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_____	X	
ROBERT WALDEN,	:	BEFORE THE COMMISSIONER OF
	:	EDUCATION OF NEW JERSEY
Petitioner,	:	
vs.	:	
	:	AGENCY DOCKET NO. 5-1/23
	:	
BOARD OF EDUCATION OF THE	:	OAL Docket No. EDU 03856-23
TOWNSHIP OF NORTH BERGEN,	:	
HUDSON COUNTY and HUDSON	:	
COUNTY/NEW JERSEY DEPARTMENT :		CERTIFICATION OF
OF EDUCATION CO. OFFICE OF EDUC., :		COUNSEL
Respondents.	:	
_____	X	

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and am Executive Director of New Jersey Appleseed Public Interest Law Center. I, with the Eastern Environmental Law Center, represented Save Braddock Park-Safe Schools and the New Jersey Conservation Foundation, in their action against the Township of North Bergen, Hudson County and the New Jersey Department of Environmental Protection (“DEP”) regarding the unlawful diversion of a certain portion of Braddock Park. The action was primarily brought under the Environmental Rights Act, and was dismissed by Judge Jablonski, A.J.S.C., on the basis of the doctrine of primary jurisdiction. The prerogative writ claim against the DEP was dismissed since the Hudson County Superior Court, Law Division held that it should have been brought in the Appellate Division.

Robert Walden is a founding member of Save Braddock Park-Safe Schools.

2. At some time in May 2023, Mr. Walden informed me that he had filed a complaint with the New Jersey Department of Education's Office of Controversy and Disputes that had been sent by the agency to be heard by an Administrative Law Judge ("ALJ"). Specifically, he informed me that the ALJ was requesting that he retain counsel. Mr. Walden did not have the resources to retain private counsel, so New Jersey Appleseed agreed to represent him *pro se*.

3. On July 10, 2023, I filed a sur-reply, with permission of Judge Jude-Anthony Tiscornia, on behalf of Mr. Walden in response to Respondents' respective motions to dismiss. Both the North Bergen Board of Education ("BOE") and the Hudson County/New Jersey Department of Education ("DOE") moved to dismiss Mr. Walden's complaint saying that it was untimely. The BOE also alleged that the New Jersey Superior Court action mentioned above somehow decided the matters raised in Mr. Walden's complaint against the BOE, though neither Mr. Walden nor the BOE or DOE were parties to that lawsuit, which dealt solely with DEP's diversion regulations. The DOE additionally claimed that Mr. Walden did not state a claim under the DOE regulations, disputing that the 23-year deployment of trailers in Braddock Park constituted a violation of N.J.A.C. 6A:26-3.13(g). See Letter Brief dated July 10, 2023 attached hereto as Exhibit A.

4. On August 29, 2023, Judge Tiscornia issued his Order denying Respondents' Motion to Dismiss, which is attached hereto as Exhibit B.

5. In accord with Judge Tiscornia's verbal instructions, the parties proceeded with discovery. On November 7, 2023, I sent both Respondents' Mr. Walden's Responses to North Bergen BOE's Interrogatories and Document Requests. His responses are attached as Exhibits C and D hereto. A thumb drive with thousands of documents was also provided to both attorneys.

6. On November 11, 2023, I sent the BOE a request for document production. Attached hereto as Exhibit E.

7. That same day, I sent DOE a request for document production. Attached hereto as Exhibit F.

8. On the morning of the last scheduling conference, January 5, 2024, the BOE sent me 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. I have received no response from the Office of the Attorney General to our document production to the Hudson County/New Jersey DOE.

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 to punishment.

/s/Renée Steinhagen
RENÉE STEINHAGEN

Date: February 29, 2024



July 10, 2023

Via Email

Hon. Jude-Anthony Tiscornia, ALJ
Office of Administrative Law
33 Washington Street
Newark, New Jersey 07102
Jude.Tiscornia@oal.nj.gov
ila.dhabliwala@oal.nj.gov

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 Tiscornia:

Please accept this sur-reply letter brief on behalf of Petitioner Robert Walden, a North Bergen taxpayer, who to date has been representing himself *pro se*. I submit this letter in opposition to Respondents' respective Motions to Dismiss, not to supplant Mr. Walden's opposition brief, but to augment his detailed, factually based arguments with case law. In essence, all three versions of Mr. Walden's complaint/petition allege a violation of N.J.A.C. 6A:26-3.13(g). Each, though subsequently amended to include more facts and the last to name the New Jersey Department of Education ("DOE") as a respondent, seeks to compel the DOE to require North Bergen Board of Education ("NBBOE") to immediately lease new trailers and transition the pre-school children out of trailers as soon as the current renovations to classrooms is complete, scheduled for September, 2024. This prospective relief vindicates a "continuing

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Exhibit A

violation of a public right” caused by DOE inaction or affirmative renewal on an annual basis and is not barred by the 90-day statute of limitations.

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STATEMENT OF FACTS

Mr. Walden’s petition sets forth a plethora of facts that, at minimum, set forth the context of his complaint, and are certainly relevant to any relief your Honor may recommend to the Commissioner. The facts he has alleged have been garnered from documents he has received pursuant to the many Open Public Records Act (“OPRA”) he has made, as well as his participation in the Department of Environmental Protection’s (“DEP”) diversion process that commenced in 2014 (2 ½ years after the after-the-fact diversion was discovered by DEP and acknowledged by North Bergen), and has yet to proceed beyond the pre-application stage.

When deciding a motion to dismiss, an Administrative Law Judge like a “court should assume that the nonmovant's allegations are true and give that party the benefit of all reasonable

inferences.” NCP Litig. Tr. v. KPMG LLP, 187 N.J. 353, 365 (2006) See also Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005)(a complaint can only be dismissed for failure to state a cause of action if the allegations, taken as true, fail to set forth a claim which provides a legal basis for relief). Motions to dismiss for failure to state a claim “should be granted in only the rarest of instances.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989). Mr. Walden alleges, in brief outline, as follows:

In 2001, NBBOE placed 16, soon to be 17, trailers in Braddock Park to temporarily house its new pre-school program. At that time, it informed the public that it intended to place the program in the Lincoln School Annex (now known as the Early Childhood Center), which was not yet completed. Five years later, in 2006, the Lincoln School Annex was completed, but the pre-school program remained in the trailers. Mr. Walden did not receive any documents that indicate that the DOE approved the placement of the trailers in 2001, affirmatively approved their use on an annual basis from 2001 to 2019 (at which time they did approve their use) nor any documents which have shown NBBOE “demonstrates satisfactory progress toward the provision of permanent facilities.” N.J.A.C. 6A:26-3.13(g). The trailers are leased pursuant to contracts that have been entered into, over the past 22 years, for different lengths of time. Currently, NBBOE leases them for approximately \$300,000 per year.

Based on an inspection occurring in November 2010, DEP issued a violation to North Bergen and Hudson County on March 17, 2011 since the trailers are located on dedicated parkland and constitute an unlawful diversion and impairment of parkland (under the Environmental Rights Act). One month later, the DEP inspector, Robert Rodriguez wrote his team in an e-mail dated April 11, 2011 the following:

I met with North Bergen Township and Hudson County officials on 4/5/2011 to discuss how to resolve the illegal diversion of the Township's school trailers on

County parkland. This meeting was prompted by our Bureau's post inspection letter sent last month to both parties threatening to withhold funding if the illegal diversion is not resolved. . . . At the meeting, the Township stated that the relocation of those trailers would result in their destruction as they are antiquated. The Township believes that they may be able to get the North Bergen Board of Education to remove the trailers from the park and relocate the students to another classroom location that is not parkland by September 2012. It was discovered that no legal agreement between the parties or with the school board exists that allows this use or the trailers on parkland.

The notion that the trailers are “antiquated” was again repeated to DEP directly in 2016 in response to a request by DEP to move the trailers out of Braddock Park to a different location.

North Bergen wrote:

The TCUs have been in service beyond the normal life expectancy for this type of structure. Therefore, relocating them to another site is not feasible. The TCUs were originally located in North Bergen in August 2001 and are currently 15 years old. . . . As the TCUs have aged beyond their useful life, relocation of the units is not advisable.

