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November 7, 2014

Via Hand Delivery

Clerk
Mercer County Criminal Courthouse
400 South Warren Street
PO Box 8068
Trenton NJ 08650

Re: Bacon, et. al., v. New Jersey Dept. of Education
Docket No. L-1989-14

Dear Sir/Madam:

We represent Defendant/Respondent in the above-referenced matter. Enclosed for filing are an original and two copies of the following documents:

- Notice of Motion to Dismiss the Verified Complaint;
- Supporting Brief;
- Proposed Form of Order; and
- Certification of Service.

Kindly return a stamped "filed" copy of these documents in the enclosed self-addressed stamped envelope.

As always, thank you for your assistance in this matter



November 6, 2014

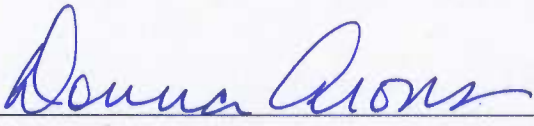
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and please contact me if you have any question regarding the foregoing.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Donna Arons

Deputy Attorney General

Donna.Arons@lps.state.nj.us

Enclosures

cc: David G. Sciarra, Esq.
Frederick Jacob, Esq.
Hon. Mary C. Jacobson, A.J.S.C.

JOHN J. HOFFMAN
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By: Donna Arons (027581985)
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BACON, et al.,

Plaintiffs/Petitioners,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO.: L-1989-14

Civil Action

CERTIFICATION OF SERVICE

I, **SHANNON M. BIDDULPH** hereby certify that:

1. I am a Legal Secretary 2 in the Division of Law, Department of Law and Public Safety, State of New Jersey, PO Box 112, Richard J. Hughes Justice Complex, Trenton, New Jersey 08625.

2. On November 7, 2014, I served two copies of Notice of Motion to Dismiss the Verified Complaint, Supporting Brief and Proposed Form of Order via electronic and overnight mail to:

David G. Sciarra, Esq.
Education Law Center
60 Park Place
Suite 300
Newark, NJ 07102

Frederick Jacob, Esq.
Jacob & Chiarello, LLC
600 West Main Street
PO Box 429
Millville, NJ 08332

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

DATED:

11/7/14


SHANNON M. BIDDULPH

JOHN J. HOFFMAN
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Attorney for Defendants

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BACON, et al.,

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v.

NEW JERSEY DEPARTMENT OF
EDUCATION

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO.: L-1989-14

Civil Action

NOTICE OF MOTION TO DISMISS
PURSUANT TO R. 4:6-2(e)

TO: David G. Sciarra, Esq.
Education Law Center
60 Park Place
Suite 300
Newark, NJ 07102

Frederick Jacob, Esq.
Jacob & Chiarello, LLC
600 West Main Street
PO Box 429
Millville, NJ 08332

C O U N S E L:

PLEASE TAKE NOTICE that at 11:00 a.m., on December 11, 2014, at the Mercer County Criminal Courthouse, 400 South Warren Street, Courtroom 4A, Trenton, New Jersey, or as soon thereafter as counsel may be heard, Defendant/Respondent will move this Court pursuant to the New Jersey Court Rules, R. 4:6-2(e), for an Order dismissing the Order to Show Cause and Verified Complaint, with prejudice, for failure to state a claim upon which relief can be granted.

PLEASE TAKE FURTHER NOTICE that Defendant/Respondent shall rely on the brief of Donna Arons, dated November 7, 2014 and submitted herewith.

A proposed form of Order is enclosed.

No discovery end date in this matter has yet been assigned.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Donna Arons
Deputy Attorney General

Dated: November 7, 2014

BACON, et. al.,

Plaintiffs/Petitioners,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION,

Defendant/Respondent.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO.: L-1989-14

Civil Action

ORDER DISMISSING THE
COMPLAINT

THIS MATTER having been opened to the Court on a motion of John J. Hoffman, Acting Attorney General of New Jersey, by Donna Arons, Deputy Attorney General, appearing on behalf of Defendant/Respondent, seeking to dismiss the Verified Complaint pursuant to R. 4:6-2(e) for failure to state a claim upon which relief can be granted; and the Court having considered the written submissions and oral arguments, if any, of the parties; and for good cause shown,

IT IS on this _____ day of _____, 2014,

ORDERED as follows:

1. Defendants' motion to dismiss the Verified Complaint is GRANTED; and

2. Defendants' counsel will serve a copy of this Order on all counsel of record in this matter within ___ days of receipt of this Order.

