

# ON THE LEGAL SIDE

Volume 1, Issue 1

New York City Board of Education

June 1999

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The general number for the

Office of Legal Services is 718-

935-3690. For other extensions,

dial 718 and the exchange 935.

**A WORD FROM THE GENERAL COUNSEL.** Consistent with the Chancellor's agenda for improved service and accountability, we offer you this inaugural newsletter describing some recent and important legal issues that affect you. As the new general counsel, I invite you in the field to share your suggestions on how we can do a better job and to recommend articles you might like to see in future issues. We look forward to working with you.—Chad Vignola



## Police in the Schools

by Deborah King

In September 1998, the Board of Education entered into a four-year agreement with the New York City Police Department pursuant to which School Safety Agents (SSAs, formerly known as SSOs) became employees of, and are supervised by, the Police Department.

The role of the SSAs does not change significantly. SSAs will not issue summonses or conduct investigations of school-related crimes. In situations not requiring immediate arrest, SSAs will consult with the principal prior to placing a student under arrest. If the

parent of an arrested student cannot be reached, a member of the school staff must accompany the student to the precinct. However, SSAs may no longer accompany the student as a school representative.

The police must be contacted whenever a student-related crime occurs. The school must make every reasonable effort to contact the student's parent before the student is questioned by the police. If the parent cannot be reached, the school may not permit the police to question a student witness unless there are "exigent circumstances." If the student is a suspect and the parent cannot be reached, the police may not question the student unless there is a "continued threat of imminent danger."

Schools are still required to complete incident reports. The SSAs will prepare their own criminal incident reports for the NYPD School Safety Division. These reports will include student

*continued on page 2*

## Charter Schools

by Judith Kay



The New York State Legislature adopted a charter school law last December, and we are now the 33<sup>rd</sup> state to offer this educational choice. Charter schools are independent and autonomous public schools, which will operate under charters issued by the Board of Regents. Educators, parents and community residents may apply to establish a charter school and may do so in combination with colleges, museums, foundations and for-profit businesses. A charter school cannot be sectarian in any way. Existing public schools may apply to "convert" into charter schools, but existing private schools may not.

The Chancellor is authorized to approve charter applications, enter into proposed agreements (the actual charters), and submit the proposed charters to the Board of Regents. The Chancellor is the only entity

*continued on page 3*

### In This Issue...

Office Directory	1
Police in the Schools	1
Charter Schools	1
Successful Discipline	2
Law on Call	4
New IDEA Regulations	3
Winners	3

# Successful Discipline

by Theresa Europe



Education Law §3020-a sets out the procedures for disciplining tenured teachers and administrators. The three-year statute of limitations means that any misconduct which happened more than three years ago cannot be charged. However, a criminal conviction is not subject to the statute of limitations.

The key to successful discipline is documentation of performance and remediation efforts to improve performance. Hearing officers will be unlikely to impose discipline unless the district demonstrates a strong, well-documented case. When documentation has been collected, schedule a Technical Assistance Conference (TAC) in this office. The principal or

supervisor must bring all documentation, including adverse ratings. The following format should be followed for documenting misconduct:

1. Give the employee 48-hour written notice to appear at a meeting (with union representative if desired) with the Principal/Supervisor.
2. At the meeting, advise the employee of the allegations, and provide an opportunity to respond.
3. One to two days after the meeting, follow up with a letter stating: (a) date and attendees at the meeting, (b) allegations and employee's response, and (c) supervisor's conclusion and possible disciplinary action.
4. Have the employee sign off on the letter to show receipt. If the employee refuses to sign the letter, have a witness sign off on the bottom of the letter stating the employee refused to sign. Do not copy the letter to anyone.

Excessive latenesses and absences: Warning letters must be given, including references to possible disciplinary action, which could include termina-

tion. At the TAC, the Principal/Supervisor must bring a detailed list, including the actual date and day of the week the employee was absent, and whether the days were before or after a holiday. Neither the Cumulative Absence Reserve ("CAR") nor copies of time-cards is sufficient.

Incompetence: Requires "unsatisfactory" ratings. This Office will not charge incompetence on the basis of "satisfactory" ratings. The rating sheet, along with accompanying letters to file and observations to support the "U" rating, are key pieces of evidence.

Corporal punishment: Will not be charged if the allegations are unsubstantiated. Prior unsubstantiated investigative reports are not evidence of corporal punishment. Furthermore, the testimony of children witnesses or victims will be necessary, and parental consent must be acquired.

Any additional questions regarding 3020-a procedures should be directed to Deputy Counsel to the Chancellor, Theresa Europe, Office of Legal Services, (718) 935-3612.

*"The key to successful discipline is documentation of performance..."*

## Police in the Schools

*continued from page 1*

names for: felonies, misdemeanors, and incidents involving weapons, controlled substances, and gang-related activities of a criminal nature.

Pursuant to the Family Educational Rights and Privacy Act, absent a health or safety emergency, no information

from a student's education records may be released to SSAs or the NYPD except with parental consent, a subpoena or court order.

SSAs will continue to search students and their belongings at the direction of the principal or designee, if there is reasonable suspicion to believe that a student has violated the law or school rules and regulations.

Chancellor's Special Circular No. 9 sets forth protocols

for the notification, response to, and reporting of, safety incidents and accidents in schools, and for the search of a student's person and possessions. Schools with questions regarding the protocols or the handling of an incident should seek advice from their superintendent, the Office of Legal Services at (718) 935-3690 or the Division of Student Safety and Prevention Services at (212) 979-3370.

