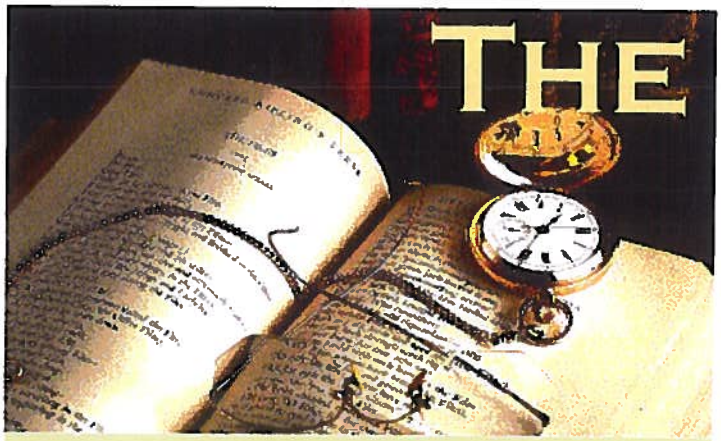

THE ADVOCATE

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VOLUME XXXIII
JUNE/JULY 2014

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Providing comprehensive employment and personnel relations services to local school districts for over 40 years.

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Welcome New Chief School Officers

The Cayuga-Onondaga BOCES Office of Personnel Relations welcomes and wishes much success to these recently appointed Chief School Officers:

KENNETH SLENTZ at the SKANEATELES CENTRAL SCHOOL DISTRICT

MATT FRAHM at the NAPLES CENTRAL SCHOOL DISTRICT

JAMIE FARR at the PHELPS-CLIFTON SPRINGS CENTRAL SCHOOL DISTRICT

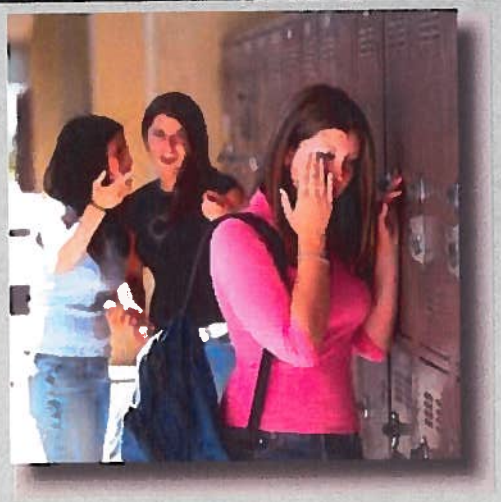
Best wishes to all new Superintendents and district administrators!

THE OPR WELCOMES RYAN HATCH

The Cayuga-Onondaga BOCES Office of Personnel Relations is pleased to announce the recent appointment of J. Ryan Hatch as a Labor Relations Specialist for the BOCES.

Ryan graduated from the University of Colorado – Boulder with a bachelor's degree in Business Management. After receiving his undergraduate degree, Ryan attended and graduated with honors from the Syracuse University College of Law and the Whitman School of Management at Syracuse University.

Since graduating, Ryan has worked as a litigation associate at The Law Office of Frank W. Miller. Ryan has extensive experience representing and counseling school districts and municipalities on a wide variety of legal issues, including labor, employment, and education law. He is very excited about joining the OPR team and looks forward to meeting all of you.



DASA Protections May Not Be Limited to Just Students in the District

In a recent decision, *J.G.S. v. Bellmore-Merrick Central High School District,* the Nassau County Supreme Court found that a lawsuit against a school district based on the Dignity for All Students Act ("DASA") could go forward even though the alleged victim was not a student in the District. In this case, the plaintiff alleged that two students circulated a video of a lewd act and told other students that the plaintiff was one of the participants therein. The

plaintiff had previously complained to the District about the two students' bullying behavior. However, at the time the video was being distributed, the plaintiff was not a student in the District, but attended a private school. The District argued to the Court that it did not owe any duty to the plaintiff under DASA, since the plaintiff was not a student in the District and that it complied with the requirements of DASA in all respects.

The Court found that a school district could not turn a "blind eye" to any acts of bullying by its students, and that the requirements of DASA were applicable even if the victim student did not attend any school in the District. In reaching this finding, the Court specifically referenced the legislative intent of the law, noting that acts of bullying are "inconsistent with a school's education mission." The Court also stated that under DASA "no student shall be subject to harassment or bullying by employees or students on school property or at a school function." Essentially, under this Court's ruling, school districts must comply with the requirements in DASA if the alleged bullies go to school anywhere in the district; where the alleged victim goes to school is of no importance.

The Court found that it was premature to dismiss the case based on the District's contention that it had done enough to comply with the requirements of DASA. The case was allowed to go forward to allow the plaintiff an opportunity to conduct discovery.

