



New Jersey School Boards Association

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Ms. Lucille Davy
Acting Commissioner
New Jersey Department of Education
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Dear Commissioner Davy:

General and Detailed Commentary on NJQSAC District Performance Review Documents

At the Monday, March 13, 2006 Leadership for Excellence in Education (NJ LEE) meeting, you discussed the confidential drafts of the District Performance Review documents and invited comments. We understand that the NJQSAC DPR'S have been formulated in accordance with Subchapter 3-Annual Review of Public School Districts, N.J.A.C. 6A:30-3.2, District self-assessment report, in order to evaluate and monitor public school districts' performance and capacity in five key components of school district effectiveness: Instruction and Program; Personnel; Fiscal Management; Operations; and Governance.

In the State Board of Education, Administrative Code, Comment/Response Form, Summary of Comments and Agency Responses, 12. Response, p. 5, presented at the March 1, 2006 State Board Meeting, it is noted that "the DPR will not be codified because the content of the tool reflects procedure and not policy." However, The New Jersey School Boards Association strongly suggests that any school board requirements, evaluated through the DPR checklist, at a minimum, go through the formal administrative code development process, and not approval by State Board resolution, as is currently offered. For the reasons set forth below, NJSBA believes that, given many of the requirements set forth in the DPR, the tool reflects much more than procedure. To ensure legal enforceability and to promote sound public policy, NJSBA believes that the code adoption process is, at a minimum, required. In several areas, statutory enactments will be required.

General Comments and Questions

Many of the items in the NJQSAC DPR checklists are requirements that will be evaluated. These are neither in statute nor code.

Clarification is necessary on numerous sections of the DPR checklists. Items are specifically identified in commentary under each section. Evaluation requirements should be clear, quantifiable and measurable. How the board can demonstrate compliance is not always clear. Will there be an NJQSAC DPR Manual, or Guidebook provided to the districts for direction? More importantly, how will this critical information be imparted to the board members? Training is critical for the success of board self-assessment in the district performance review. We reiterate our commitment to partner with the Department of Education in designing appropriate training guidelines and materials for board of education members. Training is so critical, we believe, that it should be added to the New Jersey School Boards Association's New Board Member trainings. To be consistent in our view of what is required of board members, we strongly suggest, that the Department consider requesting statutory authority to include training in NJQSAC DPR board self assessment to comply with DPR's.

There are several areas in the NJQSAC DPR checklist where the board is required to have policy and will be evaluated on that policy, notwithstanding the fact that there is no statutory or administrative code requirement that the board have that policy. On what legal authority can the DPR checklist require board policy that is not required elsewhere?

Rotondo v. Carlstadt-East Rutherford Reg. Bd. of Ed. 276 N.J.Super. 36 (App. Div. 1994) established that the State Board cannot do by administrative code, and presumably not by "resolution," what the legislature has not required, where the legislature has entered the field. The legislature has required in numerous areas that the board develop policy. Presumably, where the legislature has not required policy, it did not intend that the board be required to have policy. As such, a State Board requirement within the NJQSAC DPR for policy, while in many instances a good idea, may exceed the State Board's authority and be of questionable enforceability, particularly where the requirement is established by a State Board Resolution and has not gone through the formal administrative code adoption process.

Where corrective actions are necessary as a result of DPR's placing a district on the Continuum, where will the boards find the additional revenues and resources to put these actions into place?

Governance

1. a.

We support the concept of district mission statement, but raise a cautionary question: How can a board be evaluated on something which it is not required by statute or code to have? See general commentary above.

1. e.

"requires the administration take action" – how? By board resolution? By job description or contract? What if there is no action to be taken because all is working well? Then what?

1. a.-e.

Must the board submit each and every example of supporting documentation for points to be awarded in the particular category? If so, we believe that each supporting document must be clearly noted at the end of each item, **line by line**. There should be a manual or guide book, similar to the current Monitoring Guidebook/and or Budget Guidelines workbook, so districts are clear in exactly which documents are necessary.

