

HERRICKS UFSD
Office of the Superintendent

Memo

To: Board of Education
From: John Bierwirth *JB*
Date: January 18, 2012
Re: 2012-13 Draft Budget

In light of the New York State tax cap and other factors which have fundamentally changed the process by which Herricks and every other school district in New York prepares and sets a budget for the following year, this year's memo and presentation will be somewhat different. We have divided it into three parts:

- Part I 2012-13 recommendations
- Part II Preliminary analysis of 2013-14 budget
- Part III Long term issues

I 2012-13 Draft Budget

The gap between current 2011-12 programs and services carried forward into 2012-13 and the 2012-13 budget allowable under the tax cap as adjusted for the growth factor calculated by New York State is \$2,052,593.

While small cuts have been made in a variety of areas, the major cuts we would recommend are as follows:

- 4 elementary classroom positions due primarily to reduced enrollment. Class size would be in line with 2011-12 practices and slightly higher than in prior years. (See chart of 2011-12 and 2012-13).
- 2 Grade 6 classroom positions due to lower enrollment
- 3.5 positions in Grade 7-8 due to the elimination of the Grade 8 teams
- 4.4 positions at the High School. This will come from a variety of departments and will mean higher class sizes. We are not recommending that students be limited in the maximum number of periods they are allowed to take this year.
- The addition of 0.8 secondary teaching positions at Shelter Rock Academy to be paid for by admitting at least 4 additional tuition students from other districts. Includes expansion into Grade 8.
- Elimination of 4.0 positions in the Facilities Department through non-replacement of Facilities staff expected to retire under a previously negotiated retirement incentive. Plans currently being developed to modify cleaning schedules and hours buildings open to the public.
- 10% reduction in 2011-12 budget for clubs K-12
- \$75,000 reduction in interscholastic athletic budget. Primary cuts include elimination of athletic trainer position and elementary and secondary intramurals.
- Reduction of 5 teaching assistants for large class size mitigation.
- Elimination of Herricks participation in the Tri-State Consortium – roughly \$15,000 per year.
- Last summer the Board instituted modest fees for use of certain facilities. At the time, the Board indicated that the fees would probably increase for 2012-13 and be expanded to other areas. We recommend that the Board proceed with this.
- We recommend that the Board also consider submitting a proposition to the community this spring to change the bus limits for the High School to the State minimum (3 miles) effective the 2013-14 school year. This would permit the District to consider changing the start time of the High School in 2013-14 or thereafter without incurring additional costs for busing.

Notes on other budget lines:

1. A1060.432, A1060.500 Increase in cost of vote. School districts are required to use the new voting machines in 2012-2013. The Board of Elections is not able to give school districts in Nassau County an estimate of the cost. They have suggested that there will be a significant increase.

2. A1310.402 GASB 45 requires the district to hire an actuary to compute postemployment benefits. Periodically the district is required to have a full analysis. This will be paid in the 2012-2013 year.
3. A1430.400- Substitute teacher line has increased. There is a corresponding decrease on a payroll line for a PT employee who was handling elementary. Now an agency does both.
4. A1620.541 Decrease in fuel from last year by about \$100,000.
5. A1621.467 Geese Control added back \$26,000 on Board recommendation
6. A1621.544 There is an increase for electrical supplies and plumbing supplies
7. A1910.424.00.0001 liability insurance – we are waiting for update from insurance company-they told us to use 5% for now.
8. A1980.404 –MTA tax repealed. However, revenue was removed also. Zero impact on the budget but at least we don't have to pay and wait forever for reimbursement. Nassau County sewer tax remains on the books at \$125,000.
9. A1981490000001 BOCES admin exp – used 3% but no firm figure from BOCES.
10. A2070150000024- money put in for new state curriculum 15k+1k
11. A2250470000005-the State changed the way schools pay for 4201 schools so this is a new line for \$279,964.
12. A2250470002205- \$279,964 additional for private tuition. There is a reduction in BOCES tuition of \$243,892.
13. A2250470002205-State changed the percentage that the districts must pay for residential programs from 20% to 38%. Resulted in a \$108,150 increase.
14. A2250.498 increased \$175,000 – this is for consultants, behavior therapists, etc.
15. A5540.414.07 There is an unusual expense for the year 2010-2011 for the Boston trip. This was a result of Worldwide Bus Tours having a horrible accident and shutting down. The District lost its deposit and contracted with another bus company at a higher rate. We are still trying to get the deposit back.
16. A9010.800 NYS ERS- no offset from reserves in 2012-2013
17. A9040.800 \$100,000 added to workers comp as requested by auditors. The District should begin to add these items to the budget. The unemployment line has a \$1,115,100 reduction. Last summer the Board brought the unemployment reserve to \$1,000,000 to anticipate layoffs due to the budget cap in 2012-13, 2013-14.
18. A9901.95-transfer to special aid fund/special education summer- this has increased by \$160,719. This is as a result of the aid the district received for the summer spec ed program. Before we used to get reimbursed 80% of what the district sent but now NYS sets certain rates and only reimburses the district for 80% of those rates regardless what the district spends.

Shelter Rock Academy

Nassau BOCES is withdrawing the program currently housed on the top floor of 99 Shelter Rock Road. We proposed and the Board approved the expansion of Shelter Rock Academy into both floors with a program expansion into Grade 8. Starting spring semester 2012, the Academy will consider admitting appropriate Grade 8 students from within the District and also from other districts.

For 2012-13 the departure of the BOCES program means a loss of \$100,000 in rental income. To offset this and to pay for the 0.8 FTE in part-time teachers, who will be

needed to serve the additional students, we anticipate admitting 4 or more students from outside the District at a tuition of \$48 – \$50,000 per student per year.

2011-12

(Note: enrollments as of 12/21/11)

	Center		Denton		Searingtown		Total
	Students	Sections	Students	Sections	Students	Sections	
K	66	3	104	5	60	3	230
1	69	3	105	5	72	3	246
2	61	3	88	4	84	4	233
3	81	4	114	5	80	4	275
4	85	3	84	4	93	4	262
5	88	4	78	3	112	4	278

2012-13
Current Configuration

	Center		Denton		Searingtown		Total
	Enrollment	Sections	Enrollment	Sections	Enrollment	Sections	Sections
K	66	3	100	5	66	3	11
1	66	3	104	5	60	3	11
2	69	3	105	5 (+1)	72	3 (-1)	11
3	61	3 (-1)	88	4 (-1)	84	4	11
4	81	3	114	4	80	3 (-1)	11
5	85	3 (-1)	84	3	93	4	10
		(-2)				(-2)	(-4 positions)

Cuts Made Last Spring for the Current Year (2011-12)

Last spring, the members of the Board of Education submitted a 2011-12 budget to the community on May 17 which included \$5.5 million in cuts. These cuts were partially offset by the need to budget over \$1 million in unemployment insurance for staff members who had lost their jobs, yielding a net reduction of \$4.5 million.

