

**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**

August 1, 2007

Presiding: Ronald K. Butcher, President

Secretary: Lucille E. Davy, Commissioner

PRESENT CONSTITUTING A QUORUM

Mr. Arcelio Aponte
Ms. Debra Casha
Ms. Maud Dahme
Ms. Josephine E. Hernandez
Dr. Arnold G. Hyndman
Dr. Ernest Lepore
Dr. Thelma Napoleon-Smith

ABSENT

Ms. Kathleen A. Dietz
Ms. Edithe Fulton
Rev. Frederick LaGarde, Jr.
Mr. Kenneth Parker

CONVENING

Ronald K. Butcher, 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 August 1, 2007.

ADJOURN TO EXECUTIVE SESSION

President Butcher 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. The deputy attorney general provided an update on all legal cases of which the State Board has been named as a defendant specifically *Gillespie vs. Department of Education and the State Board of Education, The New Jersey Protection and Advocacy, Inc., the Education Law Center, the Statewide Parent Advocacy Network of New Jersey and the ARC of New Jersey vs. State Board of Education and Kelly and Michael Grieco, on behalf of Vincenzo Grieco and others similarly situated, and Nat'l Down Syndrome Congress v. N.J. Department of Education, N.J. Board of Education, et als., Federal District Court, Newark, Civil Action No. 06-04077* and on matters covered by the attorney-client privilege.

RECONVENING

President Butcher 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.

STUDENT SPEAKERS

Kayla Stoll, the 2007 State Board student representative and a junior from High Point Regional High School (Sussex County), introduced the student guest speaker.

Michaela Brown, an outgoing eighth grader from Stewartville Middle School (Warren County), spoke to the State Board about the transition from middle school to high school.

On behalf of the State Board, President Butcher thanked Michaela for her presentation.

INTRODUCTIONS

Commissioner Davy recognized Thomas Gross, Warren Interim County Superintendent of Schools, who represented the county superintendents. Mr. Gross has served in this position since April 2007.

President Butcher announced the suspension of the Student Recognition program for the summer. He stated that the Student Recognition Program would resume in the fall.

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 July 18, 2007. State Board members Debra Casha and Thelma Napoleon-Smith abstained from voting on the minutes of the meeting conducted on July 18, 2007.

PRESIDENT'S REPORTS

Resolution Honoring Arnold G. Hyndman

On behalf of the State Board, President Butcher presented Arnold Hyndman with a resolution and a ceremonial gavel honoring him for his years of service as State Board President. Dr. Hyndman has been a State Board member for 8 years and served four terms as President.

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

RESOLUTION TO HONOR ARNOLD G. HYNDMAN FOR SERVICE AS STATE BOARD OF EDUCATION PRESIDENT

WHEREAS, Dr. Arnold G. Hyndman has served with distinction and integrity as President of the New Jersey State Board of Education from July 2003 to July 2007; and

WHEREAS, during his tenure as State Board President, Dr. Hyndman increased the level of efficiency in State Board operations and resources by spearheading the board's transition to an electronically streamlined system of service and communication; and

WHEREAS, Dr. Hyndman consistently supported best practices and innovation in education, in part, by encouraging policy that provided multiple opportunities for collaboration and sharing among education professionals to enable them to implement proven methods of success in their classrooms and schools; and

WHEREAS, Dr. Hyndman exemplified his unwavering commitment to equal access to high quality educational experiences by advocating for, and working to, provide unprecedented opportunities to enable all eligible students statewide to be considered for the office of student representative of the State Board; and

WHEREAS, Dr. Hyndman also demonstrated his steadfast belief that all children can achieve through his insistence on the provision of comprehensive instructional programs and opportunities for all students regardless of residence or economic status; and

WHEREAS, the members of the State Board of Education appreciate Dr. Hyndman's efforts to mentor and fully engage new and current board members to increase the collective understanding of education policy through the encouragement of participation in professional development opportunities and meaningful interaction and dialogue with the education community; now therefore be it,

RESOLVED, that the New Jersey State Board of Education and the Commissioner of Education applaud Dr. Arnold G. Hyndman for his intelligent and progressive leadership guided by his sincere belief in the board's ability to enact education policy, thereby effectuating necessary changes and supporting successful practices in New Jersey's public education system; and be it further

RESOLVED, that the New Jersey State Board of Education expresses sincere gratitude for his continued work on behalf of all the children of New Jersey.

