between white and black students’ math achievement is narrowing, and that both will be performing at equal proficiency by 2034.

The education law got its first test when the Department of Education gave tests to 660,000 students from January to March, 2005, in the 50 states, the District of Columbia, and on military bases around the world. The test is graded on the basis of 500 points. While the math scores improved slightly, eight grade reading scores declined.

Tom Loveless, a senior fellow at the Brookings Institution, summed up the results this way: “...reading scores were flat and math scores on the rise before No Child Left Behind, and reading scores are flat and math scores are still up after No Child Left Behind. It’s impossible to know whether NCLB had an impact --- either positively or negatively.”

The View From Albany

Despite the lackluster national results, New York Commissioner Richard Mills describes the state of education in New York State in phrases so hopeful, you’d never know there’s a “Crisis In Literacy.” In his welcoming remarks to the Regents, working educators, and education-minded businessmen at the recent USNY Educational Summit in Albany, Mills said:

Achievement is up and you made that happen. More graduate than before. More pass Regents exams. National Assessment results for New York over the last decade show that the gaps between racial and ethnic groups are closing. New York leads the nation in the proportion taking SAT exams and earning qualifying scores on AP. More persons with disabilities complete high school and college.

Mills views educational success as a multi-dimensional construct, and not just a reflection of higher or lower scores, and he sees at least part of this progress as due to the history of cultural and educational institutions in New York: “New York is the only state,” Mills says, “where all the educational and cultural institutions are in one structure, and under the care of one Board – the Regents. We are loosely coupled, as we should be, but we are connected.” *

Article XI of the New York State Constitution provides the language upon which rests, according to Commissioner Mills, all of our educational progress in the State of New York:

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Section 2. The corporation created in the year one thousand seven hundred eighty four, under the name of the Regents of the University of the State of New York, is hereby continued under the name The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified, or diminished by the legislature, shall be exercised by not less than nine regents.

* Editors Note: [New York State has always been proud of its educational system. The Regents of the University of the State of New York were created by statute May 1, 1784, empowered as a corporation to act as trustees of Columbia College (originally chartered as King’s College in 1754 and closed during the Revolution) and every other college and academy incorporated in the state thereafter. Today, the University of the State of New York embraces all the institutions of elementary secondary, and higher education in the state, including libraries, museums, and other institutions of learning. *It is the only state board of education having authority over all educational activity at all levels, including private and public, non-profit and for profit institutions.*]

from: nysed.gov/pub/education.dept.puts/sedhist.txt

U.S. Predicts Upbeat Future For School Administrators

The U.S. Department of Labor, Bureau of Labor Statistics (www.bls.gov) has some interesting predictions about the future for school administrators. BLS "Job Outlook" says that "employment of education administrators is projected to grow faster than the average for all occupations through 2012."

The "Outlook" goes on to say that, "A significant portion of growth will stem from growth in the private and for-profit segments of education. Many of these schools cater to working adults, many of whom might not ordinarily participate in postsecondary education."

At the same time, enrollments of school-age children are predicted to grow between 5 to 7 % over the next decade, making the administration of preschool and childcare centers a hot area for job growth, especially if mandatory preschool becomes more popular.

The Labor Department estimates that education administrators held 427,000 jobs in 2002, sixty percent of them being with State and local governments, "mainly in schools, colleges and universities and departments of education." Two percent involved administrative responsibilities for private educational institutions. Five percent of school administrators were self employed, and the remainder of them (33%) were in child daycare centers, religious organizations, job training centers, and "businesses and other organizations that provided training for their employees."

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PAC Poetry

By Thomas A. Vasiloff, ESSAA PAC Chairman

Fall. Autumn.

The wind is a bit cooler.

Leaves are turning bright shades of red, amber and burnt orange.

The trees shed their leaves and grass grows dormant.

Ready for a winter nap.

A time of change.

November.

Election time:

More change.