In total, 62.8 positions were cut:

Administrators	3
Teachers	35.3
Teaching Assistants/Teacher Aides	8
Bus Driver	1.5
Clerical	8
Facilities staff	3
High School Monitors	<u>4</u>
Total	62.8

2011-12 Budget Cuts

Elementary

- Elementary math/science coordinator (1.0)
- Elementary CSE chair (1.0)
- Reduction of lead teachers from 0.5 to 0.25 (0.75 total)
- Elementary science kit consultant (part-time)
- Elementary Gemini (1)
- Eliminate classroom positions due to falling enrollment (8.0, later reduced to 6.0)
- Elementary speech teachers (1.5)
- Elementary library clerks (3)
- Elementary special education (3)
- Eliminate homework help
- Teacher aides (7)
- Teaching assistants (2.0)

Middle School

- Classroom/student services (6.5)
- Art/world language co-teaching (0.3)
- Teaching Assistants (1.0)
- Clerical (1)
- Reduce Athletics
- Library clerk (1)
- Teaching Assistants (2.0)

High School

- Special Education (1)
- Classroom teaching/student services (8.5)

- Music (1.0)
- Clerical (1.0)
- Monitors (4.0)
- Reduce Athletics
- Reduction in AIS services
- Teaching assistants (0.5)

Other

- Reduce technology equipment (district-wide) (\$96,000)
- Geese Off (later restored)
- Texts/supplies/STAC consultants (\$183,000)
- Reduction in library books (\$20,000)
- District office clerical (2)
- Cleaners (2)
- Grounds (1)
- Maintenance (1)
- Reduced outside security
- ESL K-12 (1)
- Administrative positions K-12 (3)
- Bus driver (1.0) and bus aide (1)
- Saturday Recreation (later restored at no net cost to budget)
- District contribution to Teacher Center

Unemployment Insurance

Historically, Herricks unemployment insurance costs have averaged \$45,000 annually.

These cuts were funded through a reserve which was replenished each summer with funds from the available fund balance. In light of (a) the number of positions being cut in 2011-12 and (b) the fact that Congress lengthened the period of eligibility for unemployment insurance thereby drastically increasing the District's potential liability, the District included \$1,115,000 for unemployment expenses in the 2011-12 general fund budget (A9050.800). Expenses in this code are currently running at an average rate of \$77,000 per quarter or \$308,000 annually, considerably less than feared due to the fact that many Herricks staff members who lost positions were able to find jobs elsewhere.

Funds remaining in this general fund budget line at the end of the 2011-12 fiscal year will go into the fund balance for the year and will, therefore, not be available for future unemployment costs. However, in light of the likelihood of substantial future cuts in positions once the New York State Legislature approved the tax cap in June 2011, the Herricks Board of Education funded the reserve \$948,977 to reach \$1 million (there was a balance of \$51,023), anticipating that this could potentially cover unemployment costs triggered by job cuts for 2012-13, 2013-14 and possibly 2014-15. This action also meant that deeper cuts in order to pay for unemployment expenses would not be necessary in these years.

Growth Factor

Part of the tax cap formula includes what the law refers to as the "growth factor". This will be calculated by New York State annually for every school district, town, village, county, etc. in the State. The factor is intended to allow for new construction (in the State's words, "bricks and mortar") to be added to the tax base in the tax cap calculation.

The growth factors for 2012-13 were released by New York State on December 30, 2011. Much to our surprise, the growth factor for Herricks was calculated at just below 1% (.098).

When the growth factor is included in the formula for Herricks, this yields a maximum allowable tax levy under the cap of \$89,514,854, an increase of 2.9% over the levy for the 2011-12 school year.

HERRICKS UFSD
PROJECTED 2012-2013 TAX CAP CALCULATION
Revised 1/3/2012

Tax Levy 2011-2012	\$ 86,929,401
x Tax Base Growth Factor- per orps	1.0098
= Prior Year With Economic Growth	\$ 87,781,309
+ Prior Year Pilot Payment Received 11/12 per county	\$ 192,715
	<u>\$ 87,974,024</u>
- prior year exemptions (capital levy) - waiting for info	<u>\$ 1,755,495</u>
= Tax Base Before Inflation	\$ 86,218,529
x 1.02 Allowable Levy Growth Factor For 2012-13	102.00%
= Total Prior Year With Inflation	\$ 87,942,900
- Pilot Payments Expected in 2012-2013-per county	<u>\$ 229,330</u>
Tax Levy Limitation for 2012-2013	<u><u>\$ 87,713,570</u></u>
Tax Levy Limitation for 2012-2013	\$ 87,713,570
+Capital local expenditures included in 2012-2013	\$ 1,731,976
Add ERS amount that exceeds 2% (16.3%-18.9%)	<u>\$ 69,308</u>
Add TRS amount that exceeds 2% (revised 11/2/11)	<u>\$ -</u>
Allowable Tax Levy for 2012-2013 (2.97%)	\$ 89,514,854
Projected Tax Levy for 2012-2013	<u>\$ 91,567,447</u>
Amount to be cut from budget	<u><u>\$ (2,052,593)</u></u>

II Preliminary Discussion of 2013-14 Budget

Many of the areas suggested for possible cuts for this year which we did not recommend will need to be revisited.

At this point a number of factors are likely to contribute to a greater difference between the allowable levy under the tax cap and carrying the projected 2012-13 budget into 2013-14:

- The likelihood that the growth factor will be more like that of other Nassau County districts. This means that the cap is to be close to 2% rather than 2.9% (\$900,000).
- The budget line for unemployment from 2011-12 to 2012-13 is decreasing by over \$1 million. Since it cannot go lower than \$0, that offset will not be a factor from 2012-13 to 2013-14.
- The rates for Health Insurance and the two retirement systems are unlikely to be as favorable as there were this year.
- Potentially, \$300,000 for tax certiorari settlements

Adding these with other existing cost factors results in a gap of \$3-5 million. We were lucky this year. We may be lucky again. We will not know until around this time next year.

