

**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 7, 2007

Presiding: Ronald K. Butcher, President

Secretary: Lucille E. Davy, Commissioner

PRESENT CONSTITUTING A QUORUM

Mr. Arcelio Aponte
Ms. Debra Casha
Ms. Kathleen A. Dietz
Ms. Edythe Fulton
Ms. Josephine E. Hernandez
Dr. Ernest Lepore

ABSENT

Dr. Arnold G. Hyndman
Rev. Frederick LaGarde, Jr.
Dr. Thelma Napoleon-Smith
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 November 7, 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.

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

Jessica Derrico, a student from Bridgewater-Raritan High School (Somerset County), spoke to the State Board about the Student Council's initiative to integrate students with disabilities into the mainstream culture of the school.

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

INTRODUCTIONS

Commissioner Davy recognized Aaron Graham, Bergen County Superintendent of Schools, who represented the county superintendents. Mr. Graham has served in this position since February 1996.

Student Recognition Program

The State Board recognized Judith Savitsky, Bergen Academies, (Bergen 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 Judith for her outstanding academic achievements.

On behalf of the State Board, President Butcher congratulated Judith on her achievements.

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 October 17, 2007 and October 19, 2007 as amended below. State Board member Kathleen Dietz, abstained from voting on the minutes of the meetings conducted on October 17, 2007 and October 19 2007.

***A. Personnel Matter**

- Approved the employment contract for Marion Bolden, the State Superintendent of the State Operated School District of Newark, pursuant to *NJSA 18A:7A-35*. State

Board member Arcelio Aponte recused. State Board members Debra Casha and Edithe Fulton opposed.

PRESIDENT'S REPORTS

November Work Session and Public Testimony Session

After a discussion with the State Board members present, President Butcher stated that the work session and public testimony session scheduled for Wednesday, November 21, 2007 would be cancelled. He also stated that those items scheduled for the State Board's consideration would be placed on the December 5, 2007 agenda. He further stated that the State Board would accept written testimony on the State Technology Plan and the Core Curriculum Content Standards Resolution.

President Butcher stated that the public testimony session would be rescheduled to December 5, 2007 at 3:00 p.m. The topic for consideration will be the Core Curriculum Content Standards Resolution.

State Board Agenda Subscribers Renewal

President Butcher stated that pursuant to NJSA 10:4-19, 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 Butcher also stated that subscriptions will be accepted until December 14 and that an additional reminder will be posted at the table in the back of the conference room on December 5, 2007 during the State Board public meeting.

School Leaders Conference

President Butcher stated that he recently attended a national conference in New York City entitled *Education Leadership: a Bridge to School Reform* sponsored by the Wallace Foundation. He also stated that this event provided an opportunity to interact with other state educational agencies and discuss issues related to education leadership. He provided each State Board member with a copy of the Southern Regional Education Board's publication *Schools Need Good Leaders Now: State Progress in Creating a Learning-Centered School Leadership System*.

New Jersey School Boards Association Annual Workshop

President Butcher stated that he along with State Board members Edithe Fulton and Josephine Hernandez attended the New Jersey School Boards Association Annual Workshop and participated in the State Board Program that was held on October 25, 2007. He also stated that information regarding the session will be sent to all State Board members from the State Board office in the near future. He further stated that State Board member Kathleen Dietz also attended the conference and provided a presentation on International Education.

President Butcher further stated that Ms. Dietz and former State Board member Maud Dahme were recently honored with an award from ASAH. President Butcher requested that Ms. Dietz provide an update on her conference presentation and information on the award she received.

Kathleen Dietz stated that she along with Peggy Stewart, former state Teacher of the Year, presented information on International Education to conference attendees, specifically regarding the importance of infusing world cultures and economics into the curriculum. Ms. Dietz also stated that she received the Humanitarian of the Year award from ASAH. She further stated that Ms. Dahme received that organization's Lifetime Accomplishment Award.

