



February 29, 2024

Via E-mail

Hon. Joseph Ascione, ALJ
Office of Administrative Law
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Re: Walden v. Bd. of Educ. of Twp. of N. Bergen, et al., Agency Docket No.: 5-1/23,
OAL Dkt. No.: EDU 3856-23

Dear Judge Ascione:

Please accept this letter brief on behalf of Petitioner Robert Walden, a North Bergen taxpayer, voter, and founding member of Save Braddock Park-Safe Schools, who, when first filing his administrative complaint with the New Jersey Department of Education in November 2022, represented himself *pro se*. I submit this letter in response to your request to address the questions of jurisdiction and standing.

In essence, Mr. Walden's complaint/petition alleges a violation of N.J.A.C. 6A:26-3.13(g), which the Respondents clearly dispute. Indeed, the brief filed by the Attorney General on behalf of the Hudson County/New Jersey Department of Education County Office of Education ("DOE" or "Department"), in support of its Motion to Dismiss, argued that under the Department's interpretation of the regulation, no violation has occurred. Accordingly, whether

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one views Mr. Walden’s complaint as alleging a violation of N.J.A.C. 6A:26-3.13(g) or a **failure to enforce** that regulation against North Bergen Board of Education (“BOE”) **by inaction** (*i.e.*, failing to require BOE to “demonstrate satisfactory progress toward the provision of permanent facilities”) or **affirmative renewal** of the trailers beyond 5-years (*i.e.*, 2 years plus 3 annual renewals), there is a “controversy” as defined by the Administrative Procedure Act that the DOE has properly submitted to the Office of Administrative Law for fact finding, a decision and recommended remedial agency action.

Moreover, Mr. Walden is effectively seeking a declaratory ruling that the Respondents have violated the regulation, while at the same time requesting a report recommending an action plan from the Commissioner compelling compliance (*e.g.*, requiring the BOE to develop a concrete plan to transition the pre-school children out of their “temporary” facilities within a time certain). Such declaratory and prospective administrative relief vindicates a “continuing violation of a public right” caused by DOE inaction or affirmative renewal on an annual basis, which Mr. Walden has standing to request under New Jersey common law.

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STATEMENT OF FACTS

Petitioner, Robert Walden restates the Statement of Fact set forth in his Letter Brief filed in Opposition to Respondents’ respective Motions to Dismiss, dated July 17, 2023, as if stated fully herein. *See* Steinhagen Cert., Ex. A at pp. 2-5. With respect to the issue of standing, he further states as follows:

Mr. Walden has been a resident of the Township of North Bergen (“Township” or “North Bergen”) since June 2013, when he purchased his apartment at 7855 Boulevard East, which is located across the street from the relevant portion of Braddock Park. Since that time, he has been paying property taxes to the Township, which include county and school board taxes as well. Walden Cert., ¶1. Upon moving to North Bergen, he became an active user of Braddock Park. Within several months, he saw signs posted in the Park that informed the public that North Bergen and Hudson County intended to divert a portion of the Park (i.e., acreage including a baseball field plus) for use by the North Bergen Preschool program. *Id.*, ¶2. Since that time, he has taken a strong interest in this issue, and has done his best to keep other North Bergen and Hudson County residents and state environmental activists informed about the matter, and to keep the matter in the public’s eye in order to hold local and state officials accountable. *Id.*, ¶3

Specifically, Mr. Walden began studying North Bergen’s diversion proposal by attending an informative public scoping hearing in November 2014, and by reading numerous newspaper articles that set forth the history of the North Bergen preschool program, which was intended initially to be housed in the Lincoln School Annex. What appeared at first to be only an

issue of whether to divert dedicated parkland (*i.e.*, an environmental issue) soon revealed itself to be an educational and safety issue as well, as he observed and photographed the terrible physical condition of the trailers, their deficient egress and the unsafe setting in which they were placed. *Id.*, ¶4. (In 2014, he had recently retired as a court certified expert in the field of evidence photography. For nearly 25 years he had investigated and provided photographs for thousands of legal cases; mostly for negligence lawsuits, *id.*, ¶5.)