Hon. Mary C. Jacobson, A.J.S.C.

This motion was:

Opposed _____

Unopposed _____

BACON, ET AL.,

Plaintiffs/Petitioners,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION,

Defendant/Respondent.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. L-1989-14

Civil Action

DEFENDANT'S/RESPONDENT'S BRIEF IN SUPPORT OF MOTION TO DISMISS
PURSUANT TO R. 4:6-2(e)
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

JOHN J. HOFFMAN
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Deputy Attorney General
On the Brief

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PRELIMINARY STATEMENT

On September 14, 2009, pursuant to the directive of the New Jersey Superior Court, Appellate Division, then-Commissioner Lucille Davy ("Commissioner") of the New Jersey Department of Education ("Department") issued comprehensive needs assessments for the sixteen Plaintiff/Petitioner school districts. These assessments examined the unique challenges faced by the districts and described the effects of recent changes in school funding pursuant to the School Funding Reform Act ("SFRA"), N.J.S.A. 18A:7F-43 to -63, as well as the impact of other, complementary legislation. The individualized assessments concluded with various recommendations to the districts and offers of technical assistance and training by the Department, where appropriate. Based on these evaluations, the Commissioner determined that the districts had sufficient resources to provide a thorough and efficient education.

Five years later, Plaintiffs/Petitioners now move before this Court pursuant to R. 4:67-6 to "enforce" the needs assessments by seeking an order compelling additional school funding, preschool, and facilities improvements. Plaintiffs/Petitioners' Order to Show Cause and Verified Complaint must be dismissed because the agency orders sought to be enforced do not encompass or direct the specific relief requested. It is well settled that the scope of relief in a summary proceeding pursuant to R. 4:67-6 to enforce an agency order is limited to the specific terms of the administrative

directive. Simply put, none of the sixteen needs assessments at issue here direct that additional ongoing funding pursuant to the SFRA, preschool, or facilities improvements be provided to these districts. As that is the relief sought in this summary proceeding, the verified complaint must be dismissed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

In December 1997, twenty school districts² filed a Complaint in the Superior Court of New Jersey, Chancery Division, seeking a declaration that the Comprehensive Educational Improvement and Financing Act ("CEIFA"), N.J.S.A. 18A:7F-1 et seq., was unconstitutional. Bacon v. New Jersey State Dep't of Educ., 398 N.J. Super. 600, 606 (App. Div. 2008). Under a Consent Order entered on February 6, 1998, the parties agreed to transfer jurisdiction of the matter to the Commissioner. Id. at 607. In response to the Department's motion to dismiss, the petition was amended to add several students attending some of the school districts and the parents of those students. Ibid.

The Commissioner then transmitted these matters to the Office of Administrative Law ("OAL") and ordered bifurcated proceedings. Ibid. The first phase of the hearings was to determine whether the petitioners were "fully effectuating" the provisions of CEIFA designed to aid low income districts. Ibid. Prior to commencement

¹ The Procedural History and Counterstatement of Facts are so intertwined in the present matter that they have been combined for clarity and the convenience of the Court.

² Buena Regional, Clayton, Commercial Township ("Commercial"), Egg Harbor City, Fairfield Township ("Fairfield"), Hammonton, Lakehurst, Lakewood, Lawrence Township ("Lawrence"), Little Egg Harbor, Lower Township ("Lower"), Lower Cape May Regional, Maurice River Township ("Maurice River"), Ocean, Quinton, Salem City, South River, Upper Deerfield, Wallington and Woodbine.

of the hearing, three school districts withdrew their petitions.³
Ibid.

On December 26, 2000, the Administrative Law Judge ("ALJ") held that the remaining seventeen districts had established by a preponderance of the evidence that they were using CEIFA funding appropriately and met the burden to move onto the next phase of the hearing. Id. at 608. On February 9, 2001, the Commissioner upheld the ALJ's decision, but clarified the issue for the second phase of the hearing: whether the seventeen school districts were providing a thorough and efficient education with current funding and, if not, whether such deficiencies could be remedied by different programmatic and fiscal choices. Ibid.

