

\* SEE PP 1-3 RE: THE LAW AS IT APPLIES TO BOE MEMBERS. JLP 4.3

~~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.~~ 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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(1).) 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.

Dated: October 3, 2005

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## **Long Range Planning Committee Meeting Minutes - November 20, 2018**

**Attendees:** Steve Jenkins, Diane Lyons, Laura Schulkind, Joe Phelan, Tom Burnell

### **Class size**

The group began by comparing class sizes in Middle and High School core classes at Haldane, Scarsdale, and Chappaqua with Rhinebeck. Scarsdale and Chappaqua are larger districts, but Bronxville is similarly sized and Haldane slightly smaller. Overall, it seemed that the Westchester districts had larger class sizes (20+ students) than both Rhinebeck and Haldane (14-18).

Generally, there is a belief that smaller class sizes in the Primary (K-2) and Intermediate (3-5) grades are favorable, but as students age and are better able to focus, class sizes can increase. The group pulled a Brookings Institute report from 2011 (<https://www.brookings.edu/research/class-size-what-research-says-and-what-it-means-for-state-policy/>) which referenced a study in Tennessee showing that a major reduction from 22 to 15 students had a significant, positive impact on achievement but mainly for students in the earliest grades and those from disadvantaged families. However, there is limited information about whether the additional cost of maintaining smaller class sizes has enough benefit when school finances are constrained.

### **ESSA Reporting**

With the advent of the new reporting directives from the ESSA plan, Tom explained the variety of ways a particular employee could be “coded” in the budget and is awaiting guidance from the Federal and state governments regarding how particular staff members, in this instance teacher aides, should be accounted for in school spending accountability.

### **Out of District Tuition**

A CAC committee member shared her own research about out-of-district tuition in our area. Tom has spent some time reviewing that document, and the committee agreed that he should reach out to her directly for a meeting about her research and the practical reality in most districts in the county. For instance, some schools may post a tuition figure on their website but don't accept out of district students at all. Others may list varying tuition rates for students with different needs though it is best practice, and in line with a student's FAPE (Fair and Appropriate Public Education) rights, to charge all students the same tuition regardless of need.

### **Preliminary Budgeting**

Tom reported that the initial budget binders have been provided to the Principals for input from their staff for the 2019-20 budget. He explained that, since our schedule had been tightened in years past, it didn't allow for Principals and staff to undergo multiple planning discussions throughout the process. Department heads would submit their needs for the coming year, and, through a number of iterations, items would necessarily be cut to stay in line with the tax cap. By the time a more finalized budget came to the Board, what was in it bore little resemblance to the initial requests of the departments thus breeding a sense of disenfranchisement among staff members. For this year, because a first draft budget won't be presented until later in February, the Principals and grade-level and/or Department chairs will have a reasonable amount of time to review what's best for student program. For next year, with the new accounting software in place, Tom and the Principals will be able to use the internal budgeting feature to improve this process further.

### **Next Meetings**

December 6, 2018 - 8:30 am (note change from original 12/4 date)

December 18, 2018 - 8:30 am

Respectfully submitted by Laura Schulkind

4.4.2

Personnel Committee Minutes

November 15, 2018

Present: Joe Phelan, Laura Schulkind, Steve Jenkins, Tom Burnell, Diane Lyons

Joe updated the committee on the difficult search for a new play director. Joe hopes to be able to appoint someone soon. We spent the remainder of the meeting discussing the upcoming negotiations with the RAA.

Next meeting: Dec 20th

Respectfully submitted by Diane Lyons

4.5

Joe Phelan

**From:** Laura Schulkind  
**Sent:** Tuesday, November 20, 2018 4:44 PM  
**To:** Joe Phelan  
**Cc:** Diane Lyons; Stephen Jenkins; Mark Fleischhauer; Jaclyn Savolainen; Elizabeth Raum; Lisa Rosenthal  
**Subject:** Fw: Advocacy Update: BOCES Capital Exclusion

Joe and all,

This seems like an easy way to advocate for the BOCES capital exclusion. Are we interested in this type of advocacy and should we use NYSSBA's letter as a template?