Upon becoming more familiar with the different statutory schemes governing the situation in Braddock Park, Mr. Walden started complaining about the safety issue posed by the temporary trailers to the Township, Hudson County, the BOE, the state DOE and the DEP. He also became an active participant in the diversion process before DEP that commenced in 2014. *Id.*, ¶7. In 2017, he realized that the trailers all lacked emergency exits, which were required by regulation. He immediately took action by writing to North Bergen Superintendent of Schools, George Solter, and DOE Superintendent of Schools for Hudson County, Melissa Pearce. Shortly after his correspondence was sent, emergency exits were installed. *Id.*, ¶8.

Over the years, Mr. Walden has written numerous letters-to-the editor, primarily to the Jersey Journal and the Hudson County Reporter, about the unsafe situation posed by the antiquated trailers and their placement in the Park, most of which were published. Indeed, the Jersey Journal wrote several editorials supporting his efforts. *Id.*, ¶10. Around 2021, Mr. Walden organized a group of local residents into the “Save Braddock Park--Safe Schools” committee, an unincorporated member organization, dedicating to advocating for the removal of the trailers from Braddock Park and the proper integration of the preschool program into the Township’s elementary schools and/or in a new facility, which would not require a diversion. He serves as the Chair of this group, which was a co-plaintiff with the New Jersey Conservation Foundation

in a prerogative writ action that was brought against the Township, Hudson County and the DEP alleging a violation of the State Environmental Rights Act. *Id.*, ¶11.

In addition, Mr. Walden has created and maintains a “Friends of Braddock Park” webpage that is devoted to all matters related to Braddock Park on Nextdoor.com’s social media website. This website includes, but is not limited to the proposed diversion and safety issues surrounding the placement of the trailers in the Park. *Id.*, ¶13.

Since attending DEP’s scoping hearing in 2014, Mr. Walden has kept his eyes on the diversion, sending photographs of the preschool and preschool-related information to DEP that contradict statements made by North Bergen officials to DEP, as well as sending DEP a steady stream of properties for sale in the Township that could be used to house the preschool program, enabling the restoration of the diverted parkland to its intended use. *Id.*, ¶14. Specifically, with respect to issues related to his respective complaints against the DOE and BOE, Mr. Walden emailed DEP on November 17, 2015, stating that the Hudson County High Tech H.S. in North Bergen would soon be vacated, and suggested that North Bergen use the building to solve its non-compliance with DEP diversion regulations. *Id.*, ¶16. Though the High Tech H.S. option was not mentioned in North Bergen and Hudson County’s first diversion pre-application, DEP did require North Bergen to provide information about the availability of such property to satisfy the alternative analysis required under DEP diversion regulations. *Id.*, ¶¶17-18. Indeed, at some point after DEP’s 2016 communication to North Bergen, North Bergen decided to acquire the High Tech H.S. property, and in 2018, it submitted a Long-Range Facilities Plan that contemplated the reorganization of the district school system with the pre-school children integrated into the various elementary schools. The DOE approved this Long-Range Facilities Plan, subject to a 2018 bond referendum being approved by the voters of North Bergen. *Id.*, ¶19.

North Bergen voters, of which Mr. Walden is one, approved the expenditure of \$65 million to purchase the 10-acre High Tech H.S. campus, with the public understanding that such purchase would enable the reorganization of the entire school district's schools, including the renovation of classrooms. *Id.*, ¶20. Accordingly, Mr. Walden is no interloper to this controversy. He has kept the 23-year old unlawful diversion of Braddock Park for use by the BOE to house its pre-school program in "temporary" trailers in the public eye: He has badgered state officials to do something to remedy the situation and has founded an unincorporated organization whose members consist of other North Bergen taxpayers and voters, and whose mission is to get the trailers out of the Park, remediate the parkland, and integrate the pre-school program into the elementary schools in the district.

