

# News & Notes

VOL. XLV No. 2 • FEBRUARY 2016

## Governor Andrew Cuomo's State of the State and Executive Budget

Provisions Regarding Pre-K to Grade 12 Education



During the afternoon of Wednesday, January 13, Governor Andrew Cuomo delivered his joint State of the State Address and proposed Executive Budget for 2016-17. The overall budget amounted to \$145 billion, with \$23.5 billion directed to school aid funding. The governor's presentation stood in stark contrast to his 2015 presentations in two ways.

First, he was much more conciliatory in his remarks about K-12 education and about educators. For example, he referred to teachers who use their own resources for instructional supplies as "a beautiful sign of dedication."

Second, his proposals were predominantly fiscal in nature, not programmatic, which is appropriate in the Executive Budget. However, SAANYS feels that statutory revisions are called for in regard to the program revisions included in the 2015 Budget Bill – provisions such as those pertaining to Failing and Persistently Failing Schools (a.k.a.,

*continued on page 3*

## Legislature Holds Joint Budget Hearing

On January 27, Assembly Ways and Means Committee Chairperson Herman Farrell, Jr. and Senate Finance Committee Chairperson Catherine Young conducted a Joint Legislative Hearing on the 2016-2017 Executive Budget proposal. The hearing was well attended by Senate and Assembly members including Assembly Education Committee Chairperson Catherine Nolan and Senate Education Committee Chairperson Carl Marcellino.

Of the 26 organizations that provided testimony, primary attention and time (almost four hours) was directed to Education Commissioner MaryEllen Elia. The number and types of questions raised by legislators indicated continuing concerns regarding the development, administration, and uses of state assessments, especially in grades 3 to 8. Although the commissioner informed the legislators that a new vendor has been hired (Questar Assessment), that the test items developed by Pearson for this year's assessments would be reviewed and revised/deleted if necessary, that the number of items included in the tests will be reduced in order to reduce the time for test administration, and that time limits for test completion will be extended; several legislators such as Assemblymember Edward Ra, remained incredulous.

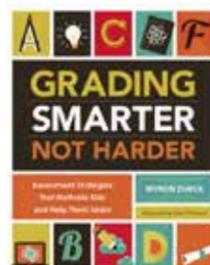
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## SAANYS Kicks Off Grading Smarter Not Harder Learning Series Featuring Myron Dueck



A collaboration between Capital Region BOCES, Greater Capital Region Teacher Center, Leading Instruction for Today's New York (SAANYS and the Magellan Foundation), and the NYS ASCD.

This series will kick off with a Blended Learning Conference with Myron Dueck on March 10. Later sessions with the author will include a book study, online sessions, a summer institute sponsored by SAANYS/LIFT NY, and follow up in district support by select BOCES statewide for implementation with staff. During the kick off session, Myron Dueck, author of *Grading Smarter, Not Harder*, will explore a number of topics with educators including: the purpose and implications of grading, what homework is (and what it could be), and whether there is a place for a zero in student grades. He will also work with attendees to strengthen their grading practices in order to best benefit learners. See page 4 for more details and registration information. ■



## Commissioner Elia Discusses Educational Priorities with State Senate

The Senate Education Committee was convened by Senator Carl Marcellino, committee chairperson, on January 20, 2016. The lone agenda item was discussion with Education Commissioner MaryEllen Elia. The commissioner began her presentation by summarizing her actions over the past six months since taking office, and her engagement of teachers, principals, parents, and stakeholders during her travels of approximately 20,000 miles across the state. She also summarized her extensive and broad experiences as an educator – from teacher, to school administrator, to school superintendent. Many senators expressed satisfaction with the commissioner's approach to date, and felt that her education background bolstered their confidence and support of her proposed priorities.

In addressing committee members, Commissioner Elia said that she wanted to address the "big issues," beginning with the annual professional performance review (APPR) system. In this regard, she focused on the recommendation of the governor's Common Core

*continued on page 3*



**SAANYS Welcomes New Unit:**

– REGION 1 –

East Islip Administrators Association

### LEGAL BRIEFS

## SAANYS Successfully Defends a Long Island Whistleblower

Recovers Back Pay and Benefits

Mike Tweed, a probationary Long Island administrator and SAANYS member, exposed a cheating scandal in his school district. Instead of being granted tenure based on his exemplary service, Tweed was retaliated against for reporting the criminal conduct by being denied tenure. During this time period, Tweed's administrative unit was not affiliated with SAANYS, however, Tweed fortunately was an individual member and sought out SAANYS General Counsel Art Scheuermann, a former Suffolk County prosecutor, to defend him against the illegal action taken.

In New York, it is extremely rare for probationary administrators to successfully challenge a denial of tenure. In the last known case, in 2003, SAANYS successfully tried such a case entitled, *Kunjbehari v. Wyandanch Union Free School District*, in Suffolk County Supreme Court, in which a building principal was wrongfully denied tenure after a fourth year of probation. It was proven at trial that the superintendent and board of education had discriminated against him because of his union activities. In that case, the principal received almost one half million dollars in back pay and benefits.

In the current case, several litigations were employed. First, SAANYS grieved the district's termination decision because the school district had failed to follow the collective bargaining agreement's (CBA) evaluation procedure. This litigation culminated in the recent arbitration award that is the basis of this article. And, second, SAANYS filed a federal constitutional lawsuit

*continued on page 7*



## Executive Viewpoint

Kevin S. Casey, Executive Director

### Who Will Pick Up the Tab?

We are entering a period of uncertainty, with many important (and related) pieces of the educational puzzle in flux. Over the coming months many will work themselves out, as specific regulations and policies take form, but for the time being, the direction of education in New York State could be significantly impacted by any number of factors.

