Update on New Decisions from our Courts and Administrative Agencies and New Laws and Regulations

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I. FEDERAL AND STATE DECISIONS

Arbitration

1. *Hempstead Classroom Teachers Ass'n v. Hempstead UFSD,* 203 A.D.3d 1046 (2d Dep't 2022).

Court affirmed lower court's affirmation of arbitrator's award. Arbitration involved changes made by district to schedules of certain teachers for the 16-17 school year. Union alleged that district assigned teachers at the middle school to teach a 6th class period per school day without additional compensation. Based on absence of an express term in the CBA and the district's past practice of compensating teachers who taught a 6th class period, arbitrator determined that district violated the CBA. Court affirmed arbitrator's decision.

Court found that arbitrator's interpretation of the CBA was not irrational, and "did not effectively rewrite the agreement. Further, the arbitrator did not exceed her authority by construing the CBA's terms in light of evidence submitted by the Teachers Association showing that, in the past, the district provided additional compensation to classroom teachers who taught a sixth period."

Censure of Trustee

1. *Houston Community College System v. Wilson*, 142 S.Ct. 1253 (2022).

Houston Community College System is public entity, its board of trustees are elected for a 6-year term. Wilson was elected to board in 2013 and from the start, "his tenure was a stormy one. Often and strongly, he disagreed with many of his colleagues about the direction of HCC and its best interests." He brought lawsuits challenging the board's actions. By 2016, the board reprimanded Wilson publicly. Thereafter he charged the board with violating its bylaws and ethical rules and filed 2 new lawsuits in state court.

At a meeting in 2018, the board adopted another public resolution, this one "censuring" him – it stated that his conduct was "not consistent with the best interests of the College" and "not only inappropriate, but reprehensible."

Issue for Court: Does Mr. Wilson possess an actionable First Amendment claim arising from the Board's purely verbal censure?

Court noted that the First Amendment prohibits governmental officials from subjecting individuals to "retaliatory actions" after the fact for having engaged in protected speech. However, the Court noted that "elected bodies in this country have long exercised the power to censure their members. In fact, no one before us has cited any evidence suggesting that a purely verbal censure analogous to Mr. Wilson's has ever been widely considered offensive to the First Amendment."

The Court noted that Wilson was an elected official and "in this country, we expect elected representatives to shoulder a degree of criticism about public service from their constituents and their peers – and to continue exercising their free speech rights when the criticism comes." Also, the only adverse action at issue is "itself a form of speech" from Wilson's colleagues. "The First Amendment surely promises an elected representative like Mr. Wilson the right to speak freely on questions of government policy. But just as surely, it cannot be used as a weapon to silence other representatives seeking to do the same."

The court indicted that given the facts of the case, the board's censure could not qualify as a materially adverse action consistent with law – "The censure at issue before us was a form of speech by elected representatives."

The Court noted that there could be instances where a verbal censure could give rise to a First Amendment claim. For instance, in certain circumstances, government officials who reprimand or censure students, employees, or licensees could impair First Amendment freedoms. The court also indicated that it was not addressing legislative censures that are accompanied by punishments, or those aimed at private individuals.

Court concluded that, based on the facts of the case, there was no viable First Amendment claim.

Child Victims Act

1. *Twersky v. Yeshiva University et al.*, 201 A.D.3d 559 (1st Dep't 2022).

Lower court granted plaintiff's motion to proceed in anonymity in action and to file complaint under pseudonyms. Court reversed. Court noted that New York courts "have addressed the legislature's intent in enacting the CVA [Child Victims Act] with respect to the use of pseudonyms and concluded that the legislature 'left it up to each alleged victim to determine whether to seek anonymity' . . . [and] 'left it to the courts to assess each individual case'"

Court noted that permission to use a pseudonym will not be granted automatically and courts should exercise discretion "to limit the public nature of judicial proceedings sparingly and then, only when unusual circumstances necessitate it."

Court found that the lower court should have denied the motion to proceed anonymously because plaintiffs failed to submit sufficient evidence to support the relief requested. Only short attorney affirmation was submitted "which merely repeated the relief requested in the order to show cause and made a single vague statement that plaintiffs might suffer further mental harm should their identities be revealed." They failed to provide specific evidence as to why each unnamed plaintiff should be entitled to proceed anonymously.

2. *Fox v. Roman Catholic Archdiocese of NY,* 202 A.D.3d 1061 (2d Dep't 2022).

The plaintiff commenced this action pursuant to the Child Victims Act alleging that in the mid-1960s, he was sexually abused by the defendant. At the time of the alleged abuse, the defendant was a grade school physical education teacher at a school operated by the defendant Church of Immaculate Heart of Mary and the plaintiff was a student at the school. The plaintiff alleged causes of action in negligence, negligent hiring, negligent supervision, and negligent retention of the defendant teacher.

Plaintiff served on the Archdiocese a first supplemental notice of discovery and inspection and a first set of interrogatories. In response, the Archdiocese moved pursuant to CPLR 3103(a) for a protective order striking the discovery demand and the interrogatories. The lower court only partially granted the Archdiocese's motion by striking many of the interrogatories and approximately half of the discovery demands. The Archdiocese appealed.

The Second Department concluded that the discovery demand and interrogatories "were palpably improper in that they were overbroad and burdensome, sought irrelevant or confidential information, or failed to specify with reasonable particularity many of the documents demanded." Accordingly, the Second Department found that the lower court "should have

granted the Archdiocese's motion and struck the discovery demand and interrogatories in their entirety, instead of pruning them."

Discontinuance of Probationary Appointment

1. *Gomez v. City of N.Y.*, 204 A.D.3d 516 (1st Dep't 2022).

The lower court denied a petition to annul the determination of the New York City Department of Education (NYCDOE), which discontinued petitioner's probationary employment as an assistant principal. The First Department affirmed.

The court noted that the petitioner "failed to demonstrate that her probationary employment as assistant principal was terminated in bad faith, in violation of a law, or for an impermissible reason." The court indicated that the record showed that NYCDOE discontinued her probationary position "because of her failure to comply with directives, complete assignments, and petitioner's two-year history of poor work performance." The court further noted that because the evidence documenting her unacceptable work performance "began in 2018 and continued for an extensive period of time before she filed her harassment complaint, there is no evidence of retaliation." In addition, the court noted that there was no showing that NYCDOE violated the Taylor Law.

"In the absence of a demonstration that the discontinuance was in bad faith or in violation of the law, petitioner, as a probationary employee, may be discharged without a hearing."

Employee Discipline

1. *Matter of Simpson v. Poughkeepsie City Sch. Dist.,* 167 N.Y.S.3d 838 (2d Dep't 2022).

Principal, pursuant to section 3020-a, was charged with 41 counts of conduct unbefitting an educator/administrator, in that she allegedly "knowingly and willfully approved the conferral of credits completed by certain students in an online platform know as PLATO with full knowledge that such credit was unlawful, as the students had not satisfied the state regulation requirements." Charges alleged that principal's actions were part of an "intentional scheme to accelerate credit acquisition in order to artificially inflate graduation rates."

Hearing officer found that there was insufficient evidence to support a finding that principal acted intentionally, sustained all of the charges, and imposed penalty of termination. Principal appealed. Lower court denied the petition. Second Department reversed.

Court noted that the hearing officer's finding that there was insufficient evidence to support a finding that the principal acted intentionally is inconsistent with a finding that the principal was guilty of any of the charges. Each of the charges alleged principal knowingly and willfully approved conferral of credits with knowledge that such credit was unlawful.

> Because there was no allegation that the petitioner's conduct was anything other than knowing and intentional, and because the hearing officer found that there was insufficient evidence that the petitioner acted intentionally, the hearing officer's determination that the petitioner was guilty of all charges was arbitrary and capricious and without evidentiary support.

Court noted that the principal admitted to conduct that was, at most, negligent, and there was no evidence that contradicted her testimony that she did not act intentionally.

2. *Destefano v. Nassau BOCES,* 202 A.D.3d 1048 (2d Dep't 2022).

Plaintiff was employed by the Nassau BOCES as mechanic and was responsible for, among other things, performing preventive maintenance on buses owned by BOCES in preparation for inspections by the Department of Transportation. BOCES charged plaintiff with 22 charges involving incompetency and misconduct. After a Civil Service Law § 75 hearing, the hearing officer found plaintiff guilty of 20 charges and recommended the termination. BOCES adopted the hearing officer's findings and terminated plaintiff's employment.

Plaintiff commenced a hybrid proceeding against BOCES alleging that the BOCES's determination was not based on substantial evidence. The Second Department noted that "[s]ubstantial evidence 'means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.'" The court found that, contrary to plaintiff's contention, the "BOCES's determination adopting the findings of the hearing officer that [he] was guilty of misconduct and incompetence was supported by substantial evidence, and the penalty of termination of his employment was not so disproportionate to the offenses as to be shocking to one's sense of fairness."

First Amendment

1. *Carson v. Makin*, 142 S.Ct. 1987 (2022).

In order to provide education to students who live in certain remote parts of the state, Maine decided not to operate schools of its own in those areas, but instead enacted a program of tuition assistance for parents who live in school districts that do not operate a secondary school of their own. Under the program, if a school administrative unit neither operates its own public secondary school nor contracts with a particular public or private school, the SAU must "pay the tuition … at the public school or the approved private school of the parent's choice at which the student is accepted." If they select an "approved" private school, the SAU will pay the tuition up to a specified maximum rate. Requirement: any school receiving tuition assistance payments must be a "nonsectarian school in accordance with the First Amendment of the United States Constitution." Maine's Department of Education considered a sectarian school to be one that is associated with a particular faith or belief system and which, in addition to teaching academic subjects, promotes the faith or belief system with which it is associated.

The two private school in question did not qualify as "nonsectarian" and therefore neither was eligible to receive tuition payments under the Maine tuition assistance program. Petitioners alleged that the "nonsectarian" requirement of the tuition assistance program violated the Free Exercise Clause.

The Court referred to its recent decision of *Espinoza v. Montana Dep't of Revenue*, wherein the Court concluded that a State need not subsidize private education, "[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious." The Court noted that in *Espinoza*, as in the case at bar, the program "specifically carved out private religious schools from those eligible to receive such funds." Therefore, a "law that operates in that manner" must be subjected to "the strictest scrutiny." The Court concluded that the Maine tuition assistance program does not survive the strict scrutiny test, noting that "there is nothing neutral about Maine's program. The State pays tuition for certain students at private schools – so long as the schools are not religious. That is discrimination against religion.

A State's antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise."

The Court noted that Maine has a number of options: "it could expand the reach of its public school system, increase the availability of transportation, provide some combination of tutoring, remote learning, and partial attendance, or even operate boarding schools of its own." As explained in *Espinoza*; a "State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious."

Conclusion: "Maine's 'nonsectarian' requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment."

2. *Kennedy v. Bremerton Sch. Dist.,* 2022 WL 2295034 (U.S. Sup. Ct. June 27, 2022).

Supreme Court finds that high school football coach's actions – kneeling at midfield after games to offer quiet prayer of thanks – were protected by both the Free Exercise and Free Speech Clauses of the First Amendment.

Initially he prayed on his own, but over time, players asked whether they could pray alongside him. Number of players who joined him grew to include most of the team after some games. Opposing team members sometimes joined. Other times he prayed alone. Court notes that he "never pressured or encouraged any student to join" his postgame midfield prayers. No one complained to the district for 7 years.

On September 17, a letter from the district was sent to the coach seeking to establish "clear parameters" going forward. It offered directives and appealed to what it called a "direct tension between" the Establishment Clause and "a school employee's [right to] free[ly] exercise" his religion" and to resolve that "tension" the district indicated that an employee's free exercise rights "must yield so far as necessary to avoid school endorsement of religious activities."

On October 14, through his counsel, the coach sent a letter to school officials informing that because of his "sincerely-held religious beliefs," he felt "compelled" to offer a "post-game personal prayer" of thanks at midfield. He emphasized that he sought to "wai[t] until the game is over and the players have left the field and then wal[k] to mid-field to say a short, private, personal prayer."

The district responded with a letter on October 16 and issued an ultimatum forbidding the coach from engaging in "any overt actions" that could "appea[r] to a reasonable observer to endorse …prayer…while he is on duty as a District-paid coach" – the district judged that anything less would lead it to violate the Establishment Clause.

After receiving October 16 letter, coach offered brief prayer following the October 16 game. At this time most of the school's players were engaged in singing a school fight song to audience. While he was alone when he started his prayer, players from other team and members of the community joined him before he finished.

The district wrote to the coach on October 23, before that evening game, explaining that a "reasonable observer" could think government endorsement of religion had occurred when a district employee on duty engaged in "overtly religious conduct." District offered option of him praying after game in a "private location" behind closed doors and "not observable to students or the public."

After October 23 game ended, the coach knelt at the 50-yard line where "no one joined him" and bowed his head for a "brief, quiet prayer." Then, after the final relevant game on

October 26, coach again knelt alone to offer a brief prayer as the players engaged in postgame traditions. While praying, other adults gathered around him on the field.

After the October 26 game, the district placed the coach of paid administrative leave and prohibited him from "participat[ing], in any capacity, in … football program activities." Letter did not allege that he performed these prayers with students and acknowledged that his prayers took place while students were engaged in unrelated postgame activities.

The Supreme Court reversed the Ninth Circuit and found that the coach was entitled to summary judgment on First Amendment claims.

Free Exercise Clause – "Congress shall make no law … prohibiting the free exercise" of religion. A plaintiff can prove a violation of free exercise by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not neutral. If such proof exists, a First Amendment violation will be found unless the government can satisfy "strict scrutiny" by showing that its course was justified by a compelling state interest and was narrowly tailored.

The Court noted that the coach met his burden – "By its own admission, the District sought to restrict Mr. Kennedy's actions at least in part because of their religious character."

Regarding the free speech claim, the court referred to the 2-step analysis: first step is the inquiry into the nature of the speech – if a public employee speaks "pursuant to [his or her] official duties," than the Free Speech Clause will generally not shield the individual from an employer's control and discipline because that kind of speech is "the government's own speech." But when the employee speaks as a citizen on a matter of public concern, the First Amendment may be implicated, and courts will proceed to a second step – a balance of the competing interests.

Both parties "agree that Mr. Kennedy's speech implicates a matter of public concern." But the disagreement centered on one question: Did the coach offer his prayers in his capacity as a private citizen, or did they amount to government speech attributable to the school district?

The Court concluded that the coach's speech was private speech, not government speech because he was not engaged in speech "ordinarily within the scope" of his duties as a coach.

> He did not speak pursuant to government policy. He was not seeking to convey a government-created message. He was not instructing players, discussing strategy, encouraging better on-field performance, or engaged in any other speech the District paid him to produce as a coach.

The Court noted that the timing of the speech confirms this conclusion because during the time of the prayers,

> coaches were free to attend briefly to personal matters – everything from checking sports scores on their phones to greeting friends and family in the stands… That Mr. Kennedy offered his prayers when students were engaged in other activities like singing the school fight song further suggests that those prayers were not delivered as an address to the team, but instead in his capacity as a private citizen.

The Court rejected the Ninth's Circuit's emphasis on the idea that the coach remained on duty after the games and served as a role model. The Court found that this argument erroneously posits an "'excessively broad job descriptio[n]' by treating everything teachers and coaches say in the workplace as government speech subject to government control. … On this understanding,

a school could fire a Muslim teacher for wearing a headscarf in the classroom or prohibit a Christian aide from praying quietly over her lunch in the cafeteria."

Second step: Does the school District's interests outweigh the employee's private speech on a matter of public concern? Court concluded that the district was unable to sustain its burden on this issue.

Court rejected the idea that the district was justified in suppressing the coach's religious activity because otherwise it would have been guilty of coercing students to pray. Court notes that district did not raise coercion concerns in its correspondence with the coach. "To the contrary, the District conceded in a public 2015 document that there was 'no evidence that students [were] directly coerced to pray with Kennedy.'" Court does note that some people may have seen and/or heard him pray but "learning to tolerate speech or prayer of all kinds is 'part of learning how to live in a pluralistic society,' a trait of character essential to 'a tolerant citizenry.'"

Dissent: "This case is about whether a school district is required to allow one of its employees to incorporate a public, communicative display of the employee's personal religious beliefs into a school event, where that display is recognizable as part of a longstanding practice of the employee ministering religion to students as the public watched. A school district is not required to permit such conduct; in fact, the Establishment Clause prohibits it from doing so."

"… the Court's history-and-tradition test offers essentially no guidance for school administrators. If even judges and Justices, with full adversarial briefing and argument tailored to precise legal issues, regularly disagree (and err) in their amateur efforts at history, how are school administrators, faculty, and staff supposed to adapt? … Today's opinion provides little in the way of answers; the Court simply sets the stage for future legal changes that will inevitably follow the Court's choice today to upset longstanding rules."

Freedom of Information Law (FOIL)

1. *Matter of The Jewish Press v. N.Y. City Police Dep't*, 205 A.D.3d 613 (1st Dep't 2022).

Petitioner challenged the denial of request for attorneys' fees and litigation costs pursuant to Public Officers Law section 89(4)(c)(ii). First Department affirmed, noting that the lower court properly concluded that the respondent had a reasonable basis for denying the request for records. "[T]he request was for an undefined period of time, a search of NYPD's records totaled in excess of 105,000 items, and each document would have had to be reviewed and potentially redacted – a process that could have taken over five years." Court therefore found that the respondent had a reasonable basis to believe the request would impose an undue burden. The court also found that the petitioner did not "substantially prevail" in the proceeding.

2. *Snyder v. Nassau Cnty.*, 199 A.D.3d 923 (2d Dep't 2021).

Article 78 proceeding to compel production of certain records pursuant to the Freedom of Information Law (FOIL). Petitioner requested records from the county – the request was denied in its entirety. Respondents moved to dismiss the petition for failure to exhaust administrative remedies. Lower court granted the motion to dismiss.

Pursuant to the law, FOIL requests must be granted or denied by any agency within 5 business days, and that any administrative appeal of a denial, as required for exhausting administrative remedies, be undertaken within 30 days of the denial. The law also provides that

the denial must state the reason therefor and advise the person of his/her rights to appeal to the person or body designated to determine appeals – and that person or body must be identified by name, title, business address and business telephone number.

The court noted that the denial of petitioner's request failed to advise of the availability of an administrative appeal and the person to whom the appeal should be directed as required by the law. As a result, the court found that the lower court erred in dismissing the petition for failure to exhaust administrative remedies.

3. *McNerney v. Carmel CSD*, 204 A.D.3d 1012 (2d Dep't 2022).

Petitioner sent FOIL request to district (CCSD) requesting certain records related to, among other things, "an incident in which the petitioner was banned from CCSD athletic and other school activities for a period of one year." About 4 weeks later, upon failing to receive a response, he mailed appeal to the superintendent. Thereafter, he commenced article 78 proceeding. After the proceeding was commenced, the district sent "a significant number of materials in response to the petitioner's FOIL request"

Lower court denied the request for attorney's fees and litigation costs finding that petitioner had not "substantially prevailed" and that the district "demonstrated a reasonable basis on the ground of privilege for denying the [FOIL] request."