The decision by the Court is of note for a couple of different reasons. First, DASA does not explicitly provide for a private right of action against a school district. However, since the claim was not dismissed, it can be implied that this Court believes that DASA does provide for a private right of action against school districts. Second, the Court's liberal interpretation of DASA imposes the broadest possible responsibilities on school districts to investigate and address all allegations of bullying.

It should be noted that currently this ruling is not binding in jurisdictions outside of Nassau County, but may be persuasive to other courts considering these matters. School districts should make sure to investigate and take appropriate action when confronted with any case of bullying within their district, regardless of who the victim may be.

Identities of Witnesses During Student Discipline Procedures

This year the Commissioner of Education was directed by the Albany County Supreme Court to reconsider the decision in *Appeal of C.M.*, 52 Ed. Dept. Rep., Decision No. 16439 (Dec. 24, 2013). In that case, the Commissioner sustained the appeal of a student on the grounds that the

student was not given an opportunity to question the complaining witness during an informal disciplinary conference, as set forth in New York Education Law§ 3214(3)(b).

The Court wanted the Commissioner to reconsider the decision taking into account the case of *D.F. v. Bd. Of Educ. of Syosset Cent. Sch. Dist.*, 386 F. Supp. 2d 119 (E.D.N.Y. 2005), wherein a federal court held that "the School's interest in protecting the identities of the students [because of the belief that the Plaintiff was violent] outweighed any interest in cross-examination of them the Plaintiff may have had." On reconsideration, *Appeal of C.M.*, 53 Ed. Dept. Rep., Decision No. 16583 (Jan. 3, 2014), the Commissioner found that although the identity of the complaining victim was not disclosed, it was sufficient that the student had the opportunity to question the principal and other school officials who investigated the incident in question and interviewed witnesses and victims.

In reaching his holding in this matter, the Commissioner relied heavily on evidence from the principal that victims, witnesses and/or their parents said they were afraid of physical and/or social retaliation if they came forward. It was these fears of retribution that allowed the district to protect the identity of the complaining student.

While this decision ultimately favored the school district's decision, it is clear that all school districts need to have well documented reasons for not giving a student the opportunity to question complaining witnesses during an informal disciplinary conference. Lack of availability or simple unwillingness of a complaining witness to appear will likely not be enough to get past the requirements of law.

School Safety and Teachers' First Amendment Rights

The New York Court of Appeals recently addressed whether the discipline imposed on two teachers for participating in a curbside parking demonstration violated the teachers' First Amendment rights.

In *Santer v. Board of Education of East Meadow Union Free School District*, the Court of Appeals first addressed whether the teachers' decision to park in an area where parents usually drop off their children and display signs regarding stalled negotiations constituted speech under the First Amendment. The majority found that this conduct was a form of expressive speech that addressed a matter of public concern and was entitled to First Amendment protection.

The Court then considered whether the discipline arising from the teachers' protected activity was justified. The school district stated that the evidence presented at the hearings showed that the teachers had created a "dangerous traffic condition" and had caused "actual disruption of the school's operation." The school district also asserted that its interest in protecting students outweighed the teachers' right to participate

in the curbside parking demonstration.

The Court of Appeals found that the school district had met its burden and demonstrated that the discipline was justified. The Court noted that the teachers created "a substantial risk to student safety" when traffic was backed up and students had to be dropped off in the middle of the street. The Court also stated that the school district did not did not have to show that a student was actually injured in order to meet its burden.

In addition, the Court noted that the parking demonstration had "led 16 teachers to arrive late to work" and caused actual disruption to the school's operation. In sum, the school district had "demonstrated a potential risk to student safety that outweighed the First Amendment value of [the teachers'] speech about collective bargaining."

Although the decision in *Santer* is supportive of school administrators and their role in protecting students and ensuring the effective operation of schools, districts should continue try to act judiciously when pursuing disciplinary actions against their employees whose conduct may qualify for First Amendment protections.

Workers' Compensation and Civil Service Law Notifications

Civil Service Law §71 entitles permanent civil service employees to a minimum one-year leave of absence for a work-related illness or injury. An employer has the right to commence a proceeding to terminate an individual's employment after the employee has exhausted his/her cumulative leave total of one year. In order to effectuate this termination, an employee must be given notice of his/her rights under the law and afforded a hearing to contest their ability to return to work and/or the amount of leave previously taken.

An appellate decision appears to require public employers to notify employees, at the inception of a workers' compensation leave, that they can be terminated if they fail to return within one year. *LaJoie v. County of Niagara*, 239 A.D.2d 908, 659 N.Y.S.2d 622 (4th Dept. 1997).