Incumbents face challenges by those who seek to unseat them.

Some succeed:

Others do not.

Politically.

Changes are as inevitable as the

Falling leaves, or

The Holidays.

Or

The New Year turning.

Some changes, even

Have important consequences for public school administrators.

Like: Tenure, Charter Schools, Licensing Requirements

And

Public Notice of Administrative Reprimands.

And

That is the reason you need PAC.

And ESSAA needs your

Contributions.

- Thomas A. Vasiloff,

ESSAA Poet Lauriate

Where the jobs are

According to the U.S. government, jobs in educational administration are expected to reflect the enrollment growth increasing fastest in the South and West; job prospects are expected to decline or remain stable in the Northeast and Midwest. In general, school administrators are in greater demand in rural and urban areas, but the pay is less.

Administrators will find it interesting that the government study cautions prospective administrators to expect increased stress if they choose school administration:

Principals and assistant principals should have favorable job prospects. A sharp increase in responsibilities in recent years has made the job more stressful, and has discouraged teachers from taking positions in administration. Principals are now being held more accountable for the performance of students and teachers, while at the same time they are required to adhere to a growing number of government regulations... The increase in pay is often not high enough to entice people into the field.

The Department of Labor uses 2002 salaries schedules in presenting the following annual earnings estimates for school administrators:

- 1) Elementary and secondary administrators had median annual earnings of \$71,490.
- 2) Postsecondary school administrators had median annual earnings of \$64,640.
- 3) Preschool and childcare center administrators earned a median of \$33,340.
- 4) Average salaries for principals and assistant principals (2002-3) were:

Directors, managers, coordinators	\$81,451
Principals,	
Elementary	\$75,291
Jr. High/ Middle	\$80,708
Senior High	\$86,452
Assistant Principals,	
Elementary	\$62,230
Jr. High/ Middle	\$67,288
Senior High	\$70,874

While teachers in public elementary and secondary schools frequently make more than their university counterparts, higher education administrators make more than public school administrators. Academic deans in Business, Education, Graduate, and Arts and Sciences Education made, respectively: \$107,414, \$100,227, \$100,391, and \$98,780.

The government considers that the following occupations require roughly the same “organizational and leadership skills” as school administration: administrative services managers, office and administrative support, worker supervisors and managers, human resource, training and labor relations managers and specialists, and “archivists, curators, and museum technicians.”

Headline Updates From NASBE: What's Hot; What's Not

High Stakes Graduation Test Rules Changed In Georgia.

The Georgia State Board of Education approved a rule that will allow students who repeatedly fail one section of the high stakes exam to receive a diploma. In the past, waivers have been granted only rarely (41 in the last four years); with the rule change, consideration will be given for attendance, how close the student came to passing the test, and whether he or she passed the applicable end-of-course test. Almost 5,000 students each year cannot pass all five portions of the graduation test; many of those students are limited-English speakers or learning disabled. Source: Atlanta Journal-Constitution (12/8/05).

Maryland Board Rejects Baltimore City Master Plan.

The Maryland State Board of Education voted to reject the Baltimore school system's updated master plan for school reform and directed the city to spend whatever is necessary to hire an outside monitor to evaluate the implementation of a rewritten plan for at least seven months. All 24 school systems in Maryland are required under the state's Thornton legislation—which supplies an additional \$1.3 billion a year to public education by 2008 in exchange for documentation of how that money is spent—to develop master plans and update them annually. Baltimore's update was the only one rejected this year. “The intent of those dollars is to accelerate student performance, and if that is not occurring, the city school system is not in compliance with the intent of the law,” state superintendent Nancy S. Grasmick said as she outlined data showing dismal student achievement and failure to show progress toward hiring enough qualified teachers. City schools chief executive officer Bonnie S. Copeland says the data show the contrary, that the city demonstrated the capacity and ability to make significant progress quickly, and that the city's graduation rate was the highest it has been in 10 years, beating the national graduation rates for African-American and Hispanic students.

