As Chair of the Special Education Committee, I would like to report on the Special Education Committee’s activities since the December 2016 Delegate Assembly.

**CHARGE:**

The Special Education Committee shall prepare and present appropriate testimony on special education issues affecting the delivery of special education services to children in New Jersey and in support of Association policies. The Committee shall report periodically to the Delegate Assembly and may also recommend positions on special education issues for consideration by the Board of Directors.

The Special Education Committee met on December 10, 2016 and on February 8, 2017. The agendas of those meetings included the topics and presentations outlined below.

The Special Education Committee met on December 10, 2016 and on February 8 and March 23, 2017. The agendas of those meetings included the topics and presentations outlined below.

**Update on NJDOE Special Education Activities**

The Committee met with John Worthington, Director of the NJ Department of Education’s Office of Special Education Policy and Procedure, and was informed about the following activities:

- **Least Restrictive Environment**—The NJDOE is now in Year 2 of a three-year program in response to litigation brought against the state concerning special education services. Seventy-six districts received training in least restrictive environment and also in universal design for learning in an effort to reduce over-classification, and ensuring that classified students are truly in the least restrictive environment.

- **Facilitated IEP**—The NJDOE is piloting a program with four districts aimed at reducing the number of filings for due process across the state, which was about 1700 filings for the most recent year. The program aims to work with IEP teams as the IEP is being developed to reduce disputes. The NJDOE hopes to expand the program statewide next year.

- **Special Education Ombudsman**—The NJDOE is still working on filling this position that is required by P.L.2015, c.219 which establishes the Office of the Special Education Ombudsman in the Department of Education, which will serve as a resource to provide information and support to parents, students, and
educators regarding special education rights and services. Under the law, the Commissioner of Education will appoint a Special Education Ombudsman who is qualified by training and experience to perform the duties of the office. It is the intention of the NJDOE to make sure that the duties of the Ombudsman do not merely duplicate what other positions within the NJDOE already do.

- **Reading Disabilities and Dyslexia**—The NJDOE is working on a handbook that will provide information to districts and others about the requirements concerning these disabilities.

- **US Supreme Court**—Mr. Worthington spoke about the issues involved in two court cases. In *Fry v. Napoleon*, 788 F.3d 622 (6th Cir. 2015) the issue concerned whether a student had to exhaust all of the procedures of the Individuals with Disabilities Education Act, even if, the initial dispute was not brought under that statute.\(^1\) The second case, *Endrew F. v. Douglas County School District RE-1*, No. 14-1417 (10 Cir. 2015) concerns the level of benefit that the student should be receiving whether it is “some educational benefit” or “meaningful educational benefit.” New Jersey currently uses the “meaningful educational benefit” standard.

### Standardized Assessment and Special Education

Through the federal Individuals with Disabilities Education Act of 2004 and the No Child Left Behind Act of 2001 (an earlier reauthorization of the Elementary and Secondary Education Act of 1965), the federal government placed a strong emphasis on the need to have standardized assessments, not only for general education students, but also for those students with disabilities. This emphasis continues in the Every Student Succeeds Act (ESSA), the name of the latest reauthorization of the ESEA, which maintains this assessment requirement.

*Special education students and their general education peers*

The ESSA requires that every special education student be assessed with or without appropriate accommodations. The law also provides for alternative assessment for those special education students who cannot take the same assessment as their general education peers. ESSA requires that alternative assessments be:

(I) aligned with the challenging State academic content standards;
(II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;
(III) reflect professional judgment as to the highest possible standards achievable by the affected students;
(IV) designated in the individualized education program developed for each such student as the academic achievement standards that will be used for the student; and

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\(^1\) Subsequent to Mr. Worthington’s presentation, the U.S. Supreme Court issued an opinion in the case on February 22, 2017, setting forth that exhaustion was not always required “where the gravamen of the plaintiff’s suit is something other than the denial of the IDEA’s core guarantee of a FAPE (Free and Appropriate Public Education).” The Supreme Court sent the case back to the lower court for further determinations.
(V) aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment. Section 1111(b) (1) (E) of ESSA.

New Jersey’s Alternative Assessment
The alternate assessment for students with the most significant intellectual disabilities in English Language Arts and Mathematics is called the Dynamic Learning Maps (DLM). The state of New Jersey and 12 other states have been working with the University of Kansas to develop and implement this assessment system. Dynamic Learning Maps assessments are designed for students with the most significant cognitive disabilities for whom general state assessments are not appropriate, even with accommodations. DLM assessments offer these students a way to show what they know and can do in mathematics, English language arts, and science. DLM assessments also help parents and educators establish high academic expectations for students with significant cognitive disabilities. Results from DLM assessments support interpretations about what students know and can do through the use of Essential Elements (EEs). EEs are grade-level-specific expectations about what students with the most significant cognitive disabilities should know and be able to do. EEs are related to college- and career-readiness standards for students in the general education population. Results can inform teachers’ instructional decisions, while also meeting statutory requirements for reporting student achievement as required by state accountability programs. DLM assessments are designed to maximize accessibility for students with significant cognitive disabilities. Assessments are built to allow multiple ways for students to demonstrate their knowledge, skills, and understandings. During assessment administration, students have access to unique accessibility tools and supports to fit each student’s needs and preferences. Some of these tools and supports are delivered through the online assessment system while others are provided outside the system, by the teacher.