PROCEDURAL HISTORY

Already, in September 20, 2021, Mr. Walden wrote several New Jersey state officials, including several state DOE officials, asking them why they were not enforcing N.J.A.C. 6A:26-3.13(g), which he understood did not permit a school district, such as the BOE, to maintain school children in temporary facilities for longer than 5-years. *See Walden Cert., Ex. A.* Receiving no response from any of the many state officials to whom he had written, he filed a complaint with the DOE's Office of Controversies and Disputes on November 7, 2022. His complaint was filed within 90 days of DOE's August 2022 annual inspection of the temporary trailers. He withdrew his complaint and filed a more detailed petition on December 13, 2022 after he was told by an ALJ that he could not "file a brief" with more factual details in support of that petition; rather, he could withdraw his initial petition, without prejudice, and file a new one. Again, understanding that he could not amend his petition unless he received permission from

BOE's attorney (which he could not obtain), Mr. Walden withdrew his second petition and filed a third one on January 11, 2023, primarily to name DOE as a respondent.

On November 25, 2022, BOE filed a Motion to Dismiss; they re-filed the motion on December 31, 2022 in response to Mr. Walden's second petition, and on March 1, 2023, in response to his third petition. Mr. Walden filed his Opposition to BOE's Motion on March 3, 2023. On March 31, 2023, the Attorney General also filed a Motion to Dismiss for failure to state a cause of action on behalf of the DOE. Mr. Walden filed his Opposition Brief to those papers on April 3, 2023. The Attorney General filed a Reply Brief on June 30, 2023, and BOE requested an extension of time to file its Reply Brief.

At a case management conference held on July 5, 2023, New Jersey Appleseed Public Interest Law Center made an appearance on behalf of Mr. Walden. Pursuant to Judge Tiscornia's directive, Mr. Walden, via his counsel, was permitted to file a sur-Reply Brief in Opposition to Respondents' Motions to Dismiss on July 17, 2023. *See* Steinhagen Cert., Ex. A. Oral argument was held via Zoom, and on August 29, 2023, Judge Tiscornia issued an Order denying Respondents' respective Motions to Dismiss. *Id.*, Ex. B.

On January 25, 2024, a case management conference was held, which had been scheduled by Judge Tiscornia to discuss the status of discovery. On November 7, 2023, Mr. Walden had sent counsel for both Respondents his Responses to North Bergen BOE's Interrogatories and Document Requests. *See* Steinhagen Cert., Ex. C & Ex. D. A thumb drive with thousands of documents was also provided to both attorneys. *Id.*, ¶5. On November 11, 2023, Mr. Walden sent both the BOE and DOE a request for document production. *Id.*, Ex. E (BOE) & Ex. F (DOE). However, on the morning of January 5, 2024, counsel for the BOE sent counsel for Mr. Walden several e-mails written by Mr. Walden to his client. No written response

to Mr. Walden’s Document Requests was provided. The production was not responsive to Mr. Walden’s document request at all. Mr. Walden has received no response from the Office of the Attorney General to his Request for Document Production that was submitted to the DOE. *Id.*, ¶8.

On January 5, 2024, Your Honor introduced yourself to counsel and stated that you were newly assigned to this matter. At that time, you directed the parties to submit briefs on the issues of jurisdiction and standing.

LEGAL ARGUMENT

I. PETITIONER’S COMPLAINT PRESENTS A “CONTROVERSY” THAT THE NEW JERSEY DEPARTMENT OF EDUCATION PROPERLY SUBMITTED TO THE OFFICE OF ADMINISTRATIVE LAW FOR FACT-FINDING, DECISION, AND RECOMMENDED REMEDIAL AGENCY ACTION.

The Office of Administrative Law “acquire[s] jurisdiction over a matter only after it has been determined to be a contested case by an agency and has been filed with the Office of Administrative Law.” N.J.A.C. 1:1-3.2(a). There is no doubt in this matter that Mr. Walden’s petition was submitted to OAL by Jennifer Simons, Director of the Office of Controversies and Disputes, after a review of his petition. There is no evidence that Ms. Simons just took the petition and blindly sent it to OAL. Indeed, she first required Mr. Walden to fill out a *pro se* petition form (Walden Cert., ¶25); and, subsequently, had several conversations with Mr. Walden in which she instructed him on how to proceed and specifically on how to amend the petition to name an additional party. *Id.*, ¶27, Ex. B. She understood his claims, and tried to be helpful given his *pro se* status. Short of asking Ms. Simons her justification for transmitting Mr. Walden’s petition to OAL, one can assume that she concluded that he was alleging a violation of state education regulations that required adjudication by the Commissioner, as chief executive

officer of the Department. Such a conclusion is consistent with the Administrative Procedures Act (“APA”), and educational regulations issued in accordance with the Act, and should not be second-guessed by this court.