On September 23, 2002, the ALJ held that five school districts⁴ met the standard of a special needs district ("SND")⁵, but that twelve did not.⁶ Ibid. On February 10, 2003, the Commissioner adopted in part and reversed in part the ALJ's Initial Decision. Ibid. The Commissioner found that only one district (Salem) met the standards for a SND. Ibid. The Commissioner

³ Lower, Lower Cape May Regional and South River.

⁴ Buena Regional, Commercial, Fairfield, Salem City and Woodbine. Id. at 608, n.4.

⁵ In the Quality Education Act of 1990, N.J.S.A. 18A:7D-1 to -371 (repealed 1996), the Legislature denominated 30 urban districts as "special needs districts." Id. at 604.

⁶ Clayton, Egg Harbor City, Hammonton, Lakehurst, Lakewood, Lawrence, Little Egg Harbor, Maurice River, Ocean, Quinton, Upper Deerfield and Wallington. Id. at 608, n.5.

further found that the remaining sixteen districts⁷ (collectively referred to as "Bacon districts") did not demonstrate that CEIFA funding was insufficient to enable them to provide a thorough and efficient education. Ibid.

Ten districts⁸ filed a Notice of Appeal to the State Board of Education ("State Board"), however, two of these districts⁹ subsequently withdrew their appeal. Id. at 608-09. On January 4, 2006, the State Board issued its decision. Id. at 609. It determined that the implementation of CEIFA had not resulted in the provision of a thorough and efficient education to the students in the Bacon districts. Ibid. The State Board concluded that a systemic remedy was necessary and that the starting point was to assess the educational needs in each of the Bacon districts and identify the approaches that would effectively address those needs. Id. at 611. In doing so, the State Board rejected the idea "that merely providing the [Bacon] districts with the same fiscal

⁷ Buena Regional, Commercial, Clayton, Egg Harbor City, Fairfield, Hammonton, Lakehurst, Lakewood, Lawrence, Little Egg Harbor, Maurice River, Ocean Township, Quinton, Upper Deerfield, Wallington and Woodbine. Id. at 608, n.6.

⁸ Buena Regional, Clayton, Commercial, Egg Harbor City, Fairfield, Lakehurst, Lakewood, Lawrence, Maurice River and Woodbine. Lakewood's appeal was limited to the Commissioner's determination that Lakewood must use all of its available funds for educational programming, including monies that it is using to support courtesy busing, before it can claim that it is entitled to status as a SND. Id. at 608, n.7.

⁹ Commercial and Maurice River. Id. at 608-09.

resources that are provided to the Abbott [d]istricts will ensure that the students in these districts are in fact afforded the educational opportunity to which they are entitled." Id. at 610. Instead, the State Board noted the "unique set of circumstances" faced by these mostly rural districts and recognized that "different approaches will be required than those utilized in poor urban districts if the deficits in the education now being provided by the appellant districts are to be corrected." (State Board Decision, p. 59).

A Notice of Appeal was filed in the Appellate Division on behalf of the Bacon districts and several students and their parents from those districts.¹⁰ The appellants urged that "the only proper remedy for the educational deficiencies in the record is to grant them status comparable to Abbott districts and award them the same financial resources provided to their urban counterparts, i.e., parity funding, facilities funding and universal preschool." Bacon, supra, at 615. The court rejected this approach, agreeing instead with the Board that as a first step, the Commissioner should "focus on the unique set of circumstances confronting students of these poor rural districts that distinguish them from their urban counterparts; assess the special educational needs of

¹⁰ By Order dated March 28, 2006, the Appellate Division granted the State Board's motion to dismiss as to all of the individual students and their parents, Commercial, Maurice River, Hammonton, Little Egg Harbor, Ocean, Quinton, Salem City, Upper Deerfield and Wallington.

the students in each of the Bacon districts; and identify the approaches that will effectively address these needs." Id. at 617. The court concluded that "such an assessment is a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their uses guaranteed." Ibid.

Consistent with the Appellate Division's order, the Department designed and implemented a comprehensive, multi-phased needs assessment. In the first part, the Department examined background data for each district, including size, configuration (grades served), percentage of students considered to be "at-risk"¹¹, enrollment trends, and, if applicable, the district's performance under the New Jersey Quality Single Accountability Continuum ("NJQSAC"), N.J.S.A. 18A:7A-3 et seq. (See, e.g., Clayton School District Needs Assessment, pp 1-2). The Department then distributed a self-evaluation survey to each of the Bacon districts. The survey asked the districts to identify areas of unmet need and the resources that they required to meet those needs. It also elicited in-depth information regarding, among other things, each district's staffing, facilities, preschool, and ability to deliver educational content consistent with the Core Curriculum Content Standards. (See, e.g., Id. at 2-5). The

¹¹ "At-risk" students were defined as those who were at or below 185% of the federal poverty guidelines.