Thanks,  
Laura

---

**From:** Julie M. Marlette, NYSSBA <NYSSBAAdvocacyAlert@nyssba.org>  
**Sent:** Tuesday, November 20, 2018 2:03 PM  
**To:** Laura Schulkind  
**Subject:** Advocacy Update: BOCES Capital Exclusion



# Advocacy Update

November 20, 2018

## BOCES Capital Exclusion

Earlier this year, the legislature passed a bill that, if enacted, would make a targeted adjustment to the state's property tax cap by incorporating a school district's BOCES capital expenditures as part of its capital exclusion. Currently, only district capital expenditures are excluded from the tax cap calculation, despite the fact that BOCES are wholly dependent on their component districts for funding.

Similar legislation was passed in 2017, but was vetoed by the Governor who cited concerns that some BOCES capital projects are not directly approved by the voters and can present unintended consequences to the taxpayer.

The updated legislation, S. 7730 (Murphy) / A.9825 (Galef), addresses the concern about voter approval by limiting the exclusion to those BOCES capital projects directly approved by the voters.

NYSSBA is asking for your help in urging the governor to sign this bill. There are multiple ways you can assist.

First: You can sign on to the "Take Action" letter below.

**Take Action Now**

Second: Your board can send a letter to the Governor and "cc:" NYSSBA. Sample letters are below.

- [BOCES Tax Cap Board Letter](#)
- [Component District BOCES Tax Cap Letter](#)



NYSSBA's memorandum in support of this bill and letter to the Governor can be accessed below. We have also included the Governor's 2017 veto message for reference.

- [Memorandum of Support S.7730 \(Murphy\) / A.9825 \(Galef\)](#)
- [Support Letter for BOCES Capital Expenditure Exemption to Governor Cuomo](#)
- [Veto Message 209 of 2017](#)

#### TRS Releases Employer Contribution Rate Estimate

Last week, the New York State Teachers' Retirement System (NYSTRS) released an estimated employer contribution rate (ECR) for fiscal year 2019-2020. The rate estimate is between 8.5% and 9.5% of member payroll. An updated estimate for the ECR will be provided in February.

Assuming the final rate for 2019-20 remains in line with this estimate, this will result in an overall rate decrease from the 2018-19 rate of 10.62%.

\*NOTE: An earlier alert inadvertently referred to the change in rate as an increase.

Additional information, including historic employer contribution rates (ECR) is available below.

- [NYSTRS Administrative Bulletin](#)

#### 2019 Legislative Priorities Webinar

The NYSSBA Governmental Relations team will be hosting their annual Legislative Priorities webinar on Thursday, December 13th from 12:00p.m. - 1:30p.m. The team will provide an analysis of the recent mid-term election results and will be reviewing NYSSBA's legislative priorities and insights on the upcoming legislative session.

Registration for the webinar can be accessed below.

- [2019 Legislative Priorities Webinar](#)

NYSSBA's Governmental Relations team will continue to report on these and other issues. For more information, visit our [Key Issues Page](#), and be sure to keep up with NYSSBA on Facebook and Twitter.



Unsubscribe

By clicking "Unsubscribe" you agree to receive no further emails from NYSSBA.

Dear Governor Cuomo,

On behalf of the XXX board of education, a component district of XXX BOCES, we are writing to ask for your signature on S.7730 (Murphy)/A.9825 (Galef), which would make a limited adjustment to the property tax cap by counting BOCES capital costs the same way a school district's capital costs are counted.

Currently, the state allows school districts to exclude their capital construction costs from the tax cap calculation. However, when initially implemented the state interpreted the exclusion to only include districts' capital expenditures, not those our school districts make to fund the capital expenditures related to BOCES facilities.

BOCES encourage efficiencies in program delivery and administrative operations through the use of shared services. BOCES also provide direct services and programs to nearly 100,000 students statewide each day. Our district relies on our BOCES for many supports, including provision of specialized programs such as P-TECH and special education for our students. As a board, we want to be able support our BOCES and the facilities' needs. All of our students should be able to access their education in safe and modern facilities, regardless of whether those programs and services are delivered in a district or BOCES building. However, not allowing us to include our BOCES capital costs in our exclusion forces us to choose between programs for our BOCES students and the students who receive their programs and services in district.

