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<b>MARIA JUAREZ, on her own behalf</b>	:	SUPERIOR COURT OF NEW JERSEY
<b>and on behalf of her minor child, A M-J;</b>	:	CHANCERY DIVISION:
<b>JULIO HERRERA VIVAR, on his own</b>	:	GENERAL EQUITY
<b>behalf and on behalf of his minor child,</b>	:	MIDDLESEX COUNTY
<b>O H-L; MARIA CHIQUITO on her own</b>	:	
<b>behalf and on behalf of her minor child,</b>	:	
<b>D S-C; LILIA FERNANDEZ,</b>	:	Docket No.
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	<b>COMPLAINT</b>

**NEW BRUNSWICK BOARD OF  
EDUCATION**

Defendant

And

**ST. PETER'S CATHOLIC CHURCH  
OF NEW BRUNSWICK, NEW  
JERSEY; CATHOLIC DIOCESE OF  
METUCHEN**

Defendants

- 
1. This action seeks judicial relief in equity for an order to enforce a restrictive covenant that runs with the land at a property commonly known as 165 Somerset Street, New Brunswick,

New Jersey, the former St. Peter's High School and the current Lincoln Annex School, an elementary public school within the New Brunswick public school system. The covenant requires the property to be maintained as a public school or for public administration. Defendant New Brunswick Board of Education, subject to the covenant, is preparing to sell the property for a use in violation of the covenant. This action also asserts multiple violations of the plaintiffs' due process rights and procedural violations in violation of regulatory and statutory authority, as well as under the state Constitution, based on the manner in which the defendant Board of Education has made its decisions to date. The plaintiffs are parents and school children currently enrolled in the Lincoln Annex – in addition to being resident taxpayers – as well as a resident of New Brunswick who is concerned about the misuse of public funds.

2. Plaintiff MARIA JUAREZ is a resident of New Brunswick residing at 264 Drift Street, New Brunswick, New Jersey and the mother of A. M-J, a student enrolled in the sixth grade at Lincoln Annex. Ms. Juarez opposes the proposed sale and demolition of the Lincoln Annex School and the transfer of her child to a temporary school space because it would diminish the public education her child is currently receiving and risk the benefits her child receives as part of the gifted and talented program.
3. Plaintiff A. M-J, whose full name is withheld to preserve the student's privacy, is a minor, a resident of New Brunswick and a sixth grade student at Lincoln Annex. The student is enrolled within the school's Gifted and Talented program. Plaintiff A. M-J opposes the

proposed sale and demolition of the Lincoln Annex School and wants to finish schooling through eighth grade at Lincoln Annex in its current location.

4. Plaintiff JULIO HERRERA VIVAR is a resident of New Brunswick residing at 56 Joyce Kilmer Drive, New Brunswick, New Jersey and the father of O. H-L, a student enrolled in the sixth grade at Lincoln Annex. Mr. Herrera Vivar opposes the proposed sale and demolition of the Lincoln Annex School and the transfer of his child to a temporary school space because it would diminish the public education his child is currently receiving and risk the benefits his child is receives as part of the gifted and talented program.
5. Plaintiff O. H-L, whose full name is withheld to preserve the student's privacy, is a minor, a resident of New Brunswick and a sixth grade student at Lincoln Annex. The student is enrolled in the school's Gifted and Talented program. This student opposes the proposed sale and demolition of the Lincoln Annex School and wants to finish schooling through eighth grade at Lincoln Annex in its current location.
6. Plaintiff MARIA CHIQUITO is a resident of New Brunswick residing at 63 Louis Street, New Brunswick, New Jersey and the mother of a student enrolled in the fifth grade at Lincoln Annex. Ms. Chiquito opposes the proposed sale and demolition of the Lincoln Annex School and the transfer of her child to a temporary school space because it would diminish the public education her child is currently receiving and pose additional hardships on her child in the transportation to and from a temporary school setting.
7. Plaintiff D. S-C, whose full name is withheld to preserve the student's privacy, is a minor, a resident of New Brunswick and a fifth grade student at the Lincoln Annex School. This

student opposes the proposed sale and demolition of Lincoln Annex School and wants to finish schooling through the eighth grade at Lincoln Annex in its current location.