New Jersey Education Association Annual Conference (NJEA)

President Butcher stated that he along with State Board members Arcelio Aponte, Debra Casha and Edythe Fulton will attend the annual conference of the New Jersey Education Association to be held on Thursday and Friday, November 8 and 9, 2007. He also stated that the State Board will participate in a panel presentation on Friday, November 9, 2007. President Butcher further stated that if other State Board members are able, they are welcome to attend.

Legal Committee Members

President Butcher stated that the State Board Legal Committee is in need of an additional member. He requested that at least one State Board member volunteer for this committee.

Committee Announcements

President Butcher stated that Arcelio Aponte will continue to serve as the chair of the Retreat/Strategic Plan committee.

COMMISSIONER'S REPORTS

Englewood Report

Rochelle Hendricks, Assistant Commissioner, Division of District and School Improvement responded to State Board member questions about the semi-annual report dated August 31, 2007.

Monitoring of School Districts

Commissioner Davy stated that the Department continues to work with school districts on the development of their District Improvement Plans based on the results of their monitoring reports. She stated that the Department is analyzing requests from two school districts regarding reconsideration of their placement on the performance continuum. She further stated that the *Bacon Districts* have been monitored and their results are currently under review by Department staff. She stated that a final report of the *Bacon Districts* would be made at the December 5, 2007 meeting of the State Board.

ITEMS FOR CONSIDERATION:

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

***A. Appointments**

Pursuant to NJSA 18A:4-32-35 approved the appointments of:

- Joanne Boyle as the Director, Office of School Ethics;
- Marie Barry as the Director, Office of Career and Technical Education.

***B. Programs to Support Student Development**

- Adopted the regulations pertaining to the voluntary drug abuse testing at *NJAC* 6A:16, Programs to Support Student Development, pursuant to *NJSA* 18A:36-25.

***C. Praxis II Resolution**

- Did not adopt the resolution raising the qualifying scores on certain Praxis II Subject Assessments and Specialty Area tests for specified disciplines, pursuant to *NJAC* 6A:9-8.1. State Board members Arcelio Aponte, Ronald Butcher, Edithe Fulton, Josephine Hernandez and Ernest Lepore voted to oppose the motion. State Board members Debra Casha and Kathleen Dietz voted in favor of the motion

***D. Core Curriculum Content Standards**

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

E. State Technology Plan

- Discussed the state technology plan as required by the United States Department of Education.

***F. City of Newark \$23,600,000 School Qualified Bonds, Series 2007**

- Adopted the resolution approving the City of Newark to allow \$23,600,000 of School Qualified Bonds, Series 2007, pursuant to *NJSA* 18A:24-97.

RESOLUTION FOR CITY OF NEWARK AUTHORIZING AN AMOUNT NOT TO EXCEED \$23,600,000 SCHOOL QUALIFIED REFUNDING BONDS, SERIES 2007

WHEREAS, the issue before the New Jersey State Board of Education is on the application of the State-Operated School District of the City of Newark in the County of Essex, New Jersey (“District”) as to whether City of Newark, in the County of Essex, New Jersey (“City”) is entitled to issue an amount not to exceed \$23,600,000 of School Qualified Refunding Bonds (the “Refunding Bonds”) on behalf of the District as qualified bonds pursuant to the School Qualified Bond Act, N.J.S.A. 18A:24-85 et seq. (the “Act”) and specifically N. J.S.A. 18A:24-97; and

WHEREAS, the authority of the State Board is established pursuant to the Act when an investigation shows to the satisfaction of the Commissioner of Education that such school district or municipality should be entitled to issue qualified bonds pursuant to the provisions of the Act shall so recommend to the state board which may by resolution determine that such school district or municipality is entitled to issue qualified bonds; and

WHEREAS, the City issued \$73,223,000 in original principal amount of School Qualified Bonds, dated September 1, 1997 (the “1997 Bonds”); and

WHEREAS, a portion of the 1997 Bonds was refunded in 2002 with the issuance of refunding bonds that were qualified bonds under the Act; and

