

notes DIGEST

\$46.4 Billion State Budget Sent to Governor

Record Education Spending Included

On June 24, the state Assembly and Senate voted to send a \$46.4 billion state budget to Gov. Murphy, who is expected to sign it by the end of the month.

The budget includes record spending for education. Public schools will get \$9.3 billion in direct aid next year, which includes the same increase of \$578 million in K-12 education formula aid that the governor proposed in February. The budget also increases Extraordinary Special Education funding by \$125 million to \$400 million, a 45% increase over last year's amount.

"We appreciate the increase in education formula aid," said Dr. Lawrence S. Feinsod, NJSBA executive director. "The impressive new investment in Extraordinary Special Education Aid will provide relief for more than 500 districts, and the Stabilization Aid will help districts as they are adjusting to new funding levels required by the state's funding formula."

In addition to the \$125 million increase in Extraordinary Special Education funding, the budget approved by both houses of the Legislature made the following changes to Gov.

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Federal Funds Available on June 29 for Tech Upgrades

On June 29, New Jersey public school districts can begin to apply for 100% reimbursement for technology-related acquisitions to strengthen their digital instruction programs as part of the Federal Communications Commission's Emergency Connectivity Fund Program.

The more than \$7 billion fund, which Congress created as part of the American Rescue Plan and that the FCC unveiled on May 11, enables districts to buy laptops and tablets, and to establish Wi-Fi hotspots and broadband connectivity during the pandemic.

"The NJSBA welcomes the program and

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Workshop 2021: Attend, Learn and Mix with Other N.J. Education Leaders

School leaders are buzzing in anticipation of NJSBA's Annual Workshop 2021.

They are energized about plans to return full time to their school buildings this fall, and many want to be updated about the latest education trends, share lessons learned from the pandemic, and all are eager to connect with others during the first statewide education conference of the school year.

The three-day virtual event, co-sponsored by NJASA and NJASBO, is scheduled for Tuesday, Oct. 26 to Thursday, Oct. 28 and will deliver smart and diverse professional training

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Gov. Murphy Signs Legislation to End COVID Public Health Emergency

On June 3, the state Senate and Assembly approved legislation to end the public health emergency that's been in place since March 2020, while also establishing a pathway for lifting the myriad executive orders the governor has issued in response to the COVID-19 pandemic. On Friday, June 4, Gov. Murphy signed the bill into law and also issued Executive Order No. 244, which formally ends the COVID-19 public health emergency.

Under the legislation (A-5820/S-3866), which passed largely along party lines, most of the executive orders related to the pandemic will expire 30 days following the bill's signing. The remainder will remain in place until Jan. 1, 2022, although the governor could act sooner on any of those. None of those that will remain in place directly concern school operations. On that note, the governor already announced last month that upon the conclusion of the 2020-2021 school year, portions of Executive Order 175 allowing remote learning would be rescinded. Instead, schools will be required to provide full-day, in-person instruction, as they were prior to the public health emergency. Furthermore, student mask-wearing will remain in place in accordance with federal Centers for Disease Control and Prevention (CDC) guidelines.

The law prohibits the governor from implementing COVID-19 mitigation strategies (i.e., face coverings, social distancing, and gathering limitations) that are more restrictive than the recommendations provided in the federal CDC guidelines, unless a substantial increase in hospitalizations, substantially increased spot positivity, or a high rate of transmission necessitates a modification that would be more restrictive.

The law also authorizes the Murphy administration to issue orders, directives, and waivers under the authority in the Emergency Health Powers Act that are related to vaccination efforts, testing, health resource and personnel allocation, and implementation of any CDC recommendations to prevent the transmission of COVID-19. This authority lasts until January 11, 2022, and can be extended for 90 days with the passage of a concurrent resolution by the Legislature.

Legislature Acts on Dozens of Education-Related Bills

In addition to sending the state budget to the governor, the Legislature acted on dozens of education-related bills during June. Summaries of the many bills follow. To read more, go to online *School Board Notes*, Numbers 48 and 49.

School District Regionalization A-5537/S-3488 establishes a grant program for conducting regionalization feasibility studies in this voluntary regionalization program and provides financial incentives for districts losing state aid because of declining enrollment. Specifically, districts facing Adjustment Aid cuts would have eight years — stretched out from the current four years — if the districts involved elect to implement a regionalization plan. Through 2028-2029, newly established K-12 regional districts would receive the greater of the state aid to which the newly established district would be entitled, or the sum of the aid of the consolidated districts including the eight-year Adjustment Aid phase-out. NJSBA supports the measure because it is voluntary.

