



# The New York State Association of School Business Officials

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*Advancing the Business of Education*

Greetings and felicitations to you all, I am Michael J. Borges, Executive Director of the New York State Association of School Business Officials (NYSASBO), a professional membership organization representing over 1,600 school business managers, officials, treasurers and assistant superintendents.

My members are responsible for the business non-instructional components of a school district's operations ranging from food service and transportation to payroll and health insurance. My members assist with developing the operating budget, implementing the tax cap and structuring capital project financing. School business officials are essential to running an efficient and cost-effective school district, and yet we are not required by law or regulation. Given the prominence and scrutiny of public finances these days, it certainly seems odd and shortsighted not to have financial expertise in our school districts.

As you probably have heard from many other speakers, a restriction on school district revenues, (i.e. cap on state aid and local taxes) and unfunded mandates are the two biggest obstacles to providing a sound basic education in our state, an education that allows our schools to graduate career and college ready students, which is essential to both the future of our democracy and economy.

This perfect storm of rising costs and caps on revenues has resulted in school districts teetering on the edge of fiscal insolvency. NYSASBO recently released a report entitled "School District Fiscal Report: A Tale of Two Insolvencies" which was a compilation of survey responses from our members and data submitted by school districts to the state Education Department on the status of their unrestricted fund balances or their savings/financial cushions. The report details how school districts, especially high need/low wealth rural and urban districts are spending down their fund balances at an alarming rate to plug deficits in their budgets. And if this depletion rate continues unabated, about a third of school districts could potentially face fiscal or educational insolvency or both by 2015. Meaning school districts will have to choose between paying their bills or as the Commissioner has referred to them as paying their legacy costs (i.e. pensions, health care, etc.) or providing a sound basic education. Literally choosing between, funding the past or the future.

Either way, the fiscal climate for schools shows no signs of getting better anytime soon. The situation we are facing did not happen overnight, so I do not expect major solutions to happen overnight or in the short-term if at all. However, there are many minor steps that can be taken to address the issue of costs and unfunded mandates in a manner that does not risk and perhaps even improves the quality of a public education.

State policymakers over the past two years have implemented several reforms that will save schools money such as:



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- Changing the required census of Pre-K children from annually to every two years.
- Authorizing school boards to enact a policy to provide student transportation based upon patterns of actual ridership.
- Easing school building aid penalties for late filing of final cost reports to more appropriate levels.
- Providing flexibility in claims auditing.
- Procurement reform that allows local governments and school districts to “piggyback” on the RFP’s of other local, state and federal government.
- Authorizing school districts to provide regional transportation services jointly with other districts or BOCES.
- Allowing BOCES to contract with public libraries and serve school districts outside the state.

In addition, Governor’s Mandate Relief Team has identified other items related to schools that we are in agreement on and urge passage into law next year:

- Repeal the requirement that schools provide a form to parents of certain children with disabilities who are veterans of the Vietnam War for a report to the Division of Veterans’ Affairs for research purposes. This requirement, found in Section 353 of the Executive Law and Section 4402 of the Education Law, is at-best outmoded.
- Repeal a duplicative requirement that school districts provide information to other agencies regarding certain students with disabilities.
- Repeal BOCES special education space planning requirements while retaining the requirement that school districts and BOCES ensure the stability and continuity of program placements for students with disabilities. Conventional wisdom appears to hold that the BOCES Special Education space planning requirement, found in Section 1950 (17) of the Education Law, is outmoded, unnecessary, and is redundant with federal requirements.
- Repeal the requirement for written parental consent prior to initial provision of special education services in a 12-month special service and/or program.



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- Provide that a due process hearing must be requested within one year of the date the parent or district had knowledge of the issue, with exceptions as required by federal law and with an exception that a parent's request for tuition reimbursement must be made within 180 days of the date the parent placed his/her child in the private school.
- Clarify that special education services for parentally-placed students do not include special classes or integrated co-teaching; clarify responsibilities for July / August services; change the date from June 1 to April 1 for a parent to request special education services; make mediation mandatory when due process complaints are sought; and establish regional rate methodologies for billing to districts.

