

**New York State School Boards Association
Recommended Mandate Relief for School Districts**

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Recommended Mandate Relief for School Districts

A Message from the New York State School Boards Association

As stewards of federal, state and local resources, school board members recognize the tremendous financial stress facing our public schools. Federal funding has neither matched what is needed to implement new testing requirements nor funded federal programs at promised levels. While state funding has significantly increased in recent years, so have the number of new mandates on school districts, which has thereby diminished the impact of that increased funding.

This lack of state and federal funding has not diminished the state's requirement of higher academic standards or the public's expectation of greater achievement for our children. As local community representatives, we seek to provide the best possible educational opportunities for children at a budgetary level that fosters community support. Our success in that effort depends largely upon our ability to operate efficiently and with the flexibility that allows us to recognize local concerns and priorities.

In the following pages, NYSSBA offers recommendations for change that would allow school districts to operate more efficiently and effectively. The pages that follow expand upon the over arching principle that extensive mandates upon school districts undermine local democracy and have a negative effect on education, as well as identifying specific areas in need of reform. These changes would allow schools throughout New York State to direct a greater share of these resources to the programs and services that are vital to the education of our state's most precious resources – our children.

1. Wicks Law

School districts should be exempt from the Wicks Law.

School districts should be given the option to hire a single contractor to coordinate the work of numerous sub-contractors whenever they undertake a construction project.

The Wicks Law requires school districts to hire four separate contractors for school construction – a general contractor plus contractors for electrical, HVAC and plumbing. Forty-nine states have saved their students and their taxpayers from the financial and educational effect of Wicks. They allow their districts to use a single contractor. Isn't it time the New York State Legislature allows our districts to do the same?

Imagine how much money local taxpayers could save if the state reduces construction costs by just 10 percent as a result of the Wicks Law exemption. For example, under Wicks, if a school awards contracts to multiple prime contractors at a cost of \$30 million, it might save \$3 million by awarding a single contract. That's \$3 million taxpayers save in construction costs. That's \$3 million that might be used to maintain education programs and improve student achievement.

Time and disruption to the learning process must also be considered. Multiple contractors mean the potential for more construction delays. Subsequently, teaching and learning suffer. The sooner a project is completed, the sooner students and staff can get on with the business of learning.

Our students and staff need sound, safe facilities conducive to learning. Reforming Wicks would make that goal a reality.

2. Charter Schools

NYSSBA believes that no new charter school should be authorized until the Legislature and the governor find a way to decrease the negative fiscal and educational impact of charter schools on students in our existing public schools.

In 2007, the statewide cap on charter schools was doubled to 200. Of the 97 charter schools currently in operation, most are located in high-need urban districts that can least afford to lose revenue. Districts that lose students to these charter schools must transfer the amount of per-pupil operating expense to the charter school. There is no corresponding reduction in district costs. In 2005-06 districts sent \$217.8 million in local, state and federal tax dollars to charter schools. As a result, many of these districts have had to scale back programs, shelve new initiatives, and increase property taxes.

Charter schools were intended to provide a mandate-free teaching and learning environment – mandates that bind public school districts. Draining resources from local school districts to fund charter schools hinders their ability to serve the greater student population. Rather than make

new “mandate free” charter schools, the state should relieve all public schools of unfunded mandates.

3. District Superintendent Salary Cap

The BOCES district superintendent’s salary cap should be repealed.

Now more than ever, district superintendents are responsible for helping their component districts meet higher learning standards and tougher graduation requirements. BOCES boards must be able to attract and retain high-quality applicants to these challenging positions. NYSSBA has long advocated that the local compensation of district superintendents should be a purely local determination based on experience and merit.

Attracting high quality leaders providing shared services and guidance to local school districts will reap future savings. Eliminating the cap means no additional cost to the state. This is a matter of local control.

4. Non-contingent Budget Items

NYSSBA supports the New York State Association of School Business Officials’ (NYSASBO) recommendation that all language referring to non-contingent budget items be removed from the law.

Contingent budgets are intended to limit the spending of schools in districts where the voters defeat the budget. A 1997 law imposed spending caps on all contingent budgets, making other contingent budget language unnecessary. Since districts are legally limited in the amount they may spend under a contingency budget, there is no need for such language. School districts need flexibility to determine which areas must be cut to stay within legal limits, while doing as little harm as possible to the educational program.

Each community should be able to prioritize educational programs. These choices may differ from district to district. Removing the list of programs that may not be funded under a contingency budget would provide enhanced local control and flexibility, while the mandatory cap under that budget ensures that the will of the voting public is enforced.

