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# ON BOARD

The Voice of Public School Leadership

April 8, 2024

NEW YORK STATE SCHOOL BOARDS ASSOCIATION • [www.nyssba.org](http://www.nyssba.org)

Vol. 25, No. 5

## Banning cellphones seen as balm by districts that have tried it

By Robin L. Flanigan  
SPECIAL CORRESPONDENT

"Off and away during the school day."  
That's the slogan behind Albion Central School District's cellphone policy as of September 2023.

The Orleans County district does not allow elementary or middle school students to bring cellphones to school, and high school students are not allowed to bring them into classrooms.

"We felt that we really needed to put something in writing because what happens on social media outside of school carries over into school hours," said Superintendent Mickey Edwards.

Nationally, 77% of schools had some form of cellphone ban in place during 2020, according to the latest figures available from the U.S. Department of Education's National Center for Education Statistics.

Albion's prohibition was planned shortly after U.S. Surgeon General Vivek Murthy issued a grim warning in May

2023 about the harmful effects of social media on adolescent mental health. The 25-page advisory noted that 95% of 13- to 17-year-old Americans use a social media platform, and more than a third say they do so "almost constantly."

Research has tied mobile phone addiction to poorer academic performance as well as higher levels of anxiety and depression.

In a recent survey, NYSSBA asked its members if they thought legislation or regulation was the answer: "Should NYSSBA support/oppose/be neutral on efforts to require use of devices that prohibit the student use of cell phones during the school day?"

Among 564 respondents, 43% said NYSSBA should support such efforts, 20% said oppose and 37% said "be neutral."

**"Now they're socializing more"**

School districts throughout New York State have tried different strategies to

See **CELLPHONES**, page 4

### Securing cellphones



Districts use different methods to get cellphones out of students' hands and pockets during class. Several districts in New York State use locking Yondr pouches (inset), while Delta High School in Utah places a holder inside the door of every classroom.

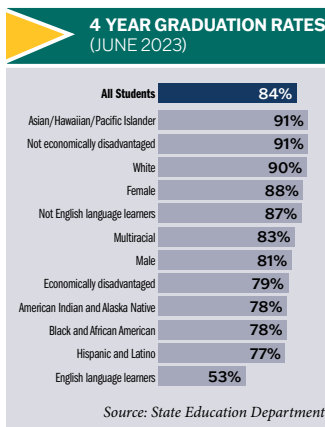
## NYS 2023 4-year grad rate = 84%

By Paul Heiser  
SENIOR RESEARCH ANALYST

The graduation rate for students who entered high school in the fall of 2019 and graduated in June 2023 was 84%, according to figures released by the State Education Department (SED). When taking into account students who graduated two months later – in August 2023, the graduation rate rose to 86%.

The June four-year graduation rate was down slightly from 85% in June 2022, but up slightly from five years earlier, when the June 2018 graduation rate was 83%.

Of the students who entered high school in 2019, 36% earned a Regents diploma, meaning they passed at least five Regents examinations in addition to meeting course and credit requirements. The other 48% received Regents with Advanced Designation diplomas, which required them to pass a minimum of eight Regents examinations in



addition to meeting course and credit requirements. Less than 1% of graduates earned a local diploma, which is offered only to students with disabilities with an individualized education program or accommodation plan.

The 16% who entered ninth grade in 2019 but did not earn a diploma as of June 2023 fall into these categories: 10% were still enrolled in school, 1% earned a GED and 5% had dropped out of school.

According to SED's website, "data is reported by educational institutions to the State Education Department throughout the school year and available for verification by districts until the close of the state data warehouse in August. District superintendents certify data is accurate in September."

"We are encouraged by the overall graduation rate," said NYSSBA Executive Director Robert Schneider. "However, we need to do more to ensure that economically disadvantaged students, English language learners, and those of all race and ethnicity groups receive the financial resources and supports they need to flourish and graduate with the majority of their classmates."

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# Don't underestimate the power of appreciation



**Robert S. Schneider**  
NYSSBA Executive Director

NYSSBA and its members have been concerned about school bus driver shortages for years. In 2018, NYSSBA published a study with the New York Association for Pupil Transportation called "Yellow Buses, Red Flags: New York's School Bus Driver Shortage," which called attention to the problem.

Since then, the situation has only worsened in many school districts. Just recently,

I read about districts in St. Lawrence County where students may be saying "good morning" to their district superintendent or school principal on any given morning as they bound up the bus steps. Yes, these administrators are the first to fill vacant driver seats.

Compensation and benefits matter, of course. School districts cannot compete with the compensation offered by hauling companies that are also facing a shortage of CDL-licensed drivers, making recruitment a challenge and retention a top priority.

I recently had a conversation with Brian Carey, who has done research on retention of bus drivers. He is assistant superintendent for business and support services for the Schodack Central School District and earned a doctoral degree from the University at Albany. For his dissertation, he surveyed more than 300 drivers from 32 upstate New York school

districts. Along with Prof. Susan Phillips, Dr. Carey has come up with a number of retention methods that any district could easily implement at little or no cost.

How? By expressing gratitude toward bus drivers for the work they do. The driver survey reveals a strong desire among drivers to feel more respected and valued.

School board members ought to be able to relate. You probably ran for school board because you want to make a difference in students' lives, and you continue to serve despite feeling unappreciated a lot of the time. Well, bus drivers are in the same position, according to the research.

The survey revealed a strong desire on the part of drivers to feel that they are making a difference. They want to feel a sense of meaning and to be recognized as a significant part of a student's education experience.

Many of them think their work is undervalued. For example, one driver said: "I wish our district-level management took us more seriously and cared more about transportation."

Carey and Phillips offer several no-cost and low-cost strategies that are worthy of exploration, including:

- Formalized recognition programs to help drivers feel more connected to the mission of the district and the students.
- School board recognition of bus drivers during their meetings.
- Thank you campaigns by district administration and students.
- Policies that allow bus drivers to take a larger role in the educational organization.
- Featuring drivers in district communications.

- Asking drivers to participate in back-to-school nights and other school activities.

Other interesting ideas he shared with me included job sharing for drivers who want to work with students as teaching assistants, monitors or aides between bus runs, which could foster a deeper connection with their district.

In what he called "the next level," Carey suggests that bus drivers may be a valuable addition to teams that deal with students' behaviors. Indeed, the law on school safety plans, Education Law 2801-a, has been updated with several references to including bus drivers and monitors in district committees that deal with student wellbeing.

Like many teachers, school bus drivers have expressed concerns about student behavior, and they need to feel supported by administrators as they seek to minimize disorder on their buses.

Also, school bus drivers are sometimes heroes. On March 28, a Fayetteville-Manlius bus driver grabbed an exiting girl's backpack as a Toyota Camry sped past a stopped bus. The motorist was later arrested.

While Carey's research focus was bus drivers, he pointed out that it is equally important to take the same approach with other non-instructional staff to "elevate those folks to a place that they understand they are part of the core mission."

He's right – the educational day starts with the essential work of school bus drivers bringing their charges to your buildings. Bus drivers are the first school district employees that students see at the beginning of the day, and the last at the end. Of course they are important. All districts should make sure they know that.



## Tool time

Payton Calvo of Questar III BOCES identifies tools as part of a SkillsUSA auto service technology competition. It was part of a regional event involving more than 370 students studying subjects including building trades, cosmetology, criminal justice, culinary arts, health careers, HVAC, network technology and more.

❖ Photo courtesy of Capital Region BOCES

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# Legislature mulls new teacher evaluation system proposed by NYSSBA and other education groups

By Brian Fessler

DIRECTOR OF GOVERNMENTAL RELATIONS

A proposal to change how schools and BOCES evaluate teachers and principals is being considered by state legislators. It reflects a consensus among advocacy groups representing school board members, superintendents, teachers, school business officials, principals and PTAs.

On March 20, the Educational Conference Board (ECB), of which NYSSBA is a member, announced it had reached agreement with the State Education Department (SED) on proposed legislation to reform New York's teacher and principal evaluation laws, better known as APPR (annual professional performance review).

In envisioning a new APPR approach, NYSSBA desired a system that restores local control. The proposal also would:

- Decouple student test scores from ratings.
- Return focus to educator development and improvement.
- Provide flexibility so that districts and BOCES will not be required to immediately negotiate and shift to a new and different system, unless they prefer to do so.

Education Commissioner Betty Rosa and NYSUT President Melinda Person hand

delivered copies of the draft legislation to the chairs of both the Senate and Assembly education committees in March.

"We think the consensus proposal will be well received by the Legislature," said NYSSBA Executive Director Robert Schneider.

"This has been a major undertaking," Schneider added. "NYSSBA and its colleagues in the ECB dedicated much of 2023 and early 2024 discussing respective needs, priorities and goals for a new evaluation system, resulting a plan that all can support."

If the Legislature approves the plan, it will represent a return to local control after a federal plan to bring more accountability to teacher and principal evaluation alienated teachers and contributed to skepticism over the value of annual tests as measures of student or school progress.