The Second Department reversed. The court found that the district did not timely respond to the FOIL request – "it was not until *after* the commencement of this proceeding that the respondents provided a significant number of additional documents responsive to the FOIL request. Under the circumstances of this case, the petitioner was the 'substantially prevailing party.'"

The court also noted that the district did not have a reasonable basis for initially denying access to the responsive materials.

Court remitted matter to lower court for a determination of the amount of an award of reasonable attorney's fees and litigation costs to petitioner.

4. *Rickner PLLC v. City of N.Y.,* Index No. 157878/2021, (Sup. Ct. New York Cnty. Oct. 28, 2021).

Petitioner claims to have made 7 FOIL requests and respondents failed to make timely determinations. For instance, the first request was sent on 1/28/21. Petitioner claims that respondents did not acknowledge this request within the statutory 5-day period and, instead, responded on 2/21/21 with an estimate that response would be rendered by 6/14/21. No response was provided by this date and petitioner sought to appeal the alleged constructive denial. The FOIL appeals officer "denied the request on ground that he lacked the authority to review an appeal of a constructive denial."

Respondents argued that each request was "still pending," that they had not made a final determination on any of them, and that petitioners had not exhausted the mandatory appeals process. They also claimed that the "ongoing pandemic has caused various delays in responding to FOIL requests."

The court noted that a petitioner can bring a legal proceeding based on the constructive denial of a FOIL request when an agency fails to respond months after the deadline it sets – "In other words, a petitioner exhausts its administrative remedies when an agency fails to timely respond."

Court noted that it is "well aware of the challenges that the ongoing pandemic has raised, particularly on government agencies. But respondents did not cite any specific reasons why it has ignored petitioner's FOIL requests." The court cited to a case from the Appellate Division, First Department wherein the agency claimed that pandemic justified delays. In that case, the court stated: "it does not follow, however, that the pandemic has rendered respondents indefinitely incapable of any response, or even of any ability to calculate when they might be able to respond."

The court granted the petition noting: "[respondents] have a legal obligation to respond to FOIL requests within the framework set out in FOIL, not complain about it. The petition is granted and, as petitioner has substantially prevailed, it is entitled to reasonable legal fees."

Jarema Credit

1. *Sisson v. Johnson City CSD*, 2022 WL 1786647 (3d Dep't Apr. 21, 2022)

Proceeding to annual a determination of the board of education terminating petitioner's employment. Petitioner was hired on June 23, 2015 as a long-term substitute music teacher, effective September 1, 2015, to serve as a replacement for teacher while that teacher was on maternity leave. She served in that role from 9/1/15 through 6/20/16 and received an APPR of "effective" at the end of the school year. Petitioner was then hired as a music teacher with her probationary appointment effective 9/1/16. She continued teaching in the district for 4 more years. Her teaching certificate lapsed from 8/31/17 – 12/15/17 but was permitted to continue teaching during the lapse.

She was notified by a 6/10/20 letter of the board's decision to terminate her employment effective 7/10/20. She claims to have acquired tenure by estoppel based on district's acceptance of her teaching services beyond her probationary period without granting or denying her tenure prior to the expiration of that period.

Education Law § 3012 provides that those appointed after 7/1/15, a four-year probationary period applies. Petitioner was subject to a four-year probationary term. The court noted that a teacher's probationary term is reduced for prior service as a "regular substitute" teacher for one or more complete school terms through "Jarema credit." In order to qualify for this credit, "a teacher must serve as a 'regular substitute' continuously for at least one school term immediately preceding the probationary period." The court concluded that the petitioner continuously served as a regular substitute teacher for at least one school term and was therefore qualified for one year of Jarema credit.

The court rejected the district's argument that the statutory language of §§ 2509 and 3012, as amended, unambiguously provides that Jarema credit is only available to teachers who serve as regular substitute teachers for two years. The court referred to a court of appeals decision that held that "a period of service as a regular substitute teacher of less than two years may be applied to reduce the three-year probationary period proportionately." The court concluded that the district was without discretion to deny Jarema credit to petitioner.

As a result of the Jarema credit for the one year that she served as a regular substitute teacher, her probationary period was shortened to end on September 1, 2019. Her probationary period was however extended three and a half months to December 15, 2019 because her teaching certificate lapsed. But because she remained employed on that date, and because no

action was taken by the district to grant or deny tenure to petitioner before her probationary period, she acquired tenure by estoppel.

2. *Denigris v. Smithtown CSD*, Index No. 610064/2020 (Sup. Ct. Suffolk Cnty. Nov. 10, 2021).

Formerly employed teacher challenged termination on grounds that he had acquired tenure by estoppel or in alternative that the decision to deny tenure was made in bad faith. Superintendent advised petitioner that he was recommending that petitioner's probationary appointment be terminated effective 6/30/20.

Petitioner claimed that he acquired tenure by estoppel "because his employment with the NYCDOE for three and half years immediately prior to his appointment as a probationary teacher with Smithtown … entitles him to a Jarema credit." He had been employed by NYCDOE as a substitute teacher and claimed that he was therefore entitled to the credit which would entitle him to a reduced probationary period of 2 years. The district argued that he was not entitled to the credit because, among other things, he was not a "regular substitute" with Smithtown school district. That is, Education law 3012(1)(a)(ii) requires that a teacher perform substitute teaching in the same district where they are seeking tenure in order to receive the credit.

The court agreed with the district that petitioner would not be entitled to a Jarema credit "because he did not perform the substitute teaching work with Smithtown." Court agreed that the language of the statute contemplates a reduced probationary period of 2 years for a teacher who has served as a "regular substitute" within the same school district with which they seek tenure.

Negligence

1. *Ismahan v. Williamsville Bd. of Educ.,* 200 A.D.3d 1667 (4th Dep't 2021).

Plaintiff commenced action seeking to recover damages for injuries sustained by her son as a result of the district's alleged negligent supervision of a physical education class during which plaintiff's son, a high school freshman, "was blindsided by a much larger student while playing one-hand touch football," resulting in injuries.

The Fourth Department held that the defendants failed to meet their initial burden on the motion to dismiss to the extent their own evidentiary submissions raised issues of fact as to whether plaintiff's son was injured as a result of "an unforeseeable act that, without sufficiently specific knowledge or notice, could not have been reasonably anticipated."

The court noted that the "testimony of the physical education teacher raised an issue of fact with respect to notice inasmuch as it established that, on the day before the collision, there was a 'very similar' incident involving a collision between two boys during a touch football game in physical education class, resulting in injury." In addition, the court noted that while the substitute teacher who was supervising the class that day testified that the class was "divided into three separate games and that he was able to supervise them all simultaneously, plaintiff's son further testified that the class was divided into four games, and the substitute teacher acknowledged that he did not see the collision that caused the injury to plaintiff's son."

The district also could not meet its burden on causation because the evidentiary submissions raised issues of fact whether "the alleged absence of adequate supervision was the proximate cause of the injury-causing event."

Notice of Claim

1. *J.G. v. Academy Charter Elementary Sch.*, 204 A.D.3d 643(2d Dep't 2022).

Infant petitioner tripped on stairs at school sustaining injury. Petitioners sought to deem a proposed notice of claim timely served. The proceeding was commenced more than one year after the accident.

Court noted that the timely service of a notice of claim is a "condition precedent to a lawsuit sounding in tort against a municipal entity." Court must consider factors including, but not limited to whether (1) the claimant demonstrated a reasonable excuse for failure to serve a timely notice of claim, (2) the municipal entity acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and (3) the delay would substantially prejudice the municipal entity.

Court found that petitioner "failed to establish that the appellant acquired actual knowledge of the essential facts constituting the claim within 90 days after the accrual of the claim or within a reasonable time thereafter."

Affidavit of mother stated that school nurse called her on the day of the accident advising her that her daughter fell on the stairs and injured her right foot. The court, however, noted that this statement "did not provide the appellant with actual knowledge of the facts underlying the petitioner's claim of negligent supervision." Also, while the mother stated in the affidavit that she spoke to an employee of the appellant about the accident about 2 months after it occurred, the affidavit indicated that the employee had no information or details to share. In addition, letters sent by the petitioners' attorney to the appellant "did not advise it of the essential facts underlying the negligent supervision claim."

Court also noted that petitioners failed to demonstrate a reasonable excuse for their failure to serve timely notice of claim. "The child's infancy alone, without any showing of a nexus between the infancy and the delay, was insufficient to constitute a reasonable excuse."

2. *I.N. v. City of Yonkers*, 203 A.D.3d 721 (2d Dep't 2022).

Infant plaintiff was allegedly injured when he fell during recess at his school in Yonkers. About 14 months later, the infant plaintiff and his parents commenced action to recover damages. Plaintiffs moved pursuant to General Municipal Law § 50-e(5) for leave to deem a late notice of claim timely served upon the defendants, City of Yonkers and Yonkers Board of Education. The lower court denied plaintiffs' motion.

The Second Department affirmed, finding that the plaintiffs "failed to establish that the defendants acquired actual knowledge of the essential facts constituting the claim within 90 days after the infant plaintiff's accident or a reasonable time thereafter." While a "medical referral" form was prepared at the school on the day of the accident, it simply indicated that the infant plaintiff "sustained a deep laceration to his right knee from a fall during recess." The court concluded that this document did not provide the defendants "with timely, actual knowledge of the essential facts underlying the claims later asserted – that they were negligent in maintaining a metal guardrail in an area of a parking lot where the accident happened and that they were negligent in monitoring and supervising the students during recess."

The court further determined that the plaintiffs did not demonstrate a reasonable excuse for their failure to serve a timely notice of claim and for the approximate 11-month delay in serving the notice of claim. Even though the injured person is an infant, "the plaintiffs failed to

submit evidence to support their contention that the delay was the product of the infant plaintiff's infancy." Lastly, the court noted that plaintiffs failed to sustain their initial burden of offering "some evidence or plausible argument" that granting the motion would not substantially prejudice the defendants in maintaining their defense.

Open Meetings Law (OML)

1. *Sindoni v. Bd. of Educ. of Skaneateles CSD*, 202 A.D.3d 1457 (4th Dep't 2022).

Plaintiff commenced action against the district for alleged violation of the Open Meetings Law and plaintiff's civil rights.

Plaintiff was previously appointed as varsity high school football coach and was notified shortly after a closed session board meeting that his appointment to that position would not be renewed. Plaintiff sought, in part, a declaration that the executive session was illegal and that the actions taken during that session were void. Lower court declared that the executive session violated the Public Officers Law and that the actions were void.

Fourth Department found that the lower court erred. Court referred to provisions in the Public Officers Law concerning executive session noting that section 108(3) states that "[n]othing contained in [the Open Meeting Law] shall be construed as extending the provisions hereof to … any matter made confidential by federal or state law." Because attorney-client communications are made confidential by the CPLR, communications between a board and its counsel, "'in which counsel advises the board of the legal issues involved in [a] determination …are exempt from the provisions of the Open Meetings Law.'"

Court noted that when an exemption under section 108 applies, "the Open Meetings Law does not and the requirements that would operate with respect to executive sessions are not in effect."

Court noted that during the closed session the board and the superintendent met with the district's counsel seeking legal advice "'regarding the [p]laintiff's legal employment status, employment rights, [and] the process for appointing school employees.' We thus agree with defendants that the attorney-client exemption applies and that the court erred in determining that there was a violation of the Open Meetings Law."

Reopening Plan

1. *Lasko v. Bd. of Educ. of the Watkins Glenn CSD*, 200 A.D.3d 1260 (3rd Dep't 2021).

Department of Health and SED issued guidance requiring districts prepare reopening plans in which vulnerable employees could obtain work accommodations "where appropriate" – citing telework, work envorornment modifications and additional personal protective equipment as options.

District adopted reopening plan for the 2020-21 school year that allowed employees to request such accommodations. Non-instructional employee was allowed to work remotely, and 2 others agreed to other accommodations. The fourth – an instrumental music teacher - was not permitted remote work because "the essential functions of [her] job" could not be performed via telework, and she did not agree to proposed alternative accommodations. Petitioners sought to compel district to consider telework as accommodation for instructional staff under executive orders, guidance and reopening plan.

District moved to dismiss appeal as moot noting that relevant executive orders have been rescinded and statewide guidance and district's reopening plan for the 2020-21 school year no longer remain in effect.

Court found that petitioners have not presented a "live issue". Court further noted that "whatever obligation respondents had to consider accommodation requests necessarily arose out of executive orders and other documents that are no longer in effect and that are unlikely to be restored."

Right-of-way Access

1. *Dornan v. Fort Ann CSD,* 201 A.D.3d 1229 (3d Dep't 2022).

Plaintiff owns 3 separate abutting parcels of property (A, B and C). School District owns parcel of property (D) that abutted parcel A to the north and parcel C to the east. A right-of-way was located within Parcel D and ran along the border between parcels A and D – the plaintiff used this right-of-way to access parcel C. But in 2015 the district erected a fence along the boundary line of parcels A and D – this new fence, according to the plaintiff, prevented him from using the right-of-way.

Plaintiffs sought a declaratory judgment determining that the plaintiffs had a valid right-of-way over parcel D and a cause of action to enforce this right-of-way by compelling the school district to remove a section of the fence located at the northeastern end of the right-of-way and that ran along the border of parcels A and D.

The Third Department held that based on the review of the deeds and transactions, and the affidavit of a professional title searcher, "plaintiffs satisfied their summary judgment burden. In opposition to this prima facie showing, defendants failed to raise an issue of fact." The court also noted that plaintiffs were able to show that the fence interfered with the use and enjoyment of the right-of-way.

School District Boundary Lines

1. *Castaldi v. Syossett CSD,* 203 A.D.3d 690 (2d Dep't 2022).

Action for a judgment declaring that the plaintiffs' property is intersected by the boundary lines of the Oyster Bay-East Norwich CSD and the Syosset CSD.

Plaintiffs listed their home in Oyster Bay Cove for sale – they were "advised by the listing agent that there could be a substantial difference in the sale price depending on whether residents of the property were eligible to send their children to the Syosset Central School District." They sought to have Oyster Bay-East Norwich CSD recognize their property as intersected by the boundary lines of both the Oyster Bay District and the Syosset CSD. This would entitle any residents of the property to designate either school district pursuant to Education Law § 3203.

Plaintiffs entered into a contract of sale for the property which contained a condition "that the prospective buyers must be able to designate the Syosset District for their children." However, the superintendent of the Oyster Bay District advised the prospective buyers that it was premature to confirm whether they would be able to designate the Syosset District for their children, but that "if such a determination could be made at this point, it . . . would have to be

denied as it appears that the entirety of the property is within the Oyster Bay[ ] . . . District." The prospective buyers elected to cancel the contract of sale.

Plaintiffs commenced the action, and after a nonjury trial, the court entered a judgment in favor of the plaintiffs declaring that the property is intersected by the boundary lines of the Oyster Bay District and the Syosset District. The Oyster Bay District appealed.

The Second Department found that the lower court "properly determined that the property is intersected by the boundary lines of the Oyster Bay District and the Syosset District." The court stated:

> At trial, the plaintiffs presented the testimony of Joseph Petito, an expert in land surveying, who testified that the property was bisected by the boundary lines for both school districts, and that a triangle-shaped area of approximately 190 square feet of the property was situated within the Syosset District, as evidenced by a 1977 subdivision map. Petito further testified that subsequent tax maps relied on by the Oyster Bay District were not reliable to determine the school district boundary lines, since they were inaccurate, not created by a surveyor, and prepared only for the purpose of assessing taxes.

The court found that the lower court's determination that the property is intersected by the boundary lines of the Oyster Bay District and the Syosset District "was warranted by the evidence at trial."

School Mascot

1. *Cambridge CSD v. N.Y. State Educ. Dep't*, Index No. 902161-22 (Sup. Ct. Albany Cnty. June 22, 2022).

School district commenced proceeding seeking to annual commissioner's decision and seeking an order finding that the district had a rational basis for its July 8, 2021 resolution reinstating the use of a race-based mascot.

Board was petitioned in October 2020 to consider ending the use of the school mascot named "Indians" and related imagery. A competing petition seeking the retention of the name and imagery was filed. In December 2020, board voted to reconsider the use of the term "Indians" and related imagery and conducted an 8-month review of the issue, including soliciting public comment, interviewing stakeholders and reviewing statement and reports by local and national Native American organizations. District also considered its own formal equity, inclusion and diversity policy.

On June 17, 2021, board adopted resolution ending the use of the "Indians" name and imagery. However, on July 8, 2021, the board reversed itself, rescinding the June resolution and renewing their commitment to the "Indians" name and logo for the time being. Board committed to considering potential changes to the current imagery and directed superintendent to include "enhanced instruction" in the history of Native American culture in the district's curriculum. Board relied on input from the "Native American Guardian Association" and the majority of the Cambridge community.

Commissioner of education granted stay and directed the district to adhere to the terms of the June resolution removing "Indians" name and imagery. Commissioner found that the July resolution "unexplained reversal" of the June resolution was arbitrary and capricious.

Court found that the commissioner's decision was "reasonable and rational, not in violation of lawful procedure, and was not arbitrary, capricious or an abuse of discretion, nor was it affected by an error in law."

Court noted that while a school board has discretion to determine the propriety of a sports team logo, this discretion is not unlimited: "a school board will be found to have abused its discretion if its choice of a nickname, mascot or logo interferes with the creation of 'a safe and supportive environment that promotes the achievement of learning standards for all children.'" The court also noted that a board will have abused its discretion when "it changes its position from a prior approved course of action without explanation."

Court found that the July resolution "was entirely lacking in the evidence-based findings which impelled its June resolution." Court dismissed the petition.

Special Education

1. *Elmira City Sch. Dist. v. N.Y. State Educ. Dept*., 204 A.D.3d 1134 (3d Dep't 2022).

The student, who required a one-on-one nurse for a medical condition that could lead to asphyxiation without proper suctioning, was enrolled in a special education kindergarten program run by the local board of a cooperative educational services (BOCES). On the first day of the program, the student's parent removed the child from the school believing that the BOCES nurse required additional suction training.

In addition, the nurse discovered a medication discrepancy in the student's treatment plan due to an alteration made by the parent. BOCES officials determined the student could not attend their program until the plan was corrected. The plan was corrected in Dec. 2018, when a care manager assisting the parent contacted the child's health care providers. However, the parent refused to have the student return because the BOCES nurse had not yet received the requested training.

In Feb. 2019, the BOCES nurse resigned. Despite efforts by the school district to find a replacement, none could be found. Therefore, the student did not return for the remainder of the school year. The committee on special education subsequently made three recommendations, all which were rejected. Nevertheless, the district notified the parent that it was pursuing enrollment in a residential placement given that a nurse could not be secured. Thereafter, the parent filed a due process complaint alleging a denial of a free appropriate public education (FAPE).

The IHO found that the student was not denied FAPE from Sept. 2018-Dec. 2018 after finding that the fault for the student not receiving services rested with the parent. The SRO disagreed, finding that while it was reasonable that the BOCES nurse did not provide care until the treatment plan was corrected, the district should have taken direct measures to correct the plan instead of relying on the parent and her care manager. Thus, the child's absence from school was the fault of the district, not the parent. The SRO found a denial of FAPE for this time.