A “contested case” is defined by DOE regulation as:

... an *adversarial* proceeding in which the *legal rights, duties, obligations*, privileges, benefits or other legal relations *of specific parties are required to be adjudicated by the Commissioner* after opportunity for agency hearing pursuant to 18A:6-9, 52:14B-1 et seq. (Administrative Procedures Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules)

N.J.A.C. 6A:3-2.1 (Definitions) (emphasis added).

Looking at the language of the regulation in order of appearance, it is certain that this proceeding, if permitted to go forward, is “adversarial” in nature. In his petition, Mr. Walden asserts that the DOE has failed to enforce N.J.A.C. 6A:26-3.13(g) against the BOE either by inaction (*i.e.*, failing to require the BOE to “demonstrate satisfactory progress toward the provision of permanent facilities.”) or affirmative renewal of the trailers beyond five years (*i.e.*, 2 years plus 3 annual renewals). In either case, Mr. Walden has stated a cause of action consistent with the plain language and ostensible policy of the regulation, which is to ensure that all school children are housed in permanent educational facilities that are both safe and educationally adequate as soon as feasible (remaining in temporary facilities for a maximum of five years). Both the DOE and BOE disagree with his allegation. To date, they have both sought to dismiss this case for several reasons, and the DOE has specifically adopted an interpretation of the regulation that denies that the Department has failed to enforce or has otherwise failed to comply with the Department’s obligations thereunder.

Next, it is also certain that Mr. Walden is seeking to have the “legal duties and obligations” of the DOE and the BOE under N.J.A.C. 6A:26-3.13(g) adjudicated by the

Commissioner. The language in the regulation, however, raises the question of when is the Commissioner's action "required"? A look at the APA provides an answer. Pursuant to N.J.S.A. 52:14B-2 (Definitions):

"Contested case" means a proceeding, . . . in which the legal rights, duties, obligations, privileges benefits or other legal relations of specific parties are *required by constitutional right or by statute to be determined by agency decisions, determinations or orders*, addressed to them or disposing of their interests . . .

Id. (emphasis added).

There is no doubt that, pursuant to statute, the Commissioner of Education is the chief executive school officer of New Jersey and supervises all public schools. N.J.S.A. 18A:4-23 ("The commissioner shall have supervision of all schools of the state receiving support or aid from state appropriations, . . . and he shall enforce all rules prescribed by the state board."). State law grants the Commissioner a broad range of powers and responsibilities, including but not limited to an obligation to ensure that local districts adhere to all legal and state board requirements relating to school district operation, and to decide legal controversies that arise under such state regulations. N.J.A.C. 6A2-1.2(a). Accordingly, there is no statutory basis for excluding Mr. Walden's allegations of noncompliance with N.J.A.C. 6A:26-3.13(g) from the Commissioner's general authority to adjudicate legal controversies arising under state education regulations. *Cf.* N.J.S.A. 52:14B-2 (exclusion of proceedings in the Division of Taxation, which are reviewable *de novo* by Tax Court); N.J.C.A. 6A:3-1.1(c)(excluding from jurisdiction of the OAL "district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate); N.J.C.A. 6A:3-1.1(d)(excluding from jurisdiction of the OAL, appeals of decisions of the State Board of Examiners suspending or revoking teaching certificates and other decisions of the School Ethics Commission).