Mr. Walden has not received any documents indicating that either DEP or DOE directed NBBOE, at any time, to lease new trailers rather than house the pre-school children in “antiquated” ones. (In 2012, two of the trailers had to be replaced after a tree fell on electric wires igniting them at a time that the trailers had no fire exits required per N.J.A.C. 6A:26-8.1.)

In 2018, Mr. Walden himself filed a complaint with DOE that the trailers violated the DOE’s educational adequacy standards because they lacked a second means of egress. The complaint was found valid, changes were made, and in 2019, 2021 and 2022, it appears that the DOE conducted its annual inspection, which is required by regulation. *See* N.J.A.C. 6A:26-8.1. Mr. Walden has not received any documents indicating that DOE, in contrast to local fire inspectors, conducted such annual inspections prior to 2019.

Also, in 2018 North Bergen and NBBOE, at the suggestion of DEP, decided to acquire the old Hudson County Technical High School (“Hi-Tech”) property to achieve compliance with

certain environmental regulations, *i.e.*, N.J.A.C. 7:36-25.2 (concerning diversion of dedicated parkland). NBBOE devised a Long Range Facilities plan which NJDOE conditionally approved in 2018, subject to a North Bergen bond referendum necessary to support the acquisition. The plan was to reorganize the North Bergen school system by moving 7th and 8th graders out of elementary schools and into Hi-Tech, and moving all the preschoolers out of Braddock Park into District elementary schools. In a 2018 referendum, North Bergen voters approved the expenditure of approximately \$65 million to enable North Bergen's Long Range Facilities Plan. (Since that time, the Governor has distributed an additional \$10 million to North Bergen to implement the LRFP). Specifically, in a letter sent (in August 2018) by an architect working with North Bergen to DOE entitled "*Overview of Proposed LRFP and Related Projects*," North Bergen stated:

Should enrollments continue to decrease as projected, the NBBOE will be able to terminate its lease of the Fulton Annex. **Further, based on the proposed LRFP, Bond funding will be sought for site acquisition and designated improvements associated with re-alignment. On realization of re-alignment, Pre-K classes located in TCUs at Hudson County Braddock Park will be returned to District schools.** (emphasis added)

However, it does not appear that DOE, since approving NBBOE's LRFP in 2018, has required NBBOE to demonstrate satisfactory progress toward implementing that Plan.

NBBOE's 22-year old deployment of trailers to house its pre-school program has occurred during a period of time that North Bergen has received state funding for its program, while North Bergen has experienced budget surpluses, and school enrollments (including preschool), have decreased.

PROCEDURAL HISTORY

On November 7, 2022, Mr. Walden filed a complaint with the DOE's Office of Controversies and Disputes. 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, 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, NBBOE 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 NBBOE’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 NBBOE 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. This sur-Reply Brief in Opposition to Respondents’ Motions to Dismiss follows.

LEGAL ARGUMENT

I. THE N.J. DEPT. OF EDUC. HAS VIOLATED THE PLAIN LANGUAGE AND POLICY OF N.J.A.C. 6A:26-3.13(g) BY FAILING TO REQUIRE N. BERGEN BD. OF EDUC. TO CEASE USING TEMPORARY TRAILERS TO HOUSE ITS PRE-SCHOOL PROGRAM THAT COMMENCED IN 2001.

In his petition, Mr. Walden asserts that the DOE has failed to enforce N.J.A.C. 6A:26-3.13(g) against NBBOE either by inaction (*i.e.*, failing to require NBBOE 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). In either case, he 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.

It is an established principle of interpretation that a "regulation should be construed in accordance with the plain meaning of its language and in a manner that makes sense when read in the context of the entire regulation ." J.H. v. R & M Tagliareni, LLC, 239 N.J. 198 (2019) (citation omitted). "Whether construing a statute or a regulation, it is not [a judge's] function to 'rewrite a plainly-written enactment,' or to presume that the drafter intended a meaning other than the one 'expressed by way of the plain language.'" U.S. Bank, N.A. v. Hough, 210 N.J. 187, 199 (2019)(quoting Di Prospero v. Penn, 183 N.J. 477, 492 (2005)).

N.J.A.C. 6A:26-3.13(g) provides:

A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:

1. The temporary facility meets the educational-adequacy and temporary-facility standards as specified in this chapter;
2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and
3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for "E" (educational) group use. (emphasis added)

It is apparent from the first sentence in this regulation that it contemplates the use or deployment of temporary facilities, such as trailers, for no longer than five years. Five years is sufficient time for a school district to plan, modify existing structures or build a new facility to

meet the needs of their program. Contrary to the Attorney General's strained reading of the regulation, the second sentence in the regulation does not extend the five-year term in perpetuity, but rather conditions the initial two year approval, and three annual renewals upon satisfaction of certain to conditions set forth in subsections 1-3.

Furthermore, to fully understand the public policy behind this regulation, the lack of a "good cause" exception to extend the number of renewals beyond three must be noted. If, in fact, the regulation contemplated and sanctioned use of temporary facilities beyond the five years, it would include explicit standards under which the Commissioner could evaluate the appropriateness or necessity of granting such an extension. Silence speaks volumes in this situation. Moreover, in deciding whether to recommend to the Commissioner to decline approving NBBOE's application to renew its use of trailers to house its preschool program unless it sets real, steadfast benchmarks to transition the children into the District's elementary schools, your honor must take notice of the specific 5-year mandate found in N.J.A.C. 6A:13A-7.1(g). This regulation, concerning temporary preschool classrooms, states in full:

Any district board of education using TCUs or other similar temporary facilities for preschool classrooms as of *August 15, 2022*, shall submit to the Department proof of compliance with N.J.A.C. 6A:26 and a long-range facilities plan for phasing out the use of TCUs or other similar temporary facilities for preschool classrooms by *June 30, 2027*.

When this regulation is read together N.J.A.C. 6A:26-3.13(g), the Attorney General's interpretation of the latter falls apart. It is clear from the definitive dates set in N.J.A.C. 6A:13A-7.1(g) that the Commissioner's own regulatory policy regarding temporary facilities, especially for preschool classrooms, does not contemplate nor authorize NBBOE's 22-year use of temporary trailers to house its preschool program. There is simply no legitimate excuse or justification for authorizing DOE to permit North Bergen to continue to fail its children and local

taxpayers. *Cf. Summer Cottagers' Ass'n of Cape May v. City of Cape May*, 19 N.J. 493, 505 (1955) (municipality cannot construe its own regulation so as to “defeat the very public policy” the Legislature intended to be served). The Commissioner must act now starting with the 2023-2024 school year.

II. THIS PETITION COMPLAINS ABOUT AN ONGOING VIOLATION OF PUBLIC RIGHTS AND IS THUS NOT BARRED BY THE 90-DAY STATUTE OF LIMITATIONS SET FORTH IN N.J.A.C. 6:24-1.2(c).

As stated above, Mr. Walden’s petition may be viewed as a complaint against DOE for inaction (*cf. 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, 261-262 (App. Div. 2001)(noting that the term “action” in R. 2:2-3(a)(2) and R. 2:2-4 “includes inaction,” and that the court can compel the “exercise of a discretionary function”) or for approval of NBBOE’s requests to deploy trailers beyond the three annual renewals permitted by the regulation. In either case, Mr. Walden’s petition implicates an ongoing violation of a public right and thus the ninety-day period of limitations contained in N.J.A.C. 6:24-1.2(c) does not apply, or should be relaxed in the interests of justice, pursuant to N.J.A.C. 6:24-1.15.

N.J.A.C. 6:24-1.2(c) provides:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the District Board of Education, . . . which is the subject of the requested contested case hearing.

