



# School Law Matters

Latest legal developments and practical guidance for school officials & administrators

May 2004

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**Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.** provides comprehensive legal representation to school districts/BOCES throughout Upstate New York in all aspects of education law, employment law and labor relations.

## School District Election Day Pointers

As you know, school elections are being held on Tuesday, May 18, 2004. While space does not permit an extensive article on election procedures and potential problems that may arise, below you will find some key points to remember:

- The Education Law prohibits "*electioneering*" on the day of the election. District election inspectors are required to post distance markers delineating the 100 foot zone. Any person who willfully violates the prohibition on electioneering may be found guilty of a misdemeanor. However, the Commissioner has ruled that the mere presence of school officials at the polling place does not constitute electioneering.
- The district must maintain a "*poll list*" that contains the names and legal residences of the people who actually vote at the election.
- It is the responsibility of the *election inspectors* to count the ballots and tally the votes cast.
- With the exception of the public's right to witness the opening of absentee ballots, the Education Law does **not** give voters or candidates the *right to witness the vote tally* or the right to inspect void ballots.
- The Chairperson of the meeting at which the election takes place *declares the result of each ballot*, as announced by the election inspectors. In general, there is **no requirement that the Chairperson of the election "certify" the election result.**
- If the district has been divided into election districts and voting machines are used, the *election inspectors must make a written report*, signed by all the inspectors, to the chief election inspector of each district, who then reports the results to the district clerk within 24 hours. The school board must tabulate and declare the result of the ballot within 24 hours of receiving the results.
- The *district clerk must immediately notify each person elected to the board of his or her election.* However, the Education Law provides that the presence of any such person at the meeting which elects him or her to office is deemed sufficient notice.
- *The district has no authority to conduct a recount.* Only the Commissioner may do so. Once the results of an election are declared, there is no authority in the election officials or voters to recanvass the votes.
- *The Commissioner of Education has exclusive jurisdiction over all election disputes.*
- *Candidates who are elected to fill the balance of an expired term are technically required to take office immediately.* A failure to file the oath of office within 30 days of the occurrence of the vacancy results in an automatic vacatur of office in accordance with the Public Officers Law.
- By law, all qualified voters who are *present at the polling place at the time of the closing of the polls must be allowed to vote.*
- "*Write-In Votes*": All ballots must have one blank space for each seat on the board of education that is up for election in which voters may write in the name of any candidate who was not nominated. There is no requirement that a voter place any kind of mark such as an "X" or "√" next to the name. Write-in ballots with minor misspellings of a candidate's name should be credited to that candidate in the absence of a showing that there is another district resident with the same or a similar name. Where voting machines are used, it is improper to require voters to cast write-in ballots in a separate ballot box.

If you have any questions regarding election day procedures, please call our offices at 315-437-7600.

## 13 School Districts Sued for Violating Homeless Assistance Act

The National Law Center on Homelessness & Poverty has filed a class action lawsuit on behalf of homeless children and their parents living in Suffolk County against New York State and 13 school districts located in that county. The lawsuit, filed in Federal District Court for the Eastern District of New York, alleges that the State and school districts denied homeless children access to public education in violation of federal and state laws.

Specifically, New York State receives federal funds under the McKinney-Vento Homeless Assistance Act that mandates that the State provide for the education of homeless children within the state. In addition, the State is required to ensure that local agencies, including school districts, comply with the Act.

Among the State's practices cited as violations in the lawsuit are:

- Failing to implement an appropriate or adequate "regional placement plan" as defined by New York State Education Law that provides a comprehensive ap-

proach to educational placements for homeless children.

- Failing to adequately monitor school districts' compliance with laws relating to the educational rights of homeless children.
- Failing to provide homeless children with "suitable clothing, shoes, books, food, transportation and other necessities" to enable them to attend school.

The school district practices cited as violations in the lawsuit include:

- Requiring proof of a "permanent address" as a prerequisite for school enrollment, a requirement that results in children being turned away at the schoolhouse door.
- Requiring a "host of records and documentation that could not reasonably be demanded of homeless children and their families," including proof of residency.
- Requiring that the entire family, including school age children, repeatedly appear at screening centers

to have their eligibility determined, thus causing children to miss school.

- Failing to set up bus transportation for school age children of families placed in emergency housing.
- Failing to provide an adequate process for selecting a school that is in the best interest of homeless children.
- Failing to provide an opportunity for the parent of a homeless child to state the best interest of the child in school selection.
- Denying homeless children the opportunity to remain in their schools of origin and forcing them to transfer to the school which serves the attendance area in which they stay while homeless.

We will keep you updated on any developments related to this lawsuit. In the meantime, if you have any questions about complying with the Homeless Assistance Act, please contact our office at 315-437-7600.

## School Officials Had the Right to Search Suspended Teacher's Classroom File Cabinet, Federal Appeals Court Says

William Shaul, a suspended teacher, failed to remove all of his personal items from his classroom. School officials cleaned out his classroom so it could be assigned to another teacher. In the process, they discovered incriminating personal correspondence, a photo album and other items in a locked file cabinet that they forcibly opened. The District attempted to introduce some of the items as evi-

dence at a disciplinary hearing which followed, but the hearing officer rejected them.

