

# School Law Matters

DECEMBER 2014



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

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

## Hot Topics

## Employee Discipline

### Firm to Present School Law Briefing in Rochester and Utica; Register Today!

The Ferrara, Fiorenza Law Firm will be presenting its latest School Law Briefings on Tuesday, December 16, 2014, from 9 a.m. – 11 a.m. in Rochester, N.Y. and Thursday, December 18, 2014, from 9 a.m. – 11 a.m. in Utica, N.Y. This is a value-added service we offer to our clients, at different locations throughout upstate New York, at least twice a year. You and your staff are invited to either or both events.

The Rochester event will be held at our Firm's office located at 400 Meridian Centre Blvd., Suite 110. The Utica event will be held at the Hotel Utica located at 102 Lafayette Street.

The topics to be addressed at these events include the following:

#### Rochester, December 16, 2014

**Copyright & Fair Use** — Learn about legal issues facing school districts as related to Copyright and Fair Use to better prepare educators and avoid monetary consequences associated with non-compliance.

**Conducting Misconduct Investigations** — Practical tips on how to conduct a thorough investigation following allegations of misconduct including tips on interviewing witnesses and writing an effective investigation report.

**Child Abuse in an Educational Setting** — Learn about: 1) the legal definition of child abuse and neglect; 2) mandatory reporting obligations; 3) tips for handling disclosures of abuse; and 4) how to avoid allegations of misconduct.

#### Utica, December 18, 2014

**Data Privacy** — An explanation of data privacy and security rules arising from the Common Core Implementation Act and related issues.

**School Law Update** — Learn about recent changes in statutory and case law impacting school districts.

**Child Abuse in an Educational Setting** — See program description for this topic above.

#### Who Should Attend?

This presentation is for Board Members, Superintendents, Principals and other school administrators.

#### No Cost to Attend But Registration Necessary

There is no registration fee for attending the program. However, space is limited and registration is necessary. Accordingly, please register no later than December 15, 2014, indicating whether you, or any other officials from your district, will be able to join us.

To register, visit our Firm's website at [www.ferrarafirm.com](http://www.ferrarafirm.com). Click on the link "School Law Briefing (Rochester)" and/or "School Law Briefing (Utica)" from the Events Calendar on the far right column of the home page. Then, click on "Register Now" and complete the applicable online form. Click Submit and you're registered.

**Questions? Call: 315.437.7600**

### Recent 3020-a Illustrates Need to Carefully Prepare for All Employee Disciplinary Cases

You might think that a hearing officer in a Section 3020-a disciplinary proceeding would have little difficulty -- or hesitation in -- deciding to discharge a teaching assistant who punched a student three times in the face. When you add the fact that the student had special needs, was physically smaller than the educator and the educator received recent and specialized training in non-violent crisis intervention techniques, you might assume that it was a simple "open-and-shut case" for the hearing officer. However, as a recent case handled by this office for one of our school district clients illustrates, there are no open-and-shut cases in 3020-a proceedings. While ultimately the employee in this case was discharged, the hearing officer's decision in this case is a perfect example of why school districts must carefully document employee performance problems on a regular basis and, when necessary, work

*Continued on the next page*

#### **In This Issue ...**

- Firm to Present School Law Briefing in Rochester and Utica; Register Today!
- Recent 3020-a Illustrates Need to Carefully Prepare for All Disciplinary Cases
- \$2 Billion Smart Schools Bond Act Referendum Passes – What Next?
- Case Challenging Underfunded Foundation Aid Formula Finally Goes to Trial
- Tax Freeze Credit May Ease Burden Caused by Granting Vets' Exemption, For Now
- Preparing for the Sale of School District Real Property
- Upcoming Events

**Employee Discipline****Recent 3020-a Illustrates Need to Carefully Prepare for All Disciplinary Cases (cont'd)**

closely with their school attorney to diligently and meticulously prepare and prosecute every employee disciplinary case.