In my view the most significant of all is the governor's state aid proposal, an increase which is less than half of what was sought by SED or recommended by the New York State Educa-

tion Conference Board (of which SAANYS is a member). It is not unusual for a governor to lowball a state aid proposal to increase leverage in ensuing budget negotiations with the legislature, but a billion plus is a steep climb. The potential impact of a paltry state aid increase is exacerbated by a tax cap just slightly above zero.

The aid increase proposed by the governor is insufficient to maintain current programs and services in the face of rising costs. If not substantially increased, districts will once again be faced with cost-driven decisions with education-

ally destabilizing effects. The governor's budget proposal again calls for an Education Tax Credit (read "voucher system") and seeks to increase aid to charter schools. These proposals would serve, if enacted, to reduce the resources available to public schools at a time when those schools are again wrestling with significant policy change relative to standards, curriculum, testing, and evaluations. While this year the governor did not slam educators in his budget presentation, his proposal understandably lead some to speculate that his opinion of public educators remains unchanged.

In the meantime SED, itself with a shrinking staff and budget, seeks to implement the recommendations of the governor's common core task force, for which no funding was proposed. In the absence of statutory change, SED is engaged in a regulatory jujitsu in order to prevent 3-8 tests from having consequences over

the next four years. It is also seeking to review standards, develop new tests, release and analyze results, modify test times, incorporate a new test vendor...all while the commissioner maintains a punishing schedule of thruway diplomacy designed to demonstrate that SED really is listening to the field. Time will tell if these changes will calm the educational waters. These are all steps in the right direction, but are still incomplete. Just ask anyone whose student performance score will not include a 3-8 test. They still fall into the statutory matrix.

It is the temporary partial patchwork nature of the fix that keeps the opt-out proponents active. Potentially raising the stakes of opting out is the fact that the Every Student Succeeds Act (ESSA), while restricting in many ways the reach of the United States Department of Education (USDOE) into the states, maintained the 95 percent participation rate techni-

cally required for federal money. The mere continuation of the participation rate requirement suggests real concern at the federal level that the opt-out movement will continue to grow.

While all this change is occurring so too is the make-up of the Board of Regents (BOR). Two new regents will be added this spring to replace retiring Chancellor Tisch and Vice-chancellor Bottar; and a new chancellor and vice chancellor will be selected by BOR members as its new leaders. One can only speculate as to what policy impact that might have.

There are currently many changes, challenges, and many moving parts, but at the end of the day, if you believe in public education, it is the responsibility of the public to pay for it. ■

## For What Purpose Is a Moratorium?

Sponsor Opinion piece by Dr. Bruce H. Crowder, Educational Vistas, Inc.

The reprieve from the audacious impact of APPR may be acknowledged as a time to reset education thinking and action. Regardless of the politicizing of Common Core and testing, teaching, learning, and assessment continue. In our current social and economical milieu, the importance of high learner expectations in core subjects and the soft effect of others is most critical.

It is time for a new foundation for teaching, learning, and assessment. That foundation begins with the identification of high learner expectations at every grade and subject. There may be a need for organized abandonment, as stated by management guru Peter Drucker, to make teaching, learning, and assessment a more appropriate fit for the realities of today. Clearly, yesterday's curricula may

not meet the new criteria for learning.

It was the hope that Common Core would be the basis for that new foundation. However, if Common Core is an explosive designation with incredible political, negative baggage in your district, then you are compelled to replace it. And, whatever represents those high expectations must be vetted publically. This is the beginning!

Following a new foundation of learner expectations, the real work begins for educators who historically have been trapped within classrooms in which they cry for the

opportunity of released time for innovation and development. While expectations for a new foundation for learning come into existence, theories of learning and knowledge acquisition affect the manner in which the expectations are to be implemented. Communities of educators need the time and support to function as such.

New thinking and action often requires new areas of learning. Advanced certificates for teaching and leadership represent the entry level requirement; however, experience *in media res* is where commitment and responsibility take hold for educators as they

value the importance of what it is they need to do. All the intent in the world goes nowhere without the support of time and finances.

We have a window of opportunity. Let us hope that those who hold the power and the resources understand what this opportunity can mean.

Dr. Bruce H. Crowder is a senior researcher for Educational Vistas, Inc. He is a former NYS assistant commissioner for Quality Assurance and the Education and Accountability Program (EAP). Dr. Crowder may be reached at bcrowder@edvistas.com. ■

The statements and opinions expressed herein do not necessarily imply or reflect the opinion or philosophy of the School Administrators Association of New York State.

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School Administrators Association of New York State

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Have questions? Need assistance?  
Use the "Ask SAANYS" button at saanys.org.

# CAPITAL UPDATE

## Governor Andrew Cuomo's State of the State and Executive Budget

*continued from page 1*

Struggling and Persistently Struggling Schools) and the state Annual Professional Performance Review system.

