



THE ADVOCATE

CAYUGA-ONONDAGA BOCES
OFFICE OF PERSONNEL RELATIONS
1879 WEST GENESEE STREET ROAD
AUBURN, NEW YORK 13021-9430

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Office of Personnel Relations

Matthew R. Fletcher
Assistant Superintendent for
Personnel Relations

Randy J. Ray
Director of Personnel Relations

Brent D. Cooley
Senior Labor Relations Specialist

Michaela Perrotto
Quinn Marie Morris
Labor Relations Specialist

Mark W. Snyder
Safety Coordinator

Diane B. Dougherty
Linda M. Brown
Administrative Support

Telephone: (315) 255-7683 or (315) 253-0361
FAX (315) 255-7625
Email: lbrown@cayboces.org

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DISABLED STUDENTS IN SPORTS

contributed by Quinn Morris

In 2010, the United States Government Accountability Office (GAO) released a study entitled *“Students with Disability: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics.”* This study concluded that students with disabilities are not being afforded an equal opportunity to participate in extracurricular athletics in public schools. Further, the study recommended that the United States Department of Education (DOE) clarify and communicate schools’ responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding extracurricular athletics.

In January 2013, the DOE Assistant Secretary for the Office for Civil Rights, issued a “Dear Colleague Letter” offering an overview and clarification of public schools’ obligations under Section 504 regarding extracurricular athletics opportunities provided to students with disabilities. In particular, the Letter highlights the requirement that a school district provide extracurricular activities and programs to disabled students equal to that of students without disabilities

An equal opportunity does not mean that every student with a disability is guaranteed a spot on an athletic team, just that disabled students are given an equal opportunity

to participate. A school district may require a particular level of skill or ability in order to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.

For a disabled student to participate, the student first must prove, just like all students, his or her ability. Any decision related to a student’s participation must be based on the same criteria used for all other players, not all other players with a disability. If a student is able to show his or her talent, then the school district must next consider what, if any, accommodations would be required for the student to participate. It is important to note that each qualified disabled student must be considered on an individual basis, a school district cannot deny a qualified disabled student the opportunity to participate solely based on generalizations and stereotypes. For example one student with a certain type of disability may not be able to play a particular sport, but another student with the same disability may be able to play that same sport.

In order to comply with Section 504, if a disabled student has the ability to participate in a sport but in order to do so would require a modification to the sport, the school district must make available any reasonable modifications, aids and/or services necessary in order to ensure equal opportunity for participation. There is, however, an exception to this rule, if the school district can show that making reasonable modifications would result in a fundamental alteration to its program, the school district will not be required to make such modification. For example, a student with a hearing impairment is interested in running track and at tryouts the student’s speed and ability qualify her for membership on the team. The implementation of a visual cue to be used to signal the start of a race, simultaneously with a starter pistol, could allow the disabled student to

participate in races along side nondisabled students. The DOE would consider this a reasonable modification since it would not fundamentally alter the nature of the activity.

In the case that reasonable modifications cannot be made or doing so would result in a fundamental alteration of the program, offering separate or different opportunity is a permissible option for providing an equal opportunity for extracurricular athletics. This could be accomplished by creating new teams or creative opportunities. If there are not enough participants within one school to form an entire team, a school district could design a district-wide team (mixed gender and age), a regional team with participation by neighboring districts' students, or use a community organizations to expand extracurriculars for disabled students. For example, a student confined to a wheelchair is interested in playing high school basketball, but the student is unable during tryouts to meet the required level of skill or ability to participate on the team. The school would not be obligated to provide the student a spot on the team when there is a selective or competitive tryout process. Furthermore, it would fundamentally alter the nature of the activity to provide modifications for the student to participate since, at a minimum, this would require lowering the basketball hoops. However, the school remains obligated to provide a separate or different athletic opportunity for the disabled student. If, for example, there are other students of various ages or genders, confined to wheelchairs and interested in playing basketball, the school could establish a district-wide team to provide a competitive experience for such students.

School districts across the state are highly concerned about how this recent DOE guidance will impact their finances during the current fiscal crisis, and rightfully so. Certainly, there will be increased costs associated with compliance, whether it is

the establishment of an entirely new team or simply providing modifications for individual disabled student athletes. Some modifications may be inexpensive and easily implemented such as allowing a one-hand touch in swimming or a visual cue in track. Others may include major overhauls such as hiring buses with lifts for teams made of players in wheelchairs or paying a trained school nurse or aide to accompany a student with diabetes to all practices and games in order to provide glucose testing and insulin administration. In Minnesota, where modified sports for disabled athletes have been in existence for over 40 years, last year about 3% of students in the St. Paul public schools played an adapted sport, while consuming more than 10% of the overall athletics budget ("*Minn. Provides a map for including disable students in sports*" Kyle Potter, *Associated Press*, February 1, 2013). Nevertheless, the cost will be unavoidable to comply with the law.