In this matter, the student was severely emotionally disturbed with a history of violent outbursts, of which the TA was well aware. The educator had a number of years of service with the District with no documented disciplinary issues in his personnel file. The only prior incident that the District could point to during the hearing was "verbal counseling" he received for utilizing a restraint technique which restricted a student's airway. There was no real question that the employee punched, and significantly injured, the student in the midst of a violent outburst in which the student struck the employee first. The real question before the hearing officer was whether the appropriate penalty, in light of all of the circumstances, was termination from service.

In making his decision, the hearing officer considered the fact that the employee's supervisors acknowledged on cross examination that he possessed a unique skill in assisting students de-escalate when agitated. He noted that the District even assigned the employee to work on a crisis intervention team and in the school's de-escalation space. Further, he noted that the educator enjoyed working with emotionally-disturbed students and chose to continue working in what was a very challenging environment.

Arguing in favor of termination, we reminded the hearing officer that the employee, by his own admission, had no recollection of the incident. This was particularly concerning to the District because the District had no guarantee that the employee would not react in the same manner if placed in a similar situation in the future.

Ultimately, the hearing officer agreed, and found that:

"Respondent's 'absence of memory' regarding this incident has left a serious 'cloud of doubt' hanging over the Respondent's abilities to cope in this environment and over his possible actions towards the students in the future. The bottom line is -- where the welfare of seriously handicapped children is concerned, no one can 'gamble' when it regards their safety and security in school."

While the hearing officer described the employee as a "good man," he decided to terminate the employee because "the School District [is] the custodian of the students in their charge [and] must be vigilant to insure their safety at all times during the school day."

If you have any questions or need assistance with any employee disciplinary matters, please feel free to contact our office.

**State Aid Litigation****Case Challenging Underfunded Foundation Aid Formula Finally Goes to Trial**

A lawsuit, originally brought in 2008 by parents of students in small city school districts to challenge the funding of the "Foundation Aid Formula" (Chapter 57 of the Laws of 2007), is finally coming to trial this month. *Hussein v. State of New York*. The plaintiffs in *Hussein* will be arguing that the Formula fails to provide "sound basic education" to students of these small city districts. The outcome of this trial, which is scheduled to begin on December 8, could have far reaching implications for all school districts in the State.

This litigation is modeled after two high profile cases which began in the mid-1990s. As many of you may recall, in 1995, the New York State Court of Appeals, the highest court in the State, held that the Education Article of the New York State Constitution (Article XI, Section 1) required the State to offer all

children the opportunity for a sound basic education. *Campaign for Fiscal Equity v. State of New York*, 86 N.Y.2d 307 (1995) ("CFE I"). Later, the Court allowed a related case to proceed in which the plaintiffs argued that the State's public education funding system was insufficient to provide for a sound basic education for children attending public schools in New York City. At trial, the plaintiffs succeeded in establishing a causal link between the State's public education funding system, and a failure to provide a sound basic education to New York City school children. After reviewing the trial record, the Court of Appeals held that the record supported the conclusion that children in New York City were not receiving the constitutionally-mandated opportunity for a sound basic education because of inadequate funding in their public

schools. *Campaign for Fiscal Equity v. State of New York*, 100 N.Y.2d 893 (2003) ("CFE II").

In *CFE II*, the Court also elaborated upon the definition of "sound basic education," and determined that it includes "the opportunity for a meaningful high school education, one which prepares [children] to function productively as civic participants." The *CFE II* decision directed the State to reform the then-existing system of financing school funding and managing schools in the State, such that every school in New York City would have the resources necessary to provide the opportunity for a sound basic education.

While the *CFE II* decision was limited to issues associated with funding of New York City schools, it was this

*Continued on the next page*

**State Aid Litigation****Case Challenging Underfunded Foundation Aid Formula Finally Goes to Trial (cont'd)**

decision that led to the enactment of the Foundation Aid Formula in 2007 which impacted the funding of all school districts. The Formula was designed to use factors such as needs of students and each district's ability to raise revenue to determine how much funding a district would receive. The basic idea was that by using the formula, wealthier districts would receive less and districts with greater need would receive more.