8. Plaintiff LILIA FERNANDEZ is a resident of, and a taxpayer in, New Brunswick residing at 11 Cotter Drive, New Brunswick, New Jersey. Ms. Fernandez opposes the proposed sale and demolition of the Lincoln Annex School because she supports public education, believes the education provided currently in the Lincoln Annex is superior to any temporary school space, and opposes the waste of public taxpayer funds.
9. Defendant NEW BRUNSWICK BOARD OF EDUCATION (hereafter “Board of Education”) is a body corporate organized pursuant to N.J.S.A. §18A:10-1 *et seq.*, located at 268 Baldwin Street, New Brunswick, New Jersey. The Board of Education manages and controls all public schools in New Brunswick.
10. Defendant ST. PETER’S CATHOLIC CHURCH OF NEW BRUNSWICK, NEW JERSEY (hereafter “St. Peter’s Catholic Church”) is included in this action as a necessary party. As the grantor to the deed of the property at 165 Somerset Street, New Brunswick, New Jersey, it has a potentially cognizable legal interest in said property. It is located at 94 Somerset Street, New Brunswick, New Jersey.
11. Defendant DIOCESE OF METHUCHEN (hereafter “Diocese”) is included in this action as a necessary party. The deed conveying the property at 165 Somerset Street, New Brunswick, New Jersey creates a cognizable legal interest in said property in both the restrictive covenant established in the deed of sale and the grant to it of the option to have

a right of first refusal fifty years after the effective date of the deed. The Diocese is located at 146 Metlars Lane, Piscataway, New Jersey.

12. The Lincoln Annex Public School has been opened since September 2016 as an elementary school under the management and supervision of defendant Board of Education. On information and belief, its initial enrollment was approximately 650 students and in the 2019-2020 school year it enrolled approximately 760 students of which approximately 80% are economically disadvantaged qualifying for subsidized (free) lunch and or other public subsidies. Ninety-four percent of all students are of Latino background.
13. The Lincoln Annex is considered one of the best performing public schools in the district.
14. On or about October 31, 2013 defendant Board of Education purchased the former St. Peter's Catholic School from St. Peter's Catholic Church for the sum of \$7,400,000 pursuant to a deed recorded on November 13, 2013 in the Middlesex County Clerk's office, Deed Book 06518, page 0704. The former St. Peter's Catholic School was located at 165 Somerset Street, New Brunswick, New Jersey and recorded as Block 51, Lot 2.01 under the tax map of the City of New Brunswick.
15. The deed recorded on November 13, 2013 imposed clear restrictions on the use of the land, via covenants that run with the land as imposed by defendant St. Peter's Catholic Church as grantor, which was agreed to by defendant Board of Education, as grantee. These covenants directed that defendant Board of Education, its successors and assigns, shall not:

- a) By advertising, promotion, signage or other means imply or suggest, directly or indirectly, that the property or any improvement thereon or use thereof, is owned, controlled, operated, managed, supervised, sanctioned or approved by Grantor; or
- b) Operate an abortion clinic or medical service type facility which include the provision of abortion services or counseling with promotes and/or encourages individuals to obtain abortions; or
- c) Utilize the property as an office or other facility for a political action group or similar organization of which the principal teaching thereof is the advocacy of abortion or right of free choice of an individual to elect an abortion; or
- d) Operate an adult book store, x-rated movie theater, or similar establishment engaged in the showing or sale of videos, books, novelties or the like, commonly known as adult entertainment; or
- e) Operate a topless bar or other facility engaged in what is commonly known as adult entertainment; or
- f) Operate an establishment engaged in the sale or use of drug paraphernalia, the sale or use of guns or weapons, gambling, massage parlor, prostitution or anything that is materially and significantly contrary to the tenets of the Catholic Church.

16. On or about January 13, 2014 defendants Board of Education and St. Peter's Catholic Church executed a corrective deed for the property at 165 Somerset Street, New Brunswick, New Jersey. This corrective deed was recorded on January 27, 2014 in the Middlesex County Clerk's Office, Book 06539, page 0236.

17. The corrective deed stated that its purpose was to delete paragraphs (a) through (f) above in paragraph 15 of this complaint and add the following language: “Grantee acknowledges and agrees that the Property will be conveyed subject to the following restriction: The Property shall be used solely for public education purposes or for public administration offices for no less than fifty (50) years after the date of the conveyance, after which time the Diocese of Metuchen shall have the right of first refusal to re-acquire the Property.”

