LAW OFFICES
DESPRES, SCHWARTZ & GEOGHEGAN, LTD.
77 WEST WASHINGTON STREET - SUITE 711
CHICAGO, ILLINOIS 60602-3271

THOMAS H. GEOGHEGAN
MICHAEL P. PERSOON
SEAN MORALES-DOYLE
CAROL T. NGUYEN, OF COUNSEL

LEON M. DESPRES (1908-2009)
ALBERT SCHWARTZ (1918-1999)

(312) 372-2511
FAX (312) 372-7391
E-MAIL admin@dsgchicago.com
www.dsgchicago.com

February 3, 2017

Mr. David Lett
Pana School District
14 East Main St.
Pana, Illinois 62577

Re: Proposed Claim for Funding Public Education

Dear Mr. Lett

By adopting Illinois Learning Standards, as well as implementing a system of student assessments to measure attainment of those standards, (1) the State through ISBE has created a standard of what is a "high quality" education under Article X, section 1 of the Constitution, and therefore (2) the State is obligated to provide funds to cover the specific costs of meeting those standards. Furthermore, these standards are - in fact - unfunded mandates under the State Mandates Act, 30 ILCS §805/1 et seq. Illinois courts have interpreted the State Mandates Act to cover unfunded mandates that require additional educational services. *See, e.g., Board of Education of Maine Township v. State Board of Education,* 139 Ill.App.3d 460 (1985). To be sure, there is also a process under the State Mandates Act itself for an exemption of the mandate if the General Assembly does not appropriate the funds. Indeed, separately, under the Illinois School Code, namely, 105 ILCS §5/2260(c), there is a general exemption for funding of *education-related* mandates - with certain exceptions related to alignment with the Common Core curriculum. Yet - notwithstanding these provisions, plaintiffs would contend that under Article X, section 1,these standards *must* be funded, because they now clarify the "high quality" education which Article X, section 1 obligates the State to provide. Put another way: by issuing learning standards, the State itself has

defined a "high quality" education in such a way as to create an enforceable right not under the Mandates Act but under the Illinois Constitution itself.

In 1996 the Illinois Supreme Court found that the term "high quality" education as used in Article X was too vague to enforce. *See Citizens for Educational Rights v. Edgar* 174 Ill.2d 1 (1996). For lack of a specific definition, the Court turned back a suit filed by sixty school districts seeking funding under Article X. But a year later, ISBE issued the first Illinois Learning Standards. And while a local school district may obtain an opt out under the *statute,* the State may not opt out of its *constitutional* duty to provide a "high quality" education once it is officially defined. In *Citizens for Educational Rights v. Edgar,* 174 Ill. 2d 1(1996), the Court had found that a *judicial* definition of such an education was "outside the judicial sphere." Article X, section 1 of the Illinois Constitution states in relevant part: "The State *shall* provide for an efficient system of *high quality* public educational institutions and services (emphasis supplied)." By the way, as noted in *Edgar,* the word "efficient" in Article X is a term of art to invoke older case law standards for what are proper boundary changes to local districts. So the real question with which the Court then grappled was the meaning of "high quality" educational institutions. In finding the term to be indeterminate, the Court said at 174 Ill.2d at 29-31:

> "To hold that the question of educational quality is subject to judicial determination would largely deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in Illinois. Judicial determination of the type of education children should receive and how it can best be provided would depend on the opinions of whatever expert witnesses the litigants might call to testify and whatever other evidence they might choose to present....
> "We are well aware that courts in other jurisdictions have seen fit to define the contours of a constitutional guaranteed education and to establish judicial standards of educational quality reflecting varying degrees of specificity and deference to the other branches of government [collecting cases in other states]...
> "Rather, we agree with the views of the dissenters in several of the cases cited above [that]... lamented the court's usurpation of the legislative prerogative in the area of educational policy..."
> "We conclude that the question of whether the educational institutions and services in Illinois are 'high quality' is outside the sphere of the judicial function."

In short, the *Edgar* Court refused to enforce a "high quality" education, solely because a judicial definition would have no political legitimacy. The Court stated at 174 Ill.2d at 30:

> "[A]n open and robust public debate is the lifeblood of the political process in our system of representative democracy. Solutions to problems of educational quality should emerge from a spirited dialogue between the people of the State and their elected representatives."

