

**New Jersey State Board of Education  
Minutes of the Public Work Session  
in the Conference Room on the First Floor,  
100 River View Executive Plaza  
Trenton, NJ**

**December 15, 2004**

**Presiding:** Arnold G. Hyndman, Ph.D., President

**Secretary:** William L. Librera, Ed.D., Commissioner

**PRESENT CONSTITUTING A QUORUM:**

Ronald K. Butcher  
Maud Dahme  
Debra Casha  
Kathleen A. Dietz  
Anne S. Dillman  
Josephine E. Figueras  
John A. Griffith  
Ernest LePore  
Thelma Napoleon-Smith  
Edward M. Taylor  
Roberta Van Anda

**ABSENT:**

Margaret F. Bartlett

**CONVENING**

Arnold G. Hyndman, president, State Board of Education, convened the public meeting with the reading of the resolution pertaining to the public session of the State Board meeting as it complies with the Open Public Meetings Act.

**WHEREAS**, the New Jersey Open Public Meetings Act was enacted to insure the right of the public to have advance notice of and to attend the meeting of public bodies at which any business affecting their interest is discussed or acted upon, and

**WHEREAS**, in accordance with the provisions of this act, the State Board of Education has caused notice of this meeting to be published by having the date, time and place thereof posted in the Department of Education, Secretary of State's Office and notice also having been given to the State House press corps, the Governor's Office and the State Board agenda subscribers, now therefore be it

**RESOLVED**, that by adopting this resolution the State Board of Education states its intention to convene a public meeting to conduct the state's business on Wednesday, December 15, 2004.

## ITEMS FOR DISCUSSION

### **A. Legal Case**

On motion duly seconded and carried, a decision in the following case was adopted by the board as presented by legal committee member Debra Casha, chairperson.

CONTROL BUILDING SERVICES, INC. V. STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF PATERSON, PASSAIC COUNTY, BOARD OF EDUCATION OF THE CITY OF PATERSON, EDWIN DUROY, MICHAEL AZZARA AND PRITCHARD INDUSTRIES, STATE BOARD DOCKET #42-04

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This matter arose from an invitation to bid on custodial services issued by the Paterson school district in March 2003 and the award of a contract for those services by the State District Superintendent of the State-operated district to respondent Pritchard Industries. The petitioner, Control Building Services, the incumbent provider of custodial services to the district, filed a complaint in New Jersey Superior Court challenging the process utilized by the district in awarding the contract to Pritchard. The petitioner alleged that the State District Superintendent had illegally awarded the contract to Pritchard and that Pritchard had conspired with the district's business administrator to violate the Public School Contracts Law. The petitioner sought relief in the form of a declaration that Pritchard's bid was invalid and requested that it be awarded the contract or, in the alternative, that all bids be rejected and the contract re-bid. The State District Superintendent subsequently determined to rescind the contract awarded to Pritchard, reject all bids, revise the bid specifications and re-bid the services.

The Deputy Commissioner in his capacity as Acting Commissioner dismissed the petition, agreeing with the Administrative Law Judge (ALJ) that since the contract awarded to Pritchard was never presented to the Paterson board for a vote as required by *NJSA 18A:18-48(b)*, the award was ultra vires. Moreover, he concurred with the ALJ that the Paterson board's failure to take any lawful action pursuant to *NJSA 18A:18A-36* amounted to a rejection of all bids by operation of law. With regard to the State District Superintendent's determination to revise the bid specifications and re-bid the contract, the Deputy Commissioner observed that *NJSA 18A:18A-22(d)* authorizes a district to reject all bids in order to substantially revise the bid specifications, and, upon review of the revisions to the specifications in this case, the Deputy Commissioner concluded that the specifications had been substantially revised. He therefore instructed the State District Superintendent to submit his recommendation to re-bid the custodial contract with the revised specifications to the Paterson board for consideration.

The State Board of Education voted unanimously to affirm the decision of the Deputy Commissioner, agreeing that re-bidding the contract was the proper course to follow. The State Board concurred that the actions of the State District Superintendent in awarding the contract to Pritchard and subsequently rescinding it and rejecting all bids were of no legal effect since he did not follow the mandate of *NJSA 18A:7A-48*. Even assuming that the statutory mandate was followed with respect to the original determination to solicit bids, no contract was awarded and no bid was accepted. Moreover, given the circumstances, including the fact that the original specifications were erroneous, re-bidding was the appropriate course to follow. As the ALJ and the Commissioner found, elimination of the paid meal break for custodians that was included in the original specifications, as well as the

need for clarification of the specification related to medical coverage, represented a substantial change. Hence, if the Paterson board had voted to award the contract in the first instance, it could legitimately have rescinded the contract and rejected all bids pursuant to *NJSA 18A:18A-22(d)*. Furthermore, even if the allegations made by the petitioner concerning the course of conduct involving Pritchard and personnel employed by the State-operated district following the original bidding process were accurate, the proper course for the Paterson board would have been to reject all bids pursuant to *NJSA 18A:18A-22(e)*, rather than to award the contract to the petitioner on the basis of erroneous specifications. The State Board therefore lifted its stay of the Deputy Commissioner's decision, which had been entered on October 22, 2004, and directed that the State-operated district continue its re-bidding process.

In light of questions raised by the record concerning the events surrounding the original bidding process, the State Board requested that the Commissioner take such measures as he deemed necessary to ensure the integrity of the re-bidding process. In addition, in order to ensure that the purposes of the Public School Contracts Law are fully effectuated and its provisions followed by the State-operated district in the future, the State Board requested that the Commissioner review the circumstances surrounding the original bidding process in this case and report as to what had occurred between school district personnel and Pritchard, and that he include recommendations as to any remedial measures he finds advisable.

**B. Report of the Closing the Achievement Gap Study Group**

State Board member John Griffith reported to the State Board the results of the *Closing the Achievement Gap Study Group: State Strategies that Work* sponsored by the National Association for State Boards of Education (NASBE). Mr. Griffith stated the study group was comprised of 17 State Board members from across the nation as well as others involved in school improvements. Mr. Griffith also stated that the task of the study group was to understand and make recommendations about how states can bring these classroom and school-based reforms to scale so that students and schools everywhere will be successful. Mr. Griffith further stated that the Study Group provided recommendations for state boards of education that include developing a technical infrastructure and training for teachers to monitor student achievement.

President Hyndman requested that the State Board Urban Education committee report to the full board in March 2005 the results of the state assessment as included in the study group report. The assessment contains indicators to determine whether a state is effectively addressing the task of raising student achievement and closing educational gaps.

**C. Ensuring Quality Teaching and Learning of New Jersey's Students and Educators**

Commissioner William Librera and the State Board members present discussed the white paper entitled, *Ensuring Quality Teaching and Learning for New Jersey's Students and Educators*. The Commissioner stated that this paper focuses on strengthening professional development efforts in New Jersey for teachers. He also stated that the white paper presents two new initiatives: the creation of a new voluntary certificate of advanced standing and the development of a statewide plan to support and assist struggling teachers for consideration. The Commissioner further stated that these initiatives are designed to improve the current system of professional learning and professional advancement for all teachers and could

position New Jersey to more effectively serve its student population and meet its academic performance goals. The Department is seeking comments from the public on this paper.

**ADJOURNMENT**

On a motion duly seconded and carried, the State Board adjourned its December 15, 2004 public work session at 3:00 p.m.

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William L. Librera, Ed.D., Commissioner  
Secretary, NJ State Board of Education

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