

**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 19, 2006

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

Secretary: Lucille E. Davy, Acting Commissioner

PRESENT CONSTITUTING A QUORUM

Mr. Arcelio Aponte
Dr. Ronald K. Butcher
Ms. Debra Casha
Ms. Kathleen A. Dietz
Ms. Josephine E. Figueras
Mr. John A. Griffith
Rev. Frederick LaGarde, Jr.
Dr. Ernest Lepore
Dr. Thelma Napoleon-Smith
Mr. Edward M. Taylor

ABSENT

Ms. Maud Dahme

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 19, 2006.

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 and legal 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

Nominations

Acting Commissioner Lucille Davy, acting secretary to the State Board, conducted the annual election of State Board officers. Acting Commissioner Davy presented the slate of officers as presented by the State Board Nominating Committee. Acting Commissioner Davy stated that the Nominating Committee recommended Arnold Hyndman for President and Debra Casha for Vice President. She also stated that the following additional nominations for the officers were made: State Board member Josephine Figueras nominated Debra Casha for President and State Board member Edward Taylor nominated Arcelio Aponte for Vice President. Acting Commissioner Davy asked for any additional nominations for either the office of President or Vice President. No additional nominations were made. Acting Commissioner Davy then asked the nominees if they accepted the nominations as presented. Dr. Hyndman accepted the nomination for President. Ms. Casha declined the nomination for President. Ms. Casha accepted the nomination for Vice President. State Board member Arcelio Aponte also accepted the nomination for Vice President. On a motion duly seconded and carried the State Board members voted unanimously to close the nominations.

Elections

President

Acting Commissioner Davy stated that in the past there have not been any contested elections for President or Vice President. She also stated that typically when the elections were uncontested, the State Board has voted first for President, followed by a vote for the Vice President and that the elections in the past have been by voice vote, Yea or Nay. State Board member Kathleen Dietz requested a roll call vote. State Board member Ronald Butcher requested a voice roll call vote. Acting Commissioner Davy stated that a voice roll call vote would be held with State Board members voting Yea or Nay followed by an alphabetical roll call by which each State

Board member would state their vote. State Board member Maud Dahme would cast her ballot by way of telephone conference.

The State Board members re-elected Arnold G. Hyndman as State Board President for a one-year term. State Board member John Griffith abstained.

Vice President

Acting Commissioner Davy stated that since this is a contested election she would accept motions for the manner in which the State Board would like to conduct the election for Vice President. State Board member Edward Taylor made a motion to vote via paper ballot. Dr. Butcher seconded the motion. Ms. Dietz requested discussion of the motion. State Board members discussed the process for using a paper ballot and the process for using the role call vote for the election President Hyndman made a motion to amend the motion to use a paper ballot and use role call vote for the election for vice president. Ms. Casha seconded this motion. Acting Commissioner Davy stated that since there were two motions on the floor this is referred to as filling the blanks and therefore, the State Board can debate whether or not to accept the amendment and then make a determination as to which motion will be voted on first. The State Board discussed the amendment made by President Hyndman. Mr. Taylor withdrew his motion to use a paper ballot. The State Board voted to conduct a role call vote for the election. Ms. Dahme would cast her ballot by way of telephone conference.

Ms. Dietz requested explanation of the role call vote. Deputy Attorney General William Malloy stated that during a role call vote each State Board members' name would be called alphabetically. Each State Board member would then state the name of the candidate for whom he or she was voting. Ms. Dietz then asked if discussion would be permitted prior to the election. Deputy Attorney General Bill Malloy stated that discussion is permitted. Both nominees for Vice President provided information regarding their interest and qualification for the position. The State Board used a voice vote to close the discussion.

The following State Board members voted for Ms. Casha for Vice President: Debra Casha, Maud Dahme, Kathleen Dietz, Josephine Figueras and Frederick LaGarde. The following State Board members voted for Arcelio Aponte for Vice President: Arcelio Aponte, Ronald Butcher, Ernest Lepore, Thelma Napoleon-Smith and Edward Taylor. State Board members John Griffith and Arnold Hyndman abstained. Acting Commissioner Davy stated that the roll call vote resulted in a tie and that State Board members would need to vote again.

The following State Board members voted for Debra Casha for Vice President: Debra Casha, Maud Dahme, Kathleen Dietz and Josephine Figueras. The following State Board members voted for Arcelio Aponte for Vice President: Arcelio Aponte, Ronald Butcher, Arnold Hyndman, Frederick LaGarde, Ernest Lepore, Thelma Napoleon-Smith and Edward Taylor. State Board member John Griffith abstained.