In 2009, then-President Barack Obama announced the Race to the Top, a \$4.35 billion federal grant program for K-12 public education. States could win large or small grants depending on how well their education plans satisfied a set of announced federal priorities, including incorporating student test score data into teacher rating systems.

In 2010, then-Governor David Paterson signed a new comprehensive teacher and principal evaluation system into law (section

3021-c of the state education law), and New York State received \$700 million in funding through the federal Race to the Top program.

The current APPR system (section 3012-d of the state education law) dates to 2015 and relied heavily on student performance results on grades 3-8 state assessments.

The 2019-20 state budget eliminated the requirement to use state tests to measure student performance and provided more flexibility to allow districts to select local assessments. Generally, half of an educator's evaluation is based on classroom observations, while the other half is based on test scores.

The COVID-19 pandemic prompted a series of pauses in APPR requirements.

In June 2020, then-Governor Andrew Cuomo signed an executive order exempting school districts from completing APPR for classroom teachers and building principals during the 2019-20 school year without the loss of state aid. In both 2021 and 2022, legislation was passed and signed which eliminated the requirement for school districts and BOCES to complete APPR for the 2020-21 and 2021-22 school years.

The ECB/SED proposal would establish an evaluation system that is subject to local negotiation and would not mandate the inclusion of student performances measures. The system

would include multiple measures aligned with state teaching and leadership standards, resulting in a four-level rating system. A "4" would indicate performance that exceeds expectations, while a "1" would indicate performance that is significantly below expectations. Districts and BOCES would have until 2032 to transition to the new system.

"NYSSBA is proud to have worked side by side with our partners in the education community to develop this proposal," said NYSSBA President Sandra Ruffo. "We believe this proposal ultimately will better serve our communities because it represents a shift in the way we evaluate our teachers and principals from an overly prescriptive state-mandated process to one that is negotiated locally by school districts."

Upon receiving the draft legislation, Senate Education Chair Shelley Mayer said: "Thank you for reaching agreement ... who can do that? It's very hard to do that around here."

The proposal had not been introduced as stand alone legislation when this issue of *On Board* went to press in early April, but that is expected soon.

"I generally don't make predictions like this, but yeah, I think it will be done that fast," said Michael Benedetto, chair of the Assembly Education Committee.



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## CELLPHONES, from page 1

limit student use of cellphones during the school day. For instance, the Enlarged City School District of Middletown in Orange County tried the honor system in 2022-23. It asked students to stow their cell phones in backpacks during school hours. But administrators didn't get the desired results, especially among high schoolers.

"We didn't think we were doing our young people justice," said Superintendent Amy Creeden. "We said 'Just put it away,' but you have to have a lot of willpower not to pull it out if it's right there in your pocket."

Added Associate Principal William Donohue: "If I'm trying to lose 20 pounds and I consistently keep nachos in my house, that's probably not going to work."

While searching for other solutions, the district discovered fabric pouches that automatically lock when closed and can be unlocked when the pouch's circular magnet gets tapped on an unlocking base. The pouches are made by Yondr Education, which saw a 150-percent increase in business in 2023. The California company partners with more than 2,000 schools in the U.S. and, in a recent survey of more than 370 administrators, 86 percent said they saw a positive impact in student wellness and safety.

The Middletown school board used Every Student Succeeds Act funding – targeting mental health support and learning loss – to purchase Yondr pouches for Middletown High School. The total investment was \$46,000. Administrators plan to introduce pouches for mandatory use in the district's two middle schools beginning this spring.

Meanwhile, high school student council scholars helped redesign their

cafeteria. It is now flush with arcade systems, old-school jukeboxes and games.

"We wanted their input about how we could change the physical environment to support them and their needs, so they didn't feel like something was taken away without something being given in return," explained Executive Principal Lynnette Williams.

"Now they're socializing more, and you feel that energy when you walk through the building," Dr. Williams said.

### Expect some disgruntled parents

The Newburgh Enlarged City School District, also in Orange County, has used Yondr pouches for six years at its Newburgh Free Academy West campus, and at the Academy's Main campus since fall 2023.

School districts that take a similar path should be prepared to hear from some disgruntled parents, initially, said Susan Valentino, co-principal of Newburgh Free Academy.

"I think some were just as apprehensive as the kids were about not having access all day," Valentino said.

Sometimes there can be accommodations. In Newburgh, students with diabetes who need their phones to monitor blood-glucose levels seal their pouches using Velcro.

According to Newburgh administrators, it's helpful to explain the rationale to students and faculty prior to implementation. At Newburgh's North campus, a behavioral health specialist organized student- and teacher-led restorative circles. Discussions focused on the role of distractions in our lives, and how fewer distractions lead to better communication and success, both personally and professionally. In addition, all

classes during a 45-minute class period one afternoon focused exclusively on the link between electronic devices and addiction.

Parents in Albion expressed concerns about cellphone restrictions at a school board meeting, Edwards noted. The superintendent followed up personally with every parent who spoke. His message: "I hear you."

School board veterans know that some amount of blowback will accompany any significant policy change. "You're never going to please everybody," said John C. Williams, president of Middletown's school board.

### Outreach and pacing can ease implementation

Six months before instituting its policy in fall 2023 that banned carrying cellphones for students in grades 6 to 12, the Wellsville Central School District in Allegany County formed a committee comprised of parents, students, faculty and administrators. The committee surveyed stakeholders about their thoughts on a more restrictive cell phone policy. They also consulted with schools in the region who had instituted similar policies, sponsored parent nights attended by a school physician, and combed through educational research on the topic published by the American Academy of Pediatrics, the Journal of Adolescent Health and the Pew Research Center, among others.

"The fact that the policy worked out so well was largely due to the amount of time we spent ahead of the actual implementation of the policy," said Superintendent David Foster.

Data shows that bullying and disciplinary referrals have dropped significantly since the new policy.

Also, there is evidence that social interaction has skyrocketed.

"We're actually worried about the sound in the cafeteria again," said Foster. "That's not something we've even thought about for six or seven years now. I'm glad to see that back."

One academic with a strong interest in cellphone policies is social psychologist Jonathan Haidt of New York University, author of the 2018 bestseller *The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure* and a forthcoming book called *The Anxious Generation: How the Great Rewiring of Childhood Is Causing an Epidemic of Mental Illness*.

"The most common mistake is believing that a ban on phone use during class time is a ban," he told *On Board*. "It is not. Students are expert at checking their phones and hiding it. Plus, if you prevent them from texting [only] during class, then they will use every moment between classes to text and check social media. They will not talk as much with each other."

That's why Haidt recommends that school boards require their campuses to be entirely phone-free during school hours. While there is no magic bullet in education, Haidt and others believe that banning cellphones might be as close as one can come.

Haidt has published a trove of "collaborative review docs" at [bit.ly/3TXr9WD](https://bit.ly/3TXr9WD).



John C. Williams

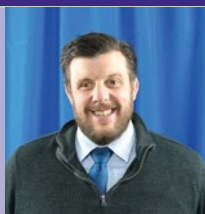
## PROS AND CONS OF BANNING CELLPHONE USE IN SCHOOL

### PROS

#### Positive student engagement.

"One thing that was almost universal was teachers expressing that they got their classrooms back."

– William Donohue  
Associate Principal,  
Middletown High School



#### Higher student achievement.

"Our cell phone policy contributed to our district's 92.1% graduation rate for the 2019 cohort. It's our highest ever, and we are very proud of this accomplishment."

– Amy Creeden  
Superintendent,  
Enlarged City School District of Middletown



#### Student gratitude.

"They say, 'Thank you for doing this. I didn't realize how much of my life was spent on my screen.'"

– David Foster  
Superintendent,  
Wellsville Central School District

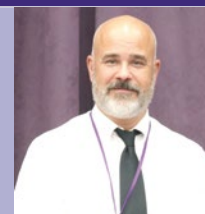


### CONS

#### Initial discontent.

"There's a frustration initially right out of the gate with many students and parents."

– Mickey Edwards  
Superintendent,  
Albion Central School District



#### Time commitment.

"Middletown held 14 'Listen and Learn' sessions in the first half of the 2023-24 school year alone."

– Dr. Lynnette Williams  
Executive Principal,  
Middletown High School



#### Expense.

Asking students to show restraint is free but might not work. A company called Loghut sells hanging organizers for about \$14 on Amazon (amzn.to/4aaKTeR). Yondr cost is \$30 per pouch, and locking mechanisms are included with bulk purchases.



# 7 questions every school board should ask the superintendent

**By Mark Snyder**  
SENIOR LEADERSHIP  
DEVELOPMENT MANAGER

Invariably, high-performing school boards have a great relationship with the superintendent. That doesn't mean they rubber stamp whatever the superintendent proposes or that they value harmony more than candor.

Rather, there is a shared vision and a spirit of enterprise. Good school boards ask pertinent and illuminating questions, and superintendents welcome this as long as it is done in a collegial and constructive way (not as a "gotcha").

It's the responsibility of school board members to focus on the right things, however. Here are seven questions every school board should be asking:

**1. What data are we collecting to assess the effectiveness of the program or effort that we are talking about?** Data-driven decision making is essential for continuous improvement. Board members should inquire about the collection and analysis of data related to

student performance, program outcomes and stakeholder feedback, then use this information to inform their decision-making process.

