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October 29, 2015

Samantha Skabla, Deputy Chief Legal and External Affairs
State of New Jersey, Department of Education
100 River View Plaza
Trenton, NJ 08625

Re: Montague Board of Education

Via Electronic Mail and FedEx

Dear Ms. Skabla:

I am special counsel to the Montague Board of Education (“Montague”). I am in receipt of the letter from Assistant Commissioner Robert Bumpus to Janice Hodge and John Waycie dated October 26, 2015. Going forward, I respectfully request that I be copied on any correspondence from the DOE that concerns Montague’s send-receive contracts with Port Jervis and High Point.

I note at the outset that Assistant Commissioner Bumpus sent his letter shortly after he, Commissioner Hesse, former Commissioner Cerf and Dr. Lamonte were named as defendants in a civil complaint now pending in the Superior Court, Law Division. A copy of the lawsuit was e-mailed to Deputy Attorney General Dominic Rota on October 15th, so I trust that everyone was aware of the development. The timing and tone of Mr. Bumpus’s letter permits an inference that it was retaliatory and designed to intimidate Montague. Tread with caution. Some lawyers might be inclined to rely on letters of this sort as evidence in court proceedings. I further note that the administration of Montague did not authorize the filing of an action against Assistant Commissioner Bumpus; the Board of Education did. Bullying a superintendent and business administrator in response to a lawsuit authorized by a board of education seems rather misguided.

Likewise, it is not the responsibility of a superintendent or business administrator to chain themselves to Port Jervis High School’s doors and physically obstruct students from entering. Mrs. Hodge and Mr. Waycie never “defied the Commissioner’s determination” or “sent a small number of students to Port Jervis, New York.” Nor did the Board. Parents enrolled their children in Port Jervis High School. Neither Mrs. Hodge nor Mr. Waycie (nor, for that matter, Mr. Bumpus or anyone else in the DOE) has the

authority to interfere with that process. If a parent chooses to enroll a child in a particular school, that is his or her choice to make. Our understanding is that all of the parents who enrolled their children in Port Jervis as 9th or 10th graders signed tuition guarantees affirming that they will personally satisfy tuition payments if necessary. Again, that is a parent's choice to make.

Speaking of defying the law, Montague filed today a petition of appeal seeking a declaration of the Commissioner that (1) N.J.S.A. 18A:38-21.1 permits Montague's current 9th and 10th graders to attend Port Jervis High School through graduation, as they were secondary students attending Port Jervis Middle School when the sending-receiving relationship between Montague and Port Jervis was effectively terminated; and (2) Montague is obligated, consistent with and further to N.J.S.A. 18A:38-21.1, to pay tuition to Port Jervis for the thirteen 9th and 10th graders currently attending Port Jervis High School and any other 9th and 10th grade students living in Montague who choose to enroll in Port Jervis High School. A courtesy copy is enclosed.

As the petition explains, N.J.S.A. 18A:38-21.1 provides:

Section: 18A:38-21.1: Termination of sending-receiving relationship.

1. a. Notwithstanding the provisions of N.J.S.18A:38-13 and N.J.S.18A:38-21, any board of education which sends students to another school district may terminate a sending-receiving relationship pursuant to the following conditions:

(3) Any secondary school student in the sending district at the time of the termination of the sending-receiving relationship shall be permitted to complete his secondary education within the receiving district. The sending-receiving relationship shall be continued for these students.

Under N.J.A.C. 6A:32-2.1, “‘secondary’ means grades nine through 12 in all high schools; grades seven and eight in junior high schools; grades seven, eight and nine in middle schools, and grades seven and eight in elementary schools having departmental instruction.”

Leaving the serious constitutional and legal problems aside, the sending-receiving relationship between Montague and Port Jervis was effectively terminated on June 24, 2013 when Commissioner Cerf revoked his consent for Montague to send students to Port Jervis. Performance of the contract was rendered impossible. At that time, Montague's current 9th and 10th graders were “secondary students” attending Port Jervis Middle School. By law, those pupils “shall be permitted to complete his secondary education within the receiving district,” that is, Port Jervis.

Montague is committed to following the law. The district's actions to date have been grounded in legal authority, namely N.J.S.A. 18A:38-21.1. That being said, Montague acknowledges the Commissioner's authority to withhold state aid and take “governance corrective action,” as Mr. Bumpus has reminded it repeatedly in his letters.

In his October 26th letter, Mr. Bumpus wrote, “if payment of the tuition bill is authorized . . . the DOE will take action within the Commissioner’s statutory and regulatory authority. . . .” Montague interprets this statement to mean that if it pays tuition to Port Jervis for students other than 8th, 11th and 12th graders, the DOE intends to take the action described.

Montague’s position is that the 8th, 11th and 12th graders are properly attending Port Jervis. No decision of the Commissioner can be construed otherwise. Neither Montague nor High Point offers facilities for 8th grade instruction, and the send-receive contract between the districts contemplates that the students who started high school in Port Jervis (i.e., the current 11th and 12th graders) will complete their education there.

As the petition of appeal indicates at ¶ 23, Montague intends to seek a temporary forbearance from Port Jervis for tuition payments for the 9th and 10th graders pending the outcome of the enclosed petition of appeal. For the sake of clarity, it is Montague’s present intention to make tuition payments only for the 8th, 11th and 12th graders currently attending Port Jervis. Over the past few years, Montague has made its first payment to Port Jervis in late November or December, so nothing is imminent. If the DOE’s position is that Montague cannot pay Port Jervis for the 8th, 11th and/or 12th graders, we would appreciate knowing that immediately. If circumstances arise under which Montague feels constrained to pay tuition for the 9th and 10th graders attending Port Jervis, Montague will file an appropriate application and notify all interested parties prior to doing so.

Finally, now that High Point has filed a petition of appeal against Montague; Montague has filed a petition of appeal against High Point; and Montague has filed a lawsuit against High Point, the attorney who formerly represented Montague (but still represents High Point, as she has since 2007) and various DOE employees including the Commissioner, perhaps it would be beneficial to discuss matters. We are open to suggestions in terms of how, when, where and with whom. If there is an interest on the DOE’s part to resolve these issues informally and impartially, we are fully willing to work toward that end.

Would you please contact me at your convenience?

Sincerely Yours,

Daniel M. Perez

DANIEL M. PEREZ, Esq.

enc.

cc: Tacia Raftopoulos-Johnson, Board President
Janice Hodge, Montague Superintendent
John Waycie, Montague Business Administrator and Board Secretary
Gary Kraemer, Esq., Montague Board Counsel
Gregory Kotchick, Esq., Counsel for High Point
(all w/o encs.)