Shaul subsequently sued the District claiming his Fourth Amendment rights against unreasonable search and seizure had been violated. A federal district court disagreed, finding that under established law, a workplace search does not violate the Fourth

Amendment unless there is an "expectation of privacy." According to the District Court, the teacher did not have an expectation of privacy because his classroom was not used by him exclusively; students, faculty, janitors and visitors all had access to the room.

*Continued on next page*

## School Officials Had the Right to Search Suspended Teacher's Classroom File Cabinet, Federal Appeals Court Says (continued)

The Second Circuit Court of Appeals affirmed the lower court's decision noting, in addition, that Shaul lost his expectation of privacy when he: 1) was suspended, 2) surrendered his keys to District officials, and 3) was given an opportunity to remove his personal effects from his classroom.

The Court also noted that the School District's search of his classroom was not unreasonable, given that it was both investigating workplace misconduct charges against Shaul and preparing the classroom for a replacement teacher. Under both situations, the school dis-

trict was justified in its search of Shaul's former classroom.

*Shaul v. Cherry Valley-Springfield Central School District*, 363 F.3d 177, 2004 W.L. 585767 (2d Cir. March 25, 2004).

## Parent Awarded \$2.75M For Son's Drowning on School Field Trip

A Bronx County Supreme Court jury recently found that the Board of Education of the City of New York was liable (in the amount of \$10 million) for the drowning death of a student on a school field trip. The jury verdict was subsequently reduced by the court to \$2.75 million.

In this case, teachers took students on a field trip to a water park. The teachers did not discover that the student was

missing until after they left the park. Moreover, they "delegated" the task of locating the child to park personnel after the park closed. Park maintenance personnel later discovered the child's body in the wave pool.

The student's mother sued the school district for severe emotional distress. The court ruled that the school district had a duty to act as a reasonable parent would under the same circumstances.

The court noted that a reasonable parent would not have left the water park without a child or even left the area until the missing child was located. In essence, the district could not "delegate" its duty to act as a "reasonable parent" under these circumstances to park officials.

*Maracallo v. Board of Education of the City of New York*, 2 Misc.3d 703 (Bronx Co., 2003).

## Teacher Awarded \$1M For Violation of Free Speech Rights

A federal court has awarded a teacher approximately \$1 million for a violation of her First Amendment free speech rights. The damages were assessed against both her school district employer, as well as two school officials individually.

In this case, Pammella Settlegoode claimed that she was discharged in retaliation for her criticism of her school district's physical education policy for

special education students. Ms. Settlegoode was able to produce evidence at trial that demonstrated that she received positive employment evaluations until she began writing letters to her supervisors complaining about the district's program.

Based on this evidence, the jury found in her favor, awarding her \$500,000 in non-economic damages and \$402,000 in economic damages, as well \$50,000

in punitive damages against two of her individual supervisors. The 9<sup>th</sup> Circuit noted that the jury had sufficient evidence to find that the non-renewal of Settlegoode's contract was in retaliation for her engaging in protected speech.

*Settlegoode v. Portland Public Schools*, 362 F.3d 1118 (9th Cir. April 5, 2004).

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## Teacher's Recall Rights Survive Discharge For Cause

Joseph Bojarczuk, a high school math teacher, was hired by the Board of Education of the Utica City School District during the 1995-1996 academic year in the District's Alternate Education Program. When the District eliminated that program at the end of that school year and replaced it with a similar program offered by the Oneida-Herkimer-Madison BOCES, Bojarczuk was laid off. Pursuant to Education Law Section 3014-a, he became employed by BOCES, but was soon terminated for unsatisfactory performance.

At the commencement of the 1997-1998 school year, the Utica City Board (Bojarczuk's original employer) hired a new employee to fill a vacancy for a high school math teacher, without recalling Bojarczuk

pursuant to Education Law Section 2510(3) and Section 3013(3). Bojarczuk appealed the denial of his reinstatement all the way to the State's highest court, the Court of Appeals. The Court of Appeals found in Bojarczuk's favor, ruling that Bojarczuk's employment with BOCES did not divest him of his statutory right to be placed upon the district's preferred eligibility list for rehiring "provided [he] otherwise qualifies for the statutes' benefits" (98 N.Y.2d 663, 665 [2002]).

In a follow-up case, decided April 1, 2004, the Appellate Division, Third Department, held that Bojarczuk was "otherwise qualified" for the statute's benefits despite his dismissal from the BOCES for cause. The court noted:

In our view, the issue distills to whether a school district should be permitted to consider service provided by a teacher after the date of layoff in determining if such teacher's performance was "faithful and competent" within the meaning of Education Law §2510(3) and §3013(3). .... we conclude that performance must be evaluated as of the time that such teacher's rights became eligible for vesting. So viewing this record and noting that petitioner's probationary employment with the district could have been discontinued at any time for any reason without a hearing ... this record can only support the finding that petitioner's performance with the district was both faithful and competent.

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