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Filing Fees Waived Under R. 1:13-2

ROSALIE BACON, individually and on behalf of G.P., Z.P., J.B., M.B., D.B., and Z.H.; JOSEPH BARUFFI, individually and on behalf of J.B.; ELIZABETH CULLEN, individually and on behalf of T.C.; EDIE RILEY, individually and on behalf of S.R.; ARNETTA RIDGEWAY AND CHRISTOPHER GLASS, individually and on behalf of J.G., F.G., and D.G.; COMMERCIAL, HAMMONTON, LITTLE EGG HARBOR, MAURICE RIVER, OCEAN, QUINTON, UPPER DEERFIELD, WALLINGTON, BUENA REGIONAL, CLAYTON, EGG HARBOR CITY, LAKEHURST, LAKEWOOD, LAWRENCE AND WOODBINE SCHOOL DISTRICTS

Plaintiffs/Petitioners

v.

NEW JERSEY DEPARTMENT OF EDUCATION,
Defendant/Respondent

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

DOCKET NO:

Civil Action

**VERIFIED COMPLAINT
TO ENFORCE AGENCY
DETERMINATION PURSUANT TO
R:4:67-6**

1. This is an action to enforce final determinations by Defendant/Respondent, New Jersey Department of Education, that the funding and high quality preschool provided by the School Funding Reform Act of 2008 (hereinafter "SFRA"), along with facilities improvements and other measures, will afford students in Plaintiff/Petitioner districts a thorough and efficient education under Article VIII, §4, ¶1 of the New Jersey Constitution, thereby remediating the constitutional violation found by the State Board of Education (State Board) and upheld by the Superior Court, Appellate Division, in Bacon, et al., v. New Jersey Department of Education, 398 N.J. Super 600 (App. Div. 2008).

PARTIES

2. Plaintiff/Petitioners Rosalie Bacon, her children G.P., Z.P., J.B., J.B., M.B., D.B., and Z.H.; Joseph Baruffi, his child J.B.; Elizabeth Cullen, her child S.R.; and Arnetta Ridgway and Christopher Glass and their children J.G., F.G., and D.G bring this complaint as representatives of students enrolled in Bacon districts to secure their entitlement to a thorough and efficient education under the New Jersey Constitution.

3. Plaintiff/Petitioners Buena Regional, Clayton, Commercial, Egg Harbor, Fairfield, Hammonton Township, Lakehurst, Lakewood, Lawrence, Little Egg Harbor, Maurice River,

Ocean Township, Quinton, Upper Deerfield, Wallington and Woodbine are poor rural school districts, collectively known in this litigation as "Bacon districts."

4. The Defendant/Respondent is the New Jersey Department of Education (herein after "Department"). The Defendant/Respondent is a department in the executive branch of state government, consists of the State Board of Education and the Commissioner of Education, and is responsible for the delivery and supervision of a thorough and efficient education to all students in New Jersey. N.J.S.A. 18A:4-1 et seq.

JURISDICTION AND VENUE

5. This complaint is brought as a summary proceeding pursuant to R.4:67-6 to enforce Defendant/Respondent's determinations to remedy the constitutional violations adjudicated in this litigation. Defendant/Respondent is a state agency and venue resides in Superior Court, Law Division, Mercer County.

FACTS

6. In December 1997, Plaintiff/Petitioner Bacon districts commenced this litigation by filing a complaint in the Superior Court, Chancery Division, asserting that the State's former school funding formula, the Comprehensive Educational Improvement and Financing Act of 1997 (CEIFA), was unconstitutional because it failed to provide students in poor

rural districts with a thorough and efficient education, as guaranteed under Article VIII, §4, ¶1 of the New Jersey Constitution.

7. In February 1998, Plaintiff/Petitioners complaint was transferred to the Commissioner of Education for adjudication and resolution. The petition was amended to include the named parents and students in the Bacon districts as Plaintiff/Petitioners and transmitted to the Office of Administrative Law for an evidentiary hearing and initial decision.

8. In 2003, following bifurcated and extensive evidentiary hearings, the Administrative Law Judge (ALJ) issued an initial decision concluding that five of the seventeen Bacon districts had proven a constitutional violation and were entitled to relief. In February 2003, the Commissioner reversed and adopted in part the ALJ decision, finding that only one district had demonstrated a constitutional violation.