2. a.

This appears to be a School Ethics Act Code of Ethics for School Board Members item and should be properly cited as N.J.S.A. 18A:12-24.1. What if a single board member violates a provision of the Act either through ignorance, lack of clarity of the law or intentionally? Should the entire board be made responsible for the independent actions of a single board member or even a minority group of board members? Aren't these individual responsibilities that will be individually penalized by the School Ethics Commission and the Commissioner? We believe that clarification on the impact to the board for this and every other School Ethics Act violation is necessary.

2. b.

Again, this is an individual board member responsibility. We do not believe the board should be penalized if a board member does not go to training. Would the individual member not be penalized by the School Ethics Commission and the Commissioner?

2. c.

We reiterate concern that "only through legal and ethical action" appears to be a School Ethics Act Code of Ethics for School Board Members matter, which needs to be cited as N.J.S.A. 18A:12-24.1 (a), and that the terms need definition. Further, is it measurable, and how so?

2. d.

Similar to 2. b., why should the entire board be penalized for the actions of one board member who fails to file his/her disclosure form? More significantly, why should the board be penalized when a school administrator fails to file his/her disclosure form?

2. a.-e.

We have great concern with this entire section since the actions of one board member might penalize the other members of the board. Further, we would like to raise the question as to whether the checklist items refer to a one time violation, or repeated violations. For example, if a self assessment discovers that legal or ethical lapses might have occurred, is it not beneficial to correct such action without penalty? Why is it necessary to have the discovery of a violation count against a district, when it is far more reasonable to have further violations (the "second bite of the apple") result in penalties? Would not the correction be what you are trying to achieve? Again, we note that supporting documentation should be specified at the end of each item for clarity.

3. a.-g.

Again, all DPR elements in this section raise the question: should a board be penalized when and if certain board members violate the Code of Conduct of the School Ethics Act N.J.S.A. 18a:12-24.? Will they not be punished in some way by the SEC and Commissioner? And if so, then what? Would the board then be absolved? It is possible to have violations in areas where the law is unclear. Documentation issues again – Section 3 seems to require policies on confidentiality and sanctions for breach of confidentiality, nepotism and school district organizational chart. But how do boards know these are requirements? Are they listed in Statute? Code? How will they be measured?

4. b.

There are differences between policies and procedures. Boards are required by statute or code to adopt policies; sometimes both policies and procedures. Generally, however, policies are adopted by the board and procedures by administration. Should not the provision specifically indicate that the board will adopt policy and the administration will adopt procedures, where appropriate and required?

4. c.

“Best Practices” is a troublesome term unless clearly defined. What are best practices? Are they measurable? How so? We believe that evaluation requirements, must be clear, quantifiable and measurable.

5. a

“Standard board practices” is a term that too is troublesome. What are they and where can they be found?

5. b.

We refer again to the Code of Ethics for School Board Members reference in 2.a.

5. c.

While boards should generally follow their bylaws, there are times where it is not inappropriate for a board to waive its by-laws. See [Matawan Reg'l Teachers Assn v. Matawan-Aberdeen Reg'l Sch. Dist. Bd. of Educ.](#), 223 N.J. Super. 504 (App. Div. 1988). The key is when rights of the public may be affected. If a board appropriately waives its bylaws, should it be penalized? Note that the supporting documentation uses the word “consistently”.

5. e.

Reference should be made to closed session minutes as well. While board action is typically taken in public session, except under limited circumstances, closed session minutes are always required. Again, a manual/guidebook and training are critical to making requirements that are clear, quantifiable and measurable.

6. a-b.

We believe that it is necessary to reference the administrative code section on the CSA evaluation, including the policy development reference.

6. e.

While we support the idea of a self evaluation by the board, we do not know of any statute or code requirement that one should occur. How do we measure the reflection that student achievement has been given the highest priority? NJSBA recommends a statutory amendment with a training component.

