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Attorneys for Defendants

RAYMOND ARTHUR ABBOTT, et al.,  
Plaintiffs,  
v.  
FRED G. BURKE, et al.,  
Defendants.

SUPREME COURT OF NEW JERSEY  
DOCKET NO.

CIVIL ACTION

CERTIFICATION OF  
SUPERINTENDENT DONNIE W.  
EVANS, ED.D.

Donnie W. Evans, Ed.D., of full age, hereby certifies that:

1. I am the State District Superintendent for the Paterson Public School District in the State of New Jersey, and have held this position since May 8, 2009.

2. I am fully certified as a school administrator by the New Jersey State Board of Examiners. Prior to becoming State District Superintendent in Paterson, I was the Superintendent of the Providence Public School District in Rhode Island, following my service as the chief district academic officer for

the Hillsborough County Public School System in Tampa, Florida. A copy of my CV is annexed hereto as Exhibit A.

3. In 1991, the New Jersey Department of Education removed the District of Paterson's School Board, and created a state operated school district. See N.J.S.A. 18A:7A-34. Paterson district became the third state-operated school system in New Jersey, after Jersey City and Newark. To date, the Paterson school system continues under State intervention, as Paterson has not exceeded 80% of the required indicators on the Quality Single Accountability Continuum ("QSAC") in the areas of Instruction and Programs, which includes student performance on standardized test scores, and governance. The Paterson School District has recovered control in certain areas, specifically fiscal, personnel and operations.

4. The students of Paterson face compelling, challenging and well-known problems. All of our students are provided lunch by the district, and more than 90% qualify for free or reduced lunch, which is a standard used to determine poverty levels. Many of our students are English language learners, with approximately 37 different languages being spoken by the children in our schools. In general, the students of Paterson struggle in the areas of English and Language Arts and Mathematics, as well as all other tested areas.

5. We have a reasonable basis to expect increased performance by the students in the Paterson schools if their education was not hindered by historical collective negotiating agreements ("CNAs") which prevent the school principals from introducing factors that increase student performance such as (1) increasing instructional time; (2) making teacher assignments; (3) overall flexibility in structure of the school day and (4) establishing the beginning and end of the school day. A copy of the CNA is attached hereto as Ex. B.

6. Currently, our CNA with teachers is negotiated utilizing the prior agreement as a minimum. We have little to no leverage to negotiate the sought changes to the CNA. The New Jersey Education Association ("NJEA") has a representative on each negotiation team and participates actively. There is resistance to provisions that would make sense in Paterson, given its struggles and demographics. Thus the same type of provisions, school day and school year structures, that have been around for many years repeatedly end up in the agreement, preventing innovation and flexibility in the schools of the district.

7. As a group, the teachers' representatives are not willing to alter the restrictions in the CNA to explore more innovative methods to teaching or structuring the school day, without additional compensation. For example, as State District

Superintendent, I would like to implement research based best practices in the Paterson schools, such as the University of Pittsburgh's Institute for Learning's Principles of Learning, and other instructional and non-instructional practices for improving academic outcomes. The restrictive provisions of the CNA stifle such implementation, by requiring that "[a]ny aspect of an experimental program which would affect the terms and conditions of employment shall be negotiated with the Association before implementation." Ex. B Art. 22:5.1 (emphasis added). The research based best practices outlined above, however, should not require additional money to implement, as they do not require that the teachers increase their working time in any manner, but merely require a change in mindset and a restructuring of the day. Yet, from past experience, it is clear that the teachers' representative will require financial concessions in exchange for this kind of reform.

8. The CNA also provides that "[s]chools may seek a waiver from provisions of the collective bargaining agreement in order to improve academic performance and/or overall school atmosphere" but "at least 25% of the school staff must sign a petition indicating the provision(s) of the collective bargaining agreement to be waived and the purpose of the waiver sought." Ex. B at Art. 24:3-1, -2. These provisions have proved unworkable in practice. It would be of significant

assistance if the Superintendent, with the approval of the Commissioner of Education, had the managerial prerogative to implement the programs beneficial for the children of Paterson for a thorough and efficient education, and then to the extent necessary, negotiate the impact afterward.