9. On February 6, 2006, the State Board issued a final agency decision, reversing the Commissioner's decision. The State Board found that the evidentiary record before the ALJ demonstrated widespread and systemic deficiencies in the curriculum, course offerings, instructional programs, support services, and performance outcomes in Bacon districts. The Board also found that students in Bacon districts had special

needs arising from intense poverty, similar to those of their counterparts in poorer urban "Abbott" districts, and that staff, programs and services to address those special needs were not provided by the CEIFA funding formula. The Board concluded that the students in Bacon districts "are not being afforded a thorough and efficient education" and that the CEIFA formula was unconstitutional as applied to Bacon districts.

10. The State Board also concluded that the Bacon districts have unique, rural characteristics and conditions, unlike those in poorer urban districts, and, accordingly, may require different remedies than those afforded students in urban districts by the Supreme Court in the Abbott v. Burke rulings. Accordingly, the State Board ruled that "the starting point for remedying the educational deficits shown by the record" in Bacon districts is for the Department "to assess the educational needs of the students in each district and identify the approaches that will effectively address those needs." Bacon et al. v. New Jersey Department of Education, EDU #2637 through 2646, 2649 through 2652, 2654 through 2656 (State Board Final Decision, January 4, 2006).

11. To determine a remedy to address the constitutional violation found in the Bacon districts, the State Board directed the Commissioner to promptly "develop a design for a needs

assessment" and to submit the design and timetable for conducting the needs assessments by May 1, 2006.

12. When the Commissioner failed to undertake the needs assessments by the deadline set by the State Board, Plaintiff/Petitioners filed a motion with the Board seeking an order compelling the Commissioner to comply. On May 26, 2006, the Commissioner issued a statement in which she declined to conduct the needs assessments and instead recommended awaiting enactment by the New Jersey Legislature of a proposed new school funding formula to replace the CEIFA formula. On July 19, 2006, the State Board denied Plaintiff/Petitioners' motion. On August 27, 2009, Plaintiff/Petitioners appealed the Board's order denying the motion to the Appellate Division.

13. On January 13, 2008, the School Funding Reform Act of 2008 (hereinafter "SFRA") was enacted into law. The SFRA repealed CEIFA and implemented a new, weighted student funding formula to be applied to all districts statewide, including the Bacon districts. The SFRA also mandated the expansion of the universal, high quality preschool program operating in urban or "Abbott district" to other "high need" districts, including Bacon districts, over a five-year phase-in timeframe. N.J.S.A. 18A:7F-43 et seq.

14. On March 14, 2008, the Appellate Division issued a decision on Plaintiff/Petitioners appeal. Bacon, et al. v. New

Jersey Department of Education, 398 N.J. Super. 600 (App. Div. 2008). The Appellate Court found, inter alia, that (a) the Department did not challenge the constitutional violation demonstrated by the Bacon districts and students before the OAL and State Board; (b) with the enactment of the SFRA to replace CEIFA, the Legislature had put in place a new formula that could provide a comprehensive and systemic remedy to ensure a thorough and efficient education in the Bacon districts; and (c) the Commissioner had failed to comply with the State Board's order to perform needs assessments of Bacon districts. Based on these findings, the Appellate Division directed the Commissioner to "proceed forthwith to design and perform a needs assessment of each of the Bacon districts, to be completed within six months," and to then "determine whether, in light of the proven educational deficits already found by the Board," the SFRA's "remedial measures afford students in the Bacon districts the through and efficient education to which they are constitutionally entitled." The Court also made clear that the proven constitutional violation "must be remedied in a timely fashion." Bacon, et al. v. New Jersey Department of Education, 398 N.J. Super 600, 618 (App. Div. 2008).

15. During 2008 and 2009, the Defendant/Respondent conducted needs assessments of the Bacon districts in response

to the Appellate Division's decision. On September 14, 2009, the Department publicly released the assessments.

