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VIA E-FILING

Honorable Mary C. Jacobson, A.J.S.C.
New Criminal Courthouse
400 S. Warren St.
4th Floor Trenton, NJ 08650

Re: *Latino Action Network, et als. v. State of New Jersey, et als.*
Docket No.: MER-L-1076-18

Dear Judge Jacobson:

I am the Solicitor for the Wildwood Board of Education (“District”). Kindly accept this letter brief in lieu of a more formal submission in support of the District’s Motion to Intervene in the above-referenced litigation. Specifically, the District seeks to intervene as a Plaintiff pursuant to Rule 4:33-1, or alternatively, under Rule 4:32, as more fully discussed below.

BACKGROUND

The District is a body corporate and politic of the State of New Jersey, organized under N.J.S.A. 18A:10-1 and charged with the conduct of the public school system in the City of Wildwood, County of Cape May. Its administrative offices are located at 4300 Pacific Ave, Wildwood, New Jersey. The District educates Pre-Kindergarten (“Pre-K”)-12 grade students operating three schools within Wildwood which educate students in grades K-4, 5-8 and 9-12, respectively.

The Wildwoods are composed of five separate municipalities consisting of Wildwood, North Wildwood, West Wildwood, Wildwood Crest and Diamond Beach (Lower Township). The Island of Wildwood, is also known as “5 Mile Island” - referring to its length. All four of the “The Wildwoods” and their four school districts share the same zip code of 08260 and are located on the five mile island.

The City of Wildwood is bordered by the latter four municipalities, with the exception of Diamond Beach. Students from these neighboring municipalities attend the District as part of a sending/receiving relationship pursuant to N.J.S.A. 18A:38-8. Not all



of the neighboring municipalities have the exact same sending/receiving relationship with the District.

Public school students from West Wildwood, a non-operating school district, attend North Wildwood Public Schools for grades K-8, and attend the District's schools for grades 9-12. Public school students from neighboring municipalities North Wildwood and Wildwood Crest attend Wildwood High School for grades 9-12.

From grades K-8, the students from North Wildwood and Wildwood Crest, who are predominately white, attend elementary schools operating within their own suburban borders. These communities are predominately upper middle class.

The District is comprised of predominantly minority students. Per the New Jersey School Performance Reports ("Performance Report") 75.5% of the District's total students are minority. Specifically, the District is 64.8% Latino students and 10.7% Black students.

An even greater racial disparity amongst the District's K-8 grade students is evidenced by the Performance Report's Enrollment Distribution Percentages by District dated 2016, and attached, which details that 76.9% of the District's 4-8 grade students and 81.9% of the District's K-4 population are minority students.

Of special relevance is the fact that though the Wildwoods are a tourist hub on a barrier island in Southern New Jersey. The city of Wildwood, which is the core municipality in the District and houses the high school is the only urban municipality as evidenced by, inter alia, having a significant number of subsidized low income housing units for year round families in need.

Moreover, the City of Wildwood consistently has one of the highest percentages of school age children living below the poverty line in New Jersey. District Factor Groups organize districts statewide to allow comparison by common socioeconomic characteristics of the local districts. The District here is classified by the New Jersey Department of Education as being in District Factor Group "A", the lowest of eight groupings. Additionally, according to the latest U.S. Census Bureau's Small Area Income and Poverty Estimates ("SAIPE") report, **Wildwood is identified as having the highest ratio of school aged students living in poverty in our state.** It is also relevant that the District is not an SDA (Former Abbott District) and does not receive funding associated with same to ensure its students a thorough and efficient ("T & E") education, although it shares many of the same characteristics and challenges.

The District is the only urban Pre-K - 12 program in the County of Cape May and is the only high school in Cape May County without an Interdistrict Public School Choice program. The existing Interdistrict Public School Choice program and technical school



options divert white students from the District's high school, adding to the District's demographic imbalance. The resulting imbalance, in pertinent part, impacts the District's funding, academic curriculum, test results, and extracurricular offerings - thus severely impacting the quality of education available to the predominantly low income minority students of the District.

It is well established that racial and economic disparities in a school system nearly always entail diminished resources and outcomes. As an urban district comprised of predominantly minority students, and with the highest rate of students under the poverty line - though bordered by more affluent non-minority municipalities that are part of the District's send /receive relationship - the District respectfully asserts that it has a particularly significant interest in the instant litigation. This interest arises from and is substantiated by the District's statutory obligation under title 18A to implement the laws and regulations promulgated by the State Board. To that end, the relevance of the issues addressed in the instant litigation - the problem of de facto segregation, the appropriate institutional and programmatic response to that problem, and the most effective and timely means for implementing such responses - could not be more pressing or paramount.

For these reasons, as more specifically articulated below, the District requests this Court to grant its motion.

LEGAL ARGUMENT

I. THE COURT SHOULD GRANT INTERVENTION AS A MATTER OF RIGHT.

The District seeks to intervene to participate as a plaintiff in the proceeding as it relates to the Court's consideration of any proposed plan submitted by the Commissioner of Education and/or the State Board of Education to remedy the alleged de facto segregation that presently exists in the State of New Jersey. Should the Court enter a judgment approving any plan submitted, the Board seeks the right to appeal as a party. N.J. Court Rule 4:33-1 provides that:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

To satisfy the rule, a moving party must (1) claim "an interest relating to the property or transaction which is the subject of the transaction," (2) show [that the



movant] is "so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest," (3) demonstrate that the "[movant's] interest" is not "adequately represented by existing parties," and (4) make a "timely" application to intervene. See, N.J. Dep't of Env'tl. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 285 (App. Div. 2018); Am. Civil Liberties Union of N.J., Inc. v. Cty. of Hudson, 352 N.J. Super. 44, 67 (App. Div. 2002) (quoting Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998)). "As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied." Meehan, 317 N.J. Super. at 568. The Rule is "construed quite liberally," and if the movant meets all four of the Rule's criteria, "a court must approve an application for intervention as of right." Am. Civil Liberties Union of N.J., Inc., supra, 352 N.J. Super. at 67.

