

# Community District Education Council District 26

Address: 61-15 Oceania St, Bayside, New York 11364

Tel: 718.631.6927 FAX: 718.631.6996 Email: central/cec26@nycboe.net

## MINUTES OF THE BUSINESS/PUBLIC MEETING

**Date:** Thursday, January 31, 2008

**Time:** – 7:00 P.M.

**Location:** MS 67- 51-60 Marathon Pkwy, Little Neck, NY, Room B44A

The meeting of the Community District Education Council of District 26 (CDEC26) was called to order by Marian Mason, Administrative Assistant and Irene Cheung, Treasurer at 7:10 p.m.

Attendees: Marie Pollicino, Irene Fennell & Irene Cheung, Minkyung Lee, Erik DePaula & Michael Kaleda

Late - Rob Caloras

Excused - Dr. Lana Zinger, Patrick McShane & Jeannette Segal

Present – Anita Saunders, Community Superintendent, Lori Butera – District Family Advocate

### **Secretary's Report – Marian Mason**

1. Marian asked if everyone had a chance to read the December 20<sup>th</sup> minutes or make corrections. Irene Cheung made a motion to adopt the minutes as is and Marie seconded. Members voted unanimously to accept the minutes.
2. Marian informed council members that their activity sheets for January is needed and any expenses should be put through for signature.

### **Treasurers Report – Irene Cheung – read the balance of each account**

Date	Vendor Name	General Supplies	Local Travel/Food	Stipend Reimbursements	Telephone Svcs	Maintenance Equip.	
		Code – <b>198</b>	Code - <b>451</b>	Code - <b>496</b>	Code - <b>402</b>	Code - <b>612</b>	Code 315
<b>09/07</b>		<b>11,000</b>	<b>1,900</b>	<b>2,000</b>	<b>100</b>	<b>4,000</b>	
AS OF	1-31-08 approx.	9631	1119	1651	100	1600	80

### ***New Business***

1. Mike Kaleda – spoke about the cell phone legislation-referred to Assemblywoman Cathy Nolan legislation to establish guidelines on the possession of cell phones by students in schools. After reviewing the bill he felt that there is interest by parents to allow their children to possess cell phones, not use, for emergencies only. He stated that it is his/CDEC's recommendation to support the bill.

### ***Legislation***

Directs the commissioner of education to establish guidelines for local policies regarding possession or use of mobile telephone in public schools by December 31, 2007; requires a school facility to provide notice to all students that mobile telephone use is prohibited in a class room during regular school hours.

**A03525 Actions:**

BILL NO A03525

01/26/2007 referred to education

**A03525 Memo:**

BILL NUMBER:A3525

**TITLE OF BILL: An act to amend the education law, in relation to the use and possession of mobile telephones by students**

PURPOSE OR GENERAL IDEA OF BILL:

The general idea is to direct the Commissioner of Education to establish guidelines for the possession of cell phones in public schools by students.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill amends section 305 of the education law to direct the commissioner to establish rules and regulations to allow the possession of a mobile telephone by a student.

Section 2 of the bill adds a new section of law, section 409-j to the education law to define mobile telephone and school facility. It further provides that the cell phone may be used in an emergency.

Section 3 is the effective date.

JUSTIFICATION:

Many parents rely on cell phones to communicate with their children after or before school hours. Cell phones have become a necessary part of the family communication which should be respected. The possession of a cell phone in school should not on its own be an offense. The responsible possession of a cell phone in no way impacts the learning process. The confiscation of cell phones for no reason other than possession is a hardship for many families.

PRIOR LEGISLATIVE HISTORY:

A.11425/2006

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: Immediately.

Anita made a point that they did not want the children using their cell phones to give out test information to the next class but also stated that parents are concerned about reaching their child in case of an emergency.

Marie made a motion to adopt Cathy Nolan’s bill and guidelines, Irene seconded. Council voted unanimously to accept.

