



**June 11, 2008**

**To:** Legislators and Legislative Staff

**Subject:** *Senate “Taxpayer Empowerment and Accountability” Plan*

The Council of School Superintendents offers mixed reactions to the Senate “Taxpayer Empowerment and Accountability” plan, opposing several items, supporting some, and offering no objection to two. In at least one case, more information is required to offer a recommendation.

The news release announcing the plan declares it to be “...*a comprehensive reform package designed to rein in runaway spending on school administrator salaries and pension benefits, and to protect taxpayers from being forced to pick up the rising costs.*” The tone of the release casts administrative compensation as a leading cause for rising property tax burdens.

This is not accurate. State Education Department data indicates superintendent salaries next year will rise by *less than the average overall proposed school budget increase* (3.6 vs. 5.3 percent). Zeroing in on administrative elements of school budgets will do little to reduce rising costs.

One aspect of the Senate plan would aim to sharply curtail retired public educators from working after retirement. This is unwise. Retired educators perform an essential role for schools in filling transitional positions. Changes in law or regulation should not foreclose that possibility.

Employing retired educators should save taxpayer money. Pensions are paid from past contributions. By employing a retired superintendent, a district avoids a pension contribution, often pays a lower salary, and often avoids other benefit costs.

Below, THE COUNCIL recommends steps to enhance accountability in the practice of working after retirement without foreclosing the possibility of tapping the resources of valuable retirees.

**Post administrator compensation information on websites**

- **Senate Proposal:** Require school districts to make all information relating to payroll, pension benefits and contracts of school administrators available on their web sites. In addition, the web site would include a link to State Education Department data that would allow school district taxpayers to compare salaries, school district enrollment and services provided in other school districts.
- **Council Reaction – No Objection:** These items are public information already available upon request. Pending further details, we do not object to this proposal.

### 72-hour public review before contract approval by school boards

- **Proposal:** Require school districts to provide the public with at least 72 hours to review all contracts before the school board votes on that contract.
- **Reaction - Oppose:** This proposal is unworkable and unnecessary. Voters elect board members to lead school district governance. Through that work board members acquire expertise they employ on voters' behalf. One of a board's most critical jobs is to select and employ an effective superintendent. The process most often involves members of the community, union representatives and board members. It is collaborative, cohesive and involving. Compensation parameters are established and publicized at the earliest stages of a search. Compensation packages are extensively thought out and negotiated by boards and superintendents, with the advice of counsel. Requiring a 72 hour delay before ratification could undermine the successful conclusion of a selection process with no net gain to the district or its students.

### Restrict hiring of retired superintendents

- **Proposal:** Put in place new rules to allow school districts to hire a retired superintendent only in extraordinary cases. Those districts seeking a waiver would initiate a multi-step approval process and be subject to an automatic review by SED and the New York State Comptroller if a certain threshold on salary and benefits is reached.
- **Reaction – More details required:** School districts employ retired superintendents for good reasons. The state should not limit use to only “extraordinary cases.” THE COUNCIL offers its own recommendations below.

Proven superintendents are best suited to assume leadership in a district with a divided board needing to resolve its differences before committing to a direction for the district and to a permanent superintendent. A board may also employ a retired interim superintendent to clear up problems, so a permanent leader can take over with a clean slate.

Districts may require interim leadership due to unexpected loss of a superintendent – or other administrator. A community may want its school board to conduct an extensive search before, or instead of, promoting from within. Interim retirees allow districts time to find the best candidate.

Promoting from within, or from another district, creates another vacancy needing to be filled almost immediately, as when a teacher becomes a principal or a principal becomes a superintendent. These transitions are disruptive for students. Often districts prefer to make promotional transitions during summer months and use retirees to serve-out the remainder of the school year.

### Public notice of intent to hire a retired superintendent

- **Proposal:** Require districts to give public notice if they intended to hire a retired superintendent, and would be obligated to disclose all salary and benefits to taxpayers on the school district's web site.
- **Reaction – No Objection.**

### Restrict termination payments

- **Proposal:** Require the state to restrict "Golden Parachutes," a contractual agreement between a school district and an employee specifying that the employee will receive certain significant benefits if he or she is terminated.
- **Reaction - Oppose:** This proposal would discourage successful educators from becoming superintendents. It would make it harder for a board and superintendent to end an unsuccessful relationship. Characterizing payments as "Golden Parachutes" inappropriately maligns boards, superintendents and the due process to which they are entitled.