Source: *Baltimore Sun* (12/7/05).

cont'd. next page

Headline Updates *cont'd. from previous page*

Massachusetts Board Looking To Toughen School Improvement Plans.

In a surprise move, the Massachusetts State Board of Education voted not to take action to approve school turnaround plans, as recommended by commissioner David Driscoll. According to board chairman James A. Peyser, the current strategies have produced little improvement and more drastic measures are needed. "I am afraid that we are not even trying to use the authority we have," Peyser said. "Moreover, the incrementalism of our school turnaround efforts reflects a lack of imagination, a lack of will, and, most troubling, a lack of urgency." The vote is fueling debate on how the state should handle this situation, as Governor Mitt Romney and a coalition of education and business leaders are pushing for stronger state intervention. Discussion will resume later this month on a deadlocked 4-4 vote on three schools' turnaround plans. Source: Boston Globe (11/30/05).

Kentucky Board Approves Policy Revising Standards For Foods In Schools.

The Kentucky Board of Education has approved a policy that revises minimum nutritional standards for foods and beverages available on public school campuses during the school day. Foods are covered by the policy if they are sold as a la carte items during the breakfast or lunch period, or offered for sale through vending machines, school stores, canteens, or fundraisers on school property. The policy also requires annual nutrition and physical activity reports from local superintendents to the state department of education. In comments submitted to the Institute of Medicine's Committee on Nutrition Standards for Foods in Schools (IOM), Gene Wilhoit, state commissioner of education, stressed that in order to improve the types of foods served in school cafeterias, the IOM Committee needs to propose changes to the school lunch meal pattern established through federal regulations. Source: Kentucky Department of Education (email communication 11/30/05).

Motion Filed To Dismiss Connecticut's NCLB Lawsuit.

The U. S. Department of Education has filed to dismiss Connecticut's suit against No Child Left Behind, claiming that the state has accepted more than \$750 million since 2002 based on its promise to meet the terms of NCLB but now is seeking "to keep the funds while jettisoning the accompanying obligations." Connecticut is set to receive almost \$180 million in federal grants this school year, about one-fourth more than it received in 2002 when NCLB was signed into law. However, the state contends that even with the increased funding, the additional testing the law requires will cost taxpayers an estimated \$8 million over the next two years. "I don't question that they gave us more money, they just didn't give us enough," said state education commissioner Betty Sternberg. In response to the Department, Connecticut Attorney General Richard Blumenthal issued a press release that characterized the motion for dismissal as an effort "to avoid the law's express provisions and prohibitions against unfunded mandates by hiding behind baseless jurisdictional challenges, by distorting clear statutory terms, and by obscuring unequivocal legislative intent. We hope and believe that the federal courts will soundly reject this legal sophistry." Source: Hartford Courant (12/4/05); Connecticut Attorney General's Office Press Release (12/5/05).

edweek.org "The Home of Education Week and Teacher Magazine"

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TEACHER-EVALUATION SYSTEM LIKELY TO BE REPLACED IN MIAMI DISTRICT.

Miami-Dade County school officials are poised to jettison their teacher-evaluation system. The 5-year-old system is tied to a contract that the Florida district's former inspector general criticized as flawed in a report that also raised questions of cronyism and conflicts of interest. (December, 14, 2005)

U.S. JUDGE RULES INTELLIGENT DESIGN HAS NO PLACE IN SCIENCE CLASSROOMS.

In a decision that could have broad implications for public schools across the country, a federal judge in Pennsylvania has ruled that "intelligent design" is not legitimate science, but rather an unconstitutional religious concept with direct ties to biblically based creationism. (December, 21, 2005)

STUDY SEES U.S. AS COMPETITIVE IN MATH AND SCIENCE.