Both Respondents argue that since Mr. Walden’s third petition was filed beyond 90 days from the DOE’s August 22, 2022 annual inspection, his complaint is out of time. This argument falls apart for several reasons. First, it is unclear why Mr. Walden’s cause of action arises from the date of DOE’s educational adequacy inspection rather than approval of NBBOE’s request to continue to use the temporary trailers (though it is not clear whether NBBOE even makes such

request) —an approval that is conditioned on satisfaction of the adequacy inspection but not tantamount to it. Though such approval should be issued prior to the start of the school year, it is not certain when DOE in fact did so. Nonetheless, the record is clear, Mr. Walden did not “rest on [his] rights” as he filed his first petition within 90-days of either the inspection or the commencement of the school year. *Cf. Reilly v. Brice*, 109 N.J. 555, 559 (1988)(The 45-day statute of limitations is “designed to encourage parties not to rest on their rights”).

Moreover, there is a credible argument that the 90-day statute of limitation does not even apply because of the continuing impact of DOE’s ongoing failure to implement its own regulation as written. *See, e.g., D’Alessandro v. Middleton Twp. Bd. of Educ.*, CD 262-86 (October 20, 1986), Vol. 4, p. 2511 (90-day limitation does not apply where implementation of regulation created “a situation [that] constitutes a continuing violation permitting a potentially discriminatory practice to continue in perpetuity”); *Russo Farms v. Vineland Bd. of Educ.*, 144 N.J. 84 (1996) (holding when a court finds that a continuing nuisance has been committed, it implicitly holds that the defendant is committing a new tort, including a new breach of duty, each day; that new tort is an “alleged present failure” to remove the nuisance, and “[s]ince this failure occurs each day, the defendants’ alleged tortious inaction constitutes a continuous nuisance for which a cause of action accrues anew each day.”); *North Plainfield Educ. Ass’n. v. Board of Educ. of Borough of North Plainfield*, 96 N.J. 587, 594-595 (1984)(noting that if the annual increment petitioners claimed they were owed were a statutory entitlement, then the ninety-day period of limitations contained in N.J.A.C. 6:24-1.2 would not apply; however, because the fact that their salary will always lag one step behind and is not attributable to a new violation each year, their case must be dismissed). *Cf. Wilson v. Wal-Mart Stores*, 158 N.J. 263(1999) (when an

individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases).

It is certain that Mr. Walden, in this case, is seeking to vindicate "an important public interest which requires adjudication or clarification" and, if not addressed at this time, there will be "a continuing violation of [a] public right[]." Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135 (2001). See cases cited in L. Pucillo & Sons v. Belleville, 249 N.J. Super. 536, 549-550 (App. Div. 1991) (where court reversed the dismissal of a complaint filed by plaintiffs, competitor and taxpayer, in order to assure the public's protection and remanded to compel defendant contractor to comply with the bid specifications because of the continuing impact of the initial wrong).¹ He is also seeking equitable, prospective relief in addition to review of DOE's wrongful inaction/action thus militating against imposition of the 90-day rule. Thorton v. Village of Ridgewood, 17 N.J. 499, 510 (1955) (holding equitable relief not barred by statute of limitations).

Finally, Mr. Walden has demonstrated that a strict adherence to the 90-day rule arising from the inspection date would be "inappropriate or unnecessary or may result in injustice." N.J.A.C. 6:24-1.5. Not only was his first petition filed on a timely basis (which could have been simply amended rather than withdrawn), but also his primary cause of action -- violation of

¹ Jones v. MacDonald, 33 N.J. 132, 138 (1960) (holding that "each purported exercise of the right of office by one without title to it constitutes a fresh wrong"); Meyers v. Mayor and Council of the Borough of East Paterson, 37 N.J. Super. 122, 128 (App. Div. 1955), *aff'd*, 21 N.J. 357 (1956) (successive payments of salary under illegally created position constitute separate remediable acts); Reahl v. Randolph Tp. Mun. Utils. Auth., 163 N.J. Super. 501, 510 (App. Div. 1978) *certif. denied*, 81 N.J. 45 (1979) (holding power of municipal authority to charge standard annual rate for sewer services was a question of public importance having a continuing impact on members of the public)

N.J.A.C. 6A: 26-3.13(g) -- will simply accrue again next month, when DOE is required to conduct an inspection of the so-called temporary, but 22-year old antiquated, trailers and approve or deny NBBOE's application to continue their use.

CONCLUSION

For the foregoing reasons, Mr. Walden's petition to enforce N.J.A.C. 6A:26-3.13(g) should not be dismissed and he should be permitted to proceed with discovery and 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 schoolboard taxes, the DOE should compel NBBOE to lease new trailers and to start this Fall to transition some of the preschool children into the District elementary schools where they belong.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER

/s/Renée Steinhagen
Renée Steinhagen



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JUDE-ANTHONY TISCORNIA
Administrative Law Judge

August 29, 2023

SENT VIA E-MAIL ONLY.

Kevin Hanly, Esq
390 Lawrence Ct.
Wyckoff, New Jersey 07481

LETTER ORDER

Amna Toor, DAG
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Laurie Fichera, DAG
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Richard J. Hughes Justice Complex
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Attn: Renee Steinhagen, Esq.
New Jersey Appleseed Public Interest
Law Center of New Jersey
23 James Street Newark
New Jersey 07102

RE: Walden v. Board of Education of the Twp. North Bergen, et al.
OAL DKT. No.: EDU 03856-23
Agency DKT. No.: 5-1/23

Dear Counsel:

Regarding the pending Motion to Dismiss the Petition in lieu of filing and Answer

Exhibit B

New Jersey is an Equal Opportunity Employer.

filed by Kevin Hanly, Esq. on behalf of respondent North Bergen Board of Education and received by the undersigned on or about March 1, 2023, said motion having been joined by respondent, New Jersey Department of education, and after having reviewed all the papers submitted by all parties, and with oral argument having been presented via ZOOM on August 23, 2023, I **CONCLUDE** that respondents' joint Motions to Dismiss the forgoing petition should be, and hereby is, **DENIED** for the reasons stated on the record, including;

- 1) regarding respondents' argument that the foregoing petition is barred by the "90 day" rule as per N.J.A.C. 6A:3-1.3(i), I **FIND** that no date certain has been identified by either of the co-defendants relating to when any 90-day period would have started to run, and thus, I **FIND** the foregoing petition is not so barred;
- 2) regarding respondent's argument that the Order dated June 13, 2022, entered by the Hon. Jeffrey Jablonski, A.J.S.C., dismissing Plaintiffs NJ Conservation Foundation and Save Braddock Park-Safe Schools' complaint precludes the Office of Administrative Law from having jurisdiction over the present matter, I **FIND** said Order does not reference the present matter and does not preclude the undersigned from adjudicating the present matter and rendering a decision.

Based on the foregoing, it is hereby **ORDERED** that the respondent's motion be **DENIED**, and the matter shall proceed before the undersigned accordingly.

It is further **ORDERED** that the parties confer with one another and subsequently contact the undersigned's staff via telephone or e-mail to schedule a pre-hearing telephonic conference.

This order may be reviewed by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

August 29, 2023

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Renée Steinhagen, Esq.
Attorney Id. 38691989
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Counsel for Petitioner Robert Walden

ROBERT WALDEN,

:

**BEFORE THE COMMISSIONER OF
EDUCATION OF NEW JERSEY**

Petitioner,

vs.

:

AGENCY DOCKET NO. 5-1/23

**BOARD OF EDUCATION OF THE
TOWNSHIP OF NORTH BERGEN,
HUDSON COUNTY and HUDSON
COUNTY DEPARTMENT OF
EDUCATION,**

:

OAL Docket No. EDU 03856-23

Respondents.

**ANSWER TO DOCUMENT
PRODUCTION**

To: Kevin Hanly, Esq., P.C.
390 Lawrence Ct.
Wyckoff, New Jersey 07481
kh@kevinhanlylaw.com

COUNSEL:

PLEASE TAKE NOTICE that Petitioner ROBERT WALDEN hereby provides, pursuant to N.J.A.C. 1:1-10.2(2) the following responses to Respondent North Bergen Board of Education's Document Requests. Petitioner has used his best efforts to retrieve documents responsive to this request for production that he no longer had in his possession. He continues to do so and therefore reserves the right to amend and/or supplement these responses as warranted. Nonetheless, Petitioner objects to the time frame imposed by Respondents' Requests: 1999 to date—a 24-year time period

Exhibit C

is highly unreasonable, and an individual citizen such as Mr. Walden cannot be expected to have maintained documents once in his possession for longer than 5-years.