Another way of looking at this is from the perspective of an individual, such as Mr. Walden, who has an interest in seeking enforcement of state education regulations. Mr. Walden has a constitutional right to institute civil proceedings to “safeguard against official wrong [doing]” and to “compel performance of a public duty.” Mullen v. Ippolito Corp., 428 N.J. Super. 85, 104-06 (App. Div. 2012) (quoting Garrou v. Teaneck Tyron Co., 11 N.J. 294, 302 (1953)). Article VI, Section V, paragraph 4, of the New Jersey Constitution reads as follows:

Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary.

The full meaning and scope of this provision is not evident from the plain language of the clause, but must be garnered from the substantive nature of the various writs – the writs of *mandamus*, *certiorari*, *prohibition* and *quo warranto* – as they developed under common law. These writs constituted a series of remedies “by which officials and bodies in the executive branch of government at local and higher levels were kept within their respective spheres and were held to methods prescribed by law.” Ward v. Keenan, 3 N.J. 298, 302 (1949); *see also* Switz v. Middletown, 23 N.J. 580, 625 (1957) (right to be heard to challenge government actions is constitutionally assured, yet the nature and scope of relief depends upon the application of principles which control the granting of any one of the four writs).

And, the constitutional right to protect a citizen from almost every form of improper official action in the Superior Court translates into a right to be heard in a contested hearing before the OAL in this matter as a result of the established judicial principle of “exhaustion of administrative remedies.” There is little doubt that Mr. Walden has the right to proceed against the DOE in the Appellate Division of the Superior Court to compel agency compliance with its own regulations pursuant to R. 2:2-3(a)(2). This Rule “authorizes an appeal as of right to the

Appellate Division from final decisions or actions of any state administrative agency or officer . . .” and includes, inaction as well. *See e.g., In re Failure by the Dept. of Banking and Insurance to Transmit a Proposed Dental Fee Schedule to the OAL*, 336 N.J. Super. 253, 261-62 (App. Div. 2001) (noting that the term “action” in R. 2:2-3(a)(2) “includes inaction,” and that the court can compel the “exercise of a discretionary function”). Accordingly, whether one views Mr. Walden’s petition as a complaint against DOE for inaction or for approval of BOE’s requests (if made) to deploy trailers beyond the three annual renewals permitted by the regulation, he would be able to maintain a prerogative writ action, **unless** “there is a right of review before any administrative agency or officer.” *Id.* And, it is Mr. Walden’s position that there is a right of review within the DOE as a “contested case,” because there is nothing in the APA that circumscribes his right to an adjudicatory hearing in the instant matter.

Recently, in Musconetcong Watershed Assoc. v. NJ DEP, 476 N.J. 465, 478 (App. Div. 2023), the Appellate Division wrote:

“Exhaustion of administrative remedies before resort to the courts is a firmly embedded judicial principle. This principle requires exhausting available procedures, that is, ‘pursuing them to their appropriate conclusion and, correlatively . . . awaiting their final outcome before seeking judicial intervention.’” Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 558-59 (1979) (citation omitted) (quoting Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767 (1947)). The exhaustion-of-administrative-remedies doctrine is “designed to allow administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the courts.” Brunetti v. Borough of New Milford, 68 N.J. 576, 588 (1975); *see also In re Request to Modify Prison Sentences*, 242 N.J. 357, 379 (2020).

The Musconetcong court then went on to identify the three primary goals of the exhaustion-of-administrative-remedies doctrine, all of which are relevant herein. First, the rule ensures that all complaints will be heard first by the agency possessing expertise in the area. Second, requiring one to exhaust administrative remedies allows the parties to create a factual

record that otherwise might not exist, as would be the case herein. And thirdly, the agency decision might satisfy the parties, thus obviating resort to the courts. *Id.*, *supra*, 476 N.J. at 479 (quoting City of Atlantic City v. Laezza, 80 N.J. 255, 265 (1979), and citing Rosenstein v. State, Dep't of Treasury, Div. of Pensions & Benefits, 438 N.J. Super. 491, 498 (App. Div. 2014)). There is little doubt that were this court to deny jurisdiction over this matter, Mr. Walden would be faced with initiating suit in the Appellate Division without any agency record -- an outcome that might, ironically result in the matter being temporarily remanded to the DOE to create such a factual record. *See e.g.*, Twp. of Neptune v. NJDEP, 425 N.J. Super. 433 (App. Div. 2012) (where DEP was the sole defendant, court temporarily remanded the matter to DEP to create a factual record regarding Township's claim of failure to dredge State navigational channels in the Bay).