The Third Department disagreed with the SRO, finding no denial of FAPE for that period. The court stated that the district was not at fault in the delay in correcting the plan because the parties agreed that parent's care manager's would take care of the necessary forms. Also, there was ongoing dialogue between the BOCES nurse and the parent about what was

needed on the forms. Moreover, the parent chose to keep the student out of school due to the lack of additional suction training during this time.

As for the period from February to June 2019, the IHO determined that district was in a "catch 22" situation because the IEP could not be implemented without a nurse, and the district could not find a candidate for the position. Characterizing this situation as an "impossibility of performance" defense, the IHO found the district did not deny the student FAPE.

However, the SRO disagreed because the "impossibility of performance" defense is specific to contract law. Under the IDEA, such a defense "[does] not excuse [the district's] statutory responsibility to implement the child's IEP (Individualized Education Program)." The district's inability to hire a nurse was not an excuse and resulted in a "material deviation" from the student's IEP, causing a denial of FAPE. The Third Department agreed with the SRO that the district failed to provide FAPE from Feb. 2019-June 2019. The student's IEP required one-on-one supervision from a nurse for suctioning and other care. Without this service, the student could not attend her educational program. While the IDEA provides certain situations under which the obligation to make FAPE available would not apply, the "inability to secure [a provider of] needed services is not included in that list."

In terms of the residential placement, the SRO and the Third Department found the residential placement was inappropriate. A residential placement must be based on a child's actual needs in accordance with an IEP, not for administrative inconvenience. Evidence showed that the child received a meaningful benefit from being educated with her peers. As a result of the denial of FAPE, the student was owed compensatory services for the period of Feb. 2019-June 2019.

Tax Certiorari

1. *DCH Auto v. Town of Mamaroneck*, 2022 WL 2162629 (Ct. of App. June 16, 2022).

DCH's lease of real property is a "net lease" in that it must pay real estate taxes associated with the property, in addition to rent. DCH challenged tax assessments by filing grievance complaints with local board of assessment review. Board denied the challenges and DCH filed petitions for judicial review. Lower court dismissed DCH's petitions finding that only an owner – not a net lessee - can file the initial grievance complaints pursuant to RPL 524(3) and that failure of the owner to file the initial grievance precluded judicial review. The Second Department affirmed. Case is appealed to the court of appeals.

Issue: Does a grievance complaint filed with the board of assessment review at the administrative level by a net lessee satisfy RPTL 524(3) such that the net lessee may properly commence an article 7 proceeding if the grievance is rejected?

Court of appeals answered the question in the affirmative and reversed.

Court noted that RPTL sets out a 2-step process for the review of property tax assessments. RPTL 524(3) states that the initial complaint must be made "by the person whose property is assessed." Regarding the second step, RPTL 704(1) provides that "Any person claiming to be aggrieved … may commence a proceeding under this article…" And in order to maintain an article 7 tax certiorari proceeding, the aggrieved party must allege that a complaint was made in due time to correct such assessment. Thus, the proper filing of a RPTL article 5 administrative grievance is a condition precedent to judicial review under RPTL article 7.

The Town argued that RPTL 524(3) requires the administrative complaint to be filed "by the person whose property is assessed" which means only the property owner. DCH argued that RPTL 524(3) does not limit the filing of a compliant to a property owner.

Court found that the language of 524(3) is ambiguous and therefore examined the statute's legislative history. The court concluded that legislative history of the origin of the clause in question indicates that a net lessee obligated to pay real estate taxes of the leased real property may file a grievance under RPTL 524(3).

Transportation of Nonpublic Students

1. *United Jewish Community of Blooming Grove, Inc., v. Washingtonville CSD,* 2022 WL 1786638 (3d Dep't June 2, 2022).

Petitioner is a non-for-profit corporation that provides services to Jewish families in Orange County.

District provides school bus transportation to resident students who are enrolled in nonpublic schools, but only on days when public schools are in session. Because nonpublic schools sometimes observe different holidays and school breaks than public schools, there are days throughout the school year when the district does not provide transportation to nonpublic school students even though their nonpublic schools are in session. This policy is consistent with SED guidance – an online handbook on transportation of students enrolled in nonpublic schools.

Counsel for the petitioners requested that the district provide bus transportation for students of nonpublic schools in the village of Kiryas Joel on days when those schools were in session but the public schools were closed. Requests were denied and the proceeding was commenced claiming that the district was statutorily required to transport nonpublic school students on all days that their nonpublic schools are open.

Lower court, among other things, declared that the district is required to provide transportation for all nonpublic school students on all days that their schools are open, and further declared that SED's guidance to the contrary is null and void. Third Department reversed.

Court noted that the issue turns on the interpretation of Education Law section 3635 which states in part that:

> [s]ufficient transportation facilities … shall be provided by the school district for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children.

The court noted that absent from the language of the statute is any explicit direction "as to when such transportation must be provided." Petitioners argued that all children must be transported to and from school on all of the days that their school is open. District argued that only "sufficient" transportation is required – which is achieved by providing "equal transportation services" on the same days of the year, to nonpublic and public school students alike.

Court reviewed the legislative history. For instance, in 1983, 1999 and 2001, the legislature considered bills that would have expanded section 3635 by adding language requiring school districts to transport nonpublic school students on certain days when public school are

closed. The court noted that none of these bills were passed, and it is "also noteworthy that the Legislature has not intervened, by way of any statutory amendment, to correct SED's longstanding interpretation of Education Law § 3635 as permitting, but not requiring, transportation of nonpublic school students on days when the public schools are closed."

Court also noted that the lower court's broad view of the statute would lead to unreasonable results.

> To be sure, the Legislature could not have intended to require school districts to transport nonpublic school students in the summer, on weekends, on state or federal holidays, or on days when public schools are closed for weather-related or other emergency reasons, none of which would be foreclosed by Supreme Court's interpretation.

Court held that section 3635 permits, but does not require, school districts outside New York City to transport nonpublic school students to and from school on days when the public schools are closed.

Unemployment

1. *Smith v. Comm'r of Labor*, 199 A.D.3d 1141(3d Dep't 2021).

Appeal from decision of Unemployment Insurance Appeal Board finding that claimant was eligible to receive unemployment insurance benefits. Claimant worked 18 days during school year; last worked 6/25/18, the final day of school. District advised claimant that she was ineligible to serve as a substitute teacher in the 18-19 school year as she had not worked the required 20 days as a substitute teacher in the prior school year. Claimant applied for unemployment on 7/22/19.

The Appeals Board found that as a per diem employee, claimant's employment relationship with district ended on her last day of work (6/25/18) and therefore she did not have employment relationship with district at the time she applied for benefits, "and could not be found to have provoked her discharge or voluntarily quit."

Court affirmed the Appeal Board's decision. Court noted that on the days she had an employment relationship with the district, "she did not engage in misconduct, was not discharged and did not quit." The court also noted that when she applied for benefits, she "no longer had an employment relationship with the school district, which had advised her that she would not be renewed in that role based upon her noncompliance with the 20-day work requirement during the prior school year." Court affirmed decision that she was "entitled to benefits and that wages paid to her by the school district can be used to establish a future claim for benefits."

Vesting/Retiree Health Insurance

1. *Donohue v. Cuomo*, 38 N.Y.3d 1 (2022).

Issue: whether New York courts should infer vesting of retiree health insurance rights when construing a collective bargaining agreement?

The court of appeals declined to adopt any *Yard-Man* type inferences, either in favor of vested rights or in favor of determining that ambiguity exists. The court stated:

> Such inferences conflict with this State's established contract law, which focuses on the parties' chosen language, by injecting considerations untethered to the words that the parties included in their agreement. … Instead of adopting such inferences based on policy considerations grounded in employment matters, or any other considerations, existing outside the four corners of the CBA, we adhere to our contract principles which preclude a New York court from 'disregard[ing] the precise terminology that the parties used.'

Whistleblower Law

1. *DaCosta v. N.Y. City of Buildings,* 203 A.D.3d 571 (1st Dep't 2022).

Plaintiff was employed by the Department of Buildings (DOB) for five months before resigning. He alleged that he was later provisionally offered a position with New York City Health and Hospitals Corporation (H & H), "but an unnamed DOB employee scuttled his offer by providing a poor reference, allegedly in retaliation for his reporting a conflict of interest to the City's Department of Investigation." He brought suit alleging a number of claims, including a claim for unlawful retaliation under Civil Service Law § 75-b.

The First Department rejected the lower's court determination that Civil Service Law § 75-b does not apply to actions taken by a public employer after the employee has resigned. The court stated in part: "Moreover, blacklisting and providing negative references to an individual's prospective employers in retaliation for prior reports of government misconduct may constitute adverse personnel action under the statute, in the same way that the State Human Rights Law has been found to cover such acts."

The court also determined that the plaintiff sufficiently established a cause of action for unlawful retaliation under Civil Service Law § 75-b. The court noted that the allegations "are sufficient for pleading purposes to reasonably infer that DOB provided H & H a negative reference about plaintiff's work in retaliation for his good faith effort to report alleged misconduct to the City's Department of Investigation."

II. COMMISSIONER'S DECISIONS

Board Member Conduct/Removal

1. *Application of Rego*, 61 Ed Dept Rep, Dec. No. 18,033 (2021).

During a virtual annual budget meeting, a board member uttered an obscenity in response to comments made by the petitioner. Based on that conduct, the petitioner appealed to the commissioner of education seeking removal of that board member.

While the commissioner dismissed the case for lack of personal service, the commissioner stated that the conduct was entirely inappropriate, particularly for a member of a board of education, and admonished that board member "to comport himself in the future in a manner befitting a holder of public office."

2. *Appeal of Corbia*, 61 Ed Dept Rep, Dec. No. 18,092 (2022).

The board member claimed that his social media account was hacked after there were references to "illegal immigrants" and a "white privilege card." The board referred the matter to the ethics committee and an investigation was conducted by special counsel. However, the board member, after claiming he would cooperate, did not respond to repeated attempts of communication. The board appointed a hearing officer to remove the member. The member didn't testify or present evidence. The hearing officer recommended removal for official misconduct and the board adopted the recommendation. The board member filed an appeal.

The commissioner of education affirmed the district's determination on the charge that petitioner failed to cooperate with, and thwarted the aims of, its investigation. Furthermore, the commissioner agreed with the hearing officer's analysis of the petitioner's failure to cooperate as "willfully, intentionally, and wrongfully imped[ing] an investigation directed and authorized by the Board of Education ...." Noting that the petitioner did not appeal this finding by the hearing officer or argue that his attorney unilaterally impeded the investigation, the commissioner held that the petitioner intentionally exercised his powers to the detriment of the school district and dismissed the appeal.

3. *Appeal of Williams*, 61 Ed Dept Rep, Dec. No. 18,116 (2022).

Board member was removed from the school board for official misconduct after a hearing was conducted by a hearing officer. The board member was not reelected at the annual meeting, which occurred after the hearing was conducted but before a decision was rendered. The hearing officer sustained five charges of official misconduct and the school board voted to remove the member. The board member then appealed to the commissioner of education for reinstatement to the board and reversal of the board's decision.

The commissioner found the request for reinstatement to be moot as he had not been reelected but addressed the claim for reversal because "[a] person removed from a school district office shall be ineligible to appointment or election to any district office for a period of one year from the date of such removal." The board member made inappropriate and derogatory comments toward fellow board members at meetings, including: 1) referring to another board member as a "loser" and "cry baby;" 2) inviting another board member "out to the parking lot" to settle a disagreement; 3) telling another board member that he was "going to back [his] car over [him]" after a dispute about a board decision; and 4) throwing his briefcase across the room that scared several community members. He also would: 1) curse; 2) be verbally abusive; 3) demean colleagues; and 4) monopolize board meetings to the point where it was "impossible" for the board to carry out its functions. Based on the evidence that supported the determination of the hearing officer, the commissioner dismissed the board member's appeal of his removal.

Child Abuse Allegation

1. *Appeal of Doe*, 61 Ed Dept Rep, Dec. No. 18,094 (2022).

Petitioners alleged that their child with a disability was abused due to the amount of protective holds placed upon the child while having behavioral issues. The superintendent conducted an investigation and found that the staff had complied with state regulations and district policy, thus finding no child abuse occurred. The parents appealed the district's determination.

While the commissioner of education dismissed some claims that fell under the Individuals with Disabilities Education Act, the commissioner stated that the petitioners could not meet their burden to show the superintendent's determination was arbitrary or capricious. The petitioners submitted a log of emergency interventions used on the student which documented the date, time frame, setting or location of the emergency intervention used, as well as the staff involved, a description of the incident and whether any injuries were sustained, or a nurse evaluation was completed. The petitioners claimed it was only after restraints were used 32 times that they were notified and that this constituted evidence of abuse. However, the commissioner found that these logs actually established that the district complied with the commissioner's regulation. Furthermore, the record supported a finding that the district acted reasonably in investigating the incident.

Educational Placement

1. *Appeal of K.Z.*, 61 Ed Dept Rep, Dec. No. 18,081 (2022).

Parents requested that their child be held back in kindergarten because the student wasn't making enough academic progress, wasn't socially and developmentally ready, and was young for his grade. The principal considered this request but decided to promote the student to first grade. The parents filed an appeal.

The commissioner of education stated that in the absence of a showing that a student placement determination is arbitrary or capricious, the judgment of local school authorities will not be substituted. In this case, the principal made the decision based on the student's report card, affidavits from the principal, school psychologist, school social worker, and in consultation with the student's classroom teacher. The commissioner found that the parents failed to show the district's decision was arbitrary or capricious based on ample evidence to show that its determination took into consideration the factors of academic achievement, social and emotional development, and the student's age.

Dignity for All Students Act (DASA)

1. *Appeal of D.S.*, 61 Ed Dept Rep, Dec. No. 18,073 (2022).

A student's father would not permit her to wear a mask on the bus claiming it harmed her physically and mentally. This happened twice but when she got to school, she was able to wear the mask during the day and on the bus ride home. The superintendent sent an email to the parent saying failure of the student to wear a mask could lead to a suspension but the parent could seek a medical exemption. The father claimed the superintendent violated DASA by bullying and harassing the family and sought discipline of the superintendent.

On appeal by the parent, the commissioner of education held that she had no jurisdiction to impose discipline upon the superintendent. Furthermore, in regard to the DASA complaint, the commissioner found there was no evidence to support the father's suggestion that the superintendent warned him of potential disciplinary consequences "to intimidate [the student] and her family." In fact, the superintendent was within her right to stress the importance of following school rules, including the mask requirement.

Elections

1. *Appeal of Feder*, 61 Ed Dept Rep, Dec. No. 18,066 (2022).

After the original budget failed to pass, the revote passed by just one vote. The petitioner alleged that he viewed an individual's name on the rolls who "sold her home and moved out of the district over a year ago" and also asserted that a voter who voted at the May election was not on the register for the June revote. The petitioner filed an appeal seeking a recount and an audit of the votes cast in the revote, as well as an examination of the voter rolls.

The commissioner of education found that petitioner had not established any impropriety in connection with the revote. There was no evidence presented as to whom the voter was that moved and the district clerk stated the person who was not on the register had voted by an affidavit ballot. In addition, the commissioner stated that the petitioner was precluded from challenging any voter's ability to participate in the budget revote given his failure to do so at the time of the election.

2. *Appeal of Morton*, 61 Ed Dept Rep, Dec. No. 18,118 (2022).

In June 2020, the district conducted the election entirely by absentee ballot due to COVID-19 and the Governor's Executive Order. When counting votes for two open seats, the district rejected 547 absentee ballots. The two incumbents won with 2,476 and 2,090 votes respectively. The two petitioners in this case lost with 1,133 votes and 1,058 votes respectively. The petitioners claimed that the ballot improperly contained four write-in spaces which caused confusion and that various ballots were voided if a voter placed a mark in a square for the candidate but also wrote in the name of that same candidate, and two people who canvassed votes were not appointed as election officials. The petitioners appealed seeking to annul the results of the vote.

In regard to write-in spaces and voiding the votes when there was a mark and the candidate's name written in the box, the commissioner of education stated that the district's invalidation of votes based on "over votes" was improper as the voter's choice of candidates was readily ascertainable. However, even if all voided absentee ballots were cast in favor of the petitioners, the commissioner stated they would not have won the election and therefore it was not a reason to invalidate the election. As for the two individuals who helped canvassed the votes, the district admitted first that the district clerk, and not the board, swore in the election inspectors, and that these two individuals were not sworn in as election inspectors. While this did not comply with the Education Law, it was not a basis for overturning the election. The commissioner stated that the errors committed by the district were no so pervasive that they vitiated the electoral process or demonstrated a clear and convincing picture of informality to the point of laxity in adherence to the law.

Home Instruction

1. *Appeal of Moye*, 61 Ed Dept Rep, Dec. No. 18,133 (2022).

District found that petitioners individualized home instruction plan ("IHIP") they submitted for their child for the 2021-2022 school year did not meet the requirements of commissioner's regulation section 100.10, specifically because it failed to include instruction concerning acquired immune deficiency syndrome ("AIDS"). Petitioners asserted that the

requirement for AIDS education in commissioner's regulation section 135.3 did not apply to homeschooled students and filed an appeal.

The commissioner of education found that section 100.10(e) identifies "health education" as a subject of instruction that must be included in an IHIP. "[H]ealth education," in turn, is defined by 8 NYCRR 135.3(b), which requires that elementary and secondary health education curriculum include age-appropriate instruction concerning the nature, methods of transmission, and methods of prevention of AIDS. Thus, the instruction was required. Furthermore, the parents' argument that this regulation was only for public school students failed as while the regulation distinguishes between the instruction to be provided in elementary and secondary schools, the basis for that distinction is not the brick-and-mortar buildings themselves, but the age of the students. The commissioner noted that although the petitioners did not disclose the nature of their opposition to AIDS instruction, a religious exemption from the study of health and hygiene was available.

Homebound Instruction

1. *Appeal of K.V.*, 61 Ed Dept Rep, Dec. No. 18,067 (2022).

During the 2020-2021 school year, the district offered the choice of in-person or fully remote instruction and the student chose the remote program. During that time, the student alleged experiencing severe migraines when looking at a screen for a prolonged period of time and sought homebound instruction from 9:00 a.m. to 2:00 p.m. While the district denied the request, it provided the student with packets of work that did not always require computer use as well as one hour of daily tutoring by telephone. The parent then filed an appeal seeking homebound instruction.

The commissioner of education found that the student was not eligible for homebound instruction as there was no proof that the student was "unable to be educated in a school setting" or temporarily "confine[d]" to home. The commissioner noted that instead petitioner may have been looking for an accommodation under section 504 and in such circumstances the commissioner has no jurisdiction to review those claims.

Mascots

1. *Appeal of McMillan*, 61 Ed Dept Rep, Dec. No. 18,058 (2021).

A board adopted a resolution to retire the nickname the "Indians" after spending several months considering the appropriateness of its team name, logo, and mascot and receiving input from the community and different organizations. The district noted that its decision was consistent with its Diversity, Equity, and Inclusion (DEI) policy. However, in the meeting following passage of the resolution, the board changed course and permitted the name to remain but directed the superintendent to create a plan incorporating enhanced instruction about Native American culture, both past and present. Parents filed an appeal.