**CDEC 26 RESOLUTION ON ASSEMBLY BILL A03525**

Pursuant to New York State Education Law Section 2590-e subsection 14, Community District Education Council 26 holds public meetings every month during which the public may speak so that parents and the community have a voice and public forum to air their concerns.

Pursuant to New York State Education Law Section 2590-e subsection 18, Community District Education Council 26 is empowered to provide input, as it deems necessary, to the Chancellor and the City Board on matter of concern to the district. Under this authority, Community District Education Council 26 sets forth the following:

**Whereas**, the safety of all children is a civil right;

**Whereas**, the safety of children living in District 26 and attending District 26 and other public schools is an important concern and priority of all members of the District 26 community;

**Whereas**, it is necessary to provide safety to children while they travel to and from school;

**Whereas**, providing safety to the community's children requires effective communication;

**Whereas**, cellular telephones have been used to promote such effective communication and their use has led to increased safety for the community's children;

**Whereas**, the responsible possession of a cell phone in no way impacts the learning process and the confiscation of cell phones for no reason other than possession is a hardship for many families.

**Whereas**, Assemblywoman Cathy Nolan has sponsor Bill A03525 that directs the Commissioner of Education to establish guidelines for local policies regarding the possession or use of mobile telephone in public schools and;

**Whereas**, the Bill requires school facilities to provide notice to all students that mobile telephone use is prohibited in a class room during regular school hours and

**Whereas**, the Bill provides that the cell phone may be used by a student in an emergency.

**Be it resolved;**

We, the members of the Community District Education Council 26 support the Bill and its passage in the Assembly.

**DATED: FEBRUARY 28, 2008**

***President's Report – Rob Caloras***

- E-mails during the month – asking members to read and respond back as quickly as possible.
- Article on NCLB Act can violate the IDEA (Independent Disability Education Plan?) Making disabled children take standardize tests could be in violation of the IEP and various other protections under the IDEA Act. **(See Attachment -1)**
- NY Law Journal article – Laura Pollutius of Bayside High School was the grand prize winner of the Independence of the Judiciary Essay Contest which was opened to all NYC High Schools. Her essay was “Youth & the Freedom of Expression”.
- Attended PS 203 Celebration of the Lunar New Year – all members invited for next year. Every school should be modeled after this school. Ms. Nussbaum received a VH1 grant where the schools get musical instruments. Also has a band and theater teacher who comes in at least three times a week. Rob expressed that the parents whose children have graduated volunteer to work on and in these events.
- Gifted & Talented Test – principals will have to dip into their budget to do the proper administering of the test. E-mail sent to the Chancellor – no response to date.
  - a. School staff being used
  - b. School time being utilized
  - c. Chancellor trying to make test more assessable to individuals – cost not beneficialChancellor creating new sites for G&T (new formula) – D26 might get another site. Anita stated that 125 students will be tested and there will be one sub teacher. Each principal has to arrange the testing. Central did not think it would be so many.
- Bonus money - \$30 per child will be given by the Chancellor but there will be a 1.75% cut across the board.

Rob - Voting on prospective candidate – Vincent Tabone

Rob Caloras, Irene Cheung, Irene Fennell, Erik DePaula, Mike Kaleda, Minkyung Lee, Marie

Pollicino - YES Votes taken for Vincent Tabone – **7 YES – 0 NO**

Rob welcomed Vincent Tabone to the council - resolution read:

**VACANCY RESOLUTION – 1-31-08**

**Resolution** - To fill a vacancy on CDEC 26 this occurred on **1-31-08**

**WHEREAS**, Community District Education Council members are representatives of the parents and community-at-large; and

**WHEREAS**, a vacancy has occurred on Community District Education Council 26 (CDEC 26) effective **7-1-07**; and,

**WHEREAS**, Department of Education rules and Chancellor's Regulation A-140 state that when a vacancy occurs on a CDEC, the CDEC shall fill the vacancy at a public meeting, after consultation with Presidents' Council and other education groups; and

**WHEREAS**, CDEC 26 has followed the regulations regarding filling of the vacancy; and

**WHEREAS**, CDEC 26 has selected a the best qualified person to fill that vacancy; now therefore,

**BE IT RESOLVED**, that in accordance with Department of Education procedures, Community District Education Council 26 hereby appoints Vincent Tabone to fill the vacancy as Council Member of CDEC 26, effective immediately.

