* SEE PP 1-3 RE: THE LAW AS IT APPLIES TO BOE MEMBERS J.F. 42

PRESENTATION FOR

RHINEBECK CENTRAL SCHOOL DISTRICT

Mandatory Reporting Obligations and Molestation and Misconduct In The Schoolhouse

By:

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THE DUTY TO REPORT CASES OF SUSPECTED CHILD ABUSE AND/OR NEGLECT

PROJECT SAVE AND REPORTING REQUIREMENTS

1. Project SAVE, also known as Safe Schools Against Violence in Education Act, contains a number of reporting obligations of which all teachers must be aware. The following is a summary of the relevant provisions:

i. Education Law § 3028-a provides that a school teacher, school administrator, guidance counselor, school psychologist, drug counselor, school nurse, supervisor of attendance, attendance teacher, or attendance officer who has reasonable cause to believe that a student under the age of 21 is an alcohol abuser or substance abuser, may make such a report to the school principal, parents or legal guardian of the student or other appropriate authorities, and that the teacher shall have immunity from civil liability for making such a report.

ii. Education Law § 3028-c provides protection to school employees who report acts of violence and weapons possession. This statute gives school employees immunity from civil liability when they report violent incidents and weapons on school grounds and "whistle blower" protection against employer retaliation. The statute operates on the assumption that teachers will make reports to the authorities or school administration of violence and weapons possession.

iii. New York Social Services Law § 413 and 420, establish the requirement that a school teacher, psychologist, nurse, school officials, guidance counselors etc., are mandated reporters. Such individuals are required to make a report of cases of suspected child abuse and/or neglect. Child abuse and/or neglect can include and not be limited to, any form of sexual contact between a student and a parent or other person legally responsible for his care or other physical abuse of a child by those persons. The regulations state that "a person legally responsible" includes "the child's custodian, guardian, [or] any other person responsible for the child's care at the relevant time." The regulations go on to note that a, "[c]ustodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child." Any person under the age of 17 cannot consent to sexual activity. The specific procedure for making reports under the Social Services Law is described below.

iv. New York Education Law § 1125 *et seq.*, imposes a duty upon every school teacher, school nurse, school guidance counselor, school psychologist, school social worker, school administrator, school board member, *or other school personnel, required to hold a teaching or administrative license or certificate*, that if a child

has been abused by an employee or a volunteer in an educational setting, that such person shall, upon receipt of any such allegation, whether oral or written, do the following:

1. Promptly complete a written report of such allegation including the full name of the child alleged to be abused, the name of the child's parents, the identity of the person making the allegation and their relationship to the alleged child victim, and a listing of the specific allegations of abuse in an educational setting.
2. In any case where it is alleged that a child was abused by an employee or volunteer of the school, other than a school within the school district of the child's attendance, the report of such allegations shall be properly forwarded to the superintendent of schools of the school district of the child's attendance and the school district where the abuse allegedly occurred, whereupon both school superintendents shall comply with the reporting and investigation obligation.
3. Any employee or volunteer who reasonably and in good faith makes a report of allegations of child abuse in an educational setting to a person and in a manner described in this Section, shall have immunity from civil liability, which might otherwise occur as a result of such actions.
4. Child abuse in an educational setting means any of the following acts; a) intentionally or recklessly inflicting physical injury, serious physical injury, or death; b) intentionally or recklessly engaging in conduct which creates a substantial risk of such physical injury, serious physical injury, or death; c) any child sex abuse as defined in this section; or d) the commission or attempted commission against a child of a crime of disseminating indecent materials to minors, pursuant to Article 235 of the Penal Law.

Educational setting means the buildings and grounds of a public school district, the vehicles of a school district, to and from school buildings; it also includes field trips, co-curricular and extra-curricular activities, both on and off school grounds, all co-curricular or extra-curricular sites and activities where direct contact between an employee or a volunteer and a child has allegedly occurred.

PENALTIES FOR FAILURE TO COMPLY WITH § E.L. 1125 *ET SEQ.*

- A mandatory reporter who willfully fails to make a report required under E.L. § 1125 *et seq.*, is guilty of a Class A misdemeanor.
- The Commissioner of education is authorized to impose a fine of up to $5,000 upon the individual mandatory reporter who fails to make a report.
- A failure to file a report can constitute professional misconduct, which can lead to the Commissioner revoking the certification and licensure of a teacher or administrator.
- A failure to report can also result in disciplinary action against the employee by the school district.

- Finally, a failure to report can also subject the employee to civil liability should a civil action be commenced by a student or the parents of a student harmed as a result of the failure to report.