In *LaJoie*, the employee was terminated in accordance with Civil Service Law §71. That is, the employee was provided with notice of the pre-termination hearing. The hearing was held, and it was determined that the employee had been absent in excess of one year due to a work related illness or injury, and that she was not physically able to return to work. The employee appealed Niagara County's decision to terminate her employment and argued that the County did not notify her at the commencement of her workers' compensation leave that she could be terminated if she did not return within one year.

The Appellate Division, Fourth Department, agreed with Ms. LaJoie and upheld a lower court's order to reinstate her. The Court found that the Civil Service Rules and Regulations obligated the County of Niagara to notify Ms. LaJoie, at the inception of her workers' compensation leave, that she could be terminated from her position if she failed to return from her leave within one year. See 4 N.Y.C.R.R. §5.9(b). In particular, 4 N.Y.C.R.R. §5.9(b) specifically provides that not later than the 21st day of absence due to an occupational injury or disease, the appointing authority must notify the employee in writing of:

1. the effective date of that leave;

2. the right to leave of absence from the

position during continued disability for one year unless extended;

3. the right to apply to the appointing authority to return to duty at any time during the leave;

4. the right to a hearing to contest a finding of unfitness for restoration to duty;

5. the termination of employment as a matter of law at the expiration of the workers' compensation leave; and

6. the right thereafter to apply to the Civil Service Department within one year of the end of disability for reinstatement to the position if vacant, to a similar position, or to a preferred list pursuant to section 71 of the Civil Service Law and subdivision (e) of this section.

The Court found that the County of Niagara failed to provide this written notification within the first twenty-one (21) days of Ms. LaJoie's workers' compensation leave and directed her reinstatement.

There are arguments that 4 N.Y.C.R.R. §5.9(b) is not applicable to school districts and other local municipalities since the regulation applies to the New York State Civil Service Department and school districts are, for the most part, governed by the county civil service rules. Nonetheless, school districts and other public employers should take heed from the LaJoie decision and issue the appropriate written notification within the twenty-one (21) days after an employee commences a workers' compensation leave. A sample letter is provided, and we strongly encourage every school district to forward this letter immediately to every employee who is on or goes on a workers' compensation leave. We also encourage each employer to check with its workers' compensation carrier to determine if the requisite notification is already being issued.

(Employer Letterhead)

Employee Name
Employee Address

Re: Civil Service Law Section 71

Dear _____:

It has come to my attention that you are on workers' compensation leave as a result of a work-related illness or injury. Your workers' compensation leave is effective _____. Pursuant to Civil Service Law §71, you have the right to leave of absence from the position during continued disability for not more than one year, unless extended. You also have the right to apply to the board of education to return to duty at any time during your leave.

If you do not return from your leave within one year, you have the right to a hearing to contest a finding of unfitness for restoration to duty. If you are found unfit to return to duty, your employment may be terminated in accordance with Civil Service Law §71. If you are terminated, you have the right to apply to the County Civil Service Department within one year after the end of your disability for reinstatement to your position if it is vacant, to a similar position, or to a preferred eligible list pursuant to Civil Service Law §71 and 4 N.Y.C.R.R. 5.9(e).

I encourage you to contact your local union representative for advice. However, if you should have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

_____

AREA UNEMPLOYMENT RATES

New York State Rate

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.3%	7.7%	7.2%	6.1%	6.4%								
2013	9.1%	8.6%	8.0%	7.4%	7.5%	7.8%	7.8%	7.5%	7.4%	7.3%	6.8%	6.6%	7.7%

Syracuse, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.4%	7.6%	7.1%	5.8%	6.1%								
2013	9.3%	8.9%	8.2%	7.5%	7.4%	7.7%	7.5%	7.1%	7.1%	6.8%	6.6%	6.5%	7.6%

Auburn, NY Micropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.5%	7.8%	7.2%	5.6%	5.7%								
2013	9.2%	9.0%	8.2%	7.3%	6.7%	6.9%	6.9%	6.6%	6.4%	6.3%	6.2%	6.2%	7.2%

Cayuga County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.5%	7.8%	7.2%	5.6%	5.7%								
2013	9.2%	9.0%	8.2%	7.3%	6.7%	6.9%	6.9%	6.6%	6.4%	6.3%	6.2%	6.2%	7.2%

Broome County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	8.0%	8.2%	7.6%	6.1%	6.4%								
2013	9.7%	9.2%	8.4%	7.6%	7.5%	8.0%	7.8%	7.4%	7.4%	7.1%	7.0%	7.0%	7.8%

Ithaca, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	4.9%	4.9%	4.4%	3.5%	4.1%								
2013	6.3%	5.5%	5.0%	4.6%	4.9%	5.6%	5.6%	5.4%	4.7%	4.6%	4.2%	4.0%	5.0%