We urge you to sign S.7730/A.9825 and thank you for your commitment to public education and our students.

Sincerely,

XXX



# Memorandum of SUPPORT

## S.7730 (Murphy) / A.9825 (Galef)

**An act to amend the education law, in relation to exempting BOCES capital expenditures from limitations upon local school district tax levies**

The New York State School Boards Association ***strongly supports*** the above referenced legislation and urges its immediate enactment.

This bill would make a targeted adjustment to the property tax cap law originally enacted in 2011 by incorporating a school district's BOCES capital expenditures as part of its capital exclusion.

Under current law, a school district is required to exclude the local share of expenses related to construction (debt service and capital outlay) from the tax levy limit portion of their tax cap calculation. This exclusion recognizes the necessity to provide facilities and the fact that voters have already approved these expenses. However, the state's interpretation of the capital exclusion was that it does not include a school district's capital costs related to BOCES facilities. Because BOCES do not generate their own state aid or levy their own taxes, they are wholly dependent upon their respective component districts to fund the construction of facilities.

BOCES encourage efficiencies in program delivery and administrative operations through the use of shared services, reaching nearly 100,000 students statewide each day. By not allowing such BOCES capital expenses to be part of a school district's capital exclusion, it has acted as a disincentive to school districts from investing and participating in these shared services.

To address this issue, language was adopted at the end of 2015 (Chapter 20) that would make this adjustment to the capital exclusion calculation. This change was designed to support our school districts and BOCES and the critical role they play in our communities, while continuing to ensure that property taxpayers remained protected against large growth in their property tax bills. The language stated that the Commissioner of Taxation and Finance shall, "as appropriate," issue rules and regulations which "may" exclude the local portion of a school district's BOCES capital costs from the tax cap calculation. Since then, we have learned that the Department has not issued any such regulations and does not anticipate doing so in the near future, if at all. This bill removes the Department of Taxation and Finance language added under Chapter 20 and makes clear that the BOCES capital exclusion shall be counted as part of a school district's capital exclusion.

A similar version of this bill was vetoed in 2017 (Veto No. 209). This new bill addresses the concerns expressed in the veto message by specifically requiring any eligible BOCES capital project be directly approved by voters.

Therefore, NYSSBA ***strongly supports*** the above referenced legislation and urges your approval. For additional information, please contact NYSSBA Governmental Relations at 518-783-0200.



# New York State School Boards Association

*Better School Boards Lead to Better Student Performance*

24 Century Hill Drive, Suite 200  
Latham, New York 12110-2125

Tel: 518.783.0200 | Fax: 518.783.0211  
[www.nyssba.org](http://www.nyssba.org)

July 24, 2018

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12244

Re: S.7730, Murphy /A.9825, Galef

An act to amend the education law, in relation to the component school districts' share of the capital expenditures of a board of cooperative educational services

Dear Governor Cuomo,

The New York State School Boards Association ***strongly supports*** the above referenced legislation and urges your immediate approval.

This bill would make a targeted adjustment to the property tax cap law originally enacted in 2011 by incorporating a school district's BOCES capital expenditures as part of its capital exclusion.

Under current law, a school district is required to exclude the local share of expenses related to construction (debt service and capital outlay) from the tax levy limit portion of their tax cap calculation. This exclusion recognizes the necessity to provide facilities and the fact that voters have already approved these expenses. However, the state's interpretation of the capital exclusion was that it does not include a school district's capital costs related to BOCES facilities. This interpretation made little sense at the time because BOCES do not receive state aid or levy taxes. It is almost a misnomer to refer to BOCES capital as all funding received by BOCES is from their component districts to fund the construction of facilities.