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.

/s/Renée Steinhagen
Renée Steinhagen

Dated: November 7, 2023

DOCUMENT REQUEST ANSWERS

DOCUMENTS TO BE PRODUCED

1. The 2018 Long Range Facilities Plan of NBBOE and all revisions thereto.

Petitioner objects to this question insofar as the NBBOE is the author of this document and Petitioner was not able to download appendices and attachments to the document. Notwithstanding, Petitioner produces documents, which can be found in the folder entitled "Documents 1."

2. Any and all documents relating to the special 2018 voter referendum to acquire the vacated High Tech school building located in North Bergen.

Petitioner produces documents, which can be found in folder entitled "Documents 2" and "Documents 1."

3. All OPRA requests sent by petitioner or plaintiffs to any governmental entity relating to Braddock Park Preschool for the years in question.

Petitioner objects to this question as overbroad in time and scope since this matter only involves the Hudson County Department of Education and the NBBOE and Petitioner should not be expected to maintain documents for longer than 5-years. Notwithstanding this objection, Petitioner produces OPRA requests that he made to the NJ Department of Community Affairs ("DCA"), NJ Department of Environmental Protection ("DEP"), NJ Department of Education ("DOE"), NBBOE, Hudson County ("HC") and the Township of North Bergen ("NB"), documents, which can be found in the folder entitled "Documents 3."

4. All responses received by petitioner or plaintiffs in response to OPRA requests sent by petitioner or plaintiffs relating to the Braddock Park Preschool.

Petitioner objects to this question as overbroad in time and scope. Furthermore, it should be noted that often Petitioners' OPRA requests were denied, and in other cases, he did not download all documents that were made available to him electronically for a limited time period. Notwithstanding this objection and qualification, Petitioner produces documents which can be found in the folder entitled "Documents 3."

5. Any and all other documents exchanged between petitioner or plaintiffs in the DEP action and any governmental authority relating to the OPRA requests referred to in Items 3 and 4 above.

Petitioner objects to this question as calling for documents that are protected by the

attorney-client privilege or work product material.

6. Any and all documents which state that NBBOE did not conduct or improperly conducted annual safety inspections of the TCU's relating to the Braddock Park Preschool for the years in question.

The question misstates the allegation. Petitioner alleges that Hudson County Department of Education did not conduct or improperly conducted the inspections. Petitioner objects to the time frame of the question, but nonetheless produces documents, which can be found in the folder entitled "Documents 6."

7. Any and all documents which petitioner is relying on to support his assertion that George Solter provided deceptive and false information to the public regarding safety deficiencies/violations relating to the Braddock Park Preschool.

Petitioner produces documents, which can be found in folder entitled "Documents 7" and "Documents 39."

8. The letter to the editor allegedly written by Hugo Cabrera relating to the safety of the Braddock Park Preschool.

Petitioner produces documents, which can be found in folder entitled "Documents 8."

9. Any and all documents relating to a statement from the Hudson County Sheriff's Office that the location of Braddock Park Preschool had "historically been a problem area."

Petitioner produces documents, which can be found in folder entitled "Documents 9."

10. The newspaper articles referred to in Statement of Facts, Pars 2,3,6.

Petitioner produces documents, which can be found in folder entitled "Documents10."

11. All emails that petitioner sent to Melissa Pearce pertaining to the egress issue.

Petitioner produces documents, which can be found in folder entitled "Interrogatory 14."

12. All OPRA responses referred to in Statement of Facts.

See Responses to OPRA requests sent to DOE found in folder entitled "Documents 3."

13. The letter to the editor of the Jersey Journal dated 11/27/20 allegedly written by

George Solter and referred to in Statement of Facts, Par 6.

Petitioner produces documents, which can be found in folder entitled "Documents 13."

14. The reports of the DEP compliance inspectors from 2001 and 2005.

Petitioner objects to this question since it is not related to the central claim in this matter. North Bergen's and Hudson County's failure to comply with DEP regulations regarding diversions is independent of his claim against NBBOE and Hudson County Board of Education. Notwithstanding, Petitioner produces documents, which can be found in a folder entitled "Documents 14."

15. The report of the DEP compliance inspector for 2011 which appears to be related to a 2010 inspection.

Petitioner objects to this question since it is not related to the central claim in this matter. North Bergen's and Hudson County's failure to comply with DEP regulations regarding diversions is independent of his claim against NBBOE and Hudson County Board of Education. Notwithstanding, Petitioner produces documents, which can be found in a folder entitled "Documents 15."

16. Petitioner's email to DEP of 11/17/15 relating to the continued use of the High Tech building in North Bergen.

Petitioner produces documents, which can be found in folder entitled "Documents 16."

17. The DEP diversion pre-application filed by North Bergen (presumably NBBOE) dated 1/26/16.

Petitioner objects to producing the pre-application. The application was filed by the Township of North Bergen, for the benefit of the NBBOE, since the Township and Hudson County are seeking to divert the property for NBBOE's use. It is not relevant to the claims made in this administrative matter insofar as it involves DEP regulations and is a public document that NBBOE and Hudson County DOE may obtain from North Bergen, Hudson County or DEP.

18. The first review of NBBOE's diversion pre-application sent by DEP on 4/12/16.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, DEP's review is a public document available from the DEP website and was sent directly to North Bergen.

19. The 8/19/16 NBBOE response to DEP's first diversion pre-application review.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, NB/NBBOE's response is a public document available from the DEP website and was sent prepared by NB/NBBOE.

20. Any and all documents relating to the 10/24/16 press conference conducted by NBBOE and Hudson County relating to the purchase of the High-Tech High School Property by NBBOE.

Petitioner produces documents, which can be found in the folder entitled "Documents 20."

21. The second review of NBBOE's diversion pre-application sent by DEP on 12/20/16.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, DEP's review is a public document available from the DEP website and was sent directly to North Bergen.

22. The DEP response referred to in the Statement of Facts, Par 14.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, DEP's response is a public document available from the DEP website and was sent directly to North Bergen. Notwithstanding, Petitioner produces one document that he received in response to an OPRA request, which can be found in a folder entitled "Documents 22."

23. The 8/25/17 response of NBBOE to DEP's second diversion pre-application review.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, NB/NBBOE's response is a public document available from the DEP website and was created by North Bergen/NBBOE.

24. Winter, 2017 edition of the NBBOE newsletter, the Communicator.

Petitioner produces a document, which can be found in the folder entitled "Documents 24." It should be noted that Petitioner only retained one column of the newsletter.

25. DOE OPRA response #W167565.

Plaintiff objects to this document request as redundant and duplicative. Notwithstanding Petitioner produces the one document, which is also included in folder entitled "Documents 25."

26. August, 2018 letter from NBBOE to DEP attached to OPRA response #W167565.

Plaintiff objects to this document request as redundant and duplicative
Notwithstanding Petitioner produces the one document, which is also included in
folder entitled "Documents 26."

27. 4/5/22 response to DEP relating to continued use of the Fulton Annex.

Petitioner produces one document, which is included in folder entitled
"Documents 27."

28. NBBOE's diversion pre-application submitted by NBBOE to DOE on or about
3/3/21.

Petitioner objects to this document request insofar as this matter is independent
from that before the DEP and is governed by a different regulatory scheme.
Moreover, NB/NBBOE's diversion pre-application is a public document available
from the DEP website and was created by North Bergen/NBBOE.

29. Letter dated 10/31/14 from NBBOE to petitioner.

Petitioner produces one document, which is included in folder entitled "Documents 29."

30. NBBOE's entire response to petitioner's OPRA request #W187876.

Petitioner objects to this Document request as redundant and duplicative of Document
Request 4. Notwithstanding, Petitioner produces documents, which are included in folder
entitled "Documents 30."