Given the cuts which will have to be implemented for 2012-13, whether the Board chooses to accept our recommendations or others instead, we believe that the following areas will need to be revisited:

- Limiting maximum number of courses students can select at the High School and raising class sizes
- Elimination of Grade 7 teams
- Reducing kindergarten to half-time with option of fee for full time
- Eliminate Gemini
- Starting instrumental music in Grade 4
- Moving to the Princeton Plan simply because there are no other options to cut staff significantly on the elementary level. (See mock plan for 2012-13 which would cut an additional 5-7 positions.)
- Substantial further reductions in clubs and sports
- Elimination of Boston and Frost Valley trips due to reduced staff capacity to plan and implement.

III Long Term Considerations

As the experience in other states in which tax caps have been passed has demonstrated, communities need to strive to adjust to the new financial constraints and budgeting rules with two objectives in mind:

1. Preserve high quality programs and services for students to the extent possible
2. Reach a level of stability which is sustainable for the foreseeable future.

Given certain factors which are unique to New York State, it will be extremely difficult, if not impossible, to achieve both objectives for the next several years unless the State makes significant changes. The factor with the greatest variability is the employee contribution rate to the two retirement systems. As outlined in this section, these rates, which are currently increasing at a very rapid rate, have swung widely over the past 30 years. This was bad before. It is terrible with a tax cap.

What must also be taken into account in this kind of environment are long term needs in areas such as capital projects, computers, musical instruments, texts, etc. These can be postponed for a year or two but not forever and each year postponed increases the size of the bill later. We have noted some of the biggest factors but these are not the only ones.

2012 – 13
Princeton Plan

	<u>Enrollment</u>	<u>Sections</u>	<u>Compared with Current Configuration 2011-12</u>
K	232	10 – 11	0 - 1
1	230	10	- 1
2	246	10	-1
3	233	9	-2
4	275	10	-1
5	262	9-10	<u>0 -1</u>
			5 – 7 Positions Cut

Tax Certiorari Case

In October 2010, Nassau County adopted a law making school districts, towns, etc. responsible for the cost of property tax settlements. Since the County is responsible for setting the assessments in the first place and since Nassau County has historically had a very poor record in this area, school districts sued to stop implementation of the law, at the very least until the County is able to clean the system up.

On January 4, 2012, the Supreme Court decided in favor of the County and against school districts. While it is expected that school districts will appeal, the ultimate outcome is unclear.

The average school district's share of settlements is \$960,000 per year. Since Herricks has very little commercial property, settlements in Herricks historically have totaled considerably less than that. \$300-\$400,000 is probably a reasonable estimate. Barring successful resolution of the court, Herricks will have to start budgeting that amount in 2013-14.

SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK****PRESENT: HON. THOMAS A. ADAMS**

Acting Supreme Court Justice

Trial/LAS, Part 13
NASSAU COUNTY

BALDWIN UNION FREE SCHOOL DISTRICT, et al.,

Petitioner (s),

-against-

ACTION NO. 1
MOTION DATE: 7/13/11
INDEX NO. : 3280/11
Seq. NOs. 1-4

COUNTY OF NASSAU,

Respondent (s).

BARBARA HAFNER and LINDA WEJNER,

Plaintiff(s),

-against-

ACTION NO. 2
INDEX NO. 4193/11COUNTY OF NASSAU, NASSAU COUNTY LEGISLATURE
and EDWARD P. MANGANO, in his capacity as
County Executive of the County of Nassau,

Defendant (s),

THE TOWN OF NORTH HEMPSTEAD, et al.,

Petitioner (s),

-against--

ACTION NO. 3
INDEX NO. 4381/11

THE COUNTY OF NASSAU, et al.,

Respondent(s).

Prior to 1938, the Nassau County Tax Act (Laws of 1916, Ch. 541) governed real property tax refunds in this county. It provided for the election of boards of assessors within each of our three towns. On June 5, 1936 the County Government Law of Nassau County (hereinafter "County Charter") was approved by the Governor (Laws of 1936, Ch. 879). Section 609 of the County Charter abolished the town assessors and created a County Board of Assessors which, pursuant to § 602, assess all property within the county liable for state, county, town, school or special district taxation. In 1939 the State Legislature gave Nassau County the authority to promulgate and amend local laws provided they did not conflict with the State Constitution and/or State Statues. (Laws of

1939, Ch. 700). See Chapter 150 and Chapter 162. Similarly, on April 12, 1939 the governor signed an act enacting an Administrative Code (hereinafter "Nassau County Administrative Code") supplementing and implementing the County Charter (Laws of 1939, Ch. 272).

In 1948, the County, enacted §§ 6-24.0, 6-25.0 and 6-26.0 of the Administrative Code and amended, *inter alia*, § 606 (formerly § 607) of the County Charter. More specifically, "[i]n view of the establishment of the County Board of Assessors whose members are charged with the duty of preparing the assessment rolls and extending the taxes," the County deemed it to be "in the best interests of the County" that § 606 be amended to provide that "any surplus existing or hereinafter arising from taxes in excess of the amount raised for the adopted budgets shall be credited to the County, and any deficiencies existing or hereinafter arising from the extension of taxes for the adopted budgets shall be a County charge" (see Exhibit B of the petitioners/plaintiffs Baldwin Union Free School District, et al.).

On October 29, 2010 the County Legislature adopted Local Law No. 18, of 2010, entitled "The Common Sense Act of 2010" (see Exhibit A of the petitioners/plaintiffs Town of North Hempstead, et al.), to repeal and replace §§ 6-24.0, 6-25.0 and 6-26.0 and portions of County Charter § 606. The law was subsequently approved by the County Executive on November 3, 2010. The petitioners/plaintiffs Baldwin Union Free School District, et al. (Index No. 3280/11), Town of North Hempstead, et al. (Index No. 4381/11) and plaintiffs Barbara Hafner and Linda Weiner (Index No. 4193/11) commenced these challenges, seeking to reverse and annul the law and declare it a nullity. Issue was joined with the service of the County's Verified Answers and objections in point of law. The County also moved, pursuant to CPLR 3211(a)(3) and (7), to dismiss Ms. Hafner and Ms. Weiner's complaint due to an alleged lack of standing and failure to state a cause of action. The proceedings were joined for trial (see CPLR § 602) in accordance with a so-ordered stipulation (Adams, J.).