Business leaders and politicians in the United States could be scaring away high school students from pursuing mathematics and science careers by focusing the spotlight on the large numbers of engineers produced by India and China and the loss of U.S. jobs to outsourcing, the author of a new report says. (December, 21, 2005)

December 1, 2005

LEGAL CLIPS: New York...

NY COURT SAYS RELIGIOUS GROUPS CAN USE SCHOOLS

A New York federal district court has ruled that a school district's refusal to allow an outside religious group to use school facilities on Sundays for religious services and worship violates the group's First Amendment free speech rights. The court concluded that permitting the group to meet at school would neither advance nor inhibit religion in violation of the Establishment Clause principle of religious neutrality. However, it found the school district's policies of precluding religious groups from using school facilities for services and worship created excessive government entanglement with religion in violation of the Establishment Clause. In 1994 the Bronx Household of Faith (BHF), a Christian church, made a formal request to use a New York City public school for Sunday religious services and worship. The Board of Education of the City of New York (BOE) denied the request based on its policy prohibiting the rental of school property for the purpose of religious worship. After a federal district court dismissed BHF's suit to enjoin enforcement of the policy and the U.S. Court of Appeals for the Second Circuit affirmed the lower court in *Bronx Household I*, the U.S. Supreme Court decided *Good News Club v. Milford Central School*, 533 U.S. 98 (2001), in which the Court held that speech discussing otherwise permissible subjects cannot be excluded from a limited public forum because the subject is discussed from a religious viewpoint. BHF made a new request for access to a school building for purposes of Sunday worship and services. BOE again denied that request. When the new suit reached the Second Circuit, it concluded that it was bound by the Supreme Court's holding in *Good News*. As a result, it found there was no meaningful difference between "the teaching of morals and character development from a [religious] viewpoint" at issue in *Good News* and religious worship at issue in *Bronx Household II*. BHF then made a third request for use of the school facilities that is an issue in the present case. The BOE, in an attempt to conform its policies to the holding of *Good News* while continuing to bar the use of school property for religious worship or services, adopted a new policy that allowed after school use of facilities by groups like the *Good News Clubs*, but still prohibited the use of school facilities as a house of worship. The district court found, as had the courts in *Bronx Household I* and *Bronx Household II*, that the BOE's policies created a limited public forum. It pointed out that in a limited public forum the BOE could not impose restrictions on private speech that amount to viewpoint discrimination without running afoul of the First Amendment's Free Speech Clause. The district court found it could not reach a conclusion different than that reached in *Good News* and *Bronx Household II* that "[BHF] seek[s] to continue using the School to engage in activities that, while in part quintessentially religious, amount to the teaching of moral values from a religious viewpoint. [BOE's] discrimination against [BHF] on the basis of this religious viewpoint is, therefore, a violation of [BHF's] First Amendment rights." Applying the primary or principal effect test to determine if allowing BHF to hold services on school property would create an Establishment Clause violation, the district court concluded as had the Second Circuit in *Bronx Household II*, "[t]he School Board does not have a valid Establishment Clause interest because the proposed meetings: (1) occur on Sunday mornings, during nonschool hours; (2) are not endorsed by the School District; (3) are not attended by any school employee; (4) are open to all members of the public; and (5) there is no evidence that any school children would be on the school premises on Sunday mornings or would attend the meetings." Turning to the excessive entanglement test, the district court found that the BOE's policy which requires it to "distinguish between "religious services" [previous policy] and "religious worship services" (Present SOP § 5.11) from the teaching of character and morals from a religious viewpoint as described in *Good News Club*," created a recipe for excessive government entanglement with religion. Lastly, it concluded that the new policy failed because the activities at issue in the present case were not "mere religious worship divorced from any teaching of moral values."

