

BOOK REVIEW: THE SUPREME COURT AS BATTLEFIELD

DELAWARE LAWYER

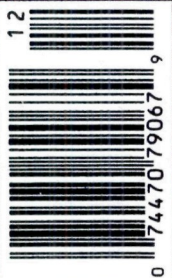
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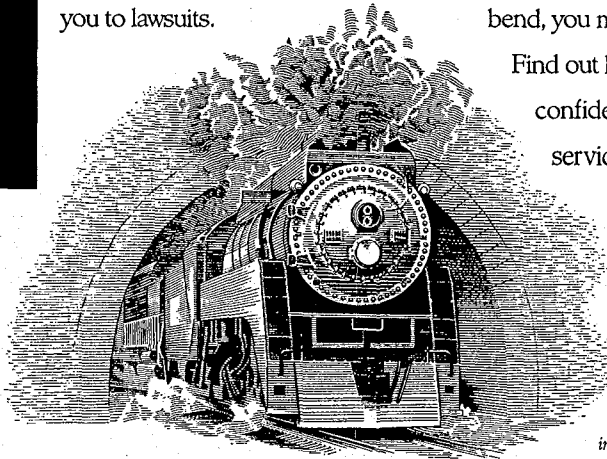


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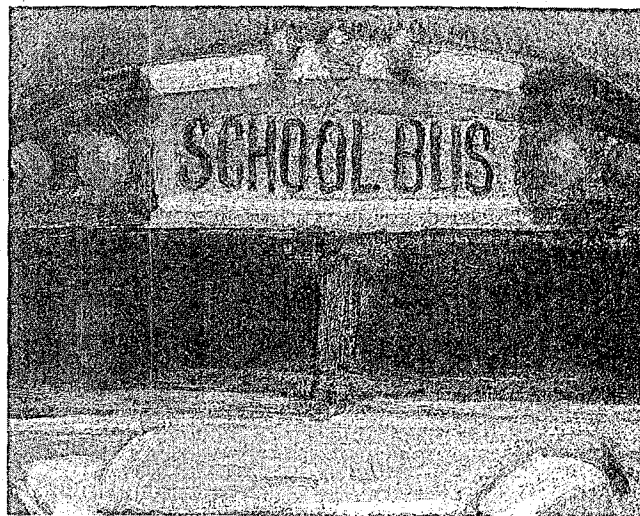
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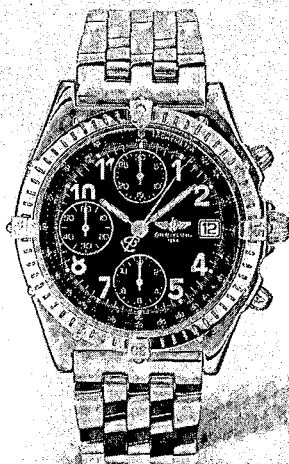
**THE SUPREME COURT
AS BATTLEFIELD**

Joel Friedlander



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Dear Editor:

It is with much gratitude and appreciation that I write this letter. Thank you for your kind, thoughtful and provocative articles on the lives, achievements and contributions of the five African American pioneers of the Delaware State Bar, Delaware Lawyer, Summer 1998.

I have had the fortunate opportunity to meet, speak with and learn from Mr. Frank Hollis, Esquire. As a relatively recent law school graduate, I lucked upon a position as a Hearings and Appeals Examiner for the District of Columbia, Department of Employment Services. My work required interpreting District of Columbia workers' compensation law and rendering decisions on contested issues.

I was only on the job a short while before noticing Mr. Hollis. Standing distinctively over six feet tall and wearing a most tasteful pair of cowboy boots, at first glance, Mr. Hollis appeared to be out of place. But as time went by, it became clear that it was more than just his appearance that made him stand out. Mr. Hollis had a quiet confidence that demanded respect. Everyone referred to him as Mr. Hollis, not Frank. Indeed, like Clint Eastwood in "Low Plains Drifter," Mr. Hollis had a manner that set him apart from the rest.

At any rate, I continued working, struggling as most new attorneys struggle. It did not take long before I found myself in Mr. Hollis' office, his explaining to me a particular nuance of workers' compensation law. Just when I thought workers' compensation might not be the area for me, Mr. Hollis said something to me no one else had ever said in all my years of learning the law. Mr. Hollis looked directly at me and held up my draft decision. He said, "if anyone can find the law in this case, you can."

Mr. Hollis' encouragement gave me confidence, and as far as law is concerned, changed my life. Presently, while I am still a fairly young attorney, I am working in a very responsible position in the workers' compensation department of a prestigious Washington, D.C. law firm. I have Mr. Hollis to thank for my good fortune.

I tell you this, not to brag about Mr. Hollis, but so that you may more fully appreciate the achievements and, moreover, the invaluable contributions of the five Delaware pioneers. To this end, having no one to guide and encourage the development of African American attorneys is one of the most invidious, intangible and unquantifiable vestiges of past discrimination remaining in our society today. I am thankful for the Delaware five because Mr. Hollis was there for me. You and I can only imagine how difficult it must have been for me.

So, again, I thank you. Your article provided me one more shot of motivation and, more importantly, further illustrated an overriding principle for my generation: Each one. Reach one. Teach one.

I am very proud to have had the opportunity to meet Mr. Hollis. Today, I consider him my friend. After reading about him, and finding out how much his life had contributed to the lives of others, I realize I was right about him from the start. He is definitely set apart from the rest.

Thank you for your consideration.

With Kindest regards, I remain
Kirk D. Williams

Dear Board of Editors:

It is difficult to imagine a better conceived or better executed edition of *Delaware Lawyer* than the tribute to Collins J. Seitz, "A Man for All Seasons." Each author was perfect for the particular assigned task and the Carpenter interview with Judge Seitz produces an informational gem graced with a candor only possible from seasoned participants. The photographs and the other editorial input were outstanding. Publication excellence can come in a small package. Congratulations!

Sincerely,
William T. Quillen

Perhaps more than any other institution of American life, education has been the object of intense national concern over the past fifty years. This is not surprising, given the importance of our children's well-being. There have been many things wrong with our schools, reflecting the many problems our society has struggled to correct during the second half of this century. When it comes to our children, we want those problems fixed and we want them fixed yesterday. The result has been an ever increasing flow of legislation, regulation and litigation intended to cure the ills we perceive in our schools. Each of the articles in this issue reflects upon one aspect of the many efforts to right our society's wrongs as they manifest themselves in our children's daily lives. We have a long way to go.

Kathi Karsnitz writes a timely article about our state's attempts to introduce experimentation and innovation into our schools via the charter school initiative, the Charter School Act of 1995, which to date has led to the establishment of four charter schools in Delaware. Kathi notes that the charter school law raises philosophical issues about whether it is in the best interest of our children to turn education over to those who may view education as a "major for-profit industry."

Paul Fine contributes a discussion of the history and current status of our states effort to improve education through the imposition of "accountability" through Delaware's Educational Accountability Act of 1998. Paul has been a dedicated and energetic proponent of education reform for many years. He explains the role of business in education reform in recent years, and the principle behind the accountability system: to create standards, reward improvement and provide real consequences for lack of achievement.

Another hot topic in education law today is sexual harassment in the schools. The Supreme Court recently held, in *Gebser v. Lago Vista Independent School District*, No. 96-1866 (U.S. 6/22/98), that schools are not liable for harassment of students by school employees unless a school official with the power to take remedial action had actual notice of the harassment and failed to act. David H. Williams provides an explanation of the fundamentals of sexual harassment law and how it applies to the schools.

Finally, Frances S. Ratner gives us a parent's (and lawyer's) perspective on the federal individuals with Disabilities Education Act, or "IDEA," which has played a low-profile but key role in education since its passage in 1975 and amendment in 1997. An advocate of the rights of children with disabilities, Frances has written a thorough, sympathetic and interesting summary of the principles and elements of this law requiring public education for children with disabilities and the "mainstreaming" of such children whenever appropriate.

I greatly appreciate the willingness of all of our authors to provide these articles. I would also like to thank Bill Wiggin and Margaret Gilmour for the able assistance and patience in keeping me on task.

Teresa Chuk Farris

"And what," an uninitiated reader might ask, "does education have to do with the law?" Increasingly a great deal, as you can see from the range of articles that this issue comprises. The simpler days of little red schoolhouses and McGuffey Readers are ancient history. Instead, educators today struggle to manage a complex establishment bristling with contingent liabilities for (among other things) sexual harassment, the needs of students with learning and other disabilities, the ambiguities of educational reform, and the hot potato of teacher competence and tenure. Educators, confronted by these threats, and striving to set up corrective

and preventive mechanisms, ... well, it's a wonder they have any time left for teaching.

Several of the articles in this issue provide expert advice on how to avoid these legal pitfalls. They also point encouragingly to the prospect of greatly improved education. And at last everyone seems to be alert to the deficiencies of the existing system and the widespread demand for change.

I thank our issue editor, Teresa Cheek Fariss for her taste and judgment in assembling a remarkable group of topics and writers. She and they have furnished our contribution to this vital discussion.

W.E.W

Contributors

Joel Freidlander is a partner of Bouchard & Friedlander, and MaloneyHuss. He is President of the Delaware Chapter Lawyers' Division of the Federal Society for Law and Public Policy Studies and is Assistant to the President of the Delaware State Bar Association.

Paul Fine is executive director of the Business/Public Education Council. Earlier, he served for eight years as President of the State Board of Education.

Kathi A. Karsnitz is currently employed as Chief Legal Counsel and Director of Lobbying by the Delaware State Education Association. Formerly, she was an associate with Young, Conaway, Stargatt & Taylor in Georgetown, Deputy Legal Counsel to Governor Carper and Director of Policy for the Delaware Department of Transportation. She lives with her husband, Craig, and two school-aged sons outside of Milton, Sussex County.

Frances S. Ratner has represented parents of children in special education as a staff attorney for the Disabilities Law

Program of the Community Legal Aid Society, Inc. She has also served as a consultant on special education issues for Parent Information Center of Delaware. Ms. Ratner graduated from New York University Law School in 1989; clerked for the Honorable Caleb M. Wright of the United States District Court for the District of Delaware; and served for four years as a Deputy Attorney General in the Criminal Division of Delaware's Department of Justice.

David H. Williams is a partner with the Wilmington law firm of Morris, James, Hitchens & Williams where his primary areas of practice include labor law, education law and litigation. He obtained his B.A. degree from Gettysburg College and his J.D. degree from Dickinson School of Law. He has been a frequent lecturer at employment law seminars and education law seminars. Mr. Williams is a member of the Labor and Employment Law Section of the Delaware State Bar Association (past chair), the Section of Labor and Employment Law of the American Bar Association, the Defense Research Institute Council of School Attorneys, and the Delaware Council of School Board Attorneys (president).

Kathi A. Karsnitz

CHARTER SCHOOLS: Mile Markers On The Road Of Reform Or A Dead End For Public Education?

Delaware's efforts to reform public education in the 1990s have produced a plethora of new statutes, all of which are directed in some fashion toward restoring public confidence in public educational institutions. While more recent reform efforts have dealt with raising the bar of acceptable student performance and teacher accountability, two early legislative changes on the road to reform were intended to provide alternatives to the traditional public school system. "Choice" and "Charter" initiatives were designed to inject marketplace competition into the public school mix.