**APPROVED** unanimously by vote: 7 – 0 **PASSED and ADOPTED** this **31 Day of January 2008**.

Rob announced that Vincent Tabone is now a member of the CDEC 26 council.

***Superintendent's Report*** – Anita Saunders

Anita thanked the council members for the lovely flowers brought to her by Irene Fennell from the council.

1. Gifted & Talented Testing – Pre-K, Kindergarten (until Feb. 15)  
Grade 1 & Grade 2 (extended to February 29<sup>th</sup>).
2. Pre-K Process – Information Meeting – Jamaica High School – February 4<sup>th</sup>  
6:30 - 8:00 P.M. Applications available early March - Notification by May.  
Upon registration – documents will be checked such as immunization & proof of address
3. MS 216 – First Place Winner, Top Scorer in “American Mathematics Competition” awarded to Andy Feng, Grade 8 – Plaque = “Top Scorer New York State.”  
Intel Winners - Artem Sergano (Bronx HS); Xiauyun Yin (Stuyvesant); Olivia Hu (MS 74).
4. Budget Adjustments –  
Central – to cut staffing, transportation, food, repairs, maintenance, information Technology initiatives, assessments & purchasing.  
Schools – to cut 1.75% across the board effective immediately.  
Cuts “only from funds not yet scheduled or committed.” – Mid-year adjustment.
5. Mid-year Vacation – February 18 – 22.

***Lunar New Year Wishes – Year of the Rat***

***New Business/Old business***

1. CEC Alliance – group of community districts that are seeking to join and bring issues to present to the Chancellor. Rob suggested on voting to join the alliance.

Rob made a motion to vote on the resolution to join the CEC President Organization Citywide and Marie seconded. (7 YES – 1 ABSTAIN)

**Resolution - To Authorize the CEC President to Join a Citywide Organization**

**WHEREAS** New York State law divides New York City into 32 community school districts, and establishes a Community Education Council for each one; and

**WHEREAS** the city has also established two Citywide Education Councils, one for high schools and one for special-education schools, to complement the Community Education Councils; and  
**WHEREAS**, notwithstanding these districts and councils, state law has given control of education citywide to the mayor through June 30, 2009, with an option for renewal; and  
**WHEREAS** many education policies are now set at the city level; and  
**WHEREAS** many schools and districts citywide face similar educational challenges and share similar policy concerns; and  
**WHEREAS** numerous Education Council presidents and members have expressed the opinion that their influence would be stronger if they worked together on issues of common concern; and  
**WHEREAS** a number of Education Council presidents have decided to band together in a citywide Council Presidents' Coordinating Committee; now therefore,  
**IT IS HEREBY RESOLVED** that the District 26 Community District Education Council does authorize, empower, and encourage its president, or a designee, to serve as a member of the Council Presidents' Coordinating Committee.  
**Dated: January 31, 2008**

Resolution will be sent to Chris Spinelli.

2. Rob spoke about the SLT complaint filed by Marie Pollicino on behalf of the CDEC 26 and the complaint is against the amendment to the SLT regulations that has been passed by the Chancellor. E-mails sent & the UFT has a lawyer working on the language on their behalf. Mr. Melvin Meer has also intervened. Erik DePaula is doing research on this matter also. Rob made a motion for the CDEC 26 to intervene in the complaint, Irene Fennell seconded (7-YES, 1 ABSTAIN).

#### ***Old Business***

1. School Liaisons List – discussion - council members have no problem being a liaison for their child's school. Rob stated that there are now 11 members and ask that the liaisons make contact with the PTA presidents. Rob also asked that they go on school visits, talk with the teachers, principals and greet the students.

