

Stephen J. Edelstein, Esq. – 285031972
 Allan P. Dzwilewski, Esq. - 006461973
 Schwartz ■ Edelstein Law Group LLC
 100 South Jefferson Road, Suite 200
 Whippany, New Jersey 07981
 (973) 301-0001
 Attorneys for Petitioners

BOARD OF EDUCATION OF THE :
 TOWN OF NEWTON (SUSSEX :
 COUNTY); MIDDLESEX BOARD OF :
 EDUCATION (MIDDLESEX :
 COUNTY); LITTLE FERRY BOARD :
 OF EDUCATION (BERGEN :
 COUNTY); KINGSWAY REGIONAL :
 BOARD OF EDUCATION :
 (GLOUCESTER COUNTY); NORTH :
 BRUNSWICK BOARD OF :
 EDUCATION (MIDDLESEX :
 COUNTY); JAMESBURG BOARD OF :
 EDUCATION (MIDDLESEX :
 COUNTY); CHESTERFIELD :
 TOWNSHIP BOARD OF EDUCATION :
 (BURLINGTON COUNTY); :
 EMERSON BOARD OF EDUCATION :
 (BERGEN COUNTY); WALLINGTON :
 BOARD OF EDUCATION (BERGEN :
 COUNTY); SWEDESBORO- :
 WOOL WICH BOARD OF :
 EDUCATION (GLOUCESTER :
 COUNTY); TOWN OF NEWTON; :
 WOOL WICH TOWNSHIP; EAST :
 GREENWICH TOWNSHIP; :
 BOROUGH OF SWEDESBORO; and :
 Taxpayer Individuals BENJAMIN :
 EGNER, CHARLES FANTASIA, :
 MICHAEL LARSEN, ALEX :
 MAJEWSKI, DINA MORRIS, WAYNE :
 LEVANTE, E. KEVIN ELVIDGE, :
 HELEN LEFROIS, DANIEL G. :
 FLYNN, SANDRA LEE DIGLIO, :
 CLARIBEL CORTES, GLORIA :
 GONZALEZ, JENNIFER NISONOFF,

BEFORE THE COMMISSIONER OF
 EDUCATION OF THE STATE OF NEW
 JERSEY

AGENCY DKT. NO.:

PETITION OF APPEAL

MARGARET HALLION, BELINDA
BLAZIC, JAMES MUELLER, JAMES
LAVENDER, JENNIFER
CAVALLARO-FROMM, THOMAS
FROMM, LORRAINE FLAHERTY,
DAVE FLAHERTY, GEORGE WEEKS,
DIANE HALE, JEFF HALE, MICHELE
BLAIR, MIA RANDAZZO, MICHELLE
VANDIEHL, JACLYN DOPKE,
LAUREN IBBOTSON, NATALIE
MATTHIAS AND DALE ARCHER.

Petitioners,

v.

KIMBERLEY HARRINGTON, in her
capacity as the New Jersey Commissioner
of Education,

Respondent.

: BEFORE THE COMMISSIONER OF
: EDUCATION OF THE STATE OF NEW
: JERSEY

: AGENCY DKT. NO.:

: **PETITION OF APPEAL**

All of the above captioned Petitioners hereby state as follows:

PARTIES

1. The Petitioning School Districts are Type II school districts created pursuant to N.J.S.A. 18A:8-1 et seq. and N.J.S.A. 18A:9.3. Their respective Boards of Education are the duly elected representative bodies entrusted with the obligation to conduct and supervise the School Districts. N.J.S.A. 18A:10-1.

2. The Petitioning Municipalities are the governing bodies responsible for collecting the property tax amounts assessed for their respective School Districts, per N.J.S.A. 54:4-75.

