

**New Jersey State Board of Education
Minutes of the Regular Monthly Meeting
in the Conference Room on the First Floor,
100 River View Executive Plaza
Trenton, NJ**

July 6, 2005

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

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

PRESENT CONSTITUTING A QUORUM

Dr. Ronald K. Butcher
Ms. Debra Casha
Ms. Maud Dahme
Mrs. Anne S. Dillman
Ms. Josephine E. Figueras
Mr. John A. Griffith
Dr. Ernest Lepore
Mr. Edward M. Taylor
Mrs. Roberta Van Anda

ABSENT

Ms. Margaret F. Bartlett
Ms. Kathleen A. Dietz
Dr. Thelma Napoleon-Smith

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 July 6, 2005.

ADJOURN TO EXECUTIVE SESSION

President Hyndman then read the resolution pertaining to the executive session of the State Board meeting as it complies with the Open Public Meetings Act.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits public bodies to exclude the public from that portion of a meeting at which certain matters are discussed, now therefore be it

RESOLVED, that consistent with the provision of *NJSA 10:4-12(b)*, the State Board of Education will now adjourn to executive session to discuss personnel matters.

The State Board immediately adjourned to executive session.

RECONVENING

President Hyndman reconvened the public meeting with the reading of the resolution pertaining to the resumption of the public session of the State Board meeting as it complies with the Open Public Meetings Act.

WHEREAS, consistent with the provision of *NJSA 10:4-12(b)*, the State Board will now adjourn from executive session to resume the open session of this meeting.

ELECTION OF STATE BOARD OFFICERS

Commissioner William Librera, secretary to the State Board, conducted the annual election of State Board officers. Anne Dillman, chair, State Board Nominating Committee, presented the slate of officers. On motions duly seconded and carried, the State Board members re-elected Arnold G. Hyndman as State Board President and Debra Casha as State Board Vice President. Both were elected for a one-year term.

Commissioner Librera congratulated both President Hyndman and Vice President Casha on their re-election.

STUDENT SPEAKERS

Raymond Thompson, Jr., the 2005 State Board student representative and a senior from High Point Regional High School (Sussex County), was not present.

INTRODUCTIONS

Commissioner Librera recognized Anthony Marino, Essex County Superintendent of Schools, who represented the county superintendents. Mr. Marino has served in this position since December 2003.

APPROVAL OF MINUTES OF THE MEETINGS

On a motion duly seconded and carried, the State Board members approved the minutes of the meetings conducted on June 1, 2005 and June 15, 2005. State Board Member Maud Dahme abstained from voting to approve the minutes of the June 15, 2005 public work session.

PRESIDENT'S REPORTS

Annual Report

President Hyndman thanked the State Board members for the support and assistance received during his second term as State Board President. He stated that during the past year the State Board the State Board has developed a system that has led to an effective working partnership with the Department that will continue into the future. Some of the functional aspects of State Board office have been reexamined through staffing changes and the State Board Office is continuing to investigate opportunities to decrease costs through electronic communications and electronic agendas. Additionally, throughout the 2004-2005 school year, the State Board addressed such major policy issues as the alternate route for principals and supervisors, professional development for educators, amendments to the licensure code and the adoption of the *Early Childhood Expectations: Standards of Quality*. Also, through special committees, the State Board will continue to reaffirm its commitment to foster awareness of international education. President Hyndman further stated the State Board will continue to keep abreast of policies related to the No Child Left Behind Act of 2001 and will consider new rules related to the New Jersey Quality Single Accountability Continuum legislation. The State Board in its capacity as the State Board of Vocational Education will also address the task of considering a new vocational education plan during the upcoming year. Finally, President Hyndman stated that the State Board will: continue to move forward with its Strategic Objectives as established in the State Boards Strategic Plan, maintain participation in the State Action for Educational Leadership II (SAELP II), and respond to the recommendations of the Mathematics Literacy Task Force.

Vice President Debra Casha expressed her appreciation to the State Board for their support of her in her role as State Board Vice President. She stated that she is honored to be able to continue serving in that capacity.

July Work Session and Public Testimony Session

President Hyndman stated that the July work session will be held on July 20, 2005 at 1:00 p.m. at the Department of Education. The item for consideration will be the Resolution of Intent to Amend the Standards and Assessment for Student Achievement Code and the items for discussion will be the Special Review Assessment, the Quality Teaching and Learning Task Force and the Gifted and Talented Commission Report.

