

**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**

November 1, 2006

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

Secretary: Lucille E. Davy, Commissioner

PRESENT CONSTITUTING A QUORUM

Mr. Arcelio Aponte
Dr. Ronald K. Butcher
Ms. Debra Casha
Ms. Maud Dahme
Dr. Ernest Lepore
Dr. Thelma Napoleon-Smith
Mr. Edward M. Taylor

ABSENT

Rev. Frederick LaGarde, Jr.
Ms. Kathleen A. Dietz
Ms. Josephine E. Hernandez

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 November 1, 2006.

STUDENT SPEAKERS

John Blakeslee, the 2006 State Board student representative and a junior from Holmdel High School (Monmouth County), introduced the student guest speaker.

Travis Hoy, a student from Long Branch High School (Monmouth County), spoke to the State Board about the benefits from attending an Abbott high school and the positive impact of Abbott funding to his community.

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

INTRODUCTIONS

Commissioner Davy recognized Bruce Greenfield, Ocean County Superintendent of Schools, who represented the county superintendents. Mr. Greenfield has served in this position since July 2002.

Student Recognition Program

The State Board recognized David Geeter, Hunterdon Central Regional High School (Ocean County), as a part of its monthly recognition program designed to honor a student or a group of students who have made a significant contribution to school, community, family or other groups. The State Board recognized David for his outstanding accomplishments in academic programs and extracurricular activities.

On behalf of the State Board, President Hyndman congratulated David on his achievements.

APPROVAL OF MINUTES OF THE MEETINGS

On a motion duly seconded and carried, the State Board members approved the minutes of the meeting conducted on October 4, 2006 and October 18, 2006. State Board member Debra Casha requested that the minutes of the Legal Cases from the October 4, meeting reflect that she was not present in the room for the following cases:

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATES OF CARMELLA CONFESSORE BY THE STATE BOARD OF EXAMINERS, STATE BOARD DOCKET #47-05

IN THE MATTER OF THE TENURE HEARING OF DARLENE DONAHUE, SCHOOL DISTRICT OF PEMBERTON AND DARLENE DONAHUE V. BOARD OF EDUCATION OF THE TOWNSHIP OF PEMBERTON, BURLINGTON COUNTY, STATE BOARD DOCKET #25-06

IN THE MATTER OF THE NONRENEWAL OF THE CHARTER OF THE GATEWAY CHARTER SCHOOL, HUDSON COUNTY, STATE BOARD DOCKET #4-06

Ms. Casha also abstained from voting on the minutes of the October 18 meeting.

PRESIDENT'S REPORTS

November Work Session and Public Testimony Session

President Hyndman stated that the November work session will be held on November 15, 2006 at 1:00 p.m. at the Department of Education. The items for discussion will be School Funding and State Board Visits to State Operated School Districts.

President Hyndman also stated that the November public testimony session will be held on November 15, 2006 at 3:00 p.m. The topics for consideration will be the Readoption of *NJAC*

6A:26, Educational Facilities and the Readoption of NJAC 6A:26A, Comprehensive Maintenance Plans and the Readoption of NJAC 6A:11, Charter Schools.

Public Testimony On-line Registration System

President Hyndman announced that in addition to the current phone registration system for public testimony, members of the public can now register to testify before the state board using an on-line system. The on-line registration system, which will be operational for the next public testimony session will allow members of the public to register on-line to present testimony on a particular area of code under consideration by the state board. The on-line system will also allow the public to submit their comments to the state board office prior to the testimony session.

Information regarding the on-line registration system can be found on the state board section of the department's website by clicking on the "meetings" drop down box and then clicking on "public testimony" or at <http://education.state.nj.us/sboe>.

State Board Agenda Subscribers Renewal

President Hyndman stated that pursuant to NJSA 10:4-19, current subscriptions for paper or electronic copies of the public meeting agenda expire on December 31. Information regarding the subscription renewal can be found on the state board section of the department's website at (www.state.nj.us/njded/sboe/meetings). President Hyndman also stated that subscription renewals will be accepted until December 15 and that an additional reminder will be posted at the table in the back of the conference room on December 6, 2007.