In addition to satisfying the policy goals supporting the exhaustion of remedies doctrine, there is no provision in the APA circumscribing or prohibiting Mr. Walden's right to request an adjudicatory hearing. Unlike the appellants in Musconetcong who were third-party objectors to a permitting decision (defined as any person other than the applicant, a state agency and a person who has "particularized property interests sufficient to require a hearing on constitutional or statutory grounds," N.J.S.A. 52:14B-3.2), the Legislature has not prohibited the DOE from promulgating rules and regulations that would allow any interested person from seeking to adjudicate a state department's or school district's failure to comply with DOE regulations. *Cf.* N.J.S.A. 52:14B-3.1(d) and 3.3 (prohibiting "State agencies from promulgating rules and regulations which would allow third[-]party appeals of permit decisions unless specifically authorized to so do by federal or State statute."

For all the foregoing reasons, the DOE's decision to submit Mr. Walden's petition to the

OAL for adjudication was correct, and this court has jurisdiction to hear his complaint as a “contested case.”¹

II. UNDER NEW JERSEY LAW, MR. WALDEN HAS A SUFFICIENT INTEREST IN THIS PUBLIC DISPUTE TO SUPPORT HIS STANDING TO FILE A PETITION AND SEEK ADMINISTRATIVE REMEDIES.

Even if the OAL court accepts the DOE’s determination that Mr. Walden’s petition, which alleges a longstanding violation of a state regulation and seeks compliance thereto, constitutes a “contested case” within the meaning of the APA, there is a question of whether Mr. Walden has a sufficient interest in this dispute to give him standing.² His longstanding and intimate relationship to the subject matter of this case, as explained in detail in his Certification as well as the fact that he has been trying to hold the DOE and BOE accountable for years serves the “essential purpose” of the standing doctrine. Such purpose is “to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication” in addition to the “paramount judicial responsibility of a court to seek just and expeditious determinations on the ultimate merits of deserving controversies.” N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm’n, 82 N.J. 57, 69 (1980).

¹ It should be noted that pursuant to “N.J.S.A. 52:14B-8, any *interested person* may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. . . .” N.J.A.C. 6A:3-2.1. Accordingly, if this court should find that Mr. Walden’s petition does not present a contested case, it should proceed as a request for a declaratory judgment. However, since a person “may not seek consequential relief beyond a declaration as to the meaning of the statute or rule,” this avenue is not preferable. *Id.* Mr. Walden is not only seeking a declaration that the DOE has violated N.J.A.C. 6A:26-3.13(g); he is also looking for remedial action on behalf of the North Bergen public, including its predominantly low-income, minority pre-school children.

² The concept of standing refers to a person’s “ability or entitlement to maintain an action before

Because Mr. Walden is not a “mere intermeddler” nor “casual interloper” nor a “stranger” to this dispute, he definitely has standing to proceed with his petition under New Jersey law. *See People for Open Government v. Roberts*, 397 N.J. Super. 502 (App. Div. 2008) (where individuals seeking enforcement of an anti-Pay-to-Play ordinance were the very persons that had initiated the ordinance via petition, giving them an “established and abiding interest” in the matter for purposes of establishing standing).

As a starting point, one must remember that the federal test for standing differs from that used in New Jersey. Compared to federal courts, “[o]ur courts have traditionally taken a generous view of standing in most contexts.” *In re N.J. State Contract*, 422 N.J. Super. 275, 289 (App. Div. 2011) (citing *Crescent Park Tenants Ass’n v. Realty Equities Corp. of N.Y.*, 58 N.J. 98, 107-12 (1971); *N.J. Builders Ass’n v. Bernards Twp.*, 219 N.J. Super. 539 (App. Div. 1986), *aff’d*, 108 N.J. 223 (1987)). Such liberal approach to standing also applies to those who seek review of administrative actions via actions in lieu of prerogative writ. *In re Camden County v. Bd. of Trustees of Public Employees Retirement System*, 170 N.J. 439, 448 (2002) (citing *Crescent Park*, 58 N.J. at 107-08).³

the court.” *Triffin v. Somerset Valley Bank*, 343 N.J. Super. 73, 80 (App. Div. 2001)