A summary of provisions related to prekindergarten- to-grade 12 education follows:

- **State Aid to Schools** – The governor proposes to **increase state aid by \$2.1 billion – over two years** – with an increase of \$991 million in 2016-17. This is unacceptable. SAANYS, as well as other educational organizations and the State Education Department are all calling for an increase of at least \$2.2 billion for one year, 2016-17. In fact, it is estimated that \$1.7 billion is needed in 2016-17 just to continue current school programs. SAANYS is pleased that Governor Cuomo has determined to provide budget runs that will provide school districts a basis to continue budget planning. However, the governor's recommendation for school operating aid, including Gap Elimination Adjustment and Foundation Aid allocations, will result in state aid decreases for some school districts.
  - o **The GEA** – The governor calls for the end of the gap elimination adjustment – over two years – with \$189 million allocated for this purpose in 2016-17, which is less than half of the \$434 million still owed. **SAANYS supports the state senate in asserting that the GEA should end in 2016-17** – this reduction in state fiscal support must end now.
  - o **Foundation Aid** – The governor never mentioned Foundation Aid during his presentation. In his budget, \$266 million is allocated in additional Foundation Aid, which is currently \$4.4 billion underfunded. SAANYS asserts that the Foundation Aid Formula should be meaningfully increased for 2016-17 – this is fiscal support that is owed.
  - o **Property Tax Cap** – Several times during the address, the property tax cap was heralded as a success, and no revisions are apparently contemplated – including for 2016-17 when the cap will be only 0.12 percent. If needed and appropriate adjustments are not made to the property tax cap methodology, then more state school aid is essential, and is included in the \$2.2 billion increase requested by SAANYS.
- **Mandate Relief** – The proposed budget includes one provision that is intended to reduce state mandates for school district BOCES. It is recommended that a new waiver process be established to allow school districts, BOCES, and approved private special education programs to petition SED for flexibility from certain special education requirements.
- **Education Tax Credit** – \$150 million would be allocated in 2016-17 for an education tax credit for eligible contributions to scholarship organizations and private schools. Under the state constitution, each student is entitled to a sound, basic education, and public schools are the vehicle by which we meet this obligation – and public schools are under-funded. The \$150 million should not be diverted from public schools.
- **Instructional Materials and Supplies** – Recognizing that many teachers spend their own money on materials for their classrooms, Cuomo proposes that a refundable credit equal to the cost of instructional supplies purchased by a public, charter, or private school educator, up to a maximum of \$200, with an aggregate cap of \$10 million.
- **Common Core Standards and State Testing** – Governor Cuomo indicated that last year his office and the state legislature implemented essential reforms to reduce testing, increase parent participation, and to empower

*continued on page 8*

## Elia Discusses Educational Priorities with State Senate

*continued from page 1*

Task Force to put a moratorium in place, effective in the current school year and running through 2018-19; and the follow-up regulatory amendments enacted by the Board of Regents in December 2015. She did not recommend or mention the need for any amendment of Section 3012-d of Education Law.

In terms of student assessment, the commissioner summarized her actions to engage parents about their concerns and recommendations, and of her intentions to continue engaging parents. She said that, for this year, tests will be shorter, that the department has secured a new test vendor (Questar Assessment, Inc.) to ensure a match between test content and standards, and that educators will have a greater role in test development. In stemming the incidence of students opting-out of state assessments, she said that teachers, principals, and superintendents are the people that parents most listen to; “they need to be part of the solution.”

The commissioner repeatedly stressed the need for higher standards and expectations, and pointed out that 71 percent of those responding to the department's common core survey expressed support of the standards – but added that revisions are necessary. She explained that the survey results will be reviewed by the department and by external practitioners to determine what needs to be revised and how it should be revised. She said that there are benefits to having “common standards,” but added that, “not everything has to be common.”

The commissioner then segued to the topic of jobs, and the importance of college and career readiness. She said that the department is working closely with the SUNY and CUNY systems to ensure that successful high school completers are prepared to succeed in higher education without the need for remediation. Also, included in the department's recommendation to increase school operating aid by \$2.4 billion is funding to expand Career and Technical Education (CTE) programs and professional development.

*continued on page 7*

## Joint Budget Hearing

*continued from page 1*

In terms of the budget, there was strong consistency across SED and each of the organizations comprising the Educational Conference Board.\* For 2016-17, all remarked upon the inadequacy of the governor's proposal to raise state school aid by \$991 million (\$2.1 billion over two years) and to allocate \$189 million to the Gap Elimination Adjustment (with the intent to eliminate the GEA in two years). Each organization rejoined with recommended state aid increases ranging from \$2.2 billion to \$2.6 billion. Rationale supporting the requested budget increases includes:

- An increase of \$1.7 billion is needed for the continued operation of current programs and services.
- A very low property tax cap of .012 percent is set for this local tax levy. This is equivalent of cutting aid by approximately \$308 million to school districts outside the Big Five.
- Foundation Aid should be increased in a meaningful and fair manner.
- The full Gap Elimination Adjustment should be retired by the allocation of \$434 million.

The State Education Department and ECB organizations were also in sync in regard to the need to provide funding to Struggling Schools (a.k.a., Failing Schools) and establishing **more reasonable, research based timelines for Struggling and Persistently Struggling Schools to post demonstrable improvement**. SAANYS also recommended that accountability procedures not be implemented in a “tunnel vision” manner, focused only upon the performance of Struggling and Persistently Struggling Schools. SAANYS has received reports that in light of no funding for Struggling Schools and the late release of funds to Persistently Struggling Schools (in January 2016 rather than in July 2015) some school districts have been reallocating fiscal, personnel, and other resources from other schools. In verbal and written testimony, SAANYS rhetorically asked whether the receivership intervention will be considered successful if a Struggling School achieves its performance targets but performance deteriorates in other schools?