National Association of State Boards of Education (NASBE) Annual Conference Report

State Board member Maud Dahme had an opportunity to attend the National Association of State Board of Education (NASBE) Conference from October 12-14, 2006 in Louisville, Kentucky. The theme of the conference was *The Changing Face of Public Education*. This past year NASBE convened two study groups: Civic Education and Preschool. State Board member Debra Casha served on the study group that considered Civic Engagement and Ethical Behavior in a Global Society. At the conference, the study group issued a report entitled, *Citizens for the 21st Century: Revitalizing the Civic Mission of Schools*. The study group on Creating High Quality Early Learning Environments also issued their report entitled, *Fulfilling the Promise of Preschool*. Further, State Board vice president Arcelio Aponte served on NASBE's Commission on Financial and Investor Literacy. The commission also issued their report entitled, *Who Will Own Our Children*. NASBE will provide each State Board member with copies of these reports. Copies may also be purchased through NASBE.

Ms. Dahme recommended that State Board members review the recommendations presented in all of the reports to inform their work as policy makers. President Hyndman requested that Ms. Casha and Mr. Aponte provide reports of their respective study groups to the State Board in the near future. State Board member Debra Casha stated that she will be making a presentation on Civic Education at the February 21, 2007 work session.

Ms. Dahme stated that for 2007, NASBE has created two new study groups: Language and Learning in Public Education, English Proficiency and Language Preservation and Models of Success: Policies and Strategies for Reconstitution and Schools in Need of Improvement. Ms.

Dahme also provided an overview of the keynote and general session speakers and the annual business meeting agenda.

Ms. Dahme further stated that she is planning a Northeast Area Conference for the Northeast area states this February in New Jersey. Ms. Dahme stated details for this conference are forthcoming.

International Education Week Resolution

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

RESOLUTION FOR INTERNATIONAL EDUCATION WEEK

WHEREAS, New Jersey students need to meet global standards of education and develop 21st century skills in order to compete and succeed in the global workplace; and

WHEREAS, the global marketplace has become a “level playing field” with no guaranteed competitive advantage for our students making the need to integrate international knowledge and skills into the core curriculum essential; and

WHEREAS, high levels of student achievement in math, science and other content areas are sought worldwide along with the ability to attain higher levels of competency in world languages to communicate effectively and form partnerships with citizens across the globe; and

WHEREAS, the New Jersey Department of Education continues to support the teaching of world languages in grades K-12, particularly those important to the global economy, such as Chinese; and

WHEREAS, this year’s international education theme is *International Education: Engaging in Global Partnerships and Opportunities*; and

WHEREAS, the New Jersey Department of Education/International Education and Resources Network (iEARN) partnership will prepare teachers in each county to integrate online project-based learning in their specific content area with schools across the globe thereby fostering partnerships worldwide; and

WHEREAS, the New Jersey Department of Education is developing a guide for integrating international content throughout the New Jersey Core Curriculum Content Standards from the elementary through the high school level; and

WHEREAS, from November 13-17, 2006 the U.S. Department of State and the U.S. Department of Education have proclaimed the seventh annual International Education Week affirming international education as critical to state and national interests; now therefore be it

RESOLVED, that the New Jersey State Board of Education hereby recognizes the importance of November 13-17, 2006 as International Education Week in New Jersey and strongly supports Governor Jon S. Corzine’s reiteration of the need for students to “learn more in better

schools” so they can prosper in the economy of the future, and “have the perspective to embrace the complexities of the evermore interconnected and complex world.”

COMMISSIONER’S REPORTS

Abbott Program Regulations

Commissioner Davy stated that she adopted program regulations for Abbott school districts on October 24, 2006 that will expire on June 30, 2007. She also stated that these regulations are very similar to the program regulations filed in previous years with the addition of rules for nepotism and ethics. Commissioner Davy further stated that the Supreme Court, in *Abbott vs. Burke* 187 NJ 191 (2006) (Abbott XV), issued an order requiring the Commissioner of Education to file Abbott fiscal regulations pursuant to the Administrative Procedures Act (APA) to be in effect for two years. Commissioner Davy stated that the Abbott fiscal regulations would be filed in the near future.