August Work Session and Public Testimony Session

President Butcher stated that the August work session will be held on August 15, 2007 at 1:00 p.m. at the Department of Education. He stated that the items for discussion will be the results of the external monitoring (NJQSAC) of the State Operated and Level II School Districts and a resolution to initiate the transition to local control beginning with the governance and financial functions of the school district of Jersey City.

President Butcher also stated that the August public testimony session will be held on August 15, 2007 at 3:00 p.m. The topics for consideration will be the amendments to *NJAC 6A:9*, Professional Licensure and Standards and the Praxis II Resolutions.

Committee Announcements

President Butcher announced the following State Board committees and the respective chairs for 2007-2008. The full committee list is as follows:

Legal Committee

Josephine Hernandez, chair
Arcelio Aponte
Edithe Fulton
Thelma Napoleon-Smith

Urban Education Committee

Arnold Hyndman, co-chair
Thelma Napoleon-Smith, co-chair
Josephine Hernandez
Ernest Lepore

Retreat/Strategic Plan Committee

Ernest Lepore, chair
Debra Casha
Kathleen Dietz
Arnold Hyndman
Kenneth Parker

International Education Committee

Kathleen Dietz, chair

President Butcher also announced the State Board liaisons:

Student Health and Safety Issues Liaison

Debra Casha

Rural/Migrant Liaison

Maud Dahme

County Vocational Schools Liaison

Debra Casha
Josephine Hernandez

Governor's Liaison

Ronald Butcher
Arcelio Aponte
Kenneth Parker

Legislative Liaison

Maud Dahme
Edithe Fulton

Student Discipline Liaison

To be named

State Action for Educational Leadership Project (SAELP) Liaisons

Ronald Butcher
Maud Dahme

President Butcher further stated that the members of the International Education committee will be announced at a later date and that other committees may be announced in the future. President Butcher also stated that during future State Board meetings, the chairperson of each committee would be given the opportunity to provide an update on the work of their committee.

Visit to State Operated School Districts

State Board President Ronald Butcher facilitated a discussion among the State Board members regarding their interest in visiting the state operated school districts of Newark and Paterson. State Board members agreed that this would be a topic for discussion at the August 15 work session and that the dates for those visits should be established at that meeting.

Migrant Education Program Visit

State Board members Maud Dahme and Kenneth Parker along with Deputy Commissioner Willa Spicer visited the Migrant Education Program in Winslow School #6 in Sicklerville, NJ in July. Ms. Dahme stated that the children designed the placemats left on the conference room table for the State Board members.

Legal Committee Report

Josephine Hernandez, chair, Legal Committee provided a report on the work of the legal committee over the past year. Ms. Hernandez stated that during the period from September 1, 2006 through August 1, 2007, 40 appeals were filed with the State Board of Education from decisions of the Commissioner, the State Board of Examiners and the School Ethics Commission. The State Board issued 57 decisions during this period. The State Board affirmed the Commissioner 23 times, the State Board of Examiners three times, and the School Ethics Commission twice. The State Board reversed the Commissioner in four cases and remanded one case to the Commissioner. Ms. Hernandez also stated that the State Board reversed the State Board of Examiners once, remanded one case to the Board of Examiners, and modified the penalty imposed by the Board of Examiners in two cases. Ms. Hernandez further stated that the State Board remanded one case to the School Ethics Commission. It dismissed three appeals, approved two settlements, decided one motion for clarification and reconsideration, granted one motion to supplement the record on appeal while denying four such motions, and granted four motions to participate. Ms. Hernandez stated that the State Board also denied a motion to compel production of documents, a motion to take official notice of a document, and a motion for alternative handling of the record.