*continued on page 7*



For more information regarding the SAANYS legislative agenda, the New York State Board of Regents, the Educational Conference Board, or other government relations concerns, contact James Viola, SAANYS director of government relations, at [JViola@saanys.org](mailto:JViola@saanys.org).

## 2015 CALENDAR

### FEBRUARY

*National African American History Month*

**Feb 8-12 National School Counseling Week**

**Feb 9 Mardi Gras**

**Feb 11 Thomas Edison's Birthday**

**Feb 12 Abraham Lincoln's Birthday**

**Feb 14 St. Valentine's Day**

**Feb 15-19 Take Your Family to School Week**

**Feb 15 Presidents' Day**

**Feb 15 Susan B. Anthony's Birthday**

**Feb 20 Frederick Douglas Day**

**Feb 22 George Washington's Birthday**

**Feb 23 W.E.B. DuBois's Birthday**

### MARCH

*Music in Our Schools Month*

*Women's History Month*

**Mar 3 Adoption of U.S. National Anthem**

**Mar 7-13 National School Breakfast Week**

**Mar 8 International Women's Day**

**Mar 10 Anniversary of Harriet Tubman's Death**

**Mar 11 Johnny Appleseed Day**

**Mar 13 Daylight Savings Time**

**Mar 17 St. Patrick's Day**

**Mar 27 Easter**

# SAANYS Professional Development Update



For information on any SAANYS professional development event, contact Karen Bronson at [KBronson@saanys.org](mailto:KBronson@saanys.org).

We are happy to say that the Locally Grown PD Series is up and running and ready for your registration!

Locally Grown PD is happening in fifteen locations across New York State in the month of March. Fifteen timely and convenient workshops will be presented by your colleague practitioners in locations from Farmingdale to Fredonia and Western Suffolk to West Seneca!

Check out the dates and locations, and mark your calendars to get together with colleagues in your region to share collegial expertise and ideas. All workshops are held from 4:30pm-6:30pm and all include an optional online or individual follow up with presenters after the workshop itself. We are even trying to identify the best pizza closest to each site to be delivered to participants and presenters. Registration is \$10 on the website. Full information, workshop descriptions, and presenter information is on the SAANYS website, but don't delay because these will be here before we know it!

- **MARCH 3:** MILLBROOK CSD, LIVERPOOL CSD, JERICHO CSD, WHITESBORO CSD
- **MARCH 8:** ARLINGTON CSD
- **MARCH 9:** ARLINGTON CSD, ERIE 1 BOCES
- **MARCH 10:** CARMEL CSD, BROOME-TIOGA BOCES
- **MARCH 15:** ARMINGDALE CSD, TONAWANDA CSD
- **MARCH 30:** LATHAM
- **MARCH 31:** WEST SUFFOLK BOCES, WSHWE BOCES, SLL BOCES

Are traditional grading systems looking more and more obsolete by the day? Look forward to more good things around the topic of *Grading Smarter Not Harder*, with events coming up through a collaboration with NYASCD, Capital Region BOCES, and Greater Capital Region BOCES:

- **MARCH:** Blended Learning Conference in six locations around NYS
- **MARCH –MAY:** Book Studies with the Author: Myron Dueck, author of *Grading Smarter Not Harder*
- **MAY:** Online discussion sessions with Myron Dueck
- **JULY:** Summer Rethink Grading workshops in Buffalo and Syracuse
- **Through DECEMBER:** On-site, in school support for implementation steps

The goal of this multifaceted event is to delve into a complicated issue in depth over time and in multiple formats that suit your learning style. The components provide sustainable support that allows you to get some traction as you think about this important topic. Check out our SAANYS website for complete information on this ground breaking learning opportunity! ■

*This program may now be covered under BOCES CoSer!*

## SAANYS MentorCoach Service

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For more information, contact Karen Bronson at 518-782-0600 [kbronson@saanys.org](mailto:kbronson@saanys.org) • [www.saanys.org](http://www.saanys.org)



SAANYS' Magellan Foundation is an approved NYSED provider for this 6-hour workshop to fulfill harassment, bullying, and discrimination prevention and intervention training required for certification/licensure under the Dignity for All Students Act (The Dignity Act).

### FOR DISTRICTS OR REGIONS DASA REFRESHER WORKSHOP

A 3-hour face-to-face DASA Refresher Workshop with Dr. Michael Johnson will ensure that you and your colleagues are up to date on the latest information and approaches for dealing with issues and situations to support all students under the Dignity Act. This interactive workshop will focus on situational problem solving and discussion around DASA topics. New SED guidance on transgender, gender non-conforming, as well as all aspects of meeting DASA compliance requirements will be covered.



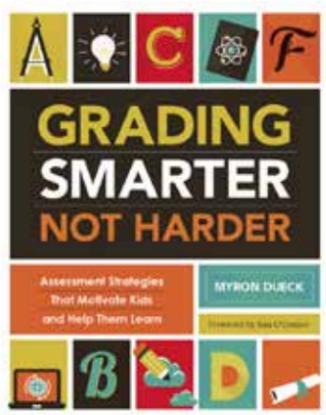
### FOR INDIVIDUALS COMPLETE DASA CERTIFICATION WORKSHOP

Teachers and administrators with initial certification who need DASA certification may take the 3-hour online portion of the workshop in addition to the three hour face-to-face workshop to become DASA certified.