President Hyndman also stated that the July public testimony session will be held on July 20, 2005 at 3:00 p.m. The topics for consideration will be the proposal to eliminate the provision of the Special Review Assessment and NJAC 6A:23A, Administrative Cost Limits, Transfers and Budget Development.

New State Board Members

President Hyndman stated that two new state board members have been appointed to the State Board and Mrs. Kathleen Dietz has been reappointed to the State Board. The newly appointed state board members and Mrs. Dietz would be sworn in at the July 20 work session.

State Board Committees

President Hyndman stated that State Board committees and committee assignments would be announced at the August 3 public business meeting. He requested that State Board members provide information to the State Board office pertaining to the committees in which they are interested in serving and any new committees that should be formed. He also requested that the current committee chairs inform him if their committee has fulfilled its obligation.

American Board for Certification of Teacher Excellence

State Board Member Roberta Van Anda presented information on a alternate route program established by the American Board for Certification of Teacher Excellence. The program is designed to increase the number of certified teachers through a new route that focuses on professional teaching knowledge and the subject matter expertise required under the No Child Left Behind Act of 2001.

Resolution to Honor Roberta Van Anda

On behalf of the State Board of Education, President Hyndman presented a resolution honoring Roberta Van Anda for her service on the State Board and to the children of New Jersey. Mrs. Van Anda was originally appointed to the board in November 2000. During her tenure as a State Board member, Mrs. Van Anda served on the Exemplary Programs Committee, International Education Committee, Legal Committee, Legislative Committee, and the Research and Development Committee.

On a motion duly seconded and carried, the State Board approved the following resolution read by Vice-President Debra Casha:

RESOLUTION TO HONOR ROBERTA VAN ANDA

WHEREAS, Mrs. Roberta Van Anda has served with distinction as a member of the New Jersey State Board of Education since November 2000; and

WHEREAS, throughout her tenure, Mrs. Van Anda has served faithfully as a member of the Legal Committee and also served on the Gifted and Talented Committee, Time on Task Committee and the Urban Education Committee; and

WHEREAS, as chair of the Exemplary Programs Committee, Mrs. Van Anda has worked to provide widespread and equal access to exemplary educational practices on issues such as the enhancement of academic curriculum through museum partnerships and narrowing the achievement gap by providing a forum for educators to interface with each other to discuss effective practices; and

WHEREAS, Mrs. Van Anda has served as a dedicated policymaker through the careful and deliberate consideration of issues to assess the impact of policy by not only interacting with the education community but also through drawing on her own experiences in education as a parent, teacher and local school board member; and

WHEREAS, the New Jersey State Board of Education recognizes and appreciates Mrs. Van Anda's gracious and sincere manner that enhanced her unwavering belief in collaboration and mutual problem solving for the benefit of all students; now therefore be it

RESOLVED, that it is both fitting and proper that the New Jersey State Board of Education and Commissioner of Education express their heartfelt gratitude to Mrs. Roberta Van Anda for her commitment to the children of New Jersey through her services as a member of the State Board of Education; and be it further

RESOLVED, that the New Jersey State Board of Education and the Commissioner of Education hereby honor Mrs. Roberta Van Anda for devoting her time and energy to the State Board and the oversight of public education in New Jersey and extend best wishes of health and happiness to her and her family.

Mrs. Van Anda thanked the state board for the resolution. She then reflected on factors that brought her to New Jersey. She further discussed her services as a teacher and a local board member. She stated that serving on her local school board and then subsequently on the State Board has enabled her to help many students across the State. She stated that her service on the State Board has enabled her to serve on national study groups and attend national conferences. Mrs. Van Anda stated that the best part of being on the State Board is attending and participating in award ceremonies that honor and recognize students. Mrs. Van Anda concluded by thanking her colleagues on the State Board and the staff of the Department of Education for their friendship and support during her tenure on the State Board.

Anne Dillman

On behalf of the State Board of Education, President Hyndman also acknowledged Anne Dillman for her service on the State Board and to the children of New Jersey. Mrs. Dillman served on the State Board for 30 years. During her tenure as a State Board member, Mrs. Dillman served four terms as the State Board President. She has also served most recently on the President's Advisory Committee, Urban Education Committee, and Exemplary Programs Committee.