WHEREAS, the application requests permission to issue the Refunding Bonds to refund the remaining outstanding 1997 Bonds maturing in years 2014 through and including 2017 in the principal amount of \$22,598,000; and

WHEREAS, qualified bonds are those where the credit status is strengthened by a pledge of State school aid to guarantee debt service payments on the bonds, and entail the State Treasurer withholding State school aid to be held in trust to pay the debt service, with the City, as issuer, replenishing the State school aid by repaying the debt service on the Bonds; and

WHEREAS, on October 17, 2007, the City introduced a refunding bond ordinance approving the issuance of \$23,600,000 in refunding bonds on behalf of the District for the issuance of the Bonds; and

WHEREAS, on September 28, 2007, the District submitted an application to the Commissioner of Education for investigation and recommendation and a determination by the State Board of Education; and

WHEREAS, the refunding bond ordinance will be finally adopted after approval has been granted by both the State Board of Education and the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs; and

WHEREAS, in accordance with the Act and specifically N.J.S.A. 18A:24-97, the Department undertook an investigation of the statutory factors to be considered in making a recommendation on the application to the State Board; and

WHEREAS, the Commissioner found that all of the express statutory factors at N.J.S.A. 18A:24-88(b) supported a positive recommendation on qualification; and

WHEREAS, the Commissioner believes that the bonds to be issued by the City will support the ability of the District as amended to maintain a thorough and efficient system of education; and

WHEREAS, the Commissioner now recommends to the State Board of Education that the City should be entitled to issue qualified refunding bonds in an amount not to exceed \$23,600,000; now, therefore, be it

RESOLVED, that the New Jersey State Board of Education, upon the recommendation of the Commissioner has determined that the City is entitled to issue qualified refunding bonds in an amount not to exceed \$23,600,000.

NEW BUSINESS

State Board member Josephine Hernandez requested information regarding the department's process used to follow up on concerns about school districts that are presented to the State Board during public testimony sessions. Erika Leak responded that school district issues are typically forwarded to the county superintendent for follow up.

State Board member Debra Casha stated that the West Windsor-Plainsboro Regional School District's Community Middle School took first place in the Science Olympiad tournament, sponsored by the Research and Development Council of New Jersey and co-sponsored by Princeton University.

LEGAL CASES

On motions duly seconded and carried, decisions in the following cases were adopted by the board as presented by legal committee members Edithe Fulton and Josephine E. Hernandez, chairperson.

SCOTT EVANS V. ATLANTIC CITY BOARD OF EDUCATION, VENTNOR CITY BOARD OF EDUCATION, MARGATE CITY BOARD OF EDUCATION, LONGPORT BOARD OF EDUCATION, BRIGANTINE BOARD OF EDUCATION, AND DANIEL LOGGI, ATLANTIC COUNTY SUPERINTENDENT OF SCHOOLS, STATE BOARD DOCKET #11-07

The petitioner, a member of the Atlantic City board, filed a petition with the Commissioner of Education seeking a ruling that the representatives of the sending districts on the Atlantic City board were prohibited from voting on the selection of a board solicitor. The Commissioner agreed with the petitioner, adopting the conclusion of the Administrative Law Judge (ALJ) that N.J.S.A. 18A:38-8.1 did not authorize representatives of sending districts to vote on the selection of a board solicitor. The State Board of Education voted unanimously to affirm the decision of the Commissioner.

ROBERT LAGRUTTA V. BOARD OF EDUCATION OF THE MORRIS COUNTY VOCATIONAL SCHOOL DISTRICT, MORRIS COUNTY, STATE BOARD DOCKET #18-07

Lagrutta appealed of the determination of the Commissioner of Education that he did not acquire tenure in the years that he worked for the Morris County Vocational School District as its Apprentice Coordinator. Appellant asserted that the Board of Education violated his tenure rights when it declined to appoint him to a part-time position as its Apprentice Coordinator for the 2005-2006 school year.

