

# School Law Matters

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A NEWSLETTER FROM THE LAW FIRM OF FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C.

Route to: Board  Personnel  Instruction  PPS  Business  Other: \_\_\_\_\_

## New State Laws of 2007 Affecting School Districts

The following is a brief synopsis of some of the new laws of which school districts must be aware as they begin the 2007-08 school year.

### Learning Standards and Accountability

*Chapter 57 (Fiscal Year 2007-08 budget bill)*

This year's state budget bill included a number of changes with respect to learning standards and accountability. They include:

#### A. Learning Standards

The Regents must adopt a schedule to periodically review and evaluate learning standards to determine if they should be changed. The Regents must consult with teachers and administrators when conducting such reviews.

#### B. Accountability

In 2008-09 a modified accountability system using existing state assessments and based upon a growth model must be adopted. In the 2010-11 school year an enhanced accountability system using the new state assessments and based on an enhanced growth model must be adopted provided such plan is approved by the federal government.

#### C. Consequences for Lack of Improvement

*Chapter 57* also adopted changes which call for expanding the scope and improving the effectiveness of the school under registration review (SURR) process. As you may know, the Commissioner of Education can

utilize the SURR process if a school's students are found to be the farthest from benchmarks established to measure the performance of the "all students" accountability group. Following such identification, a team is appointed by the Commissioner to audit the school's resources, planning and programs. Under the new law:

- School quality review teams will be appointed to assist in development of school improvement, corrective action, restructuring or comprehensive plans. The team will provide diagnostic recommendations after it conducts its review
- A joint school intervention team will be appointed for schools in restructuring or SURR status that fail to demonstrate progress as specified in their improvement plans.
- School districts labeled as requiring academic progress must have a public hearing before adopting an improvement plan.
- The Commissioner may adopt intervention plans for schools under registration review.

#### D. Distinguished Educators

A designation of Distinguished Educator will be given to recognize educational leaders who have agreed to assist low performing school districts. The Commissioner will appoint the recognized educators to a school district with comparable demographics of the educator's home district. The educators will assess the learning environment, review and assist in implementation of improvement plans. They are considered ex-Officio non-voting board members. The current employer of the

educator must grant him or her reasonable leave for this assignment.

Employment contracts with a superintendent of schools (including new, amended or extended contracts) must state that the superintendent shall be required to cooperate fully with any distinguished educator appointed by the Commissioner pursuant to Section 211-c of the Education Law.

#### E. Reporting

Beginning July 1, 2008 school districts must issue student progress reports written in plain English to parents. The reports must contain information as to a student's performance on state assessments of a period of years. School Leadership and school progress report cards must also be disseminated. They must include information concerning the school's progress in achieving standards including parental involvement, curriculum, teacher quality and accountability measures. Copies must be attached to the proposed budget.

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## New State Laws of 2007 Affecting School Districts (cont'd)

### F. Contracts for Excellence

Districts receiving an increase in total foundation aid and that have at least one school identified as requiring academic progress, in need of improvement, corrective action or restructuring must prepare a contract for excellence. The contract must describe how the increased funding will be used to support new programs or expand programs demonstrated to improve student achievement. The programs must primarily benefit students with the greatest educational needs.

In the 2007-08 school year any contract prepared by a district must be submitted for public comment and both the contract and comments shall be submitted to the Commissioner. In 2008-09 and thereafter, contracts must be developed through a public process in consultation with parents, teachers, administrators and any distinguished educator assigned to the district.

Each school district must also set up a complaint procedure by which parents can file complaints concerning the implementation of the contract for excellence.

### G. Tenure Determinations

The Regents must promulgate regulations establishing minimum standards for granting teachers tenure after July 1, 2008. The superintendent's recommendation for tenure must be based upon:

- The candidate's effectiveness in contributing to the successful performance of students;
- A utilization of analysis of performance data when providing instruction;
- Peer review to a limited extent;
- Building principal evaluations.

### New Law Restores Employees' Right to Union Rep Presence During Questioning

*Chapter 244*

This legislation was designed to overturn a recent court decision which held that not all public employees are entitled to have a union representative present during questioning about matters which could lead to the employee's discipline. Specifically, the New York State Court of Appeals decision in *New York City Transit Authority v. New York State Public Employment Relations Board*, ruled that public sector employees do not have the same rights as private sector unionized workers when facing possible disciplinary action: so-called "Weingarten rights" (named after the U.S. Supreme Court decision, *NLRB v. Weingarten*, 420 U.S. 251 (1975) .) The Court of Appeals said that the right to have union assistance during "investigatory interviews" does not apply to public employees in New York State because of differences between the National Labor Relations Act and New York's Civil Service Law.

This amendment to the Civil Service Law provides that it will now be an improper practice for an employer to deny an employee the opportunity to secure union representation at the time of questioning, if it reasonably appears that such interview may lead to disciplinary action. The law also affords an employee a "reasonable amount of time" to obtain such representation.

### Mandatory Training for Transportation Employees About Students with Special Needs

*Chapter 181*

Beginning January 1, 2009 and annually thereafter, both school bus drivers

and attendants who serve students with disabilities must receive training in understanding and attending to the special needs of such students. Those drivers and attendants who are employed as of January 1, 2009 will have until July 1 of that year to receive the training. Any person hired as an attendant or driver after January 1, 2009 must complete the training before beginning work. The Commissioner of Education is expected to establish regulations implementing this new law, which will likely contain greater detail with respect to the scope and content of the training.