18 On information and belief, from approximately January 2014 to August 2016 defendant Board of Education spent approximately \$15,000,000 to renovate the building at 165 Somerset Street and create the Lincoln Annex Public School. The Lincoln Annex School opened in September 2016 for third to seventh graders.

19. On or about June 3, 2019, New Brunswick Development Corporation, Robert Wood Johnson Barnabas Health (hereafter “RWJ Barnabas”) and Rutgers Cancer Institute of New Jersey (hereafter “Rutgers Cancer Institute”) announced plans to build a new cancer institute at a cost of \$750,000,000. Although none of the entities promoting the plans for a new cancer institute identified a site for the facility in public, on information and belief, as of May 2019 representatives of Rutgers Cancer Institute and New Brunswick Development Corp. had identified the Lincoln Annex school as the site they targeted for acquisition.

20. On information and belief, in June 2019 RWJ Barnabas offered defendant Board of Education to purchase the Lincoln Annex school. As part of the negotiated deal, RWJ Barnabas offered to pay for the construction of a new school at a separate site, initially 131

Jersey Avenue, New Brunswick, New Jersey. Defendant Board of Education accepted and approved the offer without following any of its mandatory public hearing process procedures.

21. On or about July 10, 2019, at a meeting of the New Brunswick neighborhood group Proyecto Esperanza (Esperanza Neighborhood Project) plaintiff Maria Chiquito heard for the first time publicly Mayor James Cahill state and explain that Lincoln Annex School would be sold in order to build a new cancer center and that a replacement school would be built thereafter within 3 – 5 years for the school's students.

22. At a public meeting of the Board of Education on September 17, 2019, officials of the Board of Education denied that any formal offer to purchase the Lincoln Annex was made. When asked who specifically was having conversations with RWJ Barnabas about the sale of Lincoln Annex Board of Education President Diana Solis refused to comment.

23. At a public meeting of the Board of Education on October 15, 2019, President Diana Solis stated there was no official offer to sell Lincoln Annex School.

24. On information and belief, on or about October 24, 2019, RWJ Barnabas issued tax exempt and taxable bonds for \$574,000,000 through the New Jersey Health Care Facilities Financing Authority. The new cancer institute is repeatedly referenced in the issuing documents by RWJ Barnabas and Rutgers Cancer Institute.

25. At a public meeting of the Board of Education on November 19, 2019, in response to members of the public and residents of New Brunswick speaking in opposition to the sale of Lincoln Annex who asked if the students at Lincoln Annex would be transferred to a



temporary swing site at 40 Van Dyke Avenue in New Brunswick for the following school year, President Diana Solis stated again that no proposals for the sale had been made at that time.

26. On or about November 25, 2019, Superintendent for the Board of Education, Aubrey Johnson, released a public statement that referred to the sale of Lincoln Annex as “speculation” and that “no agreement exists regarding the sale of Lincoln Annex School property to facilitate the construction of a cancer institute.”

27. On February 3, 2020, Mayor James Cahill and representatives of New Brunswick Development Corporation announced plans to sell and demolish Lincoln Annex School in order to facilitate the construction of a new cancer pavilion. It was stated then that RWJ Barnabas would build a new replacement school for the students at Lincoln Annex that would take at a minimum, three years. Until then, however, they announce that the students would be attending school at the swing space already decided by the school district at 40 Van Dyke Avenue, New Brunswick.

28. On information and belief, in or around February 2020 various community residents and community organizations in New Brunswick formed the Coalition to Defend Lincoln Annex and began to encourage opposition to defendant’s plan to sell and demolish the Lincoln Annex School.

29. On information and belief, Professor Juan Gonzalez, a professor at Rutgers University and a resident of New Brunswick wrote to Reverend James Chiecchio, Bishop of

Metuchen, on behalf of the Coalition to Defend Lincoln Annex to request a meeting with the parents who intended to ask the Catholic Church to intercede and invoke its deed restriction to maintain the school for the 50 year period named in the deed of sale.

30. Plaintiff Juarez and other community residents signed a similar letter issued to the Bishop of Metuchen requesting a meeting to discuss their concerns and the deed restriction.