The rationale for the law is "equity and fairness", i.e., that the town, school districts and special districts should be required to reimburse the County for this estimated \$80 million dollar annual expenditure. Conversely, Ranier W. Melucci, Ed.D., the President of the Nassau County Council of School Superintendents, opines that the imposition of an additional \$962,962.96 obligation (or each of its 54 districts proportionate share of 65% of the \$80 million dollar cost, representing that portion of annual real estate tax levies which constitutes school taxes) upon each of its districts would be "devastating" and "interfere, restrict and impinge upon their providing educational services" (2/28/11 Affidavit, ¶ 13). The Town of North Hempstead's Receiver of Taxes, Charles Berman,

asserts that Local Law 18 creates an inequitable scenario whereby the County retains “control over the assessment roll and the ability to correct it, while transferring liability for ‘[its] errors to the Towns, [school districts] and special districts” (3/22/11 Affidavit, para. 10).

State Law (RPTL § 726[1][a] and RPTL § 556[6]) requires a County to charge back the amount of the refund attributable to the town, special district or school district. By repealing the provisions of the Nassau County Administrative Code § 6-26-0 (b) (3) (c) that made the refunds a County charge, Local Law 18-2010 assures that the County Charter conforms with State. In short, both State statute and Local Law § 18-2010 now require the County to charge back the amount of refunds attributable to the town, special district or school district. See RPTL § 726(1)(a) (“So much of any tax or other levy, including interest thereon, as shall be refunded which was imposed for city, town, village or special district purposes, shall be charged to such city, town, village or special district.”). See also RPTL § 556(6) (section (a) requiring chargebacks of refunds paid to municipal corporations and special districts; RPTL § 102(10), the definition of a “municipal corporation” includes a town and a school district. Local Law 18-2010 does not conflict with the Constitution by requiring that any portion of tax refunds ordered following a certiorari proceeding paid by the county attributable to school taxes or town taxes be charged back to the school district, or the town, as the case may be. Nassau County has the authority to amend its County Charter by making changes in the Administrative Code with respect to local matters that do not conflict with State Statutes. *Konz v Bedell*, 273 AD 777. Local Law 18-2010 does not inhibit the intent or operation of RPAPL. See *Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91.

The movants claim that “the restrictions and limitations on the enactment of charter laws set forth in Municipal Home Rule Law (MHRL) § 34 prohibit the repeal, by charter law, of the Nassau County Guaranty, a State legislative enactment which relates to the imposition, judicial review and distribution of the proceeds of taxes . . .” Memorandum in Support of Summary Judgment motion, p. 11. Article 4 of the MHRL, “Powers of Counties and Cities to Adopt Charters”, Part 1 “The County Charter Law”, of which § 34 is a part, does not restrict Nassau County’s pre-existing Charter powers. That the Municipal Home Rule Law overall was not intended to change prior grants of lawmaking authority at the time of its adoption in 1963, is evidenced by the fact that it included provisions by which the State Legislature demonstrated its intent not to alter any powers already granted to local governments. See MHRL § 50. In accordance with the State Constitution, the Municipal Home Rule Law was not intended to change existing laws at the time of its adoption. Nassau County’s Charter was already in effect at the time of the adoption of the MHRL, § 50 which provides that “All existing valid provisions of laws,

charters and local laws not specifically repealed by this chapter shall continue in force until lawfully repealed, amended, modified or superseded." The MHRL was not intended to affect the grant of local lawmaking authority previously given Nassau County. Plaintiffs' arguments that Local Law 18-2010 violates the restrictions seemingly imposed by the MHRL are misplaced. *See also* MHRL § 35(2), (3) and (4).

The Charter sets forth the applicable restrictions on and parameters of the County's power to adopt local laws. Section 162 of the Charter states that "insofar as the provisions of this article are inconsistent [with "any other provision of this act or of any other law heretofore or hereafter enacted"], the provisions of this article shall be controlling." Thus, while it is true that MHRL 34 contains certain limitations and restrictions on the ability of counties in general to adopt and amend county charters and charter laws, those restrictions do not apply to Nassau County by virtue of Charter 162. Indeed, subjecting the County to the provisions of MHRL 34 would adversely affect the County's pre-existing Charter powers to enact local legislation and would be contrary to Article IX section 3(b) of the Constitution and the MHRL's own "savings clauses" contained in Sections 50, 56 and 35.

As the Charter controls with respect to the County's power to adopt and amend local laws, it is only necessary to examine the provisions of the Charter to determine whether the County could properly enact Local Law 18-2010. Restrictions on the County's power to adopt local laws are contained in Charter 154, and none of the restrictions contained therein would have prevented the County from adopting Local Law 18-2010. The restrictions plaintiffs cite from the MHRL are not contained in Charter 154, and as such, do not apply to the County. The County appropriately followed applicable law in enacting Local Law 18-2010.

The County Guarantee is not located in the County Charter nor does it transfer a function or duty. It is not a "Charter Law" within the meaning of MHRL § 32(1). Local Law 18-201 does not purport to supersede either RPTL § 708(3) or § 712(2-a). Local Law 18-2010 amends County Administrative Code § 6-17.3 (which is a special law exception to RPTL § 708(3) and has no bearing on the subject matter of RPTL § 712(2-a). Local Law 18-2010 does not relate to the judicial review of the proceeds of taxes, contrary to plaintiffs' contention; it does not make a school district parties to judicial proceedings.

Local Law 18-2010's repeal of Administrative Code § 6-24.0(b)(3)(c) does not in any way relate to the maintenance, support or administration of any educational system. Responsibility for the cost of property tax refunds allocated to School Districts is imposed by the State Legislature by operation of law in RPTL § 726. It is not the County that is affecting the maintenance of the educational system, but rather the operation of State law.

Local Law 18-2010 does not contain any provisions which exceed those contained in State Statute. The intent of passing Local Law 18-2010 is to place Nassau on the same legislative footing as other counties in the state. Any impact on the County's educational system, assuming there is such an impact, occurs by operation of State Law. The County is not affecting the maintenance or administration of the local educational system.

Nor does Local Law 18-2010 impair the powers of the Town to administer local taxes and assessments under Town Law § 64(1). The Town will have the same authority of general management and control of the finances of the Town as it had before the enactment of Local Law 18-2010. It will simply be subject to charge backs for assessment refunds pursuant to RPTPL § 726 or RPTPL § 556. Thus, any impairment of the powers of the Town occurs through the operation of State law, not through the passage of Local Law 18-2010.

Local Law 18-2010 is not impacting the State Legislature's ability to support education. Local Law 18-2010 makes Nassau conform to the exact same legislative scheme that applies to all counties of the state. The opponents of Local Law 18-2010 are condoning and asserting that Nassau County support the financing of public education in New York State. There is nothing in the State Statute or the Constitution to directly or indirectly substantiate such a burden on all the citizens of Nassau County. The responsibility to finance public education is with the local school districts and the State. Local Law 18-2010 does not change this concept.