3. The individual Petitioners are residents and tax payers and in some instances parents of students in the Petitioning School Districts. Petitioners Benjamin Egner, Charles Fantasia and Michael Larsen are Newton residents, taxpayers and parents of students in the

Newton Public Schools, while Petitioners Alex Majewski and Dina Morris are Newton residents and taxpayers. Petitioner Wayne Levante is Mayor of the Town of Newton, E. Kevin Elvidge, is Deputy Mayor and Helen LeFrois, Daniel G. Flynn and Sandra Lee Diglio are Council Members and each are residents and taxpayers of the Town of Newton. Petitioners Claribel Cortes and Gloria Gonzalez are residents and taxpayers of the Township of North Brunswick as well as being North Brunswick Board of Education members. Petitioner Jennifer Nisonoff is a resident and taxpayer of the Borough of Emerson. Petitioners Margaret Hallion and Belinda Blazic are residents and taxpayers of Chesterfield Township. Petitioner James Mueller of East Greenwich Township is a resident, taxpayer of same and parent of a student at Kingsway Regional as well as the President of its Board of Education. Petitioner James Lavender of Woolwich Township is a resident, taxpayer and parent of a student at Kingsway Regional as well as its Superintendent of Schools. Petitioner Jennifer Cavallaro-Fromm of the Boro of Swedesboro is a resident, taxpayer and parent of a student at Kingsway Regional and an in-coming member of its Board of Education. Petitioner Thomas Fromm of the Boro of Swedesboro is a resident and taxpayer of same and parent of a Kingsway Regional student as well as Mayor of Swedesboro. Lorriane Flaherty and Jeffrey Hale are Swedesboro residents and taxpayers. David Flaherty, George Weeks and Diane Hale are Swedesboro Council members, residents and taxpayers. Michele Blair and Mia Randazzo are residents and taxpayers in Woolwich Township and members of the Kingsway Regional Board of Education. Michelle VanDiehl, Jaclyn Dopke, Lauren Ibbotson and Natalie Matthias are residents and taxpayers of Woolwich and members of the Swedesboro-Woolwich Board of Education. Dale Archer is a taxpayer and resident of East Greenwich and is its Mayor.

4. Respondent Kimberley Harrington (“Harrington” or “Commissioner”) is the Commissioner of Education of the State of New Jersey. In her capacity as Commissioner of Education, Harrington serves as the chief executive school officer of the New Jersey Department of Education and supervises all public schools. She is also a member of the Governor’s cabinet, appointed by the Governor. As educational leader of the State, the Commissioner is responsible for apportioning State Aid among the local school districts.

THE OPERATIVE FACTS

5. The New Jersey State Constitution provides, in relevant part, that funds for the support of free public school are to be annually appropriated and be “for the equal benefit of all the people of the State” (Article 8, Section 4, Paragraph 2).

6. For 45 years or more, at least since Robinson et als. V. Cahill et als., 118 N.J. 223 (1972), New Jersey has struggled with school funding.

7. In 2008, following Abbott v Burke I through Abbott v. Burke XVIII, the New Jersey Legislature enacted the School Funding Reform Act of 2008 (hereinafter “SFRA”) (N.J.S.A. 18A:7F-43 et seq.) which established a school funding formula “to develop an equitable and predicable way to distribute State aid.” (N.J.S.A. 18A:7F-44h.)

8. In short, SFRA requires a process consisting of: (a) A determination of each District’s Adequacy Budget; (b) A determination of the Local Share, in accordance with N.J.S.A. 18A:7F-52; and (c) A determination of Equalization Aid, which is the difference between the Adequacy Budget and the Local Share.

9. In fact, the Commissioner has ignored this legislative mandate and, instead of Equalization Aid being determined as set forth above, it is instead being determined arbitrarily,

and the Local Share has become the difference between the Adequacy Budget and the Equalization Aid.

10. For the school year 2017-2018, the SFRA State Aid figures for the Petitioning School Districts were as follows:

Newton	\$6,165,257
Middlesex	\$9,122,803
Little Ferry	\$2,140,230
Kingsway Regional	\$9,599,143
Chesterfield	\$821,188
Jamesburg	\$5,353,086
North Brunswick	\$14,621,189
Emerson	\$553,411
Wallington	\$3,605,399 and
Swedesboro-Woolwich	\$7,217,672

11. The DOE has also generated additional data sheets that not only reflect “Actual State Aid” and “uncapped SFRA Aid” for school districts for the 2017-18 school year but also additional information regarding their “Local Taxes”, including “Local Tax Levy” and “Local Fair Share”. This data was provided to all school districts electronically through the DOE’s “Homeroom” portal.