Vincent will be assigned to PS 31 & PS 158

Irene Fennell assigned to PS 188

2. Erik spoke about double parking at PS 173 and stated that the police disappeared. Rob informed the attendees that the Suspension Site is no longer there and it is a Community Board 8 issue. Rob informed the attendees that it is a problem at all schools. Anita stated that some schools have adopted a procedure (PS 188) where 4-6 parents in the morning would be at the curb side (one parent will open the door, one parent would take child is taken from the car and another parent takes or escorts that child to the door and so on and so on). Erik stated that he will go to the Community Board meeting and bring this issue up again.

#### **Lori Butera, District Family Advocate**

1. Events – President's Council meeting with Martine Guerrier, Chief Family Engagement Officer will be held on February 12<sup>th</sup> at MS 266.
2. Application available for middle schools. Borough wide fairs will be taking place.
3. New high schools (building small ones) which will be announced next week. Fair taking place Feb. 5<sup>th</sup> at Martin Luther King High school.
4. D26 will be holding its Family Day at PS/IS 178 on February 14<sup>th</sup> (9-11:30) and it's on "How to Use the School and Public Library Resources".
5. SLT Training throughout the city.
6. Lobby Day will be in Albany on February 26<sup>th</sup> where parents, teachers & students meet with the elected officials. Buses will be provided.

7. Workshop on lobbying to assist parents on the letter writing & campaigning portion. Will be held at PS 46 on Feb. 5<sup>th</sup>, 9 a.m.

Rob informed the attendees that on Feb. 28<sup>th</sup>, 4 p.m. there will be a UFT Task Force on “School Governing”. Everyone is invited to attend. Politicians will be coming to speak.

Rob made a motion to adjourn the Business meeting and Vincent seconded. Council unanimously voted to adjourn.

**Business meeting ended at 8:30 p.m.**

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## PUBLIC FORUM MEETING

Forum called to order at 8:40 by Rob Caloras, President, CDEC.

Rob Caloras welcomed everyone to the CDEC 26 Public meeting & introduced the School Construction Authority speakers: Mary Leas, Project Support Manager; Sharon Greenberger, President, SCA; Gordon Tung, Chief Project Manager, SCA & Kenneth Faustmann, Sr. Project Officer, SCA.

### Speakers

1. Charlotte Heidman, PTA President-PS 216 – spoke about the Air conditioning unit in the school & electrical system which is outdated. Petitions sent to Senator Gennaro’s office asking for help.
2. Maritza Conway, PTA President-PS 216 spoke about the air conditioning in the auditorium was very bad.

Rob informed the speakers that a list was sent to Kathleen Grimm regarding the Capital Plan proposals and PS 216 was included.

### Guest Speaker – Mary Leas

She started out by giving an overview, stating that she covers district 25 & 26. Ms. Leas informed the attendees that the Capital Plan is handled in a Five Year Increment and at the present time we are in the fourth year of the five year plan. There are 29 schools in district 26 and 17 will get Capital Improvement projects for about \$42 million dollars beginning next year. They range from auditorium upgrades, exterior work, masonry, windows, roofing and some schools will get flood elimination. The Capital Plan is set to address the worst situations first and work backwards. Every year architects & engineers go around to every school (B-cap) and rank the school looking at different components (electrical, mechanical, and architectural) and rank them 1-5 (5-worst). Can look on the SCA website to see where your school ranks. Capital Plan reflects what the needs are for each school. Ms. Leas stated that she received the list that was sent to Kathleen Grimm outlining the priority schools first.

Sharon Greenberger stated that the next Capital Plan is in development. To date, they are creating small high schools. If anyone knows of any property for sale where a school can be built to inform the SCA and they will do a demographic study and work with HPD regarding rezoning if necessary and work very closely with the Department of Buildings.

Rob asked the question “has the SCA ever used eminent domain”? Mary Leas stated that they will not take home or companies.

Sharon informed the attendees that additional small high schools are being built (Gateway-800 seats; American Mortar site-early childhood center with 250 seats; Linden Place will have two small high schools built on that location).