DISTRICTS OR REGIONS INTERESTED IN HOSTING THIS DASA WORKSHOP IN THEIR SCHOOL OR DISTRICT MAY CONTACT [kbronson@saanys.org](mailto:kbronson@saanys.org) for information regarding costs and desired dates.



**Workshop Facilitator:**  
Dr. Michael Johnson has over 30 years of public school experience including serving as an administrator at the elementary, middle, and high school levels.  
Dr. Johnson is a NYSED approved DASA trainer.



## Grading Smarter Not Harder

A SERIES ON RETHINKING TRADITIONAL GRADING WITH AUTHOR MYRON DUECK

## Kickoff Event! Blended Learning Conference with Myron Dueck

**March 10 - 8:30am - 3:00pm**  
**Cost: \$135 (includes book\* and lunch\*\*)**

During this blended learning session, Myron Dueck, author of *Grading Smarter, Not Harder*, will explore a number of topics with educators including: the purpose and implications of grading, what homework is (and what it could be), and whether there is a place for a zero in student grades. He will also work with attendees to strengthen their grading practices in order to best benefit learners. Along with working virtually with Myron, attendees will work with each other and an in-person facilitator, to help make the best practices explored a reality when returning to the school building or district office.



\* Only participants attending this March 10 event will receive books directly.  
\*\* Varies by location.



These events are a collaboration between Capital Region BOCES, Greater Capital Region Teacher Center, Leading Instruction for Today's New York (SAANYS and the Magellan Foundation), the New York State Association for Supervision and Curriculum Development, Erie 2 BOCES, Putnam Northern Westchester BOCES, and Western Suffolk BOCES.

## MULTIPLE LOCATIONS!

More information and registration at [saanys.org/events](http://saanys.org/events).

- Capital Region BOCES
- Erie 2 BOCES
- Putnam Northern Westchester BOCES
- Western Suffolk BOCES
- West Genesee School District

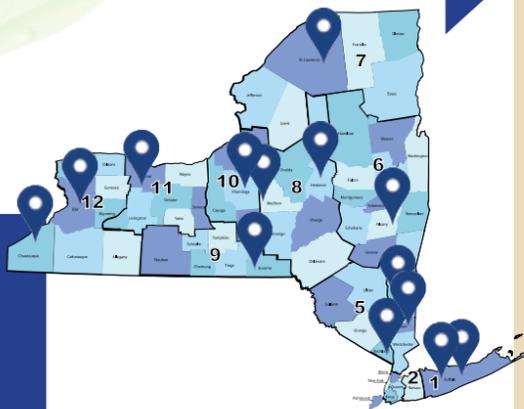
See article at left for more upcoming events.

## Local Practitioners Sharing Local Best Practices



# Locally Growth PD

**MARCH 2016 | 4:30 PM-6:30 PM**



### Western/Southern Tier

How Data Driven Instruction Can Rejuvenate Teachers: See It to Believe It!  
**MARCH 9 | ERIE 1 BOCES**

Blended Learning Jump Start Workshop  
**MARCH 10 | BROOME/TIOGA BOCES**

Faculty Meetings:  
From Dissemination to Engagement  
**MARCH 15 | TONAWANDA CSD**

Register Online – only \$10!  
[saanys.org/events](http://saanys.org/events)

### Eastern/Central/Capital

An Innovative Model to Build Teacher Leaders  
**MARCH 3 | LIVERPOOL CSD**

Revitalizing Collaborative Data Teams  
**MARCH 3 | WHITESBORO CSD**

Innovative Approaches to ELL Instruction  
**MARCH 30 | SAANYS HEADQUARTERS, Latham**

From Administrator to Connected Lead Learner  
**MARCH 31 | WSHWE BOCES, Saratoga Springs**

From Administrator to Connected Lead Learner  
**MARCH 31 | SLL BOCES, Canton**

### Downstate/Long Island

Making Teacher Evaluations More Efficient  
**MARCH 2 | MILLBROOK CSD**

Connected Leadership: Using 21st Century Tools to Communicate, Collaborate, and Inspire  
**MARCH 3 | JERICHO CSD**

Unclog the RTI Process to Meet the Needs of ALL Students  
**MARCH 8 | POUGHKEEPSIE CSD**

Bringing Collaborative Leadership to Life In Your School  
**MARCH 9 | ARLINGTON CSD**

Cultivating Teachers' Professional Growth with the EdCamp Model  
**MARCH 10 | CARMEL CSD**

Disruptive Innovation:  
Connected Learning That Works!  
**MARCH 15 | FARMINGDALE CSD**

Just Breathe: Mindfulness for School Leaders  
**MARCH 31 | WESTERN SUFFOLK BOCES**

## Congratulations Retiring Members

*Sherri Armstrong  
Laura Bair  
Marguerite Bates  
Berry Becker  
Donald Bedeaux  
Kharon Bell  
Shari Biro  
Marie Brander  
Kimberlee Brock  
Olivia Cambs  
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Andrew Ippolito  
Dale Johanson  
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Paulette Miller  
Joseph Mora  
Mary Murphy  
Debra O'Connor  
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## Google CAMP

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Cost:  
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includes Google  
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8:00 am - 8:30 am	Registration
8:30 am - 8:45 am	Opening
8:45 am - 9:00 am	Session Presentation
9:05 am - 9:50 am	Session 1
10:00 am - 10:45 am	Session 2
10:45 am - 11:00 am	Coffee break
11:10 am - 11:45 am	Session 3
12:00 Noon - 12:45 pm	Lunch
1:00 pm - 1:45 pm	Session 4
1:50 pm - 2:35 pm	Session 5
2:45 pm - 3:30 pm	App Smackdown   Closing Remarks