Mrs. Anne Dillman reflected on her tenure as a State Board Member. She stated that Governor Brendan Byrne appointed her to the State Board in 1975. She also stated that this appointment gave her an opportunity to affect meaningful change for education in New Jersey. She further stated that in the early 1970's, the State Board focused on equity in funding, family life education and early stages of State-developed testing. Mrs. Dillman stated that strengthening academic standards, developing proficiencies in core curriculum content standards, establishing a statewide minimum teacher salary and developing an alternate route to certification were just some of the State Board's greatest accomplishments during her tenure. Mrs. Dillman concluded by stating that she is honored and privileged to have worked with such dedicated colleagues on the State Board, in the department and in the various education organizations.

COMMISSIONER'S REPORT

Report of the Quality Teaching and Learning Task Force

Commissioner Librera presented the report from his Task Force on Quality Teaching and Learning. The report is divided into three sections and reflects the work of each of the task force

subcommittees. Commissioner Librera stated that although the report contains *Guiding Principals and Goals*, it does not contain a consensus of final recommendations of the Task Force. He also stated that the work of the Task Force should be extended to October 1, thereby providing additional time for developing these recommendations.

ITEMS FOR CONSIDERATION:

On motions duly seconded and carried, the State Board of Education took the following action:

A. Commissioner

- Adopted the amendments pertaining to the organization chart for the Department of Education at *NJAC 6A:2-2.4*, pursuant to *NJSA 52:14B-3(1)*. State Board Members Debra Casha and Maud Dahme abstained.

B. Appointments

- Approved the appointment of Daniel Mastrobuono as the Cumberland County Superintendent of Schools; and
- Approved the appointment of Michael Klavon as the Mercer County Superintendent of Schools.

C. Certification of Districts

- Certified for a period of seven years, the Cherry Hill School District in Camden County pursuant to the Public School Education Act of 1975, *NJAC 6A:30*, Evaluation of the Performance of School Districts, and the *Manual for Evaluation of Local School Districts*.

D. State Board Appeals

- Readopted the State Board Appeals regulations proposed at *NJAC 6A:4* pursuant to *NJSA 18A:4-1* through 20, *18A:6-27* through 29, *18A:6-39*, *18A:7A-15* and *18A:12-29*.

E. Regulatory Equivalency & Waiver

- Readopted the Regulatory Equivalency and Waiver regulations at *NJAC 6A:5*, pursuant to *NJSA 18A:36-1* et seq., specifically *18A:36A-18*.

F. Students At Risk of Not Receiving A Public Education

- Adopted the regulations pertaining to Students at Risk of Not Receiving a Public Education proposed at *NJAC 6A:17* pursuant to *NJSA 18A:38-1*, *18A:7B-12*, *18A:7B-1* et seq., *18A:7F-1* et seq., and *P.L. 107-110* et seq.

G. Special Education Advisory Council

- Approved the appointment and reappointments to the State Special Education Advisory Council pursuant *NJSA 18A:46-2* and *P.L. 94-142*.

**RESOLUTION
APPOINTMENT AND REAPPOINTMENTS TO
THE STATE SPECIAL EDUCATION ADVISORY COUNCIL**

WHEREAS, N.J.S.A. 18A:46-2 requires that the Commissioner shall appoint biannually an advisory council for special education with the approval of the State Board which will consist of not fewer than seven nor more than 15 members representative of professionals in the field of special education and parents of children with disabilities; and

WHEREAS, N.J.S.A. 18A:46-2 defines the role of the advisory council as advising in the promulgation of rules, regulations and implementation of N.J.A.C. 6A:14 and the establishment of standards and qualifications for the professional personnel and further provides that the council members shall serve without remuneration; and

WHEREAS, the reauthorized Individuals with Disabilities Education Act (IDEA) of 1997 amendments require each state education agency to have an advisory panel for special education; and

WHEREAS, the New Jersey Department of Education has established and maintains an advisory panel, known as the State Special Education Advisory Council, for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State; and

WHEREAS, the advisory panel consists of members, that are representative of the state population and are composed of individuals involved in, or concerned with, the education of children with disabilities, including: (i) parents of children with disabilities; (ii) individuals with disabilities; (iii) teachers; (iv) representatives of institutions of higher education that prepare special education and related services personnel; (v) state and local education officials; (vi) administrators of programs for children with disabilities; (vii) representatives of other state agencies involved in the financing or delivery of related services to children with disabilities; (viii) representatives of private schools and public charter schools; (ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and (x) representatives from the state juvenile and adult corrections agencies; and