31. On February 27, 2020, the Diocese of Metuchen issued a public statement, available on its website, which states in pertinent part: “For decades the diocese and the parishes in the City of New Brunswick have maintained a special connection to the immigrant community and have worked closely with them to ensure equity in all aspects of life, including education. . . . We have heard, indirectly, of the New Brunswick Board of Education’s plans and have contacted the City of New Brunswick, and while we have not yet received any formal proposal or inquiries from them, we expect that we will have an opportunity to listen to them and learn more about their plans. . . . We have deep respect for all people involved – immigrant families, the Board of Education, the school community, our pastors, the coalition, and Mayor Cahill – and are open to beginning the dialogue.”

32. On information and belief, in March 2020 several meeting dates between Diocesan officials and Professor Juan Gonzalez are proposed and postponed by the Diocese.

33. On information and belief, Professor Gonzalez notified Bishop Chiecchio of the urgency of the matter given that defendant Board of Education was proceeding to take all necessary steps to quickly consummate the sale of Lincoln Annex School. Professor

Gonzalez communicated that the Coalition to Defend Lincoln Annex would commence to send their requests for church intervention directly to Cardinal Joseph Tobin, Archbishop of Newark and to Pope Francis in Rome.

34. To date, Catholic Church officials of the diocese have not granted any meetings to any of the Plaintiffs, the parents of the children at Lincoln Annex or with Professor Juan Gonzalez.

35. On February 25, 2020, at a regular public meeting of the defendant Board of Education the published agenda for the meeting included a presentation by the New Brunswick Development Corporation and the Rutgers University Cancer Institute regarding Lincoln Annex. On information and belief, members of the Board of Education represented to parents and taxpayers at the meeting that the Board of Education would not be voting on the proposed sale of Lincoln Annex at the meeting. For the first time parents were advised, along with the general public at large, about defendant Board of Education's plans to sell the Lincoln Annex School to RWJ Barnabas, who would demolish the school and erect a new cancer pavilion in its place. Parents and the public in attendance, including the plaintiffs, were told that a replacement school would be constructed within 3 - 5 years during which time the students at Lincoln Annex would be sent to the temporary swing space at 40 Van Dyke Avenue. This temporary swing space is a warehouse that was not designed nor built to be an educational facility.

36. Members of the public in attendance demanded to speak at the public hearing, however, Board President Diane Solis prevented their participation and comments by limiting the number of people who could speak. Instead of following prior meeting protocol offering the public and parents a chance to respond to the news that their children's school would be closing, President Solis summarily adjourned the meeting without explanation. whereupon members of the public, including plaintiffs Juarez, Chiquito and Fernandez left for their homes believing the public meeting to have been adjourned. Approximately, half an hour later members of defendant Board of Education reconvened without announcing to the public that they would do so before an empty auditorium and approved a resolution calling for an amendment to the school district's Long-Range Facilities Plan calling for the sale and closing of Lincoln Annex and its replacement at a new site to be determined.

37. On March 24, 2020, during a public meeting with remote participation due to COVID-19, defendant Board of Education passed a resolution to approve a Long-Range Facilities Plan to shut down the Lincoln Annex School and replace it with a site to be identified. The Long-Range Facilities Plan was not made public prior to or at this meeting for review by community residents or parents. A selection committee convened by the Board of Education without announcement, solicitation of interested parents, or identification of the members of the committee is presumably identifying the site for a replacement school but plaintiffs, parents and the public have not received any information nor been given a meaningful chance to weigh-in. Plaintiffs have echoed the concern of many parents that the proposed replacement sites would be wholly unacceptable to them given the

independent assessments of the existence of toxics and contamination in both proposed locations. There have been no concrete representations made nor plans shared with the plaintiffs, parents or the public for remediation of the sites and whether it would meet the optimal environmental and health standards for an elementary school facility.

38. On April 28, 2020, during a public meeting with remote participation, defendant Board of Education approved five resolutions regarding Lincoln Annex School. Among other things, the resolutions included the authorization of the disposal of the current site of Lincoln Annex School, authorization of the acquisition of a site at 50 Jersey Avenue in New Brunswick as a replacement site for the Lincoln Annex, authorization of the submission of all necessary plans to acquire the new site to the New Jersey Department of Education, and authorization of the execution of an “exchange agreement” with New Brunswick Development Corporation regarding the new, replacement site. Defendant Board of Education yet again did not make its Long-Range Facilities Plan available for public review.