The bill was advanced by the Assembly Appropriations Committee last week and received amendments intended to ensure any regionalization initiative does not exacerbate student segregation in the affected districts. The bill passed the full Assembly on Monday and now heads back to the Senate, which passed a previous version of the legislation.

New Special Education Unit A-5701/S-2160 would create a special education unit within the Office of Administrative Law (OAL) and require an annual report. The special education unit would consist of administrative law judges having expertise in special education law. Under the bill, all contested cases concerning special education law referred to the OAL would be assigned to and adjudicated by the administrative law judges in the special education unit. NJSBA supports the bill.

The bill was advanced by an Assembly committee last week and may now be posted for a floor vote. S-2160 has already passed the full Senate.

Chapter 44 Amendments A-5825 would make a series of adjustments to the 2020 law, commonly known as “Chapter 44,” that made significant changes to school employees’ health benefits coverage and payment obligations.

A-5825 includes the following provisions:

- Requires boards of education and their unions to engage in negotiations to “substantially mitigate” any financial losses resulting from the implementation of Chapter 44. Under the bill, substantial mitigation may include changes to plan level offerings or contributions for the N.J. Educators Health Plan (NJEHP), or to both plan level offerings and contributions, which is not currently permissible under Chapter 44.
- Directs any school district with an increase in net cost as a result of Chapter 44 to commence negotiations immediately. The bill explicitly provides that such negotiations may include salary increases, step guides, or other terms and conditions of employment;
- Changes the effective date of the new Garden State Health Plan (GSHP), as established by Chapter 44,

from July 1, 2021 to January 1, 2022;

- Permits charter school and renaissance school employers to not implement Chapter 44 unless they have a collective negotiation agreement with any of their employees in effect on or after the law’s effective date;
- Clarifies that the provisions concerning mandatory enrollment in the NJEHP do not apply to any employee who was hired before the effective date of Chapter 44 but did not enroll or was not eligible to enroll at that time;
- Provides that for any period of time during which the school district, as an employer, does not have to pay a premium for a health benefits plan, an employee enrolled in such plan will not be required to make a contribution toward that premium (unless a collective bargaining agreement dictates otherwise);

A-5825 was approved by the full Assembly. The legislation’s Senate counterpart, S-3487, has already passed through committee and is expected to be sent to the governor for final consideration.

School Audit Delay A-5834/S-3881 provides school districts with a two-month extension to file their required annual audits with the commissioner of education. Similar legislation was signed into law last December that applied to the 2019-2020 school year.

The bill has been passed by the full Senate and received Assembly committee approval.

School Nutrition The following bills, which NJSBA supports, are part of a package aimed at addressing food insecurity. The first two would provide additional funds to school districts offering school meal programs.

- **A-5882/S-3943** requires the state to provide a 10-cent per meal supplement to the existing federal reimbursement to operators of federal summer food service programs.
- **A-5883/S-3944** requires the state to provide a 10-cent per breakfast supplement to the existing federal reimbursement to a school district with schools that participate in the federal school breakfast program by providing “breakfast after the bell.”
- **A-5884/S-3945** establishes the “Office of the Food Insecurity Advocate.”

The bills have been advanced by Senate and Assembly committees and may now be posted for floor votes in both houses.

‘Securing Our Children’s Future’ Grants The following bills would appropriate funding for various projects authorized pursuant to the “Securing Our Children’s Future Bond Act.” The act, which received voter approval during the November 2018 general election, authorized the state to borrow up to \$500 million to fund school district and county college capital projects.

NJSBA supports the following measures that will provide resources to school districts for school security projects, water infrastructure improvement and career and technical education expansion projects:

- **A-5886/S-3959** awards project grants for school security projects. The grants will, in part, be used to offset the cost of alarms and silent security sys-

tems. These grants will also be used to fund other infrastructure improvements prescribed in state law after districts certify compliance with “Alyssa’s Law,” which requires all public schools to be equipped with a panic alarm for use in a school security emergency. As that measure worked its way through the legislative process, the NJSBA successfully advocated for the Legislature to identify a funding source to offset school districts’ implementation costs. Such funding is now being made available to districts through this legislation.

- **A-5887/S-3960** will provide grants for water infrastructure projects in school districts. Eligible projects include: 1) improvements to drinking water outlets with a detectable level of lead or other contaminants; and 2) whole system remediation.
- **A-5889/S-3962** provides project grants for career and technical education expansion in county vocational school districts.

The bills passed the full Assembly on Monday and are expected to receive Senate approval in the coming days.