HOW TO FILE A REPORT UNDER THE SOCIAL SERVICES LAW

Social Services Law § 413(1) provides in relevant part:

> "Whenever such person is required to report under this Article in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency or his designated agent, who then also shall become responsible to report or cause reports to be made. However, nothing in this Section or Title is intended to require more than one report from any such institution, school or agency. At the time of making of a report, or at any time thereafter, such person or official may exercise the right to request, pursuant to paragraph (A) of subdivision 4 of Section 422 of this Article, the findings of an investigation made pursuant to this Title or Section 45.07 of the Mental Hygiene Law." (Emphasis supplied.)

The obligation of a teacher to report is not, in the first instance, to report directly to the Hotline. Rather, the obligatory language of the statute requires that a teacher *shall* make the report initially to the building principal.

WHY THE STATUTE REQUIRES THAT THE REPORT BE MADE TO THE BUILDING PRINCIPAL

- There may be multiple sources of information pertaining to the suspected case of child abuse or maltreatment. It will facilitate an investigation and, indeed, may even avoid an unnecessary investigation, if those various sources are consulted.
- It must at all times be kept in mind that Social Services Law § 419 provides immunity from civil liability only for those reports of suspected child abuse or maltreatment which are made "in good faith".
- Where we know that there may be multiple sources of information, which may help to explain a particular circumstance, and a school administrator or teacher does not check those various sources of information prior to making a report that can have a devastating impact upon a parent or family implicated by the report. Further, it may not constitute "good faith action" to make a report to the hotline without checking those sources prior to making such a report. *See* Rossignol v. Silvernail, 185 A.D. 2d 497 (3rd Dep't., 1992). *See also* Vacchio v. St. Paul's United Methodist Nursery School, New York Law Journal, Nassau County Supreme Court, 7/21/95
- The legislature concluded that suspicions be screened and reviewed internally in order to avoid a multiplicity of reports or incomplete information. Multiple reports could result in multiple investigations being opened, thereby duplicating unnecessarily the work of a state agency that is already somewhat overburdened.

- Another reason why information should be funneled through the building principal is because the principal is the first individual from the school district to be contacted by the Department of Social Services investigator when a Hotline report is filed. Thus, if the Social Services agency contacts a school principal, who is unaware that such a report has been made, that principal cannot direct the investigator to the correct personnel who have the pertinent information or supply needed information in a timely manner.

- In Rossignol v. Silvernail, 185 A.D.2d 497 (3rd Dept. 1992), the Appellate Division, Third Department, referred to being labeled as a child abuser as "one of the most loathsome labels in society". The court further pointed out that "the physical and psychological ramifications that may be attendant to addressing, defending and dealing with such charges are difficult to escape," *See also* Delehanty v. Delaware County Department of Social Services, 166 Misc. 2d 182 (Delaware County, 1995, Per Mugglin, J.)

There is a mechanism in the law that allows a teacher who has made a report to a Principal to confirm whether a hotline report was made.

Section 413, subdivision 1, states:

> "At the time of the making of a report, or at any time thereafter, such person or official may exercise the right to request, pursuant to subparagraph (A) of subdivision 4 of § 422 of this Article, the findings of an investigation made pursuant to this Title or § 45.07 of the Mental Hygiene Law."

- As noted above, persons who make such a report are only shielded with immunity from suit if they have acted in good faith in making the report. Hotline Reports made in bad faith, or without some minimal investigation, may very well result in a finding of potential liability for the School District as well as for the person making the report.

MORE ON MAKING REPORTS UNDER THE SOCIAL SERVICES LAW

Good faith in the exercise of making a report of child abuse or maltreatment requires that a teacher or guidance counselor, etc., exercise some minimum level of inquiry before making a report of suspected child abuse and/or maltreatment. That minimum level of inquiry should consist of conferring with that person's colleagues within the context of the school district itself. (*See* Social Services Law § 413(4).) Thus, reporting to the principal and discussing the case with his or her colleagues is not only a statutory requirement which is incorporated into the procedure, but is one which is necessitated if a person is to act in "good faith".

PENALTIES FOR FAILURE TO MAKE A REPORT REQUIRED BY THE SOCIAL SERVICES LAW

- A mandatory reporter who fails to make a report required by the Social Services Law is guilty of a Class A misdemeanor.
- A mandatory reporter who fails to make a report required by the Social Services Law is subject to civil liability for damages proximately caused by the failure to report.

- A mandatory reporter who fails to make a report required by the Social Services Law is subject to disciplinary action by the employer school district.
- A mandatory reporter who fails to make a report required by the Social Services Law risks having his or her certification or teaching license revoked by the Commissioner of Education.

IN THE MATTER OF FARLEY V. JOHNSON CITY CENTRAL SCHOOL DISTRICT, (Broome County Supreme Court, Index No. 2001-1393, per Rumsey, J.)