³ For well over 100 years, New Jersey courts have taken, in almost all respects, a more liberal view of the prerogative writ of certiorari than the courts of any other state. *Elizabeth Federal Savings and Loan Ass’n*, 24 N.J. 488, 500 (1957) (citing Goodnow, *The Writ of Certiorari*, 6 POL. SCI. Q. 493, 510, 526 (1891)). In 1947, Art. VI, Sec. V, par. 4 of the New Jersey Constitution broadened the writ’s protection against improper official conduct, by making its relief available as a matter of right and not just discretion. *Id.* at 501. Since then, courts have generally facilitated review of official action to ensure that “the interest of the community as a whole that illegal agency action be not left untouched” is vindicated. *Id.* at 502 (finding competing banking institution to have sufficient private interest in harmony with the public concern for the safety of deposits to give it standing). *See also Spinnaker Condominium Corp. v. Zoning Bd. of City of Sea Isle City*, 357 N.J. Super. 105, 110-111 (App. Div. 2003) (noting that in action in lieu of prerogative writ, “New Jersey courts generally have set a fairly low threshold for standing, and have afforded litigants the benefits of liberal interpretations of the standing requirements”).

New Jersey's broad and liberal approach to standing requires more than rhetorical deference; it represents a substantive departure from the constitutional and prudential limitations adopted by the federal courts and focuses on a plaintiff's personal stake in the outcome and interest in the subject matter so as to assure the adverseness necessary to sharpen the presentation of issues to the court. *See, e.g., Crescent Park Tenants Ass'n, supra*, 58 N.J. at 107 (without becoming enmeshed in the federal complexities and technicalities of standing, New Jersey courts have confined litigation to situations where the litigant's concern with the subject matter establishes a sufficient stake and real adverseness).

In accord with its notions of substantial justice and sound judicial administration, the N.J. Supreme Court has "consistently held that in cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing." *Salorio v. Glaser*, 82 N.J. 482, 490 (1980), *appeal dismissed*, 449 U.S. 804 (1980) (citation omitted). This means that a plaintiff's particular interest in the litigation need not be the "sole determinant," especially when it coincides with a strong public interest. *N.J. State Chamber of Commerce, supra*, 82 N.J. at 68.

New Jersey's "venerable tradition of liberal standing criteria" particularly applies to resident and taxpayer suits, *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ.*, 284 N.J. Super. 427, 431 (App. Div. 1995), and in such suits, taxpayers need not "prov[e] any unique financial damages." *In re Camden County, supra*, 170 N.J. at 447. *See also Crescent Park Tenants Ass'n, supra* 58 N.J. at 102 (acknowledging that this State's liberal standing doctrine permitting taxpayer to challenge illegal disbursements of public funds or other illegal official action is firmly established); *Walker v. Borough of Stanhope*, 23 N.J. 657, 662-63 (1957) (noting numerous court decisions applying this broad approach to standing where residents and taxpayers seek to set aside wrongful official action); *Stubaus v. Whitman*, 339 N.J. Super. 38, 52

(App. Div. 2001), *certif. denied*, 171 N.J. 442 (2002) (in action challenging the constitutionality of an education statute, the court found that the liberal application of standing rules was particularly appropriate in taxpayer lawsuits); Hoboken Env't Comm., Inc. v. German Seaman's Mission of N.Y., 161 N.J. Super. 256 (Ch. Div. 1978) (in action initially brought as a prerogative writ action, a resident and taxpayer of Hoboken, who had an interest in assuring that the plans for the historic preservation of the city were carried out, had standing to bring a lawsuit to prevent demolition of a historical building).