Department then conducted on-site assessments at each of the Bacon districts which were concluded by the end of December 2008. (See, e.g., Id. at 5-6).

On September 14, 2009, the Commissioner issued a report for each Bacon district describing the unique conditions and challenges present in that district, and assessing whether the remedial measures in the SFRA and complementary legislation were sufficient to afford students a thorough and efficient education. The reports detailed the amount of aid each district received under the SFRA for FY08-09 and FY09-10¹², and how the districts intended to use that funding. Each report contained conclusions and recommendations specific to the district. Where appropriate, the reports also offered services from the Department in the form of technical assistance, training and other support. The Commissioner also made concrete suggestions to Lakewood, Buena and Hammonton to correct inefficient spending and staffing practices.

Pursuant to R. 2:4-1(b) and Bacon, supra, at 619, the appellant districts could have appealed the Commissioner's reports no later than October 29, 2009. No appeal was filed.

Approximately two years after the Commissioner issued the needs assessments, on or about August 29, 2011, the eight appellant districts filed a motion in aid of litigant's rights in the

¹² The effective date of the SFRA was January 13, 2008, and first applied to the 2008-2009 school year. See, P.L. 2007, c.260.

Appellate Division seeking an order directing that full funding under SFRA be provided to the Bacon districts. On January 12, 2012, the Appellate Division denied the motion, noting that "[t]he specific relief requested on this motion to enforce litigant's rights . . . is neither encompassed nor contemplated in our decision To the extent movants' instant application seeks redress from the September 14, 2009 final administrative decisions of the Commissioner of Education as inconsistent with, or violative of, the Bacon holding, their recourse was a direct appeal therefrom." (Bacon, et al., v. NJ Dep't of Education, M-000267-11, Order (January 13, 2012), attached as Exhibit B to Verified Complaint.) The court further noted that "[t]o the extent movants seek[] to enforce, or compel compliance with, any aspect of the September 14, 2009 administrative agency determinations, their recourse is by way of summary proceeding pursuant to Rule 4:67-6." Ibid.

Approximately three years later, on or about September 8, 2014, the Plaintiffs/Petitioners filed a Verified Complaint and Order to Show Cause seeking to enforce the September 14, 2009 needs assessments and obtain an order directing full funding of the SFRA, preschool and facilities improvements as to the Bacon districts. The Department files this brief in support of its motion to dismiss the complaint and order to show cause.

LEGAL ARGUMENT

PLAINTIFFS/PETITIONERS' CLAIMS FOR AN ORDER
COMPELLING THE DEPARTMENT TO PROVIDE ADDITIONAL K-
12 SCHOOL FUNDING, PRESCHOOL AND FACILITIES
IMPROVEMENTS SHOULD BE DISMISSED SINCE THE
UNDERLYING AGENCY ORDERS DID NOT ENCOMPASS OR
CONTEMPLATE SUCH RELIEF.

Plaintiffs/Petitioners bring this summary proceeding pursuant to R. 4:67-6, which provides a mechanism for a party to an administrative proceeding to enforce a written order or determination entered by the agency. However, because the needs assessments that Plaintiffs/Petitioners seek to enforce did not encompass or contemplate the relief requested, their claims should be dismissed.

Rule 4:67-6 governs summary proceedings in Superior Court to enforce orders issued by administrative agencies. The rule applies to "enforcement actions brought by a party to the administrative proceeding in whose favor a written order or determination was entered affording that party specific relief." R. 4:67-6(a)(2) (emphasis added). The purpose of the rule is "to provide judicial remedies in aid of agency orders where necessary." In the Matter of A-1 Jersey Moving and Storage, Inc., 309 N.J. Super. 33, 40 (App. Div. 1998) (citing Pressler, Current N.J. Court Rules, comment on R. 4:67-6 (1997)). Thus, it is treated as the "analogue in an administrative proceeding of a motion for enforcement of litigant's rights under Rule 1:10-3 in a judicial proceeding."