In this case, the plaintiff alleges that, when he was *16 years of age*, he was involved in a sexual relationship with a male during the summer between his sophomore and junior year in high school. Upon returning to school in the fall, he confided in his music teacher that he had been involved in a homosexual relationship that involved several sex acts with an *adult male*. The music teacher encouraged the student to immediately discontinue the relationship. The student, for his part, pleaded with the teacher not to tell the student's parent. The teacher agreed not to tell the parent and the student assured the teacher that he would have no further contact with his male paramour.

The student's paramour had also been involved in the school as a volunteer musical accompanist. Several times after this report, the perpetrator appeared in the school as a musical accompanist. This ostensibly upset the student greatly. After several more months, the student rekindled the relationship with his male paramour. The student's mother became aware of the relationship through a series of revealing e-mails. The parent then reported the episode to the police, who arrested, charged and convicted the perpetrator for having sex with an underage minor. The parent and the student have now filed an action against the Johnson City Central School District, its superintendent, the teacher, and the perpetrator.

On behalf of the school district, a motion to dismiss the action was recently filed. State Supreme Court Justice Philip Rumsey issued a ruling that *directed that the case brought by the student against the teacher, the school district and its superintendent would be allowed to proceed. The basis of the Court's ruling was that the teacher had an unquestioned legal obligation to report these acts of abuse of which the teacher had knowledge*, the request by the student notwithstanding. The Court also concluded that the student had, in fact, sustained damages at the hand of the school district, even though it was the perpetrator who committed the acts of abuse. The Court ruled that it was enough of a showing of damage for the student to allege that he had been harmed merely by having to deal with the presence of the perpetrator in the school. Furthermore, failure of the teacher to report the episode meant that remedial measures, such as counseling, were not undertaken sooner.

Counseling Point: *It is imperative that you understand your obligation as a teacher to make reports under SAVE, etc. Furthermore, no privilege exists which prevents disclosure by the teacher merely because the student requests that the teacher keep the discussion secret.*

MATTER OF CATHERINE G. V. COUNTY OF ESSEX, 3 N.Y.3d 175 (2004)

In August of 2000, petitioner's then nine-year old daughter reported to her mother that she had been touched sexually by her half-brother Anthony, who was then 14 years old. In September of 2000 the mother reported this information to county and school officials. Neither

county, nor school officials, reported the abuse to the state wide sexual abuse hotline. In January of 2000 the petitioner discovered that Anthony had been repeatedly and frequently sexually abusing Brittany, her eight-year-old sister Melissa and her four-year-old sister Marcie. The failure of the school and county officials to report the abuse to the state wide sexual abuse hotline was the basis for the suit against the school and the county.

The school filed a motion to dismiss the suit arguing that its personnel had no obligation to file a report because Anthony was not a person in a parental relation with the child and was not otherwise a person legally responsible for the child. The Appellate Division, Third Department rejected the school's argument and ruled that the school employees, who are "mandated reporters" had an obligation to make the report when they were advised of information that constituted reasonable cause to suspect that the child had been sexually abused and that the investigating agency should be left to determine whether a person in a parental relation committed the abuse. Accordingly, the Appellate Division ruled that the *petitioner had a valid legal claim against the school psychologist and the building principal* who had each been informed of the mother's suspicions in September of 2000 and that the Petitioner also had a claim against the school district.

In October of 2004, the Court of Appeals of New York weighed in on the matter. New York's highest Court ruled that the reporting requirements contained in Social Services Law § 422 did not require school officials to make a hotline report. The Court noted that the act defines both an "abused child" and a "neglected child" as a child harmed by a "parent or other person legally responsible for his care." The Court concluded that Anthony was obviously not a "parent or guardian" and was not a "person legally responsible" for Brittany's care.

The Court looked to the plain meaning of the statute's language and the definition of guardian and concluded that Anthony did not meet that classification. The regulations state that "a person legally responsible" includes "the child's custodian, guardian, [or] any other person responsible for the child's care at the relevant time." The regulations go on to note that a, "[c]ustodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child."

The Court noted that the petitioner did not leave the girls in Anthony's charge and noted that young siblings were not the target of the reporting law. The Court concluded that the law was designed to detect and address abuse by parents, parents' paramours and guardians or custodians. The Court explicitly noted that in certain circumstances, a sibling may be a guardian or custodian, but that Anthony, was not. The Court concluded that only siblings age eighteen or older could qualify as guardians or custodians for the purposes of the reporting law. However, the Court also stated that "[w]hen in doubt about whether a case must be reported... [mandatory reporters] ought to err on the side of caution and make a report."