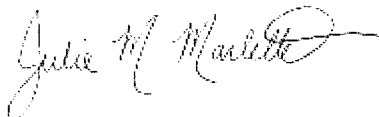
This inconsistency prompted immediate concern from the education community, and as a result, language intended to address this issue was adopted at the end of 2015. Governor's program bill 12 (Chapter 20 of 2015) was advanced, approved and signed on June 26 of 2015. As enacted, this law empowered the Commissioner of Taxation and Finance, "as appropriate," to issue rules and regulations which "may" exclude the local portion of a school district's BOCES capital costs from the tax cap calculation. However, three years, and many stalled projects later, the Department has failed to release any rules or regulations. Absent this administrative action, similar legislation was advanced and approved by both houses of the legislature in 2017. That bill, had it been enacted, would have eliminated the permissive nature of the 2015 legislation, and instead required the equitable treatment of BOCES capital (and therefore BOCES facilities and students). Unfortunately, this legislation was vetoed (Veto No. 209).

This year, the legislature approved for the third time legislation that would give BOCES and their students equitable access to facilities. To address concerns raised in the 2017 veto message, the new bill limits the exclusion eligibility of BOCES capital project to those directly approved by voters in component districts, establishing further uniformity in the exclusion for district and BOCES capital projects exempted from the calculation of the tax cap.

BOCES encourage efficiencies in program delivery and administrative operations through the use of shared services. BOCES also provide direct serves and programs to nearly 100,000 students statewide each day. Not allowing such BOCES capital expenses to be part of a school district's capital exclusion, has at best been a disincentive, and at worst financially prohibitive, from investing and participating in these offerings. All students should be able to access their education in safe and modern facilities, regardless of whether those programs and services are delivered in a district or BOCES building.

For these reasons, NYSSBA ***strongly supports*** this legislation and urges your immediate approval. If you require additional information, please do not hesitate to contact me at (518) 783-0200.

Sincerely,

A handwritten signature in cursive script, reading "Julie M. Marlette".

Julie M. Marlette

Director of Governmental Relations

Cc: Senator Terrence Murphy  
Assemblymember Sandy Galef  
Alphonso David  
Terry Pratt  
Dan Fuller  
Jamie Frank  
Michael Smingler

## VETO MESSAGE - No. 209

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bills:

Assembly Bill Number 1841-A, entitled:

"AN ACT to amend the general municipal law and the education law, in relation to payments in lieu of taxes"

Assembly Bill Number 5965, entitled:

"AN ACT to amend the education law, in relation to exempting BOCES capital expenditures from limitations upon local school district tax levies; and providing for the repeal of such provisions upon expiration thereof"

NOT APPROVED

In 2011, I worked with the Legislature to establish New York State's Property Tax Cap, which establishes a limit on the annual growth of property taxes levied by local governments and school districts to two percent or the rate of inflation, whichever is less. The Tax Cap has succeeded in curbing the growth of local property taxes, resulting in significant savings for taxpayers.

When the Tax Cap was passed, careful consideration was given to protect taxpayers from further significant increases. These bills would run counter to those efforts. First, Assembly Bill No. 1841-A would alter the value of property subject to payments in lieu of taxes (PILOT) agreements for purposes of increasing the tax levy growth factor. By allowing for the inclusion of currently exempt property within the levy growth factor, this bill would increase the base taxable property value in school districts and municipalities, thus increasing the amount they are permitted to raise taxes annually. Not only would this allow school districts and local governments to circumvent the careful balance of taxpayer and governmental interests that now exists within the Tax Cap, but the burden of those additional taxes would fall entirely on the taxpayers not subject to a PILOT agreement, as PILOTs are fixed.

Second, Assembly Bill No. 5965 would unnecessarily exclude BOCES capital projects from a school district's tax levy. School districts must account for these capital expenses within their annual Tax Cap. By placing this burden outside of the cap, school districts will be allowed to collect additional revenue from property taxpayers above the allowable Tax Cap, which runs contrary to the goals of the Tax Cap. Further, unlike individual school district capital expenditures, BOCES capital expenditures are not subject to approval by district voters. For these reasons, I am constrained to veto these bills.

These bills are disapproved.

(signed) ANDREW M. CUOMO