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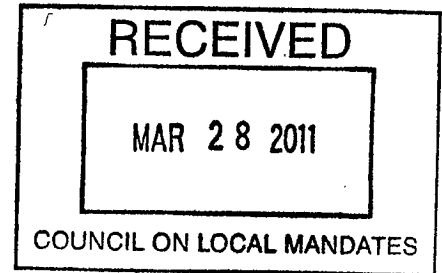
RAQUEL S. LORD
MEMBER, NJ AND NY BARS
DIRECT DIAL NO.: 973-889-4139
E-MAIL ADDRESS: RSLORD@PBNLAW.COM

March 28, 2011

VIA FACSIMILE, ELECTRONIC MAIL AND FEDERAL EXPRESS

New Jersey Council on Local Mandates
135 West Hanover Street
Trenton, New Jersey 08625-0627

Re: *Springfield Board of Education*
Our File No. 08083.32502



Dear Council Members:

We are counsel to the Springfield Board of Education (the "Board"). Enclosed for filing please find the original and two (2) copies of the Board's Complaint, with attachment, exhibits, and certification of service.

Should you require additional information, please do not hesitate to contact us.

Sincerely,

Raquel S. Lord

Raquel S. Lord

RSL:rjs

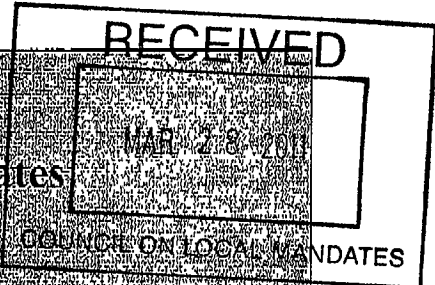
Enclosures

- cc: Michael Davino, Superintendent (*w/ enclosures via electronic mail*)
- Christopher Cerf, Acting Commissioner of Education (*w/ enclosures via facsimile and Federal Express*)
- Paula T. Dow, Attorney General (*w/ enclosures via facsimile and Federal Express*)

100 SOUTHGATE PARKWAY, P.O. BOX 1997
MORRISTOWN, NJ 07962-1997
TELEPHONE (973) 538-4006
FAX (973) 538-5146
www.pbnlaw.com



State of New Jersey
Council on Local Mandates
Complaint



The form is to be completed and signed by the Claimant's attorney or other authorized representative, identified under Part I (B).

I (A) Information regarding the Claimant (include title as County Executive or Mayor)

Name of Claimant (and title if applicable): Springfield Board of Education

Claimant contact information

Mailing Address: 139 Mountain Avenue

City: Springfield State: New Jersey Zip Code: 07081

Phone: (973) 376-1025 Fax: (973) 376-5539

E-mail address: mdavino@springfieldschools.com

I (B) Name of person preparing this document and title or relationship to Claimant (e.g., legal counsel, business administrator, superintendent)

Name: Vito A. Gagliardi, Jr., Esq.

Title/Relationship: Counsel to the Springfield Board of Education

Contact information for person identified in Part I (B)

Mailing Address: Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway

City: Morristown State: New Jersey Zip Code: 07962

Phone: (973) 538-4006 Fax: (973) 538-5146

E-mail Address: vagagliardi@pbnlaw.com

1. The Complaint:

1. Claimant alleges that the following statute, rule, or regulation is an unfunded mandate in violation of the New Jersey Constitution, article VIII, § 2, ¶ 5 and N.J.S.A. 52:13H-2, because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for its implementation:

See attachment.

2. The above-cited statute, rule, or regulation became effective on:

See attachment.

3. The following is the basis for the claim made herein that the statute, rule, or regulation identified in paragraph II (1) is an unfunded mandate:

See attachment and accompanying exhibits.

Note: The text provided in paragraph II (3) is to be used for the Pleading Summary published on the Council's web site. If more space is needed, please attach additional sheet(s).

4. State Claimant's estimate of the additional direct expenditures required to implement the statute, rule or regulation identified in paragraph II (1), together with:
(a) a description of the frequency of the estimated expenses (i.e. annual, monthly), and
(b) a specification of the basis for the estimate.

2010-2011 School Year:

\$125,528 in aid-in-lieu payments to non-public school students
\$6,188 in transportation for non-public school students

2011-2012 School Year (Estimates):

\$162,656 in aid-in-lieu payments to non-public school students
\$0 in transportation for non-public school students

(a) Payments for non-public bus routes are made monthly. Aid-in-lieu payments are made twice a year in February and June.

