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TESTIMONY OF PROFESSOR PAUL TRACTENBERG
BEFORE THE NEW JERSEY STATE BOARD OF EDUCATION
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Good afternoon. I am Professor Paul Tractenberg of Rutgers Law School – Newark. Thank you for this opportunity to present testimony today on the State Board’s proposed regulations implementing the New Jersey Quality Single Accountability Continuum. I do so on behalf of the Rutgers-Newark Institute on Education Law and Policy, of which I am the Founding Director. I also want to introduce Teresa Moore, who has joined the Institute as a consultant, and is working with us on QSAC.

The Institute’s mission is four-fold:

- to promote education reform and improvement through research, policy analysis and public discussion;
- to mobilize lawyers, scholars, and education practitioners to address complex and controversial issues in education law and policy;
- to improve public understanding of those issues; and
- to serve as a center for learning and innovative thinking about legal and public policy issues relating to education.

Issues affecting New Jersey’s urban students and schools are the Institute’s primary focus, but those issues are addressed in the context of the state’s wide diversity and with an eye toward their ramifications for the nation as a whole.

In 2002, the Institute issued a report to the Commissioner of Education entitled *Developing a Plan for Reestablishing Local Control in the State-Operated Districts*, in which we recommended comprehensive reforms to the state’s system of oversight and intervention in local school districts, including creation of a single system that would encompass all applicable accountability requirements, not only for the three state-operated districts but all districts in the state. Following the issuance of our report the Commissioner established a Working Group on State Takeover, in which the Institute’s Associate Director, Professor Alan Sadovnik, and I participated; and we also consulted with the Commissioner and his staff and members of the State Legislature and their staffs in the development of the bill that became the Quality Single Accountability System, QSAC.

QSAC reflects the recommendations of our 2002 report and the recommendations of the Working Group, but not entirely. It is not a perfect bill; it does not create a perfect system; but it is what it is. We are here today to discuss the development of regulations to implement the statute. **The thrust of my testimony is to urge you to adopt regulations that reflect the overarching spirit of QSAC – the creation of a single statewide system to assess, and increase, the capacity of local school districts to provide a thorough and efficient educational program for their students, and to provide state support and assistance to local districts designed to meet the goal of enhancing local capacity.** QSAC should preserve local control in all areas of the educational system to the greatest extent possible, and provide state support where necessary when districts lack sufficient local capacity to deliver a thorough and efficient education.

In our report, we called for a redefinition of the State's role in school district accountability, and, more broadly, in its relationship to school districts, and we continue to do so. We would like the regulations to emphasize support of, and technical assistance to, districts delivered in a collaborative manner. QSAC and the draft regulations speak of collaboration, but also retain a "command-and-control" approach by emphasizing intervention procedures triggered by measurable accountability standards and technical assistance to meet the standards. We recommend that the regulations be retooled to place greater emphasis on State support of districts to meet the single accountability standards.

In that vein, we believe that QSAC assessments of district performance should focus primarily on measures of local capacity rather than student outcomes. This focus is especially important for the State-operated school districts (“SOSDs”) and other districts in need of substantial state assistance. QSAC mandates that districts comply with quality performance indicators (which, we understand, are currently being developed by the Department). Those quality performance indicators will set the tone and establish the focus and the content of the state’s implementation of QSAC. It will be very important for them to focus systematically on local capacity to achieve desired outcomes, rather than the outcomes themselves. A snapshot of outcomes, specifically student achievement levels, reflecting performance, at a given point in time, should not determine a school district’s placement on the QSAC continuum. Rather, the focus should be on demonstrated local capacity and evidence of progress toward meeting the desired outcomes.

It also will be very important for the quality performance indicators to establish a clear system of objective standards and benchmarks by which districts will be assessed. In the case of districts needing assistance, competent, objective assessments should be carried out to measure progress, and results should be communicated promptly to the districts.

We look forward to reviewing the Department's proposed quality performance indicators, which we understand are expected to be issued in draft by March 1.

With these general themes in mind, our specific comments follow on certain issues in QSAC and the draft regulations.