Many other worthwhile mandate relief suggestions can be found in legislation (S.6688/A. 10290 sponsored by Senator Flanagan and Assemblymember Nolan, that our association can support and urge the Education Reform Commission to seriously consider them as well.

In addition to the items identified above, our members have suggested several other areas where schools can save money that can be reinvested in our children's education:

### Advertise Construction Projects in the Local Newspaper

General Municipal Law Section 103(2) requires School Districts, along with basically every other local government, to advertise construction projects over a minimal value in the local newspaper. This requirement is outdated in the internet age and alternative less costly means of notifying potential bidders can be utilized. A central registry or online portal could be developed by either our association or the state Education Department where all bids, RFP's by school districts can be found.

### Internal audit requirement

Education Law Section 2116-b requires that most School Districts establish internal audit procedures, subject to regulation and specification by the State Comptroller and NYSED. (8 NYCRR 170.12 is also relevant to this mandate.)

Both the State Comptroller and SED agree that this annual internal audit requirement should be lifted for school districts with student populations of less than 1,000 where the burden on a small staff with limited resources and expertise is problematic.

### Mailed Budget Notice

Education law Section 2022(2-a) requires that School Districts mail information about the proposed School Budget prior to the vote, or whatever action is required to implement the School District's proposed budget, to "all qualified voters."



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Again, in recognition of the digital age we live in, NYSASBO recommends allowing school district residents to opt out of receiving the notification by mail and allow it to be emailed to them. This would save thousands of dollars in printing and mailing costs for school districts annually, not to mention being more environmentally friendly.

## Pesticide Notice

Education law Section 409-h requires notice, with certain specifications, to be provided upon use of pesticides, as defined in the Environmental Conservation Law. (8 NYCRR 155.24 is also relevant.)

As a general rule, NYSASBO likes to hold health and safety requirements harmless when making mandate relief proposals. However, this particular requirement again does not take into account the digital/internet options available to disseminate information faster and more cheaply. What is more frustrating is that the language of this statute, allowing “the Commissioner” to “authorize . . . any . . . reasonable method” of communication of the required information, would appear to already permit this option.

## Leave for Prostate and Breast Cancer Screening

This mandate, found in Civil Service Law Section 159-b and Civil Service Law Section 159-c, grants leave over and above traditional sick leave, to teachers for prostate and breast cancer screening. The School District must, without state reimbursement, hire a substitute teacher to fill in for the teacher when school is in session. Teachers, of course, typically have a long summer vacation which can be used to take these tests. We believe the obvious good intent of this law can be implemented without any additional financial burden to the school district by repealing this requirement for school districts.

Besides these smaller action items, we also support the often mentioned but consistently ignored reforms to the Triborough Amendment and Wicks Law, which I will not waste further time on.

The implementation of the new teacher and principal evaluations or APPR although well intentioned and definitely needed, does place a significant unfunded mandate on school districts. The costs of training, hiring substitutes and providing stipends, hiring consultants for third party assessments, plus the cost of switching to the new common core curriculum and purchasing new textbooks all place a financial burden on schools at a time when they can least afford it and are indeed struggling to meet their current obligations. Although the train has already left the station on this one, perhaps a less costly alternative like a renewable tenure process every three years that spreads the costs, staff commitment over a period of time as well as averages out a teacher’s performance and test scores, would have achieved the same results with minimal additional costs. We plan to survey our members at the end of this school year to ascertain the real costs of this unfunded mandate.



## Building Aid

The State's recent attempts to respond to local building needs, while understandably seeking to make its own budget obligations more predictable and controllable, have only succeeded in making the system impossibly complex, more expensive, and institutionalizing a disincentive for districts to pursue a long term strategy for capital improvements and routine capital maintenance.

Revising the Building Aid formula, the mechanism that determines how much and when school districts receive state dollars to cover capital expenses, has the potential to increase the overall efficiencies and save both the State and local school districts money in capital construction.