"The School District Enrollment Choice Program," 14 Del.C. Chapter 4, permits a Delaware resident to enroll in any school district in the state, regardless of the student's place of residence, provided that the district of choice has sufficient capacity. Delaware public schools are now required to publish "profiles" to facilitate informed choice. The freedom to choose, of course, is designed to encourage public schools to improve through competition as well as provide parents with some element of control over a child's schooling.

The "choice" program is a marked departure from previous school law which required public school students to attend the school districts in which they resided,¹ a rather 'take-it-or-leave-it' approach. A more conspicuous departure from traditional school law, however, is the Charter School Act of 1995.² Charter schools are publicly funded, independently operated alternatives to traditional public schools. In exchange for explicit accountability for student performance, charter schools are permitted to operate free from most government regulation.

The Charter School Movement in the United States

The principle of school choice, predicated as it is on market-driven influences, seems to owe its origin to Milton Friedman's 1955 essay "The Role of Government in Education." Friedman's observations have found more recent support in responses to the National Commission for Excellence in Education report, "A Nation at Risk: The Imperative for Educational Reform," published in 1983.³ "A Nation at Risk," the wellspring of today's education reform movement, framed the political debate that ultimately spawned the school choice and charter programs, each now major components of public education reform.

At least 29 states and the District of Columbia have passed some form of charter school legislation since Minnesota (the first state to do so) enacted a charter school law in 1991. A National Study of Charter Schools sponsored by the U.S. Department of Education in May 1997 reported that 428 charter schools were operating nationwide by January 1997,⁴ and the Delaware State Board of Education and Department of Public Education report that 750 charter schools were operational as of September 1997.⁵ President Clinton has called for the creation of 3,000 charter schools by the year 2000 and federal legislation has provided philosophical direction and financial support to the charter school movement.⁷

The nature of charter schools foments controversy: deregulation and privatization of public sector activities frequently generate philosophical dissonance. The notion of sanctioning publicly funded schools authorized to operate under the direction of community members unfettered by most government regulations was, not surprisingly, hatched as a means to depolarize a major debate among education

reformists. At one end of the debate are the politically conservative forces pressing for a voucher system, which would permit public funds to be used in support of private, even sectarian, institutions. At the other end of the spectrum of opinion are supporters of public education who hope that charter schools will develop replicable strategies to significantly improve the public education available to all students. Somewhere in the midst of the philosophical debate are the opportunistic 'edventurists' who view the privatization of public education through charter schools as a "major for-profit industry."⁸

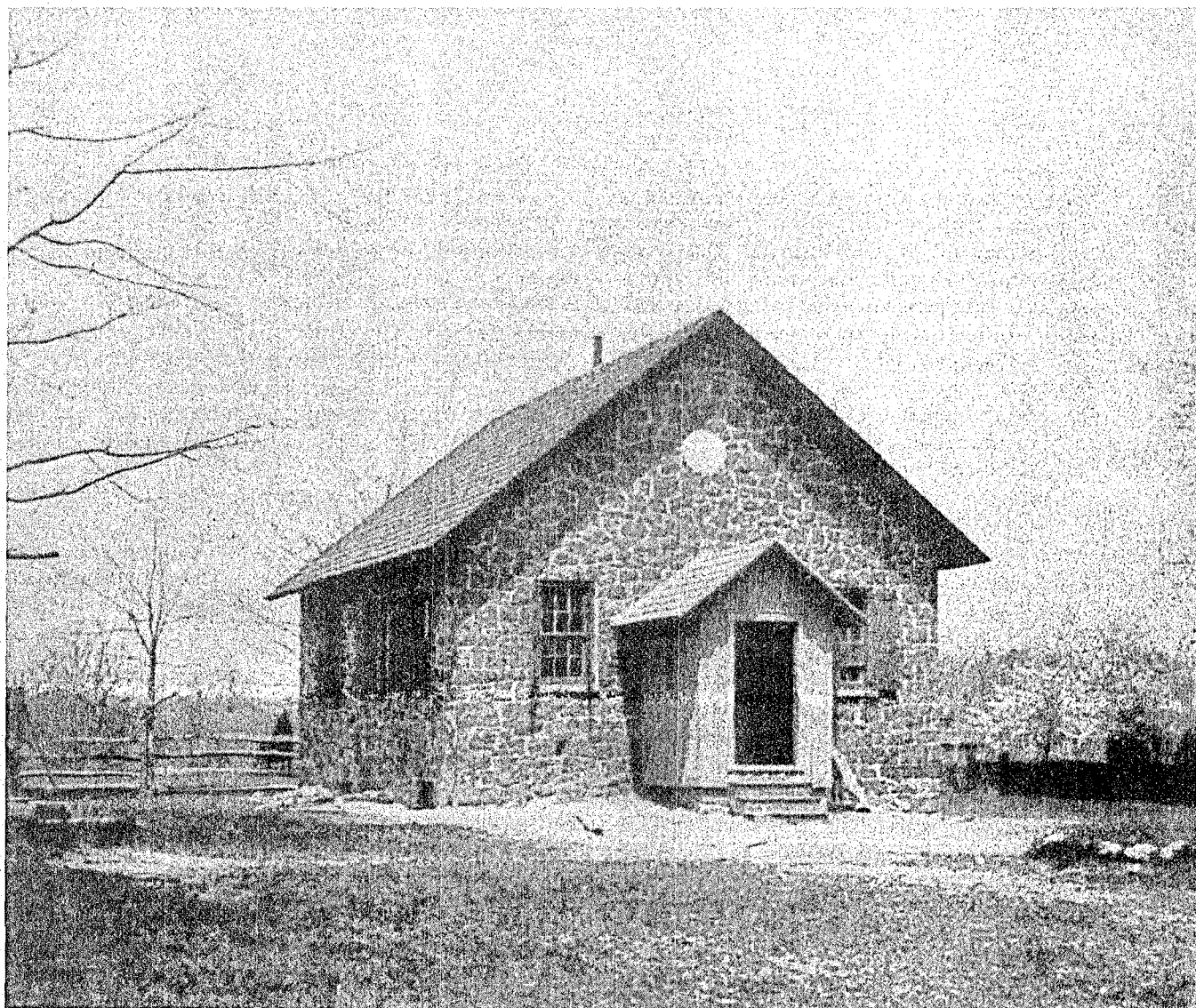
The diverse motivations for supporting charter school initiatives are reflected in the wide differences among state charter school laws. Some of the variations include: multi-agency vs. single-

agency approval processes; charters limited to conversion of existing public schools as opposed to statutes which authorize conversion of public or private schools; statutes which permit new charters or public school conversions, but do not authorize charters of existing private schools.⁹ Delaware law permits either local school boards or the Delaware Department of Education (with the concurrence of the State Board of Education) to grant charters and permits conversion of existing *public* schools or the creation of new charter schools. To date, only one Delaware charter school is operating under a grant from a local school board.¹⁰ Delaware's refusal to authorize conversion of private schools to charter schools reflects a legislative aversion to the use of public funds to support pri-

ivate schools. Article X, §3 of the Delaware Constitution prohibits the use of public funds appropriated for educational purposes to be used in support of any sectarian or denominational school. Accordingly, Delaware has not approved of public financial support for private or sectarian schools through its charter school law.

Although there are many variations in charter school laws from state to state, the single most controversial aspect of charter school law is the question of whether to permit for-profit entities to obtain charters. A limited number of states permit for-profit charter operations; Massachusetts, which initially permitted for-profit organizations, entertained a bill eliminating new for-profit operations. Most of the litigation challenging charter school operations nationwide have

Misplaced nostalgia? "The good old days" of the simple country school house.



attacked charter grants to for-profit entities.¹¹ Delaware law does not expressly permit or prohibit the issuance of a charter to a for-profit entity. When the Edison Project, a for-profit, private company operating charter schools in several states, applied for a charter in December 1996, the Delaware State Education Association sponsored a taxpayer's suit seeking to prevent the State Board of Education from issuing it a charter.¹²

Charter schools-for-profit take two basic forms: schools that operate under a charter granted to the for-profit entity and schools that operate under the supervision of a local community board which issues a "management" contract to a profit-making entity hired to manage the school. Delaware has granted one charter of the former variety (the Edison Project's applications¹³) and three of the latter variety.¹⁴

Dissection of the Charter School Act of 1995 is necessary to provide some understanding of the predicates of the controversy created by for profit charter schools.

Charter schools, while independently operated free from regulation (and nec-

essarily governmental oversight) are nevertheless intended to be *public* schools. Many provisions of the law, however,

**The freedom to
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raise the fundamental question of just what makes a school "public."

The Charter School Act of 1995

The Legislative Purpose: Overall Improvement of Education

The express legislative intent of Delaware's Charter School Act is ...to create an alternative to traditional public school districts and improve public education overall (by offering) members of the community a charter to organize and run independent public schools, free of most state and school district regulations (as long as the school meets) measurable standards of student performances.¹⁵

It appears from the precise language referring to "members of the community" that the legislature intended charter schools to be the product of a community, not corporate, viewpoint in fashioning and implementing policies and procedures to be employed in running the charter school. It further appears that the primary objective of any charter school, if it is to improve public education overall, should be to make its methodologies widely available for use in traditional public schools throughout the state. A desire to create

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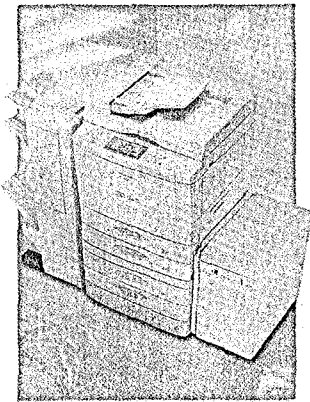
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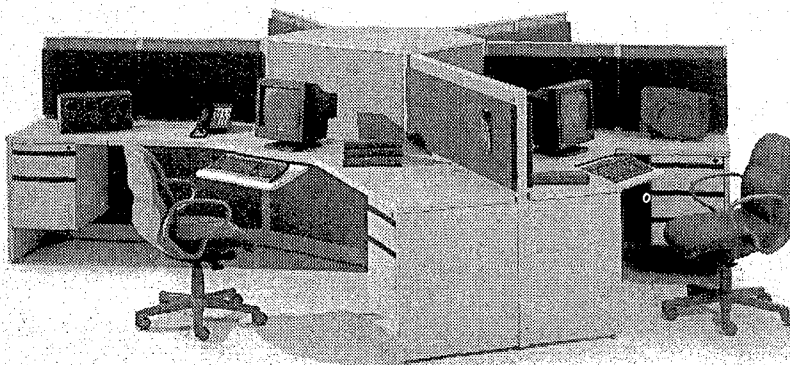
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opportunities to “test drive” innovative educational strategies motivated the education community’s support for charter schools. Indeed, the Delaware State Board of Education and the Delaware Department of Education expect a Delaware charter school to demonstrate its contribution to improving public education overall by identifying the specific strategies or practices “which can be replicated, intact or with modifications, by other public schools in the state.”¹⁶ If, however, a for-profit organization uses unique methodologies (designed to attract and maintain high student populations) it would have every interest in maintaining

**Enrollment
limitations at
charter schools
that are not
intended to
serve at-risk
populations
cause charter
schools to look
less like public
schools and
more like
private schools
supported at
public expense.**

control over that methodology for its own purposes of profit and would be loathe to make it widely available to competing school districts.

Who May Operate a Charter School?