Impact Aid S-3948/A-5896 establishes an additional category of school aid known as “military impact aid” and authorizes supplemental state aid to certain districts receiving certain federal impact aid. The Federal Impact Aid Program provides financial assistance to school districts that include within their boundaries parcels of land owned by the federal government or that are exempt from local taxation. According to a statement from the bill’s sponsors, the legislation would “provide increased state aid for school districts whose property taxpayers have had to shoulder the burden caused by past cuts in federal payments to local districts for the education of the children of active-duty military personnel.”

NJSBA supports the measure, which was sent to the governor’s desk.

Student Mental Health The following measures are part of a package of bills, spearheaded by Assembly Majority Leader Lou Greenwald and supported by the NJSBA, designed to enhance mental health services and supports for New Jersey students:

- **A-4433/S-2715** creates a grant program to encourage school districts to partner with institutions of higher education to train school-based mental health services providers. School districts that receive a grant under the program would use the funds to create and grow programs and partnerships that train students who are attending graduate school to become school-based mental health services providers. The bill has passed both houses of the Legislature.
- **A-4434/S-2716** establishes a Student Wellness Grant Program in the NJDOE. The purpose of the program will be to provide grants that support school districts in implementing school-based programs and practices that promote mental wellness, social and emotional learning, and student resilience. The bill is primed for a final vote in both houses.
- **A-4436/S-2718/S-555** establishes a “Student Mental Health Task Force” to: 1) examine issues related to the mental health of students; 2) study and survey the resources that are available to

schools and parents to address student mental health needs; and 3) develop recommendations to ensure that students have access to mental health care programs and services to allow students to meet their educational goals. The NJSBA would have a representative on the task force. The bill passed the full Senate on Monday and now returns to the Assembly, which passed a previous version of the measure.

Teacher Loan Redemption Program S-969/A-2687 would establish a loan redemption program in the Higher Education Student Assistance Authority (HESAA) to allow teachers to redeem a portion of their loan amounts for service as a teacher in a high-need field in a “low-performing school.” NJSBA supports the legislation. If the bill receives final approval in its current form, up to \$1 million could be appropriated to the program. The bill has passed the full Senate and is primed for a final vote before the Assembly.

School Bus Safety A-5817 amends current law to hold a board of education or school bus contractor responsible if they approve or assign an individual as a driver of a school bus without first complying with the provisions of law concerning the training, certification, and criminal history record checks of school bus drivers. The bill also increases the fines associated with such an action.

NJSBA is monitoring this bill, which passed the full Assembly. Its counterpart in the Senate, S-3852, has received committee approval.

Concussion Protocols Under S-225/A-679, student athletes who have sustained a concussion would be prohibited from returning to competition until they have returned to regular school activities and are symptom-free. The return of the student athlete or cheerleader would be in accordance with the Center for Disease Control and Prevention’s (CDC) graduated, six-step “Return to Play Progression” recommendations. School districts’ policies will also need to be updated anytime the CDC updates the Return to Play Progression.

NJSBA supports the bill, which has passed both houses and is now on the governor’s desk.

Concussion Evaluation A-1599 requires a student who sustains a concussion to receive written clearance to return to school from a licensed health care professional whose scope of practice includes diagnosing and treating concussions. Additionally, students with concussions are barred from physical activity such as recess or physical education until evaluated and cleared by a licensed health care professional.

NJSBA supports the bill, which has passed the full Assembly and heads to the Senate.

Electric School Bus Pilot A-1971 requires the N.J. Board of Public Utilities to develop and implement a three-year “Electric School Bus Pilot Program.” The purpose of the pilot program is to determine the operational reliability and cost effectiveness of replacing diesel-powered school buses with electric school buses for daily transportation of students.

NJSBA supports the measure, which passed the full Assembly and moves to the Senate.

Hiring Retired Teachers S-3685 permits teachers and professional staff members who provide special services, who are retired from teachers’ pension

system, to return to employment for up to two years without reenrollment in the system if employment commences during a state of emergency in the midst of a pandemic.

NJSBA supports the bill, which was approved by the full Senate and moves to the Assembly.

Addressing School Nurse Shortage A-4544/S-3150 permits a school nurse who is retired from the teachers’ pension system to return to employment in a district for up to two years without reenrollment in the pension system.

NJSBA supports the bill, which has passed both houses of the Legislature.

Computer Science S-990 requires each school district to annually issue a report to the New Jersey Commissioner of Education with miscellaneous information related to computer science courses offered in the district.

The bill passed the full Senate and moves to Assembly committee.

Cannabis Revenue for Schools S-3213 establishes the New Jersey Community Learning Program in the NJDOE to support the provision of comprehensive extended learning time programs in areas most impacted by the criminalization of cannabis (referred to as “impact zones”). The costs of the program would be supported by a portion of the annual state revenues collected from the retail sale of recreational cannabis products.