Counseling Point: *Even though the decision held that abuse or neglect by siblings under the age of eighteen does not require a report to be made, if there is any doubt about the need to make a report, the report should be made. The regulations protect mandatory reporters who make a report in good faith from civil liability that could arise if the report turns out to be unfounded.*

VACCHIO V. ST. PAUL'S UNITED METHODIST NURSERY SCHOOL, NY LAW JOURNAL, JULY 21, 1995, P. 32, COL. 2 (NASSAU COUNTY 1995)

Vacchio involved a circumstance where a nursery school teacher observed that a child had a black eye and, without more, called the New York State Central Registry on Child Abuse and Maltreatment. The report was later determined to be baseless and unfounded. The parents sued both the teacher and the Nursery School, alleging defamation. The defendant's moved to dismiss the action, alleging that § 419 of the Social Services Law immunized them from this suit. The court denied the motion noting that it did not appear from the papers submitted that "any attempt was made to determine how the black eye was caused before reporting the suspected abuse or maltreatment".

The court further stated that the "the good faith of any person making a report was in most instances presumed, provided, however, that such person was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from willful misconduct or gross negligence on the part of such a person, official or institution."

However, the court also held that it was at least arguable that the failure to conduct a preliminary inquiry or investigation prior to the rendering of a report, may support a finding of gross negligence.

WEBER V. COUNTY OF NASSAU, 215 A.D.2d 567, 569 (N.Y. App. Div. 1995) (Stands for proposition that multiple reports are not necessary and some investigation is appropriate prior to making a report)

"Social Services Law § 413 (1) provides that certain persons, including social workers, are required to report suspected child abuse when they have reasonable cause to believe that the child coming before them is abused or the person legally responsible for the child states from personal knowledge, circumstances indicating that the child is abused. Here, the allegation of child abuse was not made by the child or by a person legally responsible for the child. Weber's supervisor advised her that it was premature to make such a report, and upon discussing the matter with hospital staff, learned that the persons who made the allegations were not members of the child's household and that there was no plan as yet to discharge the patient. Three days after the allegations were made, Pilgrim Psychiatric Hospital made a report to Child Protective Services, obviating the need for a report from the Department.")

THE INTERPLAY BETWEEN EDUCATION LAW SECTION 1125 AND THE SOCIAL SERVICES LAW

§ 413-420 of the Social Services Law ("S.S.L.") does not require that school teachers or administrators make reports to the child abuse register where a teacher or administrator learns that a student has alleged that she was sexually or physically abused at school by a teacher. Rather, in such circumstances, teachers and administrators are required to comply with E.L. § 1125 *et seq* because the Education Law section was specifically enacted in order to mandate a specific, detailed and uniform reporting requirement where teachers are alleged to have acted in an inappropriate sexual manner with students.

Education Law § 1125 *et seq* is controlling where educators learn of possible abuse of a student that occurs in the educational setting. Section 1125 *et seq* of the Education Law requires that administrators contact law enforcement, advise the parents of the complaint, investigate the complaint, and prepare a written report regarding the complaint. *See* E.L. § 1125 *et. seq*.

The legislative history for § 1125 *et. seq*. states that,

> "No standard statewide policy exists for the reporting, investigation or identification of this form of child abuse. Standardization and consistency are necessary and appropriate for the protection of the school children of New York state. The legislature further finds that the reporting of allegations of child abuse in an educational setting must be formal, consistent and well documented." *See* E.L. § 1125 and Legislative findings and intent.

The reporting requirements contained in the S.S.L. require reports to be made by teachers and school administrators where the teacher or administrator has a reasonable basis to conclude that a child has been abused or neglected by a parent or a parent's paramour. The S.S.L.'s reporting requirements do not require teachers to make hotline reports where a student is alleging sexual misconduct by a teacher in a school setting, because the reporting requirements contained in E.L. § 1125 covers those circumstances. *See* Matter of Catherine G. et al., v. County of Essex et al., 2004 N.Y. LEXIS 2413 (Court of Appeals of New York 2004) (the social services law's reporting requirements were intended to cover abuse or neglect by parents and their paramours)

THE ISSUE OF SEXUAL MOLESTATION AND MISCONDUCT IN THE SCHOOLHOUSE

LEGAL BACKGROUND

In August of 2005, the New York State Education Department announced that the most often cited reason for teachers to lose their teaching credentials and teaching license was due to acts of sexual molestation and sexual abuse and/or improper relationships between teachers and students. (*See* The Post Standard, 08/14/05, "Policing Sexual Misconduct") The attached case materials summarize the recent change in focus and perspective on this subject.

The State Education Department and the courts have begun to recognize the profound harm caused by these improper acts by teachers perpetrated upon students. As the case law below establishes, the courts in particular, and State Education Department, are beginning to examine these situations much more severely. These cases provide a warning to all school districts that issues of improper relationships between teachers and students must be immediately recognized for what they are and be promptly and aggressively investigated with appropriate and severe disciplinary action taken when warranted.