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. Education for Homeless Children and Students in State Facilities

(Division of Student Services)

- Approved for publication in the *New Jersey Register* the regulations pertaining to the readoption with amendments of the Education for Homeless Children and Students in State Facilities proposed at *NJAC* 6A:17 pursuant to *NJSA* 18A:38-1, 18A:7B-12, 18A:7B-1 et seq. and 18A:7F-1 et seq.

D. Charter Schools

(Division of Educational Programs and Assessment)

- Discussed the regulations pertaining to the proposed readoption with amendments of the Charter School regulations proposed at *NJAC* 6A:11, pursuant to *NJSA* 18A:36A-1 et seq., specifically 18A:36A-18.

E. School Ethics Commission

- Discussed the amendments of the School Ethics regulations proposed at *NJAC* 6A:28 pursuant to *NJSA* 18A:12-34.

NEW BUSINESS

There was no new business.

LEGAL CASES

On motions duly seconded and carried, decisions in the following cases were adopted by the board as presented by legal committee members Arcelio Aponte, Thelma Napoleon-Smith and Ernest P. Lepore.

CARTERET EDUCATION ASSOCIATION V. BOARD OF EDUCATION OF THE BOROUGH OF CARTERET, MIDDLESEX COUNTY AND NILKANTH PATEL, STATE BOARD DOCKET #28-06

In March 2005, the Carteret Education Association filed a petition with the Commissioner of Education alleging that the district board had violated the education laws and district policy when it approved an employment contract with its school business administrator in November 2003 which provided him with payment for unused accumulated sick leave from his previous public school employment. The Administrative Law Judge (ALJ) recommended that the Commissioner dismiss the petition for failure to comply with the 90-day filing requirement set forth in N.J.A.C. 6A:3-1.3.

The Commissioner rejected the ALJ's recommendation, concluding that the petition was filed in a timely manner under the circumstances. The Commissioner observed that the limitations period for filing a petition begins to run when a party has notice which is "sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." Kaprow v. Board of Education of Berkeley Township, 131 N.J. 572 (1993). Stressing that the district board had not fixed by resolution, as required by N.J.S.A. 18A:30-3.2, or discussed at a public meeting the credit to be accorded the business administrator for accumulated sick leave, the Commissioner concluded that the petitioner did not have notice of the existence of facts which would have imposed on it a duty to further investigate when the board approved the contract in November 2003. She found that, absent public disclosure and the requisite public action, the "adequate notice" contemplated by Kaprow arose when the petitioner discovered in January 2005 that the business administrator had been provided with such benefits in his contract. Since the petition was filed within 90 days of such notice, the Commissioner concluded that it had been filed in a timely manner, and she remanded this matter to the Office of Administrative Law for a hearing on the merits. The State Board of Education voted unanimously to affirm the decision of the Commissioner.

IN THE MATTER OF THE CENSURE OF JAMES CHIEGO PURSUANT TO N.J.S.A. 18A:12-29(c), UNION TOWNSHIP BOARD OF EDUCATION, HUNTERDON COUNTY, STATE BOARD DOCKET #29-06

The State Board of Education voted unanimously to grant the motion filed by the School Ethics Commission and the Commissioner of Education to participate in this matter.

IN THE MATTER OF THE SUSPENSION OF SHARON KIGHT FROM THE BRICK TOWNSHIP BOARD OF EDUCATION, OCEAN COUNTY, PURSUANT TO N.J.S.A. 18A:12-29(c), STATE BOARD DOCKET #10-06

The State Board of Education voted unanimously to affirm the decision of the School Ethics Commission, agreeing that the appellant, a member of the Brick Township board, had violated N.J.S.A. 18A:12-24.1(e) of the School Ethics Act when she confronted an audience member in a verbal and physical manner during a break in a board meeting. The Ethics Commission found that such aggressive conduct had the potential to compromise the district board since the appellant's actions hurt the integrity of the board and intimidated the public from coming forward and addressing the board. The State Board also unanimously affirmed the decision of the Commissioner of Education that the appropriate sanction under the circumstances was a two-month suspension from the board.

DANIEL MC HARRIS V. BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BRUNSWICK, MIDDLESEX COUNTY, STATE BOARD DOCKET #15-06

The State Board of Education voted unanimously to approve the parties' proposed settlement agreement in this matter, finding it to be in accord with the principles expressed in In re Cardonick, decided by the State Board of Education, April 6, 1983.

