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Report to the New Jersey State Board of Education – May 26, 2006 *Implementation of the Bacon Decision*

In its January 4, 2006 decision, the State Board directed the Acting Commissioner of Education to set forth a plan for assessing the needs of the districts involved in the case of *Bacon, et al. v. New Jersey Department of Education* (both the appellant districts and those involved in the initial action who did not pursue an appeal). The Board also asked the Acting Commissioner to report on the remedial measures that had been ordered by her predecessor in 2003. While originally given 30 days for a response, the State Board granted the Acting Commissioner's request for a 90-day extension at its meeting on February 1, 2006. This report is submitted in response to the State Board's request.

Background

The districts participating in the *Bacon* case claimed that the school aid they received from the State was insufficient and each therefore sought additional State aid to support their education programs. In essence, they likened their needs to those of the Abbott districts and sought "Abbott" classification or additional funding similar to that provided to Abbott districts. The State Board of Education opined:

"On the basis of the record before us, we conclude that CEIFA as it has been implemented has not provided a thorough and efficient education to students in the appellant districts and that those students are entitled to a remedy that ensures that they in fact will be provided with such an education." State Board Opinion at pages 60- 61.

The State Board also said:

"The record developed before the ALJ as to the other districts involved in the litigation before the Commissioner shows that the educational needs of the students in those districts are not being met and that CEIFA as it has been implemented has not guaranteed that the students in those districts receive a constitutionally adequate education." Id. at page 62.

Based upon those conclusions, the State Board asked the Acting Commissioner to develop a needs assessment that would be performed in each of the districts involved in the litigation

In addition to assessing the adequacy of the educational inputs and programming currently provided, the Board directed that the design include elements that would identify the unique educational needs of the students in those districts requiring additional programs to address them.

At the same time, the State Board made clear its support for the development of a new statewide school funding formula, calling it the most critical of its six policy priorities for 2006:

Funding - This is the most critical of the six priorities. The State Board of Education is committed to working with the Governor's Office and the Legislature to develop a funding system that satisfies the "Thorough and Efficient" clause of the New Jersey Constitution. Any new system must address the issues of equity, provide adequate funding of Abbott districts, allow local districts the flexibility they need to provide quality education, alter our state's over reliance on property taxes to fund education and aid districts in the cost of educating students with disabilities. *Priorities in Education for New Jersey (Six in '06) for the New Jersey State Board of Education*

Several references to the funding formula were included by the State Board in the *Bacon* decision:

"In deciding this appeal, we cannot ignore students in other districts not involved in this litigation who are suffering similar educational inadequacies and whose communities do not have adequate resources to address those inadequacies." State Board Opinion at page 64

"It is impossible at this point to avoid the conclusion that CEIFA is not accomplishing its intended purpose. Rather, as it has been implemented, CEIFA has resulted in the fragmentation of New Jersey's system of public education so that there is not a unified system operating throughout the State." *Id.* At 65.

Describing the fragmented system that had been created, the Board said the Abbott districts were operating on one system and all others on another system that has "continued to allow significant disparities in both educational inputs and educational outcomes and which has not produced educational adequacy for all districts." *Ibid.*

The Board then concluded:

"It is time for a new approach, one that is educationally based. It is time to establish a unified system, one that properly balances New Jersey's tradition of home rule and the diversity of our 611 school districts with the need for a statewide system that guarantees equal educational opportunity for all students in all districts and which ensures the adequacy of the education provided by every district." *Id.* At 67.

Remedial Measures from 2003

In his decision of February 10, 2003, Commissioner William Librera directed that remedial measures be taken as to Buena Regional, Commercial Township, Fairfield, Salem City and Woodbine, which included a review by each of the respective county superintendents for those five districts and recommendations in the event that the district had had three consecutive years of failing test scores. The Commissioner also determined that he would recommend to the Legislature the inclusion of Salem City as an Abbott district and required

that the Salem County Superintendent intensify his involvement in the district particularly in review of the district's budget

Upon review of these matters with the county superintendents of the counties involved, it was determined that in each case the county superintendent had reviewed the district budget to ensure that a thorough and efficient education could be provided to the students in the district within the budget that had been submitted to the State. In every case, the county superintendent had made such a finding and no further action was taken by the former Commissioner at the time of the county superintendents.

Addressing the Needs of the Bacon Districts

The Acting Commissioner has given a great deal of consideration to the State Board's opinion in the Bacon case. While a needs assessment as described in the Board's opinion would help to identify the areas of weakness in each of the districts that might need to be considered in order to improve student achievement, the Acting Commissioner believes that the matter is best resolved by the creation and implementation of a new school funding formula. Since Governor Jon S. Corzine has made clear his intention to institute a formula that funds students based upon their needs and not on their geography, the State Board's concerns about the failures of the CEIFA formula, which appear to be at the heart of its decision in the Bacon case, will be addressed through this process. The Governor seeks to create a "unified" system as described by the Board so as to address the current fragmented structure that has allowed disparities among districts serving similar populations of students. Therefore, the Acting Commissioner has concluded that work on a new school funding formula is the best way to proceed in order to ensure that school districts throughout the State will receive the support required to meet the needs of their students.

At the same time, the Acting Commissioner believes that implementation of the new statewide school monitoring system, the Quality Single Accountability Continuum (QSAC), will allow the Department of Education to work collaboratively with school districts to address areas that need attention in order to improve student achievement outcomes and allow for high functioning school district operations that are both efficient and effective. While the new school funding formula is developed, the Department will work with the appellants in the Bacon case to evaluate their Programs and Instruction as defined in the District Performance Review as soon as it is finalized, which is expected to be no later than September 1, 2006. This process will give these districts an opportunity to self-assess and identify areas of weakness that might require technical assistance from the Department or support from a highly skilled professional as defined in QSAC. In this way, the Bacon districts can begin work to assess and address the needs of their students in an expeditious manner.

In conclusion, changing times and circumstances have resulted in a new emphasis on development and implementation of a new statewide school funding formula; in the context of funding and property tax relief, everything is on the table. The new administration has made clear its commitment to equitable school funding and the needs of the Bacon districts as well as all others will be addressed in that process. Therefore, the best course of action for everyone concerned is to await the development and implementation of the new funding formula as well as the implementation of QSAC. These changes, by themselves, could rectify the Board's concerns that led to its request for district assessments in this matter.