Movants contend that Local Law 18-2010, to the extent that it amended § 6-17.3 of the Administrative Code, violates the special districts' rights of due process since the amendment to the Administrative Code does not provide for service of a copy of the petition upon the special districts. Statutes enjoy a strong presumption of constitutionality, including a rebuttle presumption of appropriate legislative investigation and necessary factual support. *Van Berkel v Power*, 16 NY2d 37, 40. It is presumed that the enacting agency or legislative body has investigated the subject and has acted with reason rather than from mere whim or caprice. *Farrington v Pinckney*, 1 NY2d 74, 88. It is a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts and with the purpose of promoting the interests of the people as a whole. *Id.* To overcome these presumptions as they relate to constitutional due process and equal protection, it is incumbent upon the movants to establish beyond question that the statutes and regulations complained of are without any rational basis whatsoever; that they are totally unreasonable, arbitrary and capricious; and that they are impermissibly discriminatory. *Grossman v Baumgartner*, 17 NY2d 345, 349. Furthermore, the mere showing of economic hardship, no matter how threatening or severe,

does not warrant a finding of unconstitutionality nor justify the enjoining of presumptively valid legislation. *Mariculture Ltd. v Biggane*, 48 AD2d 295, 298.

Administrative Code § 6-17.3 is based on the provisions of the RPTL § 708, a state special law, which provides for service upon the assessing authority. No provision is made in RPTL § 708 for service of the petition on any party other than the party responsible for the assessment. While RPTL § 708 requires the petitioner to mail a copy to any affected school district or municipality, the only party *served* with the petition is the party responsible for the assessment. Under State law, where a town is an assessing unit, a county would not be served with the petition, even though its tax revenues could be affected by the outcome of the proceeding. Moreover, the State Legislature made no provision for the service of a petition on a special district. If a special district has a direct financial interest in the outcome of the proceeding in the form of a potential liability to the petitioner for a tax refund, it is free to seek intervention in the proceeding. *Vantage Petroleum v Bd. of Assessment Review, etc., of Town of Babylon*, 91 AD2d 1037, *affd sub nom. Vantage Petroleum v Bd. of Assessment Review of Town of Babylon*, 61 NY2d 695. Thus, § 6-17.3 is no more violative of any alleged due process rights of the special districts than is RPTL § 708. Movants' argument that 6-17.3 is unconstitutionally vague is similarly misplaced. Movants assert that because the Town does not have a treasurer, there is no provision made for service in that section. However, the section specifically provides that service should be made upon the treasurer or equivalent fiscal officer. Pursuant to Town Law § 29(1), the supervisor of each town acts as its treasurer. Service would be accomplished under this provision by serving one copy of the petition on the Town's supervisor. As every Town has a chief fiscal officer, there is simply no reason to claim that "men of common intelligence must necessarily guess at its meaning," (Petitioners' Memorandum, p. 9).

The Municipal Home Rule Law prohibits a County from adopting local laws inconsistent with the State Constitution or any general laws of the state. State preemption occurs in one of two ways: First, when a local government adopts a law that directly conflicts with a State statute; Second, when a local government legislates in a field for which the State Legislature has assumed full responsibility. The State Legislature may expressly articulate its intent to occupy a field. It may also do so by implication. An implied intent to preempt may be found in a declaration of State policy by the State Legislature or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area. In that event, a local government is precluded from legislating on the same subject matter unless it has received clear and explicit authority to the contrary. *See DJL Restaurant Corp. v City of New York*, 96 NY2d 91; *New York State Club Assn. v City of New York*, 69 NY2d 211; *Consolidated Edison of New York v Town*

of Red Hook, 60 NY2d 99; *People v DeJesus*, 54 NY2d 465; *Robin v Incorporated Village of Hempstead*, 30 NY2d 347. There is nothing in the State Legislation or the Constitution that prohibits the County from passing a Local Law 18-2011. No other state statute aside from MHRL Law is involved in this action and MHRL Law does not either expressly or by implication limit the effect of Local Law 18-2011. See *Hauser v Giunta*, 88 NY2d 449; *Daugherty v Board of Trustees*, 22 AD2d 111.

It is the determination of this Court that the subject matter of Local Law 2011 is purely local in nature and not in conflict with the State Constitution or State Legislation. *Konz v Bedell*, 273 AD 777.

Moreover, petitioner's argument that a referendum is required is misplaced. A referendum can be held only pursuant to constitutional or statutory authority. See *Mills v Sweeney*, 219 NY213. In *Matter of McCabe v Voorhis*, 243 NY 401 at p. 413, the Court stated:

"The power to provide for a referendum must be found in the City Home Rule (citations omitted). Otherwise it is unauthorized . . . Government by representation is still the rule. Direct action by the people is the exception."

There is no provision in any local law or any other law of the State including the constitution requiring a referendum in connection with the subject matter of this litigation.

The petitioners/plaintiffs' motions pursuant to CPLR Article 78 and 3001 to reverse and annul Local Law 18-2010 and for a judgment declaring it invalid are denied. In view of the foregoing, whether or not the individual plaintiffs have standing to contest the legislation (see *New York State of Ass'n of Nurse Anesthetists v Novello*, 2 NY3d 207, 211) is irrelevant. The County's motion, pursuant to CPLR 3211(a)(3) and (7), asserting that Ms. Hafner and Ms. Weiner lack capacity to sue and to dismiss their complaint due to its failure to state a cause of action is academic.

This decision is the order of the Court. All proceedings under Index Nos. 3280/11, 4193/11 and 4381/11 are terminated.

DATED JAN 04 2012


A.J.S.C.
X X X

Squeeze on District Budget Due to Retirement Systems Rates and Health Insurance

The tax levy for the 2011-12 school year is \$86.9 million. Two percent of that is \$1.74 million so future increases will be limited to less than \$2 million annually under the tax cap law. The only exception would be legally-allowable, extraordinary items or if there were a 60% vote to override the cap by the community.

Two areas of the budget, which are largely out of the District's control, have generated increases over the past several years which are close to or greater than the allowable dollar increase under the cap. These two areas are health insurance and the employer contributions to the State retirement systems.

A. Health

Actual expenditures for health insurance, despite employee contributions, which are among the highest in the County, for the past several years have totaled:

2007-08	\$7,618,856
2008-09	\$7,816,033
2009-10	\$8,068,582
2010-11	\$8,756,477
2011-12 (budgeted)	\$9,991,848

(Note: This does not include Medicare reimbursement or Excess Major Medical. The total health and dental insurance budget for 2011-12 is \$10,929,695.)