31. NJ DOE's response to petitioner's OPRA request #W176451.

Petitioner objects to this Document request as redundant and duplicative of Document
Request 4. Notwithstanding, Petitioner produces one document, which is included in
folder entitled "Documents 31."

32. NBBOE and Hudson County DOE OPRA responses concerning traffic study for the
Braddock Park Preschool.

Petitioner objects to this Document request as redundant and duplicative of Document
Request 4. Moreover, this is misstated since Petitioner does not recall requesting the
two entities named for such documents. Notwithstanding, Petitioner produces
documents, which are included in folder entitled "Documents 32."

33. Letters to the editor written by petitioner (no dates) concerning the dangers relating to
the locations of the TCU's.

Petitioner produces documents, which are included in folder entitled "Documents 33."

34. The letter to the editor by Hugo Cabrera sent to two media outlets in August, 2021.

Petitioner produces the letter, which is included in folder entitled "Documents 34."

35. The 8/19/21 article published in the Hudson Reporter concerning clearance of homeless people from Braddock Park.

Petitioner produces the document, which is included in folder entitled "Documents 35."

36. The 8/15/21 article published in the Jersey Journal concerning clearance of homeless people from Braddock Park.

Petitioner produces the document, which is included in folder entitled "Documents 36."

37. The petitioner's 5/29/16 letter (date of publication) to the editor relating to the purchase of High-Tech High School.

Petitioner produces the letter, which is included in folder entitled "Documents 37."

38. NBBOE's 8/19/16 letter to the DEP concerning utilizing High Tech as a middle school.

Petitioner objects to this document request insofar there is no letter, rather this is NB's first response, concerning NBBOE matters, to DEP's first pre-application review. This concerns a matter that is independent from that before the DOE and is governed by a different regulatory scheme. Moreover, NB/NBBOE's response to DEP's reviews is a public document available from the DEP website and was created by North Bergen/NBBOE. Notwithstanding, Petitioner produces one document that included statements concerning utilization of High Tech, which are included in a folder entitled "Document 38."

39. All photos provided by petitioner to "officials" documenting dangerous preschool conditions.

Petitioner produces, to the best of his ability, all photos he sent to "officials," all of which are "jpgs", which are included in folder entitled "Documents 39."

40. The 10/1/09 article by NJEA entitled "Beware Temporary Classrooms."

Petitioner produces one document, which is included in folder entitled "Documents 40."

41. NBBOE's 1st pre-application response to DEP dated 8/19/16.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, NB/NBBOE's diversion pre-application response is a public document available from the DEP website and was created by North Bergen/NBBOE. ."

42. NBBOE's 2016 Alternatives Analysis.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, NB/NBBOE's 2016 alternative analysis is a public document available from the DEP website and was created by North Bergen/NBBOE.

43. NBBOE's 2022 Alternatives Analysis.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, NB/NBBOE's 2022 alternative analysis is a public document available from the DEP website and was created by North Bergen/NBBOE.

44. DEP's 4th pre-application review dated 10/5/21.

Petitioner objects to this document request insofar as this matter is independent from that before the DEP and is governed by different regulatory scheme. Moreover, DEP's diversion pre-application review is a public document available from the DEP website and was received directly by North Bergen/NBBOE.

CERTIFICATE OF AUTHENTICITY

I hereby certify that, to the best of my knowledge, the documents and other records supplied pursuant to this Notice to Produce are true and correct copies of all the documents requested that are in the possession, custody and control of the Petitioner, Robert Walden.

Dated: November 6, 2023

/s/Renée Steinhagen
Renée Steinhagen

Renée Steinhagen, Esq.
Attorney Id. 38691989
NEW JERSEY APPLESEED
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Counsel for Petitioner Robert Walden

ROBERT WALDEN	:	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY
Petitioner	:	
vs.	:	AGENCY DOCKET NO. 5-1/23
BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN, HUDSON COUNTY and HUDSON COUNTY DEPARTMENT OF EDUCATION	:	OAL Docket No. EDU 03856-23
Respondents	:	INTERROGATORY RESPONSES

To: Kevin Hanly, Esq., P.C.
390 Lawrence Ct.
Wyckoff, New Jersey 07481
kh@kevinhanlylaw.com

COUNSEL:

PLEASE TAKE NOTICE that Petitioner ROBERT WALDEN hereby provides, pursuant to N.J.A.C. 1:1-10.2(1) the following responses to Respondent North Bergen Board of Education's Interrogatories. Petitioner has used his best efforts to answer the questions posed and retrieve documents responsive to these interrogatories that he no longer had in his possession. He continues to do so and therefore reserves the right to amend and/or supplement these responses as warranted. Nonetheless, Petitioner objects to the time frame imposed by Respondents' Interrogatories: 1999 to date—a 24-year time period is highly unreasonable, and an individual citizen such as Mr. Walden cannot be expected to have maintained documents once in his possession for longer than 5-years.

Exhibit D

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.

/s/Renée Steinhagen
Renée Steinhagen

Dated: November 7, 2023

WALDEN RESPONSE TO INTERROGATORIES

1. Identify all persons who have knowledge of any facts relating to this case.

Petitioner objects to this question as overbroad, vague and impossible for him to answer. Respondent Hudson County DOE is the only party who can identify the Hudson County DOE officials responsible for approving the deployment of the TCUs in Braddock Park, inspecting them for educational adequacy and permitting their continued use only if the relevant board of education has a plan to transition children out of the temporary facilities. Such persons would have knowledge as to why they have not satisfied their responsibilities and obligations under law. Similarly Respondent NBBOE is the only party who can identify all the people who have knowledge as to why NBBOE has not taken appropriate steps to place the pre-school children in permanent facilities for now over 22 years. Persons who signed documents or were quoted in documents provided in Petitioner's document production have knowledge as to their statement or the content of the document they signed or created.

2. Identify each person that you expect to call as an expert witness at the hearing.

Petitioner will not call any expert witness.

3. In regard to each person listed in the answer to #2, state the subject matter about which the expert is to testify.

N/A

4. In regard to each person listed in the answer to #2, attach a copy of all written reports rendered by such expert. If any reports are oral, set forth in detail the substance of such report.

N/A

5. In regard to each person listed in the answer to #2, identify and produce all material reviewed and/or examined by each such person in connection with the preparation of his or her report.

N/A

6. In regard to each person listed in the answer to #2, attach a copy of that person's curriculum vitae.

N/A

7. Have any admissions been made by any party to this action? If so, state,

a) the identity of the person who made the admission and the identity of all persons present when the admission was made;

b) the date and place of each admission;

c) the substance of each admission;

d) if the admission is in writing, attach a copy.

Petitioner asserts that the following admissions have been made. Documents that contain the admission are produced an electronic folder entitled "Interrogatory 7."

1. In a letter dated, April 18, 2011, NB Adminmistrator Christopher Pianese admitted that NB/NBBOE violated DEP regulations when it placed TCUs in Braddock Park.
2. In an article dated March 2017, Christopher Pianese, NB Administrator, admitted that North Bergen had "the highest surplus we ever ended the year with."
3. In an article dated February 2021, Janet Castro, NB Administrator, admitted that "North Bergen has never been in better shape in terms of its finances. . ."
4. In a DEP memo dated April 11, 2011, DEP reported that a representative of North Bergen admitted that the TCUs were "antiquated" and could not be moved.
5. In NB's 1st pre-application response, dated August 19, 2016, NB admitted to DEP that they could not relocate the TCUs, which were already being used "beyond their normal life expectancy."
6. In an article dated February 2020, George Solter, NBBOE Superintendent, admitted that the reorganization contemplated by the purchase of High-Tech highschool would "create space in North Bergen's elementary schools for the pre-K students."
7. In a statement included in a document dated August 2018, submitted to DEP by Grace Lynch, consultant to North Bergen and NBBOE, Mss. Lynch stated: stated: "NBBOE anticipates all Pre-Kindergarten students, currently housed in Temporary Classroom Units (TCU's), to return to District Elementary Schools. Pre/K and K students from Horace Mann School would continue to populate Lincoln School's Early Childhood Annex."
8. In the Winter 2017 issue of the NB BOE's newsletter "The Communicator," NB Superintendent of Schools George Solter stated "[The purchase of Hi-Tech] could also allow us to reorganize our schools to move kindergarten students into the elementary schools and Pre-K students into the current Early Childhood Center and out of Braddock Park, solving another long standing issue."
9. In a December 1, 2018 email to the Petitioner, North Bergen Superintendent of Schools George Solter wrote "The long-range facilities plan that was approved by the NJDOE includes the Pre Kindergarten students returning to the home schools when grades Seven and Eight move to the west campus."

