

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DELAWAREANS FOR )  
EDUCATIONAL )  
OPPORTUNITY and NAACP )  
DELAWARE STATE )  
CONFERENCE OF )  
BRANCHES, )  
Plaintiffs, )

C.A. No. 2018-0029-JTL

v. )

JOHN CARNEY, Governor of )  
the State of Delaware; SUSAN )  
BUNTING, Secretary of )  
Education of the State of )  
Delaware; KENNETH A. )  
SIMPLER, Treasurer of the )  
State of Delaware; SUSAN )  
DURHAM, Director of )  
Finance of Kent County, )  
Delaware; BRIAN )  
MAXWELL, Chief Financial )  
Officer of New Castle County, )  
Delaware; and GINA )  
JENNINGS, Finance Director )  
for Sussex County, )  
Defendants. )

**DEFENDANT GINA JENNINGS’ OPENING BRIEF IN SUPPORT OF HER  
MOTION TO DISMISS THE VERIFIED COMPLAINT PURSUANT TO  
COURT OF CHANCERY RULE 12(B)(6).**

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## **I. NATURE AND STAGE OF THE PROCEEDINGS**

Plaintiffs Delawareans for Educational Opportunity, and the NAACP Delaware State Conference of Branches (“NAACP-DE”)(collectively, the “Plaintiffs”), filed this action in the Court of Chancery for the State of Delaware against Defendants John Carney, Governor of the State of Delaware (“the Governor”), Susan Bunting, Delaware Secretary of Education and head of the Delaware Department of Education (“the Secretary of Education”), Kenneth A. Simpler, Treasurer of the State of Delaware (“the State Treasurer”), Susan Durham, Director of Finance for Kent County (“Defendant Durham”), Brian Maxwell, Chief Financial Officer for New Castle County (“Defendant Maxwell”), and Gina Jennings (“Defendant Jennings”), Finance Director of Sussex County, (collectively the “Defendants”).

Plaintiffs allege that Defendants violated the Education Clause of Delaware’s Constitution, for a myriad of reasons. Plaintiffs’ Verified Complaint (the “Complaint”) is attached hereto as Exhibit A. Plaintiffs’ fifty-six-page Complaint memorializes the history of Delaware’s Education system and reform, describes the State’s current system, and describes the alleged deficiencies within the State’s public education system.

This is the brief in support of the Motion to Dismiss filed by Defendant Jennings, the Finance Director for Sussex County. Because (i) this Court lacks

jurisdiction; (ii) Plaintiffs' Complaint seeks an advisory opinion; (iii) Defendant Jennings is an improper party; and (iv) Plaintiffs fail to demonstrate that they exhausted their administrative remedies before seeing judicial review of this action, the Complaint must be dismissed in its entirety. These arguments are amplified below.

## II. STATEMENT OF RELEVANT FACTS

Without reiterating every factual allegation and proffered statistic in the Complaint, a summary of Plaintiffs' alleged facts relevant to this Motion are set forth below.

The crux of Plaintiffs' Complaint is their plea to increase funding and restructure Delaware's policies for the education of "disadvantaged students,"<sup>1</sup> as they deem necessary to comply with the State's constitution. Compl. at ¶ 7. One of Plaintiffs' primary funding grievances is the process by which the State<sup>2</sup> provides funding to the schools, which is referred to as Delaware's "Unit Funding Approach." *Id.* at ¶¶ 34-42.

The "Unit Funding Approach" codified at Title 14, Chapter 17 of the Delaware Code, provides that Delaware's public schools receive funding from the State through three "divisions." 14 *Del. C.* § 1702(a). Division I funding is designated to compensate the employees of the school districts, and Division II appropriations include all other school "costs and energy, except those for debt service and the transportation of pupils." *Id.* Finally, Division III appropriations go toward "educational advancement." *Id.* Division III funding is also referred to as

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<sup>1</sup> As a note, Plaintiffs do not define who these disadvantaged students are with clarity.

<sup>2</sup> The public schools obtain funding through three main avenues: the federal government, the state government, and then the localities. Compl. at ¶ 27.

“equalizing funding.” 14 *Del. C.* § 1704. Plaintiffs claim that the purpose of the Division III funding is to “compensate for the different abilities of local school districts to raise additional funds through real estate taxes, but “it does not fulfill that purpose.” Compl. at ¶ 28. Plaintiffs claim that this funding approach causes inequality between the districts because the calculation of division funding is based on the number of “units” of students in the district (*Id.* at ¶ 31), and that the statute enacted to rectify this issue (division III funding) does not consider the “greater needs of Disadvantaged Students.” *Id.* at ¶¶ 43-50.

