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TESTIMONY OF BRENDA LISS EXECUTIVE DIRECTOR, INSTITUTE ON EDUCATION LAW AND POLICY BEFORE THE ASSEMBLY EDUCATION COMMITTEE December 4, 2006

Good afternoon. I am Brenda Liss, Executive Director of the Rutgers-Newark Institute on Education Law and Policy. Thank you for this opportunity to present testimony on Assembly Bill 3676, proposed amendments to the act authorizing the New Jersey Quality Single Accountability Continuum ("QSAC").

The Institute on Education Law and Policy is a center for interdisciplinary research and innovative thinking on education policy based at Rutgers University – Newark. 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, we consulted with then-Commissioner William Librera and his staff and members of the Legislature and their staffs in the development of the bill that became QSAC. Since then, we have consulted formally and informally with Commissioner Davy and her staff on development of a program that will effectively implement the statute. We have submitted formal comments on proposed implementing regulations. We also conducted an evaluation of the Department's pilot field test of the QSAC assessment instrument, the District Performance Review, in 13 school districts this past spring and summer, and last month we published our report of that pilot evaluation, *New Jersey Quality Single Accountability Continuum (QSAC): 2006 Pilot Program Evaluation.* We have sent copies of that report to each committee member by mail, and I have copies with me today. My comments today specifically pertain to the proposed amendments to QSAC, but they also reflect the observations and recommendations we made in the recent report.

The Institute on Education Law and Policy generally supports A3676. The bill makes necessary technical changes and clarifications, and will allow the Department of Education to begin to effectively implement the QSAC system.

However, while we generally support the bill, we do not agree with one proposed change, as I will discuss. I also note that the companion bill, S2136, was amended in committee to include some provisions that do not appear in A3676, and I will discuss a few of those as well.

Comments on Specific Provisions of A3676

Sections 3 and 4. The Institute supports the proposal to decrease the frequency of district assessment and reporting from once a year to once every three years. Annual assessment would be excessive and an unnecessary drain on state and local resources. Indeed, in our report we observed that given the time and resources required for thorough assessment, as shown by the pilot experience, reducing the assessment interval even more for districts in which performance has been satisfactory – and, thereby, further reducing the number of assessments to be verified by county superintendents and reviewed by the Commissioner each year – could reduce the burden without sacrificing effectiveness. Under the pre-QSAC system monitoring has occurred, generally, every seven years, and the impetus behind QSAC was not to change that interval in districts where no problems or concerns have been identified. For this reason, while we support the current proposal, we also would support decreasing the assessment and reporting interval even further, to once every seven years, where all accounts indicate that district performance is satisfactory. Thus, in section 4, we would maintain the current reference to seven years in 18A:7A-14a. We agree, however, that where a problem has been identified, the threeyear interval should apply, as provided in the proposed amendment to 18A:7A-14b.

Section 22. We support the proposal in the bill to extend the period in which the Department of Education is to conduct initial evaluations of Level II and Level III districts, from 45 to 120 days, and to increase the time for the Commissioner's report of these evaluations from 15 to 30 days. Comprehensive evaluations of these districts need to be done in a realistic and adequate time frame; given the breadth and depth of the task, we agree that 45 days for evaluation is insufficient and 15 days for a report is unrealistic. Even 120 days may prove to be insufficient for a thorough evaluation of some districts. The committee may wish to consider authorizing the Commissioner to extend that time if necessary in particular cases with the approval of the State Board of Education.

We also support the proposed amendment in section 22 clarifying that the period in which each former state-operated district, upon return to local control, will be required to conduct an election to determine its classification will be one year from the determination that it is performing satisfactorily in the area of governance, rather than three years. N.J.S.A. 18A:7A-49e refers to one year while 18A:7A-53c refers to three years; the amendment would make the two provisions consistent. Boards of education in the affected districts will need to make considerable efforts to inform and educate the public regarding types of boards of education so that an informed decision can be made by the

electorate, but one year should be sufficient to do so, and we see no need to wait longer than one year for the establishment of a new permanent district governing body.

Section 18. The bill includes an amendment providing that when districts under full state intervention are placed under partial intervention (that is, when they demonstrate improvement sufficient to return some areas of district operations to local control) the board of education shall nevertheless remain an advisory board until the district demonstrates satisfactory performance in the area of governance, unless the State Board of Education, upon recommendation of the Commissioner, decides to return voting functions to the board "in furtherance of the process of a transition to local control in the governance component of school district effectiveness."

We do not support this proposed amendment, for two reasons. First, it is inconsistent with one basic thrust of QSAC, which is the incremental return to local control, the return of each component of school district effectiveness separately as the district demonstrates satisfactory performance in each component. The supposed return, without voting power, is not really a return to local control. We believe concerns about a district's performance or capacity in the area of governance, which appear to be the reason for the proposed amendment, can be addressed by giving the Commissioner veto power over any untoward action by the local board of education, rather than withholding voting power – real authority – in all cases except where the State Board specifically grants it. This more positive approach also would serve the purpose of developing capacity in the area of governance in all cases rather than only those in which the State Board specifically authorizes it.

We also note, parenthetically, that the proposed amendment is inconsistent with 18A:7A-14, which concerns partial state intervention. Under that section, a district under partial state intervention shall have authority in the components of school district effectiveness in which the state has not intervened, with no reference to withholding authority in all areas whenever the area of governance is subject to state intervention. The provision applicable to districts returning from full state intervention should be the same.