5. PILOT Revenues

Any agreement between the Empire State Development Corporation, or other municipal entity and a private corporation, should provide that the split of taxes between the school district and other taxing jurisdictions is in the same proportion with the PILOT (payment in lieu of taxes) agreement as if taxes were being paid.

Typically, the assessing authority (i.e., town or county) negotiates the PILOT agreement in conjunction with the Empire State Development Corporation on behalf of all concerned municipalities. One negotiated PILOT agreement between IBM and the town of Yorktown provided the Ossining Union Free School District no revenue, although the district would have

received the largest share of IBM's tax payment. A school district should receive a proportional share of any PILOT payment equal to the proportion of property tax divided between other municipal governments.

This loophole has been closed for industrial development agencies and should be fixed for the Empire State Development Corporation as well.

6. Teacher Accountability

NYSSBA advances the following five reforms:

Establish a state hearing panel to hear and decide 3020-a cases;

Authorize school districts to terminate tenured teachers without 3020-a hearings if:

- o They have been convicted of a felony, or*
- o Their teaching certificate has been revoked by the State Education Department, or*
- o They have failed to obtain permanent certification in the requisite time period;*

Clarify that teachers must cooperate in the school district investigation of 3020-a charges against them;

Either eliminate paid suspension for teachers awaiting 3020-a proceedings, or cap the length of time they are paid; and

Require teachers facing 3020-a hearings to disclose the nature of their defense prior to the hearing.

Teacher quality is a critical factor in improving student achievement. New York school districts have worked to attract the highest caliber of teachers possible, offering salaries and fringe benefits that are among the best in the nation. But we hurt children – as well as damage the morale and stature of our many fine teachers – when unfit teachers remain on the payroll. The five reforms to the process are aimed at reducing children's exposure to individuals whose behavior makes them unsuitable for teaching or who simply are incompetent teachers. These reforms still protect the rights of the accused but expedite the process for reaching a just resolution.

According to a NYSSBA survey completed in 2004, the average case outside of New York City takes 520 days from the time charges are levied to the time a hearing officer renders a decision, up from 319 days in 1997. The cost has also soared, from \$94,527 to \$128,941. The cost and the time discourage school districts from initiating formal proceedings except in the most urgent cases.

7. Triborough Amendment

Repeal the obligation as set forth in that part of the Taylor Law's Triborough Amendment which requires school districts to pay increments on salary schedules to members of employee organizations which are party to labor contracts after the expiration of those agreements.

The Triborough Amendment, which was enacted in 1982, was designed to ensure that public employees who had been prohibited from striking by the 1967 enactment of the Taylor Law continue to receive wages and benefits while working, following their contract expiration. Therefore, under pay scales that move teachers to a higher base pay each successive year (step increases), the law grants teachers raises each year even under expired contracts.

Under a current fiscal climate that includes skyrocketing pension contributions, health care costs and energy costs, districts may seek to increase employee contributions to health insurance as a part of contract negotiations. However, if the collective bargaining unit is uninterested in negotiating this point, once the current contract expires the employees continue to contribute at their current rate and receive automatic pay increases. Changing this provision would restore equity to the collective bargaining process by restoring incentive for collective bargaining units to come to the table.

8. Pension Reform

Boards of education and boards of cooperative educational services (BOCES) should be allowed to establish pension contribution reserve funds for all employees and be able to deposit surplus monies into such funds.

A new pension tier should be created for all future school district and BOCES employees that would require employee contributions for the entire period of such participating employees' service.

School district employees should be able to select enrollment in either an existing defined benefit retirement system or a defined contribution retirement plan similar to those currently offered to employees of the state University of New York and the City University of New York. Employees currently vested in a defined benefit retirement system who elect to transfer to a defined contribution plan would retain credit and enrollment rights up to the date of making the election. Contributions after the date of transfer would be made to the defined contribution plan. Non-vested employees would be allowed to transfer employer and employee contributions made up to the date of election.

Employers are saddled with fluctuating and unpredictable costs that they are unable to plan for from year to year, which is why it's important they be able to establish pension contribution reserve funds. Reestablishing a career-long employee contribution, under a new pension tier, would also help mitigate rising pension costs.

Neither side is well served by the current defined benefit systems. Employees who don't spend their entire career in, and retire from, the system leave with little or no retirement benefit for themselves or their dependents. With high percentages of teachers leaving in the first 10 years of service and more teachers entering service later in life, it only makes sense to offer a choice between the existing systems and a defined contribution system.

9. Employee Benefits

The state should cease to undermine the collective bargaining process by giving away benefits that should be negotiated between school boards and their employees.

The state should stop singling out school districts by mandating that they alone may not reduce the health insurance benefits offered to retirees unless a comparable reduction is enacted for active employees.

The state should remove statutory barriers that prevent school districts from providing employee benefits in an efficient and cost-effective manner.