**2. What steps are being taken to recruit, retain and support high-quality educators?** The teacher shortage is real, and many teachers are handling classes outside of their tenure areas (see story, page 7). School boards should ask about district recruitment efforts, professional development opportunities and support systems for teachers to ensure a high standard of instruction.

**3. How are we supporting the social and emotional well-being of students?**

More than four in 10 high school students felt so sad or hopeless almost every day for at least two weeks in a row that they stopped

doing their usual activities, according to the U.S. Centers for Disease Control and Prevention. Yet young people are incredibly resilient and are capable of becoming whatever they can imagine. Board members should inquire about programs and services that address student mental health, social-emotional learning and student support systems.

**4. What strategies are in place to address student achievement gaps and improve outcomes for all learners?**

The state 4-year graduation rate dropped a percentage point from last year (see story, page 1), and U.S. math and reading scores are dropping, according to the latest National Assessment of Educational Progress. Addressing literacy and numeracy must be a top priority of all school boards. Board members should inquire about initiatives that address improving graduation rates, closing achievement gaps and ensuring college and career readiness.

**5. How are we leveraging technology to enhance teaching and learning?** Technology plays a crucial role in modern education. Board members should inquire about the integration of technology into the curriculum, access to digital resources, and professional development for educators to effectively use technology in the classroom.

**6. What are our students eating?**

A growing body of research suggests that diet (especially breakfast) can affect academic achievement and student behavior. And we know that diet can affect health. School leaders ought to be

concerned that one in five of those ages two to 19 have obesity, and the chance a young person will develop type 2 diabetes is about one in three. Let's be sure that school meals are as healthy as possible and that students learn about the importance of healthy nutrition.

**7. What should we be celebrating?**

The best antidote to the negativity that permeates discussion of public education is sharing information about successes. After all, these successes are the return on the investment our communities make in our schools. Superintendents need to keep school board members aware of the district's achievements, innovations and initiatives. Board members can provide recognition in meetings, on social media and in their interactions with constituents.

Generally, superintendents value the opportunity to understand what concerns the board, explain their educational strategies, get feedback (and buy-in) and then move forward as a team. Such conversations will enable school board members to be able to answer constituents' questions with confidence and clarity.

In my next article, we'll look at questions that board members should be asking themselves.

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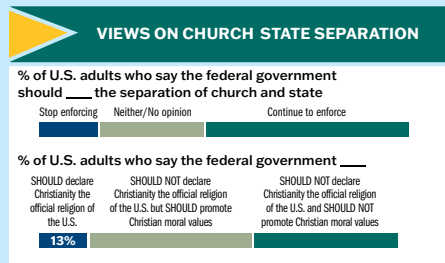
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# National Briefs

## 15 states consider putting chaplains in schools to support students' spiritual and mental health



Source: Pew Research survey conducted February 2024

Inspired by a new law in Texas, bills have been introduced in 14 state legislatures to allow school districts to hire chaplains or use them as volunteers for whatever role the local school board sees fit, including replacing trained counselors.

Texas passed a law last year that required all 1,000 school boards in the state to vote on whether they would add chaplains to staff. While statewide data is not available, a Baptist group reported that school boards in the 25 largest school districts in Texas voted against creating chaplain programs. Some districts noted that chaplains can participate in existing volunteer programs.

A similar bill passed both houses of Florida's legislature despite some opposition from both the left

and the right. The headline on a March 5 Fox news story was: "Florida bills would allow Satanic priests to serve as volunteer chaplains in public schools."

National Association of Christian Lawmakers has provided model legislation for the chaplain bills. Jason Rapert, a former Arkansas state senator who founded the group, said future bills will seek to make chaplain positions mandatory.

"The bills are mushrooming in an era when the U.S. Supreme Court has expanded the rights of religious people and groups in the public square and weakened historical protections meant to keep the government from endorsing religion," according to The Washington Post. "In a 2022 case, Justice Neil M. Gorsuch referred to the 'so-called separation of church and state.'"

A 2024 survey by Pew research shows most Americans believe in the separation of church and state (see chart).

Sources: *The Washington Post*, *FoxNews.com*, *Austin-American Statesman*

## App that times bathroom breaks gets mixed reaction in Calif., Ill.

The website of the 5-Star Students app promises to "Take School Involvement to the Next Level!"

It can give students points for participating in school activities, use barcodes to track attendance at events, measure sentiment through polls and provide emergency check-ins, among other things. But the item that is resulting in newspaper headlines is the ability of the app to issue timed hall passes.

"Hall monitor or Big Brother? Fresno teachers, students split on app tracking bathroom trips," read a recent headline in the Fresno (Calif.) Bee.

The app requires tardy students to scan in, and that has been a benefit, according to Hoover High School principal Courtney Curtis. "We started with more, like 20 to 30, sometimes even 40 tardies a day, but this semester, we've gotten down to the place where we usually have fewer than 10 (tardies) for the whole day," he said. "I would just attribute that to the fact of holding kids to high expectations."

For a bathroom break during class time, students apply for a pass through the app and receive a timer with a six-minute countdown. That has been controversial. Administrators see it as a tool to reduce problems with fighting and vaping in bathrooms, but some students resent the timer.

In Champaign, Illinois, high school students gathered 450 digital signatures to protest the planned use of the app. "As a concerned student in Champaign, IL, I am deeply troubled by the recent shift from traditional paper hall passes to a phone app," message reads. "This change is not only an invasion of personal privacy but also serves as a distraction during class hours. Our right to privacy should not be compromised under the guise of modernization or efficiency."

Teachers seem to like the app, though, according to news reports. "I gotta admit, I was a little skeptical," Peter Beck, a social studies teacher at Fresno High School, told the Fresno Bee. "But there are not as many students out there wandering around," he said.

Sources: *govtech.com*, *news-gazette.com*, *fresnobee.com*

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# Puerto Rican/Hispanic Youth Leadership Institute is a model for civics education in New York

By **Dr. Gladys I. Cruz**  
DISTRICT SUPERINTENDENT,  
QUESTAR III BOCES

A September 2023 study by Gallup and the Walton Family Foundation found that Generation Z – those now between the ages of 12 and 26 – generally lack trust in political and societal institutions. (See chart, below.) This finding is consistent with prior Gallup reports on the erosion of U.S. adults' trust in government and other U.S. institutions. Such findings raise questions about the health of our democracy and call attention to the importance of civics education.

I have been involved for years in a state program that provides a shining example of how to get teenagers excited about and involved in leadership and politics: the Angelo Del Toro Puerto Rican/Hispanic Youth Leadership Institute.

Established in 1987, the program has given more than 8,000 high school students the opportunity to learn about New York State government. Currently each year's class is about 400 students with heritage from 20 formally recognized Spanish-speaking countries, sovereign states and territories.

Over the course of six months, students from seven regional delegations participate in weekend training sessions coordinated by the statewide Regional Bilingual Education Resource Network (RBERN) and New York City Public Schools.

Students work with trainers and volunteers to better understand the legislative process. Along the way, they learn about civic engagement, parliamentary procedure, public speaking and debate. Course modules used in the program are aligned to the New York State Next Generation English Language Arts Learning Standards and New York State Social Studies Framework.

The program is named for Angelo Del Toro, who was elected in 1972 at age 21 as the youngest legislator in New York State history. He was also the first Puerto Rican from East Harlem to hold office as a state representative.

Del Toro, who died in 1994, sought to share his passion for civic participation and to create a pipeline for the next generation of young Hispanic/Latino elected leaders in New York. To continue to pursue those goals, the institute is sponsored by the State Assembly & Senate Puerto Rican/Hispanic Task Force in conjunction with the annual Somos El Futuro Legislative Conference.

Each year, about half of the PR/HYLI participants across the state are selected to participate in a three-day leadership experience in Albany that includes a mock legislative assembly in the state Assembly chambers and meetings with elected officials. This year's institute was entitled The Art of Democracy. Two hundred fifty



**Eleynei Garcia of Pan American High School in Queens participates in a mock session of the state Legislature.** ♦ Photo courtesy of Questar III BOCES

students representing 136 high schools participated in team building exercises and leadership workshops that involved forms of art and expression, including poetry, dance and acting.

Julio Anta, an author best known for his comic book series "HOME" and work at Marvel and DC Comics, was the keynote speaker. Each student received an autographed copy of Anta's newest graphic novel, "Si, Se Puede: The Latino Heroes Who Changed the United States," which shines a light on the often overlooked Latino heroes in our country's history.

On March 10, students participated in a mock session of the state Assembly in the state Capitol. Students debated and voted on bills currently under consideration by the state Legislature. The mock assembly provided students with tangible experience in negotiating

compromise, parliamentary procedure, public speaking, advocacy, research and consensus building – all core aspects of effective government and citizenship.

One bill discussed was A.04354, which would prohibit local governments from entering into agreements to house individuals in immigration detention facilities and terminate existing contracts.