However, as most of you are no doubt aware, any relief felt as a result of Foundation Aid was short-lived. Foundation Aid was frozen in 2009 due to the economic downturn. Moreover, the State subsequently implemented "Gap Elimination Adjustments" which deducted funding from each school district's state

aid allocation to help the State make up for its revenue shortfalls.

In 2008, parents of children attending schools in "small city" school districts across New York State (including Jamestown, Kingston, Mount Vernon, Newburgh, Niagara Falls, Port Jervis, and Utica) filed a lawsuit alleging that the State failed to properly fund the Foundation Aid formula. *Hussein v. State of New York*. The *Hussein* case relies on the precedent set by *CFE I* and *CFE II*. It alleges that the failure to properly fund Foundation Aid has resulted in a failure to provide a sound basic education in small city school districts. After years of pre-trial motions and appeals, the matter is finally scheduled for trial on January 21, 2015. At trial, the plaintiffs will seek to prove that the small cities schools lack the financial resources to provide all stu-

dents with a sound basic education and that this is a direct result of the State's funding system.

The *CFE II* case trial lasted for seven months, and appellate review of the trial court's decision occurred over a period of years. We expect a similarly lengthy trial in the "Small Cities" case, and appellate review of any decision after trial. Like the *CFE* cases, the Small Cities trial will be watched closely and its outcome could result in a dramatic change in state aid for all districts. However, like these other cases, it is unlikely that we will see the impact of the litigation any time soon.

Nevertheless, we will keep you informed of any key developments in this case. Feel free to call with any questions.

**Taxation****Tax Freeze Credit May Ease Burden Caused by Granting Vets' Exemption, For Now**

We reported in the February issue of *School Law Matters* about the new Veterans' Tax Exemption; outlining the steps the School District must follow when considering implementing such exemption. We advised at that time that the issue of whether or not to grant the exemption is a business decision for the Board of Education. Recently, some new factors have come to light which may have an impact on that decision.

One new aspect involves the interplay between the Veterans Tax Exemption and the Real Property Tax Freeze Credit, New York Tax Law § 606(bbb) ("Tax Freeze Credit"), which went into effect March 31, 2014. While working with a number of our clients on this issue, we

have discovered that the increase in property taxes which the non-veteran property owners will pay if your School District adopts the Veterans Tax Exemption may be reimbursed to those taxpayers by the State under the Tax Freeze Credit (assuming your School District qualifies for the Tax Freeze Credit). This is because the increase in assessment from the shift in real property taxes due to a district's implementation of the Veterans' Tax Exemption would be a "qualifying credit" under the Tax Freeze Credit law. The only enumerated exceptions to the Tax Freeze Credit are:

- A physical improvement to the eligible taxpayers primary residence;

- A removal or reduction of an exemption on the eligible taxpayers primary residence, including a reduction to the Star exempt amount calculated pursuant to subdivision 2, Section 425 of the Real Property Tax Law; and
- A revaluation that causes the assessment of the eligible taxpayers primary residence to increase by a percentage that is greater than the applicable change in the level of assessment.

Please note, however, that the Tax Freeze Credit is a two-year tax relief

*Continued on the next page*

SCHOOL LAW MATTERS is published by Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., 5010 Campuswood Drive, East Syracuse, New York, 13057, 315-437-7600, [www.ferrarafirm.com](http://www.ferrarafirm.com). © Copyright 2014 by Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., all rights reserved. Photocopying or reproducing this newsletter in any form in whole or in part for other than internal use is a violation of federal copyright law and strictly prohibited without the express written consent of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C. The information contained in this newsletter is intended for information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. Readers should not act upon any information contained herein without seeking professional counsel.