Ms. Hernandez also stated that the Legal Committee issued six written reports, which were mailed to the parties for exceptions. It reviewed ten appeals for procedural deficiencies and considered three requests to place appeals in abeyance. The President of the State Board and/or the Chairperson of the Legal Committee issued two emergent relief decisions on behalf of the Board.

Ms. Hernandez further stated that 13 decisions issued by the State Board were appealed to the Appellate Division of Superior Court, and the Court issued 12 decisions in cases which had been appealed from State Board decisions during the prior year. In those 12 cases, the Court affirmed the decision issued by the State Board 11 times and dismissed one appeal.

COMMISSIONER'S REPORTS

New Jersey Quality Single Accountability Continuum (NJQSAC)

Commissioner Davy stated that the department released the results of the external evaluations of the three State Operated School Districts and the six school districts in Level II monitoring status. These school districts were monitored through the New Jersey Quality Single Accountability Continuum (QSAC). She also stated that she adopted amendments to N.J.A.C. 6A:30, Evaluation of the Performance of School Districts, which delineates the process by which school districts may appeal the Commissioner's recommendations for placement on the performance continuum. She further stated that the amended regulations also include provisions allowing public school districts to seek reconsideration of initial placement decisions of the Commissioner prior to appealing to the State Board of Education and the procedures for filing and processing such requests. She stated that she would be recommending the return of the Governance and Fiscal functions of the Jersey City School District to the State Board at an upcoming State Board meeting.

Commissioner Davy stated that the six school districts designated by No Child Left Behind Act (NCLB) as districts in need of improvement (DINI) have also been evaluated through the QSAC monitoring process. However, the results are not yet available but, would be announced at a future date. She also stated that the department is not under the same stringent timeline for these school districts regarding the placement on the performance continuum as is required by the statute for the State Operated School Districts. She further stated that results of the external review of the Atlantic City school district are not yet completed and that additional clarification is required by the external evaluation team before the recommendation for placement on the performance continuum can be announced.

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 districts for certification.

***C. State Board Rulemaking Process**

- Adopted the regulations pertaining to the State Board Rulemaking Process proposed at *NJAC 6A:6* pursuant to *NJSA 18A:4-15*.

***D. State Board of Examiners**

- Adopted the resolution approving the appointments/reappointments of the State Board of Examiners pursuant to *NJSA 18A:6-34* and *35*.

**RESOLUTION
STATE BOARD OF EXAMINERS**

WHEREAS, pursuant to N.J.S.A. 18A:6-38, the State Board of Examiners is responsible for issuing, revoking and suspending educational certificates under rules prescribed by the State Board of Education; and

WHEREAS, pursuant to N.J.S.A. 18A:6-34, members of the State Board of Examiners are appointed by the Commissioner of Education with the approval of the State Board of Education; and

WHEREAS, the Commissioner, after consulting with members of the education community, has recommended the appointment of eight individuals to the Board; and

WHEREAS, the persons whom the Commissioner recommended have established reputations for distinguished service; now, therefore, be it

RESOLVED, that the State Board of Education hereby approves the reappointment of the following persons to a two-year term on the State Board of Examiners:

Jerome Bohnert
School Business Administrator
Paramus School District

Michael Kruczek
Teacher
Phillipsburg School District

Dr. Mary Jane McNally
Library Media Specialist
Bernards Township School District

Dr. Christopher Nagy
High School Principal
Upper Freehold Regional School District

Peter Tirri
Teacher
Paterson School District

Barry Worman
County Superintendent of Schools
Sussex County

BE IT FURTHER RESOLVED, that the State Board of Education hereby approves the nomination of the following persons to serve a two-year term on the State Board of Examiners:

Dr. Carlos Hernández
State College President
New Jersey City University

Dr. Patricia McGeehan
Superintendent – Type I School District
Bayonne School District

E. Praxis II resolution

- Discussed the resolution to raise the qualifying scores on certain Praxis II Subject Assessments and Specialty Area tests for specified disciplines, pursuant to *NJAC* 6A:9-8.1.

