



# THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

Vincent A. Giordano, *Executive Director*  
Division of Financial Operations

## MEMORANDUM

TO: Regional Operation Center Directors, ROC Operations Supervisors, and  
Regional Superintendents

FROM: Vincent A. Giordano, Executive Director, Division of Financial Operations  
Dr. Elizabeth Arons, Executive Director, Division of Human Resources

SUBJECT: New Requirements for School-based Witness Telephone Testimony  
Re: Unemployment Insurance Hearings Beginning September 2005

DATE: August 12, 2005

As a cooperative effort on the part of the Division of Financial Operations and the Division of Human Resources, this memorandum is to outline new requirements resulting from the New York State Department of Labor's (NYSDOL) recent decision to allow the Department of Education to provide witness testimony, **by telephone**, in unemployment insurance hearings involving Per Diem substitutes. At this time, this special provision will only apply to hearings for per diem employees who receive "reasonable assurance" letters in June and are subject to the provisions outlined in State law sections 590.10 and 590.11. This section of the law justifies that per diem substitutes are ineligible to collect unemployment benefits between school terms during July and August, as well as other school recesses.

This concession, a direct result of the Department of Education's request that the State reverse its 1999 decision, reinstates the Department's ability to offer testimony by telephone in these hearings. This request was made in a continuing effort to limit the charges incurred by the DOE for ineligible unemployment insurance costs, as well as reduce the hardship placed on schools to allow school-based staff to attend unemployment insurance hearings as witnesses. The State has granted this request, **provided that the DOE honors this agreement by making witnesses available - at a pre-specified time - to testify by telephone**. Accordingly, we are asking you to instruct all school principals to ensure that, if and when contacted by our unemployment insurance representatives or personnel liaison, the school representative who is responsible for calling substitutes to work from the school's substitute roster list is required to be available - by telephone - to provide testimony relative to the preparation of substitute rosters and how those rosters are utilized to call/hire per diems substitutes. Please be advised that any school witness asked to testify will be contacted in advance by a DOE representative who will provide them with specific instructions regarding the hearing and their testimony.

To clarify this issue, per diem substitutes are initially disqualified by the NYSDOL from receiving benefits over the summer. The claimants challenge the State's determination and request hearings. At the hearing both the claimant and the DOE must provide testimony, however the burden of proof is on the DOE to produce witnesses from the schools with personal knowledge of its personnel and hiring procedures. The NYSDOL acknowledges the fact that sending witnesses to hearings creates an undue hardship on the principals and school staff, and the Department is unable to provide credible school-based witnesses during the summer months since schools are closed. Therefore, the State has said it will allow the DOE to postpone these hearings until school re-opens in September - **provided we keep our commitment to have witnesses ready and available for telephone testimony**.

Undoubtedly, this concession is a huge accommodation on the part of the State and, therefore, this opportunity should be embraced by the Department. Our failure to do so will result in the Department spending millions of dollars in unwarranted unemployment insurance claims; money that could be allocated more efficiently. The Department will then be required to defend itself at an inordinate number of hearings with the appearance of "live witnesses", or chance losing every hearing and incurring unwarranted expenditures for ineligible claims.

Therefore, we seek your assistance in ensuring that school principals and essential staff are apprised of this new requirement and are directed to cooperate with our unemployment insurance representatives or personnel liaison, should they be contacted.

We thank you for your attention to this very important matter.

c: Local Instructional Superintendents  
School Principals (*via the "Principals' Newsletter"*)  
Bruce E. Feig