Locally elected school officials are in the best position to address employee benefits. Each time the Legislature enacts and the executive signs a mandatory leave bill or other employee benefit, the state further erodes the collective bargaining process and shifts more power to employee organizations. This behavior does not serve school districts, or more importantly, the taxpayers. Time off for preventative health services, paid family leave and other employee benefits are examples of items that are available to school district employees that should be negotiated, not mandated.

Ceasing to enact new mandatory employee benefits alone will not be adequate. Current laws limiting employer flexibility, such as the Triborough Amendment, and the current pension plans must be amended. The law prohibiting the diminution of retiree health benefits should also be re-examined. This was supposed to be a temporary measure enacted in 1994 in response to a Temporary Commission on Educational Retiree Health Benefits. However, further action was never taken.

In addition to retiree health benefits, there are other changes that if enacted would allow districts to continue to negotiate high-quality benefits to employees in a more cost-effective manner. Such changes include amending the Insurance Law to allow schools to form cooperative employee health benefit plans and examining self-insured single payer health plans, such as those employed in Albany and Suffolk counties. The benefits of a single payer system could also be achieved through expansion of the New York State Health Insurance Plan (NYSHIP) to offer a lower cost system. Currently, poorer districts which would benefit the most from this type of system can not afford to participate.

10. Special Education

Repeal the statutory placement of the burden of proof on school districts in individualized education plan (IEP) challenges, and make the moving party responsible for stating and defending their challenge.

Make the state and not local school districts responsible for the costs associated with students placed in the New York State schools for the blind and deaf.

Take necessary measures to resolve licensure and certification disparities among professional staff providing Medicaid eligible support services to students.

School districts across the state are striving to provide the best services possible to special education students. However, in many instances, state law prevents these services from being delivered in a timely and cost-effective manner. Under current law, school districts are bearing the burden of proof in all IEP challenges, are fiscally responsible for students who attend the state schools for the blind and deaf, and face tremendous difficulty accessing the Medicaid reimbursements they are entitled to for eligible support services, because of New York State laws.

Statutorily shifting the burden of proof has increased the cost and duration of IEP challenges and in many cases prevents students from receiving the services they need until the completion of the case. While the state cannot change federal rules regarding Medicaid eligibility for services, it can make changes to bring professional standards more in line with other states. If the state addressed these problems and took responsibility for the students in state-run schools, there would be greater resources available for all students with special needs.

11. Federal Mandates

New York State's elected officials should take a leadership role in advocating to the federal government for adequate funding for existing programs and a halt to the enactment of unfunded and under-funded mandates.

Federally mandated, but chronically under-funded programs cost New York State billions of dollars each year. These federal programs must then be subsidized by state and local funds. Federally required special educational services, which were supposed to be funded at 40 percent by the federal government, are currently funded at 17 percent. Title I and the testing requirements of No Child Left Behind add millions more to the deficiency. The Center for Medicare and Medicaid Services (CMS) enacted a rule to eliminate reimbursement to schools for certain transportation and administrative services. In December of 2007, Congress imposed a temporary moratorium on this action. Without permanent protection from this rule, New York State stands to inherit another unfunded federal program. NCLB requirements force the little federal funding that states receive into academic intervention programs that may not serve the needs of the whole district. The advocacy of New York State's leaders on educational funding to New York's congressional delegation would allow state and local funds to be redirected towards state and local programs as well as property tax relief.

12. New Unfunded and Under-funded Mandates

Curriculum decisions should be left to the purview of the board of regents and local school boards.

All state mandates should be fully funded.

New unfunded and under-funded mandates should not be enacted.

From skin cancer awareness to shaken baby syndrome, from the Irish potato famine to nutrition, there are a myriad of new legislative proposals every year to add new curriculum mandates to state education law. These mandates, while usually addressing important and significant issues, are inappropriate. Each time one is enacted schools are forced to rearrange and revise lesson plans and reallocate resources to meet new state mandates, many of which are enacted outside of the context of comprehensive state learning standards. Locally elected school officials are in the best position to determine the educational needs of the communities they serve.

In addition to curriculum changes, each year there are a myriad of new administrative and healthcare mandates proposed and enacted on school districts. Each time a new law is enacted telling school districts to post a sign indicating the location of heart defibrillators, to measure and report body mass index and to adopt, print and distribute new bus idling rules, resources are diverted from districts' educational mission.

This trend is most startling in the arena of healthcare programs and staff training. While it may be convenient for the state and counties to utilize schools as delivery mechanisms for public health services, as they provide access to concentrated numbers of children, districts cannot serve as healthcare delivery and management centers, and deliver the education that students are entitled to.