10. In an e-mail dated April 7, 2017, Bernadette McPherson (NB consultant), wrote to Jack Howard (National Park Service Land Water Conservation Fund): "Using the HCST site, the North Bergen Board of Education will then have the classroom space necessary to accommodate the Pre-K program in their existing facilities and relocate the Pre-K program out of Braddock Park."
11. NB Mayor/Assistant Superintendent of Schools/State Senator Nicholas Sacco is quoted in the Hudson Reporter article, dated Aug. 3, 2001: "This is a different issue. The [plan to build a high school in Braddock Park. . .] would have been permanent. This [placement of TCUs in Braddock Park] is very temporary. As soon as the extension to Lincoln School is built, we will move the students there."
12. In an article, dated Sept. 2017 in nj.com, the North Bergen Schools Superintendent "Solter said the trailers will be removed from the park by Sept. 2019, when a district-wide school reconfiguration plan is to take effect, freeing up classroom space in the district's elementary schools, where preschool classes will be relocated."
13. The Jersey Journal, dated Dec. 7, 2018 "George J. Solter, superintendent of North Bergen's 7,600-student district, said acquiring the older building would allow the township's school system to move seventh, eighth and ninth graders to the new building, freeing up space in its six elementary schools for preschool students."
14. In the Winter, 2020 issue of the NB BOE's newsletter "The Communicator," Superintendent of Schools Solter states: "This plan will allow us to move our older children out of the elementary schools and also provide a permanent home for our preschool children without new construction costs."
15. In NB/NBBOE's second response to DEP dated August 25, 2017, (page 7), they admit that "the [Hudson County School of Technology] site will be vacated within the next two years when the HCST moves to its new location in Secaucus, NJ. Using the HCST site, the North Bergen Board of Education will then have the classroom space necessary to accommodate the Pre-K program in their existing facilities and relocate the Pre-K program out of Braddock Park."

8. Have any declarations against interest been made with respect to the subject matter of this litigation? If so, state:

- a) the identity of the person who made the declaration and the identity of all persons present when the declaration was made;
- b) the date and place of each declaration;
- c) the substance of each declaration;
- d) if the declaration is in writing, attach a copy.

Petitioner asserts that the following declarations against interest have been made. Documents that contain the declarations are produced in an electronic folder entitled "Interrogatory 8."

1. In several lease addendums signed by North Bergen officials, dated November 22, 2011 and June 28, 2013, they declared that they will relocate the pre-school program out of Braddock Park and place the children in permanent facilities.
2. In the 2018 Long Range Facilities Plan filed with the NJDOE, NBBOE declared in a letter, dated August 2018 which was submitted with the LRFP, that "NBBOE anticipates all pre-Temporary Classroom Units ("TCU") to return to district elementary schools."

9. Identify all persons who assisted Petitioner in providing answers to these Interrogatories.

Renée Steinhagen.

10. Identify (see definition above-name and address, etc.) the members of Save Braddock Park-Safe Schools.

Petitioner objects to this question as irrelevant and calls for information that is protected by the First Amendment rights of speech and association and the right to petition government. See NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)

11. Identify (see definition above) the members of the Board of Trustees and officers of New Jersey Conservation Foundation from 2011 to date.

Petitioner objects to this question as irrelevant, and requests information of which he has no knowledge.

12. Identify all members of Save Braddock Park-Safe Schools and the New Jersey Conservation Foundation who provided testimony or provided a written statement at any Scoping Hearing relating to the diversion application filed by the NBBOE and/or North Bergen in regard to the TCU's at Braddock Park. Provide copies of all written statements.

Petitioner objects to this question as irrelevant to this proceeding, and requests information that is public and not within the special purview of Petitioner. He only knows that he himself provided testimony and is a member of Save Braddock Park-Safe Schools. Notwithstanding, Petitioner produces his own written testimony from the 2020 scoping hearing, which can be found in a folder entitled "Interrogatory 12."

13. State your current address and state when you began to occupy your current address.

Robert Walden, 78-55 Boulevard East #15i, North Bergen, N.J. 07047. Commenced residency in June, 2013.

14. Identify all persons employed by NBBOE, Township of North Bergen and/or the Hudson County Superintendent of Education (DOE) with whom the Petitioner communicated during the time period set forth in the Petition. If an oral communication, provide the date and substance of that communication, and any response thereto. If a written communication, attach a copy and any response thereto.

Petitioner objects to this question as overbroad, and redundant insofar as it asks for all OPRA requests sent to NBBOE, North Bergen and the Hudson County DOE, which have been produced in response to Document Request 4. Notwithstanding Petitioner produces 9 emails or email chains that he sent NBBOE Superintendent Solter and several emails he sent to Melissa Pearce or Joseph Zarra found in a folder entitled "Interrogatory 14" and provides the following information regarding his one phone conversation with Melissa Pearce and another in person meeting with her predecessor Joseph Zarra.

On July 17, 2017 Petitioner met with Joseph Zarra at the TCUs, and showed him the terrible and unsafe conditions posed by the pre-school.

On August 22, 2017, Petitioner called Melissa Pearce on the phone about the egress situation at the TCUs; she said she didn't know but that she would get back to Petitioner. She never did, nor did anyone else at Hudson County DOE.

15. Identify all persons employed by NJDEP with whom the Petitioner communicated during the time period set forth in the Petition. If an oral communication, provide the date and substance of that communication and any response thereto. If a written communication, attach a copy and any response thereto.

Petitioner objects to this question as irrelevant and overbroad as overbroad in time and scope since this matter only involves the Hudson County and the NBBOE and Petitioner should not be expected to maintain documents for longer than 5-years. Petitioner will not and cannot produce all his emails sent to DEP officials. He no longer has many of them and they are accessible to NBBOE and Hudson County DOE by filing an OPRA request.

16. Provide a copy of a letter from North Bergen administrators dated 4/18/2011 referred to in Par 27 of the Complaint filed in the DEP action.

This is an improper interrogatory question. Notwithstanding, Petition produces the letter, which is included in a folder entitled "Interrogatory 16."

17. Provide a copy of the 24 month lease dated 10/19/2011 referred to in Par 27 of the

Complaint in the DEP action.

This is an improper interrogatory question and the document requested is in the possession of NB/NBBOE Notwithstanding, Petitioner produces the lease, which is included in a folder entitled "Interrogatory 17."

18. Provide a copy of the First Addendum dated 11/2/2011 referred to in Par 29 of the

Complaint in the DEP action.

This is an improper interrogatory question and the document requested is the possession of North Bergen who signed the lease. Notwithstanding, Petitioner produces the lease which is included in a folder entitled "Interrogatory 17."

19. Provide a copy of the Second Addendum dated 6/25/2013 referred to in Par 31 of the

Complaint in the DEP action.

This is an improper interrogatory question and the document requested is the possession of NB/NBBOE who signed the lease. Notwithstanding, Petitioner produces the Second Addendum, which is included in a folder entitled "Interrogatory 17."

20. Provide all documents which indicate that North Bergen would give Hudson County and the NJDEP monthly progress reports on removal of the trailers referred to in Par 32 of the

Complaint in the DEP action.

This is an improper interrogatory question. Notwithstanding, Petitioner produces the documents requiring monthly progress reports, which is included in a folder entitled "Interrogatory 17."

21. Provide a copy of the 9/11/2014 resolution of Hudson County authorizing its officials to proceed in the Green Acres "major" diversion process referred to in Par 34 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter, and is a public document.