‘Limited’ Teacher Certification Pilot S-2826/A-4594 directs the (NJDOE) to establish a five-year pilot program for the issuance of limited certificates of eligibility with advanced standing (CEAS) and limited certificates of eligibility (CE). The “limited CEAS” and “limited CE” would be available to people who may not meet one of the requirements for a CEAS or CE and who are seeking employment in a school. Those who hold a limited CEAS or limited CE would only be eligible for employment at school districts approved by the NJDOE. Districts must demonstrate a sufficient capability to support new teachers while also showing that hiring a teacher with limited certification would fill a need.

The bill has passed both houses of the Legislature and awaits action by the governor.

Culturally Responsive Teaching A-5312/S-2834 would mandate that all candidates for teaching certification complete a course on culturally responsive teaching. The bill defines “culturally responsive teaching” as a pedagogy that recognizes the importance of including students’ cultural references in all aspects of learning, using research-based teaching strategies that make meaningful connections between what students learn in school and their cultures, languages, and experiences. This requirement would go into effect with the 2021-2022 school year.

The bill received final legislative approval on Monday and was sent to the governor.

Youth Sports Task Force A-2957 establishes a task force to examine issues and make recommendations concerning youth sports, including abusive coaching, confrontational parents, and bullying of players.

NJSBA supports the bill, which was approved by the Assembly Women and Children Committee and may now be posted for a vote before the full Assembly.

Governor Signs Bill Extending Special Education Benefits for 8,700 Students

On June 16, Governor Murphy signed A-5366/S-3434 which requires boards of education to provide special education and related services to students exceeding their age of eligibility. This law extends eligibility by requiring school boards to provide the services included in an individualized education program (IEP) to students who reach the age of 21 during the 2020-2021 school year, the 2021-2022 school year, and the 2022-2023 school year, provided that the parent of the student and the IEP team decide that the student requires additional services, including transition services.

“NJSBA originally had concerns about the funding for this measure, however the Association successfully sought amendments to provide for funding,” said Dr. Lawrence S. Feinsod, NJSBA executive director. “We thank the Legislature and the governor for addressing our concerns.”

While the bill was originally supposed to be funded through local, state and federal dollars, the governor noted that, because of the requirements of the federal Individuals with Disabilities Education Act (IDEA), the law will be funded exclusively through federal dollars only. While supportive of the intent to ensure that students receive the services as described in their individual education plans, NJSBA also expressed reservations that the bill duplicates those rights under the IDEA as it already provides a mechanism for students to seek additional services when a district does not meet its obligations under the IEP.

In signing the bill, Gov. Murphy said that the new law would assist approximately 8,700

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Get the Full Story Online

The print edition of *School Board Notes Digest* is published monthly, and it includes condensed versions of articles that have appeared in the weekly online version of the newsletter. The current issue is available at www.njsba.org/sbn. Follow links on that page to view archived editions.

NJSBA: Don't Remove Incentives to Keep Solar Energy Growing at New Jersey's Schools

Editor's note: A version of this column by NJSBA Executive Director Dr. Lawrence S. Feinsod was published June 3 by NJSpotlightNews.com.



Solar development at New Jersey public schools has been a point of pride for the New Jersey School Boards Association and our member districts. New Jersey's public schools have

collectively developed more than 600 solar energy projects. These solar installations save money for local taxpayers and allow funds to be redirected to the classroom, educate our students, reduce greenhouse-gas emissions, and send a highly visible message to our communities that clean energy is feasible.

This nation-leading progress has been made possible by New Jersey's solar incentive program which, for over a decade, has motivated New Jersey's necessary transformation to renewable energy through both Democratic and Republican administrations in Trenton. Unlike other states, which have focused on large solar farms, using those states' ample open space, New Jersey's open space is at a premium.

New Jersey has prioritized on-site solar projects located on the roofs and parking lots of schools, municipalities, and private businesses. Continued development of these on-site projects is a necessary ingredient to continuing the growth of solar power in New Jersey, as these projects are a wise use of space that deliver much-needed cost savings to their school hosts, as well as environmental benefits.

Not only do these on-site projects support wise land-use policy, they are distributed broadly across the state. The diversity of these distributed energy sources has energy being generated closer to where it is used. With a smarter grid, this can increase the resiliency of New Jersey's energy delivery system.

Flawed Reworking of Incentive Program Now, under a proposal being considered by the New Jersey Board of Public Utilities, this progress is about to be upended.