Successful educators who become superintendents typically give up secure positions to assume the responsibility of leading a district. They may leave the superintendency of another district where they have been successful, or move up from another administrative position, sometimes losing tenure in the process. By state law, superintendents must be employed under a contract of three to five years in length. The security provided through a contract is necessary to entice people to leave more secure positions for the superintendency.

Limiting the value of a negotiated settlement for early termination would undermine the security now provided by a contract. It could also preclude a superintendent and board from mutually agreeing to end an unsuccessful partnership. Facing the early loss of income and benefits, a superintendent might seek to "hold on," requiring the board to go through formal procedures for removal. This would be disruptive for the school system and the community.

One proposal on this theme would limit the payment for early termination to no more than 25 percent of the average annual compensation for the time remaining on the contract, essentially three months. Teachers receive tenure. Many principals and other administrators have tenure. Board members have fixed terms. Superintendents deserve more than three months.

### Prohibit private lawyers from public pension membership

- **Proposal:** Prohibit lawyers from being listed as employees of school districts for the purpose of earning additional pension and health benefits that drive up costs for taxpayers, and increase civil and criminal penalties for pension fraud.
- **Reaction - Support:** We support this in principle but would need to see more details.

### Streamline school paperwork mandates

- **Proposal:** Paper Work Reduction Act in Education – this legislation would eliminate or streamline a myriad of individual reports and filings currently required by statute or SED.
- **Reaction – Strongly Support:** We strongly support this legislation. The State Education Department calculates school districts are required to submit 150 plans and reports every year. Spread over 700 districts, this totals over 100,000 items annually.

The burden is especially great in small districts where the superintendent fills many administrative roles – CEO, CFO, instructional leader, personnel director, student disciplinarian, even backup bus driver, as well as report-writer. State policymakers need to decide – to they want school leaders completing reports no one reads, or working on things that will make a real difference for schoolchildren and taxpayers.

### Stop unfunded mandates

- **Proposal:** Require the state to fully fund any State mandates placed on schools. The Legislature would also prohibit unfunded mandates and require the State to fund one hundred percent of the cost of any new requirements imposed on school districts.
- **Reaction – Support.**

### Prevent conflicts of interest

- **Proposal:** Prevent school board attorneys from representing superintendents in their personal contract negotiations with the board, or in their personal legal work, as well as prohibit school board attorneys with spouses employed by districts from representing them in contract talks. In addition, the measure restricts school board members who have relatives who are employed by the district.
- **Reaction – Oppose:** This proposal reveals ignorance of the nature of attorney-client relationships. Attorneys are ethically barred from engaging in conflicts of interest and must avoid even the appearance of impropriety. Violation of these rules risks the attorney's license. No new law is needed and would only serve to confuse and malign.

### Council Recommendations

At the joint Attorney General/Legislative hearing on Long Island on May 22<sup>nd</sup>, THE COUNCIL made seven recommendations to strengthen accountability in the employment of retirees:

- **Prevent revolving door hiring.** Prevent any retiree – even those 65 or older – from being rehired in the same district less than six months after leaving. The Commissioner of Education could be authorized to make very limited exceptions for very short periods (three months or so), with no allowance for extension – in case a search unexpectedly fails.
- **Limit length of interim service.** Limit interim administrative appointments to a maximum of one year, even if the administrator is over 65, except in cases of extreme need again determined by the Commissioner. It is unhealthy for school systems to operate for too long without committing to permanent leadership.
- **Ensure taxpayer savings.** Require school districts to demonstrate a savings for hiring any retiree, whatever his or her age.
- **Require timely waiver requests.** Require districts to apply for waivers for any interim arrangement that is intended to be long term, not just when the retiree approaches the \$30,000 earnings limit.
- **Ensure rigorous attempts to fill vacancies.** Verify the rigor of the attempt to fill the position with a non-retiree, or establish a clear rationale for why interim leadership is needed; for example, because the community or school board is too divided.
- **Prevent conflicts of interest.** Prohibit interim superintendents from conducting the search for their permanent replacement. This might add to taxpayer costs, since a district could have to pay both a search consultant and an interim, but it would stop any insider deals, either suspected or real.
- **No pensions for felons.** Suspend pension payments to school employees convicted of job-related felonies committed during the course of their school employment. More than punishment, the objective here is deterrence.