Springfield High School & August Martin will have restructuring changes made to them.

Rob spoke about the four schools (MS 67, 74, 158, 172) where the SCA did a surveys and the explanation that was given by the principals were interrupted in the wrong, stating that they had space at their locations. (Rob’s e-mails will be sent to the SCA outlining this issue)

Meeting adjourned 9:15 p.m.

Respectfully submitted by Marian Mason, Administrative Assistant, CDEC

**Some Thoughts on the Relationship of the No Child  
Left Behind Act and the Individuals with Disabilities  
Education Act**

-by-

**Phyllis K. Saxe\***

\* **Phyllis K. Saxe** is an attorney in New York City focusing on the law as it affects people with disabilities, with an emphasis on special education.

The No Child Left Behind Act of 2001 (20 U.S.C.A. § 6301) (“NCLBA”) mandates that schools conform to certain statewide educational standards which are measured by statewide assessments.<sup>1</sup> The primary purpose of NCLBA is to hold school districts and teachers accountable for the failure of students to achieve measurable educational progress.<sup>2</sup>

The NCLBA is predicated on three important elements: “academic content standards, academic achievement standards and assessments.”<sup>3</sup> Under NCLBA, the academic content standards require that children must learn math and reading or language arts, with science to be added in 2006-2007.<sup>4</sup> The academic achievement standards establish the levels at which each student should learn the prescribed subjects.<sup>5</sup> The NCLBA promotes assessment as the principal vehicle to improve student achievement. Under NCLBA, states are required to make their educational standards exist in tandem with high quality assessments.<sup>6</sup> One writer has noted: “The NYCBA also regards state assessments as the tool to promote ‘accountability, teaching, and learning,’” which, in turn, benefits the education of all students.<sup>7</sup>

States must create and implement “challenging academic content ... [and] achievement standards” that are applicable to all public school students.<sup>8</sup> States must also create “a single, statewide state accountability system” to determine whether schools have made adequate yearly progress (“AYP”) toward the goal of having students meet proficiency standards.<sup>9</sup> Students’ performance on statewide assessment must be utilized by schools in measuring AYP. Schools must ensure that “all students” achieve the state’s level of proficiency on statewide assessments by the beginning of the 2014-2015 school year.<sup>10</sup> To accomplish this goal, schools must require every student, including students with disabilities, to take these standardized tests. The NCLBA contains provisions that apply specifically to several target groups of students, including those with disabilities.<sup>11</sup> At least ninety-five percent of students in each group must participate in statewide assessments for the school to have valid results for AYP assessments.<sup>12</sup>

With respect to students with disabilities, a debate has surfaced concerning whether accountability standards should require complete inclusion of children with special needs. As one commentator has noted. “Nearly 79% of parents” would like to see schools “pay more attention to the academic progress of students with special needs.”<sup>13</sup> However, two-thirds of the same parents are worried about their children being forced to take tests that they may not be able to pass. In addition,



half of these parents wanted their children to receive necessary accommodations when taking the test.<sup>14</sup>

The NCLBA regulations allows for “reasonable adaptations and accommodations for students with disabilities necessary to measure the academic achievement of such students.”<sup>15</sup>

Such accommodations may include (1) change in presentation, (2) changes in response mode, (3) change in timing and (4) change in setting.<sup>16</sup>

For many students with disabilities, these accommodations may not be adequate. In December, 2003 the U.S. Department of Education responded to the overall problem of assessments that included testing of children with special needs by passing regulations that allowed for increased flexibility in testing.<sup>17</sup> Nevertheless, the final regulation “allows no more than 1 percent of a school’s students to use alternate special education tests. The 1% exemption may only apply to students with the most severe cognitive disabilities.”<sup>18</sup>

How does the NCLBA relate to and affect the provisions of the Individuals with Disabilities Act (“IDEA”). The focus of the IDEA<sup>19</sup> is that students with disabilities receive a free and appropriate public education.<sup>20</sup> The IDEA provides protections and procedures for students who have physical, cognitive, or emotional disabilities. Schools must make special accommodations to ensure access for students with such disabilities to educational opportunities.