The BPU is currently restructuring its incentive program to create an update called the Solar Successor Incentive Program. The current proposal under review at the BPU calls for excessive and unjustified reductions in incentives for these on-site solar projects. It is vital that the administration of Gov. Phil Murphy and the BPU not abandon the development of on-site solar projects — a proven, highly effective approach to growing New Jersey's solar market.

While making incentives as low as possible should remain a priority, it is counterproductive to set them so low that on-site solar development is no longer feasible. Such a move will discourage projects that preserve our open space and allow for a widespread distribution of solar energy and its benefits throughout the state. The proposal under consideration at BPU will thwart the efforts of school districts to reduce their operating costs to the benefit of local property taxpayers.

Public schools are motivated to pursue on-site solar installations, which provide the combined benefits of supporting clean energy and saving money. These motivators go hand-in-hand, as schools need to capture sufficient savings to justify solar development. With the steep decrease in incentives proposed by the BPU, savings from installing new on-site solar projects will suffer or disappear, and schools will no longer be able to justify these important solar initiatives.

A List of Problems To understand the consequences of the new incentive structure being considered by the BPU, it is vital to recognize the unique position of public schools. This proposed incentive program is based on several assumptions that simply do not apply to New Jersey schools and lead to an unusable incentive structure that will prevent the state from reaching its solar and Energy Master Plan (EMP) goals:

- The proposal is built on the assumption that schools will own and develop their own solar projects. This ignores the real-

ity of how school districts operate: When a school district pursues solar, it does so under a business model where a private solar developer develops and owns the project and recovers its investment by selling low-cost energy directly to the school district. Schools depend on these solar developers for their expertise in the financing, construction, operation, and maintenance of solar projects. Schools are not in the business of developing and operating solar projects — they need to focus on education. Yet the BPU proposal writes this essential, and highly successful, public-private business model out of its incentive design.

- On top of the reality that school districts do not have the bandwidth to develop and own solar projects and need private solar developers to make these projects happen, these same developers can take the lucrative federal tax benefits that school districts and other public entities cannot and pass these benefits to their school customers. The proposal under consideration by the BPU fails to recognize this reality, further undermining the design of its proposed incentives.
- In calculating the cost of its proposed incentive structure, the proposal under consideration at the BPU neglects to acknowledge the cost reductions that solar projects deliver to schools. These savings help schools reduce the burden of school budgets on local property taxes, just as the savings from businesses which go solar let those businesses maintain their competitiveness in New Jersey. By ignoring these benefits, the proposal under consideration by the BPU undervalues its proposed incentives.

We must do better. The New Jersey School Boards Association calls upon the BPU and Gov. Murphy to continue policies that make our state and its public schools national leaders in sustainability and solar energy. The incentives currently under consideration at the BPU should be revised to encourage new solar projects at schools. Our students, our taxpayers, and our environment are counting on it. 🌞

Public schools will get \$9.3 billion in direct aid next year, which includes the same increase of \$578 million in K-12 education formula aid that the governor proposed in February.

State Budget continued

Murphy's original budget proposal:

- \$5 million is allocated for "Charter School Facility Improvements."
- \$500,000 is allocated for the implementation of the Clayton Model Pilot Program for social-emotional learning. This program was created earlier this year via legislation.
- There is \$5 million for the Community Schools Pilot Program.
- Military-impacted districts will be prioritized in receiving Stabilization Aid, a \$50 million grant program for districts experiencing reductions in state aid.
- If they participate in school regionalization studies, districts that are losing state aid will recapture about 19% of their state aid loss. Further information on this program is available in the June 15 edition of online *School Board Notes*.
- Language is included requiring analyses and reports on the use and effectiveness of federal stimulus aid, including the American Rescue Plan (ARP), by both local school districts and the New Jersey Department of Education (NJDOE).
- Over \$26.5 million is allocated for the Department of Children and Families' Office of School Linked Services, which administers the School Based Youth Services Program. This represents an increase of \$5 million above the governor's proposal and over \$11 million more than current funding levels.

National School Boards Association Holds Advocacy Institute; NJSBA Meets with Congressional Delegation

Starting on June 8, the National School Boards Association held its annual "Advocacy Institute." Due to the public health emergency, this year's conference was held virtually. The first two days of the conference included a series of information sessions and guest speakers that touched on some of the most pressing education issues being addressed at the federal level.

The final day was reserved primarily for state associations to meet with members of their

respective congressional delegations. NJSBA governmental relations staff coordinated a series of virtual Capitol Hill visits that took place throughout the day.

The day began with welcoming remarks from NJSBA President Irene LeFebvre and NJSBA Executive Director Dr. Lawrence S. Feinsod.