Unfunded education mandates are also significant cost drivers. The requirement to pay for expensive graphing calculators for all students is estimated to cost \$100 million.

In addition, cumbersome and detailed staff training and professional development requirements deny locally elected school boards the opportunity to establish staff training and professional development programs that respond to the needs of the communities which elected them.

13. Streamline Reporting Requirements

Enact the School Paperwork Reduction Act.

In 2006, NYSSBA was a member of a group of practitioners which collaborated to advise the State Education Department regarding the number of existing reporting requirements, mandated by state and federal law and regulation, and evaluate ways to reduce this administrative burden. SED has repeatedly advanced a bill that would reduce the number of individual reports required by the state.

Any effort that would reduce or eliminate the excessive and often duplicative reporting requirements imposed on school districts would be extremely helpful. Many of the current requirements divert staff time and resources from districts' primary objective of educating students. They also place a heavy burden on state Education Department staff that must spend countless hours reviewing these reports. A comprehensive, streamlined reporting system would benefit everyone.

Given tight fiscal constraints, school districts must be freed from administrative restrictions and mandates that hamper their ability to devote every education dollar to the pursuit of raising academic achievement levels. While it may be impossible to quantify the cost reductions that would result from these efficiencies at this time, the savings in staff time, printing and mailing at the State and local levels for preparing and reviewing these documents will certainly be significant. A number of obsolete requirements would also be deleted from the regulations under the department's proposal.

14. BOCES Aid Eligibility for Audits

Authorize BOCES aid eligibility for conducting internal audits and claims audits of component or other districts as warranted by accounting rules of appropriate independence.

Districts acknowledge the need for appropriate fiscal oversight, including audits. However, one of the most efficient means of implementing this program, through BOCES, remains unutilized as the service is not eligible for state BOCES aid. So long as any such audits are conducted in accordance with accounting rules monitoring appropriate independence, they should not only be allowed but encouraged.

This is not the only area in which BOCES could be better utilized. These systems could be used to promote shared services and consolidation of some back office functions to cut costs and still allow districts and communities to maintain their autonomy.

15. Maximize Energy Efficiencies

Enforce current laws that would maximize energy efficiencies.

Current law allows school districts to be customers of the New York Power Authority (NYPA). Such membership would allow them, at a minimum, to avoid surcharges for stranded costs, systems benefit charges, and renewable energy portfolio costs. However, currently not all districts which seek this benefit (to which they are entitled) are being approved.

Energy costs fluctuate wildly. While enforcement of the current law would be a start, it would not fully insulate districts from the effect of the erratic nature of the energy industry. Legislation has been advanced to exempt energy spikes from the contingent budget cap, thus allowing all districts to respond to an industry and cost they have no control over. Unfortunately, this legislation has been rejected by two different governors. This bill should be again advanced and enacted. In addition, the state should consider taking responsibility for increases in energy costs above the rate of inflation.

16. State Agency Support

Properly fund and staff state agencies, so that they can provide support and assistance to school districts.

The perpetually under-funded and under staffed State Education Department was adequately funded for the first time in over a decade during the 2007-08 fiscal year. However, as is the case with school districts, one year of proper funding will not undo years of under-funding and staff cuts. This action will have to be maintained for years before the staff knowledge and experience that have been lost through attrition can be undone and real technical assistance can be provided to school districts, as it was in the past.

Resources must continue to flow to the State Comptroller's office for assistance with internal auditing. Schools would benefit from one-stop shopping for energy related help from state agencies such as the New York State Energy Research and Development Authority (NYSERDA) and the New York Power Authority. However, there are an insufficient number of trained energy auditors to meet the demand.

17. Public Funding for Private Schools

Stop the diversion of public education funds to private schools.

School districts are required to make available to all children in their districts an adequate, free public education. Parents always retain the option not to take advantage of that free public education. However, if parents exercise that option, public school districts and the taxpayers who support them should not be responsible for the additional costs incurred by a child's attendance at a private school. Under current law, school districts must transport private school students to and from school. In addition, the district must provide textbooks and share computer hardware aid.

Private schools bear almost no responsibility for the education of special education students. This costly responsibility is shifted back to public school districts at tremendous expense. New York State mandates that public schools provide far greater educational rights to parentally enrolled private school students than those to which they are entitled to under federal law.

Private schools charge tuition to cover their cost. Their tuitions should not be subsidized by the use of public funds to help control costs.

Conclusion

If enacted, the recommendations contained within this report could provide incredible relief to school districts and as a result, taxpayers. By reducing mandates and increasing flexibility, districts will be better able to respond to the needs of their communities and their students.

For additional information on these and other topics, please contact NYSSBA's Department of Governmental Relations at 518-783-0200 or visit the website at www.nyssba.org.