The Administrative Law Judge concluded that appellant did not possess the proper endorsement to hold the Apprentice Coordinator position, that appellant's service in the position in prior years was pursuant to waivers granted to the school district, that such service cannot be construed as service under the appropriate certificate, and that appellant never took steps to acquire the appropriate certificate while serving in the position under the waivers granted by the Department of Education. The ALJ concluded that appellant did not acquire tenure because he did not hold the appropriate endorsement, and that he was therefore not entitled to the position. The

Commissioner concurred with the ALJ and adopted the Initial Decision as her final decision in the matter. In so doing, the Commissioner noted that the waivers granted to the school district permitted it to hire a person lacking the necessary endorsement, but did not provide appellant the certification necessary to acquire tenure in the position.

The State Board voted to affirm the decision of the Commissioner for the reasons set forth therein. Debra Casha abstained.

IN THE MATTER OF THE TAX LEVY ALLOCATIONS FOR THE MANCHESTER REGIONAL HIGH SCHOOL DISTRICT, PASSAIC COUNTY, STATE BOARD DOCKET #19-07

This is an appeal of the July 9, 2007 decision of the Commissioner of Education concluding that the “Librera” formula is the appropriate cost allocation methodology to be utilized for the Manchester Regional School District for the 2006-2007 and 2007-2008 school years. In that decision, the Commissioner also established a repayment schedule for Haledon and Prospect Park to return funds to North Haledon based on the use of an incorrect cost allocation method in the 2006-2007 school year. Prospect Park filed an appeal of the Commissioner’s July 9, 2007 determinations, and a cross appeal was filed by Haledon.

The present dispute derives from an earlier appeal in which a petition was filed with the Commissioner of Education by the North Haledon School District seeking to withdraw from the Passaic County Manchester Regional High School District (hereinafter “Regional District”), which is comprised of Haledon, North Haledon and Prospect Park. While the petition to withdraw was ultimately denied, the New Jersey Supreme Court did determine that an equitable cost apportionment scheme for the Regional District must be established and remanded the case to the Commissioner to do so.

While that matter was pending on remand, cost allocations for the school district for 2006-2007 school year were issued by the Department of Education based on the 100% equalization valuation method, rather than the Librera method. This error resulted in Haledon and Prospect Park funding less of the costs than they should have in the 2006-2007 school year, and in North Haledon funding more than its appropriate share of the costs. Cost allocations for the 2007-2008 school year were also originally determined based on the 100% equalization valuation method. When the errors were detected, the cost allocations for the 2006-2007 and 2007-2008 school years were recalculated by the Commissioner utilizing the Librera method, and a four year repayment schedule was developed so that Haledon and Prospect Park could repay the amount of their underpayments while minimizing the fiscal impact that would occur if the amounts were repaid in a single year.

On appeal, Haledon and Prospect Park argued that the State Board’s February 1, 2006 decision in the earlier appeal set aside the Librera method for allocating costs and that the methodology for appropriating costs in the Manchester Regional School District for all subsequent school years reverted to the statutory methodology while that appeal remains pending. Prospect Park and Haledon also asserted that the procedures followed by the Commissioner in resolving the issue with respect to the cost allocation method to utilize for the 2006-2007 and 2007-2008 school years did not provide them all process that they were due.

After a thorough of the record and arguments of the parties, the State Board affirmed the decision of the Commissioner, concluding that its February 1, 2006 decision in In The Matter Of The Petition For Authorization did not set aside the Librera method for allocating costs. Rather, that decision only determined that the record on appeal must be amplified to set forth the basis for Commissioner Librera's determination of the methodology for allocation costs among the constituent districts in the Manchester Regional School District. In so concluding, the State Board noted that, as argued by the Commissioner, a stay of the implementation of the Librera method was neither sought by any of the parties nor granted by the State Board.