For similar reasons, three years later, the Court held that Article X, section 1 does not obligate the State to provide a "minimally adequate" education. *See Lewis E. v. Spagnolo,* 186 Ill 2d 198 (1999).

But now there are standards - and the State Mandates Act itself has a process for determining the additional costs. *Now* the Court would not be usurping a legislative function of defining the standards because within the framework of existing law, ISBE has established that very definition. Since *Edgar,* standards with "political legitimacy" have now emerged – namely, the Illinois Learning Standards set by ISBE. The standards reflect the "robust political debate" within the State as to the kind of "high quality" education to which children have a textually based constitutional right.

Furthermore, apart from breach of an affirmative obligation under Article X, section 1 to provide a high quality education, an "exemption" under the State Mandates Act or the Illinois School Code would be an arbitrary and inexcusable denial of the equal protection of the laws, i.e., a specific constitutional obligation. An "exemption" would be an effective decision by the State that certain students will not receive the required "high quality" education, and it would stigmatize students in a way that would be cruel and legally obnoxious even under a deferential standard of so-called "minimal rationality" (or "reasonableness)."

Significantly, the learning standards are not just optional "goals" to which local districts may or may not aspire - rather, the learning standards constitute "mandates" within the meaning of the State Mandates Act. The Act defines a "State mandate" as "any State initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate

additional expenditures from local revenues... " The definition of a "local government" includes a "school district." 30 ILCS §805/3(a). The Act provides that State mandates may be reimbursable or not as provided by the Act. A "service mandate" covered by the Act includes services related to "elementary and secondary education." The State Board of Education is supposed to track these mandates and determine the *cost* of implementation of the mandate for school districts. Once the cost is determined, Section 6(b) the State Mandates Act states as follows: "At least 50% but not more than 100% of the increase in costs of a local government directly attributable to a service mandate... established administratively after the effective date of the Act *shall be reimbursed by the State* unless there is in existence at the time of enactment a program of State aid for the service affected by the mandate whereunder the non-local share for any participating local government is 50 % or greater and where the increased costs arising under mandate constitute allowable expenditures under the aid program (emphasis supplied). " Section 8 says that the failure of the State to make the necessary appropriations relieves the local district from implementing the mandate.

A "high quality" education under the Constitution is necessarily one and the same as an education that meets "mandates" imposed by the ISBE. Likewise, these mandates (i.e., learning standards) could also clarify a "minimally adequate" education, such as the Supreme Court in *Lewis E.* also failed to enforce because the term "minimally adequate" was too ambiguous. The plaintiffs could seek an order to require the Department of Commerce or ISBE to determine the additional cost needed to meet the mandate, just as the State Mandates Act presumes that such agencies are able to do, and to enforce the right of the school district to the very amount that the State itself deems to be necessary for that district to comply with the mandate.

Of course, we might add that ISBE is free not to articulate the standards - and then there is no enforceable right, and no obligation to fund the mandate. But at this point, it might be a breach of Article X, section 1 to scrap a program for defining them. At any rate, in this version of the claim outlined here, the plaintiffs would not seek to bar or enjoin the enforcement of the learning standards. At any rate, so long as

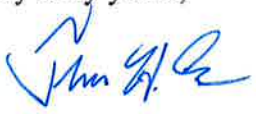
the State continues to impose these mandates, then there is a constitutional right under the language of Article X, section 1 to full funding.

In our view, this claim is long overdue for presentation to the Court. We would be delighted to be the counsel to present such a case. In *Edgar,* sixty school districts sought to enforce Article X, section 1, and if there is a second suit, there should be at least ten to twenty such districts.

Our firm would bring the case based on a commitment of ten or more districts to pay $1,000 each and commit to raise - by recruiting additional plaintiffs or otherwise - $20,000 in legal fees. But if we could sign up more than 20 districts, we would request that each additional district contribute $1,000 to be a party to the case.

That is the proposal: feel free to circulate this letter as you wish to other school districts.

Very truly yours,



Thomas H. Geoghegan