39. On information and belief the Board of Education did not submit its Long-Range Facilities Plan to the New Brunswick Planning Board for review and approval.

40. On information and belief, the purported creation, deliberation and approval of a Long-Range Facilities Plan in only two months’ time is extraordinarily short and limits the meaningful participation of community members whose lives will be directly affected by a decision of this magnitude. Other school districts engage in similar processes for school

property sales and acquisitions that take at least one year's time in order to comply with New Jersey law and ensure meaningful participation from the community at large.

41. On information and belief, as of early May 2020 the New Jersey Department of Education has received defendant Board of Education's application to amend its Long-Range Facilities Plan. Review and approval of that application is pending.

42. From the beginning of the academic school year in September 2019 defendant Board of Education in public, repeatedly and deliberately refused to reveal its plans to close, sell and demolish the Lincoln Annex School and to send its students to a temporary warehouse facility for at least three years until a new school could be built.

43. The complete lack of transparency, outright misrepresentation and lying, denial of deliberations concerning the sale of the Lincoln Annex School, acceleration of its otherwise public deliberations during the COVID-19 pandemic when public participation is limited, refusal to make available its Long-Range Facilities Plan and the creation, selection and identity of members of the select committee chosen to support the Board of Education's plans reflect a clear pattern of intentional misrepresentations, avoidance of due diligence, and bad faith dealings with parents and students at Lincoln Annex School and with the city's residents as a whole.

44. The decisions and actions of defendant Board of Education to date constitute a unilateral decision to change the terms of the restrictive covenant that runs to the benefit of the public in general and to the Lincoln Annex school community in particular.

45. On information and belief, the temporary school space designated by the Board of Education to house the 760 students from Lincoln Annex School currently includes high school students in the facility an age group that is wholly inappropriate in an educational setting to be mixed with elementary school age children. For many parents, the location may be temporary, however, the decision to relocate students means that their children will finish their elementary and middle school years at a swing school site that was never designed to be a school building.

46. The decisions and actions of defendant Board of Education to unilaterally sell the property at 165 Somerset Street to RJW Barnabas in violation of the restrictive covenant deprives plaintiffs A. M-J, O. H-L, and D. S-C of the opportunity to finish their elementary schooling at the Lincoln Annex, enjoy the benefits of the gifted and talented program at the school and jeopardizes their receipt of a quality education in New Brunswick.

47. The decisions and actions of defendant Board of Education to unilaterally sell the property at 165 Somerset Street to RJW Barnabas in violation of the restrictive covenant deprives plaintiffs Juarez, Herrera Vivar, and Chiquito the ability to secure quality public education for their children at a convenient location in their neighborhood. The material and intentional omission by defendant Board of Education in neglecting to notify parents that their young children would be spending the next 3-5 years of their schooling in the same building with high school age students jeopardizes the safety of their children.

48. The decisions and actions of defendant Board of Education to unilaterally sell the property at 165 Somerset Street to RJW Barnabas in violation of the restrictive covenant

is an unnecessary waste of public funds with no immediate benefits for school children and the public at large.

### **FIRST COUNT**

#### **(Violation of the Restrictive Covenant that Benefits Plaintiffs and the Public)**

49. Plaintiffs repeat and incorporate the allegations of the preceding paragraphs as if fully set forth herein.

50. The sale of the property at 165 Somerset Street, currently the Lincoln Annex School, to an entity with plans to construct a cancer research institute is a violation of the restrictive covenant that runs with the land and that limits its use to a public school or public administration for a period of fifty years and as such, constitutes an unlawful conveyance of school property.

51. Defendant Board of Education's decision to sell the land and eliminate its use as a public school facility is a violation of property law in New Jersey which can be redressed by the inherent equitable powers of this Court in the public interest and on behalf of the intended beneficiary of the covenant, which is public school children and the school community.



## SECOND COUNT

### (Violation of Procedural Due Process under the 14<sup>th</sup> Amendment to the U.S. Constitution)

52. Plaintiffs Juarez, A. M-J, Herrera Vivar, O. H-L, Chiquito and D. S-C repeat and incorporate the allegations of the preceding paragraphs as if fully set forth herein.