B. Retirements Systems – TRS and ERS

Due to the nature of the formulas used by New York State to set employer contribution rates, rates for the Teachers' Retirement System (TRS) and Employees' Retirement System (ERS) have swung widely since 1978-79. The rates for TRS since 1978:

1978-79	21.40%
1979-80	22.49%
1980-81	23.49%
1981-82	23.49%
1982-83	23.49%
1983-84	22.90%
1984-85	22.80%
1985-86	21.40%
1986-87	18.80%
1987-88	16.83%
1988-89	14.79%
1989-90	6.87%
1990-91	6.84%
1991-92	6.84%
1992-93	8.00%
1993-94	8.41%
1994-95	7.24%

1995-96	6.37%
1996-97	3.57%
1997-98	1.25%
1998-99	1.42%
1999-2000	1.43%
2000-01	0.43%
2001-02	0.36%
2002-03	0.36%
2003-04	2.52%
2004-05	5.63%
2005-06	7.97%
2006-07	8.60%
2007-08	8.83%
2008-09	7.63%
2009-10	6.19%
2010-11	8.62%
2011-12	11.11%
2012-13 anticipated	11.50 to 12.50%

The November 2011 bulletin from TRS notes that 2012-13 is lower than was expected:

"The Retirement Board recently adopted revised tables for eight of the nine actuarial assumptions used in the actuarial valuation of the Retirement System's assets and liabilities. The new actuarial assumptions will first be used in the June 30, 2011 actuarial valuation, which will determine the ECR referenced by the range above. The new actuarial assumptions will produce a cost savings and will help to offset some, although not all, of the expected increase in the next rate.

Although the increase in the next rate will be much less than that experienced during the prior two years, this should NOT be interpreted to mean that the ECR has reached a plateau. We anticipate continued future increases in the ECR beyond this point."

How high the TRS rate (and ERS rate which moves on a roughly parallel track) will go is unclear. Private experts have indicated that it could move to the 20-23% level before topping out and declining as it did from 1982-83 to 2001-02. This depends upon financial returns as well as any changes made by the State.

The changes in rates over the past several years have produced significant dollar increases in the District budget:

	2007-08	2008-09	2009-10	2010-11	Budgeted 2011-12
ERS*	816,934	726,801	1,394,428*	1,381,064*	1,978,557*
TRS	3,564,454	3,306,459	2,807,455	4,200,636	\$5,263,242
	*includes payments from special reserve				

With increases in rates plus any salary increases, ERS and TRS lines could increase by at least 10 – 15% annually before topping out (\$720,000 to \$1.45 million each year).

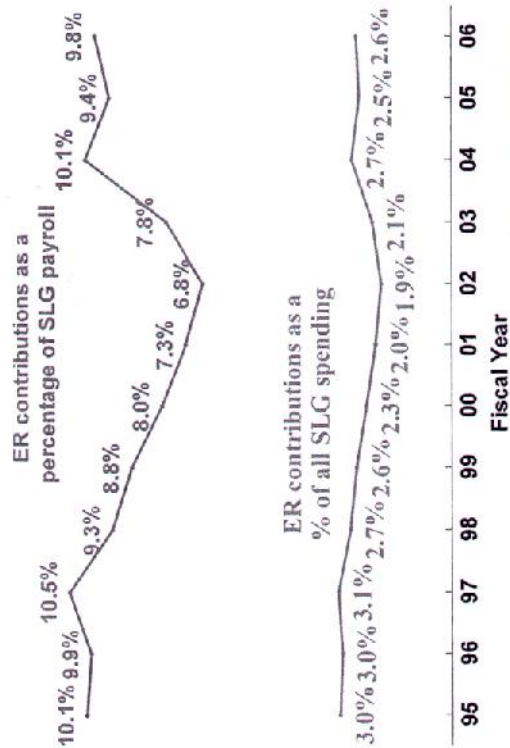
Taken together, increases in health insurance (\$699,000 to \$1.1 million) and TRS/ERS (\$720,000 to \$1.45 million) could take most or all of the allowable increase under the cap.

Tax cap 2%	=	\$1.74 million
Health Insurance	=	\$699,000 to \$1.1 million
TRS/ERS	=	<u>\$720,000 to \$1.45 million</u>
Total		\$1.42 million to \$2.55 million

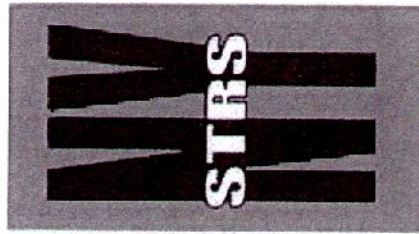
CHANGES TO CONTRIBUTIONS

Investment losses in public pension plans, if they persist, may have to be made up with additional contributions, either from employers (taxpayers), employees, or both. However, it is important to keep in mind that pension fund contributions, as shown in Figure C, currently account for less than three percent of all state and local government spending, and contributions as a percentage of employee payroll, remain at or below historical levels.