WINDSOR LEARNING CENTER, INC., ET AL. V. NEW JERSEY STATE DEPARTMENT OF EDUCATION, OFFICE OF COMPLIANCE, STATE BOARD DOCKET #23-06

Six private schools for the handicapped challenged a determination by the Department of Education to disallow from their approved tuition rates for the 2001-02 and 2002-03 school years legal fees incurred in defense of criminal charges filed against the schools and their former directors. Those charges had resulted in guilty pleas to theft by deception by the schools and their former directors. The Commissioner of Education dismissed the schools' petitions, agreeing with the ALJ that the legal fees at issue, which had been incurred in the unsuccessful defense of individuals and corporate entities engaged in the misuse of public funds, did not qualify as an expense incurred by an ordinarily prudent person in the administration of public funds and that such money was of no significant benefit to the students attending the schools. The State Board of Education affirmed the decision of the Commissioner. State Board member Debra Casha recused herself. State Board member Maud Dahme abstained.

In addition, legal committee member Arcelio Aponte presented the report of the legal committee, pursuant to referral by the State Board, in the following case.

BOARD OF EDUCATION OF THE BOROUGH OF ENGLEWOOD CLIFFS, BERGEN COUNTY V. BOARD OF EDUCATION OF THE CITY OF ENGLEWOOD, BERGEN COUNTY V. BOARD OF EDUCATION OF THE BOROUGH OF TENAFLY, BERGEN COUNTY, STATE BOARD DOCKET #16-03 and 19-05 (consolidated)

Based on its review of reports submitted by the Commissioner of Education on November 16, 2005, May 17, 2006 and August 2, 2006, the legal committee recommended that the State Board accept the reports but defer further action until after the November 2006 report was submitted by the Commissioner. In coming to this conclusion, the members of the legal committee agreed that there was a need for progressive benchmarks to assure correction of the racial imbalance in the composite student body at Dwight Morrow High School and that progress towards correction of the racial imbalance required merger of the Academies@Englewood with Dwight Morrow. Upon review of the reports, it appeared to the legal committee members that the focus had

remained on process rather than outcomes and that the Academies and Dwight Morrow were still functioning as separate schools. The legal committee was also are concerned about the number of Englewood students attending the Academies and whether adequate measures had been taken to increase their numbers by closing the “achievement gap.” However, focusing on the goals specified in the Commissioner’s August report, including a meeting scheduled for September to develop a transition plan to unify the Academies with the high school, the members of the legal committee concluded that the best course for the State Board was to consider the status of the situation after receiving the Commissioner’s November report. The legal committee recommended that, based on the data in the November report, the State Board should ascertain how many of the goals specified in the August report had been achieved and assess the status of unification of the Academies with the high school, as well as whether students from Englewood were being afforded a sufficient opportunity to attend the Academies.

In recommending this approach, the legal committee stressed that the activities specified in the August report represented an opportunity to transcend focusing on process and to focus instead on measuring progress toward an outcome that would fulfill with respect to the situation at Dwight Morrow the Constitution’s mandate regarding racial balance in the public schools. It also stressed that, as the State Board had repeatedly stated in its decisions, the measures that must be taken to reduce the racial imbalance at Dwight Morrow must ultimately achieve a balance in the composite student body at Dwight Morrow that would be acceptable under the Appellate Division’s decision in Englewood Cliffs v. Englewood, 257 N.J. Super. 413 (App. Div. 1992), aff’d, 132 N.J. 327 (1993), cert. denied, 510 U.S. 991, 114 S. Ct. 547, 126 L.Ed.2d 449 (1993). In this respect, the legal committee reiterated that benchmarks for measuring progress toward achieving a racial balance that would be acceptable under the Appellate Division’s decision must be established, that they must be applied so as to assess the progress being made toward achieving that balance, and that if progress toward that goal is not adequate, program adjustments must be made so as to achieve racial balance in a reasonable period of time.

ADJOURNMENT

On a motion duly seconded and carried the State Board of Education adjourned its November 1, 2006 public meeting at 12:30 p.m.

Lucille E. Davy, Commissioner
Secretary, State Board of Education