MATTER OF BINGHAMTON CITY SCHOOL DISTRICT V. PEACOCK, Index No.: 2004-1131 (Decision Per Judge Joseph P. Hester, Jr., 03/14/05) (Broome County Supreme Court)

This case is the first in a series of cases that have addressed the issue of a decision by a hearing officer which is regarded as too lenient, being set aside by the courts.

Respondent teacher was charged with five (5) counts of misconduct and various and improper behavior, including conduct unbecoming a teacher. The hearing officer found, and the evidence established, that the Respondent teacher left work early without leave, for purposes of picking up the student to take the 17-year old female student to his home, where they engaged in a private luncheon behind closed doors for more than six (6) hours at his residence on June 17, 2003. The evidence in the case also established that he purchased gift certificates in the form of tanning sessions for the student; purchased cell phone cards for her so she could speak to him privately on his cell phone; transported her on two (2) occasions in his personal automobile, despite knowledge that he was not allowed to do so; left work early without permission and got paid for it; developed an improper and personal relationship with the student; and that as a married teacher, committed professionally improper conduct. The hearing officer found the teacher guilty of conduct unbecoming a teacher, insubordination, neglect of duty and conduct demonstrating immoral character. The hearing officer found that the teacher had engaged in an inappropriate relationship with the student and had admitted to making the purchases of various gifts and cell phone cards for her. The evidence established, without refutation, that the teacher had made over 1500 cell phone calls to the student in a six-month period prior to the luncheon.

Under the circumstances, the hearing officer's decision to suspend the employee only for one (1) year, without pay, with no other conditions, was found by the State Supreme Court to be completely irrational. In fact, the State Supreme Court ruled that the hearing officer's decision was, in the words of the Court, "shockingly lenient". The State Supreme Court ordered the case back into a new hearing before that hearing officer to determine a "more appropriate penalty". That matter is currently under active litigation and the hearing process is underway. We are urging the hearing officer to terminate the services of Mr. Peacock.

The decision of the State Supreme Court in this case is instructive.

> The Court is mindful that the hearing officer enjoys wide latitude in dispensing sanctions and judicial review is limited to those instances where the penalty shocks the conscience of the Court or violates public policy...Respondent's misconduct was not an isolated incident. Respondent maintained an inappropriate personal relationship with S. L. for the majority of the school year 2002-2003. While initially he was guilty of only exercising poor judgment, Respondent purposely engaged which he knew or, given the administrator's warnings, should have known would place him in a situation which would foster this inappropriate relationship. His relationship with S. L. caused him to shirk his responsibilities to his employer and other students. Respondent demonstrated his complete lack of remorse by continuing his contact with S. L. after her graduation. There is no evidence or reason to believe that Respondent would behave any differently at this time. The penalty of only one year suspension without pay is so disproportionate to the Respondent's offense that it shocks the conscience of this

Court...However, contrary to Petitioner's contention, this Court finds that it cannot resolve the issue of penalty by increasing the penalty...as such, the matter must be remitted for the imposition of a new penalty.

(Court Opinion at page 7)

THE SCHOOL DISTRICT OF THE CITY OF NEW YORK V. HERSHKOWITZ, 2005, N.Y. SLIP OP 50569U (Sup. Court, New York County, 2005)

In this case, decided a month after the Peacock case above, the Court dealt with a challenge by a board of education to a hearing officer's finding. It concluded with a ruling that the hearing officer's decision to only suspend the employee for one (1) year, without pay, was shockingly lenient, and vacated the penalty. In this case, the State Supreme Court found that the hearing officer's action was totally irrational and that the hearing officer's award of a one-year suspension without pay, violated a strong public policy of the state.

In this case, the respondent teacher carried on an inappropriate relationship with the student. The respondent teacher carried on inappropriate conversations with the student via e-mail. During these conversations, the teacher discussed with the student having sexual intercourse and her touching his genitalia. The hearing officer found the respondent teacher guilty of sexual conduct toward the young high school student. However the hearing officer, shockingly, allowed the teacher to return to the classroom after only a one-year suspension without pay. Part of the hearing officer's analysis involved a finding by the hearing officer to the effect that the penalty did not need to be as severe because the teacher did not actually carry out the sex act.