"Some students had seen firsthand the conditions at detention centers so they could speak personally," said Mariana Miguel Mendez, a junior at Brewster High School. "Those were the most persuasive arguments," she said.

Education Commissioner Betty Rosa, a longtime supporter of the institute, offered welcoming remarks before the mock legislative assembly. She said the institute is "a model for helping students not only become informed citizens, but

also effective leaders and agents of positive change within their communities."

As reported in the Feb. 26 edition of *On Board*, the state Board of Regents has been encouraging schools to place a higher priority on civic education. In 2018, it convened a Civic Readiness Task Force whose recommendations resulted in the creation of the New York State Seal of Civic Readiness in 2021.

Many students who participate in the institute qualify to receive a Seal of Civic Readiness as well as the Seal of Biliteracy on their high school diploma. Some students also receive college credits for a public speaking course in partnership with local colleges. Additionally, more than \$50,000 in scholarships is awarded annually.

In June, 14 of the institute's most outstanding delegates will travel to Washington, D.C. for a personalized tour of the Capitol building and meetings with members of Congress. This is a recent addition to the program.

Students said their participation in the mock assembly and leadership program has been life changing.

The institute "is more than just a leadership program," said Hector Neri, a student from Port Richmond High School on Staten Island. "It represents the future of politics and Hispanics ... The second you step into the program you are no longer one person but become part of a cultural community."

"We are 'first generation everything,'" said Jayron Sandoval Sola, a student at Brewster High School. "So of course our parents are proud of us. I feel like this was a way for us to express ourselves and pay forward everything our ancestors did for us and sacrificed for us."

Alumni of the program have gone on to positions in public service. One is Juliana Hernandez-Commissio, who is the deputy chief of staff and senior advisor to John King, chancellor for the State University of New York. A former state Senate staffer, she attended the program when she was a junior and senior in high school. She attended this year's program with Commissioner King, NYSSBA Executive Director Robert Schneider and a number of prominent individuals with roles in state government.

I'm proud to note that Questar III BOCES coordinates the institute as part of a contract awarded by the New York State Education Department. School districts should be aware of the program and encourage students with Hispanic or Latino heritage to participate. I also hope the model offered by this program will inspire the creation of other experiential civics programs at the local, regional or state level.

*Dr. Gladys I. Cruz has served as the district superintendent of Questar III BOCES since 2015. She is the current president of AASA, The School Superintendents Association.*

## GEN Z'S TRUST IN GOVERNMENT, INSTITUTIONS IS LOW

**How much do you trust each of the following?**  
Percentage saying "a great deal" or "quite a lot"

	All*	Democrats**	Republicans**	Independents**
Science	71%	92%	50%	73%
The military	40%	14%	62%	26%
Police	38%	12%	71%	23%
The Supreme Court	21%	11%	33%	16%
Large tech companies	17%	9%	12%	10%
The Presidency	14%	25%	5%	7%
The news	16%	22%	8%	10%
Congress	12%	11%	14%	6%

\* Respondents ages 12 to 26

\*\* Respondents ages 18 to 26

Source: Gallup and Walton Family Foundation  
State of American Youth Survey, April-May 2023 (bit.ly/4acx6UW)

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# What does education research say about teacher experience and subject knowledge?

By Paul Heiser  
SENIOR RESEARCH ANALYST

According to a NYSSBA analysis of data from the State Education Department (SED), nearly one in four public school teachers in New York State was considered “inexperienced” in the 2022-23 school year. That is, they had less than four years of experience.

And nearly 7% of teachers in 2022-23 taught classes outside of their subject or field of certification.

New York State data also show that low-wealth districts have the highest percentages of instructors that fall into both categories. [See “Staff qualifications” at [bit.ly/4cAiRvb](https://bit.ly/4cAiRvb).]

How much should school boards be concerned about the percentages of inexperienced teachers and teachers who lack certification for the subjects they are teaching? While the research is mixed, the evidence suggests experience produces better outcomes for students, and certification in a specific subject area can be important, especially in math.

## Inexperienced teachers

Research tends to support the notion that experienced teachers are important to student learning. For example, a 2015 study of the literature by professors at the University of Colorado, Stanford University and the University of Virginia found that “each study shows increases in student achievement as teachers accumulate experience such that by a teacher’s fifth year, her or his students are performing, on average, from 5% to 15% of a standard deviation of student achievement higher than when he or she was a first-year teacher.” [See “Do first impressions matter? Predicting early career teacher effectiveness” at [bit.ly/4aItzhx](https://bit.ly/4aItzhx).]

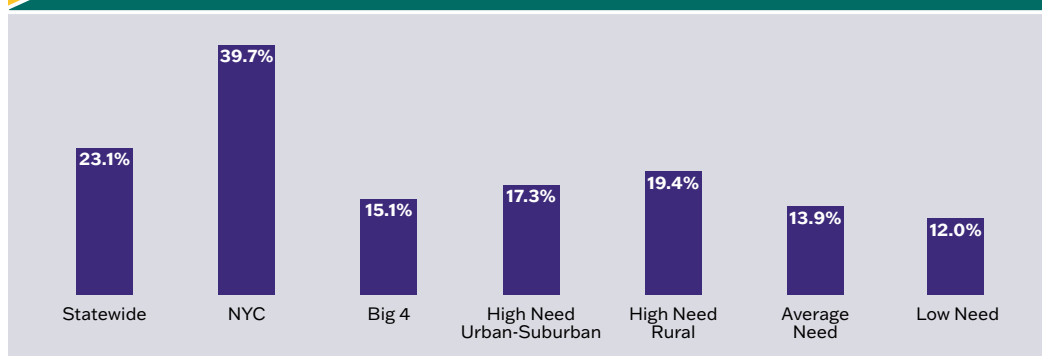
A 2017 study found that in the middle grades, there were “clear returns to experience in the form of higher test scores in both math and English language arts. [See “Returns to teacher experience: Student achievement and motivation in middle school” at [bit.ly/3IRJgXH](https://bit.ly/3IRJgXH).]

While teachers with less than four years of experience can be found in every kind of district, the percentages are highest in New York City (39%), rural high need districts (19%) and high need urban and suburban districts (17%). “High need” means that these districts rely heavily on state funding because they lack sufficient property and personal income wealth at the local level, according to SED.

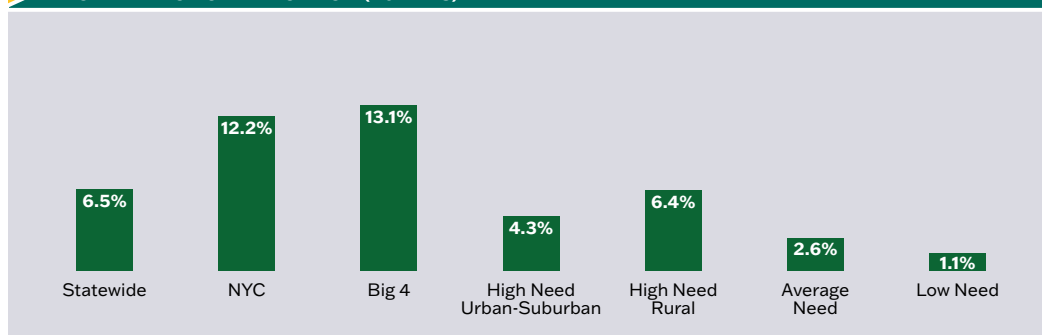
By comparison, “low need” districts, so designated because they have greater income and property wealth and rely less on state funding, had, on average, teaching staffs in which 12% of their teachers were inexperienced.

According to Kristen Wilcox, an associate professor in the Educational

## PERCENTAGE OF INEXPERIENCED TEACHERS (2022-23)



## PERCENTAGE OF TEACHERS TEACHING OUTSIDE OF THEIR SUBJECT OR FIELD OF CERTIFICATION (2022-23)



**“There’s really not much research about out-of-field teachers, but we suspect that they’re a net negative for student learning.”**

– Hannah Putman, National Council on Teacher Quality

Policy and Leadership Department of the University at Albany, experienced teachers are essential in higher poverty schools because teachers there require specialized expertise in areas such as student engagement and interventions, parent and community outreach, and, in general, the distribution of resources to meet the unique needs of economically disadvantaged children and youth.

“While teacher and leader preparation programs offer opportunities to develop knowledge and skills to meet youth and family needs, in higher poverty schools this specialized expertise is often developed over time through experience and through the building of relationships and networks in a school and broader community,” she told *On Board*.

## Out-of-field teaching

The extent to which schools have large numbers of teachers without certification in the subjects they are teaching is an indicator of a teacher shortage, according to the Learning Policy Institute. In most cases, districts can hire a teacher without certification

only if a fully prepared teacher cannot be found.