The commissioner of education sustained the appeal, finding in favor of the parents. The commissioner stated that board actions can be invalidated where boards summarily reverse course without sufficiently explaining their reasoning. Here, the commissioner found that the that the district acted arbitrarily by reinstating the "Indians" name and imagery. The commissioner stated the board's resolution reversing course offered no meaningful explanation

as to why the district no longer found the information it had previously cited persuasive and the resolution also failed to explain how the name and logo violated the district's DEI policy at the time the original resolution was passed but not a month later. In making these determinations, the commissioner relied upon research by a previous commissioner, which found that "symbols or depictions as mascots can become a barrier to building a safe and nurturing school community and improving academic achievement for all students" as well as research from the New York Association of School Psychologists that corroborated the previous findings but also opined that the continued use of such "Indigenous symbols, personalities, and stereotypes as mascots" could violate the Dignity for All Students Act ("DASA"). Additionally, the Board of Regents has taken affirmative measures, consistent with DASA, to promote positive learning environments in schools, which is reflected in its DEI Policy. Thus, the district was ordered to eliminate the use of its former team name, mascot and logo**.**

The district filed an appeal in state supreme court and recently this case was affirmed in *Cambridge CSD v. N.Y. State Educ. Dep't*, Index No. 902161-22 (Sup. Ct. Albany Cnty. June 22, 2022).

McKinney-Vento

1. *Appeal of Mayers-Tarbell*, 61 Ed Dept Rep, Dec. No. 18,043 (2021).

The district found that the petitioner's two children were not homeless under McKinney-Vento after receiving police reports showing an out-of-district residence. Petitioner claimed to have lied to the police and that the children lived with the grandmother at an in-district address, although the grandmother refused to confirm that the children resided with her. The parent filed an appeal challenging the residency determination.

The commissioner of education dismissed the claims of homelessness as premature because there was no evidence in the record that petitioner claimed that the students were homeless prior to the appeal. Nevertheless, the commissioner sustained the appeal after finding that the district did not comply with 8 NYCRR 100.2 (y) in rendering the residency determination that gave rise to the appeal. Other than a phone call between the petitioner and the homeless liaison, there was no evidence that the district provided the petitioner with the opportunity to submit information concerning the students' residency. Furthermore, the district did not identify the basis for its determination. Therefore, the case was remanded back to the district for a residency determination and the children were allowed to remain enrolled during that process.

2. *Appeal of L.R.*, 61 Ed Dept Rep, Dec. No. 18,086 (2022).

A student had been attending the district for years as a homeless student until 2021 when the district asked for information regarding the student's housing. Petitioner stated that she was having financial difficulties, could not afford non-subsidized housing or qualify for subsidized housing, and that her living arrangement was not the result of personal choice. Petitioner also stated that her current living situation, where she was living with her aunt, was temporary because her aunt was behind in paying rent and may have to move. She further reported that the space was inadequate because she had to share a single bedroom with her three children. Notwithstanding, the district found the student was not homeless and would be excluded. The parent appealed.

The commissioner of education sustained the appeal, finding that the petitioner established that she and her children lack a fixed, regular, and adequate nighttime residence. The petitioner submitted evidence that the students resided "doubled-up" at two different locations with her aunt outside of the district and her aunt sleeps in one bedroom while she and the three students sleep together in the second bedroom. The commissioner noted that the district did not conduct a home visit of the out-of-district address and did not produce any evidence to refute petitioner's assertions. In addition, the commissioner stated that while petitioner had been living with her aunt at two different out-of-district residences for several years, an inadequate living arrangement such as this does not become a fixed, regular, and adequate nighttime residence merely due to its duration.

Personnel Matters

1. *Appeal of Moss III*, 60 Ed Dept Rep, Dec. No. 18,001 (2021) & *Appeal of Moss III*, 60 Ed Dept Rep, Dec. No. 18,006 (2021).

While the commissioner of education dismissed both of these cases, both appeals involved, in part, issues where the board employed teachers that were not properly certified.

In the first case (18,001), the district admitted that two of the appointees were not certified in special education and this was an error from the human resources department. The district stated that when the error was discovered, the teachers were removed. The commissioner of education found that the district's actions were at best negligent, but mere negligence on the part of a school officer was not enough to warrant removal. Furthermore, even if proven, a violation of a board's bylaws or policies alone was not a sufficient basis for removal of a member of a board of education in a proceeding pursuant to Education Law § 306.

In the second case (18,006), the district admitted that the board improperly employed and paid three teachers who lacked appropriate certification at the time they were hired. The district claimed that the errors resulted from a lapse in the human resources department and the "unprecedented challenges resulting from the COVID-19 pandemic." The commissioner admonished the district to ensure that it employed, and paid, only appropriately certified teachers. As such, the commissioner sent this as well as the first appeal to the State Education Department's Office of Teaching Initiatives for appropriate oversight and monitoring.

Residency

1. *Appeal of Murphy*, 61 Ed Dept Rep, Dec. No. 18,018 (2021).

The students were deemed homeless and attended the district's schools until the spring of 2020, when the district investigated petitioner's residency and found out that the petitioner had not lived in the hotel where they had been staying since the beginning of March. Petitioner indicated that she had lived at a different location since mid-March 2020 "[d]ue to Covid19," but had returned to the hotel as of June 23, 2020 and provided evidence of such. However, the district still found the students were not residents. The petitioner appealed.

The commissioner of education sustained the appeal, finding for the petitioner stating that the she met her burden by producing evidence of the residence at the hotel, which the district could not rebut. Furthermore, for the period they were not in the hotel, the commissioner stated the absence was temporary in nature and did not result in a relinquishment of her residence.

2. *Appeal of A.L.*, 61 Ed Dept Rep, Dec. No. 18,041 (2021).

Student graduated from a nonpublic school in Connecticut in 2020. However, in February 2021, the district claimed the student was not a resident since 2019, based on reports from a 2020 CSE meeting that the student lived in Saratoga Springs, NY rather than in NYC where the student's father worked. The parent appealed.

While the commissioner of education dismissed the appeal as moot since the student already graduated, she felt "compelled" to make two observations regarding the district's residency determination. First, the commissioner stated that 8 NYCRR § 100.2(y)(4) does not authorize districts to make residency determinations with retroactive effect, as the district had done. Second, the district failed to follow the provisions of 8 NYCRR § 100.2(y). The district failed to give the parents an opportunity to submit information concerning the child's right to attend school in the district and failed to give written notice of its determination that the child is not a district resident, including the basis for the determination, the date that the child would be excluded from school, and a statement regarding the right to appeal the determination to the commissioner. Moreover, the commissioner noted that a CSE meeting is not an appropriate place to discuss residency. As such, she admonished the district to ensure that its residency determinations comply with 8 NYCRR 100.2(y).

3. *Appeal of S.U.*, 61 Ed Dept Rep, Dec. No. 18,062 (2021).

The student's parents originally had joint residence and legal custody but "solely for the purposes of school and a certification for medical insurance," the mother's in-district address was the student's residence. However, custody issues arose and the father got temporary physical custody, although it did not alter the residence purposes of school. Thereafter, the district found that the student was not a resident because she was living at the out-of-district address with her father. The father appealed the district's determination.

The commissioner of education sustained the appeal and found that the student was a resident of the district. The commissioner held that the student's absence from the district was temporary because the father had continuing ties to the community and an intent to return to the district. Additionally, the father stated that he was actively seeking residence in the district so that he could relocate if granted full custody. It was noted that while generally those claims are insufficient to show an intent to return to the district, this case was different due to the "circumstances that caused the student to temporarily leave [the] district." Furthermore, the father's family court attorney established not only that the court's original order was still binding, but also showed the temporary nature of the arrangement in that the modified order had only given temporary residential custody.

Student Discipline

1. *Appeal of a Student with a Disability*, 60 Ed Dept Rep, Dec. No. 17,988 (2021).

Seventh grade student was suspended for five days and parent filed an appeal alleging that the written notice was insufficient as it failed to notify her of the right to an informal conference.

The commissioner of education found that the written notice failed to satisfy the requirements under the law and commissioner's regulation. While the parent was notified by a

phone call with the principal and attended a meeting with him that day, it still did not excuse the requirement for written notification prior to the suspension. However, the commissioner noted that the superintendent denied the parent's appeal 20 minutes after it had been emailed to him and gave a generalized reason for upholding the suspension. The commissioner stated that this reflected a misunderstanding of the district's obligations in reviewing such an appeal. If a school officer or employee concludes that a district violated a student's due process rights in connection with a served suspension, including her or his right to legally sufficient written notice, it must immediately expunge the suspension from the student's record. This remedy cannot be deferred if and until a parent commences an appeal to the commissioner.

2. *Appeal of J.M.*, 60 Ed Dept Rep, Dec. No. 18,002 (2021).

Students were involved in an altercation and one student claimed that this particular altercation was part of a larger pattern of harassment by one or more students. The student was suspended for five days for violating the code of conduct. The parent appealed the suspension to the superintendent but alleged no response was received within the 10 days as required. The parent also alleged that the district failed to investigate the incidents of harassment and bullying. Thus, an appeal was filed by the parent.

The commissioner of education found that the record should not be expunged due to the delayed response of the superintendent. Not only did the student not serve any additional period of suspension due to the delay, but it was at the start of COVID-19 when schools were first closed and the superintendent communicated with the parent three times about the appeal. The commissioner also did not lessen the penalty just because there was no prior discipline as violence was involved. In addition, the commissioner noted that the allegation that the student was a victim of bullying was being investigated under the Dignity for All Students Act (DASA). However, the commissioner commented that although a finding of bullying or harassment would not affect the student's guilt in this matter, nothing would preclude the district, upon reaching such a conclusion, from expunging the suspension as a remedy "reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate [or] prevent recurrence of the behavior."

3. *Appeal of K.P.*, 61 Ed Dept Rep, Dec. No. 18,055 (2021).

In response to a class discussion on *MacBeth*, which included a discussion about a television show about couples who murder for profit, a student made comments that "if he were ever convicted of a crime he would go on a killing rampage and kill at least five random people to make certain he was going [to prison] for life." He added that he "was not joking and ... would kill as many people as he could if he was going to go to jail anyway." He was given four days of out-of-school suspension, one day of in-school suspension, and told to attend counseling. The suspension was later modified by the board to three days of out-of-school suspension and two days of in-school suspension. The parent filed an appeal seeking expungement of the suspension.

The commissioner of education sustained the appeal, finding in favor of the student. The student's mother alleged that no discipline should have been imposed as the comments were taken out of context and were part of the classroom discussion. The commissioner agreed, finding that based on the play's theme and teacher's discussion of a television show about real-life couples who murdered for profit, "the student's comments were at least tangentially related

to the plot of the play" and the television show. As such, excluding the student from the classroom for several days "was inappropriately punitive." There was no direct threat to any individual, the class was not significantly disrupted, and he was not removed from class. Therefore, the commissioner ordered the suspension be annulled and expunged from the student's record.

4. *Appeal of M.W.*, 61 Ed Dept Rep, Dec. No. 18,068 (2022).

Student with a disability was given a long-term suspension for conduct involving inappropriate electronic communications, which he had also received to prior suspensions for and for which it was found that the conduct was a manifestation of his disability. For the current suspension, a manifestation determination review conducted prior to the suspension hearing found his conduct was not related to his disability or due to the district's failure to properly implement his IEP. Then after the hearing, the superintendent found the student guilty and imposed a 30-day suspension. The parent filed an appeal.

The commissioner of education sustained the appeal, finding that the district committed several errors that deprived the student of a fair hearing. Those were: 1) the manifestation determination review was held prior to a determination of the student's guilt in contravention of the commissioner's regulations; 2) the superintendent did not adequately ensure that he served as a neutral hearing officer; 3) the superintendent failed to specifically indicate what was introduced into evidence at the hearing; 4) the superintendent made statements reflecting his unwillingness to consider some of petitioner's arguments; and 5) the student's advocate stated, and the district did not dispute, that the high school principal testified by reading a written, prepared statement into the record, which was not provided to the petitioner or entered into evidence at the hearing. The commissioner ordered the suspension expunged as well as the two suspensions received for similar conduct if it hadn't been done so already.

5. *Appeal of D.S.*, 61 Ed Dept Rep, Dec. No. 18,072 (2022).

Student was given and ingested a gummy containing TCH and reported to the nurse after experiencing symptoms. The incident report stated that the student who provided the gummy told the student what it was before she ate it. Thereafter, the student was suspended for knowingly ingesting the gummy and the parent appealed.

The commissioner of education sustained the appeal in favor of the student finding that: 1) the charge only consisted of a narrative summary; 2) the hearing officer did not make any credibility determinations to resolve conflicting testimony regarding the student's guilt; 3) the record did not contain a copy of any written recommendations made by the hearing officer with respect to guilt or penalty; and 4) guilt was not based on competent and substantial evidence. Therefore, the commissioner expunged both the short and long-term suspensions.

6. *Appeal of J.R.*, 61 Ed Dept Rep, Dec. No. 18,091 (2022).

The student was charged with: 1) possession of a vaping pen/substance; 2) attempted sale of drugs; and 3) subsequent retaliatory behavior. At the long-term suspension hearing, the student admitted to the charge of possessing the vaping pen/substance but denied the other charges. During the hearing, the parent requested to subpoena the parent of the student allegedly buying the drugs and the police officers that investigated the allegations but such was denied by

the hearing officer. Based solely on testimony from the principal, the student was found guilty of the first two charges. The parent appealed.

The commissioner of education sustained the appeal in favor of the student. The commissioner found that the hearing officer's rationale for denying the subpoenas was misplaced when he stated that the interest the district had in keeping student names confidential outweighed the parent's right to cross-examination. The commissioner noted that a parent's right to cross-examination is only limited when: 1) a student witness's identity is unknown to the student charged with misconduct; and 2) the school district "reasonably considers" the charged student to be "potentially" violent. Here, the parent of the student allegedly buying the drugs was an adult and not a student and was potentially identifiable. In addition, the hearing officer only relied upon the principal's statement that he did not know how it would work to get police officers to the hearing in rejecting that subpoena request. The commissioner found that these errors as well as the failure to adjourn the hearing to issue the subpoenas resulted in a violation of the student's right to a fair hearing was violated. The commissioner ordered expungement of the suspension based on both charges.

7. *Appeal of C.W.*, 61 Ed Dept Rep, Dec. No. 18,121 (2022).

The student displayed a suicide note to students in the school building, stated that he had a list of students he did not like on his phone, and asked a student if she had a gun he could use. The student was subjected to a "mental health arrest." The same day, the district provided an "incident report" to the parent indicating that the student was suspended for five days. The student was found guilty by a hearing officer and the superintendent adopted the report and issued a permanent suspension. A letter given to the parent stated she had only 15 days to appeal the decision. The parent appealed beyond the deadline and the district found the appeal untimely. The parent then appealed to the commissioner of education.

First, the commissioner found that the district failed to provide petitioner with legally sufficient written notice prior to the imposition of the student's short-term suspension as the suspension was issued before an informal conference and did not inform of such right as well as to call witnesses. Furthermore, the commissioner stated that the 15-day appeal deadline was too restrictive and inconsistent with due process, the Education Law, and sound educational policy. The commissioner also stated that normally there would be a remand for a new penalty but because the student was suspended on paper for over a year although he was attending a BOCES program, any further discipline would be inappropriately punitive.

Tenure

1. *Appeal of Wheeler*, 61 Ed Dept Rep, Dec. No. 18,083 (2022).

Petitioner was an assistant superintendent for curriculum and instruction in the tenure area of assistant superintendent for curriculum and instruction. Her position was abolished and she sought to be recalled from the preferred eligibility list after the district posted for the position of deputy superintendent for school improvement and community engagement. The district denied the request, stating the new position was in a different tenure area. The petitioner appealed.

The commissioner of education noted that unlike tenure areas for teachers, "there are no clearly defined guidelines or parameters for administrative tenure areas." Instead, school boards

may establish and maintain a single district-wide administrator tenure area or multiple defined administrative tenure areas. Accordingly, the commissioner stated that there is presumption of dissimilarity in tenure areas that may be rebutted by the person seeking recall. In this case, the administrator provided no evidence that the district did "not consider the two areas separate and distinct," and therefore was not entitled to be recalled for the new position. Additionally, even if the positions had been in the same tenure area, the administrator failed to establish that the job duties were similar. (see similar cases in decisions 18,102 and 18,112)

Transportation

1. *Appeal of Treacy*, 61 Ed Dept Rep, Dec. No. 18,038 (2021).

District amended its transportation policy that would not require it to transport general education students to nonpublic and parochial schools. The parents of a student who was previously transported to a nonpublic school appealed the decision.

The commissioner of education stated that a city school district may, but is not required to, provide transportation. Here, the district elected to provide transportation and its only obligation was to treat all similarly situated individuals alike. The district's change in policy still did that as students attending schools within a district and those attending schools outside of the district are not in "like circumstances." Furthermore, the parental challenge was based on the discretion of the city school district on providing transportation. The commissioner stated that this discretion is not conditioned upon the availability of a certain number of nonpublic schools or the availability of public transportation.

2. *Appeal of Azhagiriswamy*, 61 Ed Dept Rep, Dec. No. 18,070 (2022).

Petitioner mailed in a transportation request for the student to attend the nonpublic school prior to the deadline, in March 2021. However, in September 2021, the petitioner sent and email and spoke to the Director of Transportation, who said the request was never received and it was too late to make the request now. The district denied the request for transportation and the parent appealed.

The commissioner of education sustained the appeal and found that the petitioner was entitled to a presumption that she mailed the transportation request prior to the deadline because she swore to the steps she took for mailing. Although the commissioner also found that the district rebutted the presumption by offering an affidavit explaining the manner in which it received and recorded transportation requests to nonpublic schools, the commissioner still found for the petitioner as another parent in the district had made the same request and in the same manner and was also told the request was never received. The commissioner noted that it was unlikely for both requests to have been lost in the mail. The commissioner gave further guidance on procedures districts could try in dealing with transportation requests.

III. NYS EDUCATION DEPARTMENT'S CHIEF PRIVACY OFFICER DECISIONS

1. *In the Matter of a Privacy Complaint Filed Against Skaneateles CSD* (Nov. 30, 2021).

Parent filed a complaint with the Chief Privacy Officer (CPO) that the district disclosed personally identifiable information (PII) without consent to third-party service providers and

district employees who did not have a reason to have the information and that she was denied access to her child's records.

In this case, the CPO noted that while the district stated that the records were provided to the parent, the district did not provide evidence of the parent's receipt of the documents, nor did the parent confirm that she received the documentation. Therefore, the district was required to send a hard copy of the records to the parent within 30 days of receipt of the decision. In terms of the disclosure of information to third-party service providers and district employees, the CPO stated that the limited information provided in the complaint and investigation did not adequately describe all recipients of the PII and for what reason they received the PII. Therefore, the CPO cautioned the district to remain vigilant with its Education Law § 2-d and FERPA compliance.

2. *In the Matter of a Privacy Complaint Filed Against Fairport CSD* (Nov. 30, 2021).

An anonymous complaint filed with the Chief Privacy Officer (CPO) stated that a second grade teacher displayed students' names and pronouns, which would potentially indicate a student's gender identity, on a school hallway. It was alleged that consent was not obtained to disclose the information. The district stated that its actions were compliant with NYSED's July 2015, "Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students" and stated that it is unaware of any transgender or gender nonconforming students in the second grade. It was noted that that if a student used a nontraditional pronoun as part of the project, it would "allow the teacher to connect with the family to better understand the child." The district also claimed there was no breach of information or violation of privacy rights because this information is directory information and "used hundreds of times a day in schools" and that Education Law § 2-d was not enacted to address these issues.