NYSASBO's proposal is conceptually simple – eliminating the current “expenditure-based” building aid system in favor of an “entitlement-based” system whereby the State, based on local district's ability to pay and the relative need of improvements of current facilities, provides a guaranteed, multiple-year allotments for school capital improvements. Under this change, the State gains the ability to predict building aid payments on a long term basis, and school districts, with the new ability to “bank” annual state allotments for future construction use, would have a new incentive to take a long term view of capital improvements. From a cost perspective, this fundamental change in building aid has the potential to save both State and local costs.

## Private School Transportation

Although various provisions of law, regulation, and even the *Constitution of New York State* mandate that certain services be provided to the students of private or charter schools we believe that public funds should be spent on public education first and foremost, especially given that public schools are cutting back on services and educational opportunities to their own students.

Although this touches upon a deep and complicated philosophical as well as constitutional issue, we believe now is the time to have this discussion on whether parents who chose and have the financial ability to send their children to private schools should be subsidized by public taxpayer dollars.

NYSASBO recommends three options to reduce or share the financial burden of transporting private school students: 1) allow school districts to charge a fee to private schools based on the actual cost, 2) allow school districts to reimburse parents for the cost of transportation in lieu of the school district providing, and 3) limiting transportation to within 15 miles of the student's home. These options spread the cost and responsibility to those who chose to send their children to private schools.



## Special Education

We have saved the most-complex issue for last. Various mandates related to New York State's "Special Education" system, usually the result of a combination of statute, regulation, and case law, are often the subject of cost complaints. These mandates partly stem from law, partly from regulation, partly from court decisions, and partly from federal law and regulation. Article 89 of the Education Law is particularly relevant, as are various court cases, the federal Individuals with Disabilities in Education Act (20 USC 1400 *et seq*), and 8 NYCRR Part 200.

The primary, big picture issues in Special Education are as follows.

- **Cost.** As I have said repeatedly, in other contexts, New York State has the Cadillac of Special Education problems, and it simply can't be afforded anymore, if it ever really could to begin with.
- **Effectiveness.** Even the Empire Center, not a bastion of liberal sentiment, agreed in writing that Special Education would be worth the cost if it achieved great outcomes (*Helping Kids, Saving Money*, page 3). It may be wisest to pursue the programs most-known to be most-effective rather than to continue to provide the same level of service, despite all the inflexibilities and redundancies built into the current system, and the evidence from the literature that the system does not achieve the desired outcomes.
- **Sustainability.** NYSASBO and its members fully support the goals of Special Education. However, given its current cost and cost growth, and while no reliable estimates exist both are beyond question substantial, the system as presently constituted is unsustainable.

New York State's Special Education system is a frequent source of complaint and cost concerns for School Business Officials. For example, when our members were queried for mandate relief suggestions, one E-Mail consisted *entirely* of Special Education suggestions. The remainder of space and time in the portion of this testimony dealing with Special Education is, given the unique perspective of School Business Officials, dealing with the issues of cost and, as a consequence, of sustainability.

The Rockefeller Institute of Government, in a 2008 presentation to the Governor's Commission on Property Tax Relief, stated that Special Education, statewide, represented over 26% of "total instructional costs" in the 2005-2006 Fiscal Year, and pegged the absolute dollar figure, again statewide, at \$9 billion. In the same presentation, the Rockefeller Institute also stated that "New York's proportion of education dollars spent on special education is twice the national average." Other analyses more-or-less confirm that figure, and basically all agree that New York's percentage is noticeably higher than that of other states, though the specific percentages differ slightly. New York's percentage of children in or considered eligible for Special Education,



according to the Rockefeller Institute and confirmed by other sources, is also among the highest in the country, usually in or very near the top five, hovering at around 15%, noticeably over the national average.

Special Education mandates come in myriad shapes and sizes, and Special Education should, for the most part, be considered separately from other mandates, in order to give it the time and attention it deserves. We at NYSASBO are extremely confident that improving the system and cutting its costs are not-incompatible goals.

Several items should be noted at the present time, however.