**A RESOLUTION
ESTABLISHING REVISED QUALIFYING SCORES FOR CERTAIN PRAXIS II TESTS**

WHEREAS, the State Board of Education has required that teacher certification candidates pass tests in specified disciplines in accordance with N.J.A.C. 6A:9-8.1, effective January 20, 2004; and

WHEREAS, the Educational Testing Service (ETS) has developed The Praxis Series, Professional Assessments for Beginning Teachers, which includes Praxis II: Subject Assessment and Specialty Area tests to assess content knowledge; and

WHEREAS, the Department of Education seeks to strengthen test standards in selected certification areas; and

WHEREAS, the Department of Education has conducted standard-setting studies to determine the validity of and the theoretically appropriate qualifying scores for those Praxis II Subject Assessments and Specialty Area tests and has established committees to review the results of the standard-setting studies; and

WHEREAS, the Department of Education has determined that the Praxis II Subject Assessment and Specialty Area tests are valid and that the recommended increases in qualifying scores are fair and appropriate for beginning New Jersey teachers; and

WHEREAS, the Department of Education will annually evaluate the impact of qualifying scores on the available pool of teachers and report same to the State Board of Education; now therefore be it

RESOLVED, that the State Board of Education hereby supports the department's selection of the Praxis II Subject Assessment and Specialty Area tests; and be it further

RESOLVED, that the State Board of Education hereby acknowledges and accepts the department's establishment of the following qualifying scores effective December 1, 2007; and be it further

RESOLVED, that the Department will accept previous qualifying scores for these tests if the tests were taken no earlier than November 30, 2005:

Art: Content Knowledge (CK)	159
English Lang, Lit and Comp: CK	162
Family and Consumer Sciences: CK	590
French: CK	156
Marketing Education: CK	630
Mathematics: CK	141
Music: CK	155
Social Studies: CK	160
Spanish: CK	159
Speech Arts and Dramatics: CK	620

F Praxis II Resolution

- Discussed the resolution to adopt new tests and the establishment of the initial qualifying scores for the Praxis II tests to be used to obtain the Preschool through Grade Three endorsement pursuant to *NJAC 6A:9-11.1(a)4* and the vocational-technical education endorsement pursuant to *NJAC 6A:9-11.2(c)* and the adoption of newly revised tests and those qualifying scores, pursuant to *NJAC 6A:9*.

A RESOLUTION

**ADOPTING A NEW PRAXIS II TEST FOR EARLY CHILDHOOD EDUCATION,
ADOPTING REVISED PRAXIS II TESTS AND QUALIFYING SCORES, AND
ADOPTING NEW TESTS AND QUALIFYING SCORES FOR VOCATIONAL-
TECHNICAL EDUCATION ENDORSEMENTS**

WHEREAS, the State Board of Education has required that teacher certification candidates pass tests in specified disciplines in accordance with N.J.A.C. 6A:9-8.1, effective January 20, 2004; and

WHEREAS, the State Board of Education has required a test for the Preschool through Grade Three endorsement in accordance with N.J.A.C. 6A:9-11.1; and

WHEREAS, the State Board of Education approves the department's selection of the Early Childhood: Content Knowledge Area test for the Preschool through Grade Three endorsement and the establishment of an initial qualifying score; and

WHEREAS, the department has conducted a standard-setting study to determine the validity of and the theoretically appropriate qualifying score for the Early Childhood: Content Knowledge Area test and has established a committee to review the results of the standard-setting study; and

