

## School Districts May Not File Bankruptcy

School districts are asking whether they may file for bankruptcy to avoid contractual obligations such as salary increases or restrictive class size provisions if they become insolvent due to reduced state aid and/or taxes. In New York State, the answer is “no.”

Federal bankruptcy law, 11 USC §109(c)(2), requires that a municipality must be specifically authorized by its state law to file a bankruptcy petition. The term “municipality” is defined by 11 USC §101(40) as a “political subdivision or political agency or instrumentality of a State,” which includes public school districts. New York has not enacted such legislation to authorize school districts to file for a Chapter 9 bankruptcy. Although New York’s Local Finance Law §85.80 does permit some municipalities to file a petition for bankruptcy under provisions of the laws of the United States, the state law does not include public school districts within *its* definition of the term “municipality” for this specific purpose. School districts are excluded from the definition of municipality in the Local Finance Law.

The question of whether a school district may declare bankruptcy has been addressed by the New York State Commissioner of Education, John B. King Jr., in a memorandum to the Board of Regents outlining the options of insolvent school districts.<sup>1</sup> The Memorandum stated, “[t]here is no provision in statute to allow districts to declare bankruptcy.”

Instead, the New York State Education Department (“SED”) suggested that insolvent districts may seek special legislation to assist in coping with the financial emergency or deficit, listing four forms of special legislation a district might seek: *Deficit Financing Legislation*; *State Aid Advances*; *Bailout Legislation*; and a *State Appointed Control Board*.

SED also suggested to the Board of Regents that insolvent districts have other options to raise revenues and diminish expenses, such as: *Sending Students Elsewhere*; *Aid Recovery/Wealth Adjustments*; *Centralization, Consolidation and Annexation*; *Purchasing Services from BOCES*; and/or an *Insurance Pool*.

Obviously, these suggestions by SED may not be practical, available in time, or desired by districts. Many of these SED recommendations require the New York State legislature to pass special legislation, and drastic measures such as a consolidation of districts would take time, and increased borrowing only shifts operating costs to the future. Our School Law Practice Group does not, of course, endorse these suggestions, but we can discuss these and other alternatives to cope with districts’ financial distress.

If you have any questions regarding this LEGALcurrents, please do not hesitate to contact any member of our firm’s Labor and Employment Group at (585) 232-6500. ■

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<sup>1</sup> This New York State Education Department Policy Memorandum from Valerie Grey and John B. King Jr., to the Regents Committee on Audits, Budget and Finance and the Regents Subcommittee on State Aid, (June 7, 2011) can be found online at <http://www.regents.nysed.gov/meetings/2011Meetings/June2011/611audbfsad1.pdf> (click here to access: [June2011](#))



## Update on the HSE School Law Practice Group

During the past year, we have added more experienced school lawyers to our practice, including Michael J. Looby, former General Counsel to the Rochester and Buffalo City School Districts, and Alexander C. Collichio, former Assistant Legal Counsel for the Buffalo City School District. Michael and Alex are experienced school lawyers who:

- Provided legal advice and guidance to Boards of Education and Superintendents on the full range of legal and employment issues;
- Conducted numerous school law proceedings such as labor arbitrations; discipline of staff and teachers under Civil Service Law Section 75 and Education Law Section 3020-a; discrimination claims at the New York State Department of Human Rights and EEOC; due process hearings under the IDEA and Regulations of the Commissioner of Education and Appeals to the State Review Office; Appeals to the Commissioner of Education; Article 75 & 78 proceedings in New York State Supreme and Appellate Courts; and improper practice charges and designations of employee positions as managerial/confidential before PERB;
- Advised about absenteeism and disabilities such as Section 504 and ADA accommodations, FMLA, Workers' Compensation cases, and employee health care benefits;
- Advised and assisted with employee investigations, hiring procedures, employee transfers, and other Human Resource functions;
- Advised about compliance with the Open Meetings Law, the Freedom of Information Law and FERPA;
- Assisted administrators with the placement of students classified with a disability, procedures for meetings and the authority of Committees on Special Education, disciplinary charges against classified students, manifestation determinations, alternative placement during the suspension of classified students, and other special education issues, including Michael Looby's experience in a proceeding that ended special education consent decrees in both Rochester and Buffalo that had been in place for over twenty years.

We are pleased to announce they are available to assist you with legal and labor issues. ■



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