**START OF THE SCHOOL DAY**

9. According to the CNA, the schools start at 8:15 am. Ex. B. Art. 7.2-2.2, -3. I would like to stagger the start and ending time for the elementary, middle and high schools to facilitate the utilization of buses in ways that achieve savings in district transportation costs. The money saved in transportation costs could be better utilized towards programs that would affect student achievement. Due to restrictions in the CNA, however, Paterson is unable to make such a modification to school start times.

**TEACHER-STUDENT CONTACT TIME**

10. Pursuant to the CNA, Paterson high school teachers work no more than 7 hour five minute work days; elementary and primary school teachers work no more than 7 hours a day, both of which include a duty-free 40 minute lunch. Ex. B at Art. 7:2-2. In addition to the duty-free lunch, elementary and primary school teachers have a daily, 40 minute long, preparatory period, Ex. B at Art. 7:2-6.2, leaving student contact time of five hours and 40 minutes. High school teachers are required to

have a daily, 40 minute long, preparatory period, plus an activity period and a supervisory period. Ex. B. Art. 7:2-5.1, -6.2. In general, high school teachers have 5 periods of student contact, unless they volunteer (for extra compensation) for a 6<sup>th</sup> period. CNA 7:2-5. Without the 6<sup>th</sup> period of voluntary student contact, high school teachers have less than four hours of actual time instructing the students. Studies have demonstrated that increased student-teacher contact time improves student performance.

#### TEACHER ASSIGNMENTS

11. Pursuant to the CNA, Article 13 governs re-assignment of teachers. While teachers must be notified of a principal's decision to re-assign them, the teachers' consent is not required.

12. However, Paterson teachers typically grieve re-assignments to which they disagree. During my tenure, after arbitration, 100% of those assignments were upheld, but the district had to incur the time and expense of the process. This underscores the lack of cooperation and flexibility in assignments.

13. More importantly, each grievance has a chilling effect on the principal of that school. For example, after a principal decides to transfer one teacher to a better fitting assignment, and then becomes a recipient of a grievance for that decision,

the principal is less likely to institute further transfers, as the grievance process distracts from educating the children, and creates a negative environment in the school.

14. In addition to grieving re-assignments, teachers grieve other principal decisions. For the past two years, for every grievance taken to judgment at arbitration, the school district has succeeded.

#### REDUCTIONS IN FORCE

15. In the past seven years, Paterson has held two major Reductions in Force ("RIF"), one in 2011-12 and one in 2014-15. In the later RIF, 376 staff members were laid off, including approximately 188 teachers. Paterson conducts RIFs as necessary due to change in demographics and budgetary considerations.

16. Of the 188 teachers laid off in 2014-15, all were non-tenured. However, a significant number of those non-tenured teachers were rated as highly effective or effective. Yet, due to statutory and contractual seniority provisions, many partially efficient or inefficient teachers were protected, and not laid off.

17. By RIFing new teachers, Paterson is now suffering from an inability to attract new recruits in subject areas different from the subject areas of the teachers who were RIFed. For example, Paterson is always looking for science, math and special education teachers. Because new teachers anticipate

being the target of a future RIF, they are not applying for these positions.

18. It would be helpful to the children of Paterson, if when a RIF occurs that reaches the tenured teachers, Paterson could create performance based-bands, and after laying off the non-tenured teachers, next lay off the tenured teachers in order of least efficient to most efficient, based on teacher evaluations.

19. Moreover, it would improve the effectiveness of the Paterson teachers, if certain bands of laid off tenured teachers were not subject to recall. Ex. B Art. 11:6-3. Once an ineffective or partially effective teacher is laid off, that teacher should be stricken from the recall rolls.

20. I recognize the restrictions of the Tenure Statute, but it is counter-intuitive for Paterson to be forced to rehire a less than effective teacher once he or she has been laid off.

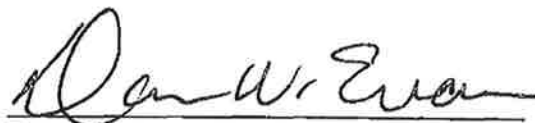
21. In conclusion, Paterson District schools would perform better if the District Superintendent, in limited and necessary circumstances, had the managerial prerogative, with the approval of the Commissioner of the Department of Education, to (1) increase instructional time; (2) make teacher assignments; (3) implement flexibility in the structure of the school day; (4) dictate the beginning and end of the school; and (5) conduct



RIFs using performance based bands, to lay off the least efficient teachers first, and the most efficient teachers last.