WHEREAS, the Educational Testing Service (ETS) has recently revised a number of older Praxis II tests that the department has used; and

WHEREAS, the department has conducted standard-setting studies to determine the validity of and the theoretically appropriate qualifying scores for those Praxis II Subject Assessments and Specialty Area tests and has established committees to review the results of the standard-setting studies; and

WHEREAS, the State Board of Education has required a test for the vocational – technical education endorsement in accordance with N.J.A.C. 6A:9-11.2; and

WHEREAS, the State Board of Education approves the department’s selection of the Praxis I: Pre-Professional Skills tests: Reading, Writing and Math for the vocational – technical education endorsement and the establishment of initial qualifying scores; and

WHEREAS, the department has conducted standard-setting studies to determine the validity of and the theoretically appropriate qualifying scores for those Praxis I Pre-Professional Skills tests and has established committees to review the results of the standard-setting studies; and

WHEREAS, the Department of Education will annually evaluate the impact of qualifying scores on the available pool of teachers and report same to the State Board of Education; now therefore be it

RESOLVED, that the State Board of Education hereby supports the department’s selection of the Praxis I: Pre-Professional Skills tests and Praxis II Subject Assessment tests; and be it further

RESOLVED, that the State Board of Education hereby acknowledges and accepts the department’s establishment of the following qualifying scores effective December 1, 2007:

Biology: Content Knowledge (CK)	152
Chemistry: CK	152
Early Childhood: CK	159
General Science: CK	152
Earth Science: CK	153
Physics: CK	141
PPST: Reading	176
PPST: Writing	174
PPST: Math	176

***G Special Education Advisory Council**

- Adopted the resolution approving the reappointments to the Special Education Advisory Council pursuant to *NJSA* 18A:46-2 and *P.L.* 94-142.

**RESOLUTION
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 professional personnel and further provides that the council members shall serve without remuneration; and

WHEREAS, the reauthorized Individuals with Disabilities Education Improvement Act (IDEA) of 2004 requires 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 reappointed to the State Special Education Advisory Council for a two-year term effective August 1, 2007. Dr. Lerner has been involved in special education for more than 20 years as a school psychologist and administrator. He is currently the Assistant Superintendent of the Bergen County Technical Schools and Special Services School District. 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 August 1, 2007. Dr. Maricle has been involved in education for more than 25 years as a teacher, learning consultant, special education coordinator, and administrator. She is currently a Principal in the Florham Park School District. She has served as Council Chairperson for the last two years; 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 August 1, 2007. Ms. Fernandez is the parent of a student with a disability. She brings to the Council several years of experience with the Statewide Parent Advocacy Network (SPAN) where she was formerly a resource parent and Director of SPAN's Parent Training and Information Center for Special Education; and be it further

RESOLVED, that the Commissioner recommends that Ms. Melinda Jennis be reappointed to the State Special Education Advisory Council for a two-year term effective August 1, 2007. Ms. Jennis is also the parent of a student with a disability. She is currently President of Pathways for Exceptional Children. Pathways began as a local parent group known as the Montville Parents of Exceptional Children and has grown into a statewide organization that advocates for educational and social reform for children with disabilities; and be it further

RESOLVED, that the Commissioner recommends that Ms. Kathleen Mullery be reappointed to the State Special Education Advisory Council for a two-year term effective August 1, 2007. Ms. Mullery is also a parent member who brings special education advocacy experience to the Council. She is currently Associate Executive Director of the Association for Retarded Citizens (ARC) of Monmouth County.

NEW BUSINESS

State Board member Maud Dahme stated that she would not continue to serve as a member of the State Board beyond the October 3, 2007 monthly public 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 Arcelio Aponte, Ernest P. Lepore, Thelma Napoleon-Smith, and Josephine E. Hernandez, chairperson.