How much does this matter in terms of educational outcomes? Research suggests that teaching in-field is better, but some analyses were inconclusive. Here are some findings:

- An analysis of a large set of fourth- and fifth-grade student achievement data in Houston, Texas, by the prominent researcher Linda Darling-Hammond and colleagues found that certified teachers consistently produced stronger student achievement gains than did uncertified teachers on six different reading and mathematics tests over a six-year period. [See “Does teacher preparation matter? Evidence about teacher certification, Teach for America, and teacher effectiveness” at [bit.ly/4a7UjYS](https://bit.ly/4a7UjYS).]
- Students who were assigned to subject-certified teachers had higher test scores, but those gains appeared to be concentrated in math, and it was not clear that subject-specific credentials promote student achievement in

other subject areas. [See “Out-of-field teachers and student achievement: Evidence from matched-pairs comparisons” at [bit.ly/4cqrlPY](https://bit.ly/4cqrlPY).]

“The bottom line is, there’s really not much research about out-of-field teachers, but we suspect that they’re a net negative for student learning, given the importance of subject-area knowledge,” said Hannah Putman, the managing director of research at the National Council on Teacher Quality, a Washington, D.C.-based think tank that researches, evaluates, and provides information and guidance on topics related to teacher quality.

In New York State, school district wealth plays a factor in the percentage of teachers teaching outside of their subject or field of certification. In 2022-23, the highest such percentages were found in the Buffalo, Rochester, Syracuse and Yonkers school districts (13%), followed closely by New York City (12%). Outside of the Big 5 districts, high-need rural districts (6.4%) had the greatest percentage of teachers teaching outside their subject areas of specialization, while the lowest-need districts in the state had the lowest percentage (1.1%) of teachers teaching outside of their certification or subject area.

For more information on options being considered by SED and the Regents, see “State group considers ways to address serious deficits in NYS teacher pipeline” in the Feb. 26, 2024, issue of *On Board*.

# Middle school gets a bad rap. It’s time to **flip** the narrative!

By the Association  
for Middle Level Education

“Bless your heart.”  
“I’m so sorry!”  
“Why?”

If you’re a middle grades educator, it’s likely you’ve heard one of these reactions when you tell someone your profession. It’s not uncommon for people to recount negative memories from their own time as a middle schooler or bemoan, “kids these days.” Even though 10- to 15-year-olds are experiencing the most rapid and significant changes of their lives other than infancy, middle school remains typecast as a time to simply endure or to “get through.” Popularized in movies and television for its awkwardness, we often forget the incredible opportunity that these years represent.

Why is that?

In celebration of Middle Level Education Month (March), we sat down with middle school administrators from around the world to better understand why middle school sometimes comes with a negative connotation – and what we can do about it.

**Problem: Many adults have unhappy memories of middle school**

**FLIP: Explain we are creating schools where learning is fun!**



Mike Hammond, principal of Oliver W. Winch Middle School in South Glens Falls, New York, with sixth graders. At right is teacher Robert Bishop. ❖ Photos courtesy of the South Glens Falls Central School District

Several of the middle school leaders we spoke to identified parents’ own experiences as middle schoolers as a source of the negativity that sometimes surrounds this age group, including Mike Hammond, principal of Oliver W. Winch Middle School in South Glens Falls, New York. “It’s the same reason why public education sometimes gets that bad rap. Everyone experienced it. They’ll remember, ‘Oh, my middle school experience was XYZ.’ They carry that with them and project it on their children.”

It’s true that humans often remember negative or traumatic experiences over positive ones. Therefore, perhaps it’s natural that during a time of such dynamic change as puberty, our negative memories or experiences may be overrepresented compared to other stages of life. “We might not remember the positives, or that there were a lot of people during that time that cared about us,” Hammond said. “We remember the big things. And usually those are the ones that caused heartache or were embarrassing.”

Luckily, middle school leaders have developed ways to combat the past overtaking present opportunity. John Donecker, head of middle school at Lausanne Collegiate School in Memphis, Tennessee, knows parents will come into their child’s adolescent years with certain preconceived notions. “That’s very understandable,” John said. “But, at the same time, we want their child to have their own experience.” He believes that requires building trust with parents and showing them regularly through your actions and communications that their child is known and loved.

A “secret weapon” deployed by Paul Destino, Principal of Mayfield Middle School in Mayfield Heights, Ohio, is one he thinks we sometimes forget when dealing with all the challenges of adolescence: fun. “We’ve all been middle school students ourselves. You’re trying to figure out how to navigate life. It’s really hard to manage that,” he said. “I think most of us can look back and remember that was tough, but it was also a heck of a lot of fun. I believe in creating a school where learning should be fun. You’re going to see a lot of fun taking place in our school. But you’ll also see engagement and learning.”

Other school leaders say research-based middle grades structures and best practices have helped them combat old stereotypes. Mark Orszula, principal of Lakeview Junior High School in Downers Grove, Illinois, said he doesn’t

really see that negative connotation at his school and credits their use of teaming structures. At Lakeview, teacher teams have the opportunity to meet at least three times a week to talk about students. “That’s huge,” he said. “The way they wrap their arms around and support our students – it’s absolutely amazing to me. Kids have a whole team behind them making sure they’re prepared when they go to high school.”

For structures like advisory and teaming to be impactful, middle school leaders recognize that the faculty they bring into the building are critical. “I want to learn where their heart is,” said Chip Schuman, principal at Mattawan Middle School in Mattawan, Michigan. “It takes a special personality to embrace kids where they are developmentally. Collaboration is not a choice. It’s an expectation.”

**Problem: People think these tweens are disrespectful, naughty**

**FLIP: In school, we know growth is the norm & we celebrate it!**

Learning to “figure out” and navigate life is actually a hallmark of the young adolescent developmental phase. During this time, tweens are developing the ability to imagine the future and think abstractly. They begin making decisions based less on impulse and more on goals. Of all age groups, middle schoolers are the most receptive to positive change following a career exploration intervention – more so than even high school students. Linda Roth, the executive director of Community School in Roanoke, Virginia, describes this time as a “trying on of a lot of personalities.” That means they need space for learning. “They’re going to say silly things and get into arguments with people and not realize what they’re saying,” Roth explained.

The “messiness” of adolescence and propensity to make mistakes along the way is part of the beauty of getting to work with this age group, said Michael Gohde, middle school principal of the Seoul International School in South Korea. “There’s an incredible responsibility in middle school. You can create lasting change.”

Unfortunately, a lack of understanding has led instead to negative stereotypes of middle schoolers. Mikaela O’Bryan, principal of Bennett County Middle School in Martin, South Dakota, believes more education for parents and the community about the brain chemistry of a middle schooler would help, including that each kid is going through puberty at different times and paces.



A meeting of the No Place for Hate project at Oliver W. Winch Middle School in South Glens Falls.

“Their bodies are changing, their brains are changing,” O’Bryan explained. “People look at that and freak out. They think these kids are disrespectful or naughty. Whereas we realize it’s not that way.”

Part of improving public awareness includes amplifying the positives. Todd Brist, Principal of Watertown Middle School in Watertown, South Dakota, and author of *The Successful Middle School Advisory*, says he sees daily examples of his students flipping the script on the narrative of young adolescence. “If I walk into the lunchroom and see a mess, several kids will jump in to clean it up,” he said.

Unfortunately, “the empathy and compassion they show are not what get talked about in the media or even in the

staff room,” he added. “We’re always talking about the negative things. That’s not even getting to the grand things. We do a food drive at Thanksgiving and the Salvation Army literally depends on our school because we have such a good turnout from our kids. And then there’s the individual things kids are doing. Those are the norm; the negative things are the exception.”

**Problem: Middle school students have a lot of issues**

**FLIP: What an opportunity to show a kid that you care!**



South Glens Falls students dressed up for Spirit Week.

While public awareness and recognition of the importance and opportunity of the middle grade years will take time, middle school leaders are constantly at work finding ways to create more positive moments for kids.

Kula Gaugen-Haili worked with incarcerated youth before becoming middle school principal at Kamehameha Schools Kapālama Campus in Honolulu, Hawai’i. He knows the power of an adult showing that they care.

“I see things from the bottom up instead of the top down,” he said. “I think my lens helps when working with kids that are going through issues. I went through it as a kid, too.”

Gaugen-Haili believes middle school is a critical time for setting kids on the right path. “It’s one of the most applicable times of life to give them a core understanding of themselves. If I’ve done my job right, they head to high school knowing what they want.”

Even as an administrator, Kula stays connected with students by leading an advisory class. Kula recalls a particular student who struggled during her time at school but is now a Harvard graduate and enrolled at Yale Law School. She recently sent him an email that simply said: *You cared. Thank you.*

“I had a little part of it,” he says, “All it took was me showing a little care and hope.”

Cedrick Gray, author of *The Successful Middle School Leader*, believes there’s an opportunity here for middle school leaders to encourage faculty to flip the script on the middle school experience. “If you had a less than desirable experience as a middle school student, then now is the time to dive in and make the experience of your scholars better than what you experienced,” he said. “We need folks who are not only willing but able to make experiences better than when we were coming up.”

*This article originally appeared in slightly different form on amle.org, the website of the Association for Middle Level Education. Reprinted with permission.*

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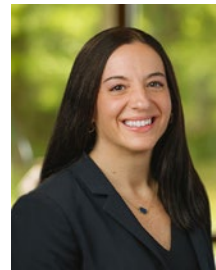
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# U.S. Supreme Court creates legal test for social media posts by public officials

By Shubb N. McTague  
STAFF COUNSEL

The Free Speech clause of the First Amendment prohibits governmental curtailment of speech. This can lead to litigation when citizens feel that school board members or other public officials have blocked them unlawfully from commenting on their social media posts. The key question is: when is a public official's posting on a social media account considered official speech, giving others a First Amendment right to comment?