The hearing officer found that the teacher communicated with the student in a clandestine manner. Further, that he encouraged the student to set up clandestine e-mail accounts so that he and the student could correspond with one another. Additionally, the content of the conversations was explicitly sexual, but no actual sex acts ever took place. This was found by the hearing officer to have been a basis upon which the hearing officer ruled that the employee should not be dismissed from the service of the school district. This the State Supreme Court found to be "irrational". The State Supreme Court found that it was completely irrational and ridiculous for the hearing officer to conclude that because the predatory teacher did not succeed in carrying out his sexual interest in the student, that he should be rewarded for such conduct by only having a suspension imposed. The Court observed:

> Indeed, to suspend respondent for one year actually tells him and everybody else that these perverted and insidious acts are not serious. Importantly, it also tells S. B. (the student) and her mother that S. B.'s resolve and her mother's courage used in withstanding and reporting respondent's persistent and improper advances were for naught. In fact, S. B.'s resolve is being used against her by those responsible for ensuring her safety, as an attempt to minimize the heinous nature of respondent's acts and attempt to get S. B. to deceive her parents. This Court simply cannot countenance such an attempt. Instead, this Court chooses to call the teacher's acts for what they are, an abuse of trust of the most serious kind; one that warrants forfeiture of the privilege to share his knowledge with those who are more vulnerable.

(Court Opinion at page 5)

The Court went on to find that the penalty imposed by the hearing officer was totally irrational and vacated the same. The Court found that the respondent never crossed the line only because he had been apprehended and turned in by the student and her parents before he had an opportunity to do so. The Court concluded that to reward him for such misconduct was simply outrageous. The Court also addressed the contention proffered by the hearing officer that the respondent teacher had 25 years of service without any prior discipline. However, the Hearing Officer failed to appreciate the harm the respondent's behavior could have on a child both presently and in the future. This the Court found, particularly in light of recent reported cases and advances in the scientific and psychological literature wherein there is a greater appreciation for the harm of such inappropriate relationships. The Court concluded that respondent was not fit to be in the classroom.

In its opinion, the State Supreme Court also tracked the development of the recent scientific and psychiatric literature establishing the incredible harm caused to students through these inappropriate and predatory relationships with adult teachers. The Court noted much of the scientific literature and concluded that the potential for harm to the student was enormous and cannot be dismissed with a simple finding that because no sex act occurred, no harm has come about. Such a conclusion, the Court said, is completely irrational and devoid of basis in fact. In reality, the Court found that there is much scientific literature to support the proposition that such a relationship is extremely harmful to children and likely to cause long-term lasting psychological impact.

Because this opinion is so instructive, we have attached a copy of the same to these outline materials.

The ultimate conclusion in this case is that the penalty was vacated. There is a strong suggestion that the Court believes that the appropriate penalty is dismissal of this individual from the employment of the school district.

BOARD OF EDUCATION OF PERU CENTRAL SCHOOL DISTRICT V. STEPHNEY (Sup. Court, Clinton County, Index No.: 05-0112; *per* Justice Ryan).

In this case, a State Supreme Court again reviewed a penalty imposed upon a respondent teacher, for sexually explicit use of a school computer. In this case, a second grade teacher had accessed pornography on the school computer. The hearing officer found that the teacher had accessed obscene and immoral images and blatant pornography, on at least six (6) different occasions. The hearing officer, however, ruled that dismissal was not warranted under the circumstances because the misconduct occurred when children were not in the classroom and the computer's location allowed him to turn it off before any student could see the screen. The teacher was considered "excellent" and even cooperated in the investigation. The hearing officer imposed a six-month suspension.

The State Supreme Court found this penalty to be excessively lenient. It found that the misconduct was "dreadfully serious" and warranted a far more serious penalty being imposed.

4.3.1

RHINEBECK CENTRAL SCHOOL DISTRICT/POLICY COMMITTEE

Minutes of Meeting of November 12, 2015

Present: Diane Lyons, Mark Fleischhauer, Lisa Rosenthal, Joe Phelan, Tom Burnell (by invitation)

The agenda discussed at this meeting were: (1) updates on policies previously reviewed by the Committee; (2) status report on operation of recently-adopted policy on late-meal payment charges; and (3) new issues potentially requiring Committee action.

(1) Policy No. 8530: "Cafeteria Meal Charges": This policy was adopted this past February. Tom reported that, in general, the policy has helped the district reduce the numbers of students who were delinquent in paying for school lunches. However, over the past few months, two issues have arisen. First, the State Education Department has notified Larry Anthony that the district is not permitted to carry over a negative balance in the cafeteria account if a student's family has not brought it into fully paid status by the end of the school year; rather, the district must transfer that item to the general fund as a debt so that the business office can take collection efforts, but the student's cafeteria account must start the new school year with a zero balance, meaning that the student has the opportunity to obtain a "Type A" lunch until that student's balance has 10 unpaid meals in it, after which the policy takes effect anew and the student will be transferred to the alternative meal until the deficit incurred in that school year only is paid. This raises the question as to whether the district should lower the number of meals a student must be in arrears in paying before the policy takes effect.