The scope of potential charter organizers is quite large, covering any “person, university, college or non-religious, non-home-based, nonsectarian entity” but expressly excluding private or religiously affiliated schools from its scope.¹⁷ Certainly, if a for-profit entity proposed a charter that could meet the requirements of the law, the Act does not expressly for-

bid issuance of a charter to it. The failure to expressly permit or exclude profit seekers, however, begs the obvious question: if the Legislature had intended to permit for-profit organizations to organize and operate charter schools why did it not say so, particularly when it expressly prohibited private schools from seeking charter approval? The reluctance to permit private schools to convert to public charter status is an obvious indication that the Legislature was duly sensitive to the objectionable nature of providing public funds for private benefit.

Who Can Attend a Charter School?

Most charter schools have relatively small student bodies. According to "The Study of Charter Schools: First Year Report," more than 60 percent of charter schools nationwide enroll fewer than 200 students and 15 percent enroll fewer than 50 students.¹⁸ Delaware permits charter schools to operate with a minimum of 200 students (or no less than 100 in the first two years of operation or if the school serves an "at-risk" or special education population).¹⁹ Permissible student body limitations raise a serious threat to maintaining a charter school as "public." The hallmark of traditional public schools is their "public" nature; attendance is limited only by residency. Traditional public schools cannot close their doors when the student population reaches a specified number of students. Delaware has attempted to address the problem presented by limited student enrollment by providing that a lottery must be held in the event of over-enrollment.²⁰

Exacerbating the problem created by permissible limits on student numbers is the fact that the Charter School Act provides the Delaware Department of Education with no authority to regulate the recruitment practices of charter schools. Accordingly, charter operators may engage in "cherry picking," or soliciting admissions applications from select groups of potential students who meet identifiable but not necessarily stated (or public-spirited) criteria. Student enrollment limitations at charter schools that are not intended to serve at-risk populations cause charter schools to look less like public schools and more like private schools supported at public expense.

Are Charter School Boards of Directors Public Bodies?

The legal character of charter school

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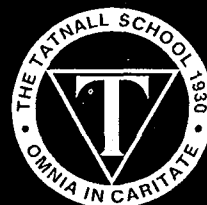
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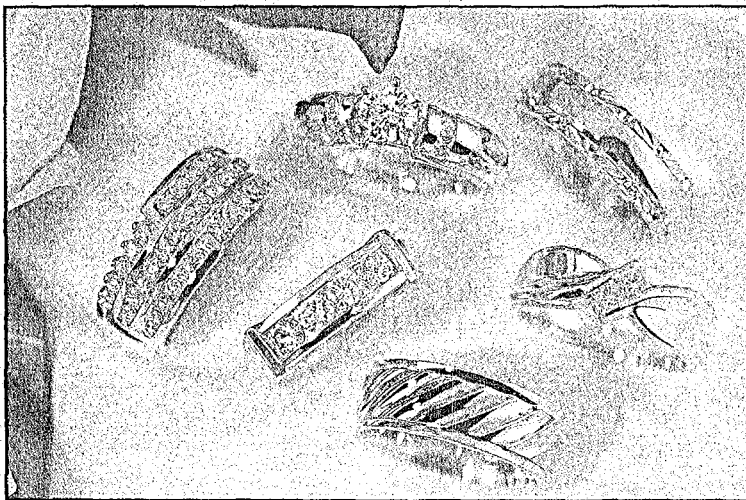
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boards of directors is not necessarily that of a public body. The Charter School Act characterizes the board of directors of a charter school as "public agents."²¹ Considering the breadth of the definition of "public body" under the Delaware Freedom of Information Act,²² it would seem that a charter school board of directors is a public body, but the issue is not entirely free from debate. Confusion over the issue arises from several factors. The Charter School Act directs that charter schools "shall be organized and managed under the Delaware General Corporation law."²³ Many charter applications contain evidence of compliance with the Delaware General Corporation law through submission of "boiler plate" certificates of incorporation and corporate by-laws. Typically, incorporation documents have broad corporate purpose clauses (not limited to the pursuit of educational purposes) and permit board meetings to occur outside the state of Delaware and by way of telephone conferences or other vehicles impermissible under the Freedom of Information Act.

Since there is no literal appointment of board members by a public official or empowerment through any mechanism other than the Charter School Act (nor are board members elected officials as are board members of traditional local school boards) it is unclear whether charter school boards constitute public bodies.

Similarly, it is unclear whether employees of charter schools are considered public employees. The Charter School Act gives school employees the right to organize under the public school employees collective bargaining statute (14 Del.C. Chapter 40); the Act also permits employees to be covered by the state pension plan or, at the employee's option, to be covered by an alternative plan.²⁴ No other accommodations of state employment seem to exist. The provisions of Delaware law pertaining to the termination of public school employees' services,²⁵ for example, do not apply to charter school employees. Unless employees of the charter school organize under the collective bargaining law for greater protection, it would appear that they may be employees at will, depending on the type of personnel policies adopted by the charter school law. Sick leave, school calendar, required days of service and duration of school day are all

unregulated. If the charter school board is not a public agency and few, if any, of the rights and privileges of traditional school employees are afforded charter school employees, what makes them public employees? Is the charter school part of the state school system under the state pension system?²⁶ Are charter school employees public employees under 29 Del.C. §5903(12)?²⁷ Considering the ambiguous legal status of both the managers and employees of charter schools, their status as "public" seems questionable.

Add Profits to the Mix
The Charter School Act was clearly

The reluctance to permit private schools to convert to public charter status is an obvious indication that the Legislature was duly sensitive to the objectionable nature of providing public funds for private benefit.

intended to break the mold of traditional public schooling. It provides a "no rules" framework for educational institutions that may well foster innovation and infuse with new life a system which has been much criticized for complacency. "No rules," however, demands unconditional trust in and concomitant loyalty from the stewards of an institution. If public education is to remain a public responsibility, funded by tax-payer dollars, its purveyors must remain dedicated to public purposes rather than private profit. Delaware's Charter School law is insufficient to protect the public from

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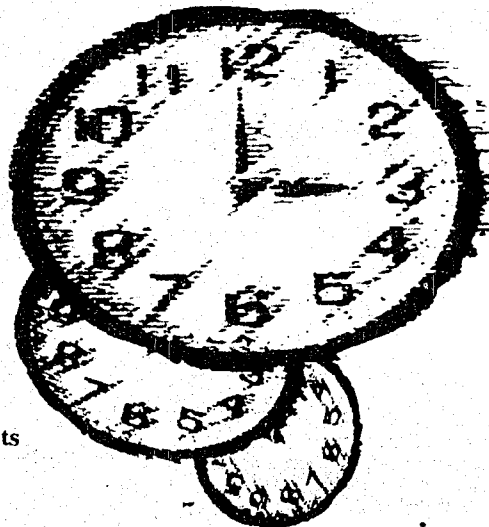
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profiteers who necessarily must be more concerned with stockholders than with students. A Delaware charter school can operate for three years before the charter granting agency must review its performance. In those three years, a typical public school student has received one quarter of his or her formal education. What is there in the current law, absent a clear decision to prohibit for-profit operators from undertaking charters, to ensure that student success is the primary concern of the school's management? What is there in the current law, other than funding, that makes a charter school truly a public school?

When you eliminate a profit motive, there can be no other driving force behind operating a school, regardless of its quasi-public nature, than a sincere desire for student success and a commitment to share the tools to disseminate that success to all Delaware students. Public education has been, and we hope will continue to be, the institution primarily responsible for making this country the world's leader. We cannot risk hurrying its demise for a fistful of dollars. ♦

FOOTNOTES

1. 14 Del.C. § 405(c).
2. 14 Del.C. Chapter 5.
3. Elert, Glenn, "School Privatization & Choice: A Sociopolitical Analysis?," May 9, 1994, Glenn Elert 1992-1993.
4. "Study of Charter Schools: First Year Report-May 1997," U.S. Department of Education.
5. Delaware State Board of Education and Delaware Department of Education First Annual State Report on Delaware Charter Schools, January 1998, p.1.
6. President Clinton's address to the San Carlos Charter Learning Center, September 27, 1997, San Carlos, California.
7. 1994 Amendments to the Elementary and Secondary Education Act of 1965, Public Law 103-382, Improving America's School Act of 1994, 20 U.S.C. § 8061.
8. "Edventurists Aim to Topple Public School 'Monopoly' with New education Industry," September 1997 TEA News, Tennessee Education Association.
9. National Study of Charter Schools, supra, n.1., Chapter III, Exhibits 9, 10, and 11.
10. The Charter School of Wilmington opened in September 1996 under a grant from the Red Clay Consolidated School District.
11. Some examples include: *Council of Organizations and Others for Education About Parochial, Inc., et al. v. Engler, et al.*, 566 N.W.2d 208 (Mich. Supr. 1997) (challenge to the constitutionality of charter school law); *Wilkinsburg Education Association v. Wilkinsburg School District*, 690 A.2d 252 (Pa. Cmwealth 1997) (challenge to a management

contract arrangement); *State of Wisconsin ex. rel. Tommy G. Thompson, et al. v. Jackson, et al.*, Wisconsin Supreme Court, District 4, Case No. 95-GV-1982 and 95-CV-1997 (challenge to state law authorizing public funds to be used for private or sectarian schools).

12. *Pry v. Board of Education*, Del. Super., C.A. No. 97M-07-015; the matter is still pending.

13. Edison originally filed an application to operate a charter school in December 1996. The State Board of Education issued it a conditional charter in August 1997; subsequently, Edison relinquished the grant and filed a new application in December 1997, ostensibly through a local board of community members. That application was conditionally approved by the State Board of Education in March 1998. The intent to which the new application constitutes a charter to be operated under the supervision and control of a local community board or one which will in fact be owned and operated by Edison remains to be seen.

14. *J. Fran Del, Inc. (The Collegiate Academy), SABIS International Charter School and The Richard Milburn Academy*.

15. 14 Del. C. § 501 (emphasis added).

16. Delaware State Board of Education and Delaware Department of Education First Annual State Report on Delaware Charter Schools, January 1998, Appendix A.

17. 14 Del. C. § 502.

18. National Study of Charter Schools, supra, at n.1, Chapter III, Exhibit 5.

19. 14 Del. C. § 503.

20. 14 Del. C. § 506: "A charter school shall not: (c) restrict student admissions, except by age and grade, or by lottery in the case of over-enrollment..." The statute, however, goes on to establish a number of circumstances in which students may be given a preference to attend a given charter school, none of which seem to support any compelling state interest.

21. 14 Del. C. § 504(b) provides: "The board of directors of a charter school shall be deemed public agents authorized by a public school district or the State Board to control the charter school." 14 Del. C. § 504(d) authorizes a charter school board of director to be sued to the same extent any public school board member could be sued and offers directors, officers, and employees the same immunities as directors, officers, and employees of traditional public schools.

22. 29 Del. C. § 10002(a): "Public body means...any...administrative...or...executive...body...empowered by...any...state governmental entity..."

23. 14 Del. C. § 504(a).

24. 14 Del. C. § 507.

25. 14 Del. C. Chapter 14.

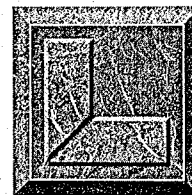
26. 29 Del. C. § 5501(a)(1) defines a state employee as a person employed by a school district which is part of the state school system. A charter school is not a school district, that is, it is nowhere defined as or referred to as a district.

27. Exemptions to "state" or "classified service" which is nevertheless 'state employment': "All employees of each state school district or special school district and of the school district of the City of Wilmington...and all employees who teach in state institutions pursuant to unit allocations as set forth in § 1703 of Title 14." Does that mean that charter school employees who are not teachers are not in state employment?