One can reasonably assume that the reason taxpayer lawsuits may be brought, in New Jersey, without proof of individualized injury or even financial harm, is their paramount role in holding government officials accountable, ensuring the transparency of official action and encouraging civic participation.⁴ Improved and more efficient government, free from corruption, favoritism and the like, is also a dominant goal underlying taxpayer lawsuits,⁵ as is the shared interest that every citizen has in the uniform enforcement and administration of the law in the communities in which they reside.

⁴ As Justice Garrison stated in Fagan v. State Board of Assessors, 80 N.J. L. 516 (Sup. 1910) (taxpayer action seeking to inspect railroad returns filed with the government):

As a citizen and a taxpayer, [Fagan] has that abiding interest in the administration of his government and of every department of it that affects him or his fellow that marks the difference between a citizen and a subject. It is to the failure of the citizen to assert these rights that we must look for those evils that are incident to our form of government rather than to a superabundant zeal in this respect. It would be unfortunate in the extreme for the courts of a republic to erect technical barriers by which these duties of citizenship were discouraged or denied . . .

⁵ See K.S.B. Technical Sales Corp. v. North Jersey District Water Supply Com'n, 150 N.J. Super. 533 (Ch. Div.), *modified by*, 151 N.J. Super. 218 (App. Div.), *rev'd on other grounds*, 75 N.J. 272 (1977), *appeal dismissed*, 435 U.S. 982 (1978) (taxpayer standing to question illegality of contract and addendum since bidding statutes were enacted for the benefit of taxpayers: objectives are to "guard against favoritism, improvidence, extravagance and corruption, and to secure for the public open and free competition.")

To the extent that Mr. Walden's status as a North Bergen resident living across the street from Braddock Park and taxpayer is not an adequate basis for according him standing in this matter --- a proposition whose validity he denies --- his status as a municipal voter participating in the bond referendum, his longstanding concerns regarding the safety of the trailers and their unlawful placement in the Park, his founding of Save Braddock Park--Safe Schools, his participation in the DEP diversion process, his website, letters to the editor and steady stream of OPRA requests to DOE and the BOE, among other activities focused on getting the DOE and DOE to follow the law, must be seen as satisfying any additional requirement for an individual interest. *Cf. People for Open Government v. Roberts*, *supra*, 397 N.J. Super. at 502 (viewing plaintiffs' action as "a legitimate effort to effectuate the will of the people" by the very people who initiated the ordinance they were seeking to enforce); *Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ.*, 284 N.J. Super. 427 (App. Div. 1995) (in a challenge to school board policy, court found that plaintiffs' status, as tenured part-time teachers, and involvement in the issue clearly satisfied any additional requirement that might exist for "a slight private interest"); *Communications Workers of Am. v. Clymer*, 292 N.J. Super. 138 (Law Div. 1996) (finding that plaintiffs, as taxpayers and licensed psychologists, had standing to challenge the Request for Proposal because the RFP permitted use of non-licensed psychologists to perform psychological services).

For the foregoing reasons, Mr. Walden is entitled to bring his petition against the DOE and BOE. New Jersey courts have shaped and used the concept of standing to "generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication," not to avoid resolving cases with significant public import such as the case here. *New Jersey State Chamber of Commerce*, *supra*, 82 N.J. at

68. The record, based on Mr. Walden's Certification, is clear: he is not a "stranger" to the dispute nor an "intermeddler." Rather, he represents his own individual interest, as a resident taxpayer, voter, user of Braddock Park, and advocate to remove the trailers from the Park, provide safe schools and integrate the pre-school program into the district elementary schools, as well as the general interest of the community in the resolution of a 23-year-old very public controversy.

CONCLUSION

For the foregoing reasons, Mr. Walden's petition to enforce N.J.A.C. 6A:26-3.13(g) should not be dismissed for lack of jurisdiction and standing and he should be permitted to proceed with the prosecution of this matter. Instead of deploying its resources and efforts to defeat Mr. Walden's claim, which he has brought on behalf of the predominantly low-income, minority children of North Bergen and all residents who pay school taxes and voted for the bond referendum, the Commissioner, as chief executive of the DOE, should require the North Bergen school district to present a plan in which they start, this Fall, to transition the preschool children into the District elementary schools where they belong, and to complete the transition by a date certain.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

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