In two recent U.S. Supreme Court cases, a unanimous court provided a test to determine whether a public official engages in state action when posting about job-related topics on social media. *Lindke v. Freed* concerned the Facebook page of a city manager in Michigan, and *O'Connor-Ratcliff v. Garnier* concerned the Facebook pages of two school board members in California.

## Facts of the city manager case

In *Lindke v. Freed*, James Freed created a Facebook page when he was in college and eventually opened it to the public. Approximately six years later, he became the city manager of Port Huron, Michigan. At that point, he posted a profile picture on Facebook of himself in a suit with a city lapel pin. He also included his title, a link to the city's website, and the city's email address on his page. While Freed operated the page himself and mainly posted pictures of his family and home life, he also posted information related to his job and other news about the city. He would converse with those that left comments on his posts.

After the COVID-19 pandemic began, Freed posted information both personal and related to his job concerning the pandemic. Kevin Lindke, a community member, was unhappy with the city's response to the pandemic and started posting comments to Freed's posts. At first, Freed deleted Lindke's comments but ultimately blocked Lindke from his page. Lindke filed a lawsuit claiming that Freed violated his First Amendment rights.

## Facts of the case involving school board members

In *O'Connor-Ratcliff v. Garnier*, two school board members in the Poway (Calif.) Unified School District created public Facebook pages to promote their campaigns. After they won, they used those pages to post information related to the school district (e.g., what happened at school board meetings, public safety updates and local budget plans). They also used Facebook to dialogue with community members. The pages described the two as "Government Official[s]" and stated their official positions. One of the members also created a Twitter page to use in the



**Michelle O'Connor-Ratcliff is the current school board president for Poway schools, located in San Diego County in California. After she and another board member blocked two parents from their Facebook pages, the case reached the U.S. Supreme Court.**

❖ Photos courtesy of the Poway Unified School District

same manner. These two board members, Michelle O'Connor-Ratcliff and T.J. Zane, kept separate personal Facebook pages that they shared with friends and family.

Christopher and Kimberly Garnier were a couple with children in the district. They began posting lengthy and repetitive comments on the board members' public pages. The board members first deleted the comments but then blocked the couple from being able to make any comments. The Garniers alleged a violation of their First Amendment rights.

## When does a public official's social media activity constitute "state action" under federal law?

Pursuant to 42 U.S.C. section 1983, an individual can bring a cause of action against a "person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State deprives someone of a federal constitutional or statutory right."

The U.S. Supreme Court focused on the *Lindke* case to set forth a test to determine whether "a public official's social-media activity constitutes state action under [section] 1983[.]"

The court held that to be able to attribute an official's social media activity to the government, the official has to:

- Possess actual authority to speak on the government's behalf; and
- Purport to exercise that authority when speaking on social media.

The court noted the difficulty in analyzing whether a public official engaged in state action or functioned as a private citizen when dealing with social media because these individuals still retain their constitutional rights as private citizens. Thus, each circumstance requires a fact-specific determination.

## Part 1 of the test: Possession of actual authority to speak on the state's behalf

The Supreme Court considered how to determine whether a public official



using social media has actual authority to speak on behalf of the government, which must be established prior to evaluating the second prong of the test.

Lindke argued that Freed's social media posts constituted state action because his page looked and functioned like an outlet for city updates and citizen concerns. However, the unanimous opinion written by Justice Amy Coney Barrett stated that Freed's postings could not be considered to be speech on behalf of the city government "unless he was 'possessed of state authority' to post city updates and register citizen concerns."

The court stated that an individual claiming a First Amendment violation must establish more than a state official having "some" authority to communicate with residents. The alleged censorship must be connected to speech on a matter which is within the official's duties. For example, the court noted that if Freed posted on a topic totally unrelated to his job, such as health code violations at restaurants, but then deleted comments on that post, it would not be connected to any authority he had within his job duties.

If, however, a local law allowed Freed to make official announcements on certain topics, or it was a long-standing custom, then it would be indicative of the authority to speak on the city government's behalf when posting on social media. The court stated that the "inquiry is not whether making official announcements could fit within the job description; it is whether making official announcements is *actually* part of the job that the state entrusted the official to do."

## Part 2 of the test: Purports to exercise that authority when speaking on social media

For a public official's speech to be considered government speech, an official must not only have actual authority to speak on the matter, but also purport to use it when speaking on social media.

This generally means the official was speaking on behalf of the government while in his/her official capacity, or when the official's speech is used to fulfill his/her responsibilities pursuant to state law.

In an example not involving social media, the court noted that if a school board president made an announcement during a school board meeting that the pandemic-era restrictions were being lifted and later makes the same announcement during a backyard barbecue with friends and family, the president would only be acting in his/her official capacity during the board meeting.

The court stated that Freed's situation was not entirely clear. Freed's Facebook page did not explicitly state that it was his personal page nor did it have a disclaimer stating the views expressed were strictly his own. If the page had either, the official "would be entitled to a heavy (though not irrebuttable) presumption that all of the posts [on the] page were personal."

The court noted that Freed's postings on Facebook were a hybrid; some were personal and some were related to city business. The decision stated for posts that appear on an ambiguous page, the content and function of a social media posting are the most important factors for consideration. For instance, if a mayor posted on social media that pursuant to a local ordinance, he/she was suspending parking rules, then the mayor would be purporting to discharge his/her official duties. If instead the mayor was just repeating or sharing information available elsewhere, then it would be more likely that the post would constitute private speech. Thus, it cannot be assumed that just because an official posts government-related information that the official is purporting to exercise his/her governmental authority.

## Deleting comments v. blocking individuals

Finally, the court noted the difference between when an official deletes comments by an individual or blocks them altogether. If a legal claim involves comments that were deleted, then just the posts from which the deletions occurred would have to be examined to determine whether the deletions pass the two tests. However, if an individual is blocked from the entire social media page, then "a court would have to examine whether [the official] had engaged in state action with respect to any post on which [an individual] wished to comment." The court noted that a public official exposes himself/herself to greater potential liability if he/she "fails to keep personal posts in a clearly designated personal account."

As a result of this new test, the court remanded both the *Lindke* and *O'Connor-Ratcliffe* cases back to the federal appellate courts from which they were appealed. Those courts will determine whether the plaintiff's First Amendment rights were violated or not.



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# Federal court decisions shed light on limits of students' right to freedom of expression

By the New York State  
Association of School Attorneys

In March 2023, a Massachusetts middle school student wore a shirt to school that read, "There Are Only Two Genders." When the school principal told him that he could not wear the shirt because of complaints from students and staff, his father picked him up, and he missed the remainder of the school day.

The student later told the school committee (Massachusetts' equivalent of a school board) that he thought everyone had a right to free speech in school. "I don't complain when I see 'pride flags' and 'diversity posters' hung throughout the school," he said.

The student filed a lawsuit in federal court requesting injunctive relief and arguing, among other things, that he was a victim of "viewpoint discrimination" (in which the government improperly allows free expression of some views but not others).

The court denied the student's preliminary injunction, finding that the student had not shown a substantial likelihood of success on his claim (*L.M. v. Town of Middleborough*, 2023). The court reasoned that the student could not counter the school district's showing that enforcement of the dress code was undertaken to protect the invasion of the rights of other students to a safe and secure educational environment.

The parties subsequently requested that the district court issue a final judgment based on the preliminary injunction ruling, which the court granted. The student appealed the district court's final judgment, and his case is now pending in the First Circuit U.S. Court of Appeals.

The legal standards applicable to student speech, both on campus and off campus, can be a murky area. The following cases are presented in an attempt to shed light on this issue.

## Regulating on-campus speech

The U.S. Supreme Court famously ruled in the 1969 case of *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* that students do not shed their constitutional rights at the schoolhouse gate. Quoting its 1967 decision in *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, the Supreme Court said schools must function as a marketplace of ideas; "The nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection."

However, students' First Amendment rights in public schools differ from those of individuals in other public settings because school administrators are tasked with safeguarding the school environment to ensure a safe environment for learning. This may lead school administrators to discipline a student for something they said, wore, or expressed related to their political opinion.

*Tinker* involved students wearing black armbands in protest of the Vietnam War. In a 7-2 ruling, the Supreme Court held that students may express their opinions, even on controversial subjects such as politics, as long as they do not materially and substantially interfere with the operations of the school or impinge on the rights of others.

Schools may discipline students for certain categories of speech even in the absence of a material or substantial disruption. For instance, "speech others may reasonably perceive as bearing the imprimatur of the school" may be regulated (*Hazelwood Sch. Dist. v.*



**Students may express themselves as long as they do not materially and substantially interfere with the operations of the school or impinge on the rights of others.**

*Kuhlmeier*, 1988). Schools may limit what is published in a school-sponsored newspaper as long as they avoid discriminating on the basis of viewpoint and officials act in accordance with school policy.