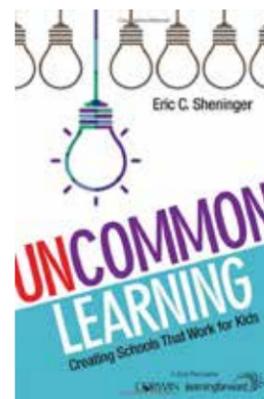
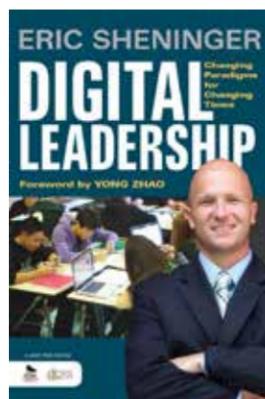
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# LEGAL BRIEFS

A Message From  
Wendy DeForge,  
SAANYS Counsel  
WDeforge@saanys.org



## Know Your Rights, Alternative Disciplinary Procedures

Most if not all tenured certificated administrators and permanent status civil service administrators are familiar with the fact that they are entitled to hearings before formal discipline is instituted. However, depending upon your specific Collective Bargaining Agreement (“CBA”), negotiated on your behalf, there may be another form of grievance/disciplinary procedure available to you.

Alternative disciplinary provisions can be extraordinarily helpful. For civil service administrators, this can be particularly helpful. A negotiated disciplinary procedure may provide a binding resolution with more expansive discovery and a longer time for the hearing to take place, as opposed to what is afforded under Civil Service Law §75. For certificated administrators, some options may include a multi-tiered disciplinary

process similar to a grievance process that would allow for a better understanding of the allegations and evidence the administrator faces before a formal hearing actually takes place. These are items that you may want to consider building into your CBA, if they do not already exist.

However, for every good point there is a bad – SAANYS has recently come across alternate disciplinary processes in several CBAs that actually afford less due process than an administrator would otherwise be entitled to under the applicable statute. As SAANYS would never condone such clauses, we have discovered that most of these clauses are extremely old and typically were crafted due to a district’s inability to remove a problematic employee through the statutory processes. Oftentimes these clauses are overlooked come time

to negotiate a successor CBA because they aren’t used, but it is important to look for and remove any such negative alternate disciplinary procedures in order to avoid their potential use by the district and anxiety filled litigation to enforce your unit members’ rights to a full due process hearing.

By way of an example, a September 1, 1994 amendment to Education Law §3020-a provided that any district with a CBA containing an alternate disciplinary procedure must allow the tenured teacher or administrator to decide whether to use the statutory process or the one negotiated. Any CBAs enacted prior to the date of the amendment that contained an alternative disciplinary procedure that remained unaltered would use such negotiated procedure in lieu of the statutory process. Most school districts simply employed this procedure and did not avail themselves of the Education Law § 3020-a procedure. The understanding throughout the state was simply if the CBA provided for the alternative disciplinary procedure then the Education Law § 3020-a option was not available. The court of appeals has cleared this

misunderstanding up for us in the recent case of *Kilduff v. Rochester City School District*.

In Kilduff, the school district’s CBA with

*It serves as a reminder to all that the § 3020-a process cannot be negotiated away. Always remember your tenure is a right, not a privilege, and it cannot be taken from you without the proper procedure.*

the teachers’ union contained a decades-old provision requiring that all discipline, other than termination, be submitted to the grievance and arbitration procedure in the CBA as an alternative to the procedures required by Education Law § 3020-a. According to the district’s thinking, because the alternate disciplinary procedure had not been altered since before 1994, this clause, which provided for less due process than the statute, must be used. Not so, according to the appellate division fourth department and the court of appeals, which held that because there were clauses within the CBA that had been altered through negotiations, though not the alternative disciplinary procedure, the CBA was no longer grandfathered and the district was required as a matter of law to offer the

employee the choice of the alternate disciplinary procedure or a hearing under 3020-a.

The moral of the story for all members is this: If you find yourself in this position, you may select which procedure you would like to avail yourself of if your CBA has one of the provisions similar to the one spoken of above. But remember, you must request it in writing if

you want to elect to go through the alternative disciplinary procedure provided in your CBA. While this decision affects only those school districts that had alternative disciplinary procedures pre-dating September 1, 1994, it serves as a reminder to all that the § 3020-a process cannot be negotiated away. Always remember your tenure is a right, not a privilege, and it cannot be taken from you without the proper procedure.

As always, if you ever find yourself in a position where you are facing discipline, and particularly if your employer wants to utilize an alternate disciplinary procedure, call the SAANYS Legal Department and we will provide you with representation and guidance throughout the process. ■

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# SAANYS Successfully Defends a Long Island Whistleblower

## Recovers Back Pay and Benefits

*continued from page 1*

against the school district and individually sued the superintendent and every member of the board of education for their egregious conduct. The lawsuit is scheduled for trial in June of 2016.