## Charter Schools

continued from page 1

that can approve applications from existing NYC public schools.

Chancellor Crew asked us to analyze the new law. Our mission became one of making sense of the law, supplying quick answers to the myriad questions raised, and providing interpretations where the legislation is either silent or opaque. Our job was made easier by Chancellor Crew's rapid assessment of how this law fits neatly into his vision of greater freedom and building a performance-driven public school system. The Chancellor has eagerly embraced the law's inherent principles of autonomy and independence from local rules. Since charter schools can purchase services on the outside, the Chancellor sees the law as an opportunity to raise

the quality and cost-effectiveness of our own service delivery system and thus be competitive with the private sector.

Chancellor Crew is proactively seeking high growth industries to sponsor new and conversion charter schools at the middle and high school levels. Charter schools will allow this city to obtain a network of public schools, located within corporate space, and to expand the public/private partnerships on an unprecedented scale.

Some of the results of our work can be found on the Board of Education's web site, [www.nycenet.edu](http://www.nycenet.edu) "Charter and New Schools—Frequently Asked Questions." The Office of Charter Schools can be reached at (718) 935-5814.

## And the Winners are!



[Pictured left to right: Judith Kay, Marsha Matthews-Friday, Maria DePalma]

### Where'd That Name Come From?

As some of you may remember, the Office of Legal Services published a newsletter some years ago. When we decided to revive the newsletter, we held a

contest for the staff of the Legal Office to suggest a name. The contest drew some 40 possible names. A three-judge panel selected the name you see on the masthead of this newsletter as capturing the essence of the newsletter and offering immediate recognition for our clients.

The originator of "On the Legal Side" is **Maria DePalma**. Runners-up were: Marsha Matthews-Friday ("The Legal Lantern") and Judith Kay ("Legal Tender"). Thanks to all of the staff who participated and congratulations to the winners!

"On the Legal Side" will be published quarterly and will be available on the Board of Education's web site, [www.nycenet.edu](http://www.nycenet.edu).



## New IDEA Regulations

by Paul Ivers

On March 12, 1999, the U.S. Department of Education issued its long-awaited and

highly anticipated final regulations implementing the 1997

*"Our initial review indicates that the final regulations can serve to relieve local educational agency obligations in a number of significant areas..."*

amendments to the Individuals with Disabilities Education Act (IDEA).

Draft regulations were released for public comment on October 22, 1997. The Department has also published its review of criticisms and comments as Attachment 1 to the regulations. The Department's discussion provides considerable insight regarding the intended application of the regulations. The Department also has published a separate Appendix A, in question and answer format, which contains its analysis of issues concerning the involvement and progress of students in the general curriculum, the CSE evaluation and recommendation process, and the implementation of the Individualized Education Programs.

continued on page 4



Board of Education of the  
City of New York  
110 Livingston Street  
Office of Legal Services  
Room 920  
Brooklyn, NY 11201



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## LAW ON CALL

*Write to this column at the above address with legal questions. Selected questions and responses will be published.*

**Q:** A man in Florida claims to be the father of a student in School X. He cites a Federal right to be sent his son's school records. He enclosed a copy of a court order from two years ago, which granted full custody of the child to the mother, with no visitation rights for the father. The father noted that the order did not bar him from getting the records. His letter demanded the records immediately.

**A:** Chancellor's Regulation A-820 incorporates the Family Educational Rights and Privacy Act ("FERPA"), which gives parents a right to access their child's school records. However, the school has up to a maximum period of 45 days to provide access. The Regulation provides that when such a request is made by a non-custodial parent, the school must notify the custodial parent of the request and inform the custodial parent that access (or copies of the records) will be provided to the non-custodial parent unless a reason is shown for why the access should not be provided. The only reason sufficient to block access is a court order or other binding instrument which specifically states that the non-custodial parent cannot have access to the child's records. The fact that there are no visitation rights is not sufficient. The purpose of the 45-day period is to allow the custodial parent to obtain an order barring access, if needed.

## New IDEA Regulations

*continued from page 3*

The legal framework governing the provision of special education is unique in that it is governed by a dual system of Federal and State laws and regulations. Current New York State law and regulations have yet to be amended to reflect the 1997 IDEA amendments.

We have begun a painstaking review of the final regulations, which requires a side-by-side comparison of the previous regulations, the final regulations, Attachment 1 and Appendix A. The meaning and intent of many provisions will be subject to debate, conjecture and eventual litigation, initially through the impartial hearing process.

Our initial review indicates that the final regulations can serve to relieve local educational agency obligations in a number of significant areas, such as the composition of CSE review teams. For example, a child's general education teacher is a mandated member of the CSE review team in all cases where the child is, or may be, participating in the general education environment. Attachment 1 and Appendix A clearly note that the physical presence of that teacher, as well as the extent to which he/she must participate in all phases of the IEP development process, is now to be determined on a case-by-case basis.

The realization of any benefit is dependent upon appropriate amendment of State law and regulation. This office will provide regular on-going analysis of the effect of the final regulations, both in this newsletter and in published memoranda.

Copies of the Regulations, which include the above-referenced Appendix and Comments, are available from the Impartial Hearing Office. They can also be downloaded from <http://gcs.ed.gov/fedreg.htm> or <http://www.ed.gov/new.html>.

### Editors

Donna Carrier-Tal  
Robin S. Greenfield  
Special assistance: Katie Raab

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