

# On the Legal Side

New York City Board of Education

Issue 3

Spring 2000

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The general number for the Office of Legal Services is 718.935.3690.

## DEFENDING HUMAN RIGHTS CASES

by Celeste Segure



Federal, state and local laws prohibit discrimination in employment on the bases of race, creed, color, sex, sexual orientation, age, disability, national origin, marital status and arrest/conviction record. These laws also prohibit retaliation against employees who oppose unlawful discrimination. Employees may file complaints of discrimination with the Equal Employment Opportunity Commission, N.Y.C. Commission on Human Rights, N.Y. State

Division of Human Rights and U.S. Dept. of Education, Office for Civil Rights. The General Practice Unit (GPU) in OLS is responsible for defending the Board of Education and its employees against complaints of discrimination filed with the above agencies. It is important for OLS to respond in a thorough manner, since discrimination complaints may result in substantial liability to the Board.

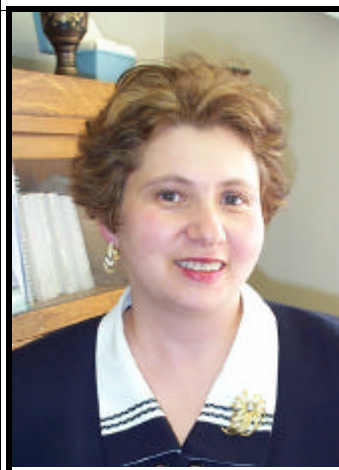
When an agency receives a complaint of discrimination, it conducts an investigation to determine whether there is probable cause to believe dis-

crimination has occurred. The key to a successful defense against a complaint of discrimination is documentation which proves the legitimate non-discriminatory reasons for the actions taken against the employee. GPU attorneys will ask superintendents, principals and other supervisors to provide the following to assist in preparing the Board's defense: narrative response to the allegations in the complaint; copies of relevant employee evaluations and observations; de-

*continued on page 2*

## ARRESTS AND DISPOSITIONS

by Susan Mandel



When you were first hired to work at the Board of Educa-

tion, you were required to be fingerprinted. Your fingerprints were checked to see whether you had any criminal convictions.

The obligation to keep the Board informed about criminal conduct continues even after you have been hired. Chancellor's Regulation C-105 requires all Board employees to notify the Office of Personnel Investigations (OPI) if they have been arrested.

*continued on page 2*

**In This Issue...**

OLS Directory	1
Human Rights	1
Arrests	1
CSE Parent Members	2
OLR Directory	3
Letters to File	3
Grievances	3
Administrative Trials Unit	4
Law on Call	4

# PARENT MEMBERS AT CSE REVIEWS

by Alexandra Michalos

The Individuals with Disabilities Education Act (IDEA) governs special education law nation-wide. This landmark legislation gives parents of children with disabilities a host of rights to ensure that all children with disabilities receive a free appropriate public education.

One such right is an opportunity to have a team of professionals meet with the parent for the purpose of developing or reviewing an Individualized Education Program (IEP). Under federal law this team is called the IEP Team. In New York State this team of professionals is called the Committee on Special Education (CSE). New York State law expands the requisite membership of the IEP Team to include a parent member. The parent member is a parent of a child with a disability who resides in the same school district as the parent, or in a neighboring school district. The parent member acts as an advocate for the parent by providing support and assistance to the parent at the review meeting.

New York State Regulations have been amended to provide that the membership of each CSE shall include, but not be limited to:

...an additional parent member of a student with a disability residing in the school district or a neighboring school district, *provided that such parent is not a required member if the parents of the student request that the additional parent member not participate in the meeting....* (Emphasis added.)

Under the amended state regulations, although a parent member is required, the parents of the student may request that the parent member not participate in their child's CSE review meeting. OLS recommends that parents be informed of this new right at the time of the Social History Evaluation when due process rights typically are described to parents. It is important to explain the role and purpose of the parent member at the CSE review meeting as well as the right to waive the participation of the parent member. All decisions of parents should be informed decisions and it is the duty of the school district to provide parents with adequate information of their rights and options.

The provision cited above is from the Regulations of the Commissioner of the New York State Education Department, Part 200 - Students with Disabilities. A complete copy of the Commissioner's Regulations is available on the internet at the web site of the New York State Education Department, [www.nysed.gov](http://www.nysed.gov). Once at the web site:

? go to "VESID";  
? then go to "News, Announcements and Timely Information";  
? then scroll down to "Part 200-Students with Disabilities."

You may also obtain a copy of the regulations by contacting the Publications Sales Desk, Room 309, Education Building, Albany, NY 12234.