16. In the needs assessments, the Defendant/Respondent identified numerous deficiencies in staff, programs and services, facilities, and other district-specific areas in need of prompt remediation. See, e.g., Clayton School District Needs Assessment (September 14, 2009), attached hereto as Exhibit A.

17. In the needs assessments, the Defendant/Respondent determined that (a) the state aid to be provided to Bacon districts under the SFRA formula would provide sufficient funding for Kindergarten to Grade 12 staff, programs and services in the respective districts; (b) the SFRA would address the need in Bacon districts for high quality preschool for three- and four-year olds by expanding the preschool program in the poorer urban or "Abbott" districts to the Bacon districts; and (c) the need for district-specific facilities improvements and financing would be addressed through the State school construction program under the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 18A:76-1 et seq.

18. In the needs assessments, the Defendant/Respondent further determined that, for all Bacon districts, the school funding and preschool to be provided under the SFRA would provide the "necessary tools" to address the districts' resource

deficiencies and would, therefore, remedy the constitutional violation found by the State Board and upheld by the Appellate Division in this litigation.

19. Following enactment of the SFRA, the Defendant/Respondent provided the Bacon districts with the increases in state aid for 2008-09 and 2009-10 required by the SFRA formula. In 2010-11, however, Defendant/Respondent cut state aid to the districts' budgets, effectively eliminating the increases provided in the first two years of the SFRA formula's operation.

20. In response to the 2010-11 state aid cut, the Plaintiff/Petitioners, on August 29, 2011, filed a Motion in Aid of Litigants Rights pursuant to R. 1:10 with the Appellate Division. The Motion sought an order enjoining Defendant/Respondent from providing state aid under the SFRA formula to the Bacon districts for 2011-12 less than the aid levels required by the SFRA formula.

21. On January 13, 2012, the Appellate Division issued an order denying Plaintiff/Petitioners' motion as not encompassed in the Court's January 2008 decision in the litigation. In denying the motion, the Appellate Division stated that "[t]o the extent movants seeks to enforce, or compel compliance with, any aspect of the September 14, 2009 administrative agency determinations," that is the Defendant/Respondent assessments of

the Bacon districts, "their recourse is by way of summary proceeding pursuant to Rule 4:67-6." Bacon, et al., v. NJ Department of Education, M-000267-11, Order (January 13, 2012), attached hereto as Exhibit B.

22. Following the state aid cut in 2010-11, the Defendant/Respondent has not provided the Bacon districts any of the state aid required under the SFRA formula for 2011-12, 2012-13 or 2013-14. In these three years, the Defendant/Respondent has provided only minimal increases in state aid, far short of even restoring the 2010-11 aid cut.

23. In 2014-15, the Defendant/Respondent will again, for the fourth straight year, not provide the Bacon districts any of the aid increases required by the SFRA formula. In the current school year, the Bacon districts are, in the aggregate, underfunded by \$18.4 million in K-12 SFRA funding.

24. Under the SFRA and the Defendant/Respondent's 2009 determinations, the Bacon districts were to receive state preschool education aid over a five year period, beginning 2009-10 through 2013-14, sufficient to phase-in and implement high quality preschool for all three- and four-year old children in their communities. The Defendant/Respondent has failed to provide any of the required aid and, as a result, the Bacon districts have been unable to provide early education to all eligible children. An estimated 1900 three- and four-year olds

in the Bacon districts have been deprived access to full-day, high quality preschool by the Defendant/Respondent's failure to implement the SFRA's preschool mandates.

25. The Defendant/Respondent has repeatedly failed, over the course of the last six years, to provide the funding, preschool and other measures determined by the Department in 2009 as required to provide a thorough and efficient education to Plaintiff/Petitioner students in Bacon districts, as found in the State Board's 2006 final ruling and as upheld by the Appellate Division in 2008.

26. As a result of the ongoing failure to comply with the 2009 determinations, the Defendant/Respondent has failed to remediate the violation Plaintiff/Petitioner's fundamental right to a thorough and efficient education, as guaranteed under Art. VIII, §4, ¶1 of the New Jersey Constitution.