In the morning, NJSBA met with a member of U.S. Senator Cory Booker's staff and later with U.S. Senator Robert Menendez.

Throughout the afternoon, the NJSBA heard from members of the New Jersey congressional delegation including:



**U.S. Senator
Robert Menendez (D-NJ)**



**Congresswoman
Bonnie Watson Coleman (D-12)**



**Congressman
Donald Norcross (D-1)**



**Congresswoman
Mikie Sherrill (D-11)**



Congressman Andy Kim (D-3)

Key staffers from the offices of Congressman Jeff Van Drew (R-2) and Congressman Bill Pascrell, Jr., (D-9) also participated.

The meetings provided an opportunity for the NJSBA and participating board members to advocate concerning various issues of national and state significance, including:

- Full funding of the Individuals with Disabilities in Education Act (IDEA);
- Investing in the educator pipeline to address the teacher shortage;
- Continuing to bridge the "Homework Gap" and digital divide; and
- Keeping public monies in public schools and avoiding the diversion of federal funds to private schools.

More information on NSBA advocacy can be found on the NSBA website at <https://www.nsba.org/Advocacy>.

A March 23 *School Board Notes* story on the NJSBA's original statement on the proposed budget can be found at www.njsba.org/NJSBA-BudgetTestimony.

Beyond the education issues, this budget:

- Increases the Homestead and Property Tax Relief Programs.
- Adds an additional \$505 million for pension payments, bringing the total payments this year to a record-breaking \$6.9 billion.
- Creates a \$3.7 billion Debt Defeasement Fund to allow the state to retire some debt early, refinance other debt at lower interest

rates, and pay for some programs that would normally be funded through bonds.

This spring, the state has been calculating the budget with an abundance of revenues due to three factors: over \$6 billion in federal aid through ARP; approximately \$4 billion from emergency bonding in anticipation of tax revenues adversely impacted by COVID; and better-than-expected tax collections. 🍏

READ MORE: For the latest developments on the budget, see online *School Board Notes*, No. 50.

Diabetic Teacher Allowed to Pursue Discrimination Claim Against District

On June 8, the New Jersey Supreme Court determined that certain employees need not demonstrate they have suffered an adverse employment action when claiming discrimination under the New Jersey Law Against Discrimination.

In the case, initially reported in *School Board Notes* on June 25, 2019, a longtime diabetic teacher suffered a hypoglycemic event in the classroom, fainted and sustained serious and permanent injuries when she hit her head on a science lab table. The teacher's allegations of injury included a total loss of smell; implantation of a dental bridge and bone grafts; altered speech; post-concussion syndrome; vertigo; dizziness; severe emotional distress; and decreased life expectancy.

The teacher alleged that the accident would not have happened but for the principal's refusal to accommodate her request to eat lunch during an earlier class period. As a Type I diabetic, she previously notified the administration of her need to maintain her blood sugar levels by eating lunch earlier in the day. However, despite assenting to her request for a single marking period, administrators ultimately assigned her to teach morning classes and to lunch duty during the student lunch periods, thus delaying her own lunch period until later in the school day. After the incident, the teacher filed suit against the school district and the building principal in his personal capacity.

In the trial court, the school district argued that the teacher voluntarily continued to teach after her blood sugar levels dropped and that she suffered no adverse employment action attributable to either board or administrative action. The trial court agreed and dismissed the complaint because the teacher could not demonstrate an adverse employment action, such as termination, demotion, transfer or any other negative employment action stemming from the district's refusal of her requested accommodation, an earlier lunch hour.

On appeal, the Appellate Division acknowledged the elements of a prima facie case of discrimination, which require the plaintiff to show: (1) membership in a protected class, in this case, meaning that she is an individual with a disability;

(2) she was qualified to perform the essential functions of the job; (3) the employer knew of the need for an accommodation; and (4) finally, the employer failed to make reasonable accommodations for her limitations. The Appellate Division also noted that where the employer could demonstrate that the accommodation would impose an undue hardship on operations, no accommodation is required.

The narrow issue presented to the Appellate Division was whether the teacher was required to prove that the district took an adverse employment action against her in order to proceed with her failure-to-accommodate claims under the law against discrimination.

The Appellate Division first determined that the trial court should not have dismissed the matter because "the employee could demonstrate that the failure to accommodate forced the employee to soldier on without a reasonable accommodation" and there need not be proof of adverse employment action because the circumstances "cry out for a remedy." The court concluded, "[she] 'soldiered on' by taking glucose tablets to maintain her blood sugar levels in order to teach. Sadly, her worst fears came to fruition when she fainted and seriously injured herself in front of her students. Hence, she should be allowed to present her claim for damages under the (Law Against Discrimination) at trial."