(b) The above figures were calculated by multiplying the number of students to whom transportation and aid-in-lieu thereof would be provided by the current cap amount, \$884.00.

Note: If more space is needed, please attach additional sheet(s).

<p>5. Does Claimant seek injunctive relief? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/></p> <p style="margin-left: 40px;">If yes, on attached sheet(s), provide a description of the nature and extent of imminent irreparable injury that will result to Claimant in the absence of injunctive relief.</p>	
<p>6. Claimant attaches:</p> <p><input checked="" type="checkbox"/> Resolution (of county/municipal governing body or of board of education), which is incorporated herein by reference, <i>or</i></p> <p><input type="checkbox"/> Copy of notice of intention to file a complaint provided to governing body.</p>	
<p>WHEREFORE, Claimant demands judgment by the Council that the statute, rule, or regulation identified in paragraph II (1) above is an unfunded mandate pursuant to the New Jersey Constitution, Art. VIII, § 2, ¶ 5 and N.J.S.A. 52:13 H-2, and that it shall cease to be mandatory in effect and expire.</p>	
<p style="font-size: 1.2em; font-family: cursive;">Vito A. Gagliardi, Jr.</p> <p><i>[Signature of person preparing this document].</i></p> <p>Date: March 28, 2011</p>	<p style="border: 1px solid black; padding: 2px;">Vito A. Gagliardi, Jr.</p> <p>Name (typed or printed) of person signing</p> <hr/> <p style="border: 1px solid black; padding: 2px;">Board Counsel</p> <p>Title (typed or printed) of person signing</p>
<p>Total number of attached pages: 10</p>	

Print Form

Paragraph II (1)

N.J.S.A. 18A:39-1, as amended by L. 1990 c. 52, Section 50; L. 1992 c. 33, Section 1 / *N.J.S.A.* 18A:39-1a, as amended by L. 1996, c. 138, Section 66; L. 2001, c. 437, Section 1; and L. 2007, c. 260, Section 62.

Paragraph II (2)

L. 1990 c. 52, Section 50 (effective on July 1, 1990); and L. 1992 c. 33, Section 1 (effective June 30, 1992) / L. 1996, c. 138, Section 66 (effective on December 20, 1996); L. 2001, c. 437, Section 1 (effective January 10, 2002); and L. 2007, c. 260, Section 62 (effective January 13, 2008).

Paragraph II(3)

N.J.S.A. 18A:39-1, as amended by L. 1990 c. 52, Section 50; L. 1992 c. 33, Section 1 / *N.J.S.A.* 18A:39-1a, as amended by L. 1996, c. 138, Section 66; L. 2001, c. 437, Section 1; and L. 2007, c. 260, Section 62 constitutes an unfunded mandate because the State has not provided resources, other than the property tax, to offset the additional direct expenditures required for implementation of each of the amendments.

In particular, *N.J.S.A.* 18A:39-1 *et seq.* governs a school district's obligation to provide transportation to students. Specifically, *N.J.S.A.* 18A:39-1 requires a school district that provides transportation for public school students to also provide transportation for non-public school students residing within the school district. That provision sets a monetary cap for the provision of such transportation. It also provides that, should a school district be unable to provide transportation to non-public school students for the maximum amount or less, the district must provide an "aid in lieu" of transportation payment to the student's parent or guardian in the amount of the cap. Districts are therefore mandated to provide either transportation or aid in lieu payments to these non-public school students. This is supported by both the language of the legislation and the sponsor's statement in support of the legislation. *N.J.S.A.* 18A:39-1a specifies a cap amount for the 2002-2003 school year and provides that that "amount shall be increased in each subsequent year in direct proportion to the increase in the State transportation aid per pupil in the year prior to the prebudget year compared to the amount for the prebudget year or by the CPI, whichever is greater."

Pursuant to *N.J.S.A.* 18A:39-1a, the cap amount has been increased several times since these statutory provisions took effect. In particular, while the original statute was passed in the early 1960's, each of the challenged amendments (as set forth above) mandated additional financial obligations on local boards of education, which, over the years have been funded in whole or in part by property taxes. Indeed, since 1996 -- the relevant year for purposes of a challenge filed with the Council on Local Mandates -- the State has passed legislation on multiple occasions that increases the financial burden on local boards of education but has failed to fully fund these additional obligations. This is in direct violation of the constitutional amendment prohibiting unfunded mandates. Indeed, each amendment after 1996 that increased the amount local boards of education are required to pay for the transportation of non-public

school students (either through providing transportation or aid in lieu of transportation payments) without a corresponding increase in state aid specifically earmarked for this transportation or aid in lieu amounts to an unfunded mandate.