Plaintiffs also contend that issues arise when local funding for education—which is derived from local real estate taxes—becomes “reduced and stagnant” because the tax percentages are “based on an assessment of real estate done in the last century.” *Id.* at ¶¶ 51-54.

Plaintiffs next contend that the between 1981 and 2018, the State has not changed the pupil assignment criteria that filters students from Wilmington into the four consolidated districts near the City. *Id.* at ¶¶ 63-64. Plaintiffs claim that after the federal court removed supervision over operations of the New Castle County districts, the State “abandoned the enrollment and transportation policies that led to racial integration,” and the Neighborhood Schools Act, 14 *Del. C.* § 220, created boundaries that “led to the rapid re-segregation of schools in New Castle County.” *Id.* at ¶ 67-68. Around the same time the Neighborhood Schools Act was enacted,

the Charter School Act was passed by the General Assembly, and Plaintiffs contend that this enabled schools to “employ admissions requirements with a disparate impact on low income students, students with disabilities, and students of color.” *Id.* at ¶ 69. Plaintiffs aver that the “effect of these policies is to place the most disadvantaged students in racially segregated, high poverty schools, which are the same schools least served by the education policies of the state.” *Id.* ¶ 71. Plaintiffs argue that Delaware’s testing results demonstrate that education of disadvantaged students is deficient (*Id.* at ¶¶ 78-83) and additional resources would address the educational needs of low income children (*Id.* at ¶¶ 84-96), children with disabilities (*Id.* at ¶¶ 97-106), and English language learners (*Id.* at ¶¶ 107-117).

Finally, Plaintiffs contend that the “well recognized needs of Delaware’s Disadvantaged Students, and the ways of meeting those needs, have repeatedly been brought to the attention of the state government.” (*Id.* at ¶ 151), They assert, for example, that the alleged defects were identified in a Committee report issued in 2001 (*Id.* at ¶¶152-156), a report issued by the Wilmington Education Task Force in 2008 (*Id.* at ¶¶ 157), and an investigation done by the Wilmington Education Advisory Committee in 2014 (*Id.* at ¶¶158-160). Regarding funding, Plaintiffs allege that in 2015 the State’s General Assembly recognized that the education funding system “does not reflect the needs of today’s children, teachers, schools, and districts.” *Id.* at ¶ 161. Similarly, Plaintiffs contend that the State cut funding by

\$26,000,000.00 when it enacted its Fiscal Year budget in 2018 (*Id.* at ¶164), which came from numerous programs. *Id.* at ¶¶ 165-168.

Between paragraphs 173 and 189, Plaintiffs generally plead three separate counts against Defendants. Count I of the Complaint alleges that the State of Delaware fails to provide disadvantaged students with a “meaningful opportunity to obtain an adequate education,” the State “failed to provide school districts with funding needed to provide Disadvantaged Students with an adequate education,” and “Delaware’s system for distributing school funding denies children residing in areas with lower property values and household incomes the opportunity to obtain an adequate education.” *Id.* at ¶¶ 175-177. Plaintiffs contend that this results in a violation of the Education Clause. *Id.* Count II claims that Delaware’s funding systems is unconstitutional because it places “an unreasonably heavy burden on taxpayers residing in school districts with low property values to provide sufficient resources to children in those districts.” *Id.* at ¶ 183. Finally, Count III states that pursuant to 9 *Del. C.* § 8306, Defendants failed to appropriately collect property taxes, due to the individual counties’ valuation year, resulting in less tax revenue for schools. *Compl.* at ¶ 185-189.

### **III. QUESTIONS INVOLVED**

1. Whether this Court has subject matter jurisdiction over this dispute where an adequate remedy exists at law, and Plaintiffs are actually seeking a writ of mandamus.

2. Whether the Complaint should be dismissed because Plaintiffs are seeking an advisory opinion rather than true declaratory relief.

3. Whether the Complaint should be dismissed as to Defendant Jennings as she is an improper party, because only the Delaware Department of Education, can exercise control and supervision over the public school system, and because she has no authority or power to set the tax rates on property or levy taxes for school purposes.

4. Whether the Complaint should be dismissed because Plaintiffs have failed to demonstrate that they exhausted their administrative remedies with the State Board of Education.