12. In accordance with such DOE data, the Newton School District was to receive \$10,352,573 in State Aid, but actually received \$6,165,257, a gap (or shortfall) of \$4,187,316. The State Aid actually received represents 60% of Newton’s SFRA Aid.

13. In accordance with such DOE data, the Middlesex School District was to receive \$13,876,528 in State Aid, but actually received \$9,122,803, a gap (or shortfall) of \$4,753,725. The State Aid actually received represents 66% of Middlesex's SFRA Aid.

14. In accordance with such DOE data, the Little Ferry School District was to receive \$8,257,738 in State Aid, but actually received \$2,140,230, a gap (or shortfall) of \$6,117,508. The State Aid actually received represents 26% of Little Ferry's SFA Aid.

15. In accordance with such DOE data, the Kingsway Regional School District was to receive \$20,069,440 in State Aid, but actually received \$9,599,143, a gap (or shortfall) of \$10,470,297. The State Aid actually received represents 48% of Kingsway's SFRA Aid.

16. In accordance with such DOE data, the Chesterfield School District was to receive \$4,224,394 in State Aid, but actually received \$821,188, a gap (or shortfall) of \$3,403,206. The State Aid actually received represents 19% of Chesterfield's SFRA Aid.

17. In accordance with such DOE data, the Jamesburg School District was to receive \$9,892,713 in State Aid, but actually received \$5,353,086, a gap (or shortfall) of \$4,539,627. The State Aid actually received represents 54% of Jamesburg's SFRA Aid.

18. In accordance with such DOE data, North Brunswick was to receive \$44,091,094 in State Aid but actually received \$14,621,189, a gap (or shortfall) of \$29,470,805. The State Aid actually received represents 33% of North Brunswick's SFRA Aid.

19. In accordance with such DOE data, Emerson was to receive \$1,186,487 in State Aid but actually received \$553,411, a gap (or shortfall) of \$633,076. The State Aid actually received represents 47% of Emerson's SFRA Aid.

20. In accordance with such DOE data, Wallington was to receive \$9,438,021 in State Aid but actually received \$3,605,399, a gap (or shortfall) of \$5,832,622. The State Aid actually received represents 38% of Wallington's SFRA Aid.

21. In accordance with such DOE data, Swedesboro-Woolwich was to receive \$11,803,713 in State Aid but actually received \$7,217,672, a gap (or shortfall) of \$4,586,041. The State Aid actually received represents 61% of Swedesboro-Woolwich's SFRA Aid.

22. One of the consequences of these aid gaps is that the Petitioning Districts were forced to raise more than 100% of their proper Local Fair Share of taxes.

23. The data from the DOE demonstrates the following:

Newton was compelled to raise 148% of its Local Fair Share;

Chesterfield was compelled to raise 131% of its Local Fair Share;

Middlesex was compelled to raise 114% of its Local Fair Share;

Little Ferry was compelled to raise 131% of its Local Fair Share;

Kingsway Regional was compelled to raise 101% of its Local Fair Share;

Jamesburg was compelled to raise 121% of its Local Fair Share;

North Brunswick was compelled to raise 117% of its Local Fair Share;

Emerson was compelled to raise 111% of its Local Fair Share;

Wallington was compelled to raise 113% of its Local Fair Share and

Swedesboro-Woolwich was compelled to raise 125% of its Local Fair Share.

The tax payers of the Petitioning Districts are required, therefore, to make up the above demonstrated gaps by paying more than 100% of the proper Local Fair Share, while other Districts are receiving excess State Aid and are not required to burden their local taxpayers in a similar fashion.

24. In fact, the State Aid which should have gone to the Petitioning Districts was arbitrarily allocated to other Districts, not in accordance with the methodology directed by the Legislature, including in the School Funding Reform Act of 2008.

25. As a consequence of the underfunding described above, each of the Petitioning Districts has been unable to provide needed programs without being forced to place an additional and more excessive burden on local property tax owners. In addition, there have been other consequences of the pocket-book fatigue experienced by these property taxpayers, including but not limited to the defeat of capital referenda in Newton, Middlesex and Kingsway. Further, Petitioning Districts have been forced to institute various budgetary restrictions, including, by way of illustration and not limitation, reduction of both certificated and support staff, not hiring such additional staff despite recognized and specific student needs, elimination or reduction of programs and curriculum offerings, discontinuance of both enrichment and extra-curricular activities and foregoing necessary investments in building and grounds maintenance as well as technology needs and the inability to purchase new textbook and similar materials to replace outdated ones. In order to maintain its programs and/or control its local tax rate, a number of the Petitioning Districts have had to spend down their Fund Balance to levels they would not otherwise have considered.