Since 1996, the State has failed to fully fund these increased financial obligations and, instead, has placed that obligation on the local boards of education to fund through the use of property taxes. The Comprehensive Educational Improvement and Financing Act ("CEIFA") set forth a calculation of State aid for student transportation. *N.J.S.A. 18A:7F-57*. One factor in the formula represented the total number of public school and non-public school students eligible for transportation pursuant to *N.J.S.A. 18A:39-1*. No such aid corresponding to the increases mandated by L. 1996, c. 138, Section 66, L. 2001, c. 437, Section 1, or L. 2007, c. 260, Section 62 was provided by CEIFA or its successor statute, the School Funding Reform Act of 2008 ("SFRA"). Indeed, neither one of these school funding formulas have been fully funded by the State since 1996. The statutory amendments challenged with this petition therefore expanded the financial obligations of local boards of education without corresponding increases in funding to offset these obligations. In particular, upon information and belief, the Springfield Public School District (the "District") did not receive the requisite State aid to offset the increases in costs mandated by the challenged amendments. As such, *N.J.S.A. 18A:39-1 et seq.* violates the New Jersey Constitution and must be stricken.

In addition, pursuant to Governor Christie's State budget for fiscal year 2011, the District did not receive any State aid for the 2010-2011 school year. Moreover, pursuant to Governor Christie's proposed State budget for fiscal year 2012, the District has been advised that the only State aid it will receive will be specifically designated for special education. Therefore, it is the District's understanding that it will receive no transportation aid for the 2011-2012 school year. As such, as of the 2010-2011 school year, the requirements contained within *N.J.S.A. 18A:39-1* and *18A:39-1a* that local boards of education provide transportation or aid in lieu of transportation for non-public school students have become unfunded mandates with regard to school districts that are receiving no transportation aid. There can be no doubt that the District, because it did not receive any State aid last year and is projected to receive no State aid next year, is subject to an unfunded and unconstitutional mandate.

The Board articulated this position to the Department of Education (the "DOE") by letter dated June 22, 2010. *See Exhibit A*. For nearly eight months, the Board received no response from the DOE. Finally, by way of letter dated February 18, 2011, the DOE advised the Board that it is obligated to provide transportation or aid in lieu thereof for non-public school students regardless of whether the Board receives State aid to cover such costs. *See Exhibit B*. At its February 28, 2011 meeting, the Board elected to appeal the DOE's position by challenging the mandate, contained within the statutory provisions referenced above, as an "unfunded mandate." *See Exhibit C*.

EXHIBIT A

SPRINGFIELD PUBLIC SCHOOLS**P.O. BOX 210****SPRINGFIELD, NJ 07081****(973) 376-1025****Fax (973) 912-9229**

MATTHEW A. CLARKE
*Business Administrator/
Board Secretary*

Dr. Carmen Centuolo
Union County Executive Superintendent of Schools
300 North Avenue East
Westfield, NJ 07090

Dear Dr. Centuolo:

June 22, 2010

I am the Business Administrator/Board Secretary for the Springfield Board of Education (the "Board"). As you may know, N.J.S.A. 18A:39-1 et seq. governs a school district's obligation to provide transportation to students. In certain cases, districts may provide financial aid instead of transportation, such as for certain nonpublic and charter school students residing in the district and students attending a choice district under the Interdistrict Public School Choice Act. The purpose of this letter is to advise that the Board is no longer obligated to make aid in lieu payments now that it no longer receives State funding.

As you may or may not be aware, pursuant to Governor Christie's State budget for fiscal year 2011, the Springfield Public School District will not receive any State aid for the 2010-2011 school year. We have reviewed the Comprehensive Educational Improvement and Financing Act ("CEIFA") and other relevant statutory and regulatory authority. The Board's obligation to make aid in lieu payments is inextricably linked to the Board's receipt of State aid. Now that State aid to the District has been completely revoked for the 2010-2011 school year, the Board has no obligation to make these so-called "aid in lieu" payments..

CEIFA sets forth a calculation of State aid for student transportation (N.J.S.A. 18A:7F-57). One factor in the formula, P1, represents the total number of public and nonpublic school students eligible for transportation pursuant to N.J.S.A. 18A:39-1. It is evident that the Legislature intended this funding formula to be used for the 2010-2011 school year, as the statute provides that the "cost coefficients shall be adjusted by the CPI for the 2009-2010 and 2010-2011 school years." (N.J.S.A. 18A:7F-57).

