

On the Legal Side

New York City Board of Education
 Number 5 • April 2011

Message from the Chancellor's General Counsel: We hope you enjoy this issue. Many of the topics were suggested by you, the reader. Please make suggestions for future issues.

The general number for the Office of Legal Services is 718-935-3690. For other extensions, dial 718-935 plus the extension listed below.

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What's New?

Index to On the Legal Side - Want to find out more about a topic not included in this issue? Now you can by using our Index to articles in previous issues. Simply go the Board of Education website, nycenet.edu, click on Projects, Events & Programs, and find Legal Office Newsletter. You then have a choice of accessing prior issues of On the Legal Side or trying our Index which is arranged by overall subjects. Topics include: employees, ethics, police, special education and students. Let us know if there is a particular legal problem you would like us to address in future newsletters.

Donations for Renovations - Did you know that donors who pay for major renovations of your school's fields, library, or classrooms can now be honored and recognized? Chancellor Harold O. Levy and the Board of Education have set up a process for naming designated areas in honor of such donors. A committee consisting of representatives of various divisions and offices throughout the Board has been established. Before making recommendations to the

Chancellor, the committee will contact the principal of the affected school who will solicit comments about the proposed name from the educational community.

Involuntary Transfers - Under recent rulings by the Commissioner of Education and the New York State Supreme Court, general education students (i.e., those without an IEP) can no longer be transferred without parent consent or without using the involuntary transfer procedures contained in Chancellor's Regulation A-450. This applies in all situations where a transfer is contemplated, including after a superintendent's suspension. At any time, a principal may initiate an involuntary transfer of a student in general education whenever the principal believes a student's behavioral and/or academic record indicates that adjustment in school is unsatisfactory and the student would benefit from a transfer. The procedure includes a two-stage process – a conference at the school level and the right to a hearing at the superintendent level. For all the particulars, please refer to Chancellor's Regulation A-450, available on the Board of Education's website, nycenet.edu, Projects, Events & Programs, Chancellor's Regulations.

Suspension From Prom and Graduation

By Zvia Shapiro

Spring is in the air and that means proms and graduations are around the corner. We are frequently asked whether a school may bar a student from attending the prom or graduation as a disciplinary

measure. Students may be barred from attending the prom or graduation if they do not have the necessary credits to graduate, or if they threaten to use violence at the event. However, a school may not bar students from these events as a disciplinary measure for other behavior unless they have been previously informed in writing of such a school policy.

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Suspension From Prom and Graduation

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The purpose of a punishment is to further a school's educational goals. Prom and graduation are viewed as rites of passage that happen once in a student's life. Banning students from attending these events might be too harsh a punishment for certain offenses. The school should seriously consider whether barring a student's attendance from a one-time event such as a prom or graduation will actually further such goals.

The school must adopt a written policy stating the types of misbehavior which would bar students from attending, and the policy should be disseminated to students and parents in advance of the events. As with all disciplinary actions, a student may not be barred from the prom or graduation based on generalizations or vague standards. For example, a school may not bar students from graduation for "unsatisfactory attendance" or "poor citizenship." Rather, the punishment must be based on a specific, identifiable infraction.

Students who already are on suspension at the time of the prom or graduation also may be barred from attending these events, but this bar must be proportionate to the infraction committed, and must further the school's educational goals.

After the offense takes place, and when suspension from the prom or graduation is being considered, the school should provide the student and parent an opportunity to discuss the underlying facts and the threatened disciplinary action before any measures are taken. Because attendance at a prom or graduation is voluntary and is not part of the instructional process, a full due process hearing is not required. Basic fairness, however, dictates that students receive notice of the disciplinary measure and an opportunity to be heard.

What Can Go In a Yearbook?

By Robin S. Greenfield

School administrators should be mindful of the importance of ensuring proper review of yearbook materials prior to publication. While individual creative expression by students is to be encouraged, yearbooks are school-sponsored activities, supervised by faculty members and designed to teach particular skills to student participants. Schools do not violate students' first amendment rights by asserting authority over the style and content of yearbooks as long as their actions are reasonably related to legitimate pedagogic concerns. For example, while a school generally should not prohibit mere criticism of the school, it may prohibit the publication of racist, obscene, or violent material.

Educators are entitled to take appropriate measures to ensure that readers are not exposed to material that may be inappropriate for their level of maturity and that the views of the individual speaker are not attributed erroneously to the school. Faculty members working with students on the publication of yearbooks should discuss these parameters with the students to ensure that all involved understand their rights and responsibilities in this area.

If you have any questions about the standard of review that applies or how to apply these principles to a particular situation, please contact Robin Greenfield or Debbie King in the Legal Office.