Concerning the arbitration case, the administrators' CBA required the evaluation of non-principal administrators to follow the following procedures: (1) to jointly developed goals by October 15; (2) to provide continuous formative evaluation and feedback throughout the school year in the form of one-on-one evaluation meetings; (3) to document by written memo any serious performance issues that could result in a negative evaluation; and, (4) to issue a final annual evaluation. In conjunction with these specific contract provisions, Scheuermann also relied on past practice and relevant board policies to show that the school district treated Tweed like a pariah in following the established evaluation procedure for administrators.

For example, both the superintendent and Tweed's direct supervisor, an assistant superintendent, failed to meet and jointly agree on mutual goals by the contractual deadline, as had been done in Tweed's two prior probationary years of employment. From the start of his tenure-bearing year, Tweed noticed a difference in his evaluators and how the evaluation process was being largely ignored. Tweed's direct supervisor failed to schedule the goals-setting meetings over the summer as was done in his prior two years of employment. Unlike prior years, Tweed's goals were not finalized by the end of the summer. Instead, Tweed's jointly developed goals were late by over two months and were only completed on December 20, 2014. The two month delay was a clear violation of the contract.

Due to the lateness of the goal setting, the evaluative period was abbreviated. However, neither the superintendent nor assistant superintendent ever held any evaluative meetings with Tweed. When confronted about this glaring violation of the CBA's evaluation procedure, both the superintendent and assistant superintendent claimed that they had evaluation meetings with Tweed, but they were in the form of group meetings, emails, and phone calls. The absence of any documented evaluative meetings constituted a second violation of the CBA.

The CBA also required that Tweed receive a written memo if a serious problem in performance should ever arise that could cause a negative final evaluation. In this case the superintendent and assistant superintendent never documented any issue with Tweed's performance. In fact, the assistant superintendent of human resources, who oversaw all aspects of personnel, testified that he was certain Tweed would be awarded tenure because of his outstanding work and the absence of any complaints or criticisms about his performance.

Despite the lack of documented performance issues, the superintendent denied tenure based on five trumped-up performance deficiencies. The arbitrator, Robert Simmelkjaer, saw through the baseless reasons for the denial of tenure and found that Tweed's supervisors' lack of calendar entries and documentation demonstrated different intentions. As the arbitrator wrote:

[I am] . . . not persuaded the administrator could have amassed five (5) performance issues ostensibly unrelated to his jointly developed goals that did not rise to the level that "could cause a negative final evaluation," yet collectively warranted a negative tenure recommendation. Inconceivably they failed to document anything.

Accordingly, Arbitrator Simmekjaer found the district failed to document Tweed's alleged performance concerns and found a third violation of the CBA's evaluation procedure. Given the clear and convincing evidence that Tweed's evaluators failed to comply with the CBA, past practice, and pertinent board policy, Arbitrator Simmekjaer ordered Tweed be reinstated to a fourth year of probation, be awarded back pay and benefits, and directed to be made whole because of the school district's violations of the CBA.

Tweed's administrative bargaining unit, the Glen Cove Educational Administrators Association, has since joined SAANYS. ■

# Elia Discusses Educational Priorities with State Senate

*continued from page 3*

When Senator Patricia Ritchie raised concern about the number of teachers laid-off during the Great Recession and a 47 percent decrease in the enrollment of education majors at the State University of New York at Plattsburgh; the commissioner readily agreed that this is a serious issue, not just in New York State, but nationally. Furthermore, she encouraged that, "we stop beating-up teachers" – that it is one of the most important jobs. She also said that, "Teachers need to have support and the State Education Department will take a role in making this occur."

Senator George Latimer asked for the commissioner's thoughts regarding Struggling Schools. The commissioner responded that "SED's role is to support these schools until they get better." She also described the statute regarding Failing Schools and Persistently Failing Schools as "a beginning," but did not elaborate.

Senator Michael Rzenhofer, on the behalf of small rural school districts expressed concern about the ability of their students to access Advanced Placement (AP) and other types of rigorous courses, and asked what can be done now. The commissioner said courses can be put online to enhance access to AP, International Baccalaureate and technical programs. She also said that this matter is being discussed by district superintendents and that the enhancement of such programmatic access and equity is included in the department's agenda.

On January 27, Commissioner Elia will present the State Education Department's priorities and recommendations in testimony before a joint hearing of the State Legislature – as will SAANYS. For more information regarding the Commissioner's meeting with the Senate Education Committee or the joint meeting of the State Legislature, contact James Viola, director of government relations at [JViola@saanys.org](mailto:JViola@saanys.org) ■

## Joint Budget Hearing

*continued from page 3*

The annual professional performance review (APPR) system was not included in the commissioner's testimony, or in the testimony of many ECB organizations. However, when questioned about APPR, Commissioner Elia indicated the need for revisions (though it is unclear whether such revisions extended to statute and regulation) and to the need to "put together a team" to determine the right way to evaluate teachers and principals in New York State. The commissioner also said, "No evaluation system should be put in place to try to skewer people." The SAANYS testimony delivered by James Viola, director of government relations, was more direct. He began by expressing appreciation of the work completed by the governor's Common Core Task Force and for the timely actions of the state Board of Regents in issuing emergency regulations and guidance. However, he described these actions as constituting an "imperfect patch" – not a fix. In regard to §3012-d, he raised the student performance-observation matrix and the impartial independent trained evaluator requirements as examples of areas warranting review and possible revision of statute and regulation. He encouraged the governor's office, members of the state legislature, and SED to continue engaging appropriate entities so that necessary revisions of statute and regulations may be made in a planned, thoughtful manner. In this regard, it should be noted that February 9 members of the SAANYS Government Relations Committee will meet with members of the legislature; Commissioner Elia and with the Governor's Deputy Secretary for Education (Jere Hochman) to discuss the governor's and SAANYS' proposals.