The Bronx Household of Faith v. Board of Education of the City of New York, 2005 WL 3071639 (S.D. N.Y. Nov. 16, 2005)

LI PARENTS SUE NASSAU BOCES:

CLAIM "TIME OUT" DEPRIVED THEIR KID OF AN EDUCATION

The parents of a special education student who was placed in a time out room on repeatedly for disciplinary reasons have filed notice of claim against Nassau Board of Cooperative Education Services (NBOCES), which is usually a precursor to filing a lawsuit in New York State. The parents allege that as a result of being isolated in a closet-size cubicle on several occasions for periods of 15 to 30 minutes their son was subjected to false imprisonment and education deprivation. William and Janet Schafer claim they discovered their son, Billy, was being placed in the cubicle when they visited the school to discuss to Billy's education plan with school officials. Mr. Schafer, who is a corrections officer, claims the 5' by 6' room is smaller than any jail cell he has seen in his work. After observing Billy being detained in the room, the Schafers removed him from the school. Justin Lowenberger NBOCES' attorney, characterizes the Schafers' complaint as "meritless," and adds the school is operating a timeout room in compliance with state regulations. However, Mr. Lowenberger declined to comment on whether the school has changed its operations since the parents lodged their complaint. While behavioral experts agree that time out rooms can be effective tools in calming students who become violent and disruptive, they caution the rooms should only be used as a last resort. Instead, they prefer the use of incentive programs that reward students for proper behavior and take away privileges when the students act up. Eleanor Guetzloe, an authority on behavior disorders from the University of South Florida, supports the use of time out rooms, but not for "ordinary behavior problems." New York State requires that the rooms have adequate lighting and enough space for students to move about. In addition, the state requires schools to provide parents with copies of relevant school policies. The Schafers claim they never received a copy of the policy. In 2002, a state appellate court upheld a \$75,000 jury award to a special education student in another school district who was detained in a time out cubicle 75 times over a six month period. The court found the jury could reasonably conclude that conditions of confinement were "atrocious."

Newsday By John Hildebrand

cont'd. next page

NCLB NEWS FROM AROUND THE NATION

A Michigan federal district court has dismissed the National Education Association's (NEA) lawsuit challenging the mandatory testing provisions of the No Child Left Behind Act (NCLB) as an unfunded mandate in violation of the NCLB provision at 20 U.S.C. § 7907(a) (2005) that prohibits federal officials and employees from imposing mandates not paid for under NCLB. Although the district court found that NEA had plead sufficient facts to establish standing to bring the suit, it rejected NEA's contention that 20 U.S.C. § 7907(a) prevents the U.S. Department of Education (ED) from requiring states and local school districts to perform annual standardized testing unless the federal government provides 100% of the funds necessary to pay for the testing. Instead, the court read the section NEA relied on as the basis for its suit as merely prohibiting federal officials and employees from "imposing additional "[u]nfunded requirements, beyond those provided for in the statute." It pointed out that had Congress intended to prohibit unfunded mandates it would have omitted the words "an officer or employee of" from 20 U.S.C. § 7907(a) or included statutory language requiring the federal government to reimburse states for all costs incurred complying with NCLB's requirements. As a result, the district court ruled that 20 U.S.C. § 7907(a) could not be "reasonably interpreted to prohibit Congress itself from offering federal funds on the condition that States and school districts comply with the many statutory requirements, such as devising and administering tests, improving test scores, and training teachers."

School District of the City of Pontiac v. Spellings, No. 05-71535 (E.D. Mich. Nov. 23, 2005)

Hawaii is considering applying for the U.S. Department of Education's (ED) new pilot program that will allow ten states to measure student academic achievement using the more flexible "growth model" rather than the rigid requirements currently employed under the No Child Left Behind Act (NCLB). Under the pilot program, schools' academic success will be determined based on whether students make clear and steady progress, even if test scores actually fall short of the official targets. Hawaii Department of Education (HED) officials believe using the "growth model" to measure academic progress under NCLB is a promising option for the state because even though most schools failed to meet targets on this year's testing, many schools demonstrated significant improvement over the previous year's test scores. However, HED may not be able to satisfy the pilot program's sophisticated record-keeping requirements, which include the ability to track individual student progress over time. Some the other pilot program requirements may also prove daunting for Hawaii. For example, ED Secretary Margaret Spellings says a state's growth model "must have been operational for more than one year." Robert McClelland, HED's director of planning and evaluation concedes Hawaii does not have one at present, and HED officials are unsure that they can devise one before the filing deadline for the program.