The State Board members elected Arcelio Aponte as State Board Vice President for a one-year term.

Acting Commissioner Davy congratulated both President Hyndman and Vice President Arcelio Aponte on their election.

STUDENT SPEAKERS

John Blakeslee, the 2006 State Board student representative and a sophomore from Holmdel High School (Monmouth County), spoke to the State Board about his concerns regarding the elimination of words “full-time” from the certified school nurse requirement proposed at N.J.A.C 6A:16, Programs to Support Student Development.

President Hyndman, on behalf of the State Board, thanked John for his presentation.

INTRODUCTIONS

Acting Commissioner Davy recognized Anthony Marino, Essex County Superintendent of Schools, who represented the county superintendents. Mr. Marino has served in this position since December 2000.

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 7 and June 21, 2006. State Board members Debra Casha, Frederick LaGarde and Ernest Lepore abstained from voting on the minutes of the June 7 public meeting. State Board members Frederick LaGarde and Ernest Lepore abstained from voting on the minutes of the June 21 public work session.

PRESIDENT’S REPORTS

On behalf of the State Board of Education, President Hyndman presented a resolution honoring John Griffith for his service on the State Board and to the children of New Jersey. Mr. Griffith was originally appointed to the board in 2003. During his tenure as a State Board member, Mr. Griffith served on the Legal Committee, Urban Education Committee, Research and Development, Retreat/Strategic Plan and the President’s Advisory Committee.

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

RESOLUTION TO HONOR JOHN A. GRIFFITH

WHEREAS, Mr. John A. Griffith has served with great distinction as a member of the New Jersey State Board of Education since 2003 and is being honored for his dedication to the children of New Jersey; and

WHEREAS, Mr. Griffith contributed significantly to the work of the State Board through his faithful service on various committees that provided recommendations on special issues including legal cases, opportunities for professional development and strategic planning; and

WHEREAS, Mr. Griffith, through his role as the chair of the Urban Education Committee, demonstrated his steadfast commitment to improving educational opportunities for

students in urban school districts by addressing challenging issues such as student achievement, fiscal accountability, quality educational leadership and school safety; and

WHEREAS, Mr. Griffith gave of his time to serve on a national panel that researched effective strategies for closing the achievement gap and used this valuable experience to inform the State Board's consideration of educational programs aimed at enhancing the academic and social environment for minority students; and

WHEREAS, Mr. Griffith has earned the respect and admiration of his colleagues on the State Board for his insightful analysis of education policy conveyed pragmatically through knowledgeable statements and thought-provoking accounts of his personal experiences and interactions with students, teachers, and administrators; and

WHEREAS, Mr. Griffith has resigned as a member of the New Jersey State Board of Education to relocate to the Commonwealth of Virginia; now therefore be it

RESOLVED, that it is both fitting and proper that the New Jersey State Board of Education and the Commissioner of Education extend their sincerest gratitude to Mr. John A. Griffith for his statesmanlike contribution of professional wisdom, which has greatly benefited the educational system in the State of New Jersey; and be it further

RESOLVED, that the New Jersey State Board of Education and the Commissioner of Education extend best wishes for health and happiness to Mr. and Mrs. John A. Griffith and family.

COMMISSIONER'S REPORT

Acting Commissioner Davy stated that Jacqueline Jones will serve as the Assistant to the Commissioner for Early Childhood Education.

New Jersey Quality Single Accountability Continuum

Acting Commissioner Davy stated that the State Legislature is considering amendments change various provisions of the New Jersey Quality Single Accountability Continuum (NJQSAC) public school monitoring system law. She also stated that based on this pending bill the department will be revising the draft NJQSAC regulations which will be presented to the State Board at proposal level in August 2006.

ITEMS FOR CONSIDERATION:

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

A. Appointments

- There were no appointments.

B. Certification of Districts

- There were no school districts recommended for certification.

C. Professional Licensure and Standards

- Adopted the amendments pertaining to the elimination of the six credit requirement for entrance into the special education alternate route proposed at *NJAC* 6A:9 pursuant to *NJSA* 18A:1-1, 18A:4-15, 18A:6-34, 18A:6-38, 18A:26-10 and 18A:26-2.7.