How does the DLM work?
A student first takes a small set of items, called a testlet, and then the system takes into account the level of difficulty of the test items and the student’s performance (correct or incorrect answers). Based on the student’s performance another testlet is selected, which contain items that are around the same level, somewhat easier, or somewhat harder than the last testlet (same, lower, or higher level skills are selected). This process continues until all of the EE’s in that year-end assessment have been completed.

Criteria to be able to take the DLM rather than the general education assessment
There are three criteria that must be satisfied in order to permit the student to take the DLM: 1) The student has a significant cognitive disability; 2) The student is primarily being instructed (or taught) using the DLM Essential Elements as content standards, and 3) The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade-and age-appropriate curriculum. All three of these criteria must be met in order for the special education student to take the DLM. A special education student who is not able to do work at grade level, but does not meet the criteria for the DLM, must take the general education assessment at grade level.
Requiring students who cannot do grade level work to take grade level assessment makes little sense

In January 2014, the NJSBA Task Force on Special Education released its report *Special Education: A Service, Not a Place*, a report that was a year-long study to identify cost-effective methods of delivering special education without diminishing the quality of services. The Task Force cited an earlier 2007 NJSBA study that found, at that time, that local, state and federal special education expenditures in New Jersey totaled $3.3 billion. With so many financial resources dedicated to the education of the special needs child, it is imperative that these resources are used effectively, in a manner that promotes student achievement for both the special needs and general education student.

To spend the time and effort to have a special needs student take an assessment at grade level, when the student is not capable of being instructed at grade level, is an inefficient use of special education dollars. The criteria for the DLM is overly restrictive, closing out testing opportunities for special education students who may benefit from the multiple ways that the DLM is designed to test knowledge and skills. With the significant resources that New Jersey spends to educate its special education population, the state must make sure that such assessments are effectively promoting the achievement of all special education students. By having such restrictive criteria for the DLM and requiring those students who do not qualify for the DLM to take the general education assessment at grade level, it becomes difficult to assess the academic growth of special education students and, in turn, to assess the effectiveness of those educational programs for those students. The state should permit IEP teams to determine what assessment and the level of the assessment is appropriate to measure each student’s growth. Additionally, by being able to measure growth more accurately, local districts will have another tool to show that the placement decisions of their IEP teams are the appropriate placements for their special education students.

Current NJSBA Policy

File Code 6000 Concepts and Roles in Instruction

Commitment to Quality Education


File Code 6147 Standards of Proficiency states, in part:

Assessment of Special Education Students

The NJSBA believes that any state assessment system must take into consideration the impact it will have on students eligible for special education and related services, and the opportunity it affords those students to meet their full potential. Any State assessment system should reflect the following principles:

1. Special education students should be included.
2. A district’s accountability for the proficiency of special education students should be based on incremental progress against standards that take into account the special challenges faced by these students.
3. Schools and districts should not be labeled in need of improvement based solely on the proficiency of special education students.
4. Remedial action that may be required of a school or district because special education students did not achieve proficiency goals should be directed exclusively at those students. [Authority: DA 11/03-CR (Special Education), DA 11/02-SR, DA 11/07-SR, DA 11/12-SR]

Proposed Additional Policy Language
The NJSBA Special Education Committee believes that NJSBA should have a policy that will enable the Association to advocate for more flexible requirements for the assessment of special education students who cannot learn at grade level. Standardized assessment of the special education student should be focused on measuring the growth of the student in the context of the actual curriculum that the student is learning, rather than the chronological grade to which the student is assigned. In making this shift, scarce special education dollars can be used more efficiently and effectively, testing the concepts the student has been learning, rather than testing the student against standards that, although chronologically appropriate, are not pedagogically or developmentally appropriate. By assessing the special education student at their pedagogical or developmental level, districts will be able to measure with greater accuracy the growth of the student and the effectiveness of their programs. That is not to say however, that assessment at grade level is not warranted if the special education student is capable of working at grade level. Ultimately, it is the IEP team that should determine the assessment and the level of that assessment that is appropriate for each individual student.

RECOMMENDATION:

The NJSBA Special Education Committee recommends approving the following additional policy language to be included in NJSBA’s Manual of Positions and Policies on Education that will enable the Association to advocate for greater flexibility in the assessment of special education students:

The NJSBA believes that, when assessing students with disabilities, federal and state authorities should adopt a flexible approach that will yield useful data on student growth and the effectiveness of the student’s educational program. IEP teams should determine whether a student with disabilities takes the general education assessment or some alternative assessment based on the student’s developmental and pedagogical progress, not necessarily on the student’s chronological grade level.
## SPECIAL EDUCATION COMMITTEE MEMBERS 2016-2017

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<tr>
<th><strong>Member Name</strong></th>
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<td>Irene LeFebvre, <em>chair</em></td>
<td>Boonton Town Bd. of Ed (Essex)</td>
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<td>Sheli Dansky</td>
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