Star Bulletin By Dan Martin

In an effort to improve standardized test scores and bring their school into compliance with the No Child Left Behind Act's (NCLB) academic performance mandates, Norristown Area High School (PA) officials have conducted a "whole-school restructuring" that includes: a new curriculum, doubling the length of classes, and asking teachers to act as mentors to students and establish good relations with their parents. While the students appear to have adapted to the changes without difficulty, teachers and other staff admit to feelings of stress and exhaustion. Curriculum, schedules, and classroom traditions that remained unchanged for decades are being jettisoned by school officials who are seeking to improve the educational experience for a generation of students who need high-quality math, science, and problem-solving skills to compete with their peers globally. Norristown High's changes are part of program called "First Things First," which proved successful in Kansas City, Kansas. Norristown is among the first high schools in Pennsylvania to win funding from Project 720, the Pennsylvania Department of Education program to improve high schools. In addition to family advocacy, block scheduling, small learning communities and curriculum overhaul, the school is providing freshmen and sophomores double periods of both math and English.

Philadelphia Inquirer By Connie Langland

STATE OF LOUISIANA WILL RUN WORST NEW ORLEANS SCHOOLS

The Louisiana Department of Education (LED) is preparing to take over control of some of the poorest performing New Orleans public schools. The Louisiana House in an 89-14 vote accepted the Senate amendments to House Bill (HB) 121, which turns control of Orleans Parish School District's schools to LED. Governor Kathleen Blanco, who was the driving force behind state takeover, believes many former residents of New Orleans will not return unless they are assured the city will have "good public schools." She says, "The state will redesign the schools as an overdue gift to our children." However, legislators from Orleans Parish and labor unions opposed the legislation. The Orleans legislators objected to the timing of the bill when residents are still scattered around the nation; the unions see the state takeover as a means of effectively jettisoning the teachers' collective bargaining agreement. When the governor signs HB 121 into law, New Orleans schools that have performance scores below the state average will be shifted into a "recovery school district" run by the LED and the Louisiana Board of Elementary and Secondary Education (BESE). There are currently 68 New Orleans schools that qualify as "failing" under the state's accountability system. Some 34 schools are not quite failing but do have scores below the state average. Currently no public schools that were under the Orleans Parish School Board (OPSB) have reopened. Many of the schools set to reopen will do so as charter schools under OPSB auspices. However, the new legislation restricts the ability of parents and community groups to convert any of the remaining schools to charters by withdrawing OPSB's authority to grant charters and placing that authority in the hands of BESE.