D. Career and Technical Education Programs and Standards

- Approved for publication in the *New Jersey Register* the regulations pertaining to Career and Technical Education Programs and Standards proposed at *NJAC* 6A:19 pursuant to *NJSA*. 18A:1-1, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25 through 4-27, 18A:4-32, 18A:4-34, 18A:6-9, 18A:7A-1 et seq., 18A:33-1 et seq., 18A:40-12.1 and 12.2, 18A:54-1 et seq., 18A:59-5, 34:15C-3, 29 C.F.R. Subpart C of Part 570; 20 U.S.C. §§ 2301 et seq.; P.L. 105-220.

E. Educational Facilities

- Discussed the readoption of rules pertaining to Educational Facilities proposed at *NJAC* 6A:26 pursuant to P.L. 2000 c. 72; N.J.S.A. 18A:1-1, 18A:4-15; 18A:6-9; 18A:6-27, 18A:7A-11; 18A:7A-46.1 et seq.; 18A:7f-34; 18A:7G-1 through 13, 15, 20, 26, and 31 through 37; 18A:18A-16, 18, 36 and 39; 18A:17-49 et seq.; 18A:20-1.1 et seq.; 18A:20-4.2; 18A:20-36; 18A:21-1 through 5; 18A:22-18 through 20; 18A:22-27 through 30 and 39; 18A:24-1 et seq.; 18A:33-1 seq.; 18A:46-1 et seq.; 18A:54-21; 18A:55-2; 40:55D-31; 47:1A et seq.; 52:27D-130; 18A:76-15.

F. Comprehensive Maintenance Plans

- Discussed the readoption of rules pertaining to Comprehensive Maintenance Plans proposed at *NJAC* 6A:26A pursuant to N.J.S.A. 18A:7G-1.

NEW BUSINESS

Public Testimony

President Hyndman stated that public testimony would not be held today.

State Board Committees

President Hyndman stated that he would be announcing the 2006-2007 State Board Committees and the Committee chairs at the August monthly public business meeting.

LEGAL CASES

On motions duly seconded and carried, decisions in the following cases were adopted by the board as presented by legal committee members Kathleen Dietz, Josephine E. Figueras, and Debra Casha, chairperson.

ROSALIE BACON, individually and on behalf of G.P., Z.P., J.B., J.B., M.B., D.B., AND Z.H.; JOSEPH BARUFFI, individually and on behalf of J.B.; ELIZABETH CULLEN, individually and on behalf of T.C.; EDIE RILEY, individually and on behalf of S.R.; ARNETTA RIDGEWAY AND CHRISTOPHER GLASS, individually and on behalf of J.G., F.G., AND D.G.; AND BUENA REGIONAL, CLAYTON, COMMERCIAL, EGG HARBOR CITY, HAMMONTON, FAIRFIELD, LAKEHURST, LAKEWOOD, LAWRENCE, LITTLE EGG HARBOR, MAURICE RIVER, OCEAN, QUINTON, SALEM CITY, UPPER DEERFIELD, WALLINGTON, AND WOODBINE SCHOOL DISTRICTS V. NEW JERSEY STATE DEPARTMENT OF EDUCATION, STATE BOARD DOCKET #4-03

Sixteen school districts involved in the litigation in this matter filed a “Motion to Afford Immediate Remedies” with the State Board of Education seeking an immediate declaration that they are “Abbott ‘special needs’ districts” and an order that the Department of Education propose legislation appropriate to that designation. The basis for the motion was that the Acting Commissioner of Education had not yet provided a report to the State Board as directed in its decision of January 4, 2006. However, on May 26, 2006, the Acting Commissioner did submit a report. As a result, the State Board found the issue raised by the motion to be moot, and it voted unanimously to deny the motion.

C.G. AND R.G., on behalf of minor child, R.M.G. V. BOARD OF EDUCATION OF THE TOWNSHIP OF BRICK, OCEAN COUNTY, STATE BOARD DOCKET #16-06

The appellants filed a petition with the Commissioner of Education in March 2005 in which they challenged the grade of 84 that their son, R.M.G., had received in English for the second quarter of the 2003-04 school year. They amended their petition in May 2005 so as to include a challenge to their son’s grade of 86 in history for the third quarter of the 2004-05 school year. The Acting Commissioner dismissed the petition, agreeing with the Administrative Law Judge (ALJ) that the appellants’ claims involving the 2003-04 school year were not filed within the 90-day filing limitations period. With regard to the appellants’ claim for the 2004-05 school year, the Acting Commissioner agreed with the ALJ that the appellants had not met their burden of demonstrating that their son’s third-quarter history grade had been given in an arbitrary, capricious or unreasonable manner.

