

**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**

**January 9, 2008**

**Presiding:** Arcelio Aponte, Vice President

**Secretary:** Lucille E. Davy, Commissioner

**PRESENT CONSTITUTING A QUORUM**

Ms. Debra Casha  
Ms. Kathleen A. Dietz  
Ms. Edithe Fulton  
Ms. Josephine E. Hernandez  
Dr. Ernest Lepore

**ABSENT**

Rev. Frederick LaGarde, Jr.  
Dr. Ronald K. Butcher  
Mr. Kenneth Parker

**CONVENING**

Arcelio Aponte, vice 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 January 9, 2008.

**ADJOURN TO EXECUTIVE SESSION**

Vice President Aponte 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 issues.

The State Board immediately adjourned to executive session.

### **RECONVENING**

Vice President Aponte 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.

### **SWEARING-IN OF STATE BOARD MEMBER**

Michelle Miller, AAG, administered the oath of office to Dr. Dorothy A. Strickland as the newest member of the State Board of Education. Dr. Strickland is the Samuel DeWitt Proctor Chair in Education Professor of Residency at Rutgers University Graduate School of Education. She was formerly the Arthur I. Gates Professor of Education at Teachers College, Columbia University and the State of NJ Professor of Reading.

Dr. Strickland expressed delight at her appointment to the State Board. She stated she is aware of the direct link policy has in today's classroom and she is looking forward to participating in establishing, developing and strengthening those links.

State Board members and Commissioner of Education Lucille Davy congratulated Dr. Strickland on her appointment and welcomed her to the State Board of Education.

### **STUDENT SPEAKERS**

Kayla Stoll, the 2007 State Board student representative and a junior from High Point Regional High School (Sussex County) welcomed Annie Valentine, a senior at Westfield High School (Union County). Ms. Valentine spoke about the importance of the Student Assistance Counselors and asked state board members to support creating these positions in all high schools.

Ms. Stoll also introduced Michaela Brown, an eighth grade student from the Stewartville Middle School (Warren County). Ms. Brown spoke to the State Board about the benefits of technology in schools.

### **INTRODUCTIONS**

Commissioner Davy recognized Robert Osak, Hudson County Superintendent of Schools, who represented the county superintendents. Mr. Osak has served in this position since 1996.

### **Student Recognition Program**

The State Board recognized Eric Delgado, Bayonne High School (Hudson 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 Eric for his outstanding academic and extra curricular achievements.

On behalf of the State Board, Vice President Aponte congratulated Eric 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 public meetings conducted on December 5, 2007 and December 19, 2007. State Board members Ernest Lepore and Debra Casha abstained from voting on the minutes of the work session held on December 19.

### **PRESIDENT'S REPORTS**

#### **School Boards Recognition Month Resolution**

State Board member Kathleen Dietz read a resolution to recognize January as School Board Recognition Month. On a motion duly seconded and carried, the State Board approved the following resolution:

#### **RESOLUTION FOR SCHOOL BOARD RECOGNITION MONTH**

**WHEREAS**, New Jersey's public schools serve 1.4 million children in pre-kindergarten through 12th grade; and

**WHEREAS**, the Core Curriculum Content Standards instituted by the New Jersey State Board of Education set rigorous expectations of academic achievement for all New Jersey students; and

**WHEREAS**, New Jersey's 4,800 non-partisan local board of education members work tirelessly and without remuneration to meet those standards by dedicating their time to the oversight of school district operations, sound finances, comprehensive policies, curriculum and staffing; and

**WHEREAS**, the efforts of local boards of education have contributed to New Jersey's status as a leader in academic quality, including benchmarks of success such as high school graduation rates, National Assessment of Educational Progress scores, teacher-to-student ratios, and college preparation through advanced-placement offerings and SAT assessments; and

**WHEREAS**, the National School Boards Association and the New Jersey School Boards Association have declared January 2008 to be School Board Recognition Month; now, therefore, be it

**RESOLVED**, that the New Jersey State Board of Education recognizes the contributions of our state's local boards of education to the academic success of its public school students and expresses its sincerest appreciation to local school board members for their focus on the well-being and achievement of children throughout the state; and be it further

**RESOLVED**, that the New Jersey State Board of Education encourages qualified New Jersey citizens to consider serving as members on their local boards of education.

Kevin Ciak, president, New Jersey School Boards Association, accepted the resolution on behalf of the members of local school boards statewide.

## **COMMISSIONER'S REPORTS**

### **Monitoring of School Districts**

Commissioner Davy presented an update on the status of monitoring school districts via the Quality Single Accountability Continuum (QSAC). She stated that 126 school districts have completed self assessments. The staff in the county offices of education will be reviewing the results. In addition, amendments to the QSAC regulations at N.J.A.C. 6A:30 are currently being promulgated through the administrative code adoption process.