The state Supreme Court held that an adverse employment action is not a required element in a failure to accommodate claim and remanded the matter to the trial court for trial.

Board members may discuss this matter with the board attorney or may call the Legal, Labor Relations, and Policy department at (609) 278-5254.

OPRA Response Deadlines Return in Most Cases

On June 10, 2021, the Government Records Council (GRC) issued a special statement clarifying that records custodians for public school districts and charter schools must abide by pre-pandemic deadlines in responding to requests made under the Open Public Records Act (OPRA).

There is an exception to these deadlines for

records related to a district's or school's response to the COVID-19 pandemic. The special statement was issued in response to legislation (*P.L.* 2021, c. 103/A5820), signed by the governor earlier this month, to end the public health emergency in place due to the pandemic. The GRC is an affiliate of the New Jersey Department of Community Affairs and is charged with ensuring the public's right to access government records.

Background and Context OPRA sets specific timelines within which districts and schools must respond to a public records request. In general, OPRA requires that a public agency respond to a request and provide access, or otherwise reply to a request, within seven business days. In light of the pandemic, OPRA was amended in March 2020 by *P.L.* 2020, c. 10 to lift the required response timelines during the pandemic.

Despite the relaxation of the response deadlines, records custodians were still required to "make a reasonable effort to respond to a request for access to a government record within seven business days or as soon as possible thereafter." It should be noted that on March 26, 2020, the GRC issued a special statement to clarify records custodians' obligations during the period of emergency.

However, the legislation signed this month, bringing an end to the pandemic state of emergency, marked a relative "return to normal" for school records custodians.

The June 10 special statement from the GRC clarifies that records custodians "shall immediately resume normal OPRA operations, except in those limited circumstances where a requestor is seeking records directly related to that agency's COVID-19 response." The statement interprets "COVID-19 response" to mean "those records directly, as opposed to tangentially, relating to the agency's response to the COVID-19 pandemic." Records custodians are referred to the March 2020 special statement for guidance about requests for records related to the district's or school's COVID-19 response.

For more information about this update or OPRA compliance requirements, board members should consult with their board attorney or call the Legal, Labor Relations, and Policy Department at (609) 278-5254.

Tech Funds continued

urges districts to act quickly, because the initial application window will remain open for just 45 days," said NJSBA Executive Director Dr. Lawrence S. Feinsod. "Don't miss this opportunity to upgrade the technology in your district."

The identified "eligible equipment" allowance is for up to \$400 per device and up to \$250

for hotspots to close the nationwide homework gap associated with virtual learning.

The NJSBA's TEC partner, E-rate Consulting, Inc., explained the program's rules to help you determine your district's eligibility for the new program and provides tips for a successful funding application process, slated to begin this month.

The recorded webinar is available at www.njsba.org/ECFWebinar.

www.njsba.org/ECFWebinar.

A document answering 38 questions submitted by webinar participants can be accessed at www.njsba.org/38QuestionsAnswered.

Please contact vince@erateconsulting.com for additional questions and guidance regarding planned technology spending or past purchases that may qualify for federal reimbursement. 🍏

NJSBA Virtual Workshop 2021

continued

sessions programmed to impart school leaders with actionable tools to succeed.

Interesting keynote speakers, special events and entertainment, and a live exhibit hall will be offered for attendees to interact with sponsors and their peers for group and personal chats, and product demonstrations.

The online conference will be available for 30 days, which means attendees can revisit sessions that they would like to experience again, and view the ones that they missed.

Registration Details NJSBA is offering a special group rate of \$900 for up to 25 team members, including school board members, superintendents, school business administrators, IT directors, facilities directors, principals, and other district staff. That's only \$36 per person. The individual member rate is \$450 per person.

New Registration Process for 2021 The group registration process for Workshop 2021 has changed. Please review the group rate registration instructions before starting if you are registering two or more team members. Select "individual" registration ONLY if you are registering one person. Registration is available online and must be handled by the business administrator.

To learn more, and to register, visit the Virtual Workshop 2021 website at <https://workshop.njsba.org>.

Special Education Benefits

continued

students across the state who are expected to age out of their special education services over the course of the three applicable school years with an estimated cost of approximately \$600 million over those three years.

On June 16, the New Jersey Department of Education (NJDOE) issued a memo saying the passage of the law, "ensures that students with disabilities who did not receive the services included in their IEPs will receive additional or compensatory education if deemed necessary by the student's IEP team." However, the new law "does not guarantee that all students exceeding their eligibility will receive additional or compensatory services."