**Taxation**

**Tax Freeze Credit May Ease Tax Burden Caused by Granting Vets' Exemption (Cont'd)**

program ending in 2015-2016 school year. As such, if your Board is receiving community pressure to grant the Veterans exemption and the Board is concerned about backlash on the budget vote if it does not grant the exemption, then this may be the tax year to imple-

ment the exemption as your taxpayers would likely see no overall tax increase. Moreover, if the State does not renew or continue the Tax Freeze Credit program, then your district can advise the voters that the increase (for which they are no longer being reimbursed) is due

to the State termination of the Tax Freeze Credit.

If you have any questions, please feel free to contact us.

**Real Property**

**Preparing for the Sale of School District Real Property**

If your District is considering the sale of unneeded school district property in the near future, we recommend school districts undertake steps now to ensure a successful conveyance down the road. Initially, a school district should ensure it maintains clear and marketable title to the property it maintains. On many occasions, school districts receive title through deeds which restrict the use of the property for school district purposes. Additionally, title may be held in the name of a prior school and has not been transferred following centralization or merger. It is important to identify any title concerns early on. This begins with updating existing abstracts of title or preparing one if an abstract or title report does not exist. Potential buyers will require marketable title. At the same time, we recommend school districts also take steps to review any existing survey. Any and all encroachments upon district property should be remedied prior to marketing school property for sale.

When selling real property, the Board of Education has a fiduciary duty to conduct a sale in a commercially reasonable manner designed to obtain the highest selling price. Typically this requires some type of appraisal of the property to determine the fair market price. In exercising the Board's fiduciary responsibility, the Board has discretion to determine the method of sale. Sale methods could include listing the property with a qualified commercial broker, advertising for sale and requesting purchase offers, advertising for sealed bids to be submitted or other reasonable methods which the Board may determine.

Prior to the sale of district property, a Board of Education must determine the property is no longer needed for school district purposes. Education Law Section 1804(6)(c) authorizes a board of education in a central school district to approve, by resolution, the sale of dis-

trict property. However, the statute does provide an option by which a referendum on the question of whether to sell unneeded school district property is required, if a petition signed by at least ten percent of the qualified voters in the school district is filed with the Clerk of the Board within thirty days following the board voting to approve the sale of the property. In that case, the question of whether to sell must be decided by the voters and any sale would not occur until the referendum is voted upon. Sale of school district property in a small city school district requires voter approval pursuant to Education Law §2511(1).

Should your district anticipate the sale of district property in the near future, please do not hesitate to contact our office for assistance and guidance.

**Upcoming Events**

<u>Attorney(s)</u>	<u>Date(s)</u>	<u>Event/Location/Program</u>
Colleen Heinrich Michaela Perrotto Joseph Bufano	December 16	<b>Ferrara Law Firm School Law Briefing</b> , 400 Meridian Centre Blvd., Suite 110. Rochester, NY, "Copyright & Fair Use"; "Conducting Misconduct Investigations"; and "Child Abuse in an Educational Setting"
Henry Sobota Susan Johns Joseph Bufano	December 18	<b>Ferrara Law Firm School Law Briefing</b> , Hotel Utica located at 102 Lafayette Street, Utica NY, "Data Privacy"; "School Law Update"; and "Child Abuse in an Educational Setting"
Wayne Vander Byl	January 13	<b>"Never Settle for Second Best: Building a Staff of Elite Educators in a Tenure Culture"</b> , 400 Meridian Centre Blvd., Suite 110, Rochester, NY, Workshop #5 entitled "Effective Implementation of Teacher Improvement Plans – Part 1"
Wayne Vander Byl	January 15	<b>"Never Settle for Second Best: Building a Staff of Elite Educators in a Tenure Culture"</b> , 5015 Campuswood Drive, East Syracuse, NY, Workshop #5 entitled "Effective Implementation of Teacher Improvement Plans – Part 1"

*Please note that "Client In-Service" programs are being provided to particular clients at their request. If you are interested in having us present a program for you, please contact us so we can schedule one to suit your needs.*