Second, some families whose children are delinquent in paying for lunches have indicated that they are unable to pay the deficit at once, but could pay for lunches going forward and would do so if their children could obtain a "Type A" meal rather than the alternative meal. Tom informed the Committee that the business office has been working with families in this position to structure payment plans to retire the amounts owed for previous unpaid-for meals, but the policy as written did not offer any guidance on what to do in this situation.

After a thorough discussion, the Committee asked Tom to continue in his and the business office's efforts to work through these issues as the policy is fully implemented, and then to report back to the Committee early in 2016. It is hoped that there will be more data at that point to guide the Committee on how best to address these issues.

(2) Policy No. 8410: "Student Transportation" – Joe provided the Committee with copies of this policy, marked up to show the changes he had drafted to address the Committee's requests from the October 2015 meeting. After a thorough discussion, Joe agreed to make some further changes, which the Committee will take up at its next meeting.

(3) Policy No. 8414: "School Bus Safety": Joe has discussed the issues regarding bus drills that the Committee raised at its previous meeting with Brett King. Brett will review the old files on the drills that had been compiled by his predecessor as CLS's

principal, to ascertain whether those materials show that nonpublic school students are to be receiving the bus drills and the training required during those drills. Brett will report back to Joe and Joe will update the Committee.

(4) Policy No. 8414.1: "Bus Driver Qualifications, Training, and Conduct": The Committee reviewed language Joe had drafted to be added to this policy regarding bus driver conduct. After a thorough discussion, the Committee asked Joe to confer with the district's legal counsel regarding this policy.

(5) Policy No. 8414.5: "Alcohol and Drug Testing of Bus Drivers": At the Committee's request, Joe agreed to discuss this policy with legal counsel.

(6) Policy No. 8414.6: "Bus Accidents": Joe has made some minor linguistic changes to this policy to reflect similar changes made in the other policies in the 8410 series. No substantive changes were made.

(7) Policy No. 8415: "Field Trip and Extracurricular Activity Transportation, and Special Uses of School Buses": Joe will make similar linguistic changes to this policy as have been or will be made to the other policies in the 8410 series. In addition, the Committee will consider at a future meeting whether the district's practice regarding the issuance of bus passes for students riding the late bus should be added to this policy.

(8) Potential New Policy Regarding Social Media Use: The Committee discussed a workshop given at the recent NYSSBA convention regarding the use of social media as it affects schools. It was reported that a presenter of that workshop recommended that school districts have policies regarding social media use by students and adults who are employed by or otherwise act under the auspices of the district. After a thorough discussion, the Committee asked Joe to confer with legal counsel regarding this matter.

Proposed Agenda for Next Regular Meeting (December 10, 2015):

Continued review of district policies, starting from Policy No. 5154. Follow up on previously discussed items.

Dated: November 12, 2015

Respectfully submitted,

Lisa Rosenthal

4.3.2.1

Communication Committee Meeting, November 16, 2015
Present: Joe Phelan, Laura Schulkind, Deirdre d'Albertis, Deirdre Burns

1. The committee discussed input to the Common Core Task Force. The committee will have a draft to share with the board at its next meeting on 11/24. (The draft document to the will reflect the substance of the discussion). Comments must be submitted by November 30.

2. The committee enumerated various opportunities to advocate for our schools. Issues to advocate about include schools finances/budgeting (tax levy cap, GEA) and legislative/regulatory issues (Common Core, testing, evaluation). It was noted that it is important that the board and the larger community have a broad understanding of the financial impact of the Gap Elimination Adjustment on the district. The GEA continues to be a topic of discussion at the state level. Joe will provide the board with the analysis of the amount of money the district has lost out on from the state due to the GEA.

Upcoming advocacy opportunities include:

a. The Board's input to the CC Task Force.
b. Joe sent a letter to K-12 parents about the Task Force and with a link to the page where parents can submit their own testimony.
c. Dutchess County Superintendents have a meeting scheduled with Sen. Sue Serino for this Friday. Joe will attend.
d. Joe has been invited, and will attend, a lunch, organized by Assemblyman Kevin Cahill, with Speaker of the Assemby Carl Heastie, also this Friday. Speaker Heastie is touring the Assemblyman's district.
e. Attending the Dutchess County School Boards Association meeting on December 3rd re: NYSSBA Advocacy training.
f. DCSBA working to schedule a meeting with Regent Judith Johnson.
g. December 8th meeting with State Education Commissioner Elia.There are all day meetings set up for different constituencies in different groups at separate times. Board members (Mark, Lisa) will attend, Joe and Marvin will represent the district, two PTSO reps will attend on behalf of parents, and RTA and admin reps will also attend. Perhaps we can get more information on the format of these meetings in order to be prepared to be most effective.
h. Meetings with our state representatives early in the new year - locally and perhaps, this year, join NYSSBA's lobby day in Albany, which is usually held in March.
i. Be alert to statewide efforts to lobby in Albany with other organizations. Continue to consider ways to make common cause with neighboring districts in the county.
j. Reach out to parents to encourage they advocate with state legislators (a theme developed in Mark's graduation remarks last year).