27. On July 28, 2014, Plaintiff/Petitioners, through counsel, notified the Attorney General of Defendant/Respondent's failure to provide the SFRA funding and preschool, facilities improvements and other measures as required by the Respondent/Defendant's 2009 determinations. Plaintiff/Petitioners requested the Attorney General take immediate steps to ensure the Department promptly complied with the remedial determinations in this matter and advised this action would be commenced in the event no action was

forthcoming. Plaintiffs/Petitioners Letter to Acting Attorney General John Jay Hoffman (July 28, 2014), attached hereto as Exhibit C. To date, Plaintiffs/Petitioners have received no response to their request.

28. Plaintiff/Petitioners initiate this summary proceeding to obtain an order from this Court compelling Defendant/Respondent to comply with the agency's 2009 determination that SFRA funding, preschool, facilities improvements and other district-specific measures, provide the necessary tools to remediate the deficiencies in the Bacon districts, and, thereby, ensure Plaintiff/Petitioner's a constitutionally mandated thorough and efficient education.

COUNT ONE

29. Plaintiff/Petitioners repeat and incorporate fully herein the allegations set forth in paragraphs 1 through 28.

30. In 2009, the Defendant/Respondent determined that the school funding and preschool expansion to be provided to Plaintiffs/Petitioners under the SFRA, N.J.S.A. 18A:7F-43 et seq., would, along with district specific facilities improvements and other measures, address the constitutional violation found by the State Board and upheld by the Appellate Division in Bacon v. New Jersey Department of Education, 398 N.J. Super. 600 (App. Div. 2008), thus affording Plaintiff/Petitioner students a thorough and efficient education

as guaranteed under Art. VIII, §4, ¶1 of the New Jersey Constitution.

31. By failing to implement the SFRA in the Bacon districts, including the provision of K-12 funding and high quality preschool for all three- and four-year olds, along with district-specific facilities improvements and other measures, the Defendant/Respondent has not complied with the 2009 determinations required to remedy the continuing constitutional violation in the Bacon districts.

WHEREFORE, Plaintiff/Petitioners request an Order directing the Defendant/Respondent to provide the remedial measures in the 2009 determinations as follows:

A. Calculate the increases in state aid as required by the SFRA formula for 2014-15, promptly transmit those determinations to the Legislature, and seek supplemental appropriations as may be necessary to ensure the provision of necessary funding, staff, programs and resources in Bacon districts for the current school year;

B. Determine the increases in state aid required by the SFRA formula in subsequent years, and seek such appropriations from the Legislature as may be necessary to ensure the provision of funding, staff, programs and resources in Bacon districts by the start of the pertinent school year;

C. Determine for 2015-16 and subsequent years, the amount of preschool education aid required under the SFRA to implement high quality preschool for all three- and four-year olds consistent with district plans, approved by Defendant/Respondent to provide such programs for all eligible children in Bacon districts no later than the 2019-20 school year;

D. Develop and implement district-specific plans for facilities improvements and financing as may be necessary and consistent with the Educational Facilities Construction and Financing Act (EFCFA), N.J.S.A. 1A:76-1 et seq., commencing in the 2015-16 school year;

E. Undertake such other district-specific remedial measures as identified in the 2009 assessments or as otherwise necessary to ensure the effective and efficient use of funds in the districts' budgets;

F. Award attorneys' fees to Plaintiffs/Petitioners pursuant to N.J.S.A. 10:6-2c.

E. Such other relief as the Court may deem appropriate and necessary to ensure remediation of the constitutional violation found in this litigation.

JACOB AND CHIARELLO, LLC

By: Frederick A, Jacob, Esquire

EDUCATION LAW CENTER

By: _____
David G. Sciarra, Esquire

Dated: September 4, 2014

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiffs/Petitioners, by their attorneys, hereby certify that the matter in controversy is not the subject of any other pending or contemplated judicial or arbitration proceeding.

David G. Sciarra, Esq.
Attorney for Plaintiff/Petitioners

Dated: September 4, 2014

VERIFICATION

I, David G. Sciarra, Esquire, am familiar with the matters herein, and hereby affirm under the penalty of perjury that the factual statements contained in the foregoing Verified Complaint are, to the best of recollection and belief, true and accurate.

David G. Sciarra, Esq.
Attorney for Plaintiffs/Petitioners

Dated: September 4, 2014