State of New Jersey Dep't of Environmental Protection v. Mazza and Sons, Inc., 406 N.J. Super. 13, 19-20 (App. Div. 2009).

Therefore, the scope of relief in a summary proceeding to enforce an agency order is limited to remediation of the violation of the order. See, Abbott v. Burke, 206 N.J. 332, 371 (2011) ("Abbott XXI"). A party proceeding pursuant to R. 4:67-6 must show that the agency order sought to be enforced "afford[s] that party specific relief." R. 4:67-6(b). In other words, there must be a "specific and unequivocal order" in place. Abbott v. Burke, 170 N.J. 537, 565 (2002) ("Abbott VIII") (LaVecchia, J., concurring in part and dissenting in part). And in order to prevail, the party seeking to enforce the order must show that the defendant "has failed to comply with the order and that the court's assistance is necessary to secure compliance." State of New Jersey Dep't of Environmental Protection v. Mazza, supra, 406 N.J. Super. at 20.

Here, the Commissioner's 2009 needs assessments of the Bacon districts did not require the specific relief now sought by Plaintiffs/Petitioners. In the Order to Show Cause, Plaintiffs/Petitioners frame their request for relief as an Order requiring "the provision of K-12 funding, preschool, facilities improvements and other measures as determined necessary to remedy

the continuing constitutional violation¹³ in Plaintiff/Petitioner districts" (Order to Show Cause, p. 2). In the Verified Complaint, Plaintiffs/Petitioners delineate the relief sought as an Order requiring Defendant/Respondent to do the following:

- (A) Calculate the increase 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 increase 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

¹³ Defendant/Respondent notes that there is nothing in the record to support Plaintiffs/Petitioners' assertion that there is a "continuing constitutional violation."

(EFCFA) N.J.S.A. 1[8]A:7[G]-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; and
- (G) Such other relief as the Court may deem appropriate and necessary to ensure remediation of the constitutional violation found in this litigation.

(Verified Complaint, pp. 13-14)

Hence, the crux of the remedy sought by Plaintiffs/Petitioners is increased resources in the form of State aid, preschool aid and facilities funding. But that relief is not available in this proceeding, because it was not encompassed in the agency orders sought to be enforced.

First, as to State aid, while each district evaluation discussed the impact of SFRA funding on the particular district and, if appropriate, made recommendations for use of State funds, nowhere in the assessments did the Commissioner order or direct payment of State aid in the future.¹⁴ Likewise, while the

¹⁴ In fact, the reports indicate that eight of the Bacon districts were slated to receive no increase in K-12 aid for FY 09-10. See, Egg Harbor School District Needs Assessment, Lakehurst School District Needs Assessment, Lakewood School District Needs

assessments note that most of the Bacon districts would be required to expand preschool pursuant to the SFRA, the agency decisions contain no specific requirements or directives concerning such expansion. And as to facilities, the reports document that thirteen districts¹⁵ had received approval and State grant aid for proposed facilities projects, but they do not direct any additional action by the State.

Hence, in the needs assessments, the Commissioner made no specific orders or directives regarding future State aid, preschool or facilities funding. Because the needs assessments sought to be enforced do not specifically and unequivocally compel the remedy requested, Plaintiffs/Petitioners are not entitled to relief pursuant to R. 4:67-6 and this summary proceeding should be dismissed.

Plaintiffs/Petitioners appear to contend, however, that their claims for relief stem from an implicit finding in the needs assessments that the provision of a thorough and efficient education in the Bacon districts is dependent upon full funding pursuant to the SFRA, and therefore that the remedies requested

Assessment, Little Egg Harbor School District Needs Assessment, Maurice River School District Needs Assessment, Ocean Township School District Needs Assessment, Upper Deerfield School District Needs Assessment, Woodbine School District Needs Assessment.

¹⁵ Buena, Clayton, Commercial, Egg Harbor, Fairfield, Hammonton, Lakehurst, Lawrence, Little Egg Harbor, Quinton, Upper Deerfield, Wallington and Woodbine.

flow from the underlying agency determinations. See, e.g., Verified Complaint, ¶18. That is simply not the case.

