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By Fax and Regular Mail

July 28, 2014

John Jay Hoffman, Esq.  
Acting Attorney General of New Jersey  
Office of the Attorney General  
R.J. Hughes Justice Complex  
P.O. Box 080  
25 West Market St.  
Trenton, New Jersey 08625-0080

Re: Bacon, et al., v. New Jersey Department of Education

Dear General Hoffman:

As counsel to the Plaintiffs in Bacon, et al., v. New Jersey Department of Education, we write to bring to your immediate attention the Defendant Department of Education's ("Department") failure to provide the funding, preschool and other resources required by the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A. 18A:7F-1 et seq., to students in the 16 rural or "Bacon" districts, as ordered by the Department in 2009 in the above captioned matter.

In January 2006, after several years of proceedings, the State Board of Education ("State Board") ruled that students in the Bacon districts are not receiving a "thorough and efficient" education, as guaranteed under Article 8, para. 4 of the New Jersey Constitution, and as demonstrated in the extensive evidentiary record developed in hearings before the Office of Administrative Law. The State Board also directed the Department to assess the educational needs of each district to meet State academic standards, as well as the academic, social and health needs of the districts' students, and, based on those assessments, provide funding and other remedial measures to address the constitutional violation. Bacon, et. al., v. New Jersey Department of Education, State Board of Education, SB Dkt. No. 4-03, (January 25, 2007).

In 2008, the Appellate Court affirmed the State Board's determination that the Bacon students and districts had, in fact, "demonstrated a constitutional deprivation unchallenged" by the State, as well as "an inability through local taxation"

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60 PARK PLACE • SUITE 300 • NEWARK, NEW JERSEY • 07102

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to raise sufficient funds to support quality education. The Court also directed the Department to assess "the unique set of circumstances confronting students of these poor rural districts that distinguish them from their urban counterparts," and to determine if the newly enacted SFRA funding formula provided the resources necessary to meet those needs and, therefore, remedy the constitutional violation. Bacon, et. al., v. New Jersey Department of Education, 398 N.J. Super. 600 (App. Div. 2008).

The Department then complied with the Appellate Division's directives by conducting individualized needs assessments of the Bacon districts, issuing the results in 2009. The assessments detailed numerous and serious deficiencies across the districts, confirming the State Board's finding of unconstitutional education. The assessments also examined whether the school aid and other resources to be provided to the districts through implementation of the new SFRA formula would address those educational deficiencies and remedy the constitutional violation.

The needs assessments found that, under the SFRA, the Bacon districts would receive additional K-12 funding to ensure a constitutional level of resources in their annual budgets. SFRA would also provide the districts with funding to implement well-planned, high quality preschool for all three- and four-year olds in the districts, an expansion of the "Abbott preschool program" previously made available in the poorer urban districts. The assessments also identified the need for facilities funding and State assistance to address identified district-specific issues. Finally, the assessments determined that formula funding and preschool under the SFRA would give Bacon districts the "necessary tools" to address their educational deficiencies and would, therefore, remedy the constitutional violation found by the State Board and upheld by the Appellate Division in this litigation.

Following enactment of the SFRA, the Bacon districts received increases in K-12 formula State aid for 2008-09 and 2009-10, as required by the law. In 2010-11, however, SFRA aid was cut from the districts' budgets, eliminating the increases from the first two years of the formula's operation. Further, from 2011-12 through 2013-14, the districts received only minimal increases that not only failed to restore the 2010-11 aid cut, but also has left these districts further behind the level of resources deemed adequate under the SFRA formula for their districts.

In addition, the Department has provided none of the funding and other resources required under the SFRA to enable the districts to implement the Abbott preschool program for all three- and four-year olds by 2013-14, the timeframe established in the SFRA. Moreover, no steps have been taken to address the districts facilities needs.

In 2014-15, the Bacon districts will again be deprived of the funding increases and preschool programs required by the SFRA formula. As a result, the constitutional violation found by the State Board in 2006 and upheld by the Appellate Division in 2008, and the specific education and educationally-related deficits determined by the Department in the mandated 2009 needs assessments, have not been remediated to date. Accordingly, it is imperative that the State take immediate steps to comply with the State Board, the Department and Appellate Division rulings in this proceeding. This requires prompt action to properly implement the K-12 funding, preschool and other requirements of the SFRA formula in the Bacon districts, commencing in the 2014-15 school year.

Plaintiffs counsel stand ready to assist you in ensuring the State implements the SFRA optimally and as intended by the Legislature, in 2014-15 and future years. Please contact me if you need additional information or wish to discuss this matter further. In the event the State fails to correct the SFRA's implementation, as set forth above, Plaintiffs will have no alternative but to seek appropriate judicial relief.

We anticipate your prompt response to the substantial constitutional issues raised herein.

Respectfully yours,



David G. Sciarra, Esq.  
Counsel for Plaintiffs



Frederick Jacob, Esq.  
Counsel for Plaintiffs

cc: Christopher S. Porrino, Chief Counsel to the Governor  
David S. Hespe, Commissioner-Designate  
Donna Arons, Deputy Attorney General