WHEREAS, a majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities; and

WHEREAS, the advisory panel shall: (i) advise the department of unmet needs within the state in the education of children with disabilities; (ii) comment publicly on any rules or regulations proposed by the department regarding the education of children with disabilities; (iii) advise the department in developing

evaluations and reporting on data to the Secretary of the United States Department of Education under Part B Sec. 618 of the Individuals with Disabilities Education Act; (iv) advise the department in developing corrective action plans to address findings identified in federal monitoring reports under this part; and (v) advise the department in developing and implementing policies relating to the coordination of services for children with disabilities; now therefore be it

RESOLVED, that the State Special Education Advisory Council meets the state mandate for an advisory council and the federal requirements for an advisory panel; and be it further

RESOLVED, that the Commissioner recommends that Dr. Howard Lerner be appointed to the State Special Education Advisory Council for a two-year term effective July 6, 2005. Dr. Lerner has been involved in special education for more than 20 years as a school psychologist and supervisor. He is currently the Assistant Superintendent of Special Services for the Wayne Township Public Schools. He is a member of the district's Strategic Planning Committee and Staff Development Advisory Council for Special Services. Dr. Lerner is also the parent of a student with a disability; and be it further

RESOLVED, that the Commissioner recommends that Dr. Sharon Maricle be reappointed to the State Special Education Advisory Council for a two-year term effective July 6, 2005. Dr. Maricle has been involved in education for almost 25 years as a teacher, learning consultant, special education coordinator and administrator. She is the former Director of Special Services for the East Hanover Public Schools, where she was instrumental in designing and implementing a district-wide plan to create inclusive school programs. She is currently a Principal in the Florham Park School District; and be it further

RESOLVED, that the Commissioner recommends that Ms. Debra Fernandez be reappointed to the State Special Education Advisory Council for a two-year term effective July 6, 2005. Ms. Fernandez has worked for the Statewide Parent Advocacy Network (SPAN) since 1994 in numerous capacities. She is currently a SPAN Resource Parent and Program Coordinator for Community Resource Center in North Jersey. She is also the parent of a student with a disability.

H. Educational Facilities

- Adopted the amendments to School Facilities regulations proposed at *NJAC 6A:26-3.7(j)* pursuant to *NJSA 18A:7G-5k* and *NJSA 18A:7G-26*.

I. Student Transportation

- Readopted with amendments the Student Transportation regulations at *NJAC 6A:27*, pursuant to *NJSA 18A:1-1*, *18A:4-15*, *18A:39-21* and *18A:70-18*.

J. NJ Assessment of Skills and Knowledge 4

- Adopted the resolution approving the New Jersey Assessment of Skills and Knowledge (NJASK4) Standard Setting for Science.

**RESOLUTION TO ESTABLISH SCORE STANDARDS FOR GRADE FOUR
NEW JERSEY ASSESSMENT OF SKILLS AND KNOWLEDGE (NJ ASK4)
SCIENCE**

WHEREAS, the goal of public schools is to provide all students with a thorough and efficient education as defined by the *Core Curriculum Content Standards* so they may function politically, economically, and socially in our democratic society; and

WHEREAS, the grade four New Jersey Assessment of Skills and Knowledge (NJ ASK4) science assessment is one of the means that is provided for assessing student progress toward mastery of the essential knowledge and skills; and

WHEREAS, N.J.A.C. 6A:8-4.1(b) requires State Board of Education approval of **student** performance levels for statewide assessments in those grades as specified for district certification; and

WHEREAS, the established levels of proficiency are partially proficient, proficient and advanced proficient; now therefore be it

RESOLVED, that the score standards of 200 for the proficient level and 250 for the advanced proficient level, where the range is 100 to 300, recommended by the Commissioner of Education for the science component of the grade four New Jersey Assessment of Skills and Knowledge (NJ ASK4), shall apply to the March 2005 administration and future administrations of the test.

K. Adult Education

- Approved for publication in the *New Jersey Register* the repeal and adoption of the new chapter of Adult Education regulations at *NJAC* 6A:13 pursuant to *NJSA* 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:27-2, 18A:48-1, 18A:49-1 through 8, 18A:50-12, 13, and 14, and the Adult Education Act, 20 *U.S.C.* §§ 1201 et seq.