22. Provide a copy of the MOU between, it would appear, Hudson County and North Bergen dated 10/28/2014 referred to in Par 34 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter, and is a public document. Notwithstanding, Petitioner produces the MOU which is included in a folder entitled "Interrogatory 17."

23. Identify the Save Braddock Park member (See definition above) who complained to

North Bergen concerning the proposed diversion plan for Braddock Park referred to in Par 35 of the Complaint in the DEP action. If the complaint was in writing, attach a copy.

Petitioner identifies himself. The complaint is irrelevant to this matter since it involves a different regulatory scheme and is a public document. Notwithstanding, Petitioner does not have the letter he sent North Bergen.

24. Provide a copy of the letter dated 10/31/2014 from Cotter, Pianese and Solter in response to the complaint referred to in Par 35 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter, and is a public document. Notwithstanding, Petitioner produced this document in response to Document Request 29.

25. Provide of copy of the email of Caroline Armstrong dated 11/21/2014 in response to an inquiry made by a member of Save Braddock Park referred to in Par 37 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves failure to comply with DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain through OPRA.

26. Provide a copy of the Resolution of Hudson County dated 11/8/2015 approving the pre-application documents it intended to submit to NJDEP referred to in Par 39 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County.

27. Provide a copy of the pre-application documents filed by Hudson County on 1/26/2016 referred to in Par(s) 39 and 40.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

28. Provide a copy of the letter from Mr. Pianese to DEP dated 3/7/2016 relating to removal of parking lot restriction signs referred to in Par 41 of the Complaint in the DEP action.

Petitioner produces the letter dated 3/7/2016, which can be found in folder entitled "Interrogatories 28".

29. Identify who took and has possession of the photograph dated as late as 1/6/2017 relating

to a restrictive parking sign referred to in Par 42 of the Complaint in the DEP action. Provide a copy of that photograph indicating the date it was taken.

Robert Walden. A copy of the photo is found in a folder entitled "Interrogatory 29."

30. Identify the date and identify all participants in a telephone conference where DEP officials told Hudson County official(s) to commit to removing trailers in Braddock Park by September, 2016 referred to in Par 44 of the Complaint in the DEP action. If the details of this alleged telephone conference were reduced to writing, provide a copy.

Petitioner has no personal knowledge of all the participants in such telephone conference. His knowledge is based on a "Meeting Summary for the File" dated 05-26-16, which can be found in a folder entitled "Interrogatory 30" which states that Caroline Armstrong (DEP), Judeth Yeany (DEP), Martha Sapp (DEP), Sue McCurrie (HC), Wanda Monahan (HC) were in attendance.

31. Provide a copy of the second submission to Green Acres dated 8/19/2016 referred to in Par 45 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

32. Provide a copy of the DEP's second completeness review dated 12/20/2016 referred to in Par 47 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

33. Provide a copy of the document referred to in Par 49 of the Complaint in the DEP action wherein it states that DEP required the lease to be modified with a termination date not later than 8/31/2021.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE and can may obtain from Hudson County, North Bergen or DEP who received it directly.

34. Provide copies of any and all documents where DEP required compensation from 2001, proof of past lease payments from 1/1/2011 to 1/1/2014 and future lease payments, and sign

relating to parking lot be included in the diversion referred to Par(s) 50-52 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

35. State when DEP changed its position relating to the parking lot being part of the diversion and provide any documents relating thereto referred to in Par 52 of the Complaint in the DEP action.

This interrogatory is irrelevant to this matter insofar as it involves DEP regulations, and to the extent that there is a public document reflecting the inclusion of the parking lot as part of the diversion, NBBOE and Hudson County DOE may obtain such document from Hudson County or DEP

36. Provide copies of the Township's third submission to DEP dated 8/25/2017 referred to in Par 53 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

37. Provide copies of all documents relating to the 10/31/2017 notification by DEP to North Bergen relating to the completeness of the third application, and that the replacement property ratio was to be lowered to 3:1 as set forth in Par 54 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

38. Provide a copy of the bond referendum question which was approved by North Bergen voters referred to in Par 56 of the Complaint in the DEP action.

This is an improper interrogatory question. Notwithstanding, Petitioner provided this document in response to Document Request 2.

39. Provide a copy of the letter and notice contained therein dated 6/2/2020 from plaintiffs in the DEP action addressed to the NJ Attorney General and others under the Environmental Rights Act referred to in Par 58 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves

the ERA, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County, DEP or the Attorney General.

40. Provide any document wherein North Bergen asked DEP to restart the diversion process and to seek a permanent diversion referred to in Par 59 of the Complaint in the DEP matter.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

41. Identify all members of Save Braddock Park-Safe Schools and the New Jersey Conservation Foundation who provided testimony via Zoom or provided a written statement at the Scoping Hearing held on 8/11/2020 relating to the amended diversion application referred to in Par(s) 60 and 61 of the Complaint in the DEP action. Provide copies of all written statements.

Petitioner objects to this question as irrelevant to this proceeding, and requests information that is public and not within the special purview of Petitioner. He only knows that he himself provided testimony and is a member of Save Braddock Park-Safe Schools. Notwithstanding, Petitioner produces his own written testimony found in a folder entitled "Interrogatory 12."

42. Provide a copy of the North Bergen resolution passed on 11/4/2020 seeking "to move forward with the restarted major diversion process" referred to in Par 62 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County or DEP.

43. Provide a copy of the letter from the plaintiffs in the DEP action dated 11/10/20 referring to a second notice under the ERA referred to in Par(s) 64 and 65 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves the ERA, and is a public document that NBBOE and Hudson County DOE may obtain from Hudson County, DEP or the Attorney General.

44. Provide a copy of the email dated 11/25/2018 from County Counsel Vincitore to plaintiffs referred to in Par 67 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it

involves the DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from its own counsel.

45. Provide a copy of the North Bergen email dated 4/14/2020 with attached documents referred to in Par 68 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves the DEP regulations, and is a public document that NBBOE and Hudson County DOE may obtain from NB.

46. Identify the member of Save Braddock Park who sent an OPRA request to North Bergen on 3/20/2021 [the date is actually 03-21-2021] referred to in Par 69 of the Complaint in the DEP matter. Provide a copy of the OPRA request and any response by Hudson County.

Robert Walden. Petitioner produces the OPRA Request and Response, which is included in a folder entitled "Interrogatory 46" and Document Request 4.

47. Provide a copy of the letter dated 3/19/2021 from plaintiffs to DEP with attached report by Robert Walden referred to in Par(s) 72 and 73 of the Complaint in the DEP action.

This is an improper interrogatory question, it is irrelevant to this matter insofar as it involves the DEP regulations, and is a public document. Notwithstanding, Petitioner produces the report that can be found in a folder entitled "Interrogatory 47." Petitioner does not have the letter.

48. Provide a copy of the OPRA request to NJDOE referred to in Par 75 of the Complaint in the DEP action and the response of NJDOE dated 7/15/2019.

This is an improper interrogatory question, and it is irrelevant to this matter insofar as it involves the DEP regulations. Notwithstanding, Petitioner produces the OPRA request that can be found in a folder entitled "Interrogatory 48" And "Document 4."

CERTIFICATION

I hereby certify that the foregoing answers to Interrogatories are true and that I am
authorized to certify these answers on behalf of, and as the act and deed of, the petitioner. I am
aware that if any of the foregoing statements made by me are willfully false, I am subject to
punishment.

/s/Renée Steinhagen
Renée Steinhagen

Dated: November 7, 2023

Renée Steinhagen, Esq.
Attorney Id. 38691989
NEW JERSEY APPLESEED
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23 James Street
Newark, N.J. 07102
(973)735-0523
renee@njappleseed.org
Counsel for Petitioner Robert Walden

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ROBERT WALDEN	:	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY
Petitioner	:	
vs.	:	AGENCY DOCKET NO. 5-1/23
BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN, HUDSON COUNTY and HUDSON COUNTY DEPARTMENT OF EDUCATION	:	OAL Docket No. EDU 03856-23
Respondents	:	REQUEST TO PRODUCE DOCUMENTS
<hr/>	X	

Petitioner Robert Walden (hereinafter "Petitioner"), hereby demands that Respondent North Bergen Board of Education (hereinafter "NBBOE") respond to the following Request to Produce Documents in accordance with the Definitions provided herein within the time prescribed by applicable Rules.