53. Plaintiffs Juarez, A. M-J, Herrera Vivar, O. H-L, Chiquito and D. S-C have a fundamental property interest in the right to a publicly-funded equal educational opportunity. Defendant Board of Education may not take away Plaintiffs' rights without adherence to the minimum procedures required by the Fourteenth Amendment to the United States Constitution.

54. The New Jersey Administrative Code (N.J.A.C. 6A:26 *et seq.*) describes procedures governing the submission of a Long-Range Facilities Plan ("LRFP") for public education facilities. The Code provides that "no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and approved by the Commissioner." N.J.A.C. 6A:26-2.1(b). Each school district is required to "submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated . . . to afford the planning board(s) the opportunity to prepare and submit findings to the school district." N.J.A.C. 6A:26-2.1(c). Furthermore, "no LRFP shall be considered complete until the comments have been received from the planning board(s) or until 45 days have passed from the planning board(s) receipt of the LRFP."

*Id.*

55. When, as here, a school facility is slated to be replaced, the LRFP must contain “a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility.” N.J.A.C. 6A:26-2.2(15). The proposed LRFP must also contain ““preliminary data to support each proposed new school facility or addition, renovation to an existing school facility, and the removal from the school district's inventory of school facilities for each school facility to be sold, converted to non-school facility use, or razed.” N.J.A.C. 6A:26-2.2(16). The New Jersey Administrative Code also describes procedures for the closure of school facilities.

56. Inadequate or deficient notice, procedures, and decision-making by defendant Board of Education deprived, violated and, if effectuated, will continue to violate New Jersey law and Plaintiffs’ due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

57. Defendant Board of Education has repeatedly denied plaintiffs Juarez, A. M-J, Herrera Vivar, O. H-L, Chiquito, and D. S-C an opportunity to be heard on the plans to close and demolish the Lincoln Annex School by deliberately misleading them about the timing and nature of its plans for the school, of the site for the construction of a replacement school, and of the plans to provide an appropriate setting in a temporary school facility in violation of Fourteenth Amendment of the United States Constitution.

58. Defendant Board of Education’s deprivation of plaintiffs’ due process rights will substantially diminish the quality of the public school education the plaintiffs are

receiving, including the loss of benefits associated with the gifted and talented program at the Lincoln Annex School. Defendant Board of Education's unlawful acts will also cause additional hardships in transportation to a temporary school setting.

59. If not enjoined by the Court, defendants will proceed with the sale and closure of the Lincoln Annex School, in derogation of the rights of plaintiffs, resulting in irreparable injury.

### **THIRD COUNT**

**(Violations of Procedural Due Process under the New Jersey Constitution, N.J.S.A. Const. Art. 1, ¶ 1)**

60. Plaintiffs Juarez, A. M-J, Herrera Vivar, O. H-L, Chiquito and D. S-C repeat and incorporate the allegations of the preceding paragraphs as if fully set forth herein.

61. Plaintiffs have a fundamental interest and property interest in the right to a publicly-funded equal educational opportunity. Defendant Board of Education may not take away plaintiffs' rights without adherence to the minimum procedures required by Article 1, Section 1 of the New Jersey Constitution.

62. The New Jersey Administrative Code (N.J.A.C. 6A:26 *et seq.*) describes procedures governing the submission of a Long-Range Facilities Plan ("LRFP") for public education facilities. The Code provides that "no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and

approved by the Commissioner.” N.J.A.C. 6A:26-2.1(b). Each school district is required to “submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated . . . to afford the planning board(s) the opportunity to prepare and submit findings to the school district.” N.J.A.C. 6A:26-2.1(c). Furthermore, “no LRFP shall be considered complete until the comments have been received from the planning board(s) or until 45 days have passed from the planning board(s) receipt of the LRFP.”

*Id.*

63. When, as here, a school facility is slated to be replaced, the LRFP must contain “a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility.” N.J.A.C. 6A:26-2.2(15). The proposed LRFP must also contain ““preliminary data to support each proposed new school facility or addition, renovation to an existing school facility, and the removal from the school district's inventory of school facilities for each school facility to be sold, converted to non-school facility use, or razed.” N.J.A.C. 6A:26-2.2(16). The New Jersey Administrative Code also describes procedures for the closure of school facilities.