Pandemic Voices: Calling for Video Submissions

As we appear to be making our way out of the COVID crisis, the NJSBA is developing a video compilation to document this time in our state's education history.

The NJSBA is soliciting video entries from K-12 public school students, teachers and district administrators, asking them to reflect on the unexpected times of joy during a deeply disruptive era. Some questions to prompt your students might include:

- How have you grown during the pandemic?
- What did you learn about yourself?
- What will you remember the most?
- Were there moments that you remember when you surprised yourself with what you could accomplish in learning from home?
- What skills have you gained as a result of remote learning?
- What do you wish never to repeat again?
- What did you miss the most during virtual schooling?
- Were there any silver linings from this time?

Video submissions can be new or previously recorded, dating back to March 2020. Additionally, school administrators are invited to share what they have discovered about themselves, their students and their staff. Submissions should be three minutes or less. Student entries must include a release form signed by a parent or legal guardian. Please submit videos by July 23.

The submission form is here: www.njsba.org/SubmissionForm. The release form required for student submissions is here: www.njsba.org/ReleaseForm. The NJSBA may use select entries for promotional purposes, resulting in internal and external coverage through a variety of communication channels including online platforms, social media, broadcast and publications.

Interim Data Shows Student Performance Lagging; NJDOE Cautions Against Comparisons

At its monthly meeting on June 16, the State Board of Education heard an update on student achievement over the last year. The update provides a snapshot of mid-year student learning in English language arts, math and science. The New Jersey Department of Education (NJDOE) determined the percentage of students in each grade level/content area that are below grade level, on grade level, or above grade level. With this data, targeted interventions can be developed to meet the needs of all students, especially vulnerable student groups.

According to the preliminary data released by the NJDOE, Black and Hispanic students were struggling academically after a year of remote, or partially remote, instruction caused by the pandemic. The data showed that 56% of Black students who participated in the assessment were doing mathematics "below grade level," while 52% of the Hispanic students were not doing work at grade level. The number of white students below grade level was 28%. The numbers for English language arts were similar. Fifty-one percent of Black students were below grade level, as were 52% of Hispanics and 27% of white students.

The assessment of what was "at grade level"

was new, the NJDOE cautioned. A June 2 broadcast memo from the NJDOE told districts not to overreact.

"The Department would discourage comparisons between the interim assessment data described above and data regarding student performance on previous administrations of the New Jersey Student Learning Assessment or other statewide assessments," said Dr. Lisa Gleason, assistant commissioner of academics and performance. "Statewide assessments serve a different purpose, and are administered under different conditions than local interim assessments," she added in the broadcast memo. "Comparisons between these data sets would not yield meaningful takeaways regarding trends in student learning over time."

Officers Nominated and Calendar Approved

The board nominated Kathy Goldenberg and Andrew Mulvihill to an additional year as president and vice-president, respectively, and will hold officer elections at its July meeting. The board also approved its annual calendar of meetings for the upcoming year.

READ MORE: For more information, go to online *School Board Notes*, No. 49.



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BRIEFLY NOTED

NJSBA Celebrates Student Voices During the Pandemic

Despite the pandemic, the NJSBA provided three opportunities for students to be recognized this year: the Eighth-Grade Dialogues, the Unsung Heroes/Heroines Awards and the student-produced films in the Garden State Film Festival.

Eighth-Grade Dialogue The NJSBA was not able to hold in-person interviews for the county school boards associations' Eighth-Grade Dialogues, but video interviews were conducted and can be seen at www.njsba.org/Dialogues.

Unsung Heroes/Heroines NJSBA recognized the unsung student heroes and heroines. Videos honoring the students' achievements can be seen at www.njsba.org/Unsung.

Garden State Film Festival In the June 2 edition of *School Board Notes*, the NJSBA announced the winning student-produced films



The grand prize-winning film in the "Hometown Documentary" category is *At the Core – The Heart of Appel Farm*, produced and directed by students Troy Nguyen (at left) and Chloe Pecheux at Washington Township High School in Gloucester County

in the Second Annual "New Jersey Hometown Documentary Short" category in the Garden State Film Festival. The grand prize-winner was *At the Core – The Heart of Appel Farm*, produced and directed by students Troy Nguyen and Chloe Pecheux at Washington Township High School in Gloucester County,

where Kristen Dirato is the TV Broadcast and Video Production teacher. The winning school district will be awarded \$500 by the NJSBA.

The deadline for student entries in next year's Garden State Film Festival contest is Jan. 2, 2022. For more information, go to GSFF.org