FIRST COUNT

26. The Petitioners repeat the allegations of Paragraphs 1 – 25 as if set forth herein at length.

27. The above described funding pattern violates the SFRA, since it is neither “equitable” nor “predictable” as required by N.J.S.A. 18A: 7F – 44h. The Petitioning Districts

do not receive the funds purportedly allocated to them and are, in fact, severely under-aided at less than 70% of their SFRA allocation.

28. This Petition seeks a declaratory determination that the methodology now used by the Commissioner of Education must be modified for the 2018-2019 school year State funding allocations so as to comply with the directions of the Legislature, including in the School Funding Reform Act of 2008.

WHEREFORE, Petitioners demand that the Commissioner of Education allocate any State Aid funds provided by the New Jersey Legislature for 2018-19 school year so that Petitioners receive an equal, equitable and predictable amount of said state aid funds and are not continually and severely under-aided, including a Declaration that Petitioners, its residents and taxpayers are now paying more than their fair share of local property taxes, together with counsel fees, costs of this action, and such other relief as may be deemed appropriate, including fiscal adjustments for previous underfunding in violation of SFRA.

SECOND COUNT

29. Petitioners repeat the allegations of Paragraphs 1 – 28 as if set forth herein at length.

30. The methodology used by the Commissioner, as aforesaid, and the consequences of that methodology is arbitrary, unreasonable and capricious with no rationale relationship to any recognized educational or economic need.

31. The above described funding pattern, in fact and as applied, violates Article 8, Section 4, Paragraph 2 of the New Jersey Constitution in that the process followed was not that required by the Legislature and the result does not constitute equal funding.

32. Because the Petitioning Districts are under-aided, with concrete, negative consequences, while other Districts are over-aided, all in violation of the methodology directed by the Legislature, the Commissioner, in her official capacity, has caused a violation of the Petitioners' equal protection rights under the New Jersey Constitution.

WHEREFORE, Petitioners demand a Declaratory Judgment that the Commissioner of Education allocate any State Aid funds provided by the New Jersey Legislature for 2018-19 school year so that Petitioners receive an equal, equitable and predictable amount of said state aid funds and are not continually and severely under-aided, including a Declaration that Petitioners, its residents and taxpayers are now paying more than their fair share of local property taxes, together with counsel fees, costs of this action, and such other relief as may be deemed appropriate, including fiscal adjustments for previous underfunding in violation of SFRA.

THIRD COUNT

33. The Petitioners repeat the allegations of Paragraphs 1 – 32 as if set forth herein at length.

34. By placing a property tax burden on the Petitioning Taxpayers which is greater than that dictated by the methodology directed by the Legislature, the Commissioner, in her official capacity, has caused a violation of the Due Process Rights of the Petitioning Taxpayers by unfairly and without due process of law imposing an arbitrary and unreasonable property tax burden.

35. As a consequence, each of the Petitioning Taxpayers has suffered a financial loss.

WHEREFORE, Petitioners demand that the Commissioner of Education allocate any State Aid funds provided by the New Jersey Legislature for 2018-19 school year so that Petitioners receive an equal, equitable and predictable amount of said state aid funds and are not

continually and severely under-aided, including a Declaration that Petitioners, its residents and taxpayers are now paying more than their fair share of local property taxes, together with counsel fees, costs of this action, and such other relief as may be deemed appropriate, including fiscal adjustments for previous underfunding in violation of SFRA.

FOURTH COUNT

36. The Petitioners repeat the allegations of Paragraphs 1 – 35 as if set forth herein at length.

37. The normal process for enactment of Regulations involves the drafting of proposed regulations, notice to all interested parties, the preparation for public distribution of an “impact statement,” the opportunity for interested persons to be heard, and, if requested by the Agency, a public hearing, the preparation of a Report including a summary of all submissions, and final adoption. See, the Administrative Procedures Act, N.J.S.A. 52:14B(1)-(15). See also, N.J.A.C. 1:30-5.1 et seq.