In conclusion, in order to be in compliance with Section 504, a school district must make reasonable modification to its policies, practices, or procedures, whenever a modification is necessary to ensure equal opportunities are provided to qualified disabled students to participate in extracurricular activities, unless the school district can demonstrate that the requested modification would constitute a fundamental alteration of the nature of the extracurricular activity. To avoid violating Section 504 obligations, which could result in the loss of federal funding, and legal problems, school districts should work with their athletic associations to ensure that students with disabilities are not denied an equal opportunity to participate in interscholastic athletics. Further, due to the potential financial impact of compliance, it is wise for schools to study their own extracurricular programs and evaluate their own qualified disabled students' athletic/competitive needs in order to plan accordingly.

Form I-9 Audits and District Compliance

Under President Obama's Administration, the U.S. Immigration and Customs Enforcement (ICE) has increased Form I-9 audits and enforcement actions to nearly 12 times the number of audits completed in the final year of the Bush Administration. As such, school districts should make sure their Form I-9s are in compliance.

Under the Immigration Reform and Control Act (IRCA), districts are prohibited from knowingly hiring or employing unauthorized workers. Compliance with IRCA requires employers to complete Form I-9s for all employees hired after November 6, 1986, to verify an employee's identity and to confirm that the individual is authorized to accept employment in the United States. These forms are required to be filled out for all employees, including U.S. citizens. Districts are required to keep all Form I-9s for three years after an employee's date of hire or one year after the employment relationship ends, whichever is later.

According to the Department of Homeland Security's U.S. Citizenship and Immigration Services website, IRCA fine and penalties for "hiring or continuing to employ a person... knowing that the person is not authorized to work in the United States" begin at \$375 per violation and reach as high as \$16,000 per violation for a third offense. Employers may also be fined for errors found on the Form I-9s for "failing to comply with Form I-9 requirements." Fines for these violations range from \$110 to \$1,100 per violation. Criminal penalties for engaging in a pattern or practice of hiring or recruiting unauthorized aliens can result in up to 6 months in prison and \$3,000 for each unauthorized alien.

Due to the potential criminal and monetary penalties associated with violations, districts are encouraged to implement a written Form I-9 policy, train designated personnel on proper Form I-9 verification procedures and

conduct self-audits of Form I-9 records.

The Form I-9 requirements do not change the fact that districts are prohibited from discriminating against employees on the basis of national origin, citizenship, or immigration status. As such, districts may not demand that employees show specific documents because of their national origin, ethnicity, immigration or citizenship status, race, color, religion, age, gender or disability, or because of any other protected characteristic. Districts may not treat applicants differently than others because there is a belief that an applicant is a noncitizen.

For further information, please visit: <http://www.uscis.gov/portal/site/uscis>



SAVE THE DATE!

NEGOTIATIONS WORKSHOP

TUESDAY, MARCH 19, 2013
8:30 a.m. - 1:00 p.m.

CAYUGA-ONONDAGA BOCES
REGIONAL EDUCATION CENTER
PRESENTATION ROOM

1879 W. GENESEE STREET ROAD
AUBURN, NEW YORK

On Tuesday, March 19, 2013, the Cayuga-Onondaga BOCES Office of Personnel Relations will conduct a half-day workshop on issues relating to negotiations and personnel relations.

This workshop will provide information for superintendents, assistant and associate superintendents, and any central office staff who are involved in negotiations and/or labor relations. The program will begin with registration at 8:30 a.m. and conclude at approximately 1:00 p.m. Refreshments will be provided during coffee breaks.

To attend or sign up your staff members, contact Linda Brown at lbrown@cayboces.org or (315) 255-7683 by Thursday, March 14, 2013.

AREA UNEMPLOYMENT RATES

New York State Rate

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.1%	9.2%	8.7%	8.1%	8.6%	9.1%	9.1%	8.8%	8.2%	8.3%	7.9%	8.2%	
2011	8.9%	8.6%	8.2%	7.7%	7.8%	8.1%	8.3%	8.1%	8.2%	8.0%	7.9%	8.0%	8.2%

Syracuse, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.4%	9.4%	8.7%	8.1%	8.5%	9.0%	8.9%	8.6%	8.4%	8.2%	7.8%	8.5%	
2011	9.3%	9.0%	8.5%	7.8%	7.8%	8.2%	8.2%	7.8%	8.1%	7.7%	7.8%	8.2%	8.2%

Auburn, NY Micropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.2%	9.3%	8.6%	7.9%	8.1%	8.4%	8.3%	7.9%	7.5%	7.6%	7.5%	8.3%	
2011	9.1%	9.0%	8.5%	7.5%	7.3%	7.5%	7.5%	7.1%	7.2%	7.1%	7.3%	7.8%	7.7%

Cayuga County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.2%	9.3%	8.6%	7.9%	8.1%	8.4%	8.3%	7.9%	7.5%	7.6%	7.5%	8.3%	
2011	9.1%	9.0%	8.5%	7.5%	7.3%	7.5%	7.5%	7.1%	7.2%	7.1%	7.3%	7.8%	7.7%

Broome County Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.7%	9.4%	8.7%	8.2%	8.6%	9.2%	9.3%	9.0%	8.5%	8.4%	8.0%	8.8%	
2011	9.7%	9.2%	8.8%	8.3%	8.0%	8.5%	8.5%	8.0%	8.2%	7.9%	8.0%	8.4%	8.5%