L. Standards and Assessment for Student Achievement

- Discussed the elimination of the Special Review Assessment provision proposed at *NJAC* 6A:8 pursuant to *NJSA* 18A:7A-4 through 14, 18A:7C, 18A:7E-2 through 5, 18A:35-4.2, 18A:35-4.7, 18A:59-5 and 18A:7F-4, 4.1 and 4.2.

M. NJ Assessment of Skills and Knowledge 4

- Considered the resolution of intent to eliminate the Special Review Assessment provision pursuant to *NJAC* 6A:8-2.1(a).

Intent to Amend the Standards and Assessment for Student Achievement Code

WHEREAS, the State Board of Education is responsible under N.J.A.C. 6A:8-2.1(a) for establishing State educational goals and standards; and

WHEREAS, pursuant to N.J.A.C. 6A:8-5.1(a)5, all New Jersey public school students are required to demonstrate proficiency in all sections of the High School Proficiency Assessment (HSPA) or Special Review Assessment (SRA) process applicable to the class graduating in the year they meet all other graduation requirements; and

WHEREAS, pursuant to N.J.A.C. 6A:8-4.1(c), district boards of education are required, according to a schedule prescribed by the Commissioner, to administer the applicable Statewide assessments, including the five major components: the elementary assessment component for grades three through seven, the grade eight assessment component, the High School Proficiency Assessment (HSPA), the Special Review Assessment (SRA), and the Alternate Proficiency Assessment (APA); and

WHEREAS, the Commissioner has reviewed the Special Review Assessment (SRA) requirements at N.J.A.C. 6A:8-4.1(d)1 and (d)4 and 5.1(f); and

WHEREAS, the Commissioner has recommended modifications in the Statewide Assessment System section, N.J.A.C. 6A:8-4.1, and in the Graduation Requirements section, N.J.A.C. 6A:8-5.1, reflecting the gradual phasing out of the SRA process; and

WHEREAS, the Commissioner has recommended modifications in N.J.A.C. 6A:8-4.1 and 5.1 including a new HSPA Appeals Process as part of a multi-pronged process for ensuring that all students have every opportunity to achieve the Core Curriculum Content Standards in language arts literacy, mathematics, and science and then demonstrate that achievement in order to earn a State-endorsed high school diploma; now therefore be it

RESOLVED, that the New Jersey State Board of Education announces its intent to amend the Statewide Assessment System requirements in N.J.A.C. 6A:8-4.1(d)1 and (d)4, limiting the use of the SRA process in mathematics to those students entering the ninth grade prior to the 2007-2008 academic year and limiting the use of the SRA process in language arts literacy to those students entering the ninth grade prior to the 2005-2006 academic year; and be it further

RESOLVED, that the New Jersey State Board of Education announces its intent to add a new section at N.J.A.C. 6A:8-4.2, establishing an HSPA appeals process, beginning in the 2007-2008 academic year for science, in the 2008-2009 academic year for language arts literacy, and in the 2010-2011 academic year for mathematics; and be it further

RESOLVED, that the New Jersey State Board of Education announces its intent to amend Graduation Requirements section of the Standards and Assessment for Student Achievement Code, delineating the various components of a multi-

pronged process for ensuring that all students have every opportunity to achieve the Core Curriculum Content Standards in language arts literacy, mathematics, and science and then demonstrate that achievement in order to earn a State-endorsed high school diploma, that process to include, at N.J.A.C. 6A:8-5.1(f), additional instruction, multiple opportunities to retake the HSPA, additional high school diploma options, and, at N.J.A.C. 6A:8-5.1(g), providing chief school administrators with the opportunity to file an HSPA appeal on behalf of a grade 12 student who has not demonstrated proficiency in one or more sections of the HSPA.

NEW BUSINESS

State Board Member Josephine Figueras requested information on follow-up activity concerning the resolution of intent to eliminate the Special Review Assessment. President Hyndman stated that the resolution will be scheduled to appear on the work session agenda and all future agendas until the State Board takes formal action.

President Hyndman asked State Board Members to identify what the State Board has done for the children of New Jersey as a result of today's monthly public meeting. State Board member Roberta Van Anda stated by considering the elimination of the SRA, the State Board may have saved some lives. State Board Member Debra Casha stated the adoption of the State Board Appeals code enables everyone striving for due process. President Hyndman stated that the State Board established high and consistent standards for the NJASK 4 Science test that will have a positive impact on children. He also stated that the State Board emphasized the importance of the safety of the children of New Jersey by readopting the Student Transportation code.