Here, the CPO stated that based on the circumstances of this case, no students' PII was inappropriately released. The CPO cautioned the district, however, "to be mindful that protecting a transgender students' privacy is tantamount to ensuring their health and safety and cases must be addressed on a case-by-case basis. There should be no policy whereby a student's transgender or gender nonconforming status is publicly displayed, without an understanding of the implications and consent."

3. *In the Matter of a Privacy Complaint Filed Against North Shore Schools* (Dec. 1, 2021).

Taxpayer filed a complaint with the Chief Privacy Officer (CPO) alleging that the district disclosed student and family personally identifiable information (PII), specifically, names, addresses, and phone numbers, without consent to the president of the teacher's union to advocate for the budget. As a second violation, the taxpayer alleged that the district, in response to a Freedom of Information Law (FOIL) request, released PII pertaining to a specific student.

The district admitted that, pursuant to a 2020 FOIL request, it provided the president of the teacher's union with a list of the names, addresses, phone numbers and schools for all families with children enrolled in the district on June 2, 2020. The district stated that it released this information because it is directory information in accordance with FERPA, and the release, which was used to promote the district election, would benefit students in accordance with Education Law § 2–d(5)(b)(1). The district's further explained that it would not have released the information after it received guidance from the CPO on August 27, 2020, which was sent to all Data Protection Officers. That guidance consisted of an August 5, 2020 FOIL decision issued

by CPO explaining that Education Law § 2-d is more protective of PII than FERPA and that releasing information in a get-out-the vote effort was not sufficiently beneficial to students or educational agencies to justify the release of directory information. In light of this guidance, the district denied the 2021 FOIL request made by a complainant for the same information provided to the president of the teacher's union. With regard to the second allegation, the district admitted that it made a redaction error but states that the error involved one single page in a 29,000 page FOIL response. Once made aware of the disclosure, the district contacted the family and requested that the individual who received the FOIL disclosure immediately destroy the document.

The CPO found that district's 2020 release to the president of the teacher's union violated FERPA and Education Law § 2-d as it did not qualify as directory information in accordance with the district's directory information policy. In terms of the redaction error made to the FOIL response in the second allegation, the CPO found this release constituted an unauthorized disclosure or release of PII and should have been reported pursuant to commissioner's regulation. However, since the district took steps toward remediating the situation, the CPO stated that the district must review its policies concerning the required actions when an unauthorized disclosure or release occurs and review its policies regarding "directory information."

4. *In the Matter of a Privacy Complaint Filed Against Jericho UFSD* (Apr. 29, 2022).

A parent filed a complaint with the CPO alleging that students in the district took screenshot photos of a department spreadsheet that contained information including whether a student was a student with a disability, English language learner, 504 status, at risk for SEL, at risk academically, displaced, or qualified for free or reduced price lunch. The parent alleged that this information was disclosed to others. The district stated that the breach occurred when a guidance counselor inadvertently shared with 45 students a link to the document containing the PII of 286 of the incoming high school class of 2024. The guidance counselor mistakenly assumed the link could only be viewed by district staff and subsequently sent an email to "disregard" that message. This occurred in June 2020 but the district did not become aware of the disclosure until February 2022.

First, the CPO stated that commissioner's regulation section 121.4 along with Education Law § 2-d allows parents, eligible students, teachers, principals or other staff of an educational agency to file complaints about possible breaches and unauthorized releases of PII. Here, the parent only filed a complaint with the CPO and not the district as well. The CPO stated that the district's parent's bill of rights only gave information on filing a complaint with the CPO but failed to fully establish and communicate the procedures to file complaints about breaches or unauthorized releases of student data and/or teacher or principal data.

Second, the CPO determined that the district's investigation into the unauthorized release of PII was inadequate. When learning that the link was sent to 45 students, the district should have, "at minimum," determined if the link was accessible and if it was, how and when these students deleted the email. The request to "disregard" the email was insufficient. Furthermore, the district failed to file a data incident report with the CPO when the breach occurred back in June 2020. Noting that even if the breach was not discovered until February 2022, the district was required under the commissioner's regulation to report the data breach no later than 10 calendar days after the date it was discovered, which it did not do. Finally, the district failed to

comply with the commissioner's regulation in notification to the affected families. The CPO required the district to correct its numerous errors.

SELECTED NEW LAWS OF 2022

Annual Professional Performance Review (APPR)

Chapter 201 amends the Education Law to provide that a school district or BOCES shall not *be required to* complete an APPR for teachers or building principal in the 2021-22 school year and state funding shall not be withheld for not complying with the requirements of 3012-d (Educ. Law § 3012-d(17)).

Adult Survivors Act

Chapter 203 enacts the Adult Survivors Act which revives the ability of adult survivors to file certain claims. Revived claims include those alleging intentional or negligent acts resulting in physical, psychological, or other injury suffered when certain sexual offenses, as defined by law, were committed against them when such person was 18 or older and were barred or dismissed by the statute of limitations. The claims are revived for a one-year period beginning November 24, 2022 (six months after the law is effective) (Civ. Serv. Law § 214-j).

Criminal Possession of a Firearm, Rifle or Shotgun in Sensitive Locations

Chapter 371 § 4 amends the Penal Law to create a new crime related to possession of guns on school grounds. A person will be guilty of criminal possession of a firearm, rifle or shotgun in a sensitive location when such person possesses a firearm, rifle or shotgun in or upon a sensitive location and such persons knows or reasonably should know such location is a sensitive location (Penal Law § 265.01-e). The law takes effect September 1, 2022.

As relevant to schools, a sensitive place is defined as:

> in or upon any building or grounds, owned or leased, of any educational institutions, colleges and universities, licensed private career schools, school districts, public schools, private schools licensed under article one hundred one of the education law, charter schools, non-public schools, board of cooperative educational services, special act schools, preschool special education programs, private residential or non-residential schools for the education of students with disabilities, and any state-operated or state-supported schools.

However, the terms of the law do not apply to enumerated individuals including, for example:

- Consistent with federal law, law enforcement who qualify to carry under the federal law enforcement officers safety act
- Police officers as defined by Criminal Procedure Law § 1.20(34) and retired police officers
- Peace officers as defined by Criminal Procedure Law § 2.10
- Security guards who have been granted a special armed registration card while at the location of their employment and during their work hours as a security guard.

Freedom of Information Law

Chapter 155 repeals subdivision 6 of section 87 of the public officers law as added by Chapter 808 of the Laws of 2021. It further amends subdivision(2)(e) relative to the denial of records compiled for law enforcement purposes when such disclosure would interfere with law enforcement investigations or judicial proceedings. The law provides that any agency, which is not conducting the investigation that the requested records relate to that is considering denying access pursuant to this exception shall receive confirmation from the law enforcement or investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation (Pub. Off. Law § 87(2)(e)(i)).

Healthcare Workers Bonus Pay

Chapter 56 Part ZZ § 1 adds a new section to the social services law setting out terms and conditions under which healthcare and mental hygiene workers will be paid a bonus in state fiscal year 2023 not to exceed $3,000. The purpose of the bonus is to recruit, retain and reward such workers. School districts, boards of cooperative educational services, charter schools and other named educational entities are included among the list of employers who will pay out such bonuses. The Commissioner of Health is directed to seek federal funding to support funding the bonuses and to coordinate with the commissioner of labor and the Medicaid inspector general to develop a process for employers to report the hours worked by eligible employees and request reimbursement for issued bonuses. The list of employees to whom such bonuses may be paid includes but is not limited to physical therapists, occupational therapists, social workers, psychologists, speech therapists, licensed practical nurses and registered nurses. An employee must earn less than $125,000 annually to qualify for the bonus (Soc. Serv. Law § 367-w).

High School Diplomas

Chapter 26 amends the education law relative to awarding diplomas to a person under 21 years of age who is placed with, committed to, under the supervision of, detained or otherwise confined in any facility operated by a state department or agency or political subdivision which provides an educational program pursuant to Education Law § 112 or who is confined in a correctional facility. A school district of location will not be responsible for issuing a diploma if another school district provided credit bearing educational programming. The school district of location is the district in which the facility where the person is placed, committed or confined is located. The school district responsible for issuing the diploma must ensure the person has completed the minimum state diploma requirements (Educ. Law § 112-a).

Human Rights Law

Retaliatory Action

Chapter 140 expands the protections against retaliation afforded under the human rights law by including disclosure of an employee's personnel file because an employee has filed a complaint, testified or assisted in any proceeding pursuant to the human rights law unless such disclosure

was made in the course of commencing or responding to a complaint in any proceeding under that law or other civil or criminal judicial or administrative proceeding permitted by law (Exec. Law § 296(7)). Additionally, the law empowers the state Attorney General to commence a proceeding against an employer that has been, is, or is about to violate the provision regarding discriminatory retaliation practices (Exec. Law § 296(9)).

Victims of Domestic Violence

Chapter 202 expands the categories of protections afforded under the human rights law to victims of domestic violence. Previously, victims of domestic violence were afforded protection from refusal to hire, and harassment based upon their status or because an individual opposed practices prohibited under the human rights law or filed a complaint, testified or assist in any proceedings under the law (Exec. Law § 296(1)(a), (h)). As relevant to schools, Chapter 202 provides that it shall be an unlawful discriminatory practice to deny the use of educational facilities to any person otherwise qualified or to permit harassment of any student or applicant by reasons of that person's status as a victim of domestic violence (Exec. Law § 296(4)).

Immunization Database Access

Chapter 44 makes an amendment to the provisions of Chapter 733 of the Laws of 2021 that required school districts to be given the ability to batch download information from the state immunization database for students enrolled in the district. The law clarifies that schools with the technical ability to batch download records and shall receive access for only those children submitted by the school for which the school obtained a certificate of immunization or for which the school has the responsibility to verify immunization status for school attendance purposes pursuant to Public Health Law § 2164. Schools are required to safeguard such information and only use it for authorized purposes (Pub. Health Law § 2168(8)(d)(i)). Chapter 44 delayed the effectiveness of Chapter 733 of the Laws of 2021 until July 1, 2022.

John R. Lewis Voting Rights Act of New York

Chapter 226 enacts the John R. Lewis Voting Rights Act of New York. The law is applicable to school districts (Elec. Law §§ 17-204(4); 17-220).

The purpose of the law is to:

- Encourage participation in the elective franchise by all eligible voters to the maximum extent and
- Ensure that eligible voters who are members of racial, ethnic, and language minority groups have an equal opportunity to participate in the political processes of the state and especially the right to vote (Elec. Law § 17-200).

Pursuant to the act, state law, rules, regulations and local laws and ordinances are to be construed liberally in favor of protecting the rights of voters to have their ballots cast and counted, ensuring eligible voters are not impaired in registering to vote and that voters of race, color and language - minority groups have equitable access to fully participated in the electoral process including registering to vote and voting. Policies and practices that burden the right to vote must be narrowly tailored to promote a compelling policy justification that must be supported by substantial evidence (Elec. Law § 17-202).

The law defines protected class as a class of eligible voters who are members of a race, color or language-minority group (Elec. Law § 17-204(5)). Language minorities include persons who are American Indian, Asian American, Alaskan Native or of Spanish heritage (Elec. Law § 17-204(6)).

The act protects against voter disenfranchisement by prohibiting voter suppression and vote dilution. No board of elections or political subdivision (including school districts) can put in place laws, regulations, rules, policies or procedures that result in a denial or abridgement of the right of members of a protected class to vote. The law also prohibits use of a method of election which has the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections (Elec. Law § 17-206). At-large voting is defined within the law as a method of election in which all the voters elect each member of the governing body (Elec. Law § 17-204(1)(a)). A district-based method of election means a method of electing a governing body using a districting or redistricting plan wherein members elected to the body must reside in a specified district or ward within the geographic boundaries of the political subdivision and are elected only by voters who reside in that same district or ward (Elec. Law § 17-204(2)).

The law creates methods by which multiple categories of parties may bring action against a political subdivision for voter disenfranchisement. The parties who may commence actions include:

- An aggrieved person
- An organization whose membership includes aggrieved persons or members of a protected class
- An organization whose mission in whole or in part is to ensure voting access and such mission would be hindered by a violation of the act
- The attorney general of New York.

Remedies which may be imposed if a court determines a violation of the act has occurred range broadly and include but are not limited to:

- Implementing a district-based method of election
- Eliminating staggered elections so that all members of a governing body are elected at the same time
- Reasonably increasing the size of the governing body
- Transferring authority for conducting elections to the county board of elections
- Additional voting hours or days
- Additional polling locations
- Additional means of voting, such as voting by mail
- Ordering of special elections
- Expanded opportunities for voter registration.

The law explicitly prohibits moving the election of school board members to the November election, if the voters of the school district vote on a budget in May (Elec. Law § 17-206(5)). Prevailing parties are entitled to attorneys' and other fees as prescribed by law.

Beginning June 20, 2025, political subdivisions will be required to provide language assistance to language-minority voters when, based on data from the American community survey or data of comparable quality collected by a public office, it is determined that:

- more than two percent, but in no instance fewer than three hundred individuals, of the citizens of voting age of a political subdivision are members of a single language-minority group and are limited English proficient.
- more than four thousand of the citizens of voting age of such political subdivision are members of a single language-minority group and are limited English proficient.
- in the case of a political subdivision that contains all or any part of a Native American reservation, more than two percent of the Native American citizens of voting age within the Native American reservation are members of a single language-minority group and are limited English proficient. For the purposes of this paragraph, "Native American" is defined to include any persons recognized by the United States census bureau or New York as "American Indian" or "Alaska Native".

Such assistance includes provision of registration or voting forms, information and materials in the applicable language, except that if the applicable language is historically oral or unwritten then only oral instructions, assistance or other information is required to be furnished (Elec. Law § 17-208).

Lead Testing and Remediation

Chapter 130 reinstates a waiver process for school districts who have consistently tested below established lead levels. Under the law the commissioner of health is required to adopt regulations setting these standards (Pub. Health Law § 1110(4)). Additionally, the law provides that lead testing and remediation shall be building aid eligible to the extent such expenses are not covered by other state and federal resources (Educ. Law §§ 1950(5)(b); 3602(6)(b)(1), (6-h)).

New York City Mayoral Control

Chapter 364 continues mayoral control of schools in New York City. Some brief highlights:

- In section one of the law modifications were made to the appointment process to the city board and the length of the terms for members was reduced to one year. Members of the city board must complete required fiscal oversight and governance training within 3 months of taking office (Educ. Law § 2590-b).
- Section 4 of the law grants community district education council greater participation in the process for appointment of community superintendents by the chancellor (Educ. Law § 2590-e).
- Section 6 of the law requires that each public school is required to have a parent coordinator who will engage with parents and working with administration, parent associations and the community identify parent issues (Educ. Law § 2590-h).
- Section 8 requires the commissioner of education to conduct a comprehensive review and assessment of overall effectiveness of the city's school governance system; requires the commissioner to hold at least one public hearing in each borough; and the commissioner must issue a report to the governor and legislature by December 1, 2023.

Open Meetings Law

Chapter 1 amends the terms of Chapter 417 of the Laws of 2021 related to conducting meetings remotely. The law simplified the defined entities permitted to utilize its provisions by stating that any public body as defined in section 102 of the Public Officers Law may conduct meeting pursuant to the terms of the act. The law also extended the term of Chapter 417 providing it would be in effect until the expiration or termination of the state disaster declared emergency pursuant to Executive Order number 11 of 2021.

Chapter 56 Part WW § 1 amends the Public Officers Law to require that a public body must allow the public the opportunity to attend, listen and observe meetings in at least one physical location (Pub. Off. Law § 103(c)).

Chapter 56 Part WW § 2 adds a new section to the law regarding videoconferencing by public bodies, including school districts. Section 103-a permits meeting by videoconferencing without all locations being open to the public in the following circumstances:

- A minimum number of members are present in a location open to the public to meet the quorum requirement.
- The governing board has adopted a law or resolution following a public hearing authorizing use of video conferencing under these circumstances.
- The public body adopted written procedures governing member and public attendance consistent with § 103-a and the procedures are posted on the website of the public body.
- Members of the public body shall be physically present at meetings unless such member is unable to be physically present due to extraordinary circumstances as set forth in the public body's resolution and written procedures, including disability, illness, caregiving responsibility, or any other significant or unexpected factor or event which preclude a member's physical attendance.
- Members of the public body must be able to be heard, seen, and identified while meeting is conducted (excepting executive sessions).
- Minutes of the meeting must note which members were physically present and who were remote.
- Public notice of meeting must inform public the videoconferencing will be used, where the public may view and/or participate in such meeting, where required documents and records will be posted or available and identify the physical location for the meeting where public may attend.
- Such meetings must be recorded, and recordings posted or linked on the public body's website within five days of the meeting and remain available for five years. Recordings must be transcribed upon request.
- Members of the public must have the opportunity to view via video the meeting and to participate via video to the same extent as those in person for any public comment period.
- The public body must use technology to permit access by members of the public with disabilities, consistent with the Americans with Disabilities Act.

Public bodies will not be subject to the in-person requirements for a quorum of the board during any state disaster emergency or a local state of emergency if the public body determines the

circumstances necessitating the declared emergency would affect or impair its ability to hold a meeting in person (Pub. Off. Law § 103-a).

For further information see NYS Department of State Committee on Open Government Q&A, and other resources at: https://opengovernment.ny.gov/chapter-56-laws-2022-guidance-document and https://opengovernment.ny.gov/system/files/documents/2022/04/oml-information-session_041422.pdf.

Prevailing Wages

Chapter 119 makes an amendment to the Labor Law provisions enacted by Chapter 823 of the Laws of 2021. The law clarifies that prevailing wages must be paid on public works worksites for any work involving the delivery to and hauling from such projects of aggregate supply construction materials, as well as any return hauls, whether empty or loaded and any time spent loading/unloading. Previously the law did not include the work worksites (Labor Law § 2203-a)(f)).

Probationary Appointments

Chapter 201 provides that previously tenured teachers who accept a new position in the 2020-21, 2021-22, 2022-23 school years will be entitled to a shortened probationary period if they received an APPR evaluation rating in the 2017-18 or 2018-19 school year rather than in the final year of service as is typically required (Educ. Law §§2509(1)(a)(ii); 2573(1)(a)(ii); 3012(1)(a)(ii)). Similar circumstances apply to appointment made by boards of cooperative educational services, except that the APPR rating the teacher received in 2017-18 or 2018-19 must have been highly effective or effective (Educ. Law § 3014(1)(b)). For further information see NYS Education Department, Office of Educator Quality and Professional Development, *2021-22 School Year Annual Professional Performance Review Update* (May 18, 2022) at: http://www.nysed.gov/common/nysed/files/memo_appr-2022_final.pdf.

Retirees- Earnings Waiver

Chapter 56 Part HH provides that public sector retirees may be employed in a position for a school district or board of cooperative educational services without prior approval or any affect upon his or her status as retired and without suspension or diminution of retirement allowance. Neither will such earnings be subject to the cap imposed by Retirement and Social Security Law § 212(1) and (2) (Retir. & Soc. Sec. Law § 211(9)). The law is effective through June 30, 2023.