Articles in this newsletter are for general information purposes only and are not to be relied upon as legal advice. Be sure to contact the Office of Legal Services (OLS) or the Office of Labor Relations (OLR) for legal advice in specific situations.

## Arrests and Dispositions

continued from page 1

After an employee notifies OPI of an arrest, OPI, in consultation with OLS, will evaluate whether the employee should be removed from his/her regular assignment pending disposition of the criminal case. For employees who have regular contact with students, such as teachers, it is likely that a decision will be made to reassign pending the disposition.

When the criminal case is resolved, the employee must provide OPI with an original certificate of disposition. A decision will be made whether the employee should be permitted to continue employment with the Board. This applies even if a case is resolved through a plea to violation or delayed dismissal. Factors that will be considered include the relevance the crime has to fitness/ability to do the job and the agency's interest in protecting the safety and welfare of staff, students and others. The standard is

particularly high for employees who have regular contact with children. For tenured teachers or permanent civil service employees, a disciplinary hearing is likely to follow a felony conviction.

Even when a case results in dismissal of the charges, the Board still must investigate the allegations and determine whether the employee poses a threat to children or if any conduct affects an employee's job performance.

Failure to disclose an arrest can result in adverse employment consequences. Termination of employment is possible. Thus, it is important that you strictly comply with the reporting requirements in Chancellor's Regulation C-105. These rules are in place because Board employees must be role models for children who are entrusted to them. This necessitates our being especially vigilant with regard to employees who have been arrested and/or convicted.

## Defending Human Rights Cases

continued from page 1

scription of applicable procedures or policies; comparable data showing that other similarly situated individuals were treated the same way; copies of investigative reports, grievance decisions, and a copy of the employee's personnel file.

The GPU attorney will then prepare the Board's response to the allegations for submission to the agency. The agency may schedule a hearing, and you may be asked to participate as a witness. While the complaint is pending, you must not discuss it with the em-

ployee or engage in any retaliatory conduct.

If you are served with a complaint of discrimination, forward it immediately to Deputy Counsel Robin Greenfield, Office of Legal Services, 110 Livingston St., Rm. 920, Brooklyn, NY 11201. Please indicate the date and the method of service. **DO NOT RESPOND TO THE AGENCY ON YOUR OWN.**

For questions regarding complaints of discrimination, call GPU at 718- 935- 3690.

**Office of Labor Relation  
and Collective Bargaining  
Directory**

**Director**

935.2049-Dale C. Kutzbach

**Executive Assistant**

4568-David Bass  
(Contractual Grievance and Special Complaint Procedures-Circular 6R-School-Based Options)

**Supervising Attorney**

2631-Robert Waters  
(PERB - Arbitration)

**Grievance Procedure  
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2638-James Meehan  
2632-Allison Corbie  
2624-John Cullen  
2622-Thomas Liese  
2615-Cynthia Lowney  
2630-James Sealey  
2620-Rebecca Seawright  
3681-Alex Tare  
2629-Richard Topp

**PERB - Arbitration  
Group**

2626-George Foster  
(Local 372)  
5618-Thomas Fox  
2619-Alan Newman  
2640-Jerry Rothman

**Material in File Group**

2636-Norman Beckenstein  
2623-Harvey Nagler  
2621-Simon Fenster  
2617-Stanley Fogel  
2625-Gary Laveman

2628-Office Fax

All numbers begin with 718. 935.

# Letters to the File

by David Bass



An important part of a supervisor's responsibilities is to prepare accurate and fair material for placement in the official file of a teacher or other employee. A critical service provided by the Office of Labor Relations and Collective Bargaining (OLR) is to assist supervisors in meeting the contractual standards for letters to the file.

Arbitrators may order letters to the file removed if the letters are inaccurate or unfair. To avoid this, letters should be drafted with the following principles: be specific in describing the facts and investigation undertaken; reflect a complete investigation of the allegation; recite the teacher's response and an evaluation of the validity of the response; reach a clear conclusion and state a rationale for accepting or rejecting the teacher's response.

OLR is available to review drafts of documents before they are placed in employee files. Drafts should be sent by fax to David Bass. He will ensure that the draft is given to an appropriate and experienced resource person for prompt review.

A special reminder is warranted about reports issued by

the Office of Special Investigations (OSI) or other investigative bodies, including the Special Commissioner of Investigation (SCOI). Although these reports are a valuable source of information when determining whether to write a letter for file, arbitrators have been reluctant to permit letters to the file when the author is unable to defend its contents with no more than an indication that it is based on a report. Therefore, when a supervisor receives an OSI report recommending disciplinary action, a Technical Assistance Conference (TAC) should be scheduled immediately. The supervisor should call OLS at 718.935.3609 to schedule the conference if it has not been scheduled within a few days of receipt of the report.