Post Employment Rules-Employment After You Leave the Board

By David B. Shacher, Ethics Officer

Some of you may think that once you finish your employment with the Board of Education, you will never again have to worry about any New York City rules or regulations. Well, think again – some Conflicts of Interest Law rules apply to employees even after they have left the Board of Education.

The Conflicts of Interest Law requires that a public servant (including all Board of Education officials and employees) wait a period of one year from the last date of employment before the public servant may appear before his/her former agency on behalf of a private entity. In essence, this means you cannot communicate in writing, by telephone, or in person, with any part of the entire Board, as

part of your new job with a private employer, other than for purely ministerial matters which involve minimal personal discretion.

The one-year appearance ban applies only to you, not to your new employer. That means you can work for a private entity that does business with the Board as long as you do not contact anyone at the Board, either in person or in writing, for a period of one year on behalf of your employer. You may work on your company's business with the Board as long as you do not appear before the Board and you did not work on this exact matter while at the Board. For example, you can work as an editor for a book publisher that has a contract with the Board as long as you do not try to market the book to the Board, or you could work as a marketer for that book publisher as long as your territory does not include the Board.

The one-year ban does not apply if your new job is with another government agency (city, state or federal), including public colleges and universities. That *continued on page 3*



Post Employment Rules

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means, for example, you can go work for the State Education Department and immediately be in contact with the Board. It also does not apply if you are a consultant providing services to the Board through the Division of Human Resources as long as the consulting relationship is between the Board and you, personally. That means you can provide consulting services as Jane Docent, but not as Jane Docent Associates or Jane Docent, Inc. Also, if you are a consultant who wants to provide evaluative or consultative services to children, it would be a violation of the conflicts rules for your reports to be submitted to the Board of Education at an impartial hearing or elsewhere. You may not contact Board employees or officials in the course of providing services to a child.

There is also a lifetime ban you must consider -- the City Charter states that a

public servant who leaves the City's employ may never appear (whether for pay or as a volunteer) before the City (or receive compensation for services rendered) in connection with a particular matter with which that person had been "personally and substantially involved through decision, approval, recommendation, investigation or other similar activities." A "particular matter" includes a specific contract, including any renewals of the contract which are anticipated according to the terms of the contract.

Under this rule, if, for example, you developed a project which led to a two-year contract with an outside arts organization, you may not take a position with the arts organization if the job would require you to be involved in that project during the term of the contract, including any automatic renewals of the contract. However, when the contract and any renewals expire, you can have involvement in a new contract with terms similar to the contract you worked on at the Board.

Finally, the City Charter prohibits a public servant from using for private advantage any confidential information that the public servant learned as part of his or her public service. "Confidential information" consists of information that is not publicly obtainable. If information has not been made public and is not available under the Freedom of Information Act or other lawful methods, the information is confidential.

For example, if you worked on a project concerning the possible sites of new schools, and this information is not available to the public, you cannot use your knowledge of the possible sites of the school to benefit any private interest -- including yourself, your private employer, your family or friends.

I urge you to speak to me before you take a new job if you have any concerns about limits on what you can do. You may contact me confidentially at 718-935-5300. In addition, you may contact the Conflicts of Interest Board directly at 212-442-1400.

Law on Call

By Celeste Segure

Q: I am a teacher for the Board of Education, and I just received legal papers by mail at my school. The legal papers, a summons and complaint, name me along with the Board of Education as defendants in a lawsuit, and indicate that a parent and a student in my class are suing me because the student fell over his desk during my class and bruised his hip. Will the Board of Education defend me in the lawsuit? What do I do with the legal papers?

A: Under Section 50-k(2) of the General Municipal Law, the City of New York provides for the legal defense and indemnification of Board of Education employees who are named as defendants in a tort (negligence) lawsuit as long as they were acting within the scope of their responsi-

bilities and in the discharge of their duties, and were not in violation of any Board of Education rules or regulations at the time the incident occurred. Legal representation will also be provided to an employee named as a defendant in a criminal case as long as the employee meets the same criteria for legal representation.

If you are a Board of Education employee and receive a lawsuit in which you are named as a defendant, you should inform your supervisor, and immediately forward the legal papers to the attention of OLS Staff Attorney Celeste Segure at 110 Livingston Street, Room 920, Brooklyn, New York 11201, or by fax at (718) 935-3625. Include a letter requesting legal representation and indicate the date and manner in which you received the summons and complaint, e.g., by mail or personal service. It is important that this be done quickly because a complaint must be responded to in a short period of time.

Ms. Segure will then contact you and your immediate supervisor and request additional information and documentation regarding the matter alleged in the lawsuit. Your supervisor will be asked to submit a recommendation concerning your request for legal representation. Thereafter, all documentation are submitted to the New York Law Department, also known as the office of the Corporation Counsel, for further review.