64. Inadequate or deficient notice, procedures, and decision-making by defendant Board of Education deprived, violated and, if effectuated, will continue to violate New Jersey law and plaintiffs’ due process rights guaranteed by Article 1, Section 1 of the New Jersey Constitution.

65. Defendant Board of Education has repeatedly denied plaintiffs Juarez, A. M-J, Herrera Vivar, O. H-L, Chiquito and D. S-C an opportunity to be heard on the plans to close and demolish the Lincoln Annex School by deliberately misleading them about the timing and nature of its plans for the school, of the site for the construction of a replacement school, and of the plans to provide an appropriate setting in a temporary school facility in violation of Article 1, Section 1 of the New Jersey Constitution.

66. Defendant Board of Education's deprivation of plaintiffs' due process rights will substantially diminish the quality of the public school education the plaintiffs are receiving, including the loss of benefits associated with the gifted and talented program at the Lincoln Annex School. Defendant Board of Education's unlawful acts will also cause additional hardships in transportation to a temporary school setting.

67. If not enjoined by the Court, defendants will proceed with the sale and closure of the Lincoln Annex School, in derogation of the rights of plaintiffs, resulting in irreparable injury.

#### **FOURTH COUNT**

**(Violations of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.)**

68. Plaintiffs repeat and incorporate the allegations of the preceding paragraphs as if fully set forth herein.

69. On February 25, 2020, at a public meeting of defendant Board of Education, members of the Board of Education shared a published agenda that only spoke of a proposal for the sale of Lincoln Annex, which the community was informed of for the first time. The agenda did not include a vote on the proposed sale of Lincoln Annex. In addition to the exclusion of a vote on the agenda, members of the Board of Education explicitly and intentionally misrepresented to parents and taxpayers at the meeting that there would be a vote on the proposed sale of Lincoln Annex that day.

70. Upon hearing for the first time of the proposed sale, plaintiffs and members of the public in attendance at the public meeting demanded to speak and were prevented from doing so by defendant Board of Education.

71. Upon noting Plaintiffs and community members' disagreement with defendant Board of Education's announcement, defendant Board of Education then summarily adjourned the public meeting without explanation nor allowing plaintiffs and the public an opportunity to be heard.

72. After plaintiffs and members of the public left the meeting, defendant Board of Education reconvened the public meeting without announcing to the public that they would do so and without any members of the public nor plaintiffs present to call for a vote on the proposed resolution to sell Lincoln Annex.

73. Defendant Board of Education proceeded to secret vote on the resolution, which called

for an amendment to the school district's Long-Range Facilities Plan and approves the sale and closing of Lincoln Annex and its replacement at a new site to be determined.

74. Defendant Board of education privately voted to approve the resolution in absence of any public meeting, notice or opportunity to be heard.

75. At the public meeting of Defendant Board of Education on March 24, 2020, that included remote participation due to the COVID-19 pandemic, defendant Board of Education passed a resolution without solicitation of public comment, notice or an opportunity to be heard and discuss the proposal that would approve a Long-Range Facilities Plan to shut down the Lincoln Annex School and replace it with a site to be identified. The Long-Range Facilities Plan was not made public prior to or at this meeting for review by community residents or parents, including plaintiffs.

76. Defendant Board of Education secretly convened a selection committee of individuals without announcing their intention to do so nor soliciting interested parents and community members to participate. Defendant Board of Education has not identified the members of the committee who are presumably entrusted with the significant responsibility of identifying a site for a replacement school.

77. Defendant Board of Education has not provided any independent assessments, information or engaged in consultation with parents and community members who have expressed their concerns about known toxics and contamination at both proposed sites for the replacement school.

## **FIFTH COUNT**

### **(Violation of Title 18A Education, NJ Rev Stat Section 18A:7G-4)**

78. Plaintiffs repeat and incorporate the allegations of the preceding paragraphs as if fully set forth herein.

79. In early May 2020 Defendant Board of Education submitted to the Commissioner of the New Jersey Department of Education its Long-Range Facilities Plan for approval. Said plan specified that Lincoln Annex School would be demolished and a new school built at 50 Jersey Ave.