LEGAL CASES

On motions duly seconded and carried, decisions in the following cases were adopted by the board as presented by legal committee members John A. Griffith, Roberta Van Anda, and Debra Casha, chairperson.

ANNE MARIE ABERCROMBIE V. BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY, STATE BOARD DOCKET #6-05

The petitioner, a teaching staff member, filed a petition with the Commissioner of Education challenging the district board's determination to deny her claim for supplementary sick leave benefits pursuant to *NJSA* 18A:30-2.1. The Commissioner dismissed the petition, finding that the petitioner had failed to comply with the 90-day time limit for filing such petitions. *NJAC* 6A:3-1.3(d)1 [now codified at *NJAC* 6A:3-1.3(i)1].

The State Board of Education affirmed the decision of the Commissioner to dismiss the petition. The State Board agreed with the Commissioner that Verneret v. Board of Education of the City of Elizabeth, decided by the State Board of Education, 95 N.J.A.R.2d (EDU) 134, is clear that even if an alleged work-related injury is also the subject of a workers' compensation action, an individual claiming benefits pursuant to *NJSA* 18A:30-2.1 must file a petition with the Commissioner within 90 days of the district board's action that has the effect of denying such benefits. The State Board agreed that when the petitioner received notice in June 1999 from the district's workers' compensation administrator that her claim for workers' compensation benefits was being denied and that no benefits of any kind would be paid to her under workers' compensation, she was on notice that the district board was not considering her absences to have

been caused by an illness arising out of and in the course of her employment so as to entitle her to benefits under *NJSA* 18A:30-2.1. The State Board also concurred with the Commissioner that there was nothing in the record showing circumstances that warranted relaxation of the 90-day rule in this case. Roberta Van Anda abstained.

S.B., on behalf of minor child, J.B. V. BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY, ESSEX COUNTY, STATE BOARD DOCKET #16-05

The State Board of Education dismissed the appeal in this matter as a result of the appellant's failure to correct deficiencies in his notice of appeal. Most significantly, the appellant, despite repeated notice, failed to file a signed original copy of his appeal or to provide proof of service on the district board as required by the regulations governing appeals. In view of the fact that the appellant was provided with several opportunities to cure the deficiencies and was expressly notified that his appeal would be dismissed if he failed to do so, the State Board found such noncompliance to be fatal to his appeal. Josephine E. Figueras abstained.

IN THE MATTER OF THE REVOCATION OF THE TEACHING CERTIFICATE OF THOMAS CARNEY BY THE STATE BOARD OF EXAMINERS, STATE BOARD DOCKET #10-05

The State Board of Education voted unanimously to deny the appellant's motion to supplement the record on appeal. *NJAC* 6A:4-1.9(b).

IN THE MATTER OF THE DENIAL OF A WAIVER TO THE OCCUPATIONAL CENTER OF UNION COUNTY, UNION COUNTY, STATE BOARD DOCKET #1-05

The State Board of Education voted unanimously to affirm the decision of the Commissioner of Education to deny the appellant's application for a waiver. The appellant, which operates a private school for the disabled, sought a waiver pursuant to *NJAC* 6A:5-1.1 *et seq.* from the requirement of *NJAC* 6A:23-4.3(c)iii that private schools for the disabled maintain an average daily enrollment of 16 public school placement students. Although the appellant contended that the program provided by the school was unique and could not be duplicated, the State Board found that it had not demonstrated that this was, in fact, the case. Under the circumstances and given the fact that the school was serving only four students, the State Board concurred with the Commissioner's decision to deny the appellant's waiver application.

JOSEPH C. PARLAVECCHIO AND ALFONSE R. ROSSI V. STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK, ESSEX COUNTY, STATE BOARD DOCKET #11-05

The petitioners, former employees of the State-operated school district, were indicted on state and federal charges stemming from their ownership of a building they had been leasing to the district. They were subsequently acquitted of the federal charges, and the state charges were dismissed. At that point, the petitioners requested indemnification from the State-operated district pursuant to *NJSA* 18A:16-6.1 for their counsel fees and costs incurred in defending those charges. By letter dated April 29, 1997, the district's Senior Associate Counsel advised the petitioners that their request had been denied. On September 15, 1997, the petitioners filed a complaint in Superior Court, Law Division, seeking indemnification. On January 23, 1998, the complaint was dismissed without prejudice and the matter transferred to the Commissioner of Education.