TATIANA CHARAPOVA V. BOARD OF EDUCATION OF THE TOWNSHIP OF EDISON,
MIDDLESEX COUNTY, STATE BOARD DOCKET #30-06

The petitioner, a non-tenured teacher, filed a petition with the Commissioner of Education in August 2005 challenging the nonrenewal of her employment by the district board for the 2005-06 school year. The petitioner claimed that the district board had discriminated against her on the basis of age and national origin. The Commissioner rejected the conclusion of the Administrative Law Judge (ALJ) that the petition was not filed in a timely manner pursuant to N.J.A.C. 6A:3-1.3, concluding that, notwithstanding the petitioner's receipt of a nonrenewal letter sent to all non-tenured staff on April 19, 2005, the earliest she could have made allegations of discrimination was in May 2005, when she became aware that similarly situated staff members were being recalled to employment while she was not. Since the petitioner had filed her petition within 90 days of becoming aware of such information, the Commissioner found the petition to be timely, and she remanded this matter to the Office of Administrative Law for proceedings on the petitioner's claim.

The State Board of Education voted unanimously to reverse the decision of the Commissioner and dismiss the petition, concluding that the 90-day filing period began to run when the petitioner received notice from the district board on April 19, 2005 that she was not being offered an employment contract for the 2005-06 school year. Consequently, her petition was not filed in a timely manner. Observing that the 90-day period for filing a petition commences when a petitioner learns of facts that would enable her to file a timely claim, the State Board concluded that the April 19 letter triggered the 90-day period by providing the petitioner with notice that she would not be offered employment for the following school year. The State Board stressed that the petitioner was fully aware of information which she believed demonstrated age and national origin discrimination at the time she received such notice and that her claim was based on allegations of discriminatory treatment which had occurred prior to her receipt of that letter.

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

As a result of its decision on June 6, 2007 to grant the appellant's motion to supplement the record, the State Board of Education remanded this matter to the School Ethics Commission for any further proceedings which it deemed necessary in order to determine in the first instance whether, on the basis of the record as supplemented, the appellant had "take[n] any private action that may compromise the board" in violation of N.J.S.A. 18A:12-24.1(e) of the School Ethics Act, and, if so, to recommend an appropriate sanction to the Commissioner of Education. In light of its determination, the State Board set aside the censure imposed by the Commissioner pending a determination on remand of whether the appellant had violated the School Ethics Act and, if so, the appropriate sanction. State Board member Maud Dahme recused herself.

THE DERON SCHOOL OF NEW JERSEY V. NEW JERSEY STATE DEPARTMENT OF
EDUCATION, OFFICE OF COMPLIANCE, STATE BOARD DOCKET #9-07

The appellant, an approved private school for students with disabilities, was audited by the Office of Compliance Investigation, and a determination was issued that the school must return \$8,778 to sending school districts because the school improperly included additional pension benefits for administrators in its tuition costs in the 2002-2003 school year. Appellant appealed the audit determination to the Commissioner.

After considering the parties' cross-motions for summary decision, the ALJ concluded that the Department of Education properly applied its regulations and disallowed the costs at issue, and that the stringent requirements for invoking the doctrine of equitable estoppel against a governmental agency were not met by appellant. The Commissioner agreed with and adopted the recommendation of the ALJ as her final decision in the matter for the reasons set forth in the ALJ's decision.

On April 3, 2007, appellant filed the instant appeal to the State Board. On appeal to the State Board, Appellant argued that the doctrine of equitable estoppel should be applied to preclude the Department from disallowing the pension expenditure because the Department was allegedly aware, based on financial statements filed by it for several years, that the Deron school was including such pension payments in its costs, but failed to enforce the regulation prohibiting such costs until the audit being appealed was conducted. The Department countered that the stringent requirements for invoking the doctrine of equitable estoppel were not satisfied by appellant, and that the ALJ and Commissioner correctly determined that appellant failed to meet those requirements. After a thorough review of the record, the State Board voted unanimously to affirm the decision of the Commissioner for the reasons expressed therein.