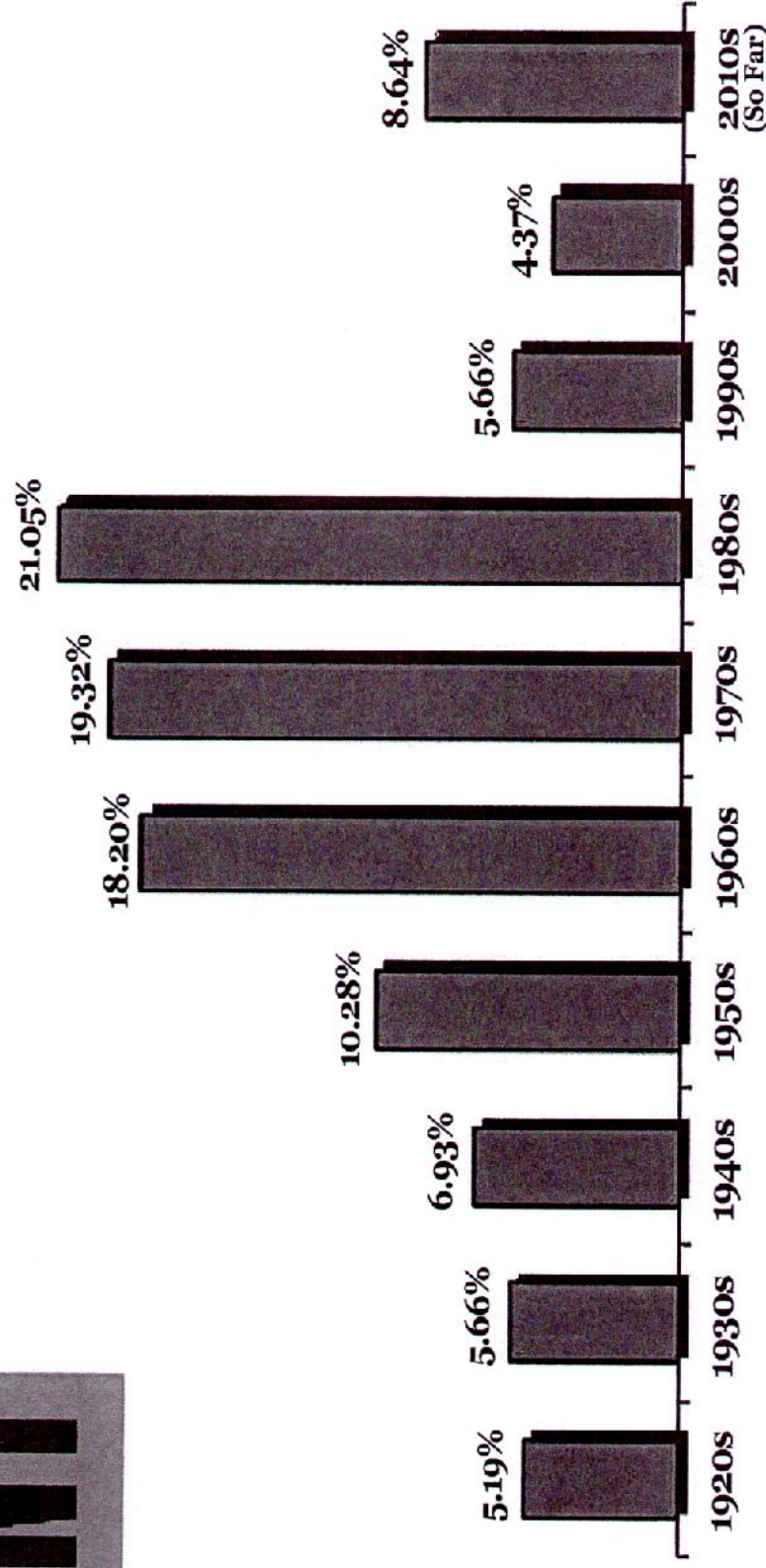
Figure C. State and local government pension (ER) contributions as a percentage of state and local government payroll and of all spending



Source: U.S. Census Bureau



Average Employer Contribution Rates* (ECRs) By Decade



Average (all years): 10.79%

* The percentage of salary which school districts contribute to NYSTRS on behalf of members.

Debt Service

Since the 2008-09 school year, the District has paid off four bond issues:

<u>Year in which Bond Floated</u>	<u>Initial Principal Amount</u>
1990	\$11,300,000
1991	2,623,200
2004	332,169
2006	78,475

The chart of the remaining principal and interest payments on all currently outstanding issues follows. Please note that the increase in payments on the 2008 bond is due to the fact that the District will no longer be able to float BANS and must float long-term bonds. The projected interest rate for those bonds is relatively conservative (4.0). The actual rate could be less. By floating BANS the District has been able to save the difference between one year interest rates, currently considerably less than 1%, and long term rates of 4 – 4.5%.

The next issue to be retired is the 2004 bond with the last principal and interest payment due in 2014-15. In light of the manner in which debt issues are factored into tax cap calculations, it is strongly recommended that the District consider requesting approval of a capital project issue in the spring of 2014 to cover the most pressing capital needs as outlined in the following section. A capital project approved in spring 2014 would not require principal and interest payments before the 2015-16 school year, the year after the 2004 bond is retired. Principal and interest payments are subtracted from a school district's budget in the base years in order to determine the baseline for calculating the maximum allowable tax levy increase.

The size of the capital project proposed should be limited to an amount which would generate interest and principal payments no greater than the \$300,000 per year required for the 2004 bond in order to smooth out the impact on the taxpayer. A bond issue prior to this date would create a bump in the tax levy. A bond issue after this date would create a dip and then a bump.

Long-Term Capital Needs

Jim Brown prepared a chart with the anticipated capital needs of the District over the next 5-10 years. There are two sections. The first section is projects which would be done through outside contractors and would require approval of the community through a specific proposition. The second section covers in-house projects which we expect would be undertaken by district staff and which would be funded through the general fund budget.

The projects listed are those which are currently anticipated as necessary within the next 10 years. Since the useful life expectancies of roofs, boilers, parking lots, etc. are difficult to estimate, this list is based on current condition, likely rate of deterioration even with appropriate maintenance and anticipated date of replacement. Some items may last longer than anticipated and will, therefore, not need to be replaced within this period, while others not on the list may decline faster than anticipated and need to be replaced.

The most pressing projects are highlighted in bold italics. Some of these are items were postponed from the last bond issue due to insufficient funds – e.g., the two boilers at the Middle School. Other projects, such as the Middle School roof, have been known for a long time. The exceptional quality of that roof and the re-seaming work done several years ago have allowed it to last for longer than most flat roofs. However, it will be 22 years old in 2014-15 and older by the time we actually replace it.

As indicated in the prior section on debt service, we recommend that the District consider a proposition in spring 2014 to cover the most pressing capital projects. Depending upon the speed with which these projects are approved by the New York State Education Department, work would probably be undertaken during spring or summer 2015. The first principal and interest payments would not be made until 2015-16 - the year after the 2004 bond issue is retired.