Times-Picayune By Laura Maggi

Legal Clips cont'd. from previous page

COACHES CAN BE PAID FOR VOLUNTEERING

The Department of Labor (DOL) has issued a letter describing what a “nominal fee” is specifically in the context of a nonexempt school district employee who “volunteers” to coach or act as an advisor. Nonexempt school district employees may “volunteer” under the FLSA if they: (1) volunteer without expectation of compensation, except they can be paid expenses, reasonable benefits, or a nominal fee; (2) volunteer without coercion; and (3) do not volunteer for the same type of services that they perform in their regular job. “Nominal fee” is not defined in the Fair Labor Standards Act (FLSA). So, to define the term, DOL looked to the definition of “incidental” in the FLSA, which is defined as no more than 20 percent. In short, the DOL concluded that if a stipend paid to a nonexempt school district employee who volunteers to coach or act as an advisor is no more than 20 percent of the amount a school district “would otherwise pay to hire a coach or advisor for the same services it would appear to be a permissible ‘nominal fee.’” This letter withdrew an earlier DOL letter dated July 11, 1995, which stated that if the stipend divided by the hours worked exceeded minimum wage, the stipend was not nominal. In the letter at hand a school custodian received a stipend of \$3,675 to coach varsity track. The DOL was unable to conclude if this amount was nominal because the district did not state how much it would otherwise pay a coach for the same services. For school districts who pay the same coaching and advisor stipends to teachers and nonexempt employee “volunteers” and other “volunteers” who are not otherwise employed by the school district, this letter indicates that the DOL will not consider this stipend a nominal amount. For school districts who currently pay nothing to nonexempt employee “volunteers” and other “volunteers” who are not otherwise employed by the school district, pursuant to this letter, such “volunteers” may receive a stipend that is no more than 20 percent of what non-volunteer coaches and advisors receive. Courts are not bound by DOL opinion letters, and as illustrated in this opinion letter, DOL may rescind opinion letters at its whim.

DOL letter: www.nsba.org/cosa2/flsa.pdf

ATTENTION: ALL CURRENT AND SOON TO BE RETIRED ESSAA MEMBERS

By Herb Dickson; President, ESSAA Retirees

Health Insurance

This past December the county legislature in my area unilaterally decided it would be a good revenue enhancement to raise the health insurance premium paid by its retirees. They are allowed to do this under existing law. Fortunately, the measure was defeated.

This could happen to you in a heartbeat. The Retired Empire State Supervisors and Administrators Association is seeking to prevent this from happening to all of our retirees.

Support our efforts by joining today.

Identity Theft

I would like to remind both active and retired ESSAA members about the danger of identity theft. You are entitled to a free annual credit report maintained on you by the three credit bureaus. It is important to check each of the agencies for false information or for any recent suspicious activity. You may request all three at once or you could, as I do, order a different one every four months.

You may request your information at www.annualcreditreport.com or by calling 877-322-8228.

The Retired Empire State Supervisors and Administrators Association devotes 100% of its time and resources to serving the interests of retired administrators, and works to improve the quality of life for all retired educators

The benefits of ESSAA membership (excluding the life insurance and legal representation) continue to be available to us. The annual donation is \$25 dollars per calendar year, which includes \$10 which will go to the ESSAA PAC. Now more than ever it is critical to support the work of our PAC and the ESSAA legislative agenda.



TEAR OFF FORM TO BE SENT TO:

Retired Empire State Supervisors & Administrators Association
 C/o Herbert Dickson
 2636 Quail Ridge Road
 Endicott, NY 13760



Name _____ Home Phone _____

Address _____ Work Phone _____

Former Unit _____ Email _____

INSIDE ALBANY:

2006 LOOKS GOOD FOR ELIOT SPITZER AND FOR EDUCATION

by Tony Laurino

Eliot Spitzer is the most attractive (and hopefully, inevitable) candidate for Governor in next year's race. Through the efforts of Bob Ungar, our lobbyist (as well as the lobbyist for several other influential groups in Albany) I had a chance to speak with Eliot Spitzer at a private breakfast.

All candidates tout the need for better education and simultaneously decry the tax burden on communities for that quality education. Few offer solutions. Happily, Eliot appears willing to address those issues head on! In his responses to my questions he acknowledged that ever increasing property taxes will end up crushing the educational community.

Based on his experience as the New York State Attorney General he frankly stated that there are several areas and programs in the budget that are currently over funded and, several areas whose funding levels can be frozen. Reallocation of already existing fiscal resources can better be used to reduce class sizes and fund educational quality for all students in all districts. Spitzer is dedicated to the proposition that the funding required by the CFE litigation to fund the New York City schools should NOT be at the expense of any other districts.

Spitzer's knowledge of the educational concerns that confront us each day, and his head on approach to funding education, is a breath of fresh air. This is a candidate ESSAA should support with our CAS/PAC funding and our votes on Election Day, 2006.



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