Secondly, the proposed reference to a "transition to local control" – in the provision quoted just above and another providing for districts to be "designated as transitioning to local control" creates unnecessary ambiguity. This could be read to provide for an additional step in the process of return to local control, which we do not believe is its intent. To the extent that this is the intent, it is a departure from the QSAC process as originally enacted, and would make the process even more lengthy and complicated. Again, one basic thrust of QSAC is incremental return to local control. If a district satisfies the state's criteria in any of the five key components of school district effectiveness, then, by definition, it demonstrates that it is capable of resuming control of that component, and the state should withdraw from intervention in that area without further delay or "transition." The entire period of intervention should be a period of "transition" toward restoration of local control. There should be no need for an additional period of "transition" between intervention and withdrawal. Accordingly, we recommend that the reference to "transition" in section 18 be eliminated.

Comments on S2136

S2136, as approved by the Senate Education Committee, includes a few noteworthy provisions that do not appear in A3676.

First, the Senate bill, as amended, includes a provision clarifying the functions and authority of the highly skilled professionals who may be appointed to oversee certain district operations in accordance with a district improvement plan. We believe the Senate bill, as amended, addresses this issue appropriately, and this Committee should include a similar provision in its bill.

Second, the Senate bill, as amended, includes a provision stating that the State Board of Education may adopt rules to implement QSAC through an expedited procedure (and that such rules may remain in effect for a 36-month period). Upon expiration of the rules adopted through the expedited procedure, the State Board is to promulgate rules in accordance with the Administrative Procedure Act. We don't know the genesis of or reason for this proposed provision, and therefore cannot say whether we support it, except to note that, as the Committee is aware, the State Board's formal rulemaking process is already almost over; the period for comments on the proposed rules has closed. Authorization for an expedited rulemaking process seems unnecessary in light of the extent of the process that already has occurred. We also note generally that the procedural requirements of the Administrative Procedure Act serve an important purpose, and those requirements should not be bypassed lightly.

Third, regarding the relationship between QSAC and the mandates of *Abbott v. Burke*, the Senate Committee statement accompanying S2136 notes that "It is the committee's intent that nothing in this bill or the law establishing NJ QSAC is intended to supplement, replace, or supersede the Supreme Court's *Abbott v. Burke* directives for implementation of remedial programs, reforms and accountability measures in Abbott districts nor to eliminate or diminish the responsibilities of the Commissioner of Education to ensure students in the Abbott districts receive the full benefits of the Abbott remedies." Again, we don't know the genesis of this statement, but we believe it is related to a recommendation in our recent report. We recommended that, in order for QSAC to be a "single accountability system" in accordance with legislative intent, the Department's assessment instrument must reflect all applicable legal and regulatory requirements, including the *Abbott* requirements where they apply.

As we noted in the report, the reason for a "single accountability system" is to avoid parallel or overlapping systems that cause confusion and duplication of effort. A particular concern upon adoption of QSAC was the state's special needs districts, which are required to comply with both the monitoring and assessment requirements applicable to all New Jersey school districts and the regulatory provisions implementing the mandates of *Abbott v. Burke*. Those districts, and those requirements, continue to be a special concern. The goal, which has become a statutory requirement, is to create a single system in order to allow a single picture to emerge of how each district is

performing in all applicable areas. This committee may wish to add a statement to its bill similar to the Senate committee statement, reiterating and emphasizing this goal and its particular significance for those districts with judicially mandated programmatic requirements.

Additional Comments

I have a few additional comments that pertain to QSAC, but not specifically to the proposed amendments.

The first pertains to the relationship between QSAC and the School District Fiscal Accountability Act adopted in April 2006. The two statutes have provisions that are similar in some respects; the difference between the two, and when one rather than the other is to take effect, is unclear. The Fiscal Accountability Act provides for appointment of a "State monitor" to provide "direct oversight" of a district's "business operations and personnel matters" if certain adverse fiscal events occur. QSAC provides that a "highly skilled professional" may be appointed to provide "direct oversight" in any of the five components of school district effectiveness, including fiscal management and personnel, which sounds much like the "State monitor." The "direct oversight" of "business operations" and "personnel matters" by a State monitor under the Accountability Act could, theoretically, be identical to the direct oversight of a highly skilled professional under QSAC. Could a State monitor be appointed prior to or after the state intervenes in a district that fails to satisfy fiscal and personnel performance goals under QSAC? How will the Commissioner determine when the situation in a school district justifies that the powers of one statute or the other will be invoked to establish the appropriate oversight? To eliminate this ambiguity, we recommend an amendment to clarify how the oversight functions of the Fiscal Accountability Act will be triggered and when, in contrast, QSAC oversight functions will be triggered.

Secondly, we observe that QSAC's implementation may provide us with insights into areas of education policy beyond school district performance and accountability. In our recent report we discussed the relationship between New Jersey's system of accountability, as embodied in QSAC, and its system of school finance. As we noted, one comprehensive system in which both state aid and other forms of assistance are based on comprehensive needs assessment may be worth pursuing. The system established by QSAC could be the basis for such reforms. We offer this observation not suggest that these reforms could be adopted today or in short order, and not to further complicate an already extremely complex task before the Legislature this year, but to illustrate QSAC's significance, and potential benefit, to efforts to provide for a more equitable, effective, thorough and efficient public education system.

Thank you very much for your consideration.