Proposed Capital Projects - Project Details 5 to 10 year plan

Searingtown

• Windows – replace windows not completed in last project	\$492,015
• Electrical – replace fire alarm panel	\$40,700
• HVAC – replace univents throughout building	\$1,310,000
• Front Entrance - remodel	\$314,000
• Site work – repave rear parking lot and walking paths around building	\$106,860

Middle School

• <i>Boilers – replace two (2) boilers, boiler controls</i>	<i>\$680,700</i>
• HVAC– replaces univents, air conditioning for Library and Cafeteria	\$1,431,600
• <i>Roof – replace roof</i>	<i>\$1,126,000</i>
• Parking– repave rear parking lot and create additional parking, repave School Rd.	\$952,550

High School

• Windows – replace windows not completed in last project	\$1,375,700
• Boiler – replace boiler	\$212,161
• Gyms - replace bleachers	\$538,000
• HVAC– fans and ductwork, air conditioning for both Cafeterias', replace univents	\$1,745,000
• Hall lockers – replace original lockers	\$125,000
• Structural work – repair damaged columns, repointing	\$170,000

Denton

• Windows – replace windows not completed in last project	\$553,419
• Electrical – install generator and surge system	\$185,900
• <i>Roof - replacement Gym</i>	<i>\$311,200</i>
• Site Work – new backstops and goals, replace blacktop play area, parking lot	\$130,000
• HVAC – replace univents	\$1,310,000

Community Center

• Windows – replace	\$1,399,000
• Electrical – upgrade fire alarm system	\$40,600
• HVAC – replace univents	\$1,159,800
• Gym – replace bleachers	\$182,000
• Exterior – replace doors, repair stonework rear of building	\$250,400

Center Street

• Windows – replace windows not completed in last project	\$443,838
• Electrical – replace fire alarm panel	\$40,700
• Site Work – replace blacktop play area	\$116,030
• Roof – repair fascia	\$12,460
• HVAC– replace univents	\$1,410,000

99 Shelter Rock Road

• Sidewalks – repair or replace curbing, walks, asphalt	\$38,680
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Project Cost	\$18,483,513
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Total Costs (includes legal fees, architectural and engineering, etc.)	\$21,256,039
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Proposed In-house Projects - Project Details 5 to 10 year plan

Searingtown

• <i>Renovate Bathrooms</i>	<i>\$18,010</i>
• Paint Exterior of Building	\$20,700
• Refinish Gym Floors	\$40,000
• Replace Courtyard Doors	\$14,000
• Replace Clock System	\$8,500

Middle School

• Replace Gym ceiling	\$30,700
• Replace Clock System	\$10,000

High School

• Install new ceiling and lights in all classrooms	\$125,000
• Refinish two Gym Floors	\$85,000
• Install new sidewalk down front driveway	\$25,000
• Install new pole lights down front driveway	\$15,000
• Replace Clock System	\$10,000
• Install new exterior doors	\$30,000
• <i>Renovate Bathrooms, replace hot water heater</i>	<i>\$40,000</i>
• Renovate Home Ec Room	

Denton

• <i>Renovate Bathrooms</i>	<i>\$18,010</i>
• Renovate Computer Lab	\$8,900
• Renovate Main Office	\$5,200

Community Center

• <i>Renovate Main floor bathrooms</i>	<i>\$9,000</i>
• <i>Replace electrical panel in Kitchen</i>	<i>\$4,600</i>
• Install new ceiling and lights main floor	\$11,800

Center Street

• Install new Ceiling and lights Main hallway	\$7,800
• replace flooring in Main Office	\$8,700
• Replace exhaust fans	\$16,030
• <i>Renovate bathrooms</i>	<i>\$18,460</i>

99 Shelter Rock Road

• Replace front sidewalk	\$38,680
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Project Costs	\$619,090
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Technology

In order to maintain functional levels in both the operation of the District and current instructional programs, a minimum level of investment in technology is necessary over a period of time. While some investment has been made over the past few years, it has been below the level required to sustain the District's IT infrastructure on a long-term basis.

Based on current costs, our technology department estimates that the minimum annual budget necessary to sustain District operations and instructional technology is \$148,070. The ramifications of failing to do so are summarized in the following pages.

Should the State move to computer-based assessments in 2014-15 with the assessments currently being developed by the multi-state consortium (PARCC), Herricks would fall substantially short of the necessary level of computers. Current plans call for roughly one-third or one-half of each grade level to be tested in each scheduled time slot. Herricks could test way fewer than that.

These projections are based on a five year replacement cycle. This plan allows for maintenance of our existing technology and does not allow for new initiatives.

All computer labs and carts contain thirty computers.

Cost of Computer Lab	\$27,000.00
Cost of Netbook Cart	\$13,800
Cost of SmartBoard	\$1,100.00
Cost of Projector	\$800
Cost of Netbook	\$500
Cost of Laptop	\$850
Cost of Computer	\$900

Computer Labs

Center Street	1
Denton Ave.	1
Searingtown	1
Middle School	2
High School	3
	8
# of Computers	1251
# of Netbooks	460
# of Laptops	251

Replace Each Computer Lab - Every 5 Years	\$216,000
Replace each Netbook - Every 5 years	\$230,000
Replace each Laptop Every 5 years	\$21,3350
Buy one new server each year	\$7,500
Infrastructure Improvements Switches, Routers, Firewall, etc...	\$6,000
Replacement SmartBoards 5 Per building per year	\$27,500
Replacement Projectors 10 per building per year	\$40,000
Five Year Cost	\$740,350
Yearly Cost	\$148,070

Herricks UFSD
Technology Overview and Needs Assessment
December 1, 2011

1. Inability to support the latest versions of various software packages including Microsoft Office and SmartNotebook due to the age range of the machines in the district.
2. Need to support three operating systems (XP, VISTA, 7), including one that is no longer supported by Microsoft.
3. Unable to take advantage of the native speeds of our network (1Gb) as a majority of our computers only support 100Mb. This inability interferes with streaming media and has resulted in slow network response times.
4. Unable to connect wireless devices at "N" speed as a majority of our wireless devices only support "B" or "G". This inability can cause websites to load slowly and erratically causing frustration on the part of student and teachers.
5. Difficulty integrating technology from home (teachers and students) as many of our users have newer technologies at home.
6. Our current email system, Exchange Server 2007, will lose mainstream support from Microsoft in April of 2012. Service pack support ended in January of 2009. Upgrading to the latest version of Exchange would require purchasing new hardware that could support its more powerful features.
7. Loss of instructional time when computers are down and waiting for repair.
8. Less capable computers in our classrooms connected to Smartboards as we are no longer able to upgrade lab computers on a regular basis. Historically, lab computers would be pushed into classrooms giving teachers and students access to more capable equipment.
9. The number of computers in elementary classrooms is being reduced as older less reliable computers become obsolete. This along with increases in class size has had an adverse effect on small group instruction in our classrooms.
10. Inability to replace aging equipment such as SmartBoards and projectors as they become less dependable.
11. Reduction in the number of laptops on carts as we are unable to replace machines that are no longer cost effective to repair leaving us with carts that can no longer service an entire class.
12. As the state is moving towards a computer based testing model, it is essential that we have equipment that meets the specifications required. Currently, according to recently released specifications, we would not have enough compatible computers to comply.