The State Board of Education voted unanimously to affirm the ultimate determination of the Acting Commissioner to dismiss the petition, but it modified the Acting Commissioner’s analysis regarding the appellants’ claims for the 2003-04 school year. The State Board observed that the appellants had sent an email to the Department of Education and a letter to the Commissioner in June 2004, within the 90-day limitations period, relating their allegations concerning their son’s English grade and requesting assistance. In neither instance were they directed to the proper office in the Department for filing a petition of appeal. Given these circumstances, the State Board concluded that relaxation of the 90-day requirement was

warranted. Consequently, it considered the merits of the appellants' claims concerning their son's second-quarter English grade during the 2003-04 school year.

Like the ALJ, the State Board concluded that there was nothing in the record that showed that the district board had acted in an arbitrary, capricious or unreasonable manner in its handling of R.M.G.'s second-quarter English grade in 2003-04. In addition, the State Board fully agreed with the Acting Commissioner that the appellants had not demonstrated that the district board had acted in an arbitrary, capricious or unreasonable manner with regard to their son's third-quarter history grade in 2004-05.

**BOARD OF EDUCATION OF THE TOWNSHIP OF HAMILTON, MERCER COUNTY V.
LEWIS C. SHINKLE, JR., STATE BOARD DOCKET #11-06**

The district board filed a petition with the Acting Commissioner of Education in which it sought to recover salary and benefits paid to the respondent, a former tenured teaching staff member, while he was suspended pending resolution of criminal and tenure charges based on allegations of sexual relations with a student. The respondent had received salary and benefits in the amount of \$312,347 from the date of his suspension in May 1997 until the tenure charges were sustained by the Commissioner in August 2004, at which time the respondent was dismissed from his tenured employment. The respondent filed a counterclaim against the district board seeking indemnification for the expenses he had incurred in defending against the criminal indictment, which had been dismissed without prejudice.

The Acting Commissioner dismissed the respondent's counterclaim and ordered him to reimburse the district board for \$312,347. During the proceedings in the Office of Administrative Law, the respondent had failed to produce records showing the amount of other income that he had received during the period of his suspension. Stressing that the amount of the respondent's income during his suspension was clearly relevant and was not independently ascertainable without the respondent's W-2 forms, the Acting Commissioner concluded that the respondent had not met his burden of showing that his substitute earnings were less than the total amount paid to him by the district board during that period. In addition, the Acting Commissioner concluded that the conduct which led to the criminal and civil proceedings against the respondent – engaging in sexual relations with a student – clearly did not arise from the duties of his employment. The State Board of Education affirmed the decision of the Acting Commissioner. Thelma Napoleon-Smith recused herself from the deliberations in this matter.

ROSALIE BACON, individually and on behalf of G.P., Z.P., J.B., J.B., M.B., D.B., AND Z.H.; JOSEPH BARUFFI, individually and on behalf of J.B.; ELIZABETH CULLEN, individually and on behalf of T.C.; EDIE RILEY, individually and on behalf of S.R.; ARNETTA RIDGEWAY AND CHRISTOPHER GLASS, individually and on behalf of J.G., F.G., AND D.G.; AND BUENA REGIONAL, CLAYTON, COMMERCIAL, EGG HARBOR CITY, HAMMONTON, FAIRFIELD, LAKEHURST, LAKEWOOD, LAWRENCE, LITTLE EGG HARBOR, MAURICE RIVER, OCEAN, QUINTON, SALEM CITY, UPPER DEERFIELD, WALLINGTON, AND WOODBINE SCHOOL DISTRICTS V. NEW JERSEY STATE DEPARTMENT OF EDUCATION, STATE BOARD DOCKET #4-03

At its meeting on June 7, 2006, the State Board of Education referred to the legal committee for review the report submitted on May 26, 2006 by the Acting Commissioner pursuant to the State Board's decision of January 4, 2006. The report resulting from the legal committee's review

recommended that the Acting Commissioner be directed to submit a supplemental report by the August 2, 2006 State Board meeting specifically addressing all of the elements directed in the January 4 decision. The report also recommended that the supplemental report include a proposal for a needs assessment to be performed in the appellant districts and the other districts involved in the litigation, along with a timetable for implementation that gives priority to the appellant districts. On motion duly seconded and carried, the report resulting from the legal committee's review was adopted by the State Board as presented by Debra Casha, chairperson, with the amendment that the Acting Commissioner submit her supplemental report by September 6, 2006.

ADJOURNMENT

On a motion duly seconded and carried the State Board of Education adjourned its July 19, 2006 public meeting at 12:40 p.m.

Lucille Davy, Acting Commissioner
Acting Secretary, NJ State Board of Education

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