GOLDEN DOOR CHARTER SCHOOL V. STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF JERSEY CITY, HUDSON COUNTY, STATE BOARD DOCKET #10-07

Golden Door Charter School filed a petition with the Commissioner of Education seeking payment from the State-operated district of Jersey City for the cost of home instruction delivered by an approved private agency to a handicapped student attending the charter school whose district of residence was Jersey City. The Commissioner dismissed the petition, concluding that the State-operated district did not have any obligation for the costs at issue. The Commissioner stressed that the plain language of N.J.S.A. 18A:36A-11b requires charter schools to pay the costs of educating handicapped students without further contribution from the district of residence, except where the student is enrolled in a private day or residential school. In this case, the student was provided with home instruction by an approved private agency and was not placed in a private school. The Commissioner observed that the law clearly distinguishes between services provided by approved agencies and placement in an approved private school. The State Board of Education voted unanimously to affirm the decision of the Commissioner.

IN THE MATTER OF THE SUSPENSION OF THE TEACHING CERTIFICATES OF BRUCE SKERBITZ BY THE STATE BOARD OF EXAMINERS, STATE BOARD DOCKET #6-07

The State Board of Examiners issued an order to the appellant, a teacher, to show cause why his teaching certificates should not be revoked or suspended as the result of allegations that he had made inappropriate comments to several middle school students. After a hearing, an ALJ found that the appellant did not deny having conversations with his class regarding a fictional homosexual lover, although he denied initiating the topic; admitted calling a student's brother a

“faggot” but maintained that it was to teach the student about the proper use of vocabulary; and did not deny asking a student sarcastically if he wanted to be rubbed after he had been kicked in the groin by another student and the appellant believed he was exaggerating the pain. The ALJ concluded that the appellant’s behavior constituted conduct unbecoming a teacher but did not warrant revocation of his certificates. Accordingly, she recommended that the appellant’s certificates be suspended for one year. On February 22, 2007, the State Board of Examiners concluded that the appellant had shown poor judgment in making the comments and that his behavior constituted unbecoming conduct. The Board of Examiners agreed that the penalty recommended by the ALJ was appropriate under the circumstances, and it ordered that the appellant’s certificates be suspended for one year. The State Board of Education voted unanimously to affirm the decision of the State Board of Examiners.

DAVID A. SMITH V. BOARD OF EDUCATION OF THE GREAT MEADOWS REGIONAL SCHOOL DISTRICT, WARREN COUNTY, STATE BOARD DOCKET #49-06

The petitioner, a former principal and assistant principal in the regional school district, filed a petition of appeal with the Commissioner challenging the determination by the regional board not to offer him employment for the 2004-2005 school year as an assistant principal while retaining a non-tenured individual in that position. The Commissioner determined that the petitioner had achieved tenure as an assistant principal under N.J.S.A. 18A:28-6, and she ordered the regional board to compensate the petitioner for salary and benefits retroactive to July 1, 2004, subject to appropriate mitigation.

On December 4, 2006, appellant filed the instant appeal to the State Board. On July 2, 2007, the parties submitted a proposed settlement agreement to the State Board. In the proposed agreement, the regional board agrees to pay petitioner \$46,870.34 in back pay and \$18,129.66 for health and dental benefits, totaling \$65,000, in full settlement of this matter, and the petitioner agrees to waive his entitlement to be placed on the district’s preferred eligibility list. The State Board found the proposed settlement agreement to be in accord with the principles expressed in In re Cardonick, decided by the State Board of Education, April 6, 1983 and approved the settlement. State Board member Arnold G. Hyndman abstained.

ADJOURNMENT

On a motion duly seconded and carried the State Board of Education adjourned its August 1, 2007 public meeting at 12:25 p.m.

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