28. 14 Del. C. § 515(b).

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Paul R. Fine

HOLDING OUR SCHOOLS ACCOUNTABLE: IT'S TIME TO FINISH THE JOB

Education reform provides little in the way of instant gratification. It's more like the Twelve Labors of Hercules, where each challenge overcome is followed by another grueling test. Nonetheless, since there's nothing more important than the future of our children, this reform journey is very much worth completing . . . and doing right.

With enactment of the Educational Accountability Act of 1998 (SS1 for SB 250), Delaware met another major challenge this year, another important step on our deliberate journey to better public schools. There's no time to rest on our laurels. We must keep moving to strengthen our accountability system, adding essential components that were compromised out in Dover while also linking accountability to effective professional development.

The remaining issues are tough, including such controversial topics as teacher tenure, performance-based pay, accountability for education professionals, and sanctions for failing schools. Meeting these challenges could provoke epic battles worthy of Hercules and other heroes of Greek mythology, but success is vital, and as we address such issues, we will learn who favors serious school improvement and who's content with changes that *sound* good but promise little significant change.

This article addresses these topics and the broader issue of educational accountability in Delaware. I begin with background on the overall reform, summarize progress thus far, lay out the key role business has played in this drama, and propose an agenda for the future.

Delaware's Standards-Based Reform

The current burst of reform activity began in the early 1990s, spurred by business leaders, among others, who were

concerned about the quality of high school graduates applying for jobs. Among the key drivers of the reform was the organization I represent, the Business/Public Education Council.

In 1990 Delaware's public school system faced several problems:

- A minimum competency approach was "dumbing down" the school system.
- Tests provided relative rather than absolute information on student progress. Thus, most schools experienced the so-called "Lake Woebegone Effect," in which every student is above average.
- There was little formal accountability and no accountability system.
- The emphasis was on inputs, rather than results.
- Professional and staff development was minimal and largely ineffective.

Since 1990 much has been done to deal with these problems. First, the State Board of Education developed a vision for school reform known as New Directions. It was a standards-based approach, defining what students need to know and be able to do in core academic disciplines to succeed in their careers and in life. It was predicated on raising expectations; the idea being that the best way to get better performance is to expect it and demand it.

The first step was to create rigorous academic standards, and today we have them in math, science, English language arts, and social studies. We also have higher graduation requirements: students must earn more credits and take more challenging courses.

New state tests require students to demonstrate that they can meet the standards. These assessments are designed to test students' true knowledge and ability, not just their ability to guess correctly. The first such tests – given this year in math and English language arts and next year in science and social studies – will establish a baseline against which to chart our progress. A



forerunner to these tests is the state writing assessment, which has been in place for several years and is starting to produce evidence of improved student performance.

Since the new standards and tests are deliberately more rigorous than what we've had before, initial results may well be disappointing. (In fact, it will be surprising if they aren't.) Given that, we must withstand pressures to weaken the standards and, instead, work harder until our children *do* meet them.

After creating standards and designing new tests, Delaware addressed the real bottom-line question: What happens to those who meet, or don't meet, the standards?

The first part of the answer came in the spring of 1997, when the General Assembly and Governor Carper enacted legislation tying future high school graduation starting in the year 2002 to successful completion of the new state tests. The same legislation required the Governor and Department of Education to go beyond *student* accountability to recommend a complete accountability *system* for Delaware schools.

1998 Accountability Legislation

Such a system was enacted this spring, and while it is not as strong as it needs to be, it is a good first step. The bill – pushed hard by Governor Carper and sponsored by Senator David Sokola – is intended to reduce so-called “social promotion,” to reward academic achievement of students, schools, and districts, and to hold schools and districts accountable for results.

Students who demonstrate proficient and superior performance will receive incentives such as certificates, endorsed transcripts, and monetary awards for post-secondary education. Those students whose reading performance is seriously deficient will be retained at grades 3, 5, 8, or 10 unless they can demonstrate proficiency at the end of summer school. Likewise, eighth-grade students whose performance in math and English language arts is seriously deficient will be delayed in entering high school.

Schools and school districts will be evaluated on three measures: the *absolute* performance of their students on the state tests, the schools' record in *improving* student performance, and their record in improving the performance of students at lower levels of achievement. Schools and districts that are “Superior

Accredited” will be recognized and rewarded, those designated as “Accredited” will be recognized, and those on “Accreditation Watch” will undergo an improvement process.

Should a school or district fail to improve and become “Non-Accredited” for two successive years, the State Secretary of Education may publicly recommend an improvement plan although ultimate authority remains with the local school board.

The legislation also puts in place measures to begin developing accountability systems for the Department of Education

**It is not
enough to
hold students
and schools
accountable.
Administrators
and teacher
must also be
accountable
for student
progress, a goal
we believe
can be achieved
in a way that
is fair and
reasonable.**

(DOE), parents, and education professionals. For the DOE, this means annual customer satisfaction and management reviews. For parents, it means a Parents' Declaration of Responsibilities – identifying the elements of effective parental involvement and the responsibility schools have to help parents meet them.

The bill also requires the Governor and Secretary of Education to provide the General Assembly with a plan for professional accountability by January 1999. That plan is to address professional standards, professional recertification, professional evaluation, professional

development, teacher skill requirements, the desirability of creating a Professional Standards Board, and administrator employment practices.

The Role of Business in Education Reform

In late 1990, about the time New Directions was launched, the Delaware Business Roundtable established the Business/Public Education Council. That body includes local CEOs as well as leaders in education and government. Its contributions thus far include:

- A 1992 survey in which local employers identified academic skills and personal attributes necessary for success in the workplace and pointed out among them current high school graduates.
- The Lochtenberg Report, a series of 1993 recommendations to Governor Carper for delivering social services more effectively, many of which have been implemented by the Governor's Family Services Cabinet Council.
- Creation of educational research and development centers at the University of Delaware and Delaware State University to support the reform initiative.
- A Gap Analysis, which compared national principles of effective school reform to actual Delaware policy and practice. This led to appointment of the Education Improvement Commission (EIC), which recommended ways to foster accountability and decentralize the educational process.

Most recently, the Council sponsored and adopted a report entitled *The Missing Link* to emphasize the critical importance of professional development as part of the reform mix. I'll return to it in a moment.

Finally, the Council's most important contribution – in my view – has been to help sustain the standards-based initiative by providing moral and political support over the years. When other players begin to waiver, business can help maintain the needed focus.

For the last two years, the Council has devoted itself to two areas: holding all members of the education system accountable for results and seeing that Delaware's K-12 educators have the support they need to make the standards-based system work. As already noted, this work was based on a year-long report, which was prepared by Chris Perry and myself, along with Paul

LeMahieu, who until recently directed the Educational R&D Center at the University of Delaware.

That report, *The Missing Link*, continues to guide our actions. It was based on two separate 1997 research projects. One project examined the status of current accountability and professional development activity in six representative Delaware school districts, providing a basis for comparing Delaware policies and practices with those we had developed from interviews with national experts. The second project involved a series of national case studies examining innovative initiatives in accountability and professional development. In both cases, the purpose was to uncover best practices and lessons learned that might be applied in Delaware.

The Missing Link

What did we learn from this research, conducted *before* enactment of the recent accountability legislation? Not surprisingly, we found little formal accountability in Delaware schools, certainly nothing approaching an accountability system. Nor were we surprised to encounter resistance from many educators, who fear that such a system will be unfair and who oppose even the idea of negative sanctions.

We found that existing accountability measures focused almost exclusively on students, with few real consequences associated with performance. While there had been some discussion of accountability among district administrators, until recently there was little such discussion with teachers. We also found that little was happening to decentralize real authority, without which accountability is a hollow promise.

On the brighter side, we found pockets of excellence in Delaware and elsewhere which can serve as models and which offer useful lessons. As we searched the nation, we found fairly widespread agreement on some critical success factors – for example, that accountability must be tied to student performance, and that consequences – positive or negative – should be based on more than one event, such as a single test. Though educators do not welcome or believe in negative sanctions, we also found evidence that negative sanctions *do* influence behavior.

We concluded that Delaware's accountability system should:

- Match authority with accountability, a process we can jump-start through

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incentives, legislation, and waivers that encourage flexibility and decentralization.

- Employ multiple ways to assess the performance of schools, teachers, and students.
- Be based at the school-building level, with systemic consequences flowing from student performance.
- Reward good performance, assist those who need help, and ultimately sanction those who consistently or egregiously fail to perform.
- Ensure equity. To us, this meant expecting the vast majority of students to meet the standards, providing effective extra help for those who need it, and recognizing that some

**We
must
withstand
pressure to
weaken the
standards
and, instead,
work harder
until our
children do
meet them.**

children - like some adults - learn in different ways than others.

- Be credible and widely accepted.

Finally, we must recognize that this complex and difficult task requires an iterative approach. It's unlikely we will get it completely right the first time.

Nobody has yet - so we must demonstrate the staying power to do the necessary fine-tuning - not bail out at the first discouraging sign.

While accountability can gain the attention of students, teachers, and school administrators, and can probe the extent of current success, it cannot by itself improve performance. That is why we argue strongly that accountability must be integrated closely with effective

professional development, which we define as building capacity among teachers and administrators to produce the most effective teaching and learning.

On the *good* news side, Delaware has increased funding for professional development over recent years and, as with accountability, we have districts that can stand as national professional development exemplars. Unfortunately, most schools and districts fall far short of what's needed and what's possible. The vision articulated in *The Missing Link* is to close the gap between "what is" and "what can be." For example:

- While professional development today is a smorgasbord of offerings, it can and should emphasize improved instruction and system change.
- While mediocrity is too often accepted as the standard, all schools can and should adopt standards of best practice.
- While today there is little meaningful evaluation of professional development, schools can and should demand improved competence and performance.
- While there is little effective professional development for school administrators, we can and should help this key group lead the reform charge.
- While lack of time is a major barrier to more effective professional development, we can and should overcome it.
- And while sharing today is the exception rather than the rule, all schools and districts can collaborate for greater efficiency and effectiveness.

Where Do We Go From Here?

With passage of the recent accountability act, the key structural elements of Delaware's reform (standards, assessments, and accountability) are in place. The challenge now is to translate those elements into improved student performance, a task that will require fundamental changes in schools and classrooms throughout the state. More specifically, we believe it will require the kinds of changes proposed in *The Missing Link*, changes that integrate accountability and professional development.

For one thing, we must strengthen the new accountability system, addressing points that were ignored or postponed during the compromises that led to passage of SS1 for SB 250. Foremost among the unfinished business is the inclusion of sanctions for schools that continue to fail

Continued on page 32

David H. Williams

SEXUAL HARASSMENT IN SCHOOLS

Perhaps there is no more sexual harassment today than there was nine or ten years ago, but the number of sexual harassment claims by employees and students skyrocketed in the 1990s. There are several explanations. First, the Clarence Thomas confirmation hearing placed a spotlight on sexual harassment. Second, the spotlight continues to be fueled by movies, magazine articles, lawsuits, and President Clinton. Third, women are less likely to tolerate offensive conduct. Fourth, the Civil Rights Act of 1991 created more meaningful remedies (compensation for emotional distress). Before the Civil Rights Act of 1991, the only remedies available under the Civil Rights Act were reinstatement with back pay.

