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MEMBER, NJ BAR
CERTIFIED BY THE SUPREME COURT OF
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October 7, 2011

VIA ELECTRONIC AND REGULAR MAIL

Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairperson
New Jersey Council on Local Mandates
P.O. Box 627
Trenton, New Jersey 08625-0627

Re: *In re the Complaint of the Springfield Board of Education*
Docket No.: 3-11
Our File No.: 08083.55978

Dear Judge Sweeney:

We are counsel to the Springfield Board of Education (the "Board") in the above matter. We write in response to an October 6, 2011 e-mail from the Council advising of the decision to permit the New Jersey Network of Catholic School Families (the "Network") and the New Jersey Catholic Conference (the "Conference") to appear as *amici curiae* in this matter. Please accept this letter as the Board's objection to those appearances.

Initially, we note that the October 6, 2011 e-mail from Mr. Slaughter announcing the Council's decision was the first the Board heard of any *amicus* request by the Network or the Conference. Although the Council apparently received an October 5, 2011 letter from Mary T. McElroy requesting permission for the Network and the Conference to appear, the Board was not copied on that letter, and no copy was circulated to the Board by the Council. As such, the Board was given no opportunity to respond to the request prior to the Council voting to allow the appearance. Even the most rudimentary due process dictates that the Board should have received notice of the request to appear and an opportunity to be heard on the matter. Indeed, Rule 7(d) of the Council's Rules of Procedure explicitly requires that any request to appear as *amicus curiae* be served on all parties. We object to this violation of the Board's due process rights.

Beyond this procedural violation, the request by the Network and the Conference to appear as *amici* is tragically belated. The Board filed its complaint with the Council on March 28, 2011. By letter dated April 8, 2011, the Council set various deadlines for responsive pleadings and other filings. The Council explicitly set June 6, 2011 as the deadline "for any group or individual to file a Request to Appear as *amicus curiae* in this matter." (See Exhibit A.) Ms. McElroy's request was not received

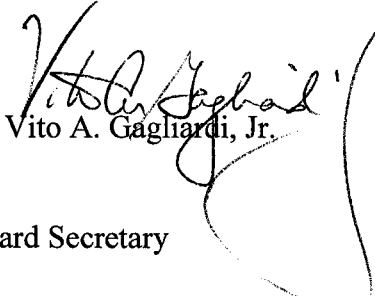
100 SOUTHGATE PARKWAY, P.O. BOX 1997
MORRISTOWN, NJ 07962-1997
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until four months after this Council-imposed deadline. Ms. McElroy has been following the Board's challenge to the aid-in-lieu mandate since even before it filed an official complaint with the Council, as Ms. McElroy addressed the Board on this issue at public meetings as early as March 1, 2011. In addition, Ms. McElroy was in attendance at the August 4, 2011 oral argument before the Council on the State's motion to dismiss the Board's complaint. Though a request to appear as *amici* in August would still have been overdue, the Board at least would have had a fair opportunity to respond to the merits of any brief filed by the Network and the Conference. Instead, in a blatant attempt to thwart the Board's ability to respond, Ms. McElroy waited until less than two weeks before the scheduled hearing in this matter to request appearance on behalf of the Network and the Conference. Such tactics should not be condoned by the Council.

The appearance of the Network and the Conference as *amici* at this juncture would be inappropriate and inequitable. Should the Council ignore the Board's objections and permit those appearances, however, no individual representing the Network or the Conference should be permitted to participate in the October 18 hearing, given the extremely belated entrée of those organizations in this matter. In addition, the Board requests leave to respond to the *amici* brief prior to the hearing.

Thank you for your attention to this matter. Should you require any additional information from the Board, please feel free to contact us.

Respectfully,


Vito A. Gagliardi, Jr.

cc: Michael Davino, Superintendent of Schools
Matthew Clarke, Business Administrator/Board Secretary
Pat Venezia, Board President
Shawn D. Slaughter, Executive Administrator & Coordinator
Christopher Huber, Deputy Attorney General
Christopher Cerf, Acting Commissioner of Education

EXHIBIT A



State of New Jersey
COUNCIL ON LOCAL MANDATES
135 WEST HANOVER STREET
TRENTON NJ
(609) 984-9738
(609) 984-9737 FAX

Hon. John A. Sweeney, AJSC (ret.)
Chair

Mailing Address:
PO Box 627
Trenton, NJ 08625-0627

April 8, 2011

To: State Officials
(listed on Attachment 1)

Re: Complaint filed by the Springfield Board of Education (3-11)

I enclose herewith copies of a Complaint and related documents filed with the Council by the Springfield Board of Education, in which it is alleged that N.J.S.A. 18A:39-1, paragraphs II(1), II(2), and II(3), which governs a school district's obligation to provide transportation to students regarding Aid In Lieu of Transportation is an unfunded mandate. The Complaint was filed by Vito A. Gagliardi, Jr., Esq. on behalf of Michael Davino, Superintendent, of the Springfield Board of Education (via E-Mail) on March 28, 2011.

Answer(s) to be filed. The Council has determined that the Attorney General must file an Answer to the Complaint on behalf of the State of New Jersey as Respondent. Any other official listed on Attachment 1 who chooses to do so also may file an Answer to the Complaint. Answers must be filed, on or before May 9, 2011, by email to the Council office at filings-clmand@treas.state.nj.us. As well as delivering a hard copy of an original and two copies to the Council office. By the same date, each Respondent also must serve all Claimants (identified on the Service List, Attachment 2), and such others as are on any updated Service List, with a copy of its Answer.