#### **IV. ARGUMENT**

Defendant, Gina Jennings, moves to dismiss all counts of Plaintiffs' Complaint for multiple reasons. First, this Court lacks subject matter jurisdiction over this action as Plaintiffs have an adequate remedy at law. Second, this Court should dismiss Plaintiffs' Complaint because their plea for a declaratory judgment is truly a masked advisory opinion, and therefore this case is not justiciable. Alternatively, the claims against Defendant Gina Jennings, individually, should be dismissed because Defendant Jennings is an improper party to this action. Finally, Plaintiffs have presented no evidence to demonstrate that they exhausted their administrative remedies with the Board of Education, and therefore the Court should be reluctant to intervene.

##### **A. Standards for a Motion to Dismiss Under Rule 12(b)(6)**

When considering a motion to dismiss a complaint under Court of Chancery Rule 12(b)(6) for failure to state a claim, the Court assumes the truthfulness of all well-pleaded allegations of fact in the complaint. *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 139 (Del. Ch. 2003) (citing *Grobow v. Perot*, 539 A.2d 180, 187 & n.6 (Del. 1988)). Although "all facts of the pleadings and reasonable inferences to be drawn therefrom are accepted as true . . . neither inferences nor conclusions of fact unsupported by allegations of specific facts . . . are accepted as true." *Id.* That

is, “[a] trial court need not blindly accept as true all allegations, nor must it draw all inferences from them in Plaintiffs’ favor unless they are reasonable inferences.” *Id.*; *Gloucester Holding Corp. v. U.S. Tape & Sticky Prods., LLC*, 832 A.2d 116, 123 (Del. Ch. 2003).

**B. The Court of Chancery Lacks Subject Matter Jurisdiction Over This Case Because Adequate Remedies At Law Exist.**

The Court must dismiss Plaintiffs’ Complaint for lack of subject matter jurisdiction for two reasons. First, an adequate remedy at law exists in the form of a declaratory judgment, and Plaintiffs’ request for a permanent injunction is merely a vehicle to invoke this Court’s equitable jurisdiction. Second, Plaintiffs have an adequate remedy at law because the relief sought is better addressed in the Superior Court as a *writ of mandamus*.

**1. This Court lacks subject matter jurisdiction over this declaratory judgment action because there is no underlying basis for equity jurisdiction.**

The Court of Chancery has limited jurisdiction, and may “exercise subject matter jurisdiction only when the case falls into one of three buckets.” *Organovo Holdings, Inc. v. Dimitrov*, 162 A.3d 102, 113 (Del. Ch. 2017). This Court, as “Delaware’s constitutional court of equity” may “acquire subject matter jurisdiction over a case in three ways: (1) the invocation of an equitable right; (2) the request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation of subject matter jurisdiction.” *Medek v. Medek*, 2008 Del.Ch.LEXIS

132, at \*10, 2008 WL 4261017, (Del. Ch. Sept. 10, 2008)(internal citations omitted)(internal quotations omitted). Likewise, this Court “will not exercise subject matter jurisdiction where a complete remedy otherwise exists but where plaintiff has prayed for some type of traditional equitable relief *as a kind of formulaic open sesame to the Court of Chancery.*” *Id.* (internal quotations omitted)(emphasis added). In *Candlewood Timber Group, LLC*, Delaware Supreme Court stated:

The fact that a complaint contains a prayer for an equitable remedy, without more, does not conclude the jurisdictional analysis. In deciding whether or not equitable jurisdiction exists, the Court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint *in light of what the plaintiff really seeks to gain by bringing his or her claim.* To say it differently, the appropriate analysis requires a “realistic assessment of the nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available and fully adequate.”

*Candlewood v. Timber Group, LLC v. PanAm. Energy, LLC*, 859 A.2d 989, 997 (Del. 2004)(quoting *McMahon v. New Castle Assoc.*, 532 A.2d 601, 603 (Del. Ch. 1987) (emphasis added); *see also Organovo Holdings, Inc.*, 162 A.3d at 113.

Pertinent to this litigation, the Court of Chancery “only has jurisdiction over declaratory judgment actions if there is an underlying basis for equity jurisdiction.” *Gelof v. Schramm*, 1984 Del.Ch.LEXIS 498, at \*5 (Del. Ch. June 4, 1984)(citing *Western Air Lines, Inc. v. Allegheny Airlines, Inc.*, 313 A.2d 145 (Del. Ch. 1973)). This Court has held that “the Declaratory Judgment Act did not expand the

jurisdiction of [the Court of Chancery] or alter the jurisdictional relationship between [the Court of Chancery] and the Superior Court. Thus, a complaint for declaratory judgment does not fall within [the Court of Chancery's] subject matter jurisdiction unless it concerns equitable subjects, claims or rights or properly contains a claim for equitable relief.” *Smyrna v. Kent County Levy Court*, 2004 Del.Ch. LEXIS 163, at \*14 (Del. Ch. Nov. 9, 2004) (internal quotations omitted). Along the same lines, “merely adding a claim for an injunction to enforce a declaration of legal rights will not, ordinarily, invoke [Chancery Court's] jurisdiction.” *Id.* Notably, it is the plaintiff who “bears the burden of establishing this Court’s jurisdiction.” *Medek v. Medek*, 2008 Del.Ch.LEXIS 132, at \*9 (Del. Ch. Sept. 10, 2008).

