

THE STATE OF NEW HAMPSHIRE

Cheshire, SS.

SUPERIOR COURT

Contoocook Valley School District, et al.

213-2019-CV-00069

v.

The State of New Hampshire

New Hampshire Department of Education

Christopher T. Sununu and Frank Edelblut

**PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTIVE RELIEF**

NOW COMES the Contoocook Valley School District, by and through their attorneys, Wadleigh, Starr & Peters, PLLC, and move for a preliminary injunction enjoining the unconstitutional underfunding of ConVal's schools stating as follows:

1. This action is for declaratory and injunctive relief to enforce the rights under Part II, Article 83 of the New Hampshire Constitution and the *Claremont* decisions which require the State Defendants to fully fund a constitutionally adequate education.
2. As the New Hampshire Supreme Court has repeatedly recognized, "The State [has] the exclusive obligation to fund a constitutionally adequate education. The State may not shift any of the constitutional responsibility to local communities." *Opinion of the Justices (Reformed Public School Financing System)*, 145 N.H. 474, 476 (2000).
3. "[T]he New Hampshire Constitution imposes solely upon the State the obligation to provide sufficient funds for each school district." *Opinion of the Justices (Reformed Public School Financing System)*, 145 N.H. 474, 476 (2000).

4. As detailed in the ConVal's Verified Petition, which is incorporated into this Motion, the State must provide ConVal with base adequacy funding of \$22,164,318.40 (\$10,843.60 per pupil x 2,044 pupils) to meet its constitutional obligations for the 2019 fiscal year.
5. Under RSA 198:40-a(II)(a), as modified by RSA 198:40-d, the State only intends to provide the ConVal School District with \$7,432,106.64 in base adequacy funding for the 2019 fiscal year. (\$3,636.06 per pupil x 2,044 pupils).
6. As of the date of this filing, the State has provided ConVal with less than \$5,202,474.65 of base adequacy funding, resulting in a current shortfall more than \$16,961,843.75 with the final April 1, 2019 payment required by RSA 198:42<sup>1</sup> remaining.
7. Absent injunctive and declaratory relief from this Court, the State will only provide ConVal with \$2,229,631.99<sup>2</sup> in base adequacy funding on or about April 1, 2019 and fail in meeting its constitutional duty to fully fund education.
8. A preliminary injunction is appropriate where there is (1) an immediate danger of irreparable harm (2) no adequate remedy at law and (3) a likelihood of success on the merits. *N.H. Department of Environmental Services v. Mottolo*, 155 N.H. 57, 63 (2007).
9. First, ConVal will be irreparably harmed if a preliminary injunction is not issued before April 1, 2019<sup>3</sup> as the State will likely argue that sovereign immunity bars this Court from granting injunctive relief after that date.

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<sup>1</sup> RSA 198:42 provides that the "adequate education grant determined in RSA 198:41 shall be distributed to each municipality's school district or districts from the education trust fund in 4 payments of 20 percent on September 1, 20 percent on November 1, 30 percent on January 1, and 30 percent on April 1 of each school year."

<sup>2</sup> 30% of \$3,636.06 x 2,044 pupils. See RSA 198:42(I); RSA 198:40-a(II)(a); RSA 198:40-d.

<sup>3</sup> This Court has, in a different case applying the State's underfunding of school districts, specifically held that injunctive relief can be granted before the end of the fiscal year on June 30<sup>th</sup>. See *Bedford School District v. State*, No. 216-2016-CV-00396, at p. 16-17 (Cheshire Superior April 6, 2017)(Ruoff, J.) Nevertheless, where the State has previously taken the position in a different case that if injunctive relief is not awarded on or before April 1 that the

10. Second, there is no adequate remedy at law. “[W]here the plaintiffs seek a declaratory judgment that actions taken by the State are unconstitutional, ‘the court ha[s] jurisdiction to grant equitable relief.’” *Lorenz v. New Hampshire Admin. Office of the Courts*, 152 N.H. 632, 635 (2005), *as modified* (Feb. 16, 2006)(quoting *Claremont School Dist. v. Governor (Costs and Attorney's Fees)*, 144 N.H. 590, 593 (1999)). Equitable relief is particularly appropriate in this case where ConVal seeks to prevent the State from acting unconstitutionally in the future. (i.e. April 1, 2019) See RSA 491:22; Part I, Article 8 of the New Hampshire Constitution (as amended November 2018).
11. Third, the ConVal petitioners are likely to succeed on the merits. As explained in further detail in the Verified Complaint, the State’s 2008 Spreadsheet (Exhibit A) upon which the current base adequacy funding of RSA 198:40-a(II)(a) is based has computational errors that can be corrected with the State’s own data. The State Department of Education has published reports demonstrating that, using the State’s own formula, and the State’s own published data, the cost of providing a constitutionally adequate education, exclusive of transportation, is \$9,929 per pupil. See 2019 Spreadsheet attached as Exhibit I to Verified Complaint. Whereas the State has also determined transportation costs differ in small urban districts from large rural districts and averages \$914.60 per pupil in the ConVal School District, it can be totaled to determine that the cost of providing a constitutionally adequate education, including transportation, is \$10,843.60 per pupil for pupils in the ConVal School District.
12. This Court has the power and the jurisdiction to issue equitable injunctive relief requiring the State to provide the constitutionally required funds. As this Court noted in the case of *Bedford School District v. State*, No. 216-2016-CV-00396, at p. 14 (Cheshire Superior April

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petitioner is barred by sovereign immunity, it is prudent to move to obtain a preliminary injunction prior to April 1 in this case.

6, 2017)(Ruoff, J.), whether the requested relief may be awarded depends on whether it is “specific or substitutionary in nature. Specific relief grants ‘the original thing to which the plaintiff is or was entitled.’” In this case, ConVal is requesting that the State be ordered to pay on April 1 what it is constitutionally obligated to pay under Part II, Article 83 of the New Hampshire Constitution. This is a request for specific relief and is within this Court’s power. See also *Bowen v. Massachusetts*, 487 U.S. 879, 900–01 (1988).

13. RSA 198:42(II) provides that “The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the comptroller shall transfer sufficient funds from the general fund to eliminate such deficit.”

14. Although RSA 198:42(II) authorizes the governor to pay the constitutionally required educational adequacy funds regardless of the balance in the education trust fund, the education trust fund currently has a surplus in excess of the amounts that should be provided to ConVal on April 1, 2019.

WHEREFORE, for the reasons stated in this Motion, and in the Verified Complaint, Petitioners request that this Honorable Court:

- A. Enter a preliminary injunction requiring payment of the remaining base educational adequacy funds of \$16,961,843.75 as required by Part II, Article 83 of the New Hampshire Constitution; and
- B. Grant such further relief as may be just and equitable

Respectfully submitted,