Retirement

Vesting

Chapter 56 Part TT §§ 1 and 2 amends the retirement and social security law by eliminating the need to have ten or more years of credited service in the system before members of Tiers V and VI are considered vested. Members will be vested after five years of credited service (Retir. & Soc. Sec. Law §§ 526(a); 612(a), (a-1)).

Minimum Service Credit
Chapter 56 Part TT §§ 3 and 4 amends the retirement and social security law to provide members in Tiers V and VI have a minimum service credit of five years instead of 10 in order to qualify for benefits (Retir. & Soc. Sec. Law §§ 502(a); 602(a)).

School Cafeterias

Chapter 47 repeals Executive Law § 376-b as added by Chapter 753 of the Laws of 2021 in relation to provisions governing the securing of grease traps and interceptors at food service establishments. The law provides instead that the standards governing grease traps/interceptors be added to Executive Law § 378, which provides the standards that must be covered in the State Uniform Fire Prevention and Building Code (Exec. Law § 378(18)). Any food service establishment as defined in 10 NYCRR § 14-1.20, with a grease trap must ensure that such trap or interceptor is designed to withstand expected loads and prevent unauthorized access. Such standards will apply to all new and existing grease traps/ interceptors and must also address installation of a warning sign or symbol (*Id.*).

School District Elections

Chapter 172 extends the provisions of Chapter 60 of the Laws of 2021 regarding absentee ballots through December 31, 2023. Chapter 60 of the Laws of 2021 amended relevant provisions of the education law to provide that the definition of illness for purposes of requesting an absentee ballot shall include, but not be limited to, instances where a voter is unable to appear personally at the polling place because there is a risk of contracting or spreading a disease that may cause illness to the voter or other members of the public (Educ. Law §§ 2018-a (school districts with personal registration), 2018-b (districts without a system of registration), 1951 (BOCES)).

School Lunch Program

Chapter 56 transfers part of the oversight of operations of school lunch programs to the Department of Agriculture and Markets. That Department will be responsible for certifying to the State Education Department the school lunch programs that qualify for additional state subsidy based upon purchasing at least 30% of its total cost of food products for the lunch program from New York state farmers, growers, producers or processors. SED will make payment to the school lunch programs that qualify for the subsidy as certified by the Department of Agriculture and Markets (L. 1976 Ch. 537 § 5).

School Safety

Panic Alarm Systems
Chapter 227 requires a district-wide school safety team to consider the installation of a panic alarm system as part of its annual review. A panic alarm system is defined to mean a silent security system signal generated by the manual activation of a device intended to signal a life-threatening or emergency situation requiring a response from law enforcement. Such systems

may include a wired panic button, wireless panic button or a mobile or computer application (§ 2801-a(2)(f)). A decision to utilize a panic alarm system would ultimately be incorporated as part of a building-level emergency response plan (Educ. Law§ 2801-a(3)(d)).

Threat of Mass Harm
Chapter 206 creates the crimes of mass harm and aggravated mass harm within the Penal Law. A person is guilty of making a threat of mass harm to a school when with intent to intimidate a group of people or to create \public alarm a person threatens to inflict or cause to be inflicted serious physical injury or death at a school and thereby causes a reasonable expectation of fear of serious physical injury or death or causes the evacuation or lockdown of a school. A defendant may not offer as a defense that they did not have the intent or capability of creating such harm. A threat of mass harm is a class B misdemeanor (Penal Law § 240.78).

A person is guilty of aggravated threat of mass harm when such person engages in the conduct defined in Penal Law § 240.78 (threat of mass harm) and has made any overt act in commission of such crime, such as:
- Making a plan to carry out such threat;
- Compiling a list of targets;
- Possession of any weapon or device that may be used to carry out such threat; or
- Other preparatory action.

Aggravated threat of mass harm is a class A misdemeanor (Penal Law § 240.79).

School Taxes

STAR Program
Chapter 59 Part Z Subpart A § 1 amends the real property tax law to provide that if the commissioner grants a late application for an enhanced exemption such that the assessment roll cannot be changed the amount of savings payable based upon the exemption will be made directly to the taxpayer from designated state funds (Real Prop. Tax Law § 425(6)(a-2)).

Chapter 59 Part Z Subpart D clarifies the terms under which the state will share information regarding taxpayers receiving the STAR credit with entities outside the state (Tax Law § 606(eee)(7)(B)).

Homeowner Tax Rebate Credit
Chapter 59 Part BB § 1 establishes the terms under which a Homeowner Tax Rebate Credit will be awarded in 2022 (Tax Law 606(n-1). This rebate program is valid for one year. For more information see: https://www.tax.ny.gov/pit/property/htrc/lookup.htm.

Sexual Harassment Hotline

Chapter 138 establishes a toll-free confidential hotline for complaints of workplace sexual harassment. The hotline will be operated by the State Division of Human Rights during regular business hours and will be staffed by attorneys providing pro bono counsel. Employers must include information about the hotline in any materials employers must post or provide to

employees regarding sexual harassment (Exec. Law. § 295(18). The law becomes effective July 14, 2022.

Special Education

Extended Attendance Provisions
Chapter 223 extends the eligibility of students with disabilities who turned 21 during the 2021-2022 school year to receive specified educational services in the 2022-2023 and 2023-24 school years. Those receiving educational services pursuant to an individualized education plan (IEP) may continue to receive those services until the student completes the services pursuant to the IEP or turns age 23, whichever is sooner.

State Aid

Foundation Aid Maintenance of Equity Aid
Chapter 56 Part A § 3 sets out the conditions under which Foundation Aid Maintenance of Equity Aid will be awarded to school districts subject to state level maintenance of equity requirements pursuant to specified provisions of the federal American Rescue Plan Act. Eligible school districts as defined in law will receive an apportionment of Foundation Aid Maintenance of Equity Aid if it is determined by the commissioner in consultation with the director of the budget that an eligible district would otherwise receive a reduction in state funding on a per pupil basis inconsistent with the federal state level maintenance of equity requirement. The apportionment shall be equal to the amount necessary to meet the federal maintenance of equity requirement (Educ. Law § 3602(4-a)).

Updated Plans for ESSER Funds
Chapter 56 Part A § 5-a requires school districts receiving funding from the Elementary and Secondary School Emergency Relief funding under the American Rescue Plan Act to post an updated plan of how such funds will be expended on its website and submit such plan to the State Education Department. Chapter 56 Part A § 9-a of the Laws of 2021 established the requirements for the initial plan for the monies. The updated plan must include how such funds will be expended and how the LEA will prioritize spending on non-recurring expenses as defined in Chapter 56 Part A § 9-a(1), as well as an analysis of public comment, goals and ratios for pupil support, detailed summaries of investments in current year activities and balance of funds spent in priority areas.

For further information see NYS Education Department, Office of State Aid website at https://www.oms.nysed.gov/faru/FA__ARP_Form_Notification_and_Guidance.html.

Required Plans Based Upon Foundation Aid Increase
Chapter 56 Part A § 5-b amends the requirements first imposed by Chapter 56 Part A § 10-d of the Laws of 2021 requiring school districts that receive an increase in foundation aid of 10% or $10 million to complete plans on how these funds will be used to address student performance and need. Updated plans must be completed and posted to school district websites by July 1 of 2022 and 2023. Plans submitted in 2022 must include additional items beyond those needed in

2021 including goals and ratios for pupil support, and detailed summaries of investments in current year initiatives and balance funds spent in priority areas. Plan must include an analysis of public comment. Plans must be submitted to the State Education Department in a form prescribed by the department. The department must then post all collected plans to its website. Plans only need to address the foundation aid increase, not the total amount of foundation aid a district will receive.

For further information see NYS Education Department, Office of State Aid website at https://www.oms.nysed.gov/faru/FA__ARP_Form_Notification_and_Guidance.html.

Session Days
Chapter 56 Part A § 7 modifies Education Law § 3204(4)(a) to provide a school must be in session for 180 days exclusive of legal holidays that occur during the school year and exclusive of Saturdays (previously it stated 190 days inclusive of legal holidays) (Educ. Law § 3204(4)(a)).

Late Cost Reports Aid Forgiveness
Chapter 56 Part A § 9 establishes a comprehensive approach of aid forgiveness for building costs that were properly expended that would have otherwise been subject to penalties for late filing of forms due to inadvertent administrative or ministerial oversight (Educ. Law § 3602(6)(k)).

Chapter 56 Part A § 10 establishes a comprehensive approach to aid forgiveness due either to the late filing of transportation contracts or improper advertising for such contracts that would otherwise have been subject to penalties where the mistakes were due to inadvertent administrative or ministerial oversight or due to extenuating circumstances (Educ. Law § 3625(5)).

Broadband Expansion
Chapter 58 Part MMM § 1 enacts the WIRED Act (Working to Implement Reliable and Equitable Deployment of Broadband). The law creates the Division of Broadband Access and establishes multiple grant programs to facilitate implementation of greater broadband access in unserved and underserved areas of the state (NYS Urban Dev. Corp. Act § 10-gg).

Recover from COVID Grants
Chapter 53 appropriates $100 million over two school years (2022-23 and 2023-24- $50 million each year) to award grants pursuant to a plan developed by the commissioner of education and approved by the director of the budget for school districts and boards of cooperative educational services to address student well-being and learning loss in response to the COVID-19 pandemic through:

- Employment of mental health professional, expansion of school-based mental health services and other evidenced-based mental health supports for students and staff
- Creation or expansion of summer learning, after-school, or extended day and year programs for students.

The law directs that such grants be awarded based on factors including but not limited to:

- Measures of need of students to be served

- The school district's proposal to target the highest need schools and students/ the BOCES proposal to target highest need students
- Extend to which the district or BOCES' proposal would address student learning loss or well-being in response to trauma of pandemic
- Extent to which proposal would provide delivery of services directly in school buildings
- Extent to which the proposal maximizes the number of students served
- Proposal quality.

Tenure

Chapter 201 modifies the terms under which teachers and building principals may be awarded tenure for those appointed to probationary period in the 2017-18 through 2021-2022 school years (see Educ. Law §§ 2509(2)(b); 2573(5)(b), (6)(b); 3012(2)(b); 3014(2)(b). The following chart explaining the terms under which tenure may be granted is excerpted from NYS Education Department, Office of Educator Quality and Professional Development, *2021-22 School Year Annual Professional Performance Review Update* (May 18, 2022) at: http://www.nysed.gov/common/nysed/files/memo_appr-2022_final.pdf.

School Year Educator was Appointed to Probationary Term	**Tenure Eligibility Criteria Under Chapter 201 of the Laws of 2022**
2017-2018	• Educator received either an Effective (E) or Highly Effective (HE) rating in at least one of the four preceding school years; and • did not receive an Ineffective (I) rating in the final year of their probationary period (or the most recent year a score was received if no overall rating was received in the final year). *
2018-2019	• Educator is not required to have received any overall evaluation ratings for three consecutive years; and • did not receive an Ineffective (I) rating in the final year of their probationary period (or the most recent year a score was received if no overall rating was received in the final year). *
2019-2020	• Educator is not required to have received any overall evaluation ratings for three consecutive years; and • did not receive an Ineffective (I) rating in the final year of their probationary period (or the most recent year a score was received if no overall rating was received in the final year). *
2020-2021	• Educator received either an Effective (E) or Highly Effective (HE) rating in at least one of the four preceding school years; and • did not receive an Ineffective (I) rating in final year of their probationary period (or the most recent year a score was received if no overall rating was received in the final year). *
2021-2022	• Educator received either an Effective (E) or Highly Effective (HE) rating in at least two of the last four preceding school years; and • did not receive an Ineffective (I) rating in final year of their probationary period (or the most recent year a score was received if no overall rating was received in the final year). *

* Eligibility for tenure is always subject to the superintendent of school's recommendation. Prior to recommending an educator for appointment on tenure, the superintendent of schools must find that such educator is competent, efficient, and satisfactory. Additionally, for those classroom teachers and building principals who did not receive an overall evaluation rating during the 2019-20 through 2021-22 school years, the superintendent of schools must find that the classroom teacher or building principal would have been qualified for appointment on tenure based upon performance, notwithstanding that their evaluations were not completed, and no overall rating was received.

Transportation Contracts

Chapter 56 Part A § 11-a amends the education law to permit the electronic filing of a transportation contract on a form approved by the commissioner of education when available (Educ. Law § 3625(1)).

Chapter 56 Part A § 11 establishes the terms under which a transportation contract may be submitted electronically to the commissioner of education. If a school district submits a contract electronically it must contain a certification on an approved electronic form rather than an original signature as required for filed paper copies (Educ. Law § 3625(2)).

Universal Prekindergarten Programs

Chapter 56 Part A § 17-a sets out beginning with the 2022-23 school year a school district operating a prekindergarten program pursuant to section 3602-ee may annually apply for a waiver by August 1st relative to employment qualifications of staff offering prekindergarten services. The waiver allows personnel employed by an eligible agency approved or licensed by other than the state education department that is collaborating with the school district to provide prekindergarten services, to meet staff requirements of the licensing or registering agency. The commissioner must annually file a report on such waivers with information detailed by law (Educ. Law § 3602-ee(8)(c)).

Chapter 56 Part A § 17-b sets out beginning with the 2022-23 school year a school district operating a prekindergarten program pursuant to section 3602-e may annually apply for a waiver by August 1st relative to employment qualifications of staff offering prekindergarten services. The waiver allows personnel employed by an eligible agency approved or licensed by other than the state education department that is collaborating with the school district to provide prekindergarten services, to meet staff requirements of the licensing or registering agency. The commissioner must annually file a report on such waivers with information detailed by law (Educ. Law § 3602-e(12)(d)).

Zero-Emission School Buses

Chapter 56 Part B, subpart A § 1 adds a new section to the education law (§ 3638) regarding purchase and use of zero-emission school buses. A zero-emission school bus is a bus propelled

by an electric motor that draws power from a hydrogen fuel cell or battery or otherwise operates without direct emission of atmospheric pollutants. Highlights of the law include:

- By July 1, 2027, school districts may only purchase or lease zero-emission buses and must include in bids for transportation contracts that the contractor must only use such buses. Additionally, procurement contracts for retrofitting or manufacture of such buses and charging or fueling infrastructure need to include clauses that such products be produced or made in whole or substantial part in the United States or its territories and that final assembly of such buses and related infrastructure occur in the United States or its territories.
- The commissioner may grant a one-time extension of up to 24 months to meet these requirements pursuant to terms defined in law.
- With respect to the requirement that procurement contracts include mandates for American produced or assembled products, the commissioner may grant a waiver under specified circumstances after a hearing and opportunity for public comment. This determination must be made on an annual basis no later than December 31st. If the commissioner determines for three consecutive years no waiver is needed, an annual determination will no longer be required.
- By July 1, 2035, school districts may only operate and maintain zero-emission buses and must include such requirement in contracts for student transportation.
- Prior to beginning the procurement process school districts must create a workforce development report addressing job loss and creation as a result of the procurements, identify gaps in skills of current workforce related to maintenance and operation of zero-emission buses, charging infrastructure or equipment and include a comprehensive plan to transition, train or retrain employers impacted by such purchase and leases that contains an estimated budget for the costs of such employee transition and training.
- Notify any employees' collective bargaining representative of any substantial impact on its members or unit including positions that may be affected, altered or eliminated prior to beginning the procurement process for zero-emission buses and related infrastructure.
- Nothing in the law alters the existing rights of employees of school districts. Further no employee shall be subject to discharge, displacement or loss of position who agrees to retraining.

Chapter 56 Part B, Subpart A § 2 establishes that expenses for purchase, lease construction or installation of zero-emission school bus charging stations shall be an aidable expense (Educ. Law § 3623-a(2)(f)).

Chapter 56 Part B, Subpart A § 3 establishes the amortization for zero emission school buses and related costs pursuant to 3623-a(2)(f) shall be twelve years (Educ. Law § 3602(7)(e)).

Chapter 56 Part B, Subpart A § 4 provides that fuel includes electricity used to charge or hydrogen used to refuel zero-emission buses for the aidable transportation of pupils but shall not include electricity or hydrogen used for other purposes (Educ. Law § 3623-a(1)(e)(7)).

Chapter 56 Part B, Subpart A §§ 5 and 6 permit common and union free school districts to enter in leases for twelve years for zero-emission buses (Educ. Law §§ 1604(21-a), 1709(25)(i)).

Chapter 56 Part B, Subpart B § 1 establishes that the New York State Energy Research and Development Authority shall provide technical assistance to school districts regarding the operation and management of zero-emission buses and the charging of such fleets, as well as pursuing state and federal grants and other funding opportunities (Pub. Auth. Law § 1854(22), (23)).

Chapter 58 Part OO § 7 dedicates $500 million of the Clean Water, Clean Air and Green Jobs Bond Act monies to the purchase or conversion to zero-emission school buses and supporting infrastructure (Env. Conserv. Law §§ 58-0701, 58-0703(h)). *Note the public will vote to approve the bond act at the November 2022 general election.

EXTENSIONS OF CURRENT LAWS

Conditional and Emergency Conditional Appointments
Chapter 56, Part A § 24 extends until July 1, 2023, the ability of school districts, BOCES and charter schools to make conditional and emergency conditional appointments while awaiting the outcome of criminal history record checks.

Contracts for Excellence
Chapter 56 Part A §1 amends Education Law § 211-d to provide that a school district which submitted a contract for excellence for the 2021-22 school year must submit a contract for excellence for the 2022-23 school year unless all schools in the district are identified in good standing. Such contract must provide for the expenditure of an amount which is not less than the amount approved by the commissioner for the 2021-22 school year (Educ. Law § 211-d(1)(e)).

Disposal of Surplus Computer Equipment
Chapter 196 extends the provisions of the general municipal law allowing for donation of surplus computer equipment by municipalities to public schools, public libraries and other public and private institutions for secular educational purposes through July 1, 2025 (see Gen. Mun. Law § 104-c).

Employee Leave Time
Chapter 234 extends for an additional year the effectiveness of the provisions of the civil service law which permit public employees to take a paid leave of absence not to exceed four hours per vaccine injection to get vaccinated against COVID-19 (unless entitled to a greater benefit pursuant to a collective bargaining agreement). Such leave may not be charged against an employee's accrued leave. Employees are eligible to take such leave through December 31, 2023 (Civ. Serv. Law § 159-c).

Gun Free Schools, Safe School Transfer
Chapter 56, Part A § 25 makes permanent, the state law provisions implementing the federal Gun Free Schools Act and provisions of the education law relative to attendance at a safe public school.

Preschool Evaluations
Chapter 339 extends to June 30, 2024, the ability of a multidisciplinary evaluation program licensed under Education Law § 4410 to employ a certified school psychologist to conduct an evaluation of a preschool child or an infant or toddler suspected of having a disability (Educ. Law § 4410(6)(d)).

Rochester City Schools District Purchasing from BOCES
Chapter 56, Part A § 31 makes permanent the authorization for the Rochester City School District to purchase required health and medical services with the consent of the BOCES board in its geographical area by adding a new subdivision to the law (Educ Law § 1950(8-d)).