### **New School Funding Formula**

Commissioner Davy informed the State Board that the new school funding formula was adopted by the New Jersey Legislature on Monday, January 7, 2008. She stated the new formula would provide for a single, unified formula to govern the distribution of state aid to school districts throughout the state. The formula also includes significant expansion of pre-school aid for at-risk children. Sessions will be conducted with superintendents through the county roundtables so the superintendents have sufficient time to plan their budgets.

### **Quality Counts Survey 2008**

Commissioner Davy announced to the State Board that New Jersey scored higher in the Quality Counts Survey 2008, which annually compares states' efforts to improve education in various areas.

### **Partnership for 21<sup>st</sup> Century Skills**

Jay Doolan, Assistant Commissioner, Division of Educational Standards and Programs, Janis Jensen, Director, Office of Academic Standards and Sandra Alberti, Director, Office of Math and Science Education provided information on this state leadership initiative. Dr. Doolan stated that the Department is applying to become recognized as a 21<sup>st</sup> Century Skills Leadership state. This initiative is designed to identify the 21<sup>st</sup> century skills needed for today's students. Collaborative partnerships among educators, business, government and community leaders will be established to meet the needs identified. The desired outcome is for New Jersey graduates to be global thinkers, workers and leaders.

Dr. Doolan further stated that once completed, the application will be submitted to the Governor, who will then submit it on behalf of the state. Dr. Doolan and his staff plan to create an awareness campaign of this initiative for parents, students, educators and community.

## **ITEMS FOR CONSIDERATION:**

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

**A. Appointments**

- Pursuant to *N.J.S.A.* 18A:4-35, approved the appointment of Janis M. Jensen as the Director, Office of Academic Standards.

**B. Core Curriculum Content Standards**

- Adopted the resolution to revise the Core Curriculum Content Standards for Language Arts Literacy and Mathematics pursuant to *NJAC* 6A:8.

**C. Bilingual Education**

- Discussed amendments to the regulations pertaining to Bilingual Education pursuant to *N.J.S.A.* 18A:35- 3 and Title III of No Child Left Behind Act of 2001.

**D. Special Review Assessment (SRA) paper and Resolution**

- Discussed amendments to the regulations pertaining to the Special Review Assessment pursuant to *NJAC* 6A:8-4.1.

**NEW BUSINESS**

Vice President Aponte announced this was the only meeting in January. In February, the State Board will resume its regular meeting schedule. He also announced that Dr. Strickland replaces Dr. Arnold Hyndman who will be invited to the February 6 meeting to receive acknowledgement for his service to the State Board.

**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, Edithe Fulton, and Josephine E. Hernandez, chairperson.

A.M.S., on behalf of minor child, A.D.S. V. BOARD OF EDUCATION OF THE CITY OF MARGATE, ATLANTIC COUNTY, AND BOARD OF EDUCATION OF THE TOWNSHIP OF JACKSON, OCEAN COUNTY, STATE BOARD DOCKET #26-07

On September 7, 2007 the Commissioner of Education issued a decision holding that petitioner-respondent A.M.S. was domiciled in the City of Margate, thus entitling his son, A.D.S., to a free public education in the Margate School District. Appellant, the Board of Education of the City of Margate, is challenging the Commissioner's determination that it is the school district responsible for providing A.M.S.'s son a free public education, contending that a school district in Pennsylvania where A.D.S.'s grandparents reside is the school district responsible for providing a free public education to A.D.S.

In her decision, the Commissioner concluded that A.M.S., an enlisted member of the U.S. military, established his domicile in Margate, as it is his "home base," notwithstanding that his parents are providing him an apartment there free of rent and other costs and that he is rarely

physically present at that location because of his military assignments elsewhere. The Commissioner further concluded that A.M.S.'s arrangement with A.D.S.'s grandparents, wherein they have provided care for him since his mother's death due to the physical absence of A.M.S. while on duty with the military, does not establish the grandparent's residence in Pennsylvania as A.D.S.'s domicile and the school district responsible for providing him a free public education.

After the appeal was filed by the Board of Education of the City of Margate A.M.S., filed a motion to supplement the record on appeal with a letter dated October 15, 2007 from the New Jersey Department of Human Services, Division of Developmental Disabilities (DDD) to A.S., a grandparent of A.D.S. The letter is purportedly an offer of a long-term placement of A.D.S. by DDD in Bancroft Neurohealth, which the letter states is a placement that will meet A.D.S.'s habilitation needs.

A.M.S. argues that the document is relevant to a determination of the appeal and should be made a part of the record on appeal. A.M.S. asserts that, because the State of New Jersey will be funding the residential component of A.D.S.'s placement in Bancroft Neurohealth, his grandparents' primary connection to the placement has been severed, thus demonstrating that Margate, and not the Pennsylvania school district where A.D.S.'s grandparents reside, was correctly determined by the Commissioner to be the school district responsible for providing a free public education to A.M.S. In addition, A.M.S. argues that, if the decision of the Commissioner is not upheld by the State Board, there may be no school district available to pay for the educational component of A.D.S.'s placement at Bancroft.

