

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

SULLIVAN, ss

220-2015-CV-146

DEPARTMENT OF EDUCATION

v.

CROYDON SCHOOL BOARD, JODY UNDERWOOD, ANGI BEAULIEU,
JAMES PESCHKE, KIMBERLY MCKINNEY AND ERICA BRITTNER

DEPARTMENT OF EDUCATION'S
MOTION FOR PRELIMINARY INJUNCTION

NOW comes the Department of Education ("DOE"), by and through its counsel, the Office of the Attorney General, and moves for a preliminary injunction. In support of this Motion, DOE states as follows:

1. This matter was filed by DOE with a request for a preliminary and permanent injunction preventing the Croydon School District from sending public school children to private schools where the tuition is paid for by taxpayer funds.
2. On December 14, 2015, this Court denied DOE's request for a preliminary injunction finding that DOE had delayed in requesting the preliminary injunctions until after the students had begun classes at the private school. (December 12, 2015 Order at 3).
3. The matter was heard for trial on March 9, 2016, with an additional filing by the Respondents and a reply from DOE filed in late March and early April 2016. An order has not yet been issued.
4. However, the new school year for 2016-17 is rapidly approaching and it is expected that the students could begin school as early as August 29, 2016. As a result, DOE believes it is

necessary to ask for a further preliminary injunction at this time to prevent any students from Croydon being enrolled and attending any private school.

5. DOE argues that in accordance with the constitutional responsibility to provide an opportunity for an adequate education, as detailed in *Claremont School District v. Governor*, 138 NH 183 (1993), and its progeny, there is no current New Hampshire law that allows public school students to attend private schools where the tuition is paid by taxpayer funds. Because local school districts only have the authority granted to them by the State, Croydon does not have an "option" to choose to send its students to private schools. *Ashley v. Rye School District*, 111 NH 54, 55 (1971). It does have the option to send its public school children to other communities' public schools, *see* RSA 193:4 and RSA 194:22, but not to private schools.

6. Therefore, based on the arguments, facts and law alleged in its Complaint for Preliminary Injunction and Permanent Injunction, dated October 29, 2015, and as argued and submitted at the May 9, 2016 trial on the merits, all of which are hereby incorporated and referenced herein, DOE requests that a preliminary be issued preventing the Croydon School District from enrolling and/or allowing any public school students to attend any private school where the tuition is paid for by taxpayer funds.

7. Counsel for Respondents, Sean List, was contacted and informed that this pleading would be filed. His assent was not requested.

WHEREFORE, DOE respectfully requests that this honorable Court:

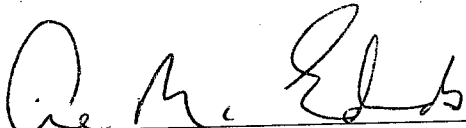
- A. Grant this Motion for Preliminary Injunction; and
- B. Grant such further relief as may be just and equitable.

RESPECTFULLY SUBMITTED,
NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

By its attorneys,

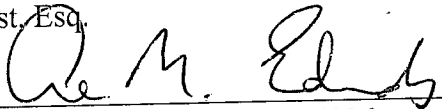
JOSEPH A. FOSTER
ATTORNEY GENERAL

DATED: July 28, 2016

By: 
Anne M. Edwards, Bar #6826
Associate Attorney General
Erin McIntyre, Bar #20432
Attorney
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Concord, NH 03301-1937
603-271-3650

CERTIFICATE OF SERVICE

A copy of this Objection was served by email and first class mail on July 28, 2016, to defense counsel, Charles G. Douglas, III, Esq. and Sean R. List, Esq.


Anne M. Edwards, Bar #6826
Associate Attorney General