Submitted by Deirdre Burns

4.3.2.2

RHINEBECK CENTRAL SCHOOL DISTRICT
Rhinebeck, NY 12572

Statement to Common Core Task Force

The Rhinebeck Central School District believes in the value of setting high expectations for students' intellectual development. As such, adoption of the Common Core State Standards (CCSS) has informed the development of our curriculum in positive ways. However, this effort to establish broad, deep and meaningful curricula for New York State public schools, an effort we have embraced, has been fatefully flawed by its link to standardized testing and to teacher evaluation, as well as by a hasty, ill-advised State Education Department roll-out. The overemphasis on standardized testing and its use to evaluate teacher effectiveness has undermined the project of creating robust, creative learning communities in public schools.

We propose the following:

1. Curricular standards must be decoupled from standardized tests and teacher evaluations.

2. We believe curriculum is most effective when developed by educators. Local curriculum development, informed by statewide standards, requires adequate time, resources and professional development for teachers. Additionally, developing curricular documents is the means to an end, not an end in itself. Adequate resources must be available to bring standards to life, turning curriculum into a rich daily experience of learning for students. Thus, the Gap Elimination Adjustment and the tax levy cap must be ended to ensure adequate resources for schools to both develop and implement curricula that are aligned with and that support the Common Core State Standards.

3. We applaud efforts to elevate expectations for students. Yet, as all parents and teachers know, young people, in their beautiful uniqueness, develop and grow in diverse ways. Standards are an excellent guide, but they must be developmentally appropriate and allow the flexibility for teachers to respond to the varied needs, interests and strengths of children in their classrooms. Classroom learning must neither be test driven nor product driven. State policies must support local needs and

the organic development of curricula reflecting the varied character of our children, teachers, and communities.

4. Because the CCSS have been linked to teacher evaluations, we are compelled to assert our conviction that such evaluation is not the domain of State legislators but, rather, must be properly developed by educators. Research does not support using complex algorithms to evaluate teacher impact on learning based upon standardized test scores. Furthermore, rubrics developed to improve teaching through the assessment of the pedagogical behavior of educators are being used inappropriately to evaluate teaching, according to the developers of these instruments. We object to the current legislation that guides the Annual Professional Performance Review and recommend an overhaul developed by educators.

Our views and recommendations on the Common Core State Standards, as implemented in New York State, have been informed by diverse members of our community: parents, teachers, administrators and students. We urge the Common Core Task Force to reorient State policies, regulations, and legislation away from a punitive, adversarial stance towards school districts and teachers. We abhor the linking of educational policy to political strategies to pass the state budget. Tremendous resources are expended to develop and administer pernicious testing regimes and evaluation schemes. To reiterate, we support high standards and high expectations. We urge the Task Force to refocus State efforts to support robust curricula that are focused on and honor the complexity and joy of student learning, and teacher professionalism and growth, within vibrant, well-resourced public school communities.

Evaluation of the success resulting from an overhaul of these various policies will be evident by the support they engender among students, parents, teachers, educational researchers and the various other stakeholders in our communities.

- The parent-driven "opt-out movement" in New York State will wither and fade in the face of renewed trust on the part of parents in our school districts and in our State's approach to standards, assessments, and educator evaluation protocols;

- Student achievement will improve, as measured by the authentic and appropriate assessment of skills and knowledge, and not by corporately-developed testing;

- Educational researchers will laud, not pan, the efficacy of educator assessment protocol that are developed and implemented with a basis in authentic measures of student achievement, as supported by a solid research base;

- More teachers and administrators will enter, and remain, in a profession that respects and supports their skills and their efforts, one in which they are not bashed regularly in the interest of political and corporate interests.

11/16/15

4.3.3

School start time committee minutes

November 17, 2015

Present: Deirdre d'Albertis, Laura Schulkind, Joe Phelan, Tom Burnell, Diane Lyons

The committee first looked at survey results from the staff. The survey had been sent out less than 24 hours before and the committee was pleased with not only the number of responses but the thoughtful feedback. It is vital for the committee to gather this insight.

The committee took some time to rework a few questions on the student survey that will be given out soon.

On November 24th the staff will have an opportunity to meet with members of the committee to ask questions and give additional feedback in an informal way after school.

Joe will be gathering some information from the administrators on bell schedules as the committee continues to look at ways to present an option with the least amount of disruption to our student's current schedule and activities.

The committee spent the remainder of the meeting working on the December 8th presentation.

On Monday November 23rd the committee will be watching a webinar on school start time.

Respectfully submitted by Diane Lyons