Schools are among the most visible targets, and are exposed to claims from several sources. Schools must protect employees from each other, students from each other, and students from employees. Teachers are well informed of their rights and do not hesitate to assert them. Students and their parents are almost as well informed and litigious. Sexual harassment claims may involve Titles VII and IX of the Civil Rights Act, the Constitution, the Delaware Criminal Code, and State tort laws.

PROTECTING EMPLOYEES FROM EACH OTHER

Title VII of the Civil Rights Act of 1964 protects employees from quid pro quo and hostile environment sexual harassment.

Quid Pro Quo Harassment

Quid pro quo harassment involves unwelcome sexual advances and requests for sexual favors when submission to or rejection of such conduct by an individual is used as

the basis for employment decisions. 29 C.F.R. § 1604.11(a). See, e.g., *Highlander v. K.F.C. National Management Co.*, 805 F.2d 644 (6th Cir. 1986); *Jones v. Flagship Int'l.*, 793 F.2d 714 (5th Cir. 1986), cert. denied 479 U.S. 1065 (1987). While a consensual relationship is by definition not unwelcome, there are frequently factual disputes over whether the relationship was welcome in the first instance, or whether a welcome relationship became unwelcome. Typically, *quid pro quo* harassment is inflicted on an employee by a supervisor who possesses the power to make employment decisions.

Hostile Environment Harassment

Hostile environment harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment. 29 C.F.R. § 1604.11(a)(3).

Title VII of the Civil Rights Act of 1964

Showing of Psychological Injury Not Required

The Supreme Court's decision in *Harris v. Fork Lift Systems, Inc.*, 126 L.Ed.2d 295 (1993), settled a conflict among the circuits by holding that a showing of psychological injury is not required in order to establish liability for a hostile environment. "Title VII comes into play before the harassing conduct leads to a nervous breakdown." 126 L.Ed.2d at 302.

Is Harassment Based on Sex?

Conduct equally offensive to men and women does not support a sexual harassment claim. *Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986), cert. denied, 481 U.S. 1041 (1987); *Johnson v. Tower Air, Inc.*, 149 F.R.D. 461 (E.D. N.Y. 1993) (claim dismissed where supervisor abusive to both male and female employees). In

Examples of SEXUAL HARASSMENT include:

- UNWELCOME SEXUAL ADVANCES
- SUGGESTIVE OR LEWD REMARKS
- UNWANTED HUGS, TOUCHES OR KISSES
- REQUESTS FOR SEXUAL FAVORS
- RETALIATION FOR COMPLAINING ABOUT SEXUAL HARASSMENT
- DEROGATORY OR PORNOGRAPHIC POSTERS, CARTOONS OR DRAWINGS.

other words, an "equal opportunity harasser" who is an obnoxious jerk at all times is not engaging in gender-based harassment. On the other hand, harassment directed against women, or "disproportionately more offensive or demeaning [sic] to one sex" is based on sex, notwithstanding the absence of sexually explicit content. *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486, 1522-23 (M.D. Fla. 1991).

Is The Conduct Unwelcome?

Consistent failure to respond to suggestive comments or gestures may be sufficient to communicate that the conduct is unwelcome. *Lipsett v. University of Puerto Rico*, 864 F.2d 881 (1st Cir. 1988). Participation (even occasional) in the kind of conduct alleged to be unwelcome supports the claim that the conduct was welcome, unless the plaintiff can establish she conveyed to other participants that she considered such conduct offensive. *Loftin-Boggs v. City of Meridian*, 633 F. Supp. 1323 (S.D. Miss. 1986), *aff'd*, 824 F.2d 971 (5th Cir. 1987), *cert. denied*, 484 U.S. 1063 (1988).

Supervisor Harassment

An employer may be liable for a supervisor's sexual harassment even if the employer lacks actual notice of the supervisor's misconduct. *Faragher v. Boca Raton, Fla.*, U.S. Sup. Ct. No. 97-282 (6/26/98); and *Burlington Industries, Inc. v. Ellerth*, U.S. Sup. Ct. No. 97-569 (6/26/98). Employers are responsible for the sexually harassing behavior of people the employer arms with supervisory authority. In the *Boca Raton* case, the Court observed that "when a fellow

employee harasses, the victim can walk away or tell the offender where to go, but it may be difficult to offer such responses to a supervisor."

Employers are not, however, strictly liable for the sins of supervisors. An employer escapes vicarious liability by showing it exercised reasonable care to avoid sexual harassment and the complaining employee failed to take advantage of a

well-publicized, consistently enforced anti-harassment policy. Thus, schools must: 1) adopt a sexual harassment policy providing a complaint procedure that enables employees to step around the supervisory chain of command; 2) publicize the policy; 3) train employees as to what conduct is prohibited, and how to complain about harassment; and 4) consistently enforce the policy.

Suits By Accused Harassers

If a school terminates an accused harasser, the school must be prepared to defend a wrongful discharge or defamation claim. Refraining from taking warranted disciplinary action in order to avoid such a claim exposes the school to a claim by the sexual harassment victim, as well as other employees who may be victimized in the future. Conducting a prompt, thorough, confidential investigation is the only defense to a claim by the disciplined harasser. The issue is not whether the employer was correct, but rather whether after an adequate investigation, the employer reached a good faith belief that harassment occurred.

Training Employees

Training that explains the policy and emphasizes the school's commitment to the enforcement of the policy is essential. Such training is particularly important for supervisors who are armed with the power to reward and punish employees.

In time, supervisors "who just don't get it" will get their employers in trouble. Moreover, even consensual relationships between supervisors and employees are problematic. Putting to the side the inevitable perception of co-workers that the employee in such a relationship receives favored treatment, there is also a risk the employee will claim the relationship was never consensual, or that the consensual nature of the relationship terminated but the supervisor continued to pursue the relationship. If the relationship ends, the motivation for any subsequent adverse or disciplinary action is suspect. In many such cases, the employee may claim demotion, transfer, termination, etc., was retaliation for resisting the superior's advances.

Co-employee Harassment

The employer is not responsible for co-employee harassment if, through its supervisors, it did not know, and could not have reasonably known, of the hostile work environment. Generally speaking, the employer is liable for co-employee harassment if man-



agement level employees knew or should have known of the harassment and failed to take prompt, corrective action. *Andrews v. City of Philadelphia*, 895 F.2d 1469 (3d Cir. 1990).

EMPLOYEE HARASSMENT OF STUDENTS

Loss of Federal Funds

Title IX of the Civil Rights Act prohibits most schools (schools receiving federal financial assistance) from engaging in sex discrimination, including sexual harassment of students. If the United States Department of Education determines a school permits such sex discrimi-

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nation to persist despite notice of non-compliance, such a school is penalized through the loss of federal funds.

Private Remedy

In addition to risking the loss of federal funds, a school employee's harassment of a student may also result in a private action for enforcement of Title IX. *Franklin v. Eivett Public Schools*, 503 U.S. 60 (1992).

Actual Notice

Schools are not liable for employee-student sexual harassment under Title IX unless school officials with authority to take corrective action had actual notice of the harassment. *Gebser v. Lago Vista Independent School District*, U.S. No. 96-1866 (6/22/98). In rejecting a "knew or should have known" standard, the Court held that neither the absence of an anti-discrimination policy nor the lack of grievance

procedure for asserting sexual harassment complaints alters the actual notice requirement to establish a Title IX claim.

STUDENTS HARASSING STUDENTS

The Department of Education and some courts are of the view that a school violates Title IX if it has notice of, but fails to take action to stop, peer harassment against a student. 62 Fed. Reg. 12039; *Davis v. Monroe County, Fla. Board of Education*, No. 94-9121 (11th Cir. 2/14/96). In *Davis* the school took no action for five months after a fifth-grade girl and her mother complained the girl was subjected to degrading language and sexual fondling by a fifth grade boy.

CONSTITUTIONAL CLAIMS

Employees and students may assert

Constitutional claims under the equal protection clause against public school districts for acts of sexual harassment. In order to prevail, however, such a plaintiff must establish the school board sanctioned a policy or practice violating the plaintiff's constitutional rights. Negligence is not enough. For example, in *Gonzalez v. Ysleta Independent School District*, 996 F.2d 745 (5th Cir. 1993), a teacher accused of abusing a student was reprimanded and transferred to another school where he then allegedly molested the plaintiff. The school district may have been negligent, but was not liable because the board's transfer decision did not indicate deliberate indifference.

Schools will continue to face a barrage of sexual harassment claims from employees and students. The following measures will limit the number of such claims, and

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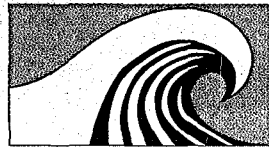
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place schools in a defensible position.

1. Adopt separate sexual harassment policies which include complaint procedures for employees and students. The complaint procedures must include alternative avenues enabling the complaining party to side-step the alleged harasser.

2. Communicate sexual harassment policies to staff, students and parents, emphasizing sexual harassment will not be tolerated, irrespective of who engages in such conduct.

3. Promptly investigate charges of harassment preserving, to the extent practicable, the privacy of the alleged harasser. At the same time, assure there

**Refraining
from taking
warranted
disciplinary
action in order
to avoid such a
claim exposes
the school to a
claim by the
sexual harass-
ment victim,
as well as other
employees
who may be
victimized in
the future.**

is no retaliation against the person alleging harassment.

4. Following a prompt, thorough investigation take, if appropriate, effective remedial action consistent with discipline previously administered under similar circumstances. Never act in a manner which appears to punish the victim.

5. If challenged by the victim or the alleged harasser, the issue is not whether the employer reached the correct conclusion. Rather, the test is whether the employer acted in good faith based on a prompt, thorough, investigation. ♦

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CREATING A SUCCESSFUL MEETING

by David McGurgan

Ever been stuck in a day-long meeting or seminar that seems to drag? It's only two hours into the presentation and your mind is already wondering. You need another cup of coffee and a handful of danishes just to stay awake. When is this presenter going to shut up?

If any of this sounds familiar you've probably been in a poorly executed meeting. If you are planning your company's next meeting or about to make a presentation, follow this simple formula for success: research + creativity + practice = successful meeting.

Using this equation you will transform a would-be-mundane meeting into a productive and informative session that your participants will enjoy rather than dread.

Research

Research and preparation cannot be stressed enough! Doing your homework before the meeting will ensure that your session is a success and not a flop. When preparing for your meeting, you will need to investigate the venue and resources. If necessary, make a chart of your requirements and make a checklist for each facility you are considering and compare.

The venue is the most important element of your meeting. Things you should ask yourself are, is it in a location with easy access for out-of-town guests? Does your proposed venue have the capacity to handle all your meeting attendees? Does the facility provide catering and audio/visual equipment? Does the venue have lodging accommodations?

You should also consider the atmosphere you want to project at your meeting. If you are having a one-on-one meeting, an upscale restaurant is a good setting to get to know your associate on a more intimate level. Deep Blue, with its primarily seafood menu, is a good location for impressing your client or associate in a sophisticated environment. Founded by chef Dan Butler, who also runs the famed Tavola Toscana restaurant, you can be assured of a first-rate dining experience.

If you are hosting a group of 300, you will need to use a venue that can accommodate large groups with ease. Harry's Savoy Grill has expanded their award-winning restaurant to include Harry's Savoy Ballroom. The elegant addition to Harry's can accommodate up to 400 people with its elegant large premises

that will leave a positive impression on your associates.

The University of Delaware's Goodstay building is another terrific choice for your meeting and planning needs. The historic building has plenty of space to host your next meeting. The Combsberry 1790 Bed and Breakfast and The Independence Park Inn are two places that offer an elegant and different environment for your next meeting.

