{Letterhead]

To: Members of the Ohio State Board of Education
From: Diana Fessler --Third District
Date: April 24, 1998
RE: Deregulation Resolution, Minimum Standards and Issue 2

As you know, I have expressed concern regarding the board's response to the General Assembly's directive (SB 55) that we adopt a rule freeing *efficient* and *in continuous improvement* districts from carrying out specific laws and regulations. Nonetheless, I feel compelled to more fully present my position on the matter to you in writing.

For several reasons, the proposed rule would not pass muster with JACARR [(Chapter 119.03 (H-I)]. The proposed rule (OAC 3302-101-01) violates the intent of the General Assembly's directive and it creates conflict between and among existing and future laws and regulations. In addition, the SBE is exceeding its lawful authority. Furthermore, the relationship between the proposed rule, the proposed minimum standards for schools, and Issue 2 deserves consideration.

Specifically:

1. Senate Bill 55 directs the board to tell districts the SPECIFIC statutes and laws that they are free to ignore. The obvious conclusion is that the remaining laws and regulations are to be implemented as written.

2. The proposed rule does the opposite: It presents a list of statutes and rules that districts must implement (teacher's retirement system; the public school employees' retirement system; the rights of teachers; EMIS; proficiency testing; school finance; licensure; and a few additional categories). Thus, the proposed rule grants *efficient* and *in continuous improvement* districts the right to ignore a huge portion of current, *and future*, education laws and administrative rules. The net effect is the repeal of a great deal of the ORC and the OAC as it relates to education.

There is a huge difference between naming selected statutes and rules that can be ignored (leaving everything else intact), and naming everything that must be implemented (and letting everything else go.). The latter choice repudiates the work of the General Assembly.

In addition, without authority, the proposed rule *extends* the "freedom" to participate in legal non-compliance with existing and future laws and regulations to *academic watch and academic emergency* districts. Thus, the proposed rule co-mingles the *waiver authority* of Senate Bill 140 with the *legal non-compliance* set forth in Senate Bill 55 -- and there *is* a difference.

Although I strongly support local control, it is my opinion that if a particular law or regulation is no longer needed, then the elected body that put it in place should carefully review it and hear from the public before taking action to amend or repeal it. However, I recognize that is not the process that was laid out in SB 55. Even so, a careful and *systematic review* of the education laws and regulations under discussion would have allowed us to make informed decisions regarding which chapters, sections, statutes, and rules would be mandatory and which would be discretionary. But, as you know, our board has not even looked at the text of the chapters, sections, statutes, and rules that we are proposing districts be allowed to ignore. (As you will recall, Chapter 33 contains about 1000 pages; the Ohio Administrative Code contains approximately 500 pages). Accordingly, the board is not making an informed decision on behalf of the Public.

Using the proposed rule, I spent the best part of two days attempting to isolate the portions that can or cannot be ignored by the districts. As a result, I can say with confidence that it would be to our shame and folly to proceed without reviewing, in detail, the specific wording of the chapters, sections, statutes, and rules that we are proposing districts dispense with.

Had our board devoted time to even superficially reviewing just the section headings, it would have become readily apparent that confusion will reign supreme. It will be *impossible* for lawyers, let alone average citizens, to readily determine which chapters, sections, statutes, and rules are applicable and which are not without relying on the department's interpretations. Disputes will abound, and department interpretations will be subject to many challenges. Therefore, I concur with Charles DeGross' analysis of the rule: it should be renamed *the School Law Attorney's Full Employment Act of 1998*.

In a related vein, freeing districts from compliance with new and future laws and regulations (which presumably will include the long awaited new standards) raises another area of concern: the assertion by proponents of Issue 2 that the proposed tax increase is linked to "higher standards." It appears that the proposed rule (OAC 3302-101-01) renders the board's development (and the General Assembly's acceptance) of Ohio's so-called commitment to "high" standards (the new minimum standards) immaterial. Many will agree that it is likely that those controversial standards, in their present form, will never be approved by the General Assembly. Consequently, some very bright people seem to have come up with a creative way to get the donkey in the barn through a different door.

Consider: Why has the board spent six or seven years developing new standards that districts won't have to follow? For a while, I was mystified as to why the General Assembly directed the board to develop standards and then passed a law telling us to write a rule freeing districts from following education laws and regulations. Then I started thinking about the vacuum that will be created as a result of OAC 3302-101-01.

In this context, it is important to remember that a dozen or so districts are already participating in a deregulation project. Yet, to my knowledge, the board has received no reports of any *validated* increased student achievement accrued as a result of the deregulation, nor an explanation of why we have spent *two million dollars* on the project. How on earth can it cost districts *more* money to comply with *fewer* mandates? It costs more because *deregulation* doesn't mean increased local control; deregulation is the code word for development and implementation of various social engineering projects, such as integrated vocational and academic training; doing away with Carnegie Units/credits; longer school days; longer school years; mandatory job training for students; issuance of skill certificates, etc., none of which would survive the scrutiny of full public debate.

The pros and cons of our existing system of education notwithstanding, at least we knew approximately how much the system cost. But if it costs two million dollars to *deregulate* a dozen districts operating under the old system, how much will it cost to deregulate the whole system? And since it appears that *deregulation costs more* that regulation, where will the money come from? We know full well that education mandates are being cut, cut, cut by OAC 3302-101-01, yet the plea for increased funding is predicated on the false premise that we will continue to fund the mandates that were part and parcel of what we might now refer to as the old school. The "new" schools in Ohio will need the funds from Issue 2, not to finance the standards and other "old school" mandates, but to finance those various social engineering projects mentioned above.

To re-state the case: on one hand there is the claim that more public dollars are needed to fund the mandates that were instituted supposedly to increase academic achievement, while on the other hand there is a conscious effort to free the majority of districts from the vast majority of education laws and regulations. (These comments are about increased funding for student achievement only. I concede the point that more money does pay for better facilities, materials, and equipment, and that it provides for increased teachers' salaries. However, *there is no evidence that supports the claim that more money produces increased academic excellence*.)

By any measure, the proposed rule goes against what would generally be considered the development of good public policy that leads to good government in a nation ruled by law. The public, if they knew, would be alarmed by the fact that our board has demonstrated such a cavalier attitude toward adopting a rule that has such wide-spread implications without having even read the text that is, for all practical purposes, being repealed. A case could be made that the proposed rule never would have made it this far if the board was a fully elected rather than a hybrid elected/appointed body. In November, voters will get a chance to return the board to a representative body elected by the People.

In summary, the proposed rule (OAC 3302-101-01)

- is not in compliance with Senate Bill 55;
- extends, without authority, a rule that was intended for *efficient* and in *continuous improvement* districts to the *academic watch and academic emergency* districts, thereby co-mingling provisions of SB 55 with those of SB 140;
- encompasses hundreds and hundreds of pages of fine print that have not been read by members of the board; and it
- is so incredibly convoluted that even our board can't agree on what it says.

Accordingly, I urge you to reject the proposed rule. I look forward to your letter of reply.

cc: Representatives Allen, Buchy, Cates, Corbin, Jacobson, Jolivette, Krebs, Mottley, and Roberts
Senators Horn, McLin, and Nein
Other interested parties

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