The Law Department reviews all requests for legal representation to determine if you meet the legal criteria for legal representation, and will inform you whether the request has been approved or denied. If the request is approved, you will be advised as to the extent of Corporation Counsel's legal representation, and Corporation Counsel will commence its defense. You, at your own expense, may retain private counsel to defend the case should you choose to do so.

Junk Food May Not Be Sold To Students

This is to remind all superintendents, principals, and school personnel of our continuing obligations under federal, state, and local law (Chancellor's Regulation A-812) to prevent the sale of non-nutritious or foods of minimally nutritious value, either directly or through vending machines, to the students within our schools before the end of the last lunch period. These food items include soda or soda waters, chewing gum, water ices, and certain candies, including jellies and gums, marshmallow

candies, fondant, licorice, spun candy, and candy coated popcorn.

Please also make sure that all necessary precautions are taken to ensure that these items (whether in vending machines or otherwise) are not available to students before the end of the last lunch period each day.

All school personnel must understand that the sale of non-nutritious items to students prior to the end of the last lunch period each day is a violation of the applicable law and may result in the withholding of reimbursement for the child nutrition programs.

In addition, under Chancellor's Regulation A-812 other snack items (such

as potato chips or granola bars) may only be sold with the permission of the Executive Director, Office of School Food and Nutrition Services, 44-36 Vernon Boulevard, Long Island City, New York 11101, (718) 729-6100.

Violations of the law governing the sale of snack foods will not be tolerated; and will result in a report to the Community Superintendent for appropriate and prompt action.

Any individual who wishes to report a sale of snack foods in violation of the applicable law, may do so by contacting Dionne Ryan, at 110 Livingston Street, Room 920, 718-935-3608, e-mail dryan@nycboe.net.

Filing Discrimination Complaints

By *Michael J. Valente, OEO Complaint Officer*

It is the policy of the Board of Education to provide equal educational and employment opportunities without regard to race, color, religion, creed, national origin, alienage, citizenship status, age, marital status, disability, sexual orientation, gender (sex), or prior record of arrest or conviction, except as permitted by law. It is also the Board's policy to maintain an environment free of harassment from any of the above-noted grounds, including sexual harassment. The Board of Education also prohibits retaliation for requesting or assisting with a discrimination investigation.

If you believe you have experienced discrimination or harassment by a Board employee or officer, you may file a complaint with the Board's Office of Equal Opportunity ("OEO") or your Local Equal Opportunity Coordinator ("LEOC"). The procedures are set out in Chancellor's Regulation A-830 located at the Board's website www.nycenet.edu. Student complaints about sexual harassment by a staff member will be forwarded to the Special Commissioner of Investigation. Student-to-student sexual harassment is handled in accordance with Chancellor's Regulation A-831.

In general, Chancellor's Regulation A-830 allows for the prompt and fair resolution of complaints of discrimination or harassment against an employee, parent or student by a Board employee or officer through a formal investigation or conciliation. The LEOC performs the majority of investigations or conciliation sessions. LEOCs are designated by "Appointing Officials" (heads of offices, Superintendents, Principals) to investigate and resolve complaints of discrimination. They are located throughout the Board of Education system in all Superintendent and District Offices, High Schools, and Central Offices. LEOCs perform their duties with oversight and assistance from OEO.

The following highlights the A-830 internal complaint process:

1. A complaint of discrimination or harassment should be made to OEO or the LEOC as soon as possible after the incident.
2. If OEO does not take the case, the complainant may be informed that other offices best address the matter. There may be times when OEO does not take a case but requests that school officials take appropriate action to resolve workplace disharmony. In these cases, OEO provides assistance and advice to school officials on conflict resolution.
3. If OEO takes the case, the complaint will be processed, investigated, and resolved in accordance with A-830. OEO will inves-

tigate the complaint or forward it to the LEOC for investigation. If forwarded to the LEOC, the LEOC must investigate the case and issue a written decision. The Appointing Official then reviews the LEOC Report and decides whether the facts and evidence support the allegations. The Appointing Official will decide whether the evidence warrants a "violation" or "no violation" determination.

4. For completed LEOC investigations, the Appointing Official sends determination letters to the parties of the outcome of the investigation and, if there is a violation finding, implements appropriate corrective action. For OEO investigations, OEO issues its determination to the complainant. If a "no violation" finding is made, the complainant may appeal.

A complaint may also be resolved more quickly and informally through conciliation. In conciliation, the LEOC will attempt to work out a resolution, which must be approved by the parties and the Appointing Official. If conciliation fails, the complainant still has the right to request a formal investigation.

If you have any questions or want to file a complaint, contact the Office of Equal Opportunity, located at 65 Court Street, Rm. 923, Brooklyn, New York 11201, Telephone (718) 935-3319, TTY: (718) 935-5385, Fax (718) 935-2531.