The State Board also rejected appellants' assertion that they were denied procedural due process by the Commissioner when she rendered her July 9, 2007 determination without merit. The State Board agreed that the consultation with the parties that preceded the Commissioner's determination satisfied the requirements of procedural due process in these proceedings, as the July 9, 2007 letter corrected calculation errors, rather than setting forth a determination in an adjudicatory proceeding involving fact-finding and conclusions of law that would require a more formal opportunity for presentation of testimony and evidence by the parties. Ronald K. Butcher abstained.

IN THE MATTER OF THE PETITION FOR AUTHORIZATION TO CONDUCT A REFERENDUM ON THE WITHDRAWAL OF THE NORTH HALEDON SCHOOL DISTRICT FROM THE PASSAIC COUNTY MANCHESTER REGIONAL HIGH SCHOOL DISTRICT, PASSAIC COUNTY, STATE BOARD DOCKET #9-05

This matter arose from a petition filed with the Commissioner of Education by the North Haledon school district seeking to withdraw from the Passaic County Manchester Regional High School District. The Commissioner referred the petition to a board of review, which granted North Haledon's petition and directed the superintendent to fix a date and time for a special school election on the question of withdrawal. On June 13, 2003, the Appellate Division reversed the board of review's decision to authorize a referendum to determine whether North Haledon should be permitted to withdraw from the regional district, a decision affirmed with modification by the New Jersey Supreme Court on August 11, 2004. The Supreme Court remanded the matter to the Commissioner to develop an equitable cost apportionment scheme for the regional district. In response to the Supreme Court's directive, Commissioner William Librera established a cost allocation plan, which he detailed in a letter dated January 18, 2005. Each of the constituent districts of the regional district – Haledon, North Haledon and Prospect Park – filed an appeal to the State Board of Education.

In a decision issued on February 1, 2006, the State Board, finding that it was not able to properly review the Commissioner's determination since the record did not provide a sufficient explanation of the methodology used to develop the revised allocation that would enable it to judge whether the allocation fulfilled the terms of the Supreme Court's remand, remanded this matter to Acting Commissioner Lucille Davy with the request that she amplify the decision by providing the basis and rationale for the specific determinations set forth in the Commissioner's decision of January 18, 2005. The State Board retained jurisdiction.

The Acting Commissioner subsequently transmitted the matter to the Office of Administrative Law (OAL) for hearing as an uncontested case. After the Chief Administrative Law Judge requested clarification as to whether the issue at hearing was limited to a determination of the rationale utilized in the January 18, 2005 letter, and if not, the nature of the report and

recommendations being requested, the Commissioner responded on May 11, 2007 with a request that OAL “shift the focus” of its proceedings from developing a record on the cost apportionment scheme established by former Commissioner Librera, as directed by the State Board in its decision of February 1, 2006, to starting anew the process for developing a method for apportioning the costs of the regional district.

Prospect Park filed a motion with the State Board for amplification/clarification of the scope of the remand directed by the State Board in its decision of February 1, 2006, relating that it wanted to be certain that the hearing requested by the Commissioner was within the scope of the remand directed by the State Board and/or that the Commissioner had the authority to broaden the scope of the hearing in the manner outlined in her May 11, 2007 letter.

The State Board found no basis for altering its remand. Although the Commissioner had premised “shift[ing] the focus” of the remand on the fact that former Commissioner Librera and other unidentified Department of Education employees who had assisted him in developing a cost apportionment plan were no longer employed in the Department, the State Board observed that there was nothing before it demonstrating that such individuals were not available to participate in the development of a record at hearing or that attempts had been made to secure their presence at a hearing. The State Board added that when it remanded this matter in February 2006 for development of a record, it was aware of the fact that Commissioner Librera had left the Department in September 2005. Accordingly, the State Board voted unanimously to reaffirm the remand directed in its decision of February 1, 2006, and it continued to retain jurisdiction.

ADJOURNMENT

On a motion duly seconded and carried the State Board of Education adjourned its November 7, 2007 public meeting at 2:50 p.m.

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