Apart from those students whom a school district is mandated to transport, a district can choose to provide transportation to other students (N.J.S.A. 18A:39-1.1). The statute specifically provides that districts will not receive State aid pursuant to N.J.S.A. 18A:7F-57 for transportation of these "other pupils." This provision requires that State aid be provided for all students for whom the District is required to provide transportation or aid in lieu of transportation.

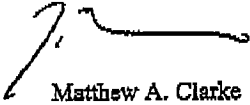
It is beyond doubt that the Legislature intended for school districts to receive State aid for those students whom they are required to transport or provide aid in lieu payments. That the student transportation funding formula arises under CEIFA is proof positive of this intention. In 2008, the Legislature passed the School Funding Reform Act (the "Act"). Under the Act, student transportation aid is funded in the same way as was done under CEIFA. In the Assembly Budget Committee's statement that accompanied the bill, the Committee noted that the funding formula is one that "represents a level to reimburse districts for cost of efficiently transporting eligible pupils based on regular or specialized modes of transportation, eligible pupils transported, and average miles per eligible pupil." Acknowledging that the transportation of students represents a significant financial burden on school districts, it is clear that the Legislature intended that mandated student transportation or aid in lieu of transportation would be funded through State aid.

Now that the State has revoked transportation aid and all other funding for the District, we are no longer required to provide aid in lieu payments to students who do not attend our public schools. The Board has made its schools available and offered a free public education to all students who reside within the geographic boundaries served by the District. The families to whom the Board makes aid in lieu payments have chosen not to educate their children in the District's public schools. The Board - and more importantly the taxpayers of Springfield - are not required to write checks to families who choose not to send their students to the public schools. If the State wishes to provide these families with financial assistance, it must do so at the State level. The taxpayers of Springfield should not be required to bear this financial burden without any assistance from the State.

To require the Board to provide aid in lieu payments despite the fact that the Board now receives no State aid for these payments would amount to an unfunded mandate in violation of the New Jersey Constitution. Should you challenge the Board's cancellation of aid in lieu payments, the Board is prepared to contest the relevant statutory and regulatory provisions with the Council on Local Mandates as unconstitutional unfunded mandates.

Please feel free to contact me should you have any questions.

Sincerely,



Matthew A. Clarke

- CC: Governor Chris Christie
Senate President Stephen M. Sweeney
Senator Thomas Kean, Jr.
Assembly Speaker Shelia Y. Oliver
Assemblyman Jon Bramnick
Assemblywoman Nancy Munoz
Union County Freholder Chairman Daniel P. Sullivan
Commissioner of Education Brett Schundler
NJSEA Executive Director Marie Bilik
NJASA Executive Director Rich Bozza
NIASBO Executive Director John Donahue
Garden State Coalition of Schools Executive Director Lynn Strickland

EXHIBIT B



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER D. CERF
Acting Commissioner

February 18, 2011

TO: Chief School Administrators
Board Secretaries/School Business Administrators
County Superintendents
County School Business Administrators

FROM: Yut'se O. Thomas, Acting Assistant Commissioner
Division of Finance & Regulatory Compliance

SUBJECT: Payment of Aid in Lieu of Transportation

YOT

It has come to our attention that some local boards of education are confused about the definition of "public school student" and are questioning their responsibility to pay aid in lieu of transportation under certain circumstances.

Public school students are all students attending regular public school programs provided in their resident school districts, all students attending vocational school, charter school, choice school or any other specialized public school program, and all students assigned to private schools for the handicapped by their resident school district's child study team. Only those students attending private schools for which their parents or legal guardians pay tuition, or students attending a public school outside of their resident district and for which their parents or legal guardians pay tuition are not considered to be public school students.

N.J.S.A. 18A:39-1 defines who is eligible for mandated transportation services. Whenever a board of education provides transportation to its resident students who attend regular public school programs, it must also provide transportation services to students attending nonpublic schools who meet the distance requirements in the law. If an elementary school student lives more than two miles from their nonpublic school or a student attends a secondary school located more than two and one-half miles from their school, the student is eligible for mandated transportation services. However, the law places a limit on the cost of this transportation. If the student's resident district cannot provide transportation for that amount or less (\$884 per student for the 2010-2011 school year), the district must pay the student's parent or legal guardian that amount as aid in lieu of transportation.