The District satisfies all four criteria, to wit:

A. THE DISTRICT HAS A GENUINE INTEREST AND SUBSTANTIAL STAKE IN THE OUTCOME OF THE LITIGATION.

Under the circumstances outlined in the factual Background supra, intervention by the District is proper. As a predominately minority District with the highest percentage of students in poverty which has been adversely effected by zoning and choice programs, the District stands to be directly affected by the outcome of the instant litigation. The District will continue to suffer the harm of segregation by race, ethnicity and poverty if the remedy the State proposes fails to address the situation in a way that is effective for the District. Thus, the District is directly interested in the outcome of this litigation and will be adversely impacted if the Plaintiffs fail to succeed.

B. THE EXISITING PLAINTIFFS DO NOT REPRESENT THE UNIQUE INTERESTS OF THE WWBOE.

Current Plaintiffs are various non-profits and students from outside the District. There are currently no Plaintiff Boards of Education, and thus no Plaintiffs representing an entity subject to the enforcement of the educational statutes (N.J.S.A. 18A) and corresponding administrative code regulations (N.J.A.C. 6A), or who are obliged to deal with the everyday realities implicated at the very core of this litigation.

As indicated above, pursuant to N.J.S.A. 18A:10-1, the District is charged with the conduct of its public school system. More specifically, the District is subject to and enforces N.J.S.A. 18A:38-1, which the current Plaintiffs allege violates the New Jersey State Constitution. See Pl.'s Complaint at Pg. 33 at ¶C.

As the current parties are not obliged to follow or enforce such statutes and regulations they may not provide the necessary and appropriate empirical information or specific evidence of the full impact of the State's educational residency, charter and



choice school decisions and their interplay with educational opportunities and outcomes. Accordingly, the District respectfully requests approval to intervene as a matter of right pursuant to Rule 4:33-1.

C. THE DISTRICT'S MOTION TO INTERVENE IS TIMELY.

The timeliness of a motion to intervene must be judged by “the issues raised as a consequence of the” proposed order being challenged. Warner Co. v. Sutton, 270 N.J. Super. 658, 666 (App. Div. 1994); See also, United States v. Alcan Aluminum, Inc., 25 F.3d 1174, 1181 (3d Cir. 1994) (“[T]imeliness is not just a function of counting days; it is determined by the totality of the circumstances.”). In the instant matter, subsequent to the Plaintiffs filing a motion for partial summary judgment, the Court issued a notice that Plaintiffs were to 5 notify every public school district, charter school, renaissance school and county vocational school in the State of New Jersey of the pending litigation. The notice stated that any school district wishing to participate in the lawsuit may file an application to intervene by March 31, 2020. Movant sought a brief extension due to an injury and technology issues associated with the COVID19 pandemic. Accordingly, the motion is being filed on April 3, 2020 and is timely.

II. IF THE COURT DENIES INTERVENTION AS OF RIGHT, IT SHOULD GRANT PERMISSIVE INTERVENTION.

Alternatively, the Court should grant permissive intervention under Rule 4:33-2. Pursuant to this Rule, “anyone may be permitted to intervene...if the claim of defense and the main action have a question of law or fact in common,” Ibid., and if the intervention will not “unduly delay or prejudice the rights of the original parties,” Meehan, supra, 317 N.J. Super. at 568 (quoting Atl. Employers Ins. Co. v. Tots & Toddlers Pre-Sch. Day Care Ctr., Inc., 239 N.J. Super. 276, 280 (App. Div. 1990)). As with intervention as of right, the standards for permissive intervention should be “liberally construed.” Am. Civil Liberties Union of N.J., Inc., supra, 352 N.J. Super. at 70 (quoting Zirger v. Get Accident Ins. Co., 144 N.J. 327, 341 (1996)). Factors to be considered are “the promptness of the application, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further complicate litigation. Ibid. (citation omitted).

The District meets the test for permissive intervention. Its application is in conformance with the Court’s Order to file before March 31, 2020. If the District is permitted to intervene it will address the precise issues before the Court from the perspective of an impacted board of education and accordingly its participation may reduce the likelihood of subsequent litigation. Simply put, the District seeks to support Plaintiff’s allegations of de facto segregation of the public schools of the State of New



Jersey and the harmful impact of the same upon its students but has an interest in the outcome of the litigation.

The District's intervention will not unduly delay these proceedings or prejudice the rights of the primary parties. The Court has ordered the District be placed on notice to intervene, thus the Court has recognized the appropriateness of timing of such an application pursuant to its February 4, 2020 Order. Thus, there is no delay or prejudice resulting from the District's intervention.

Because the District has demonstrated that it meets the criteria of Rule 4:33-2, the Court should grant permissive intervention if it denies intervention as of right pursuant to Rule 4:33-1.

CONCLUSION

For the reasons set forth above and in their supporting papers, the District respectfully requests the Court to grant it leave to intervene as a Plaintiff to provide additional support for the current Plaintiff's claims in its capacity as a board of education organized under N.J.S.A. 18A and as a predominately minority New Jersey public school district with various send/receive relationships and the highest percentage of students living in poverty.

Thank you.

Respectfully Submitted,

D'ARCY JOHNSON DAY, P.C.

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SOLICITOR WWBOE