Schools may also discipline speech that constitutes hate speech, discrimination, harassment, hazing, intimidation, threats, profanity, and/or bullying (including cyberbullying). For example, a federal court in California held that a student's Twitter post with a photograph of another student and a racist caption (the N-word) was not protected speech. The court reasoned that the post interfered with the rights and emotional security of both the student depicted and the student who saw the post and complained about it. The student who posted the item did so during school hours, while the student was on school grounds. (*Castro v. Clovis Unified Sch. Dist.*, 2022).

School officials may also regulate and discipline students for speech that is vulgar, lewd, sexually inappropriate or that advocates for the use of illegal drugs (*Bethel Sch. Dist. No. 403 v. Fraser*, 1985; *Morse v. Frederick*, 2007).

What about political speech? This may be particularly salient during 2024, as this is a presidential election year. The Israel-Hamas war has also raised issues related to the regulation of student speech in school districts in New York State and the nation.

Some schools have unsuccessfully attempted to curtail political speech by categorizing it as speech that schools are permitted to regulate without showing a material or substantial disruption or an impingement on the rights of others. For instance, an employee of a school in Vermont instructed a student to change or cover up portions of his shirt depicting former President George W. Bush as a chickenhawk (an advocate for war who avoided serving in the military), as well as a user of cocaine. The school argued that the shirt was not permissible because it depicted illegal drug use. The Second Circuit Court of Appeals, which also has jurisdiction over New York schools, held that the school's actions violated the student's right to free political speech and that the drug depiction was not promoting the use of illegal drugs (*Guiles v. Marineau*, 2006, *cert. denied*, 2007 U.S. LEXIS 8793).

Similarly, in a Michigan case, a shirt portraying a president as an international terrorist was deemed to be protected (*Barber v. Dearborn Pub. Sch.*, 2003).

In both cases, the school districts failed to show a material or substantial disruption to the school operations or an impingement on the rights of others.

A school prohibiting religious speech may also encounter constitutional challenges. For instance, officials in a New Jersey high school prohibited a student from wearing a red armband, distributing flyers with pro-life sentiments during non-instructional times and wearing

tape over her mouth. In holding for the student, the court reasoned that the expectation of disruption was not well-founded (*C.H. v. Bridgeton Bd. of Educ.*, 2010).

## Regulating off-campus speech

In the age of social media and smartphones, off-campus speech has become a concern for schools. In litigation, the burden is on the school district to show that what was texted or posted outside the school setting affected the school environment.

In 2021, the U.S. Supreme Court addressed whether school officials could regulate off-campus speech in a case involving a cheerleader who was suspended from her squad after she posted something on Snapchat that her coaches viewed as inappropriate (*Mahanoy Area Sch. Dist. v. B.L.*, 2021).

In *Mahanoy*, the Court held that the *Tinker* standard applies to off-campus speech but schools have a diminished authority to regulate such speech. A school's interest in maintaining an orderly learning environment and a student's right to free speech must be balanced on and off campus. Accordingly, schools may regulate off-campus speech that materially and substantially disrupts school operations and that impinges on the rights of others, but the burden of proof is higher when off-campus speech is involved.

Notwithstanding a school's diminished authority to regulate off-campus speech, the *Mahanoy* decision listed circumstances where schools maintain a significant interest in regulating student speech. Schools retain a significant interest in addressing off-campus speech in circumstances of harassment, bullying, threats and school rule violations, such as cheating and hacking.

Rulings after *Mahanoy* provide examples of how courts have viewed issues faced by many districts involving off-campus speech. For instance, two students were disciplined for "private" social media posts made outside of school that contained racist and violent themes against Black classmates. The school contended that the posts constituted bullying, threatening and harassing speech and, therefore, was not protected speech. The Ninth Circuit Court of Appeals agreed (*Chen v. Albany Unified Sch. Dist.*, 2022, *cert. denied sub nom; Eppe v. Albany Unified Sch. Dist.*, 2023).

Similarly, a court held that a Texas student's racially charged social media message that was sent from an off-campus location to a student from a rival school was not protected speech (*McClelland v. Katy Ind. Sch. Dist.*, 2023).

In general, student speech that substantially and materially disrupts school operations or that impinges on the rights of others should not be tolerated, whether made on or off campus. The court decisions cited in this article hinged upon specific facts. Therefore, school officials must examine situations on a case-by-case basis.

Contact your school attorney if you have any questions regarding student discipline concerning a student's First Amendment right to freedom of speech, on or off campus.

Members of the New York State Association of School Attorneys represent school boards and school districts.



Candace J. Gomez Christopher Cruz

This article was written by Candace J. Gomez of Bond, Schoeneck & King PLLC with the assistance of Christopher Cruz, a graduate of Florida State University College of Law and an associate trainee at BSK.

# Do you need a board policy on artificial intelligence?

## *Breaking new ground and revisiting familiar areas*

By Jessica Goldstein

DEPUTY DIRECTOR OF POLICY SERVICES

With all the talk about artificial intelligence (AI) and its impact on schools, let's take some time to think about the policy implications.

Some school districts including New York City initially restricted access by students and teachers to ChatGPT and other such "generative" AI tools in school, fearing their use to circumvent learning and assignments. However, these tools can be accessed at home, and it is not always easy to tell when they have been used. New York City has changed its policy and is now looking for the best ways to use AI to improve instruction and student outcomes through their "AI Policy Lab."

The State Education Department has not issued a guidance on AI, but AI was the subject of a recent discussion by state policymakers (see "Board of Regents discuss AI's impact on education" in the March 18, 2024 issue of *On Board*).

Guidance has been issued by education departments in other states. Using those guidance documents and other resources, NYSSBA has developed a sample policy on artificial intelligence (Policy No. 8636). It's also worth noting that most districts already have policies in place that can help guide use of AI in schools.

### NYSSBA's suggested language is a starting point

NYSSBA Policy Services developed its sample policy on AI to serve as a starting point for discussions by district governance teams. AI is rapidly evolving, and districts may want to make



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modifications to the tools and landscape change.

We favored an approach that focused on the overarching expectations of districts as found in

existing related policies (see sidebar), as well as set guidelines and parameters for use of AI, especially generative AI (GenAI).

The policy acknowledges certain current realities:

- Students' ability to access GenAI outside of school may vary, and some students may not want to put their work into GenAI tools.
- The software tools to detect the use of GenAI may be inaccurate, inconsistent or biased.

- The data used to train GenAI models is usually unknown, may be biased, or violate copyright laws.

### Guidelines for the use of GenAI in schools

NYSSBA's sample policy language includes certain expectations:

- Students are responsible for their own work.
- Teachers must clarify their expectations regarding student use of GenAI.
- Teachers can design assignments that allow for multiple methods for students to demonstrate their understanding, and they should make it difficult for students to use GenAI to circumvent learning.
- All use of GenAI tools must be compliant with current laws,

### NYSSBA to host workshop on AI and public education

NYSSBA will host a Live Virtual Policy Workshop on Artificial Intelligence on May 8. Cost is \$140 for NYSSBA members and \$280 for non-members. To register, go to [bit.ly/49fSVSH](https://bit.ly/49fSVSH).

regulations and district policies (see sidebar, below).

- As has always been the case, if teachers suspect a student did not do the work themselves, they can require students demonstrate their knowledge and skills.
- Employee use of GenAI tools must be approved by their supervisor, and employees remain responsible for all work they produce and must always review any work generated by GenAI tools.

It's worth noting that any information used as input in GenAI tools can be used by that tool for its own purposes or to inform the content it generates in the future. Therefore, NYSSBA's sample policy sets a requirement that district users of GenAI may not input any sensitive, copyrighted, proprietary or confidential district information, including:

- Student information protected by federal and state laws and regulations.
- Staff information protected by federal and state laws and regulations.
- District information that would be withheld if a Freedom of Information Law request was received.

For a copy of NYSSBA's sample policy 8636, Artificial Intelligence, please contact [policy@nyssba.org](mailto:policy@nyssba.org).

## Existing policies that impact the use of AI

Your district already likely has policies on the following topics, which would apply in the context of use of AI by staff and students:

- **Computer Use in Instruction** (Acceptable Use) (NYSSBA sample policy No. 4526) – describes acceptable and unacceptable student use of district computer resources, including the internet and any applications accessed by the internet.
- **Internet Safety** (4526.1) – establishes protections such as filtering and monitoring of student and staff use of the internet and blocking access to content that is obscene, child

pornography, harmful to minors and inappropriate for minors as determined by the school board.

- **Code of Conduct** (5300) – prohibits academic misconduct, including plagiarism, cheating and copying.
- **Student Records** (5500) – establishes protections for information in student records to avoid access by unauthorized parties.
- **Computer Resources and Data Management** (8630) – describes acceptable and unacceptable use – by persons other than students – of district computer resources, including the internet and any

applications accessed by the internet.