22. It is in the best interest of the children of the Paterson schools to grant the Superintendent, with the approval of the Commissioner, the managerial prerogative to adopt these creative solutions on a case by case basis, to increase student achievement and ensure that the students are receiving their constitutionally mandated thorough and efficient education.

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

  
Donnie W. Evans, Ed.D

Dated: August 23, 2016

Exhibit A

## **CURRICULUM VITAE**

**DR. DONNIE W. EVANS**  
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Paterson, New Jersey 07514  
(973) 787-4607  
devans@paterson.k12.nj.us

### **Educational Preparation**

**Ed.D.** (Educational Administration & Supervision), The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina. December 1985.

**Dissertation:** Professionalism and Bureaucracy in Educational Improvement - An evaluation study of the development and implementation of a professional development (site-based management) model.

**Cognate Area:** Special Education Administration

**M.A.** (Educational Administration & Supervision), North Carolina Central University, Durham, North Carolina. December 1976.

**B.S.** (Mathematics), North Carolina Central University, Durham, North Carolina. May 1972.

### **Employment History**

**State District Superintendent**, Paterson Public Schools, Paterson, NJ. May 8, 2009 to Present.

Chief Executive Officer for the school district that includes 28,400 students, 4,500 employees, and a budget of \$570 million.

**Senior Scholar**, Annenberg Institute for School Reform, Brown University, Providence, Rhode Island. October 1, 2008 to December 31, 2008.

Conduct research and writing on challenges of the urban superintendent and provide technical assistance to institute staff and school districts.

**Superintendent**, Providence Public Schools, Providence, Rhode Island. September 19, 2005 to September 18, 2008.

Chief Executive Officer for the school district that included 24,000 students, 3,100 employees, and a budget of \$319 million. Responsible for leadership, management and oversight of all departments and services.

**Chief District Academic Officer**, Hillsborough County Public Schools, Tampa, Florida. November 4, 2002, to September 19, 2005.

Deputy Superintendent level position responsible for leadership and oversight of academic programs and services for the district's 190,000 student district and its 28 charter schools.

**Assistant Superintendent**, Division of Instruction, Hillsborough County Public Schools, Tampa, Florida. June 30, 1999 to November 4, 2002.

Responsible for leadership and management of all programs and services in the Division of Instruction and charter schools including recommendations to the School Board to approve or not approve applications to open charter school.

**Assistant Superintendent**, Division of Supportive Services, Hillsborough County Public Schools, Tampa, Florida. January 2, 1998 to June 30, 1999.

Responsible for leadership and management of all programs and services in the Division of Supportive Services including Exceptional Student Education, Student Services, Early Childhood, Federal Programs, Charter and Choice Schools, and Research and Development.

**Director**, District Reform Initiatives, Hillsborough County Public Schools, Tampa, Florida. November 4, 1996 to January 1, 1998.

Responsible for providing leadership and assistance to various reform initiatives including, but not limited to, charter schools, choice schools, restructuring exceptional student education programs, and intervention/prevention services for student's at-risk of failure.

**Supervisor**, Exceptional Student Education Collaborative Services, Hillsborough County Public Schools, Tampa, Florida. December 6, 1993 to November 4, 1996.

Responsible for supervising the FUSE "inclusion" Program which entailed implementation and expansion of inclusive services for students with disabilities.

**Adjunct Professor**, Department of Special Education, College of Education, University of South Florida, Tampa, Florida. December 6, 1993 to June 2005.

Taught graduate level educational leadership and special education administration courses for graduate students.

**Associate Professor and Director**, Departments of Special Education and Educational Leadership, College of Education, University of South Florida, Tampa, Florida. June 1, 1990 to December 6, 1993.

Taught graduate level educational leadership and special education administration courses. Developed, coordinated, and acquired funding for the College of Education's Doctoral Program in Special Education Administration and managed a University based Leadership Training Institute for Special Education Administrators that provided in-service training for Florida principals and special education administrators.

**Director**, Programs for Exceptional Children, Durham County Public Schools, Durham, North Carolina. July 1, 1987 to May 31, 1990.

Managed the school district's programs for exceptional children (special education and gifted).