This Court lacks subject matter jurisdiction because Plaintiffs have an adequate remedy at law. Plaintiff’s Complaint seeks two forms of relief: (1) declaratory judgment, asking this Court to, among other things, interpret the Education Clause to the Delaware Constitution, and declare that Defendants “violated and are violating the constitutional rights of each and all of the Plaintiffs and Disadvantaged Students”; and (2) ask this court to enter “permanent injunctions compelling Defendants to establish, fund, and maintain a general and efficient system of free public schools that provides all Disadvantaged Students with a

reasonable opportunity to be equipped for their roles as citizens, full participants in our society, and competitors in the labor market.” *See* Compl. at page 54.

Although Plaintiffs seek a recognized equitable remedy, this Court may not invoke jurisdiction because Plaintiffs’ request for equitable relief is illusory. As Plaintiffs admit in their Complaint, the Education Clause, Article X § 1 of the Delaware Constitution, states that the “General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools.” Compl. at ¶ 21. Similarly, Plaintiff claims that the State “is obligated to provide each local school district with the financial resources needed to provide all children with a meaningful opportunity to obtain an adequate education, and the flexibility to use those resources most appropriately, and it must do so in an equitable manner.” *Id.* at ¶ 26.

To invoke Chancery Court jurisdiction, Plaintiffs must demonstrate that their claims sound in equity. Here, Plaintiffs’ sole equitable claims are permanent injunctions to enforce the State’s “duties” under the Education Clause. This plea for relief is a failed attempt by Plaintiffs to invoke the Court of Chancery’s jurisdiction, when there is an adequate remedy at law for the true relief sought. Delaware Courts have previously recognized this issue, and are reluctant to enter an injunction as a remedy to enforce a declaratory judgment action. As the court held in *Christiana Town Center, LLC v. New Castle County*, the argument that “a coercive remedy in

the form of an injunction will be required to enforce any declaratory judgment . . . cannot succeed, as the court must presume that the [party] will respect any decision rendered by any competent court of this State.” *Christiana Town Center, LLC v. New Castle County*, 2003 Del. Ch. LEXIS 60, at \*14 (Del. Ch. June 6, 2003); *see also Young v. Red Clay Consol. Sch. Dist.*, 159 A.3d 713, 780-781 (Del. Ch. 2017)(“The court must presume that parties will respect any decision rendered by any competent court of this State.”). Similarly, the Declaratory Judgment Act specifically states that “such declaration shall have the force and effect of a final judgment or decree.” 10 *Del. C.* § 6501.

Here, Plaintiffs ask this Court to interpret the Establishment Clause of the Delaware Constitution, and declare that Defendants violated, and are continuing to violate, students’ rights under this clause. If the Court determines that a constitutional violation exists, Plaintiffs seek permanent injunctions “compelling Defendants to establish, fund, and maintain a general and efficient system of free public schools that provides all Disadvantaged Students with a reasonable opportunity to be equipped for their roles as citizens, full participants in our society, and competitors in the labor market.” Compl. at p. 55. In other words, if the Court finds that there is a violation, Plaintiffs seek permanent mandatory injunctions to compel Defendants to do what they are allegedly required to do, pursuant to the

Delaware Constitution. This is *exactly* the “formulaic open sesame” situation cautioned by the *Candlewood* court.

Similarly, Count III, states that Defendants violated 9 *Del. C.* § 8306. Assuming, *arguendo*, that Defendant Jennings is the proper Defendant<sup>3</sup> to this action, there is an adequate remedy at law because Plaintiffs’ declaratory judgment action asks for “an order that will require compliance” with this statute. Thus, Plaintiffs seek a declaration of law that Defendants violated the statute, and a permanent injunction is unnecessary to enforce that judgment. There is no equitable remedy sought under Count III, and therefore the Court of Chancery lacks subject matter jurisdiction as to this claim as well. As adequate remedies at law exist, and the relief sought for permanent injunctions is unnecessary to enforce this declaratory judgment action, this Court should dismiss Plaintiffs’ Complaint, in its entirety, based on lack of subject matter jurisdiction.<sup>4</sup>

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<sup>3</sup> See argument *infra* at section III(C), explaining that Defendant Jennings is an improper party to this litigation.