38. By developing a methodology for determining State Aid which is inconsistent with the directions of the Legislature, the Commissioner of Education has engaged in de facto rule making with complying with the Administrative Procedures Act.


39. As a result, the Petitioners have been harmed.

WHEREFORE, Petitioners demand that the Commissioner of Education allocate any State Aid funds provided by the New Jersey Legislature for 2018-19 school year so that Petitioners receive an equal, equitable and predictable amount of said state aid funds and are not continually and severely under-aided, including a Declaration that Petitioners, its residents and

taxpayers are now paying more than their fair share of local property taxes, together with counsel fees, costs of this action, and such other relief as may be deemed appropriate, including fiscal adjustments for previous underfunding in violation of SFRA.

Schwartz ■ Edelstein Law Group LLC
Attorneys for Petitioners

By: 
STEPHEN J. EDELSTEIN, ESQ.

By: 
ALLAN P. DZWILEWSKI, ESQ.

Dated: January 11, 2018

VERIFICATION

Dr. G. Kennedy Greene, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Newton Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Newton Board of Education therein are true to the best of my knowledge and belief.

I 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.



DR. G. KENNEDY GREENE

Dated: January 11, 2018

VERIFICATION

Dr. Linda A. Madison, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Middlesex Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Middlesex Board of Education therein are true to the best of my knowledge and belief.

I 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.



DR. LINDA A. MADISON


Dated: January 10, 2018

VERIFICATION

Frank R. Scarafile, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Little Ferry Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.
2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Little Ferry Board of Education therein are true to the best of my knowledge and belief.

I 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.



FRANK R. SCARAFILE

Dated: January 10, 2018

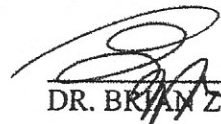
VERIFICATION

Dr. Brian Zychowski, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the North Brunswick Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for North Brunswick Board of Education therein are true to the best of my knowledge and belief.

I 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.


DR. BRIAN ZYCHOWSKI

Dated: January 11, 2018

VERIFICATION

Scott Heino, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Chesterfield Township Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Chesterfield Township Board of Education therein are true to the best of my knowledge and belief.

I 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.


SCOTT HEINO

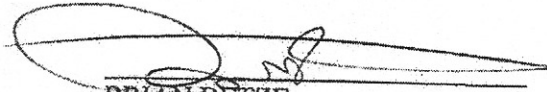
Dated: January 11, 2018

VERIFICATION

Brian Betze, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Jamesburg Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.
2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Jamesburg Board of Education therein are true to the best of my knowledge and belief.

I 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.


BRIAN BETZE

Dated: January 10, 2018


VERIFICATION

Dr. Brian P. Gatens, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Emerson Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Emerson Board of Education therein are true to the best of my knowledge and belief.

I 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.



DR. BRIAN P. GATENS

Dated: January 11, 2018

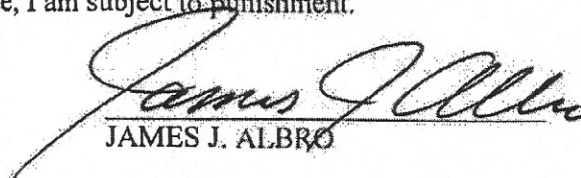
VERIFICATION

James J. Albro, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Wallington Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Wallington Board of Education therein are true to the best of my knowledge and belief.

I 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.


JAMES J. ALBRO

Dated: January 10, 2018

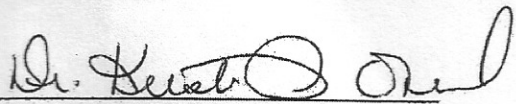
VERIFICATION

Dr. Kristin P. O'Neil, of full age, hereby certifies as follows:

1. I am the Superintendent of Schools for the Swedesboro-Woolwich Board of Education, one of the Petitioners in the instant action, and am fully familiar with the facts involved in this matter.

2. I have read the foregoing Petition of Appeal and do state that, the facts set forth for Swedesboro-Woolwich Board of Education therein are true to the best of my knowledge and belief.

I 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.


DR. KRISTEN P. O'NEIL
KRISTIN

Dated: January 11, 2018