Student Records and Homeless Students
Chapter 56, Part A § 26 makes permanent of provisions of law related to homeless students and the transfer of disciplinary records (Educ. Law §§ 3209(1)(a), (2-a); 3214(7)).

Traffic Safety
Chapter 229 extends the provisions of the photo speed violation monitoring system in school zones in New York City through July 1, 2025. Additionally, the law eliminates the limitation on hours of operation of such systems (previously only operational between 6 am and 10 pm) and requires signs stating "photo enforced" be included below speed limit signs (Veh. & Traf. Law § 1180-b(1), (2)).

Transportation Contracts
Chapter 56 Part A § 27 extends until January 1, 2028, the ability of school districts and transportation contractors to make amendments to such contract upon finding an amendment necessary to comply with federal, state or local laws, rule or regulation imposed after the execution of the contract or to enhance safety subject to approval by the commissioner of education (Educ. Law § 305(14)(d)).

Universal Prekindergarten Program (UPK)
Chapter 56 Part A § 17 extends the authority of the State Education Department to administer the full-day UPK program through June 30, 2023 (Educ. Law § 3602-ee(16)).

Wage Deductions
Chapter 301 extends the applicability of the wage deductions permitted pursuant to Labor Law section 193 by two years through November 6, 2024 (Labor Law § 193; see original Chapter Law 451 of Laws of 2012).

LAWS THAT PASSED BOTH HOUSES AWAITING ACTION BY THE GOVERNOR

Assessment of Real Property

Property owned by cooperative corporation or on condominium basis
A.3491-B/S.5946-B amends the real property tax law and the real property law with respect to assessment of property owned by a cooperative corporation or on a condominium basis. Currently the law provides that property owned on a cooperative or condominium basis shall be assessed at a sum not exceeding the assessment which would be placed upon such parcel were the parcel not owned or leased by a cooperative corporation or on a condominium basis. This law would permit municipal corporations other than a special assessing unit (i.e. New York City and Nassau County) to remove that restriction on assessment for property owned by a cooperative corporation or on a condominium basis constructed after January 1, 2023. School districts may pass a resolution to remove such restriction. These provisions do not apply to property that is participating in an affordable housing tax credit program or has an agreement with federal, state or local authorities related to affordable housing requirements (see Real Prop. § 339-y; Real Prop. Tax Law § 581(d)).

Notice of intent to seek change in assessment of property subject to PILOT agreement
S.953-A/A.944-A adds a new provision to the real property tax law that requires owners of property subject to a payment in lieu of taxes (PILOT) agreement who wish to seek a change in the assessed value of the property to provide notice to the agency, county, town, village, city or school district of the intent to seek a change in assessment 45 days prior to filing for such change in assessment (Real Propr. Tax Law § 561-a).

Display of Posters on Veterans' Benefits

A.3913-B/S.1961-B amends the labor law to require all employers with more than 50 full time employees to display a poster created by the Department of Labor in consultation with the Division of Veterans' Services explaining services and benefits available to veterans. The law would take effect January 1, 2023 (Lab. Law § 201-h).

Dyslexia and Dysgraphia Taskforce

A.2185-B/S.441-C establishes a Dyslexia and Dysgraphia taskforce that will examine appropriate and effective evidence-based dyslexia and dysgraphia screening methods, reading interventions and other educational supports for children in grades K-5. The taskforce will be chaired by the commissioner of education or the commissioner's designee an include nine other members with backgrounds and expertise as specified in law. The taskforce will prepare a report for the governor and Legislature after at least two public hearings. The act would take effect January 1, 2023 and be deemed repealed August 1, 2024.

Electronic Display of Posters

A7595/S.6805 amends the labor law to require in addition to the physical posting of any required notices pursuant to state or federal law, that an employer also must make digital versions of such notices available through the employer's website or by email. Employers must provide notice to employees of the digital availability of these notices (Labor Law § 201).

Environmental Standards for Ambient Lead and Lead Contamination

A.5541-B/S.8040-A requires the department of environmental conservation, in consultation with the department of health to propose new standards and update any existing standards as appropriate for ambient levels of lead contained in soils, on floors and windowsills Such updated standards will result in blood levels that are no higher than a target that is fully protective of human health and which at a minimum include consideration of the recommendations from the centers for disease control. The law requires the updates standards to be proposed by March 31, 2023 and that a report will be issued by June 1, 2023.

First Aid Training for Coaches

A.9534-A/S.8615-A provides that a teacher or person unable to receive a valid certificate of completion of a course in first aid due to a physical disability may coach any athletic activity if there is another teacher or person who is certified in first aid who is present with such uncertified teacher or person for all practices, scrimmages and during competition (Educ. Law § 3001-b(2), (3))

Freedom of Information Law

Definitions of Retiree and Beneficiary

A.5469/S.190 amends the freedom of information law by including definitions for retiree and beneficiary. A retiree means a former officer or employee of an agency, the state legislature, or the judiciary who was a member of a public retirement system as defined by Retirement and Social Security Law § 501(23) and is receiving or is entitled to receive a benefit from such public retirement system (Pub. Off. Law § 86(10)). A beneficiary is a person designated by a member of a public retirement system as defined by Retirement and Social Security Law § 501(23) to receive retirement or death benefits following the death of the retiree (Pub. Off. Law § 86(11)). Additionally, section 89 of the Public Officers Law is amended to clarify that the home address of a retiree of a public retirement system and the name and address of a beneficiary of a public retirement system is not required to be disclosed pursuant to a FOIL request.

Fees for Requested Records

A.4677-A/S.4863-A amends the freedom of information law to provide an agency may not charge a fee for a FOIL request where an identical record was prepared within the past six months and an electronic copy of such record exists. Additionally, if more than one request is

made for an identical record before any such request has been fulfilled, any fees charges shall be apportioned equally among the requestors (Pub. Off. Law § 87(1)(b)(iii)).

Holocaust Education

A.472-C/S.121-B authorizes the commissioner of education to conduct a survey regarding the instruction of the Holocaust within the state. Education Law section 801 requires instruction about the Holocaust. The survey will be designed to include questions about how the school district is meeting the learning standards for instruction on the Holocaust and an attestation from the superintendent that instruction about the Holocaust is included at all appropriate grade levels. Based upon the survey the commissioner shall prepare a report for the governor and specified members of the Legislature on the first day of January after the law becomes effective or 120 days after the law becomes effective, whichever is later. School districts that either do not reply to the survey or do not affirmatively attest that Holocaust instruction is provided will be required to implement a corrective action plan.

Human Rights Law

Statewide Campaign Related to Diversity
A.5913-A/S.123-A adds a new section to the human rights law creates a statewide campaign for the acceptance, inclusion, tolerance, and understanding of diversity. The State Division of Human Rights has responsibility to implement such campaign and shall cooperate with public and private organizations including local governments, community groups, school districts, churches, charitable organizations, foundations and other relevant groups to develop educational materials to be published on the website of the division, social media campaigns and other means (Exec. Law § 294-a).

Citizenship/ Immigration Status Protected by Law
A.6328-A/S.6586-A expands the protections under the human rights law to include citizenship or immigration status. Citizenship and immigration status means the citizenship of any person or the immigration status of any person who is not a citizen of the United States. Nothing in the article shall preclude verification of citizenship or immigration status where required by law, notation of citizenship or immigration status where required by law, nor shall an adverse action based on verification be prohibited where such verification is required by law (Exec. Law § 41)). It shall be an unlawful discriminatory practice for an employer to refuse to hire or permit harassment on the basis of citizenship or immigration status (Exe. Law § 296(1)(a), (h)). Additionally for educational institutions it shall be an unlawful discriminatory practice to deny the use of educational facilities to any person otherwise qualified or to permit harassment of any student or applicant by reasons of that person's citizenship or immigration status (Exec. Law § 296(4)). The attorney general is authorized to seek enforcement of the laws of the state by reason of a person's citizenship or immigration status (Exec. Law § 63(9), (10)).

Industrial Development Agencies

Notice of Projects
S.3256/A.10056 Section one of the bill requires an industrial development agency that has adopted a resolution describing a project to deliver a copy of such resolution to affected taxing jurisdictions by certified mail return receipt requested. In the case of a school district the IDA must send notice to the school board and the district superintendent of the district (Gen. Mun. Law § 859-a(1-a). Section two of the bill requires when an IDA deviates from the uniform tax exemption policy it established it must notify by certified mail return receipt requested the affected local taxing jurisdictions of the proposed deviation. When notifying schools districts notice must be send to the school board and the district superintendent of the school district (Gen. Mun. Law § 874(4)(b)).

Notice of Termination of PILOTs
S.4471-A/A.7295-A Section 1 of the bill amends the general municipal law to require notification of the expiration of a PILOT agreement be delivered to affected taxing jurisdictions two years prior to its expiration and immediately upon early termination of an agreement (Gen. Mun. Law § 858(15)).

Nominating Petitions in Buffalo City School District

A.9423-A/S.8409-A reduces the number of signatures required for petitions for nomination in the Buffalo City School District. Those seeking a seat in a subdistrict would need at least 200 signatures (prior was 500) and those running for an at large seat on the board would need 400 signatures (prior was 1000) (Educ. Law § 2553(10)(d)(1)).

Prevention of Lead Levels in Children

S,5024-D/A.7325-C Section four of the bill adds pre-kindergarten and kindergarten programs licensed certified or approved by any state or local agency to the list of entities that must request enrollees in the program furnish proof of lead screening prior to or within three months of enrollment of a child less than six year of age. If a parent or legal guardian does not offer such proof then the entity must provide the parent or guardian with information on lead poisoning in children, prevention of lead poisoning and refer them to a primary care provider or local health authority (Pub. Health Law § 1370(d)(1), (2)). Section five of the bill adds operators of prekindergarten programs to the list of entities able to access the statewide immunization database which also contains records regarding lead testing (Pub. Health Law § 2168(8)(d)).

Public Employment Relations Board

S.9403-A/A.10457-A amends the labor law to modernize the practices of the Public Employment Relations Board (PERB). Section one of the bill adds a new section of law requiring PERB to establish rules authorizing an electronic filing (e-filing) program for specified proceedings before it (Labor Law § 708-a). Section two of the bill amends section 708 of the Labor Law to incorporate the provisions for e-filing and provide until such provisions are implemented parties

should provide courtesy digital copies via email to those served by regular mail unless such party does not have access to send copies via email or it would impose an undue burden (Labor Law § 708 (5)). Section three of the bill adds new subdivision requiring PERB to create a publicly accessible decision index to be posted to its website (labor Law § 710-a). Section four of the bill adds a new section directing PERB to create information for employers and employees of the rights afforded under law and post such material to its website in English and in the twelve most common languages other than English spoken in the state as determined by the most recent American Community Survey published by the United States Census Bureau (labor Law § 710-b).

Purchasing

American Salt
A.7919-A/S. 9441 enacts the Buy American Salt Act. The act implements a requirement that municipalities include clauses in contracts for purchase of rock salt that such product be mined or hand harvested in the United States. Exceptions apply in circumstances defined by law (Gen. Mun. Law § 104-d).

Piggybacking
S.8717/A.9880 extends until June 30, 2026, the ability of school districts and other municipalities to "piggyback" onto contracts of the federal government, states, and other municipalities that were competitively bid consistent with the provisions of the general municipal law for the purchase of materials, equipment or supplies and contracts for the installation, maintenance or repair of such materials, equipment or supplies (Gen. Mun. Law §103(16)).

Rescue Inhaler Devices

A.2440/S.4935 amends the public health law to add a new section authorizing enumerated eligible persons or entities, including school districts, boards of cooperative educational services, charter schools and non-public elementary and secondary schools to purchase, possess and use rescue inhaler devices for the emergency treatment of asthma and other respiratory diseases. An eligible entity will designate one or more persons to be responsible for the storage, maintenance, control and general oversight of the rescue inhaler device pursuant to regulations adopted by the commissioner of health. In order to use a rescue inhaler device an individual must complete a training course conducted by a nationally recognized organization experienced in training laypersons to use such devices, an organization or person approved by the commissioner of health. Devices may also be used in a specific instance as directed by a health care practitioner. The provisions of the law do not prohibit use of such devices by a healthcare practitioner or by a person acting pursuant to a lawful patient specific prescription. The use of a rescue inhaler devices shall be considered first aid or emergency treatment for the purposes of any statute relating to liability. Additionally, the law does not require authorized entities to purchase and use such rescue inhalers for emergency treatment (Pub. Health Law § 3000-e).

Retiree Health Insurance

A.10425/S.9347 amends the civil service law to set out a standard by which extrinsic evidence is admissible in cases related to retiree health insurance. A court may consider extrinsic evidence when determining whether the parties to a collective bargaining agreement (CBA) between a union and public employer intended for the retiree health insurance benefit to vest in the retirees beyond the durational terms of the CBA, and if so to what extent and scope (Civ. Serv. Law § 157-a).

Right to Express Breastmilk

S.4844-B/A.1236-A expands the rights of nursing employees to express breast milk while at work. Employers must provide reasonable unpaid break time or allow employees to use paid breaktimes or mealtimes "each time" (previously said each day) an employee has reasonable need to express breast milk. Upon request an employer must designate a room or other location for employees to express breast milk. Such room must be in close proximity to the work area, well lit, shielded from view and free from intrusion by others in the workplace or public. The law also sets out minimum standards for supplies and access to utilities such as electricity and water for such room and dictates that such room may not be a bathroom or toilet stall. An exception to the physical location and requirements for such rooms is provided in cases of undue hardship. The commissioner of labor must develop and implement a written policy regarding the rights of nursing employees to express breast milk. Employers must provide such written policy to employees upon hire, and annually thereafter and to employees upon return to work following birth of a child. Such policy must inform employees of their rights, specify how means to request a room or location to express breast milk may be submitted and require employers to respond to requests within a reasonable time frame not to exceed five business days. Lastly a nondiscrimination and non-retaliation provision is added to the law (Lab. Law § 206-c).

School Cafeteria Service

S.6289-C/A.1874-C adds a new provision to the education law requiring that commencing with the 2023-2024 school year and thereafter school cafeteria management contracts with private food service companies must contain provisions requiring disclosure of ingredient lists and nutritional information for all meals that such company provides to the school district or board of cooperative educational services (BOCES). The school district and BOCES must in turn publish such information on its website (Educ. Law § 924).

SIGH Act

A.5735-C/S.922-C amends the education law to implement the "schools impacted by gross highways act" (SIGH). Neither the commissioner of education nor the chancellor of education in the City of New York may authorize construction of school building within 500 feet of a controller access highway unless it is determined that space is so limited that there is no other site to erect such school. For purposes of this law a controlled access highway includes highway defined as such pursuant to Vehicle and Traffic Law § 109 under the jurisdiction of the

commissioner of transportation and functionally classified as specified in law, and a divided highway under the jurisdiction of the NYS thruway authority for mixed traffic with access limited as the authority may determine and generally with grade separation at intersection (Educ. Law §§ 408(3-a), 2556(5-a)). The law would not take effect for five years after adoption and provides exemptions in the following instances:

- school districts with new construction project with advertisements for bids or requests for proposals issued prior to such effective date
- school districts which have acquired real property to construct a new school building as approved by the school board
- school districts which have a building permit issued by the State Education Department
- in New York City a new school construction project with advertisements for bids or requests for proposals issued prior to such effective date.

Special Education

Notice for use of restraints or time-out rooms
A.8540-A/S.7548-A requires parents of students with disabilities be notified the same day anytime their child has been placed in a time-out room, or a physical or mechanical restraint is applied on such student. A procedure for such notification must be developed. If a principal cannot contact the parents after reasonable attempts, the principal shall record and report such attempts to the committee on special education (Educ. Law § 4402(9)).

Tuition Reimbursement Interim Rates
A.10192/S.9134 sets out a mechanism by which annual growth of prospective tuition reimbursements rates may be included in calculations for tuition and/or fees for service reimbursements on an annual basis beginning in the 2022-23 school year for 853 schools, Special Act School Districts, July and August programs for students with disabilities and Education law 4410 programs and services (Educ. Law § 4405(4)).

State Aid

A.9878/S.8701 provides that lottery winnings by a resident of a school district which exceed 25 percent of a district's adjusted gross income shall be excluded from a district's adjusted gross income (Educ. Law § 3602(1)(h), (16)(a)(2)).

Taylor Law

S.8282/A.9372 makes permanent the provisions of the Taylor Law relative to an expedited method to receive injunctive relief for improper labor practices (Civ. Serv. Law § 209-a).

Tax Exemptions

Exemption for volunteer firefighters and volunteer ambulance workers
A.10155-A/S.9131 amends the real property tax law to provide a uniform mechanism for all municipalities to offer a partial tax exemption for volunteer firefighters and ambulance workers.

After a public hearing a city, village, town, school district, fire district or county may adopt a local law, ordinance or resolution providing an exemption of ten percent of the assessed value of a primary residence. Exemptions may be granted if the applicant resides in the city, town or village which is served by the fire company, department or ambulance service, the property is the primary residence, the property is used exclusively for residential purposes (if not that portion not used for residential purposes may not be exempt from taxation), the applicant is certified by the authority having jurisdiction of the fire district/company or ambulance service as being an enrolled member with a minimum service requirement between two and five years as set by the municipality which adopts the exemption. Special rules apply to exemptions for enrolled members with more than 20 years of service and unremarried surviving spouses of deceased firefighters and ambulance workers who died in the line of duty if separately adopted by the municipality (Real Prop. Tax Law § 466-a). The bill repeals Real Property Tax law sections 466-a as added by chapter 617 of the Laws of 1999, 466-b, 466-c, 466-d, 466-e, 466-f, 466-g, 466-h, 466-I, 466-j and 466-k three years after the act shall become law.

Extension First Time Homebuyers Exemption
A.9135/S.8890 extends the expiration of the first-time homebuyers' exemption for newly constructed home though December 31, 2028 (Real Prop. Tax Law § 457(5)).

Notice of Senior Citizen Exemption Availability
A.1980/S.8570 requires municipalities including school districts, that have adopted the senior citizen tax exemption to provide additional notice of the availability of the exemption beyond that included on tax bills by sending an additional notice 30 days prior to the deadline for filing for such exemption (Real Prop. Tax Law § 467(4)).

Senior and Disability Exemption Income Limitations
S.3085-A/A.3956-A Section one of the bill raises the maximum income eligibility limits for seniors to be eligible for the senior citizens' exemption offered by Real Property Tax Law § 467 from 29,000 to 50,000 commencing July 1, 2022 (Real Proper Tax Law §§ 467(3)(a)). Section 2 of the bill raises the maximum income eligibility for disabled persons for the exemption offered by Real Property Tax Law § 459-c from 29,000 to 50,000 commencing July 1, 2022 (Real Proper Tax Law § 459-c(5)(a)).

Teachers' Retirement System

S. 9296/A.7184-A amends the education law to permit a retiree of the NYS Teachers' Retirement System who returns to service after retirement and suspends receipt of retirement benefits during that service to seek a recalculation of retirement benefits upon subsequent re-retirement where the employee earns an additional two years of service credit (Educ. Law § 503(11)).

Vacancies in Public Office

A.10144-B/S. 978-C amends the public officers law to provide that a person will automatically vacate office upon the entering of a guilty plea in federal court to a felony or upon entering a

guilty plea in federal court to a crime involving a violation of his or her oath of office (Pub. Off. Law § 30(1)(e)).