The Governor's Mandate Relief Redesign Team, in its 2011 *Final Report*, put forth eight Opportunities for Further Mandate Relief that related specifically to education or School Districts. Of those eight, six appear to specifically related to Special Education. This special consideration by the Team should be an indication of the depth and importance of this issue.

To repeat some of the same material cited earlier, those six suggestions were as follows:

- Repeal the requirement that schools provide a form to parents of certain children with disabilities who are veterans of the Vietnam War for a report to the Division of Veterans' Affairs for research purposes.
- Repeal a duplicative requirement that school districts provide information to other agencies regarding certain students with disabilities.
- Repeal BOCES special education space planning requirements while retaining the requirement that school districts and BOCES ensure the stability and continuity of program placements for students with disabilities.
- Repeal the requirement for written parental consent prior to initial provision of special education services in a 12-month special service and/or program.
- Provide that a due process hearing must be requested within one year of the date the parent or district had knowledge of the issue, with exceptions as required by federal law and with an exception that a parent's request for tuition reimbursement must be made within 180 days of the date the parent placed his/her child in the private school.
- Clarify that special education services for parentally-placed students do not include special classes or integrated co-teaching; clarify responsibilities for July / August services; change the date from June 1 to April 1 for a parent to request special education



services; make mediation mandatory when due process complaints are sought; and establish regional rate methodologies for billing to districts.

As stated above, most of our members support the goals of Special Education. However, the system's current condition, with 31 pages of State mandates that exceed federal mandates (as identified by NYSED) and various inappropriate restrictions and redundancies built into the system, has put it on an unsustainable path.

NYSED's 31-page list of instances where the State has mandates that go beyond the federal mandates has attracted a lot of attention. We at NYSASBO and our members recognize that some of those aren't really appropriate to consider as mandates. For example, if the federal requirements cite "deafness," but do not define that term, the State has to step in to define and quantify deafness. This then appears misleadingly to be an instance wherein State requirements exceed federal requirements.

However, many of those 31 pages do indeed contain instances where the State specifically exceeds federal mandates, thus contributing to the great cost and unsustainable course of Special Education.

I will cite a few instances, from NYSED's 31-page list, just to start discussion.

- New York State's requirements appear to accommodate non-public schools to a much-greater degree than do federal requirements, to the point of allowing parents of a Special Education student in a non-public school access to impartial hearings seemingly similar to that enjoyed by parents of a Special Education student in a public school. (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, bottom of page 2 to start of page 3.)
- State requirements specify a maximum Special Education class size of 20 or 25 students, depending on grade level. Federal requirements don't. (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, top of page 11.)
- State requirements state that, in a Special Education impartial hearing, the burden of proof is on the School District or State agency providing services to the student. Federal requirements don't (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, middle of page 12.)
- State requirements provide for a four-month statute of limitations for judicial review of an impartial hearing's rulings, under Article 4 of the CPLR. Federal requirements, by contrast, provide for a 90-day statute of limitations, unless the State has an explicit time



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limitation. New York does, and its explicit time limitation *specifically exceeds* federal standards. (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, near the top of page 13.)

- New York State has maximum caseload requirements for Consultant Teacher Services. Federal requirements don't. (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, middle of page 27.)
- New York State's requirements for accommodating a Special Education student who changes School Districts appear to go noticeably beyond federal requirements. (State Ed report, *New York State Law, Regulations, and Policy Not Required by Federal Law/Regulation Policy*, top of page 17.)

NYSASBO's analysis of the 31-page State Ed document has uncovered around 50 instances of State mandates exceeding federal mandates, which should be subject to further review. And this was just with one sweep at the material, and does not include other instances where comparisons to the federal requirements may not be appropriate but reform may still be in order.

As stated, Special Education deserves to be considered by itself. NYSASBO has taken tentative steps toward an extensive review of Special Education programs. In the meanwhile, however, at minimum the six suggestions made by the Governor's Mandate Relief Team should be given full consideration.

So there is no shortage of ideas on how to make our educational system more cost-effective, there just seems to be a shortage of willpower to make it happen. And time is running out to take make a difference before our school districts start falling off a fiscal cliff in great numbers in 2015.