March 22, 2017

**Testimony on Special Education**

**Before the**

**Joint Committee on the Public Schools**

My name is Irene Lefebvre and I am a local school board member with the Boonton Town Board of Education. I am also the chair of the New Jersey School Boards Association’s (NJSBA) Special Education Committee, which is made up of a select group of board members with special education experience who assist the Association in setting special education policy and goals. It is in that role that I speak to you today.

The NJSBA is a federation of all of New Jersey’s local boards of education. NJSBA provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.

The NJSBA believes that all New Jersey special education students should be provided an appropriate public education within our state and, where possible, within the regular school environment.

There are two critical components in any successful special education program: 1) Adequate funding and, 2) Effective programming. In 2007, NJSBA commissioned a study to address the “actual costs” of special education in New Jersey. The study used an empirical approach to examine trends affecting the cost and delivery of special education programs and services. It found that local, state and federal special education expenditures in New Jersey totaled $3.3 billion. The main cost-drivers were out-of-district placements, programs for students with autism, transportation, related services, and resource programs. The study also identified other cost-drivers, including high classification rates, exclusionary placements, and impediments to shared services.

In 2013, to address the continuing pressure that special education places on local district budgets, the NJSBA embarked on a second major study with the goal to reduce special education costs to local school districts without diminishing the quality of needed services. After the yearlong study, the NJSBA found that there was a dire need to develop strategies that will maintain quality services, without negatively affecting resources for general education programming.

That 2014 report, entitled “Special Education: A Service, Not a Place,” made 20 recommendations that address early intervention, literacy, shared services, changes in state and federal aid, alternative funding, and training of educators and school board members. Those recommendations included the following:

Early intervention—The state should develop a multi-tiered system of supports, including programs such as Response to Intervention, Intervention and Referral Services and Positive Behavioral Supports, to identify students with learning needs at an early stage and implement strategies. The process should include ongoing assessment and evaluation. Such early intervention in the general education classroom would improve student outcomes and enable schools to avoid over-classifying children as requiring special education. Additionally, the NJSBA found that, through educationally sound strategies, schools could reduce costs. The NJSBA is pleased to note that in 2016, this Legislature passed unanimously and the Governor enacted a law that establishes a Response to Intervention framework within the NJDOE, which supports and encourages its use by school districts to promote the achievement of all students. *N.J.S.A.* 18A:6-135.

Shared services—While many school districts share some special education services, such as transportation, the task force recommends that the New Jersey Department of Education and local school districts explore a voluntary Regionalized Special Education Model/Shared Services Model for special education and related services. For example, regional or county-level child study teams could evaluate students and then turn over the findings to the local school district for implementation. Such a strategy could free up resources locally for classroom-level programs.

Funding—In its 2014 report, NJSBA recommended restructuring state special education aid to support programs that improve student outcomes; ensuring adequate Extraordinary Special Education Cost Aid, which helps fund out-of-district placement for severely disabled pupils; and providing flexibility in the use of federal special education funding so that it could be applied to supplemental literacy and math programs in inclusive settings. Research shows that when reading improves, classification rates drop.

Funding continues to be one of the most vexing problems within special education. First, the federal government has not yet delivered on its promises of funding. When the Individuals with Disabilities Education Act was first enacted in 1975, Congress sought to cover 40% of the national average per pupil expenditure (APPE) multiplied by the number of children with disabilities served under IDEA in each state. However, current funding levels place that percentage at around 17%. This represents less than half of the promised amount from the federal government.

At the state level, special education funding is part of the School Funding Reform Act (SFRA). Under the SFRA, special education dollars are based, in part, on the assumption that the classification rate in any district is 14.69%. If your actual classification rate is higher, the amount you receive will still be based, in part, on that statutorily set lower rate. This leaves the local district having to make up the difference through local tax levies; no easy task given the 2 % hard cap in which districts must operate. This sometimes becomes a situation in which a district may be penalized for its success. It may, for instance, have a very good in-district autism program for which parents move to the district, but in doing so, drive-up the district’s percentage of classified students, causing it to receive less funding for its special education programs.

Training—In its recommendations on training, the NJSBA addressed teacher preparation programs, professional development for child study teams and other professionals, and programming for board of education members. The state’s teacher preparation programs should focus on the inclusive classroom with training in adapting curriculum, instruction and assessment to meet the needs of all learners. Such training would reduce IEP-related conflicts, develop a culture of trust and cooperation among school districts, parents and students, and meet the needs of all students in an inclusive setting. NJSBA is pleased to have been a supporter of S-1474, the bill that was enacted into law in February 2017 that requires teacher preparation programs for the instructional certificate to include a certain amount of instruction or clinical experience in special education.

Burden of proof—In 2008, *N.J.S.A.* 18A:46-1.1 was enacted which places the burden of proof and burden of production on the school district in all due process proceedings, no matter which party has actually brought the complaint forward. In most other types of litigation, the party bringing the complaint has the burden of proof and production. Statutorily keeping the burden on the school district at all times drives up the cost of litigation and the number of due process cases. This means that limited taxpayer dollars are being spent not on special education programming to help students, but on lawyers and other experts.

To read all of the recommendations in the 2014 NJSBA report, please go to <https://www.njsba.org/news-information/research/njsba-task-force-on-special-education-report-2014/>

Since that report, there have been other special education issues that have arisen. One of these is the issue of assessment of special education students. Under current federal and state law, all students must take the end-of-year standardized assessment. In NJ, that is the PARCC. While a special education student may take the PARCC with any appropriate accommodations, they must take the PARCC that matches their chronological grade level. There is an alternative test, called the Dynamic Learning Maps for those who have the most severe learning disabilities, but the criteria to be able to take the DLM are overly restrictive, leaving some students no alternative but to take the PARCC at grade level despite the fact that they cannot do grade level work. In those instances, NJSBA questions whether this represents the best use of education dollars and whether testing under such circumstances yields measurable data that tells educators anything about the effectiveness of their educational programming.

In conclusion, the NJSBA urges the Joint Committee on the Public Schools to look at the following:

1. Funding—The current School Funding Reform Act is not currently being fully funded. Further, the manner in which the SFRA funds special education is not truly based on the numbers and the needs of the special education students, straining district budgets and putting the needs of the special education student against those of the general education student. The mechanics of the SFRA need to be re-evaluated to better serve the special needs student. Before the 2% hard cap, there was the ability for a district to apply for a waiver to the then 4% cap where costs exceeded the cap.
2. Litigation—While NJSBA understands the circumstances that led to the burden of proof and production being placed on school districts, such a move unnecessarily drives up costs for school districts and the students they serve. The Joint Committee should look at other less costly ways to provide parents and students with the protections that they are seeking without shifting the burden in these cases to school districts.
3. Assessment—The Joint Committee should look at alternative ways of assessing the special needs student so that each student is being assessed in accordance with the educational goals outlined in their individual education plan, not based on their chronological grade level. In this manner, testing dollars will be used more effectively measuring growth of the special needs student.

The NJSBA thanks you for the opportunity to address the Joint Committee on the Public Schools. The NJSBA stands ready to help you with any further information you may need as you continue your inquiry.