Role of the QSAC Continuum vis-à-vis the Current Seven-Year Certification System.

QSAC and its implementing regulations are intended to replace the current statutory and regulatory scheme that now provides for a seven-year certification system. Nonetheless, QSAC refers to a seven-year certification, indicating that a high performing district will be certified for seven years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators. N.J.S.A. 18A:7A-14(a); -14(b); -14(c) (8); -15(d).

The draft regulations are silent on the issuance of a seven-year certification. Indeed, in the section governing placement on the performance continuum, where one might expect a reference to this statutory requirement for high performing districts, no such reference appears. See N.J.A.C. 6A: 30-4.1.

It is unclear why a seven-year certification was retained in the statute, when annual reviews are required of each district to assure that they continue to meet the quality performance indicators. **To remedy this inconsistency, the seven-year certification to which QSAC refers should be reconciled in the regulations with the annual review requirement.**

With respect to the status of districts that now hold seven-year certifications, QSAC and the draft regulations provide that initial evaluations and continuum placements of districts currently classified as Level I will occur on a schedule to be established by the Commissioner. Level II, III and state-operated school districts must be evaluated within 45 days of the effective date of the regulations. N.J.A.C. 6A:30-8. **Given the compressed 45-day time frame in which initial QSAC evaluations must be completed, we caution the Board against adopting the regulations precipitously. This may be one of the areas in which a technical amendment of QSAC is justified.**

Establishment of Measurable Performance Standards

QSAC directs the Department to establish a single evaluation and monitoring system for all school districts in the five "key components of school district effectiveness": instruction and program; personnel; fiscal management; operations; and governance. It mandates an assessment of districts' achievement of the T & E standards of 18A:7F-4, and mandates an evaluation of district capacity in the five areas. N.J.S.A. 18A:7A-10. It provides that "quality performance indicators" will be used to evaluate the districts, but does not define the indicators other than to describe them as "comprised of standards for each of the five key components of school district effectiveness....[The indicators] shall take into consideration a school district's performance over time, to the extent feasible." N.J.S.A. 18A:7A-10.

The draft regulations provide that the Department will use "objective measures" to evaluate district performance and capacity in the five component areas. N.J.A.C. 6A:30-2.1(b). In the Institute's 2002 report to the Commissioner, we endorsed the notion of

developing objective, concrete performance measures. Objective, public standards will ensure maximum understanding of the State's expectations for districts, and maximum progress toward districts achieving high performance. We have offered our assistance to the Department in the crafting of those objective measures of performance. In our 2002 report, we included a suggested checklist in an appendix. Our proposed checklist was based on a more detailed one used -- with considerable success -- in the Compton, California Unified School District, a district in which local control was reestablished after a relatively short period of state operation.

Moreover, the Institute recommends that specific standards be included that measure compliance with mandates that apply particularly to Abbott districts. Those standards should relate to the Abbott implementation measures expressed in existing regulations.

In addition, for any districts in partial or full state intervention (including the three current State-operated districts), the standards should be progress-oriented as opposed to strictly numerical, indicating "substantial improvement" or "significant progress" toward achieving an indicator. This approach would allow the state and the districts to recognize the progress they have made since the inception of state operation, and would acknowledge the distinct challenges in meeting certain goals given the constellation of non-educational barriers to achievement that exist in those districts.

This recommendation, that progress-oriented, as well as more precisely measurable numerical standards should be included in the quality performance indicators, is consistent with QSAC. QSAC requires that, in evaluating placement on the continuum, the quality performance indicators "shall take into consideration a school district's performance over time, to the extent feasible." N.J.S.A. 18A:7A-10. The draft regulations also incorporate a progress-oriented standard not in evaluating school district performance for placement on the continuum, but in the process of evaluating withdrawal from full or partial intervention. The regulations provide that the Commissioner must consider "evidence of sustained and substantial progress," which is demonstrated by the district having satisfied 80 to 100 percent of the weighted quality performance indicators in one or more of the five components of effectiveness, and "substantial evidence" that the district has in place local capacity in a number of areas. N.J.A.C. 6A:30-7.1. **We recommend that the regulations follow QSAC's mandate to incorporate a progress-oriented standard at the stage of evaluating a district for placement on the continuum.**