Ithaca, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	6.9%	6.5%	5.9%	5.7%	6.3%	7.2%	7.0%	6.7%	5.7%	5.8%	5.4%	5.6%	
2011	6.4%	5.8%	5.3%	5.3%	5.4%	6.5%	6.7%	6.2%	5.9%	5.6%	5.5%	5.6%	5.8%

Ontario/Seneca/Wayne/Yates Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	9.1%	9.1%	8.5%	7.5%	7.9%	8.1%	7.7%	7.4%	7.1%	7.2%	7.1%	8.0%	
2011	9.2%	9.0%	8.5%	7.6%	7.3%	7.4%	7.1%	6.8%	6.9%	6.6%	6.8%	7.6%	7.6%

Rochester, NY Metropolitan Statistical Area

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ann. Avg.
2012	8.5%	8.6%	8.0%	7.7%	8.0%	8.4%	8.5%	8.3%	7.9%	7.7%	7.4%	8.0%	
2011	8.6%	8.4%	7.9%	7.3%	7.3%	7.7%	7.8%	7.5%	7.6%	7.2%	7.2%	7.5%	7.7%

*Source: New York State Department of Labor
Labor Statistics
www.labor.state.ny.us*

CONSUMER PRICE INDEX

January 2013

	INDEX 1982-84 BASE YEAR=100	% INCREASE FROM 2012	% INCREASE FROM PRIOR MONTH
NY-Northeastern New Jersey Area			
1. All Urban Consumers	254.807	2.2	0.5
2. Urban Wage Earners & Clerical Workers	250.849	2.2	0.5
U.S. City Average			
1. All Urban Consumers	230.280	1.6	0.3
2. Urban Wage Earners & Clerical Workers	226.520	1.5	0.3

COST OF LIVING UPDATE

ALL CITIES

NY - NORTHEASTERN NEW JERSEY

Month	Revised Wage Earner Index	%	All Urban Consumers Index	%	Revised Wage Earner Index	%	All Urban Consumers Index	%
Jan-11	216.4	1.8	220.2	1.6	238.4	1.8	242.6	1.5
Feb-11	217.5	2.3	221.3	2.1	239.8	2.4	243.8	2.1
Mar-11	220.0	3.0	223.5	2.7	241.7	2.7	245.6	2.3
Apr-11	221.7	3.6	224.9	3.2	242.7	2.9	246.5	2.5
May-11	223.0	4.1	226.0	3.6	244.3	3.5	248.1	2.9
Jun-11	222.5	4.1	225.7	3.6	244.6	3.7	248.5	3.2
Jul-11	222.7	4.1	225.9	3.6	245.3	3.8	249.2	3.3
Aug-11	223.3	4.3	226.5	3.8	246.0	3.9	250.1	3.5
Sep-11	223.7	4.4	226.9	3.9	246.9	4.3	250.6	3.8
Oct-11	223.0	3.9	226.4	3.5	246.3	3.7	250.1	3.3
Nov-11	222.8	3.8	226.2	3.4	245.5	3.3	249.3	3.0
Dec-11	222.2	3.2	225.7	3.0	244.6	3.0	248.3	2.7
Jan-12	223.2	3.1	226.7	2.9	245.5	3.0	249.3	2.8
Feb-12	224.3	3.1	227.7	2.9	246.5	2.8	250.3	2.6
Mar-12	226.3	2.9	229.4	2.7	248.2	2.7	245.1	2.5
Apr-12	227.0	2.4	230.1	2.3	248.7	2.5	245.9	2.3
May-12	226.6	1.6	229.8	1.7	249.0	1.9	252.7	1.8
Jun-12	226.0	1.6	229.5	1.7	248.5	1.6	252.4	1.6
Jul-12	225.6	1.3	229.1	1.4	248.2	1.2	252.0	1.1
Aug-12	227.1	1.7	230.4	1.7	249.7	1.5	253.5	1.4
Sep-12	228.2	2.0	231.4	2.0	251.0	1.7	254.6	1.6
Oct-12	228.0	2.2	231.3	2.2	250.5	1.7	254.3	1.7
Nov-12	226.6	1.7	230.2	1.8	250.6	2.1	254.3	2.0
Dec-12	225.9	1.7	229.6	1.7	249.5	2.0	253.6	2.1
Jan-13	226.5	1.5	230.3	1.6	250.8	2.2	254.8	2.2
Feb-13								
Mar-13								
Apr-13								
May-13								
Jun-13								
Jul-13								
Aug-13								
Sep-13								
Oct-13								
Nov-13								
Dec-13								

THE ADVOCATE STAFF

Editor:

Michaela Perrotto

Editorial Assistant &

Desktop Publisher:

Linda M. Brown

Contributors:

Matthew R. Fletcher

Randy J. Ray

Brent D. Cooley

Quinn Marie Morris

Mark W. Snyder

Linda M. Brown

Published by:

Cayuga-Onondaga BOCES
Office of Personnel Relations
1879 West Genesee Street Road
Auburn, NY 13021-9430
Telephone: (315) 255-7683
Fax: (315) 255-7625

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