80. On information and belief, defendant Board of Education did not submit the complete plan to the New Brunswick Planning Board for approval as to both sites in question.

WHEREFORE, Plaintiffs demand judgment against the defendants for any or all of the following relief:

1. For the entry of a temporary restraining order, preliminary injunction and permanent injunction restraining defendants and all other acting in concert with them from:
  - A. Executing a sale or conveyance of the land at 165 Somerset Street, New Brunswick, New Jersey for any use except public education;
  - B. For the entry of an injunction enjoining defendant Board of Education to rescind its decision-making in this matter and



renew its review of the use of Lincoln Annex School in strict  
conformity with [Recount all procedural statutes]

2. For Plaintiffs' costs and attorneys' fees; and
3. For such other relief as the Court deems just and equitable.

LATINOJUSTICE PRLDEF

Juan Cartagena

Natasha Bannan

Jorge Vasquez

By: \_\_\_\_\_

Juan Cartagena

May 19, 2020

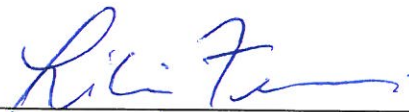
Law Office of Charles Alvarez, Esq. LLC  
Ivette Ramos Alvarez

Attorneys for Plaintiffs

### VERIFICATION

Lilia Fernandez, of full age, hereby certifies as follows:

1. I am a plaintiff in this case. I have personal knowledge of the facts set forth herein.
2. I have read the foregoing Verified Complaint and hereby certify that the allegations contained therein are true and correct, except those made on information and belief which I believe to be true.
3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Dated: 5/19/20

**CERTIFICATION REGARDING PERSONAL IDENTIFIERS**

I further certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I certify that the foregoing factual statements made by me are true and I am aware that, if any of the foregoing is willfully untrue, I am subject to punishment.


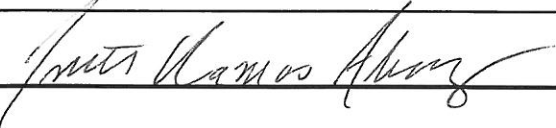
LatinoJustice PRLDEF  
Attorneys for Plaintiffs

By: 

Juan Cartagena

Dated:

19 May 2020

	<h2 style="margin: 0;">Civil Case Information Statement</h2> <h3 style="margin: 0;">(CIS)</h3> <p style="margin: 5px 0 0 0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 <b>Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed</b></p>		<b>For Use by Clerk's Office Only</b> Payment type: <input type="checkbox"/> ck <input type="checkbox"/> cg <input type="checkbox"/> ca Chg/Ck Number: _____ Amount: _____ Overpayment: _____ Batch Number: _____	
	Attorney/Pro Se Name Ivette Ramos Alvarez, Esq.		Telephone Number (973) 476-6701	
	Firm Name (if applicable) Law Office Charles Alvarez, Esq., LLC		County of Venue Middlesex <span style="float: right;">▼</span>	
	Office Address 149 Washington Street Bloomfield, NJ 07003		Docket Number (when available) _____	
			Document Type Complaint	
Name of Party (e.g., John Doe, Plaintiff) Maria Juarez		Caption Maria Juarez, et.al v New Brunswick Board of Education, et.al.		
Case Type Number (See reverse side for listing) 399	Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you have checked "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.		
Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If "Yes," list docket numbers _____		
Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Name of defendant's primary insurance company (if known) <input type="checkbox"/> None <input checked="" type="checkbox"/> Unknown		
<b>The Information Provided on This Form Cannot be Introduced into Evidence.</b>				
Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation				
Do parties have a current, past or recurrent relationship? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If "Yes," is that relationship: <input type="checkbox"/> Employer/Employee <input type="checkbox"/> Friend/Neighbor <input type="checkbox"/> Other (explain) <input type="checkbox"/> Familial <input type="checkbox"/> Business		
Does the statute governing this case provide for payment of fees by the losing party? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition  Plaintiffs are beneficiaries of a restrictive covenant on school property. Defendant seeks to sell the property in violation of the covenant. Any closing must be enjoined.				
Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, please identify the requested accommodation: _____		
Will an interpreter be needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If yes, for what language? Spanish		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).				
Attorney Signature:  5/19/20				