The Deputy Commissioner dismissed the matter, finding that the petitioners had failed to comply with the 90-day time limit for filing petitions with the Commissioner. *NJAC* 6A:3-1.3(d) [now codified at *NJAC* 6A:3-1.3(i)]. The Deputy Commissioner concluded that the April 29, 1997 letter from the district's Senior Associate Counsel constituted notice to the petitioners that their request for indemnification was being denied. The Deputy Commissioner observed that the petitioners had failed to file any action until five months later, when they filed a complaint in Superior Court.

The State Board of Education voted unanimously to affirm the decision of the Deputy Commissioner to dismiss the petition. The State Board concurred with the Deputy Commissioner that the April 29, 1997 letter provided notice to the petitioners that their claim was being denied, and it found nothing in the circumstances that would warrant relaxation of the 90-day rule in this case.

ALBERT ZIEGLER V. BOARD OF EDUCATION OF THE CITY OF BAYONNE, HUDSON COUNTY, STATE BOARD DOCKET #5-04

The petitioner, who holds an instructional certificate with an endorsement in skilled trades, which was issued to him in 1982, filed a petition with the Commissioner of Education claiming that the district board had violated his tenure rights when it terminated his employment during the 1998-99 school year on the grounds that he did not have the appropriate certification for the courses he was teaching: Technology 1 (9-12), Shop (9-10), and Maintenance and Repair (9-12). The petitioner had been employed by the district board as a teacher of employment orientation until 1996 when his position was eliminated as the result of a reduction in force. He was reemployed for the 1997-98 school year.

The Commissioner dismissed the petition, concluding that the petitioner did not hold the appropriate certification for the courses he had been teaching in 1998-99. The Commissioner concluded that the courses at issue were subject area vocational courses requiring appropriate specialized certification and, therefore, were beyond the scope of the petitioner's certification. The Commissioner found that the courses differed in kind, and not merely in degree, from the employment orientation classes the petitioner previously had taught.

Recognizing that resolution of the matter was necessarily dependent on whether the scope of the petitioner's skilled trades endorsement encompassed the courses at issue so as to authorize him to teach them, the State Board of Education reversed the decision of the Commissioner. The State Board observed that the regulations in effect when the petitioner received his certification in 1982 provided that applicants who presented six years of approved full-time experience in a skilled trade were eligible for certification in "Skills trades (Experience Background)" without the requirement of a bachelor's degree. Although the certification regulations in effect at that time did not specify the scope of the authorization to teach under the skilled trades endorsement or list any trades under that endorsement, the State Board, citing *Polo v. Board of Education of the Vocational Schools of the County of Bergen*, decided by the State Board of Education, 94 N.J.A.R.2d (EDU) 36, aff'd, 95 N.J.A.R.2d (EDU) 105 (App. Div. 1995), reiterated that it was evident from the language of the regulations that they were intended to authorize the holder of a skilled trades endorsement to teach trades in which he or she had demonstrated the requisite experience.

Upon review of the record, the State Board found that the petitioner had been issued a standard instructional certificate with a skilled trades endorsement on the basis of his documented experience as a carpenter, and it agreed with the Administrative Law Judge that the responsibilities of the courses at issue did not extend much past the rudimentary introduction to skilled trades with an emphasis on woodworking. By virtue of the petitioner's possession of a skilled trades certification, which was issued to him on the basis of his requisite experience as a carpenter, he was authorized to teach skilled trades courses in carpentry. The State Board added that, given the nature of employment orientation, which provides an introduction to the basic skills required in a variety of trades, the holder of a skilled trades endorsement, regardless of the particular experience which qualified him or her for that endorsement, was authorized by virtue of such certification to teach employment orientation. Since the courses at issue were basic skilled trades courses with an emphasis on carpentry, the State Board concluded that the petitioner's skilled trades endorsement authorized him to teach them.

Accordingly, the State Board concluded that the petitioner was improperly terminated from his tenured employment during the 1998-99 school year, and it directed the district board to reinstate him with back pay and emoluments, less mitigation, to a teaching assignment within the scope of his skilled trades certification. Since the record did not permit a finding with regard to damages, the State Board remanded this matter to the Commissioner for the limited purpose of determining the specific amount of damages to which the petitioner was entitled. Ernest P. Lepore abstained.

ADJOURNMENT

On a motion duly seconded and carried the State Board of Education adjourned its July 6, 2005 public meeting at 3:45 p.m.

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