When you are choosing a location for your meeting, you need to investigate its resources, namely materials and food. Don't assume that a facility will have its own audio-visual equipment. Request a personal tour of the premises and ask to inspect their equipment. If they do not provide any, you will need to outsource to a subcontractor to provide needed services. Corporate Computer Rentals is the area's leading equipment rental company who can provide you with equipment for a successful meeting.

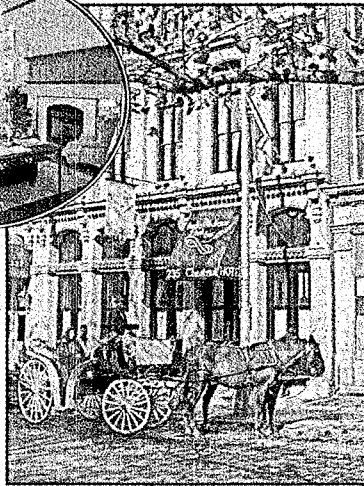
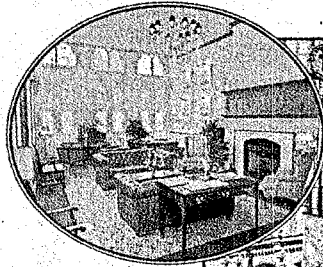
When it comes to food you should also ask to see a menu. Meeting with the chef is a good way to determine if the food will meet your needs. Observing an actual function and taste-testing the food is okay! Any facility concerned with your happiness will be more than glad to offer these things on a personal tour. By doing your research on the venue and resources, you are ensuring that there will be no last minute surprises the day of your presentation.

Creativity

Once you have selected your meeting location, you will need to put together the actual itinerary of your meeting. By injecting creativity into your presentation, you can transform an average meeting into an exhilarating and exciting session. Make sure that your meeting is interactive and uses visual aids to drive home concepts.

Most meetings that I have attended have been dry monologues presented by someone who carries on as if I wasn't even there. By making your audience a part of your presentation, you will reduce boredom and increase interactivity.

Another way of injecting creativity into your meeting is to have contests and giveaways that reinforce your meeting's theme. These small perks are just one of the many ways you can make your meeting participants feel they are part of the presentation and not just idle observers.



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Participants should be encouraged to ask questions, present their own ideas and feel free to offer their input. Using games, quizzes and team projects helps everyone to relax, get to know each other and encourages group participation. Meeting leaders should stop often to ask questions and solicit feedback from the participants. A productive meeting will encourage spontaneous dialogues and not adhere to a strict monologue.

Audio/visual aids are a great way of expressing complex concepts. You should use computer monitors, projectors, overheads, films and props to help participants visualize key themes of your meeting.

Practice

Meetings are much like weddings in that in order to guarantee a memorable event, you need to prepare and be creative. The two functions also require practice. By rehearsing your event and presentation you can identify and correct problems to ensure an effective meeting.

If you are the presenter at the meeting, gather a few associates, get a video camera and go through a dry-run of your presentation. Ask for feedback and suggestions for improvement. As painful as it may be, watching a tape of your own presentation can help you improve your delivery and effectiveness.

Meetings should have goals, a theme and a message that will be easily understood and retained by your audience. By previewing your presentation with friends and colleagues, you can fine-tune your presentation so that it runs flawlessly.

If necessary, stop by the meeting location a few hours before hand and make sure everything is ready to go. Check to see if there are enough seats, nametags, an appropriate amount of space for your participants. With a little research, creativity and practice your next meeting is bound to be a success.

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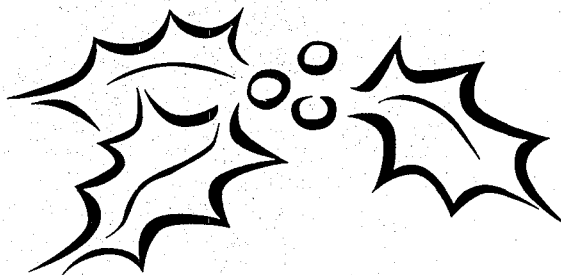
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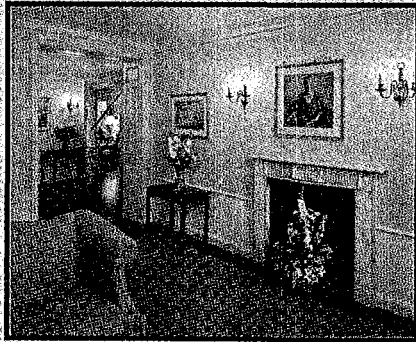
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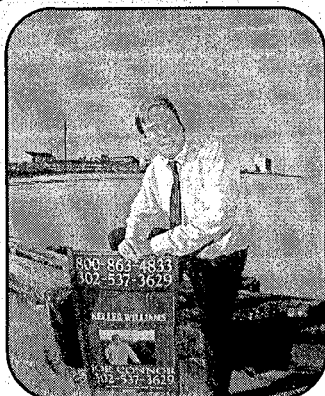
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Frances S. Ratner

THE IDEA — A PARENT'S PERSPECTIVE

I will never forget my sister's high school graduation in 1973. Something I witnessed there has always stayed with me as a sign of the times. It was not the valedictorian's speech peppered with protests against the Vietnam War, nor was it the many peace signs taped on mortarboards. It was the acceptance of a diploma by a student in a wheelchair. As he reached for that prized possession and shook the principal's hand, the entire audience cheered his accomplishment and gave him a standing ovation. I suppose it was a rare sight indeed for the crowd to see a student with a disability graduate from public high school with his peers. Children with disabilities were largely unseen and unheard back then.

Indeed, in my entire public education, up through my high school graduation in 1980, I remember no students with disabilities in any of my classes. The only children with special needs I saw were in a private school for the "handicapped" in which my mother taught English. I made many trips to that school to watch my mother teach and to see wheelchair basketball games. It never occurred to me that the separation of special needs children from typical children was anything but natural.

Only many years later, when I learned that my own child had autism, did I begin to really consider the educational needs of children with disabilities. Fortunately, my daughter was born in the 1990s, when strong federal legislation supporting the public education of children with special needs had already been in existence for some time. What follows is a brief explanation of the history of the Individuals with Disabilities Education Act ("IDEA" or "the Act"), a description of the Act's provisions, and a discussion of the 1997 amendments to IDEA. IDEA's core principles are that (1) public schools have the responsibility to educate children

with disabilities, and (2) public schools must educate these children with their nondisabled peers whenever appropriate.¹

THE PRE-IDEA SCENE

When public schools first came into being in colonial America, students with disabilities were virtually excluded.² Up until the early 1970s, it was not unusual for public schools to refuse to enroll children with disabilities or to place them in programs where they were completely segregated from their nondisabled peers.³ Families were sometimes forced to find private services at great distance from their homes and at great expense. Sometimes financial and emotional desperation drove these families to needlessly place their children in state institutions.⁴ When public schools did offer services to these children, schools often operated with little regard for parental input. Parents were not allowed to see most records, they received few or inadequate notices about their children's programs, they were not invited to staff meetings about the children, and they did not see evaluations of their progress.⁵

In the early 1970s, parents of children with special needs began to assert a legal right to a public education. These parents based their claims on legal victories achieved by civil rights activists advocating on behalf of black children who had been similarly segregated and given inferior educational services.⁶ Parents filed suits in jurisdictions around the country claiming that public schools were violating their children's constitutional rights. Many federal court decisions held that school districts were indeed violating the equal protection and due process rights of children with special needs. Congress then began holding hearings around the country to examine the education of children with special needs. Congress found that several million children with special needs were either totally excluded from public education or placed in inappropriate programs. These hearings convinced

Congress that there was a nationwide problem and that a nationwide solution was needed. As a result, in 1975 Congress enacted Public Law 94-142, the Education for All Handicapped Children Act (EHA). In 1990, Congress amended the EHA and changed its name to the Individuals with Disabilities Education Act.⁷

IDEA

Under IDEA, states must provide a "free appropriate public education" (FAPE) to all eligible children with disabilities; that is, states must provide special education and "related services" designed to meet the needs of these children.⁸ Further, special education must occur in the "least restrictive

environment" (LRE), which means that children with disabilities are to be removed from the regular classroom only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.^{9,10} IDEA and the federal regulations promulgated pursuant to the Act (34 C.F.R. sec. 300.1 et seq.) provide detailed rules for states to abide by in providing special education services.¹¹ What follows is a brief synopsis of IDEA's main requirements.

Eligibility: Only children with the following listed disabilities can qualify for services under IDEA — autism, deaf-blindness, hearing impairment (including deafness), mental retardation, multiple disabilities, orthopedic

impairment, other health impairment, serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment (including blindness). For preschool children (ages 3-5), states may also serve children with developmental delays.¹²

Evaluations: If a parent suspects that his or her child has a disability, the parent has the right to request from the school district a free multidisciplinary evaluation of the child to determine whether the child falls within an IDEA disability listing. The evaluation team must include at least one teacher or specialist who is knowledgeable about the area of the child's suspected disability. The child must be assessed in all areas related to the suspected disability, and the team must collect information about the child from a variety of sources. If the school refuses to evaluate the child, it must give the parent written notice of the refusal as well as a full explanation of the reasons for the refusal. The parent can challenge the school's refusal to evaluate by requesting a due process hearing.¹³

If the school does evaluate the child, but finds that the child does not qualify for services, the parents have the right to obtain an Independent Educational Evaluation (IEE). An IEE is an evaluation performed by a qualified examiner not employed by the school district. Parents have the right to an IEE at public expense, unless the district successfully challenges an IEE request at a due process hearing. The school must consider the results of the IEE, though the school need not abide by them.¹⁴

The Individualized Education Program: When a school determines that a child is eligible for special education, the school must develop an Individualized Education Program (IEP) within 30 days. The IEP is a written statement of the child's current levels of educational performance; learning goals for the child; the services the school will provide; the need for assistive technology devices and/or services (e.g., electronic communication aids); and the setting in which the child will receive services. The IEP is developed by an IEP team, which includes the child's teacher(s), a school representative, and the parent. The IEP must be reviewed and a new IEP developed at

Author Frances Ratner, lawyer and parent. Direct experience gives her account a special urgency.



least once per year, although parents may call for an IEP meeting at any time to request changes in the IEP or to discuss problems in its implementation.¹⁵ For older students,¹⁶ IEPs must contain a transition component — that is, goals, objectives, and services designed to promote a student's independence and success after graduation.