- **Information and Data Privacy, Security, Breach and Notification** (8635) – informs the school community of protection of personally identifiable information of students and staff under state Education Law section 2-d (and its implementing regulations).
- **School District Compliance with Copyright Law** (8650) – limits use of copyrighted material consistent with fair use guidelines.
- **School District Records** (1120) – regards access to, and protection of, school district records and information.

# ELLs must always receive language services

*Special education classification does not make it optional*



**Betty A. Rosa**  
Commissioner of Education

Cognitive scientists believe that humans sort objects and ideas into clearly defined categories in order to simplify our understanding of the world. It makes sense to classify *things* in this way; people, however, are *not* objects – and we must resist the tendency to place human beings into neat little boxes.

I have written previously about the dangers of looking at an issue or problem through a single lens. We risk overlooking important

details and subtle nuances when we fail to widen our perspective.

The same is true of the children in our care. Teachers will be the first to remind us that students are complex beings with diverse abilities and needs. One child may lack stable housing; one may have endured a dangerous and traumatic journey to America; another may have a significant physical, emotional, cognitive or learning disability; and one may speak little or no English. There are countless issues that can impact a student's ability to learn; some children face multiple challenges at the same time. It is our responsibility to identify and address each student's unique needs.

In this column, I will discuss the ongoing challenges associated with educating English Language Learners (ELLs) who also have one or more disabilities. In the

aggregate, these students are routinely among the state's lowest performing in terms of academic outcomes.

In January 2024, the State Education Department's (SED) Office of Special Education and Office of Bilingual Education and World Languages issued a joint memorandum to remind New York's school leaders of their obligation to ensure that all ELLs, including those with a disability, have access to all appropriate instructional and support services, *including language acquisition services*. The field memo is illustrative of SED's efforts to work together internally so that we can better help you to help your students succeed.

In practice, this means:

- The services provided to an ELL pursuant to state regulation should be considered part of that student's general education core instruction.
- An ELL determined to be eligible for special education services must continue to participate in the district's bilingual education or English as a New Language (ENL) program. This may mean that special education services, accommodations, program modifications and/or supplementary supports and services may be needed to support that student's participation and progress in the bilingual or ENL program.
- Special education programs and services *cannot* replace a student's right to access the district's bilingual or stand-alone ENL program – even in the face of tricky scheduling and staffing issues. Simply put: language services should *never* be considered an "add on" to be provided only when convenient.

It is far too easy for a district to misidentify a student as having a disability or not having one when issues of language acquisition are also involved. So, when determining whether an ELL has a disability, a

school's Committee on Special Education must ensure that language differences aren't mistaken for language disorders and that patterns of performance related to cultural differences or interrupted schooling are not mistaken for signs of a disability.

A student with a disability must *always* be provided with special education and related services tailored to meet that student's unique needs. And an English Language Learner must *always* be provided with equal access to all school programs and services offered to non-ELL students, including access to those programs required for graduation. But too often, the students who check both of these boxes do not, in fact, receive all of the programs and services that they're entitled to.

This is not a new issue for our school leaders, who have long grappled with the best ways to serve their students who need specialized services in more than one area. It is also true, however, that the issues surrounding language have been greatly exacerbated by the recent influx of migrant students within New York's public schools.

To be certain, these are fraught times for the immigrant population. The politics of the situation are critically important. Regardless of how we feel about national immigration policy, it is our job and our collective responsibility to teach all of the children who are in front of us.

I recognize that this is a lot to ask of you and your schools. It is expensive, time-consuming, hard work to ensure that all students receive the programs and support services they need to thrive. But, as educators, we have a legal, moral and professional obligation to support the growth and learning of every New York State public school student.

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Application Deadline: April 26, 2026

Anticipated Start Date: August 5, 2024

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Materials and all inquiries should be directed to:

Scott E. Payne, District Superintendent  
CA BOCES  
1825 Windfall Road Olean, NY 14760  
Office: 716-376-8254  
Email: [scott\\_payne@caboces.org](mailto:scott_payne@caboces.org)

### An invitation to apply for the position of Superintendent of School

The Cattaraugus-Little Valley Board of Education is seeking an enthusiastic, knowledgeable, proven leader who is committed to developing a climate of excellence for students, faculty, and the community to serve as Superintendent of schools replacing Dr. Sharon Huff, who is retiring. The Board expects to offer a competitive salary and benefit package commensurate with experience and education, not less than \$165,000 per year. The ideal candidate should:

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- Have effective oral and written communication skills.
- Possess strong human relations skills, credibility, honesty, and leadership skills.
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Erie 1 BOCES  
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[mcapuana@e1b.org](mailto:mcapuana@e1b.org)



Learn more about our district at [depewschools.org](http://depewschools.org).

**FF|CSD**

## An invitation to apply for the position of Superintendent of Schools



The Fonda-Fultonville Central School District Board of Education seeks a professional, determined leader who will embrace their community, traditions and hometown sense of pride.

The ideal candidate will lead by example and be prepared to support the district's history of academic success; will be open, honest and approachable; and will work to keep the school community moving forward.

Located in the historic Mohawk Valley, Fonda-Fultonville Central School District serves approximately 1,300 students in Montgomery County. The nearby river, rolling farmland, lakes and mountains provide numerous recreational activities and its convenient location allows for an easy commute to New York State's Capital Region.



**Application  
deadline:**

April 17, 2024

**Anticipated  
start date:**

Sept. 1, 2024

- Salary range is \$150–\$180k, commensurate with experience.
- NYS Administrative certification required.
- FFCS is an equal opportunity employer.

Search Consultant: David Ziskin,  
HFM BOCES District Superintendent

A complete job description and application instructions are available at  
[www.hfmboces.org/FFCSsearch](http://www.hfmboces.org/FFCSsearch)

# Bringing storybook characters to life



Teachers and administrators in the Springs School in Suffolk County recently dressed up as storybook characters to encourage love of reading.

❖ Photo courtesy of Springs Union Free School District



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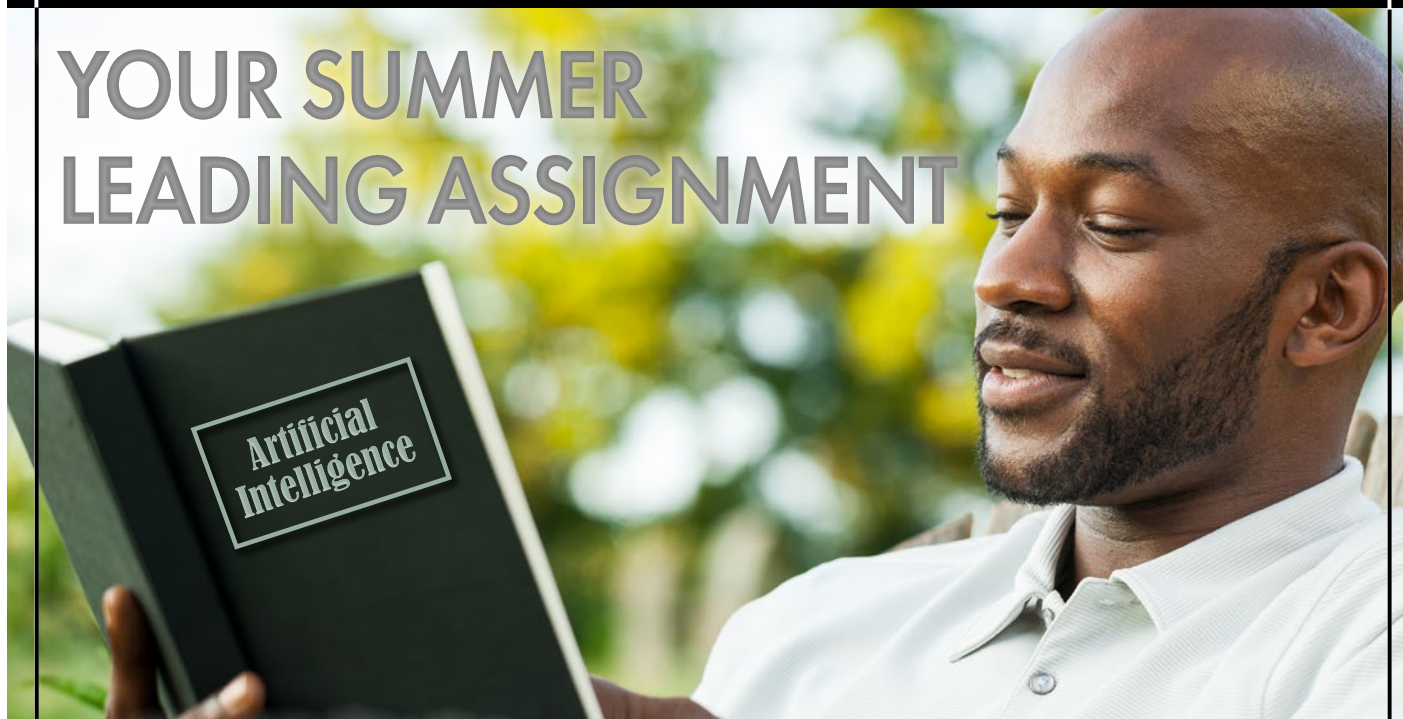
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