February 17, 2011

Page 2

In order to limit the fiscal impact of costly transportation to charter and choice school programs, the cost of transportation to charter schools for students living outside of the charter school's district or region of residence, as well as the cost of transportation to choice school programs, is also limited to the maximum annual expenditure for nonpublic school transportation (\$884 per student for the 2010-2011 school year). If the cost is higher and the student's parent or legal guardian agrees to pay the amount in excess of this annual limit, the student will be provided with a ride. Otherwise, the student's parents or legal guardians will be paid that amount as aid in lieu of transportation.

Payment of aid in lieu of transportation is a transportation service provided by law to the parents or legal guardians of students who are eligible for transportation services under the law. The laws establishing this eligibility and payment of aid in lieu of transportation predate both the "State Mandate, State Pay" provisions of law and the CEIFA funding formula, N.J.S.A. 18A:7F-57. **No state law relieves a local board of education of the obligation to pay aid in lieu of transportation when a student is eligible for this transportation service.** State transportation aid paid to local boards of education has never covered the full cost of these mandated transportation services, and is not a prerequisite for the payment of aid in lieu of transportation.

If you have any questions regarding this issue, please contact the Office of Student Transportation at (609) 984-5757 or by email at student.trans@doe.state.nj.us.

YOT/DRS:IT/Doc Orig/Nonpublic/2010-2011/Payment of aid in lieu of transportation

c: Members, State Board of Education
Christopher Cerf
Senior Staff
LEE Group
Garden State Coalition of Schools
Dot Shelmet
Alan Guenther

EXHIBIT C

DRAFT COPY SUBJECT TO REVISIONS BY BOARD**22. AID IN LIEU RESOLUTION**

Moved by Mrs. Shanes, seconded by Mr. Delia, approval of the following resolution:

RESOLUTION

Resolved, that the Board of Education authorizes and directs the Superintendent of Schools to work with the Business Administrator and Board Counsel to challenge the February 18, 2011 memo from the Department of Education regarding payment of aid in lieu of transportation, notwithstanding our absence of state aid, via an application to the Council on Local Mandates and/or a court of competent jurisdiction, as appropriate.

Yeas: Unanimous by all Members present.

MOTION CARRIED

23. SCHOOL FACILITIES PROJECT AT WALTON

Moved by Mr. Strumpf, seconded by Mr. Delia, approval the Delegation of Authority to School Business Administrator for supervision of the School Facilities Project at Edward V. Walton Elementary School for DOE Project # 5000-050-10-1001, SDA Project # 5000-050-10-GOSL and Grant # G5-4547

Yeas: Unanimous by all Members present.

MOTION CARRIED

24. SCHOOL FACILITIES PROJECT AT SANDMEIER

Moved by Mr. Strumpf, seconded by Mr. Delia, approval the Delegation of Authority to School Business Administrator for supervision of the School Facilities Project at Thelma Sandmeier Elementary School for DOE Project # 5000-090-10-1006, SDA Project # 5000-090-10-GOSQ and Grant # G5-4552."

Yeas: Unanimous by all Members present.

MOTION CARRIED

25. SECOND PUBLIC SESSION (10:08-10:15 PM)

The following members of the public had questions or concerns regarding the following items:

1. Afterschool security and reports of laptops being stolen:

Linda Hakerson, Dory Hassan

2. How many BOE members have children attending Springfield Public Schools:

Jeff Rodgers

3. My children are in private school, how does someone sign-up to receive a laptop:

Patty Boyle

26. NEW BUSINESS

1. District art work will be on display at the Public Library

2. The PTA at Gaudineer is requesting a representative from the board to attend their meetings.

CERTIFICATION OF SERVICE

1. I am a paralegal employed at the law firm of Porzio, Bromberg & Newman, P.C., attorneys for Complainant Springfield Board of Education (the "Board").

2. On March 28, 2011, I caused to be served via facsimile and Federal Express a properly addressed and sealed envelope containing a copy of the Board's Complaint, with attachment, and exhibits, to the individuals below at their last known addresses:

Christopher Cerf, Acting Commissioner of Education
New Jersey Department of Education
100 Riverview Plaza
Trenton, New Jersey 08625-0500

Paula T. Dow, Attorney General
Department of Law and Public Safety
Hughes Justice Complex
25 West Market Street
PO Box 112
Trenton, New Jersey 08625

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Rodger J. Sisco

Dated: March 28, 2011