Following a finding that a student has a disability, under the IDEA the school must convene an Individualized Education Program (IEP”) team, which will identify the students’ individualized needs and design an IEP, setting forth the appropriate instruction and services that the student will receive to address the student’s disability.<sup>21</sup> The IEP must make every effort to avoid educating students with disabilities in separate classrooms and provide accommodations that allow disabled students to attend classes with non-disabled students to the extent possible.<sup>22</sup>

In terms of scoring the tests of special education students, the NCLBA has opted to measure this group according to the same standards as their general education peers.<sup>23</sup> This is in tandem with a goal of the NCLBA — to improve the quality of special education.

But, as one commentator had noted:

While schools will no longer be able to hide their special education students’ performances, there is a legislative debate about the fairness and appropriateness of requiring special needs students to meet the same standards and pass the same assessments as their non-disabled peers. On the one hand, it seems to be a natural extension of the drive toward mainstreaming and the least restrictive trends in special education, while on the other hand, it seems to contradict the IEP concept of the IDEA of 1997.<sup>24</sup>

For example, while under the IDEA, students are required to participate in state or district-wide testing, there is no minimum participation percentage. As one writer noted:

There are a variety of explanations for such an omission. Primarily, the crux of the IDEA hinges on the individually tailored education plan

crafted according to the student's uniqueness, without regard to mandatory, arbitrary floors determined by people who have minimal, or no interaction with the student. Arguably, alternate assessment should make up for this gap as they are included in both the IDEA and the NCLBA. However, the NCLBA includes alternative assessments only for determining the percentage of students tested. There is no provision that mentions alternate assessments as a means for achieving a reliable and appropriate measure of proficiency.<sup>25</sup>

Also, under the IDEA, how the student is to be assessed is determined by the IEP team, not the local school district and such determination is based on the student's disability and needs.<sup>26</sup> Under the NCLBA, all students are required to participate, regardless of disability. This contrasting approach ignores the primary concern of the IEP — the individual needs of the student. The NCLBA requires that students test in particular grades. Not so under IDEA where students need not be assigned to a traditional grade; “as an education tailored to a particular student does not demand such a distinction. Assignment to a particular grade for the sole purpose of testing ... would disregard the IDEA's ... goal of particularized treatment of students with disabilities.”<sup>27</sup>

Ultimately, the intersection of the IDEA and the NCLBA will revolve around the issue of whether educational services that are intended to assess if disabled students have become proficient on state assessments under the NCLBA, violate such students' right to a free appropriate public education (“FAPE”) under the IDEA. The seminal Supreme Court ruling concerning the IDEA and the provision of a FAPE arose in the case of *Board of Education of Hendrick Hudson School District v. Rowley*.<sup>28</sup> In *Rowley*, the Court interpreted the “free appropriate public education” requirement of the IDEA's predecessor statute, the Education for All Handicapped Children Act, to ascertain the requisite degree of education afforded to disabled students. The Court held that a state is in compliance with the requirements of the IDEA if the IEP is “reasonably calculated to enable the child to receive educational benefits conferring a ‘minimum floor of opportunity.’”<sup>29</sup>

It is conceivable that mandatory testing may violate the IDEA because a disabled student may not acquire meaningful benefit from the standardized test, which may replace procedures in place that provide the student with a meaningful educational benefit.<sup>30</sup> Following the *Rowley* ruling, an IDEA violation may arise from insufficiencies in an IEP. If a student cannot receive a meaningful educational benefit from the IEP, an IDEA violation under *Rowley* exists.<sup>31</sup> Based on the foregoing, it is possible that denying alternate assessments may deprive a student of a meaningful educational benefit. Indeed, one commentator has noted:

Consequently, the requirements of the IDEA and the NCLBA conflict regarding “gap” students — significantly learning **disabled** students whose abilities exceed the need for alternative assessment, but for whom mere testing accommodations or minor IEP changes will not provide an adequate opportunity to meet state assessment standards. Because only a limited number of students qualify for the few alternative assessments a school can offer and still make AYP, most students with disabilities fall into this gap. Still, NCLBA requires most special education students to participate in grade-level assessment, regardless of their current grade level of achievement.<sup>32</sup> (emphasis in original)

At present, two courts have ruled that individuals do not have a private right of action under the NCLBA.<sup>33</sup> Nevertheless, given the broad emphasis on individualized education promoted by the IDEA, it is conceivable that a successful claim may be pursued asserting that schools are in violation

of the IDEA when they alter a special education students' IEP in an effort to have the disabled student meet the NCLBA's state assessment standards. That is, when students with disabilities have IEP's which do not place them in the least restrictive environment<sup>34</sup> due to methods employed to enable them to reach proficiency on state NCLBA assessments, I believe that a claim under the IDEA may be made out. But, only time will tell.

#### Footnotes

- 1) 20 U.S.C.A. § 6311 (b)(2)(A)(c)(F)
- 2) See Keele, Comment: Is the No Child Left Behind Act The Right Answer for Children with Disabilities, 72 UMKC L.Rev. 1111, 1113 (Summer, 2004) (hereinafter "Keele")
- 3) Id.
- 4) Id.
- 5) Id. at 1115
- 6) 20 U.S.C.A. § 6311(a)(1)
- 7) 20 U.S.C.A. § 6301(b)
- 8) 20 U.S.C.A. § 6311(b)(1)(A)(b)(1)(B); see, Comment, "Testing — No Child Left Behind Act and The Individuals with Disabilities Act, 20 Temp. L.Rev. 1387 (Winter, 2006) (hereinafter "Testing")
- 9) 20 U.S.C.A. § 6311(b)(2)(A)
- 10) 20 U.S.C.A. § 6311(b)(2)(F)
- 11) 20 U.S.C.A. (b)(2)(c)(v)(II)(cc)
- 12) See "Testing" *supra* note 8 at 1393; See 20 U.S.C.A. § 6311(b)(2)(I)(ii)
- 13) See "Keele," *supra* note 2 at 1124
- 14) Id.
- 15) Id.
- 16) Id.
- 17) 34 C.F.R. § 200 cited at "Keele," *supra* note 2, at 1125
- 18) Id.
- 19) 20 U.S.C.A. § 1400 (d)(1)(A)(c)
- 20) 20 U.S.C.A. § 1401(8)
- 21) 20 U.S.C.A. § 1414(d)(1)(B); also 20 U.S.C.A. § 1414(d)(1)(A)
- 22) 20 U.S.C.A. § 1412(a)(5)(A)
- 23) See Rentschler, "No Child Left Behind: Admirable Goals, Disastrous Outcomes," 12 Widener L. Rev. 637, 657-8 (2006) (hereinafter "Rentschler")
- 24) Id.
- 25) See Plain, "Results Above Rights? The No Child Left Behind Act's Insidious Effect on Students with Disabilities, 10 Roger Williams U. L. Rev. 249 (Fall, 2007) (hereinafter "Plain")
- 26) See U.S.C.A. § 1414(d)(1)(A)
- 27) See "Plain," *supra* note 25 at 257
- 28) 458 U.S. 176, 203-04 (1982)
- 29) Id. at 206-07
- 30) See "Plain" *supra* note 25 at 257
- 31) Id. at 264; citing *Seattle Sch. Dist v. B.S.*, 82 F.3d 1493, 1498-1500 (9<sup>th</sup> Cir. 1996)
- 32) See "Testing" *supra* note 8 at 1418-19
- 33) Id. At 1407; citing *Kirby -v- Cabell County Board of Education*, 206 U.S. Dist. LEXIS 67254 at \*20 (S D.W.Va., Sept. 19, 2006); *Leighty -v- Laurel School District*
- 34) 20 U.S.C.A. § 1412(a)(5)