The draft regulations condition withdrawal from intervention on district performance at the level of 80 to 100 percent of the indicators. In our view, this sets the bar too high for reestablishing local control. Moreover, it does not allow districts to be considered as "moderate performing," an intermediate performance category that exists in QSAC but is not mentioned anywhere in the draft regulations. **Instead of performance at the level of 80 to 100 percent, the regulations should provide for moderate performance at the level of 50 to 79 percent as well as at the higher performing level.**

It appears from QSAC and the draft regulations that the school districts' self-assessment reports are intended to be the linchpin of the State's assessment of district performance. The statute requires "an annual report of its progress in complying with the quality performance indicators" from each district "in such form as prescribed by the Commissioner." N.J.S.A. 18A:7A-11. The draft regulations go further; they state that the annual reports are to be based on "self-assessment" reports. N.J.A.C. 6A:30-1.2 (definition of annual review); 30-3.1(b) and 3.2 (requirements of annual review and self-assessment). QSAC does not use the term "self-assessment."

The State should determine, on a district-by-district basis, if districts have the capacity to prepare self-assessments in any of the five areas of effectiveness. Because of the tendency to self-assess more favorably than an objective assessor might, the State should not bind itself to the conclusions of the self-assessments. The State should retain the authority to override district self-assessments, and the regulations should reflect that.

Other techniques can be used to guard against bias in self-assessment. The draft regulations provide for county superintendents to evaluate the annual reports and recommend placement on the continuum to the Commissioner. N.J.A.C. 6A:30-3.3(d). The Department indicates that it plans to weight the indicators. If this is the case, will the districts know the weighting? **The Institute has recommended that the Department give consideration to having a neutral third party conduct the district assessments, in collaboration with school districts. The third party could be a university partner, private entity, highly skilled professional team, public agency, etc. We continue to think this idea is worthy of exploration.**

Highly Skilled Professionals.

QSAC defines Highly Skilled Professionals (HSPs), N.J.S.A. 18A:7A-3, and provides that they may be employed to assist lower-performing districts (N.J.S.A. 18A-7A:14c2), and to provide direct oversight in partial or full intervention. (N.J.S.A. 18A-7A:14c6). The statute provides that their fees would be shared equally between the State and district. N.J.S.A. 18A:7A-14c2, c6, e8; -15c. **The draft regulations state that the Commissioner will develop the criteria for selection. N.J.A.C. 6A:30-1.2. What qualifications will be established? Who will choose the HSPs, the Department or the district? Will recruitment be done?**

The statute refers to two categories of assistance, both of which could be supplied by HSPs, known as "technical assistance" and "targeted assistance." N.J.S.A. 18A:7A-3. The regulations do not elaborate on the statutory definitions. N.J.A.C. 6A:30-1.2. They do indicate that HSPs can provide technical or targeted assistance. **It is unclear why two separate categories of assistance were included in the statute, when one or the other would seem to suffice. We recommend that the regulations clarify the distinction between the terms.**

QSAC also seems to contemplate that HSPs can perform two quite different kinds of functions on behalf of the State—technical assistance to districts, presumably delivered in a collaborative fashion, and “direct oversight.” The former seems consistent with the supportive, cooperative role of the Department. The latter seems consistent with a command-and-control role. Indeed, QSAC seems to authorize the Commissioner to empower HSPs to serve as mini-State district superintendents in particular areas of a local district’s operations. **If that is what the statute intends, then we recommend that the regulations be more transparent and provide greater detail about that.**

Withdrawal from Partial or Full State Intervention

We question one aspect of withdrawal, a pre-withdrawal phase that the draft regulations call a “transition period.” We are uncertain how the “transition period” differs from the period during which a district in intervention will be implementing its improvement plan.