Related services: States must also provide "related services" for children in special education. Related services are those required to assist a child with a disability to benefit from special education. Such services can include audiology, psychological services, physical therapy, occupational therapy, school health services, recreation, medical services for diagnostic or evaluation purposes, counseling services, transportation, speech pathology, and parent counseling and training.¹⁷

Procedural safeguards: IDEA contains several requirements designed to safeguard the rights provided under the statute. Thus, parents have the right to inspect and review their child's relevant educational records; the right to request that records be amended if inaccurate; the right to receive written prior notice on matters regarding the identification, evaluation, or placement of their child, or the provision of FAPE to their child; the right to request a due process hearing by an impartial hearing officer if the parents disagree with a child's identification, evaluation, or placement, or any aspect related to the provision of FAPE; and the right to file a complaint against a school district with the state educational agency alleging a violation of IDEA.¹⁸

The IDEA Amendments of 1997 (P.L. 105-17)

After two years of analysis, hearings and discussions, Congress passed legislation in 1997 that reauthorized and amended the IDEA. President Clinton signed the bill into law on June 4, 1997.¹⁹ The preamble to the IDEA Amendments of 1997 recognizes the accomplishments of the IDEA over the past two decades. Yet the preamble states that the education of children with disabilities can be made even more effective by having high expectations for such children; strengthening the role of parents; and providing special education, related services and supports in the regular classroom whenever appropriate.^{20 21} The major changes to IDEA, all of which became effective

on or before July 1, 1998, include:²²

Children in private schools: Parents who enroll their special education child in a private school without the approval of the public school can receive reimbursement for the private school tuition if a court or hearing officer finds that the public school had not made FAPE available to the child in a timely manner prior to the enrollment. However, parents may have reimbursement reduced or denied if they failed to provide adequate notice to the public school of the private school enrollment.²³

Eligibility: Under the old IDEA, schools were not required to include parents in the decision-making process as to

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with disabilities
or to place
them in
programs where
they were
completely
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the nondisabled
peers.**

whether a child was eligible for services. Under the amendments, a parent must be included as a member of the team that determines his or her child's eligibility.²⁴

IEP: The amendments emphasize even more than the original IDEA the participation of special needs children in the general curriculum. Thus, IEPs must now contain a statement of how a child's disability affects the child's involvement and progress in the general curriculum; objectives enabling the child to be involved in the general curriculum; a statement of program modifications or supports to enable the child to be

involved in the general curriculum and in extracurricular and other nonacademic activities; and an explanation of the extent, if any, to which the child will not participate with typical peers in the regular classroom. In addition, if a child is to be in the regular education environment, the child's regular education teacher is now a member of the IEP team.²⁵

The amendments also set forth with greater specificity what must be included in an IEP. IEPs must now include a statement of how a child's progress toward goals will be measured, and how the parents will be regularly informed of progress. Parents will need to be informed of progress at least as often as parents of children without disabilities are informed of their children's progress. For a child with behavioral problems, the IEP team must consider strategies and supports to address the behavior. The new law also states that parents must be members of any group that makes decisions on their child's placement.

Procedural safeguards: The new law provides that parents have the right to review *all* their child's records, not just relevant ones. The amendments require schools to provide parents with a long list of their procedural safeguards at certain points in the process (e.g., with each notice of an IEP meeting). The procedural safeguards notice must be written in an easily understandable manner and in the parents' native language (unless it would not be feasible to do so). When parents file a complaint against the school, the new law requires them to give the school notice of the problem and a proposed resolution of the problem. States must now offer a voluntary mediation system to resolve disputes between parents and schools. Federal district courts can award attorneys' fees to a parent who is a prevailing party, although fees are barred or reduced in certain circumstances. For example, fees can be reduced if the attorney did not state in the complaint a description of the problem and a proposed resolution.²⁶

Discipline: The new IDEA has detailed provisions for handling students with behavior problems. The statute allows schools (1) to suspend, for not more than 10 days, a child who has engaged in misbehavior, or (2) to place that child in an "alternative educational setting" for not more than 10 school days, or (3) to place that child in an alternative educational setting for not more

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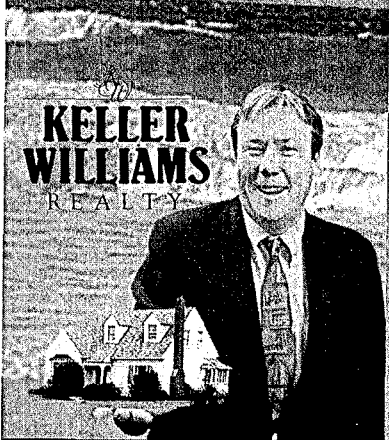
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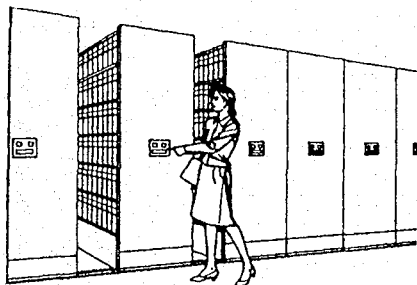
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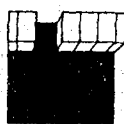


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than 45 days if the child brings a weapon to school or has or sells illegal drugs. A hearing officer may also order a change in placement to an alternative educational setting for not more than 45 days if the school demonstrates by "substantial evidence" that maintaining the current placement is substantially likely to result in injury to the child or others. Any alternative educational setting must enable the child to continue to participate in the general curriculum and include services and modifications designed to address the child's behavior.²⁷

Not later than ten days after taking disciplinary action, the school must hold an IEP meeting to conduct a behavioral assessment and implement a

the child to understand the consequences of the behavior or to control the behavior.²⁸ A parent may request an expedited hearing to contest the determination that the behavior was not a manifestation of the child's disability.²⁹

Another significant change in the law relates to children not yet found eligible for special education but who have engaged in misbehavior. Such children can assert the protections of IDEA's new discipline rules if the school had knowledge that the child was a child with a disability before the misbehavior occurred. For example, a school will be considered to have had such knowledge if the parent had requested an evaluation of the child.³⁰

CONCLUSION

During its more than 20 years, IDEA has provided educational opportunity for many children with special needs. While federal, state, and local authorities grapple with the practical implications of the IDEA amendments, parents and their advocates need to become aware of the new law so they can ensure that schools are abiding by it. What appears on paper needs to be put into practice. Unfortunately, even though the old IDEA has been around for years, well-meaning administrators and teachers too often have not seemed aware of all of the law's requirements. For example, I have heard school officials rely on an impermissible argument, lack of resources, to try to deny providing the services a child needs; and I have attended annual IEP meetings where the school simply wrote a new IEP and did not review the child's progress on the prior IEP. Given the current state of knowledge of many school personnel, and the law's new requirements, it is crucial that educators and administrators receive intensive training on appropriate educational practice under the new IDEA. Only then can the rights provided by IDEA be realized by all the children within the law's coverage. ♦

FOOTNOTES

1. Two other laws can also affect the education of children with disabilities - Section 504 of the Rehabilitation Act of 1973 (a nondiscrimination statute) and the Americans with Disabilities Act. These laws, however, are beyond the scope of this article.

2. Allan G. Osborne, Jr., *Legal Issues in Special Education* at 1 (1996).

3. Reed Martin, *Extraordinary Children, Ordinary Lives* at 1 (1991).

4. Reed Martin, *Educating Handicapped*

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behavioral intervention plan (or review a plan if it already exists). In addition, the IEP team must determine whether or not the child's behavior was a manifestation of the child's disability. If the team finds that the behavior was not a manifestation of the disability, the child may be suspended or expelled, but the school must still provide FAPE to the child. However, in order to find that the behavior was not a manifestation of the disability, the team needs to find that the child's IEP and placement were appropriate, and that the child's disability did not impair the ability of

Children: The Legal Mandate at 22 (1979).

5. *Id.* at 8.

6. Steven S. Goldberg, *Special Education Law: A Guide for Parents, Advocates, and Educators*; at 1 (1982).

7. R. Martin, *Extraordinary Children*, at 1-3.

8. Schools do not have to provide the best or most expensive education, but only an appropriate one.

9. NICHCY News Digest: Questions and Answers About the IDEAs at 2-3 (1993).

10. The importance of the right of children with special needs to be educated with their nondisabled peers cannot be overstated. While "inclusion" may not be appropriate for every child, it is appropriate for many children. Inclusion can take different forms - for example, it can mean having a child attend all regular education classes, or it can mean having a child attend only nonacademic regular classes (art, music, etc.). The benefits of integration include preparing the child to function in society; enabling the child to learn skills and behaviors from typical peers; and affording the child opportunities to make friends with typical peers. *Integrated School Communities: Ten Reasons Why*, University of Minnesota.

11. Another important resource is Delaware's special education regulations, which are contained in the *Administrative Manual: Programs for Exceptional Children* (1996). The manual can be obtained from the state Department of Education.

12. NICHCY News Digest at 2.

13. *Id.* at 4-5.

14. *Id.* at 5.

15. *Id.* at 6-8.

16. Under the 1997 IDEA amendments, transition planning must begin at age 14.

17. NICHCY News Digest at 3.

18. *Id.* at 9-11.

19. NICHCY News Digest, *The IDEA Amendments at 1997* at 1 (1997).

20. *Individuals with Disabilities Education Act Amendments of 1997*, Pub. L. No. 105-17, sec. 601 (1997).

21. Rep. Castle (R-De.) viewed the amendments' advantages as follows: encouraging the use of cost-effective mediation; making it more difficult for parents to unilaterally place a child in private school at public expense; providing more federal money to local schools; modifying attorneys' fees and thus reducing litigation; reducing incentives to over identify children; making schools safer; and giving parents access to more information. Cong. Rec. H2536 (daily ed. May 13, 1997) (statement of Rep. Castle). Counterarguments to the legislation included opposition to mainstreaming; disagreement with expanding federal expenditures; opposition to increasing federal authority over educational issues; and a perceived disregard for the educational rights of children without disabilities. H.R. Rep. No. 105 at 386 (1997); Cong. Rec. S4313 (daily ed. May 12, 1997) (statement of Sen. Gorton).

22. The federal Office of Special Education Programs issued proposed IDEA regulations pursuant to the amendments in October of 1997. As of the date of this writing, final regulations had not yet been issued.

23. NICHCY News Digest, *The IDEA Amendments at 16-17*.

24. *Id.* at 20.

25. *Id.* at 20-23.

26. *Id.* at 25-29.

27. *Id.* at 30-31.

28. *Id.* at 32-33.

29. *Id.* at 33.

30. *Id.* at 34-35.

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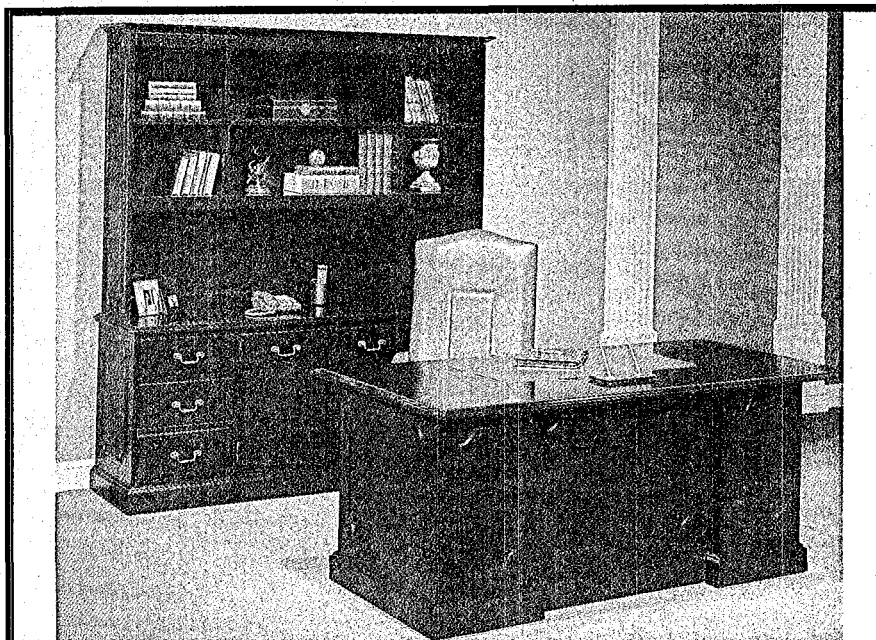
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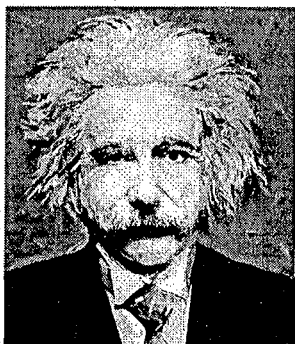
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CONTINUED FROM PAGE 18
despite extra assistance. Delaware's law provides a six-year period during which non-performing schools are given the chance to improve. Without some real consequence at the end of this process beyond negative publicity schools will not take the process seriously.