After the TAC, if it is determined that a letter to the file is warranted, the supervisor must meet with the employee to discuss the report (having provided the required 48-hour notice and advised the employee that union representation is permitted as disciplinary action might result). At the meeting, the supervisor should present the employee with the allegations and a copy of the report, allowing a full opportunity for response. There should be a discussion of the factual findings the supervisor has made from conducting an independent review of the report and back-up material. It is important that the letter to the file reflect that the supervisor has concluded that the conduct occurred and that a letter to the file is appropriate.

If you receive a report from the SCOI, contact OLS before taking action. Every report issued by the SCOI is evaluated by OLS. If a letter to the file is recommended, supervisors should follow the TAC procedures and draft letters carefully, as outlined above.



## GRIEVANCES AND ARBITRATION

by Robert E. Waters

The adjustment of employee grievances is governed by collective bargaining agreements (CBA). These negotiated procedures commonly incorporate multi-level grievance review processes, and the Board's procedures are no exception. Generally, a grievance is an alleged violation of a specific provision of a CBA. Under certain contracts, a grievance may also be an alleged discriminatory, arbitrary or capricious application of a specific provision of an agreement.

The Board's agreements, for the most part, utilize a four-step grievance process, culminating in final and binding arbitration. The first three steps usually are conducted by the principal, the district superintendent or designee and the Chancellor's representative. While each step represents a progressively more formal level of review, the first hearing conducted by an independent fact-finder is the arbitration proceeding. Earlier grievance steps are more in the nature of an internal management review to determine if the CBA has been enforced properly.

If you conduct a grievance

*continued on page 4*

# LAW ON CALL

## LAW ON CALL

Selected questions received will be published with responses.

Q: I just learned that a fight that caused a serious injury of a student occurred early last week at a pizza shop where many of our students go for lunch. Can we suspend the students involved, and how long do we have to request a superintendent's suspension?

**A:** In accordance with the relevant Discipline Code and Chancellor's Regulations A-440, A-441 and A-445, a suspension must be sought on the same day as the alleged misbehavior, whenever possible, or within a reasonable time thereafter, but only after school officials conduct a complete investigation of the incident so as to determine what disciplinary action, if any, should be taken. You should initiate an investigation as soon as you receive a report that something occurred in order to determine what action, disciplinary or otherwise, to take, even if you learn about the incident some time after it occurred. Make a good faith effort to investigate the incident and seek a suspension and provide evidence of the reason for the delay at the hearing.

Also, disciplinary action may be taken against a student for misconduct that occurs off the school premises (e.g., at the bus stop or subway station or on a school trip) when it negatively affects the educational process or endangers the health, safety, morals or welfare of the school community. In the situation you present, there is a sufficient nexus between the pizza shop and the school. Students from the school were at the pizza shop on school time, albeit a lunch hour, and a serious fight occurred. The incident must be addressed not only because one student was injured but also because the fight might be carried over into future interactions between or among the students. Therefore, suspension should be sought in such a case.



William C. Thompson, Jr.  
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**Chancellor**

## MEET THE ADMINISTRATIVE TRIALS UNIT

The Administrative Trials Unit is responsible for prosecuting disciplinary proceedings.



**Left to right:** Marie DePalma, Susan Mandel, Carlton Butler, Robin Merrill, Maxine Forrester-Lyons, Stella Ekeoma, Valerie Fields (**seated**) Tammy Mays, Patria Frias-Cólon, Theresa Europe, **Not pictured:** Janet Alvarez, Lisa Hutchinson

## Grievances and Arbitration

*continued from page 3*

conference at Step 1 or Step 2, be sure to take accurate notes reflecting the arguments and positions of all parties. You should also ascertain the procedural history of the case—that is, verify when the

grievance was first submitted and/or appealed to the next step. Based on the procedural history, you should determine whether the grievance was timely filed and/or appealed at each step. After considering

all the facts and arguments in the case, you must write a decision sustaining or denying the grievance. If you attend a Step 3 grievance conference, be prepared with all the relevant facts and arguments you wish to be considered by the Chancellor's representative.

You may be called upon to participate in an arbitration

proceeding, if a case proceeds to that level. In such instances, an attorney from OLR will contact you to prepare for the hearing. Questions can be addressed to Bob Waters at 935.2631.

### On the Legal Side

**Editors:** Donna Carrier-Tal  
Robin Greenfield