The testimony delivered by James Viola is posted at [saanys.org](http://saanys.org).

\*The Educational Conference Board (ECB) is comprised of the Conference of Big 5 School Districts, NYS Association of School Business Officials, NYS PTA, NYS Council of School Superintendents, NYS School Boards Association, NYSUT, and SAANYS. ■

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# Governor Andrew Cuomo's State of the State and Executive Budget

continued from page 3

school districts. In reality, necessary actions related to the Common Core Curriculum and the testing regimen were delegated to the State Education Department, saying, "...we urge SED to do it right this time."

- **Annual Professional Performance Reviews** – The proposed budget includes no provisions to amend Section 3012-c or Section 3012-d of Education Law.
- **Universal Prekindergarten** – The video presentation that preceded the governor's presentation said, "Prekindergarten should be for all New York State students and that is why the state will pick-up the tab." However, the additional allocation for prekindergarten services will not be sufficient to ensure universal availability. An additional \$22 million is requested for the provision of prekindergarten services to children 3 years of age. The new funds will be awarded based on competitive grant applications. For the QUALITYstarsNY review/improvement program, \$2 million is proposed in addition to the \$3 million already allocated. **SAANYS recommends that the \$22 million proposed to expand pre-k to three-year-old students be redirected to pre-k programs for students four years of age.**
- **Age of Juvenile Jurisdiction** – New York and North Carolina are the only states that set the age of juvenile jurisdiction at 16 years of age. It is proposed that:
  - o The age of juvenile jurisdiction be raised to age 17 on January 1, 2018 and to age 18 on January 1, 2019; raise the lower age of juvenile jurisdiction from age 7 to age 12 on January 1, 2018 for all offenses except homicide.
  - o Family Court jurisdiction be expanded to include youth ages 16 and 17 charged with non-violent felonies, misdemeanors, or harassment or disorderly conduct violations.
- **Community Schools Aid** – During his presentation, Governor Cuomo expressed the intent to "transform every Failing School into a Community School." Toward that end, in addition to the two-year allocation of \$75 million approved last session for persistently failing schools, a one-year allocation of \$100 million is now proposed. Of the additional allocation, \$75 million would be targeted to the 17 school districts with Struggling and/or Persistently Struggling Schools and \$25 million would be available to other high need, low performing districts to be identified by the State Education Department. The additional funds will be allocated, not based on RFPs. The governor proposes no revisions to the programmatic requirements set for Struggling and Persistently Struggling schools, such as the timeframe within which demonstrable improvement must be demonstrated.
- **Career and Technical Education** – The proposed budget does not contain provisions to increase aid to BOCES and non-component school districts for the provision of CTE services.
- **School Safety** – The governor posits three recommendations:
  - o Changes are recommended to clarify the difference between district-wide and school-level safety plans, especially in regard to protecting confidential information, and would require that all school staff receive mandatory annual training on such plans. Each school district would be required to designate a school or district employee as chief emergency officer to coordinate emergency-related training, and for emergency communications.
  - o It is proposed that requirements related to school fire drills be modernized by replacing a small number of the 12 fire drills currently required with preparation for other types of emergency situations, such as lock-down drills.
  - o The State Education Department, rather than the state legislature, would be authorized to forgive the state aid withholding school districts otherwise face, for holding fewer than 180 days of class, if the shortfall is due to school closure in an emergency situation after a credible threat to student safety.
- **State Education Department** – The proposed budget level funds State Education Department personnel and operations.

- o Similar to last year, the proposed budget includes \$8.4 million to be allocated to the State Education Department to support multiple versions of tests, to allow for the release of test items, and to reduce the need for field testing.
- o The proposal includes no additional funds to SED for the provision of professional development.

- **Pension Forfeiture** – Article 5 of the state constitution states: "After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired." (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.) An amendment to the state constitution is now proposed so that a "public official" convicted of a crime related to public office that is deemed to constitute a willful breach of the contractual relationship between the individual and a pension / retirement system of the state or of a civil division thereof – that as a result of such a breach all benefits, rights, and privileges under the pension / retirement system shall be forfeited. SAANYS has reached out to the governor's office for a definition of "public official" and to ascertain whether it would include school administrators, teachers, or other school employees. As of the time of this writing (January 21, 2016) the requested clarification has not been received.
- **Charter Schools** – Direct state aid to charter schools would increase from \$25 million during the current year to \$27 million in 2016-17. The budget bill includes no language specifying accountability procedures or procedures to guard against "creaming."
- **Constitutional Convention** – The governor proposes a \$1 million appropriation to create a commission to develop a blueprint for a constitutional convention. SAANYS has strong reservations about this allocation and the advisability of holding a constitutional convention. It is our recollection that when the governor first ran for office, his platform included a constitutional convention, and that one of the express purposes of the convention was to review and possibly amend provisions related to individuals already receiving public education pensions.

SAANYS has already engaged the governor's office to clarify the contents of the Executive Budget and to raise possible alternatives for consideration. Formal testimony was presented before a joint meeting of the legislature on January 27 (see page 1), and teams of school administrators met with legislators and with the governor's office on February 9. For more information about the proposed Executive Budget and plans to engage legislators and the governor's office, contact James Viola, director of government relations, at [JViola@saanys.org](mailto:JViola@saanys.org). ■

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