The Commissioner's mission in conducting the district evaluations, as framed by the Board and affirmed by the Appellate Division, was to "focus on the unique set of circumstances confronting students of these poor rural districts that distinguish them from their urban counterparts; assess the special educational needs of the students in each of the Bacon districts; and identify the approaches that will effectively address these needs." Bacon, supra at 617. In doing so, the Commissioner examined a panoply of issues and challenges that confronted these districts. She offered appropriate directions and directives based on findings regarding conditions in each district as they existed at that time. The needs assessments also pointed out ineffective fiscal and spending practices of some districts, and made suggestions for remedying them. The Commissioner recommended to eight districts¹⁶ that were taxing under their local fair share that they should consider raising their local tax levies, and that two districts¹⁷ should consider using excess surplus funds to meet educational needs. She also identified inefficient spending practices in Buena, Hammonton and Lakewood. As to Buena, she stated that it was critical that

¹⁶ Commercial, Egg Harbor, Fairfield, Lakehurst, Lawrence, Little Egg Harbor, Maurice River, and Ocean.

¹⁷ Commercial and Lawrence.

the district "address[] the contractual issues that have teachers spending such a minimal amount of time involved in instructional activities." (Buena Regional School District Needs Assessment, p. 9). The Commissioner also noted that "[d]espite the needs the administrators described in their survey and during the site visit, the district chose to use a small amount of its new [FY08-09 SFRA] funds for staff development, texts and administration, reserving the bulk of the 20% increase for tax relief." Similarly, the Commissioner recommended that Hammonton improve its deployment of staff and "take advantage of contractual provisions that allow[] the district to require more instructional time from its teachers than they are currently providing." (Hammonton School District Needs Assessment, p. 8).

Regarding Lakewood, the Commissioner noted that "it is impossible to make a true assessment of Lakewood's financial needs without analyzing the district's choice to expend a large amount of funds on non-mandated courtesy busing for both its public and nonpublic students. . . . The Department reaffirms now that it is unacceptable for the district to allege critical unmet needs for its public school students while it spends such a substantial sum of money to provide a non-mandated courtesy service to its nonpublic students. Lakewood must revise its priorities so that its resources are better directed to the needs of the students it is responsible for educating." (Lakewood School District Needs

Assessment, p. 9-10). The Commissioner concluded that "[t]here are many areas in which Lakewood needs to improve in terms of student performance, but the district also has significant resources to address those needs." (Id. at 11).

In short, as required by the State Board and the Appellate Division, the Bacon needs assessments analyzed the then-existing conditions present in the districts. The Commissioner found that each district had sufficient resources to provide a thorough and efficient education. The reports did not, however, either explicitly or implicitly, make any determination that the districts' provision of a thorough and efficient education depended on continued funding and other provisions of the SFRA. Put another way, the relief now sought by Plaintiffs/Petitioners—increase in funding, preschool, and facilities improvements—was not encompassed within the 2009 needs assessments. To the extent that Plaintiffs/Petitioners disagreed with the conclusions in those assessments and desired orders mandating future implementation of the SFRA, their recourse was to appeal to the Appellate Division. However, they chose not to do so, and cannot now, pursuant to R. 4:67-6, challenge the validity of the underlying agency determinations. R. 4:67-6(c)(3); In re Valley Road Sewerage Co., 295 N.J. Super. 278, 291 (App. Div. 1996). This summary proceeding is not the appropriate vehicle for Plaintiffs/Petitioners to revive any issues they have with the 2009 decisions.

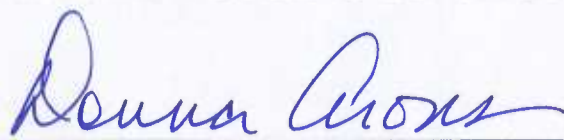
In addition to relief in the form of additional funding, preschool and facilities improvements, Plaintiffs/Petitioners also seek an order for undefined "other measures as determined necessary to remedy the continuing constitutional violation in Plaintiff/Petitioner districts." (Order to Show Cause, p. 2; see also Verified Complaint, p. 14). As discussed above, in this summary proceeding pursuant to R. 4:67-6, Plaintiffs/Petitioners must demonstrate that there is a specific and unequivocal agency order to be enforced. Plaintiffs/Petitioners' vague request for "other measures" does not meet this standard. Given that there is no specific order requiring the particular relief requested, the order to show cause and verified complaint should be dismissed, as well as Plaintiffs/Petitioners' request for attorneys' fees.

CONCLUSION

For all of the foregoing reasons, Plaintiffs/Petitioners' Verified Complaint should be dismissed.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

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