New Jersey Appleseed

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: November 10, 2023

Exhibit E

DEFINITIONS

1. "Document" and "documents" shall mean all written, recorded or graphic matters whatsoever and all nonidentical copies thereof, including but not limited to papers, books, records, letters, photographs, tangible things, correspondence, communications, telegrams, newspaper articles, emails, text messages (written or verbal), cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, records of telephone or other conversations, statements, summaries, opinions, studies, analysis, evaluations, contracts agreements, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, guidelines, charts, manuals, brochures, publications, schedules, price lists, customer lists, subscription lists, journals, statistical records desk calendars, appointment books, diaries, lists tabulations, newsletters, drafts, proofs, galleys or other pre-publication forms of materials, telephone lists or indexes, Rolodex indexes, computer printouts, data processing program libraries, data processing input or output, microfilm, microfiche, purchase orders, receipts, books of account, records or invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, and notes or drafts relating to any of the foregoing, all things similar to the foregoing, any other documents as defined or encompassed by Rule 4:18 that you can obtain such by request or that you have a legal right to bring within your possession.

2. If any request for documents is deemed to call for the production of privileged or work production materials and such privilege or work product is asserted, provide

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege; and
- (c) a brief statement of the document, including: date, number of pages, attachments, author, and subject matter.

3. If any document requested herein was at one time in existence, but has been lost,

discarded or destroyed, identify each such document and provide the following information:

- (a) the date or approximate date that the document was lost, discarded or destroyed;
- (b) the circumstances and manner in which it was lost, discarded or destroyed; and
- (c) the reason(s) for disposal of the document.

3. This Request to Produce Documents is continuing in nature and requires the NBBOE to provide supplemental documents and/or responses if, prior to trial, NBBOE or its representatives should obtain additional or supplemental documents which are responsive to this Request.

DOCUMENTS TO BE PRODUCED

1. Please provide any documents indicating or constituting NBBOE's request for approval from Hudson County Department of Education ("Hudson County DOE") with respect to NBBOE's placement of temporary classroom units ("TCUs") in Braddock Park to house North Bergen's pre-school program for the school year 2001-2002.

2. Please provide any documents indicating or constituting NBBOE's annual request for approval from Hudson County DOE with respect to NBBOE's continuing use of the TCUs to house North Bergen's pre-school program from the school year 2002-2003 through the school year 2023-2024.

3. Please provide any documents that NBBOE provided to Hudson County DOE that indicate, constitute or establish that NBBOE "demonstrate[d to Hudson County DOE] satisfactory progress toward the provision of permanent facilities" with respect to housing North Bergen's pre-school program.

4. Please provide all documents related to the annual inspections, i.e., Health and Safety Evaluation of School Building Checklist, NBBOE is required to perform, pursuant to N.J.A.C. 6A:26-6.1 & 8.1 regarding the TCUs located in Braddock Park from 2001 to date.

5. Please provide all documents indicating or constituting NBBOE's transmission of their annual Health & Safety inspections to Hudson County DOE regarding the TCUs located in Braddock Park from 2001 to date.

6. Please provide all documents concerning soil, health and environmental testing conducted at the site of the North Bergen Preschool program, both prior to and since the 2001 installation of the TCUs in Braddock Park.

7. Please provide all leases NBBOE has entered into with any company to provide the TCUs, and any guarantees or other warranties provided the NBBOE with respect to the TCUs.

8. Please provide all RFP/RFQs issued by NBBOE and/or North Bergen, on behalf of the BOE, to build a permanent pre-school since 2012, and all responses thereto.

CERTIFICATE OF AUTHENTICITY

I hereby certify that, to the best of my knowledge, the documents and other records supplied pursuant to this Notice to Produce are true and correct copies of all the documents requested that are in the possession, custody and control of Respondent Hudson County DOE.

Dated: November 2023

/s/ _____

Renée Steinhagen, Esq.
Attorney Id. 38691989
NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.
23 James Street
Newark, N.J. 07102
(973)735-0523
renee@njappleseed.org
Counsel for Petitioner Robert Walden

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ROBERT WALDEN	:	BEFORE THE COMMISSIONER OF EDUCATION OF NEW JERSEY
Petitioner	:	
vs.	:	AGENCY DOCKET NO. 5-1/23
BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH BERGEN, HUDSON COUNTY and HUDSON COUNTY DEPARTMENT OF EDUCATION	:	OAL Docket No. EDU 03856-23
Respondents	:	REQUEST TO PRODUCE DOCUMENTS
<hr/>	X	

Petitioner Robert Walden (hereinafter "Petitioner"), hereby demands that Respondent Hudson County Department of Education (hereinafter "Hudson County DOE") respond to the following Request to Produce Documents in accordance with the Definitions provided herein within the time prescribed by applicable Rules.

New Jersey Appleseed

By: /s/ Renée Steinhagen
Renée Steinhagen

Dated: November 10, 2023

Exhibit F

DEFINITIONS

1. "Document" and "documents" shall mean all written, recorded or graphic matters whatsoever and all nonidentical copies thereof, including but not limited to papers, books, records, letters, photographs, tangible things, correspondence, communications, telegrams, newspaper articles, emails, text messages (written or verbal), cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports, records of telephone or other conversations, statements, summaries, opinions, studies, analysis, evaluations, contracts agreements, jottings, agendas, bulletins, notices, announcements, advertisements, instructions, guidelines, charts, manuals, brochures, publications, schedules, price lists, customer lists, subscription lists, journals, statistical records desk calendars, appointment books, diaries, lists tabulations, newsletters, drafts, proofs, galleys or other pre-publication forms of materials, telephone lists or indexes, Rolodex indexes, computer printouts, data processing program libraries, data processing input or output, microfilm, microfiche, purchase orders, receipts, books of account, records or invoices reflecting business operations, all records kept by electronic, photographic or mechanical means, and notes or drafts relating to any of the foregoing, all things similar to the foregoing, any other documents as defined or encompassed by Rule 4:18 that you can obtain such by request or that you have a legal right to bring within your possession.

2. If any request for documents is deemed to call for the production of privileged or work production materials and such privilege or work product is asserted, provide

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege; and
- (c) a brief statement of the document, including: date, number of pages, attachments, author, and subject matter.

3. If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify each such document and provide the following information:

- (a) the date or approximate date that the document was lost, discarded or destroyed;

- (b) the circumstances and manner in which it was lost, discarded or destroyed; and
- (c) the reason(s) for disposal of the document.

3. This Request to Produce Documents is continuing in nature and requires the Hudson County DOE to provide supplemental documents and/or responses if, prior to trial, Hudson County DOE or its representatives should obtain additional or supplemental documents which are responsive to this Request.

DOCUMENTS TO BE PRODUCED

1. Please provide any documents indicating or constituting Hudson County DOE's approval of the placement of temporary classroom units ("TCUs") in Braddock Park to house North Bergen's pre-school program for the school year 2001-2002.

2. Please provide any documents indicating or constituting Hudson County DOE's annual approval of the use of the TCUs to house North Bergen's pre-school program from the school year 2002-2003 through the school year 2023-2024.

3. Please provide any documents that indicate, constitute or establish that North Bergen Board of Education ("NBBOE") "demonstrate[d to Hudson County DOE] satisfactory progress toward the provision of permanent facilities" with respect to housing North Bergen's pre-school program.

4. Please provide all documents related to the annual inspections Hudson County DOE is required to perform, pursuant to N.J.A.C. 6A:26-8.1 regarding the TCUs located in Braddock Park from 2001 to date.

CERTIFICATE OF AUTHENTICITY

I hereby certify that, to the best of my knowledge, the documents and other records supplied pursuant to this Notice to Produce are true and correct copies of all the documents requested that are in the possession, custody and control of Respondent Hudson County DOE.

Dated: November 2023

/s/