



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

PRESIDENT OF THE UNIVERSITY
AND COMMISSIONER OF EDUCATION

May 7, 2008

TO: District Superintendents of Schools
FROM: Richard P. Mills 
SUBJECT: Investigation of Lawyers Receiving Pension Benefits

As you know, Attorney General Cuomo has been investigating allegations that some lawyers working for school districts and BOCES were improperly receiving pension benefits from the State retirement system. During his investigation, the Attorney General and I asked for your cooperation, and you responded without hesitation. I am grateful for your work.

The Attorney General's review exposed problems in the way some school districts and BOCES characterized attorneys who were providing legal services to them. The Attorney General has determined that individuals who are working for BOCES as independent contractors cannot be classified as employees. The State Comptroller recently also enacted regulations that require employers to analyze each staff position according to specified criteria and certify that staff are "employees" rather than "independent contractors" before they may qualify for State pension benefits. All BOCES must comply with these regulations.

As many of you have pointed out, however, there is more we can do together to ensure that State pension benefits go only to bona fide public sector employees. Here are additional actions we will take:

- The Department will study the Attorney General's findings and recommend amendments to Commissioner's regulations, where appropriate;
- The Department will review all COSER's currently in place and the COSER approval process to ensure compliance with law;
- With advice of the Attorney General and the State Comptroller, the Department will send guidance to BOCES that reflects best practices;

- The Department will convene a group of Department staff and District Superintendents to identify opportunities for improved district services through COSERs.

I have discussed this with Chancellor Bennett. He supports this approach, and will discuss this with the Regents at their May meeting.

BOCES are an essential resource to school districts across the State. I am confident that our engagement on this problem will not distract us from the important work ahead.