Motion(s) re Complaint Responses. Any Respondent Motion directed to the Complaint, such as a motion for dismissal, must be filed with the Council and served on Claimant on or before May 23, 2011. Claimant responses to any Respondent motion directed to the Complaint must be filed with the Council, and served on other parties, on or before June 20, 2011.

Amicus requests. The Council has set June 6, 2011 as the due date for any group or individual to file a Request to Appear as amicus curiae in this matter. A Request to Appear must include an affidavit, written statement, brief, or other written document on the issue the requester wishes to address should amicus status be granted. A copy of each Request must be provided, on the date of filing, to Claimant and Respondent(s), who will have until June 13, 2011, to file objections, by motion, to any requests.

The Council has copied the New Jersey Association of Counties, the New Jersey State League of Municipalities, and the New Jersey Conference of Mayors on this letter, should any of those organizations wish to request amicus status in this matter. In addition, the Council requests their assistance in notifying those of their members who may be interested in filing for amicus status individually.

Pleading Summaries and Information Sheets. When filed with the Council and served on Claimant and Respondent(s), all of the above-described pleadings, including Answer(s), Motions, Additional argument, Responses to Motions, and Requests to Appear as amici curiae, must be accompanied by completed Complaint form. The pleading summaries included on those forms will be added to the Council's web site, www.state.nj.us/localmandates.

Notices of Appearances and Representation. In order to accommodate the expedited pleading schedule in this case, the Council requests that Respondent(s) and any person or organization intending to file a Request to Appear as amicus curiae notify this office by email, fax or letter of their intended appearance and the name and contact information (including e-mail) of their attorney or other authorized representative, at least one week in advance of their initial filing deadlines.

Similarly, parties should notify this office as soon as possible if there are any changes to be made in the representation or contact information on any given Service List. The Service List will be updated as needed to identify those parties and others who are to be served with copies of pleadings; all filers should contact the Council office on or before the date of filing to obtain the most recently updated Service List.

Procedure for filing and service of Answers, Motions, and Requests to Appear. The Council's Rules of Procedure provide additional information regarding the procedure to be followed for filing and service of pleadings. Those Rules are published on the Council's web site.

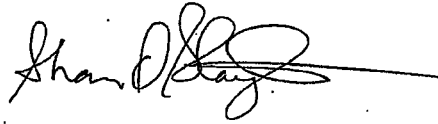
The Council office will maintain a service list to identify those parties and others who are to be provided or served with copies of filings. Anyone filing an Answer, Motion, or Request to Appear should contact the Council office on or before the date of filing to obtain the most recently updated service list.

If you have questions regarding any of the above or would like additional information on specific procedures to be followed for filing and service, please do not hesitate to Shawn Slaughter at 609-984-9739.

Very truly yours,



Hon. John A. Sweeney, AJSC (*ret.*)
Council Chairman
& Member



Shawn D. Slaughter
Executive Administrator
& Coordinator

By hand delivery, e-mail, and/or fax
Enclosure/Attachments
cc, w/enclosure/attachments: As on Attachment 2

April 8, 2011

ATTACHMENT 1

Honorable Paula Dow
Attorney General of the State of New Jersey
Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625

Jeffrey S. Chiesa, Esq.
Chief Counsel to the Governor
State House
Trenton, NJ 08625

Honorable Stephen M. Sweeney,
Senate President
Senate Democratic Office
State House
Trenton, NJ 08625

Honorable Thomas H. Kean Jr.
Senate Minority Leader
Senate Republican Office
State House
Trenton, NJ 08625

Honorable Sheila Y. Oliver
Speaker of the General Assembly
Assembly Democratic Office
State House
Trenton, NJ 08625

Honorable Alex De Croce
Minority Leader of the General Assembly
Assembly Republican Office
State House
Trenton, NJ 08625

Kent M. Hicks
Secretary of the Senate
State House
Trenton, NJ 08625

Dana M. Burley
Clerk of the General Assembly
State House
Trenton, NJ 08625

April 8, 2011

ATTACHMENT 2: Copy of letter, w/enclosures and attachments, by email/fax to:

Claimant Springfield Board of Education – Michael Davino, Superintendent
Springfield Public Schools
139 Mountain Avenue
Springfield, NJ 07081

Porzio, Bromberg & Newman P.C. – Raquel S. Lord, Esq.
100 Southgate Parkway
Morristown, NJ 07962

Copies of letter, w/enclosures and attachments, by email/fax to:

Chuck Chiarello (Mayor, Buena Vista Township)
President
New Jersey State League of Municipalities
222 West State Street
Trenton, NJ 08618

William Dressel, Executive Director
New Jersey State League of Municipalities
222 West State Street
Trenton, NJ 08618

David M. DeVecchio
President
New Jersey Conference of Mayors
150 West State Street
Trenton, NJ 08608

Beth E. Timberman
President
New Jersey Association of Counties
150 West State Street
Trenton, NJ 08608

Copy of letter, w/enclosures and attachments, by fax to:

Chris Cerf
Acting Commissioner
Department of Education
100 River View Plaza
P.O. Box 500
Trenton, NJ 08625-0500
(609) 777-4099 fax