Many educators resist the addition of sanctions, often arguing that the socio-demographic differences among students makes the playing field unequal from school to school or district to district. That argument does not hold water in a system based on improvement. In other words, no one is saying that District A must achieve results equal to District B, but only that both districts should improve their own performance from year to year.

We
found little
formal
accountability
in Delaware
schools —
certainly
nothing
approaching an
accountability
system.

Further, it is not enough to hold students and schools accountable. The administrators and teachers who run those schools must also be accountable for student progress, a goal we believe can be achieved in a way that is fair and reasonable to all parties. It is unacceptable that everyone should be held accountable except the professionals who run our schools. Fortunately, a task force consisting of educators, legislators, and others, including business, will address such issues.

We must also provide schools with authority that is commensurate with their accountability, a change that will require the making of more financial, administrative, educational, and regulatory decisions at the school level. We at

the Council also favor broadening the measures on which student performance is based. Even though we support the state assessment as the primary indicator, other pertinent elements should be considered in evaluating student achievement.

In addition, we support creation of a truly independent body (outside the education establishment) to oversee Delaware's accountability system and provide continuity as governors, legislators, and state education officials come and go. Finally, we need an improved information system to generate prompt and accurate data necessary to improving policies, programs, and practices in Delaware schools.

A second area of major need is effective professional development that is linked to accountability. Here we must begin with a comprehensive, coherent approach including teachers and administrators and directed exclusively to instructional improvement and system change. Many other "nice to do" activities must give way to concentrated attention on these primary needs.

We must also ensure that all schools are staffed with teachers and administrators who are qualified, well trained, and effective in helping students learn. This will require the kind of professional accountability and focused professional development noted above. Professionalism can be enhanced by:

- Requiring teacher and administrator recertification every five years and regular high-quality continuing education and professional development.
- Making recertification a prerequisite for maintaining tenure.
- Overhauling the Delaware Performance Appraisal System (DPAS), beginning with the inclusion of student achievement results in the performance evaluations of teachers and other professionals.
- Connecting teacher and administrator compensation more closely to knowledge, skill, competency, and performance. A committee has been created to recommend to the Governor ways to achieve this goal.

Combined with a revamped professional development system that replaces today's scattershot approach with one that focuses only on student performance and system change, these reforms would make a major difference in the education of Delaware children.

In addition to strengthening accountability and linking it to effective profes-

Continued on page 36



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THE SUPREME COURT AS BATTLEFIELD

Joel Friedlander

CLOSED CHAMBERS: THE FIRST EYEWITNESS ACCOUNT OF THE EPIC STRUGGLES INSIDE THE SUPREME COURT

By Edward Lazarus (Times Books, 518 pp.)

A year ago in these pages I reviewed *Slouching Towards Gomorrah*, Judge Robert Bork's reflections on the "culture war." *Closed Chambers*, by Edward Lazarus, is of the same genre, but his chronicle is told from a more privileged vantage point. The author is a former law clerk for Justice Harry A. Blackmun.

To describe *Closed Chambers* in the manner of its subtitle, however, as an "eyewitness account" of struggles inside the Supreme Court, is to do an injustice to the book. Lazarus has done more than collect war stories from his year as a law clerk. He has used his experience to great advantage, interviewing many of his peers and unearthing the internal memoranda and draft opinions that reveal the fractures created and mended between the filing of a writ of certiorari and the issuance of a final decision. Focusing on three classes of cases, those concerning the death penalty, race discrimination, and abortion, Lazarus places the day-to-day conflicts of his own clerkship year within the context of generation-long struggles to enshrine

competing ideas into fundamental law.

What emerges is an account of how the culture war is waged within the confines of the Supreme Court. Lazarus portrays the modern Court as one where liberal and conservative Justices exploit every opportunity to reinforce or roll back the precedents of the Warren era, and where ideological law clerks engage in concerted efforts to lobby those unpredictable Justices who relish casting the swing vote. Everyone has absorbed Justice Brennan's dictum about the "Rule of Five": it takes five votes, and only five votes, to make law at the Court. One may add the corollary that the fifth Justice can make whatever rule of law he or she chooses.

Viewed historically, however, we see that a majority decision is less a declaration of victory than a temporary seizure of territory. The Court's rulings are subject to the power of the President and Congress to pass new laws, and, more importantly, to replenish the personnel of the Court. Meanwhile, legal advocacy organizations work continuously to shape the Court's agenda, and journalists, law professors and street protesters all take aim at the Justices' morale.

The history of death penalty litigation well illustrates these forces. In a series of engaging chapters, Lazarus describes first the movement to abolish the death penalty, which began with a bench memo pre-



pared by law clerk Alan Dershowitz in 1963 and culminated in a 5-4 decision in 1972 that Lazarus chides for lacking a legal rationale.¹ But abolition proved short-lived. In 1976, a plurality opinion for a fractured court created a legal regime whereby every death sentence became subject to rigorous appellate review.² The result was ongoing confrontation at the Court, in the form of emergency applications to stay executions. At stake in each case was the fate of the condemned prisoner, and that of dozens or hundreds of others whose own appeals would be prolonged if the Court granted review. Justices Brennan and Marshall voted to stay every execution, and Justices White, Rehnquist and Scalia were almost always opposed, leaving the clerks in each of the other four chambers scouring the record into the middle of the night, looking for procedural issues that would justify the four votes needed to grant certiorari and the fifth vote needed to stay the execution. These confrontations continued unabated until 1989, when a conservative law clerk succeeding in getting five Justices to adopt his proposed revision to the law of habeas corpus, creating a procedural bar to almost every emergency application.³

Abortion litigation shows a similar progression of the culture war at the Court. An abolitionist movement led to a landmark opinion notable for its lack of legal reasoning or textual foundation,⁴ followed by a protracted effort to overrule, a splintering of factions, intense lobbying by clerks (and even a shoving match between two of them), and finally a co-authored plurality opinion⁵ that Lazarus describes as "unconvincing" in its qualified support of *Roe v. Wade*, but nevertheless "a not-to-be-emulated but much-needed act of judicial statesmanship." The position staked out by the plurality allowed for some measure of legislative battling over abortion, and it "cauterized a terrible wound" at the Court, by keeping the Justices "outside the fray."

These quoted phrases capture a tension in Lazarus' diagnosis of the present Court's failings. Too often, he argues, factions of Justices engage in tendentious reasoning to achieve a partisan outcome. But Lazarus is not above approving tendentious reasoning in the service of tempering the divisiveness of the culture war.

On the one hand, Lazarus pleads for the Justices to deliberate more conscientiously, to apply principles more consistently, and to write with more candor, less arrogance and less recrimination. Lazarus does not mention his name, but

Justice Holmes might be the leading example of this deliberative model of judging. In his judicial opinions Holmes elaborated a jurisprudence that challenged his brethren to separate their personal political beliefs from their interpretation of the Constitution. Holmes kept so aloof from the political process that in his correspondence, he derided the use of the word "vote" to describe what the Justices do in conference.⁶

Lazarus also wants the Court to speak with an "institutional voice." He longs for the statesmanship of Chief Justice Earl Warren, who forged unanimity in divisive cases concerning race. Lazarus believes that a more unified Court might lead to a more unified nation. He writes,

**Viewed
historically,
however, we
see that a
majority decision
is less a
declaration of
victory than
a temporary
seizure of
territory.**

"the Court's mending could be an inspiration for our own."

This is indeed a book for our time. Lazarus's study of the most nettlesome issues in constitutional law does not lead him to conclude that the Court should interpret the Constitution in a progressive fashion, a reactionary fashion or according to any particular school of thought. Instead, he recommends that the Justices reach decisions whereby they and we can better get along.

As seen in *Brown v Board of Education* and *Casey*, perhaps the two most significant cases in the last half-century, the judicial statesmanship recommended by Lazarus sacrifices clarity of reasoning in the service of a political objective. In *Brown*, all nine Justices were persuaded that *Plessy v Ferguson* was wrong and should be

overruled, but they could not explain even to their own satisfaction why that was so. We can only wonder how are nation's history would have differed had a non-unanimous Court followed the one theoretically available rationale – taken from Justice Harlan's dissent in *Plessy* and from the brief of the NAACP Legal Defense Fund – that the Constitution is color-blind.

In *Casey*, a majority of the Court appeared to conclude that *Roe* was wrongly decided, but Solicitor General Starr, Justice Scalia and cadre of conservative law clerks could not persuade that same majority that *Roe* had to be overruled. This failure to overrule may reflect less a coherent theory of stare decisis than a reluctance to face the consequences of laying down a clear rule of law. Justice Scalia's dissent in *Casey* provided an acute critique of the plurality's legal reasoning, but his closing line revealed the stark political consequences of overruling *Roe*: "We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining."⁷

Whether the issue is race discrimination, the death penalty or abortion, *Closed Chambers* shows that the Justices of the last generation are reluctant to conclude that the Court has no continuing role in resolving the great political controversies of our time. In the absence of a compelling theory of how the Constitution speaks to these issues, we should not be surprised that each of the Justices has a preferred, if unconvincing, solution. As Lazarus shows, the politicking begins where each Justices' reasoning ability ends.

Hence the weakness of any "insider" account of the Court, or even any well-researched account of Court insiders. Edward Lazarus does well to show us why we should not expect the Court to provide authoritative pronouncements on each of the cases that come before it, but if we are to understand the Courts' proper role in the Culture wars, we need a perspective more Olympian than the chambers of the Justices. ♦

FOOTNOTES

1. *Furman v. Georgia*, 408 U.S. 238 (1972).
2. *Gregg v. Georgia*, 428 U.S. 153 (1976).
3. *Teague v. Lane*, 489 U.S. 288 (1989).
4. *Roe v. Wade*, 410 U.S. 113 (1973).
5. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).
6. 2 *Holmes-Laski Letters* 1031, 1045 (M. Howe ed. 1953).
7. 505 U.S. 833, 1002.

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sional development, there's a *third* part to the Council's current agenda: supporting further improvements in the learning environment. We can do this by installing and maintaining effective discipline and safety policies so that school time is spent on effective teaching and learning and by increasing parental involvement in every school and classroom in part by making schools more parent-friendly. As noted at the beginning of this article, the kinds of changes we are proposing will challenge us all. While many key pieces of the reform are in place, the most difficult -

While
accountability
can gain the
attention of
students,
teachers, and
school
administrators
and can probe
the extent of
current
success, it
cannot by
itself improve
performance.

and most *important* - elements are yet to be addressed. But we can take hope from the fact that Governor Carper, the General Assembly, and many of our educators have supported the standards-based reform process over the past eight years providing the leadership without which success is not possible.

By addressing the issues cited in this article, Delaware will have in place the basis for excellent public schools, schools that will produce the skilled graduates our state needs in the next millennium. The results of this endeavor will affect every Delawarean, whom we encourage to join us in making our schools the best they can be. ♦

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