**Adjunct Professor**, Division of Continuing Education, East Carolina University, Greenville, North Carolina. January 9, 1990 to April 30, 1990.

Taught Introduction to Exceptional Children (graduate level).

**Principal**, Lowe's Grove Jr. High School, Durham County Public Schools, Durham, North Carolina. July 1, 1979 to June 30, 1987.

Provided leadership and management for all facets of the school's operation. Supervised 98 member faculty and staff.

**Assistant Principal**, Lowe's Grove Jr. High School, Durham County Public Schools, Durham, North Carolina. July 1, 1976 to June 30, 1979.

Performed administrative duties assigned by the principal. Assignments included teacher and student scheduling, student discipline, student transportation, student attendance, and teacher evaluation.

**Assistant Principal**, J. W. Neal Jr. High School, Durham County Public Schools, Durham, North Carolina. February 15, 1975 to June 30, 1976.

Performed administrative duties assigned by the principal. Assignments included student discipline, facilities management, student attendance, and teacher evaluation.

**Mathematics Teacher**, Carrington Jr. High School, Durham County Public Schools, Durham, North Carolina. August 15, 1972 to February 14, 1975.

Taught eighth grade mathematics to all levels of general education students as well as a class for students who were educable mentally handicapped (EMH). Also served as advisor for the school's math club and gymnastic team.

#### Grant Awards & Grant Management

**Grant Manager**, "Voluntary Public School Choice Program: Hillsborough Choice", US Department of Education, Washington DC. Award Number S361A020006, \$6,000,000, September 30, 2002 to September 19, 2005.

**Principal Investigator**, "Preparation of Administrators and Supervisors of Special Education" (Doctoral training for exceptional student education administrators and supervisors), US. Office of Special Education Programs, Washington, DC. Award Number HO-29D-10025, \$350,000, July 1, 1991 to June 30, 1994.

**Principal Investigator**, "Leadership Training for Florida's Exceptional Student Education Administrators" (In-service leadership training for Florida's special education administrators and principals), Florida Department of Education, Bureau of Education for Exceptional Students, Division of Public Schools, Florida Department of Education, Tallahassee, Florida. Project Number 291-26210-91650, \$450,000, January 1, 1990 to June 30, 1993.

### Publications (Refereed)

- Evans, D. (1997). Policy Issues for Inclusive Schools: Toward a Unified Education System in Special Education Practice: Applying the Knowledge, Affirming the Values, and Creating the Future. Pacific Grove, CA: Brooks/Cole Publishers.
- Evans, D., Harris, D., & Pirko, C. (1997). A District's Perspective on Change: The Evolution of An Inclusive System: Part II. Case in Point, 10(1), 1-10.
- Evans, D., Townsend, B., Duchnowski, A., & Hocutt, A. (1997). Addressing the Challenges of Inclusion of Children with Disabilities. Teacher Education and Special Education, 19(2), 180-191.
- Evans, D. & Harris, D. (1996). A District's Perspective on Change: The Evolution of An Inclusive System: Part I. Case in Point, 9(2), 11-22.
- Evans, D., & Panacek-Howell, L. (1995). Restructuring Education: National Reform in Paul, J., Rosselli, H., & Evans, D. Integrating School Restructuring and Special Education Reform, Orlando: Harcourt Brace Janovitch.
- Harris, D. & Evans, D. (1995). Restructuring for Inclusion in Paul, J., Rosselli, H., & Evans, D. Integrating School Restructuring and Special Education Reform, Orlando: Harcourt Brace Janovitch.
- Paul, J., Rosselli, H., & Evans, D. (1995). Integrating School Restructuring and Special Education Reform, Orlando: Harcourt Brace Janovitch.
- Evans, D., Harris, D., Adeigbola, M., Houston, D., & Argott, L. (1993). Restructuring Special Education Services. Teacher Education and Special Education, 16(2), 137-145.
- Harris, D. & Evans, D. (1994). Integrating School Restructuring and Special Education Reform. Case in Point, 8(2), 7-19.
- Silliman, E. R., Ford, C. S., Beasman, J., & Evans, D. (1999). An Inclusion Model for Children with Language Learning Disabilities: Building Classroom Partnerships. Topics in Language Disorders, 19(3), 1-18.