Ontario/Seneca/Wayne/Yates Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.3%	7.7%	7.0%	5.7%	5.5%								
2013	9.2%	9.0%	8.3%	7.3%	6.7%	6.7%	6.3%	5.8%	5.9%	5.7%	5.8%	6.0%	6.9%

Rochester, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2014	7.0%	7.2%	6.7%	5.5%	5.8%								
2013	8.7%	8.3%	7.7%	7.1%	7.0%	7.1%	7.2%	6.8%	6.8%	6.5%	6.2%	6.1%	7.1%

Source: New York State Department of Labor Labor Statistics

CONSUMER PRICE INDICES

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM PRIOR YEAR	% INCREASE FROM PRIOR MONTH
May 2014			
NY-Northeastern New Jersey Area			
1. All Urban Consumers	261.225	0.5	1.9
2. Urban Wage Earners & Clerical Workers	257.145	0.5	1.9
U.S. City Average			
1. All Urban Consumers	237.900	0.3	2.1
2. Urban Wage Earners & Clerical Workers	234.216	0.3	2.1
June 2014			
NY-Northeastern New Jersey Area			
1. All Urban Consumers	261.350	0.0	1.7
2. Urban Wage Earners & Clerical Workers	257.147	0.0	1.7
U.S. City Average			
1. All Urban Consumers	238.343	0.2	2.1
2. Urban Wage Earners & Clerical Workers	234.702	0.2	2.0

COST OF LIVING UPDATE

	ALL CITIES				NY - NORTHEASTERN NEW JERSEY			
Month	Revised Wage Earner Index	%	All Urban Consumers Index	%	Revised Wage Earner Index	%	All Urban Consumers Index	%
Jan-12	223.2	3.1	226.7	2.9	245.5	3.0	249.3	2.8
Feb-12	224.3	3.1	227.7	2.9	246.5	2.8	250.3	2.6
Mar-12	226.3	2.9	229.4	2.7	248.2	2.7	245.1	2.5
Apr-12	227.0	2.4	230.1	2.3	248.7	2.5	245.9	2.3
May-12	226.6	1.6	229.8	1.7	249.0	1.9	252.7	1.8
Jun-12	226.0	1.6	229.5	1.7	248.5	1.6	252.4	1.6
Jul-12	225.6	1.3	229.1	1.4	248.2	1.2	252.0	1.1
Aug-12	227.1	1.7	230.4	1.7	249.7	1.5	253.5	1.4
Sep-12	228.2	2.0	231.4	2.0	251.0	1.7	254.6	1.6
Oct-12	228.0	2.2	231.3	2.2	250.5	1.7	254.3	1.7
Nov-12	226.6	1.7	230.2	1.8	250.6	2.1	254.3	2.0
Dec-12	225.9	1.7	229.6	1.7	249.5	2.0	253.6	2.1
Jan-13	226.5	1.5	230.3	1.6	250.8	2.2	254.8	2.2
Feb-13	228.7	1.9	232.2	2.0	252.3	2.3	256.2	2.4
Mar-13	229.3	1.3	232.8	1.5	252.7	1.8	256.6	1.9
Apr-13	228.9	0.9	232.5	1.1	252.0	1.3	256.0	1.4
May-13	229.4	1.2	232.9	1.4	252.3	1.3	256.3	1.4
Jun-13	230.0	1.8	233.5	1.8	252.9	1.8	256.9	1.8
Jul-13	230.1	2.0	233.6	2.0	253.3	2.1	257.3	2.1
Aug-13	230.4	1.5	233.9	1.5	253.6	1.6	257.7	1.7
Sep-13	230.5	1.0	234.1	1.2	254.4	1.4	258.5	1.6
Oct-13	229.7	0.8	233.5	1.0	252.9	0.9	257.1	1.1
Nov-13	229.1	1.1	233.1	1.2	253.0	1.0	257.4	1.2
Dec-13	229.2	0.0	233.0	0.0	253.1	0.0	257.3	0.0
Jan-14	230.0	0.4	233.9	0.4	255.5	0.9	259.6	0.9
Feb-14	230.9	0.4	234.8	0.4	254.8	-0.3	259.0	-0.2
Mar-14	232.6	0.7	236.3	0.6	255.9	0.5	260.0	0.4
Apr-14	233.4	0.4	237.1	0.3	255.9	0.0	260.0	0.0
May-14	234.2	0.3	237.9	0.3	257.1	0.5	261.2	0.5
Jun-14	234.7	0.2	238.3	0.2	257.1	0.0	261.4	0.0
Jul-14								
Aug-14								
Sep-14								
Oct-14								
Nov-14								
Dec-14								

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