Workers' Compensation

S.6373-B/A.2020-A expands the workers' compensation law to provide coverage for all employees for post-traumatic stress syndrome based upon extraordinary work-related stress (Work. Comp. Law § 10(3)(b)).

SELECTED NEW STATE REGULATIONS

Accountability Waiver

The Board of Regents adopted amendments to commissioner's regulations beginning with the 2021-2022 school year that permit students enrolled in grade 6 who take a Regents mathematics course to take the corresponding high school level Regents Examination in lieu of the grade 6 mathematics test. These provisions are in effect through the 2024-2025 school year (8 NYCRR § 100.4(b)(2)(ii)).

The Board of Regents adopted amendments to commissioner's regulations beginning with the 2021-2022 school year that permit students enrolled in grades 7 and 8 who take a Regents science course to take the corresponding high school level Regents Examination in lieu of the intermediate level science test. These provisions are in effect through the 2024-2025 school year (8 NYCRR § 100.4(e)(4)).

The Board of Regents adopted amendments to commissioner's regulations to add into the accountability scheme the participation of students in grade 6 on a Regents mathematics examination and the participation of students in grade 7 on a Regents science examination (8 NYCRR § 100.21).

Administration of Medication

The Board of Regents adopted amendments to commissioner's regulations modifying the terms under which unlicensed school personnel may be trained to administer glucagon in order to comply with changes in state law that authorize administration of glucagon by other than injection. Unlicensed personnel must take a training course approved by the State Education Department for glucagon administration. The course must include steps for mixing, *if necessary*, and administering glucagon including observation of the trainee using a manufacturer's glucagon training device or demonstration device (8 NYCRR § 136.7(f)(2)).

Annual Professional Performance Reviews (APPR)

Building Principals
The Board of Regents adopted amendments to commissioner's regulations pushing back the implementation date for use of the Professional Standards for Educational Leadership for purposes of annual professional performance reviews to the 2025-26 school year. The change also includes a corresponding amendment to clarify that nothing shall be construed to abrogate any conflicting collective bargaining provisions in effect on September 1, 2025, that mandate use of the 2008 ISLLC standards (8 NYCRR § 30-3.2 (l)).

BOCES Regional Technology Plans

The Board of Regents adopted amendments to commissioner's regulations modernizing the regulatory requirement relative to BOCES technology plans. The changes better reflect current

technology and practice and promotes regional collaboration and ensure that state priorities such as increased access to technology and maintaining robust cybersecurity controls are addressed (8 NYCRR § 115.1).

Educator Certification

Bilingual Education and Supplementary Bilingual Education Extensions for School Counselors
The Board of Regents adopted amendments to commissioner's regulations establishing conditions for issuance of Bilingual Education extension and Supplementary Bilingual Education Extension certificates to candidates for the initial and professional school counselor certificate which will begin being issued February 2, 2023. Additionally, the Board amended the course hour requirements applicable to all school counselor certificate holders (provisional, permanent, initial or professional) who apply for a bilingual extension or supplementary extension on or after February 2, 2023, to twelve hours rather than fifteen. Such coursework must include study in:

- Theories of bilingual education
- Multicultural perspectives
- Sociolinguistics and psycholinguistics and
- Methods of providing school counselor services to English language learners using native language and English (8 NYCRR § 80-4.3(a)).

A supplementary bilingual education extension for school counselors allows candidates enrolled in a program leading to the bilingual education extension to work as a bilingual school counselor where there is a demonstrated shortage. A candidate must have completed three semester hours of coursework and have a statement from the employer certifying to the need for the candidate to work under and supplementary bilingual education extension as set out in the regulation (8 NYCRR § 80-4.3(a)(4)).

Course Requirements General Education Liberal Arts and Sciences
The Board of Regents adopted amendments to commissioner's regulations to remove the requirement that candidates for teaching certificates meet course hour requirements in general education liberal arts and sciences since such requirement exists for undergraduate degrees in general. The Board also removed the general education liberal arts and sciences course requirement for candidates pursuing the Individual Evaluation Pathway to certification (8 NYCRR §§ 52.21, 80-3.7)

Course Requirements Science Certificates
The Board of Regents adopted amendments to commissioner's regulations to reduce the course hour content requirements for those who already hold a science certificate or candidates preparing simultaneously for two or more teaching certificates in different sciences. Such candidates need only complete 18 hours of content courses in the additional science (previously 30 hours were required for both sciences). The same reduction in course hour requirements was also adopted for those who hold a science certificate and are seeking certification in an additional science title through the individual pathway to certification (8 NYCRR §§ 52.21(b)(3)(iii)(a)(1), (b)(3)(iv)(a); 80-3.7(a)(2)(iii)).

DASA Training
The Board of Regents adopted amendments to commissioner's regulations permitting a candidate for a teaching or administrative license to receive required training under the Dignity for All Students Act (DASA) entirely online. Previously, three hours of the training had to be conducted in-person (8 NYCRR § 80-1.13).

Definition of Year of Experience
The Board of Regents adopted amendments to commissioner's regulations to create a more streamlined and flexible definition of year of experience for permanent or professional certification. A year of experience is now defined as a minimum of 180 days in a 12-month period of full-time satisfactory experience or its equivalent in an educational setting acceptable to the Department (8 NYCRR § 80-1.1(47)).

Elimination of edTPA
The Board of Regents adopted amendments to commissioner's regulations repealing the requirement that candidates for teacher certification complete a teacher performance assessment (edTPA) to qualify for certification. Instead, candidates will have to complete a teacher performance assessment as part of the candidate's student teaching, practicum, or similar experience (see *Teacher Performance Assessment* below) (affected sections of part 80: 8 NYCRR §§ 80-1.5; 80-3.3(b), (d); 80-3.4(b); 80-5.8, 80-5.17).

Reissuance of Initial Certificate
The Board of Regents adopted amendments to commissioner's regulations to remove the requirement that a candidate for reissuance of an initial certificate have completed 50 hours of continuing teacher and leader education credits. Additionally, the Board adjusted the time frame within which candidates must pass the relevant content specialty test for reissuance of a certificate. Candidates may pass the content specialty test prior to or within one year of application or during the validity period of the Emergency COVID-19 certificate, provided such certificate is held in the same certificate title of the reissuance sought. Lastly, the Board also added the assessment required for certification as a school counselor to the list of content specialty tests that candidates seeking a reissuance must pass if relevant to the certification sought (8 NYCRR § 80-1.8(a)).

SDBL and SDL Program Changes
The Board of Regents adopted amendments to commissioner's regulations repealing a requirement that candidates for a school district business leader, school district leader and transitional D candidates must have successfully passed the associated certification exam for graduate program completion or institutional recommendation for certification. This change will permit candidates for SDBL, SDL and transitional D certification to obtain the Emergency COVID-19 certificate (8 NYCRR § 52.21(c)(3)(vi), (c)(4)(iii)(a), (c)(5)(vi)(c)).

Teacher Performance Assessment
The Board of Regents adopted amendments to commissioner's regulations adding a definition of teacher performance assessment to the requirements for programs leading to teacher certification.

Such assessment means a multi-measure assessment where candidates demonstrate the pedagogical knowledge and skills identified in the New York State Teaching Standards, which align with the four principles of the New York State Culturally Responsive-Sustaining Education Framework, and their content knowledge and skill in teaching to the State learning standards in the grade band and subject area of a certificate sought (8 NYCRR § 52.21(b)(1)(xxi)).

The Board of Regents adopted amendments to commissioner's regulations adding a requirement for programs leading to certification as a teacher to effective September 1, 2023, include a teacher performance assessment for candidates seeking their first initial teaching certificate that shall be integrated into the candidates' student teaching, practicum or similar clinical experience and design to promote candidates' professional growth (8 NYCRR § 52.21(b)(2)(ii)(c)(2)(iii)).

Diploma Requirements

Appeals Process for Regents Examination Scores between 50-64
The Board of Regents adopted amendments to commissioner's regulations modifying the appeals process for students taking Regents Examination in June 2022, August 2022, January 2023, June 2023 and August 2023 seeking to have a score of 50-64 apply as a passing score for diploma requirements. To be eligible a student must have:

- Taken an examination during the stated administration periods
- Earned a score of 50-64 and
- Attained a passing course average in the corresponding course of such examination that meets or exceeds the required passing grade established by school policy as recorded on the student's official transcript in each quarter of the school year.

In considering such appeals, the superintendent may consider recommendations and evidence as provided in the regulation. Such determinations may be appealed to the commissioner of education (8 NYCRR § 100.5(d)(7)). The State Education Department has prepared a detailed guidance on this topic, see: http://www.nysed.gov/common/nysed/files/programs/curriculum-instruction/faqspecialappealtoearndiplomalowerscoreregents.pdf.

Declination of Exemptions
The Board of Regents adopted amendments to commissioner's regulations extending the ability of parents of students who receive an exemption to any year in which their child received an exemption prior to the student's graduation. School must notify parents of their right to decline the exemption under terms specified in the regulation (8 NYCRR § 100.5(a)(5))

Diploma Issuance When Student Confined to Residential or Correctional Facility
The Board of Regents adopted amendments to commissioner's regulations to implement a process for issuance of diplomas to a person who is placed with, committed to, under the supervision of, detained or otherwise confined in any facility operated by a state department or agency or political subdivision which provides an educational program pursuant to Education Law § 112 or who is confined in a correctional facility if such person has completed the minimum state diploma requirements while in such facility. The regulation sets out rules to determine the district responsible for issuance of the diploma and the responsibilities of both the facility requesting the diploma on behalf of the student and the school district that is responsible

for issuance. If the school district determines that the individual has met the requirements for a diploma, the individual shall be enrolled in the district, a transcript be created, and a diploma issued. The student is then included in the calculation of the district's graduation rate (8 NYCRR § 100.2(pp)).

High School Equivalency Diploma

The Board of Regents adopted amendments to commissioner's regulations providing candidates for a high school equivalency diploma the ability to continue using their passing Test Assessing Secondary Completion (TASC) sub-test scores as passing score on the corresponding General Educational Development (GED) Test administered on and after January 1, 2022, to substitute for up to three of the four corresponding GED sub-tests (8 NYCRR § 100.7(a)(2)(ii)).

January 2022 Regents Examinations

The Board of Regents adopted amendments to commissioner's regulations providing an exemption to the diploma credential and endorsement requirements related to the passing of January 2022 Regents examinations (8 NYCRR § 100.5(a)(5)(vi)(a)(4)).

Special Determination to Graduate with Local Diploma

The Board of Regents adopted amendments to commissioner's regulations establishing a special appeals process for students who is scheduled to graduate in June 2022 but is unable to earn a diploma because he or she did not achieve a passing score on a Regents examination may request a special determination to graduate with a local diploma. To be eligible the student must have otherwise met the graduation requirements and:

- Been enrolled in course of study or make-up program in 2021-22 school year leading to a June 2022 Regents Examination, earned credit in such course or make-up program and participated in such Regents Examination but did not achieve a passing score or qualify for a special appeal for such examination or
- Been enrolled in course of study or make-up program in 2021-22 school year that was intended to culminate in the student's participation in June 2022 Regents Examination and the student earned such credit in the course or make-up program but was unable to participate in the examination due to illness, including isolation or other restrictions attributable to COVID-19.

The regulation also outlines the requirements for the superintendent or building principal's review and determination (8 NYCRR § 100.5(d)(14)).

United State History and Government Examination

The Board of Regents adopted amendments to commissioner's regulations providing exemptions to diploma, credential and endorsement requirements related to the passing of the June 2022, August 2022, and January 2023 United State History and Government Regents examination so students may meet diploma requirements since the Regents examination will not be available during those administration periods (8 NYCRR § 100.5(a)(5)(vi)(a)(4)).

The State Education Department has prepared a FAQ regarding the U.S. History and Government Exam see: http://www.nysed.gov/common/nysed/files/programs/state-assessment/faq-cancellation-regents-exam-ushg-framework-622.pdf.

Homebound Instruction

The Board of Regents added a new provision to commissioner's regulations regarding minimum instructional requirements for students who are unable to attend school in person for at least ten days during a three-month period due to illness or injury which requires the student to remain at home or in a hospital or other institution. Highlights of this requirement include:

- Instruction can be provided by the district of residence, a tutor, via contract with a school connected to a hospital or institutions where student admitted or by contract with the local school district where such hospital or institution is located
- Requests by parents for homebound instruction must include medical documentation and need to be reviewed by the school's medical officer
- Districts must furnish instruction within 5 days of learning of student's injury or illness or within 5 days of parental request whichever is sooner
- Districts must adopt a written instructional delivery plan in consultation with parents that includes the number of hours of instruction, method by which it will be delivered, location where instruction be provided, explanation how plan ensures continued academic progress for student. Such plans must be reviewed regularly but not less than once a month
- A regular review includes a consideration of when the student's instructional hours may be increased but provides that for state aid purposes students must receive the minimum hours of instruction as established in 8 NYCRR § 175.21
- Prior to July 1, 2023, elementary students must receive a minimum of 5 hours of instruction per week and secondary students a minimum of 10 hours
- On or after July 1, 2023, elementary students must receive a minimum of 10 hours of instruction and secondary students a minimum of 15 hours of instruction
- Districts must keep detailed records of the instruction provided including the number of hours, instructor name, and location where provided (8 NYCRR § 100.22).

The Board of Regents adopted amendments to commissioner's regulations to clarify that students with disabilities who are provided homebound instruction pursuant to a determination of the committee on special education are entitled to the same number of days and length of time as required for regular education students by section 100.22 (8 NYCRR § 200.6(i)).

Internal Audit Function

The Board of Regents adopted amendments to commissioner's regulations making a technical amendment to align the exemption for an internal audit function with the provisions of Education Law § 2116 that exempt school districts with an enrollment of less than 1,500 students from having to institute the internal audit function (8 NYCRR § 170.12(b)(3)).

Prohibition on Lawsuits for Unpaid Meal Charges

The Board of Regents adopted amendments to commissioner's regulations to conform with the statutory requirement that a school district may not file a law suite against a parent or guardian for unpaid meal fees (8 NYCRR § 114.5(b)(5)(iv)).

Records Retention

The Board of Regents adopted amendments to commissioner's regulations repealing the prior records retention schedules MU-1, ED-1, CO-2, and MI-1 which were replaced effective January 1, 2021, by the revised combined schedule LGS-1. The Board also adopted revisions to the LGS-1 schedule to make technical corrections such as typographical errors and clarification of text as well as to reduce retention periods for certain items:

- State assessments reduced from 2 years to 1
- License plate reader data reduce from 20 years to 1 year
- Negative health screening reports and logs relating to COVID-19 and other screening programs from 1 year to 30 days (8 NYCRR § 185.5 and Appendix L (LGS-1)).

Sections 185.11, 185.12, 185.13 and 185.14 are repealed.

Special Education

The Board of Regents adopted amendments to commissioner's regulations in order to implement statutory requirements for the immediate appointment of an impartial hearing officer (IHO) if one has not been appointed withing 196 days of a parent filing the request for impartial hearing (8 NYCRR § 200.5(j)(3)(i)(a)).

The Board of Regents added a new provision to commissioner's regulations outlining the timelines and circumstances for accelerated review of parental due process complaints. Such accelerated process cannot be used for complaints involving initial identification of a child or a manifestation determination. Under the regulation the district will be deemed to have violated the rights to a free appropriate public education by virtue of the delay in appointment of an IHO. The regulation also sets out the schedule for submission of documents from both parties via email and for the IHO to review and render a decision. School districts which have complaints resolved through the accelerated process must report annually on a form and in a format prescribed by the commissioner the number of complaints, the nature of the relief sought by the parent and the outcome (8 NYCRR § 200.5(o)).

The Board of Regents adopted amendments to commissioner's regulations establishing that impartial hearing officers who hear an accelerated due process case will be entitled to a flat rate of $500 (8 NYCRR § 200.21(a)).

Substitute and Incidental Teaching

Incidental Teaching

The Board of Regents adopted amendments to commissioner's regulations extending to the 2022-2023 school year the ability of a superintendent to assign a teacher to teach a subject not covered by his or her certificate or license for a period not to exceed 10 classroom hours a week (normally the limitation is 5 classroom hours per week), when no certified or qualified teacher is available after extensive and documented recruitment, provided other regulatory requirements are met (8 NYCRR § 80-5.3).

Substitute Teaching
The Board of Regents adopted amendments to commissioner's regulations extending to the 2022-2023 school year the ability to employ a person who is uncertified and not working toward certification to work beyond the 40-day limitation up to 90 days (or more in rare circumstances) if such person holds a high school diploma or its equivalent and the district or BOCES cannot find a certified teacher after a good faith search (8 NYCRR § 80-5.4(c)(3)(ii)).

Sudden Cardiac Arrest Information and Training

The Board of Regents added a new regulation addressing sudden cardiac arrest in order to implement Chapter 500 of the Laws of 2021 which is applicable to public, nonpublic and charter schools. The State Education Department must post to its website information relating to students exhibiting sign and symptoms of pending or increased sudden cardiac arrest developed by the commissioner of health in conjunction with the commissioner of education. Schools must include that same information in any document that may be required from a parent or guardian for a student's participation in interscholastic sports, including permission form and post such information on their websites or reference how to obtain such information on the website.

Students who exhibit signs or symptoms of pending or increased risk of sudden cardiac arrest must be immediately removed from athletic activities and cannot return to such until written clearance from a doctor is received. Athletic activities means physical education class, or extra-class athletic activities that involve physical activities that result in participants' increased heart and respiratory rates. Extra-class athletic activities include individual, group or team activities organized on an intramural, extramural or interscholastic athletic basis to supplement regular physical education class instruction. The regulation specifically provides that pupils attending public school participating in extra-class athletic activities must receive clearance from the director of school health services before returning to such activity after exhibiting signs or symptoms of pending of increased risk of sudden cardiac arrest. The authorization must be kept in a student's permanent health record and the school must abide by any limitations or restrictions contained therein. (8 NYCRR § 136.9).

The Board of Regents adopted amendments to commissioner's regulations removing the requirements that coaches receive first aid and CPR training from the American Red Cross. Training may be received from any national recognized organization as defined in Public Health Law § 3000-b(1)(d). Such programs must include instruction on recognizing signs and symptoms of cardiac arrest and sudden cardiac arrest (8 NYCRR § 135.5).

NYSED Memo on Dominic Murray Sudden Cardiac Prevention Act
https://www.p12.nysed.gov/sss/documents/MemoSCA.pdf

NYSED Sample letter to parents regarding prevention sudden cardiac arrest
https://www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/SampleParent_GuardianLetterSCA_.docx

Interval Health History for Athletics
https://www.p12.nysed.gov/sss/documents/SampleRecommendedNYSEDIntervalHealthHistoryforAthleticsFillable6.2022.pdf

Student Enrollment

The Board of Regents adopted amendments to commissioner's regulations providing that when a school district of location is to issue a diploma under Education Law § 112-a, the individual to be issued a diploma will be enrolled provided that the residential or correctional facility provides documentation of age and documentation of such child's placement, commitment, supervision, detainment or confident into such residential facility (8 NYCRR § 100.2(y)(7)).