The Board of Education of the City of Margate opposes the motion, arguing that a determination of DDD as to eligibility for DDD services is based on different criteria than determination of the school district responsible to provide a student a free public education and thus has no relevance when reviewing the decision on appeal. Margate further argues that A.M.S. has failed to include documentation that the offer of placement in the letter was accepted. Absent documentation of acceptance of the placement, it is asserted that a conclusion that A.M.S.'s grandparents no longer have any financial responsibility for his care cannot be made based on the letter proffered for inclusion in the record on appeal. Finally, Margate asserts that A.M.S. has failed to support his assertion that the school district in Pennsylvania where A.D.S.'s grandparents reside will not fund the educational component of his placement in Bancroft Neurohealth if it is determined responsible to educate A.D.S.

After a thorough review of the papers filed on the motion, the State Board concludes that the proposed exhibit is not material to the issue on appeal and denies the motion to supplement the record. Debra Casha, Kathleen Dietz and Dorothy Strickland abstained.

VICTOR EISENBERG V. BOARD OF EDUCATION OF THE BOROUGH OF FORT LEE,  
BERGEN COUNTY, STATE BOARD DOCKET #31-07

The petitioner in this matter, Victor Eisenberg was employed as a teacher by the respondent, Board of Education of the Borough of Fort Lee, commencing in the 1998-99 school year. By letter dated April 3, 2001, the Superintendent notified the petitioner that the Board had determined not to renew his employment for the 2001-02 school year. On September 29, 2001, the petitioner filed a petition of appeal with the Commissioner challenging the Board's action. Among other assertions, Eisenberg alleged in his petition that the school's former principal had told another teacher that he had received instructions from the Superintendent to make sure that he "papered" Eisenberg's personnel file to justify the decision not to renew his employment.

In addition to filing his petition with the Commissioner, Eisenberg also filed a civil complaint in Superior Court against the Board and its administrators claiming defamation, breach of contract, breach of covenant of good faith and fair dealing, and age and religious discrimination. The petitioner sought reinstatement to his teaching position and damages. In an oral decision rendered on July 16, 2004, the Hon. Sybil Moses, A.J.S.C. granted the Board's motion for summary judgment and dismissed the complaint. On November 3, 2005, the Appellate Division affirmed Judge Moses' decision and remanded the matter to the Office of Administrative Law ("OAL").

During the proceedings in OAL, the Board filed a motion to limit the scope of the proceeding, arguing that the only remaining issue was whether the Board had acted properly in not renewing the petitioner's employment, and, if not, whether its action was arbitrary and capricious. On October 17, 2007, the Administrative Law Judge recommended granting the motion, finding that the doctrines of res judicata and collateral estoppel precluded the petitioner from relitigating his claims that he had been denied due process and that his file had been "papered" or otherwise altered. The ALJ found that those claims had been determined by Judge Moses in her decision. Therefore, the ALJ concluded that the only remaining issue in this matter was whether the Board had followed the proper procedure in not renewing the petitioner's employment and whether the Board had acted in an arbitrary and capricious manner in taking the action that it did.

The petitioner requested that the Commissioner review the ALJ's interlocutory decision. On November 15, 2007, the Commissioner granted the petitioner's request. Upon review, the Commissioner agreed with the ALJ that the petitioner's due process claim should be removed from consideration at hearing as a result of Judge Moses' decision, but she rejected the ALJ's determination that the petitioner's claim that his file had been "papered" or otherwise altered should also be removed from consideration. The Commissioner agreed with the petitioner that the latter issue was not directly resolved in the Superior Court action, as the Judge in that matter determined that the issue with respect to "papering" petitioner's file should be determined by the Commissioner.

The Board then filed a motion with the State Board for leave to appeal the Commissioner's interlocutory decision, reiterating its contention that res judicata and collateral estoppel precluded the petitioner from relitigating his claim that the Board had altered his personnel file. The petitioner filed a brief in opposition to the motion.

Upon review of the briefs and appendices filed by the parties, including the transcript of Judge Moses' oral decision, the State Board fully agrees with the Commissioner that the petitioner's claim that his personnel file was "papered" was not determined by Judge Moses and should not be removed from consideration in these proceedings. Accordingly, the State Board affirms the Commissioner's interlocutory decision of November 15, 2007 for the reasons expressed therein. Dorothy Strickland abstained.

**ADJOURNMENT**

On a motion duly seconded and carried the State Board of Education adjourned its January 9, 2008 public meeting at 1:20 p.m.

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