### Mandated Reporters of Suspected Child Abuse

*Chapter 193*

The Social Services Law has been amended to clarify which "school officials" are mandated reporters of suspected child abuse. The new law defines "school officials" as including: teachers, guidance counselors, school psychologists, school social workers, school nurses, school administrators and/or any other school personnel required to hold a teaching or administrative license or certificate. Such mandated reporters are required to make reports to the child abuse registry and immediately notify the person in charge of the school. The person in charge of the school will be responsible for all further administrative action necessitated by the report. The law further states that any child abuse report must contain the names, title and contact information of every staff person believed to have direct knowledge of the allegations in the report. The law also prohibits retaliatory action against employees who comply with the requirements of this Law.

### Student Dental Health Certificates

*Chapter 281*

Beginning September 1, 2008, par-

## New State Laws of 2007 Affecting School Districts (cont'd)

ents will be required to furnish a pupil's dental health certificate upon enrollment in school and whenever a health certificate is required to be furnished. School officials may request an examination and dental health history of a child at any time in their discretion to "promote the educational interests" of such child. The certificate cannot be more than 12 months old and must state whether the child is in fit dental condition to attend school. School officials will be responsible for placing these dental health certificates in each student's cumulative health record. The Department of Education will be responsible for keeping a list of dentists to whom parents may be referred.

### Mandated Leave for Cancer Screening, Blood Donation and Nursing Mothers

*Chapter 111, Chapter 574, Chapter 578*

*Chapter 111* of the Laws of 2007 amended the Civil Service Law to include school districts among the list of public employers who must grant employees up to four hours of leave each year for screening for breast or prostate cancer. Such leave cannot be charged against any other leave to which the employee is entitled.

*Chapter 574* requires employers to provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to express breast milk for her nursing child for up to three years following child birth. It further requires the employer to make reasonable efforts to provide a room or other location, in close proximity to the work area,

where an employee can express milk in private.

*Chapter 578* requires employers, including school districts, to grant 3 hours leave time every 12 months for the purpose of donating blood.

### Health Department to Provide Schools with Anaphylaxis Policy

*Chapter 57*

The Commissioner of Health in consultation with the Commissioner of Education must develop an anaphylaxis policy for school districts setting forth guidelines and procedures to be followed for both prevention of anaphylaxis and during a medical emergency resulting from anaphylaxis. The policy will include training courses for school personnel and guidelines for the development of an individualized emergency health care plan for children with allergies which could result in anaphylaxis. The policy will be forwarded to school districts, BOCES and charter schools on or before June 30, 2008.

### Retaining Larger Operating Fund Balances

*Chapter 238*

This amendment to the Real Property Tax Law will enable school districts to retain greater percentages of their operating fund balances at the end of the school year. In the 2007-08 school year districts may retain 3% of their operating budget. Any funds in excess of 3% must be used to reduce the following school year's tax levy. In 2008-09 and thereafter school districts may retain 4% of their operating budget.

The law also provides that in the 2008-09 school year, the property tax report card **must** include additional data with respect to:

- the projected amount of the unappropriated unreserved fund balance that will be retained if the proposed budget is adopted;
- projected amounts of reserved and appropriated fund balance and the percentage of the proposed budget that represents;
- the actual unappropriated unreserved fund balance retained in the budget for the preceding school year; and,
- the percentage of the budget that the unreserved, unappropriated balance represents.

### Seat Belts Now Required in Small Vans

*Chapter 241*

This amendment to the Vehicle and Traffic law requires the use of seat belts by all occupants of small vans (with a seating capacity of less than 10 persons) used as school buses.

### Debt Financing

*Chapter 431*

This law provides uniform requirements that municipalities, including school districts, must follow when authorized to incur debt to liquidate deficits. The requirements include:

- filing reports with the Comptroller (who must certify the amount of

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## New State Laws of 2007 Affecting School Districts (cont'd)

the deficit before bonds may be issued);

- periodic reporting requirements over the life of the bond; and
- adopting a three year financial plan for each year over the life of the bond.

## Tax Certiorari Reserve Funds

*Chapter 445*

This new law clarifies that tax certiorari reserve funds can be kept on deposit more than four years if the tax certiorari proceeding applicable to the reserve fund has not been finally determined or otherwise terminated after the exhaustion of all appeals.

## New IRS Rule for Tax-Sheltered Annuities

The IRS recently adopted new rules on tax-sheltered annuities under Section 403(b) of the Internal Revenue Code. While a majority of the rules do not become effective until January 1, 2009, one provision that deals with "contract exchanges" takes effect now.

Specifically, this provision applies to any situation where an employee changes investment options within the same plan after September 24, 2007. The new rule requires that the employer and each 403(b) provider must enter into an agreement to share information, to make sure that the plan complies with the law.

School districts are not required to adopt these agreements by September 24; they can be approved all the way up to January 1, 2009. However, if an agreement is not done properly, there is a risk that transfers made after September 24 will be treated as taxable, retroactively.

Therefore, many 403(b) providers are either: (1) refusing to process these transfers until the agreements are in place, and there is more guidance from the IRS, or (2) are advising districts to temporarily freeze these transfers until the agreements are signed. ***Please note that this only affects transfers between investment choices. It does not prevent employees from contributing to their accounts, or from taking distributions when they retire.***

In our opinion, it would be prudent to temporarily freeze these transfers until the agreements are approved. We recommend that school districts notify employees about this, and also keep their unions informed. You can point out that the purpose of the freeze is to protect employees from having their funds become taxable. We also recommend that districts consult their tax advisors and encourage employees to do the same about specific situations.

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