When the State withdraws from partial or full intervention in a school district, local control is being restored in one or more of the five QSAC components of effectiveness. In either full or partial intervention, withdrawal from intervention is premised on a district showing that it has successfully implemented its improvement plan. N.J.S.A. 18A:7A-14(c) (8); -15(d). The improvement plan delineates the district's goals to address the quality performance indicators in which it has been found to be deficient. N.J.S.A. 18A:7A-14c. Once the indicators are satisfied in any area, the statute allows withdrawal to occur.

Nowhere in QSAC does the legislature provide for “transition” to local control of areas of operation subject to an improvement plan while the district is in intervention. Nonetheless, the regulations call for a “transition procedure” and a “transition plan” when the State plans to withdraw from partial or full intervention. N.J.A.C. 6A:7. We believe that transition should be unnecessary. If a district in intervention meets the quality performance indicators, it ceases needing intervention. The state will withdraw, and can designate the district “high” or “moderate” performing. If the district is not meeting the indicators in one or more areas, and the State intervenes in those areas, QSAC provides that the district must “implement its improvement plan” in those areas. Once the district successfully implements the improvement plan,” N.J.S.A. 18A:7A-14(c)(8), the State withdraws from intervention.

We agree that a transition period in which the State retains a limited role is important. After withdrawal, the Department should continue oversight, but not control, of areas in which intervention occurred. The Working Group recommended up to a two-year “transition period” after all five areas of school district effectiveness have been returned to local control. During that post-withdrawal period, the State would continue monitoring, the expanded board of education would continue to operate, and there would be enhanced opportunities for civic involvement in the district for up to two years. The board would initiate a superintendent search and the state district superintendent could remain for up to two years in a monitoring capacity. At the end of the transition period, the voters would vote on whether they prefer an elected or appointed board of education.

Our 2002 report on state takeover has additional recommendations for how such a post-withdrawal could be structured.

Civic Engagement

We applaud QSAC's requirement that the local community of each school district participate in the assessment of district performance. The statute provides for participation by parents, school employees and community residents. N.J.S.A. 18A:7A-14(a)(1). The draft regulations go further, mandating the participation of more constituencies. N.J.A.C. 6A:30-3.2(b). We wholeheartedly endorse meaningful involvement of all groups that are affected by the educational system, as our 2002 report recommended.

The draft regulations also require civic engagement in the process of the Commissioner conducting an in-depth evaluation of a district that is performing moderately or at a lower level. N.J.A.C. 6A:30-5.3(e)(5). We support this initiative.

State Capacity to Implement QSAC

We are concerned about the Department's capacity both to oversee effective transition from the current systems of district certification, and state monitoring and intervention to the QSAC system, and to conduct the assessment, monitoring and intervention functions that the statute requires. We and others have spoken about the mismatch between the Department's ever-increasing responsibilities and diminishing resources. That is a problem even if QSAC does not significantly add to the Department's already heavy burdens. We also are concerned about how the Department might be restructured to implement QSAC. For example, in our 2002 report, we strongly recommended that the Department's assessment, monitoring and technical assistance roles be separated.

There is also a different kind of state capacity issue—fiscal capacity. QSAC mandates that the State fund the resources needed to assist lower-performing districts to improve their effectiveness. N.J.S.A. 18A:7A-14(c)(1). We understand that funding needs to be accomplished in a cost-effective and fiscally-sound manner, but it is likely that additional state funding will be required for a wide spectrum of districts throughout the state.

This implicates broader issues than QSAC. In your *Bacon* decision, this Board directed the Commissioner to report to you about how the 17 non-urban districts involved in that case should be assisted to enable them to provide their students with a thorough and efficient education. You also directed the commissioner to make recommendations about a new statewide system of funding education.

The Institute has just launched a new project focusing on whether a new funding system should parallel QSAC's "continuum of need" approach, perhaps even be merged into a single comprehensive system that combines resource allocation, monitoring and assessment, technical assistance and state intervention.

We at the Institute stand ready, as we have since our establishment in 2000, to assist this Board and the Commissioner and Department in meeting your weighty and crucially important responsibilities in all these regards. Thank you.