6. f.

A professional development plan for each board member is a positive action. However, it is not found anywhere in statute or code. Were the board to create this plan, how would it square with the recently enacted travel regulations and administrative cost limits? A manual/guidebook and training are critical here.

6. a.-f.

Supporting documentation is not described or required. How is compliance verified? Further, in general, evaluation of staff is not addressed. Should not the code on staff evaluation be considered?

7. a.

Though an idea with merit, a school board functional organization chart is not required in either statute or code. Manual/guidebook/training all necessary.

7. c.

We suggest that you add citation from 18A:12-24.1(i). The comments from 2 a. and 3. a.-g. are appropriate here with regard to the Code of Ethics for School Board Members.

7. d.

Add citation from 18A:12-24.1 (j) See comments from 2 a and 3 a-g. Same applies here with the Code of Ethics for School Board Members.

7. e.

Add citation from 18A: 12-24.1 (d) See comments from 2 a and 3 a-g. Same applies here with the Code of Ethics for School Board Members.

7. f.

Supporting documentation contains reference to policies that are not required by either statute or code to be developed by the board.

7. a.-e.

Appropriate documentation should follow each item. Evaluation requirements should be clear, quantifiable and measurable.

8. a.

“Student subgroup performance” needs clarification. Is it a reference to NCLB subgroups, current monitoring or something else? We suggest appropriate reference be given to relevant reports such as the accountability workbook, code and statute.

8. b.

“Board approved corrective measures” needs clarification. Does it refer to CAPA Review team reports? The appropriate reference needs to be given to relevant reports such as the accountability workbook, code and statute. We have great concerns about the costs involved in implementing recommended changes. Where would districts find the money to accomplish these changes?

8. d.

What happens if the funds have been over expended? The key is what you do about it. Please refer to audit recommendations, Fiscal Management, C. This section goes to the heart of good governance.

“No repeat audit findings of a substantive nature.” Mistakes occur, correct them, move on and try not to have them happen again.

8. a.-e.

Items need clarification, particularly as to measurement and supporting documentation. Evaluation requirements should be clear, quantifiable and measurable. This whole section illustrates our comment on the concerns about funding and resources, already severely impacted by the last 5 years of flat funding and the restrictions of S-1701.

9. a.

The requirement for having a policy on handling public complaints is not found in either statute or code, similar to numerous other items in the checklist. We again point to a lack of legal underpinning for these requirements. While we agree that it is positive for a board to have a policy on public complaints, we believe that any such requirement be part of statute or code, not a resolution checklist.

9. b.

Citation to N.J.S.A. 18A:12-24.1 (g) See previous comments on Code of Ethics for School Board Members, 2. a. 3. a.-g, 7. c,d,e.

9. c.

Citation to N.J.S.A. 18A:12-24.1 (g). See previous comments on Code of Ethics for School Board Members, 2. a., 3. a.-g, 7. c.-e.

9. d.

The requirement for having a policy on OPRA is not to be found in either statute or code, as we have stated in regard to other requirements in the NJQSAC DPR checklist. While we agree it is positive for a board to have a policy on OPRA, we believe that such requirement should be part of statute or code, preferably statute, and not by resolution.

9. a.-g.

Documentation with each item would be clearer. But again, we suggest that the board is being held accountable to have policies in place that are not required by statute or code. Can a board be legally held responsible for items that are not required by either statute or code?

The NJSBA appreciates the opportunity to provide the Department of Education with these comments as the discussion of the NJQSAC DPR's moves toward forward. We will continue to monitor the development of the DPR's and we anticipate providing you with further commentary in the weeks ahead. We remain ready to partner with you in designing training guidelines and materials, and in the providing appropriate training for the successful board self assessment under NJQSAC.

Sincerely,

Michael A. Vrancik
Director, Governmental Relations

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