<sup>4</sup> Additionally, to the extent that Plaintiffs seek permanent injunctions against future harm, this claim “is not warranted simply because a court has found past conduct as illegal,” and the “societal prohibition is a guarantee protected by the Declaration of Rights.” *Young v. Red Clay Consol. Sch. Dist.*, 159 A.3d 713, 780-781 (Del. Ch. 2017).

**2. This Court lacks subject matter jurisdiction over this case because what Plaintiffs are truly seeking is a writ of mandamus.**

The Court must dismiss Plaintiffs' Complaint because Plaintiffs have an adequate remedy at law in the form of a *writ of mandamus*. In fact, it seems that Plaintiffs truly seek a *writ of mandamus* as their form of relief. A *writ of mandamus* is common law remedy "ordering a state agency to do what it must pursuant to statute, an action exclusively within the jurisdiction of the Superior Court." *Theis v. Board of Educ.*, 2000 Del. Ch. LEXIS 48, at \*10, 2000 WL 341061 (Del. Ch. Mar. 17, 2000); *see Gelof v. Schramm*, 1984 Del. Ch. LEXIS 498, at \*6-7 (Del. Ch. June 4, 1984)(stating that the "writ of mandamus is a command from a court of law directed to one who has a duty to act to perform that duty in accordance with the law. Its purpose is to enforce the rights already established rather than to establish or declare the rights of parties.").

There are multiple statutes pertinent to this litigation that Plaintiffs neglected to mention in their Complaint. Pursuant to 14 *Del. C.* § 122(a), the ***Department of Education*** "shall adopt rules and regulations, consistent with the law of this State, for the maintenance, administration and supervision throughout the State of ***a general and efficient system of free public schools in accordance with this title***, including the rules and regulations specified in subsection (b) of this section." 14 *Del. C.* § 122(a)(emphasis added). Likewise, 14 *Del. C.* § 201 states that "[t]he system of free public schools throughout this State shall be ***general and efficient.***"

Finally, The Neighborhood Schools Act, 14 *Del. C.* § 220, states that it is the “intent and purpose of the General Assembly through this subchapter to establish and implement a plan for neighborhood schools in Northern New Castle County that is *fair and equitable to all affected children* in New Castle County.” (emphasis added). Thus, Counts I and II of Plaintiffs’ Complaint is better addressed as a *writ of mandamus* because Plaintiffs are requesting enforcement of rights that are already established through Delaware Statutes. Therefore, this Court must dismiss Counts I and II because the Superior Court has jurisdiction over *writs of mandamus*.

C. **Counts I, II, and III Should Be Dismissed Because Plaintiffs’ Complaint Seeks An Advisory Opinion Disguised As Declaratory Relief.**

Plaintiffs’ Complaint should be dismissed because Plaintiffs disguise their plea for an advisory opinion in the form of a declaratory judgment. The “justiciability rules applied by Delaware courts closely resemble those used at the federal level. Delaware courts do not rule on cases unless they are ripe for judicial determination, consistent with a well-established reluctance to issue advisory or hypothetical opinions.” *Cummings v. Estate of Lewis*, 2013 Del. Ch. LEXIS 65, at \*27-28, 2013 WL 979417 (Del. Ch. Mar. 14, 2013)(internal citations and quotations omitted); *see also* *Bebchuk v. CA, Inc.*, 902 A.2d 737, 740 (Del. Ch. 2006). Likewise, “[d]eclaratory judgments . . . will not be granted merely to satisfy a party’s desire for an advisory opinion or an adjudication of a hypothetical question.” *Sprint*

*Nextel Corp. v. iPCS, Inc.*, 2008 Del. Ch. LEXIS 90, at \*52 (Del. Ch. July 14, 2008).

Like the litigation here, “[a]n action seeking declaratory relief . . . is not exempt from the requirement that the parties must present the court with an actual controversy that is ripe for judicial adjudication. In determining whether an action for declaratory judgment is ripe for judicial determination, ‘a practical judgment is required’.” *Cummings*, 2013 Del. Ch. LEXIS 65 at \*28, 2013 WL 979417. In this State, the Court may grant a party’s request for declaratory judgment so long as the party presents “an actual controversy.” *In re Peierls Family Inter. Trusts*, 59 A.3d 471, 477 (Del. Ch. 2012)(citing 10 *Del. C.* § 6501). The requirements of an “actual controversy” for a declaratory judgment are:

(1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interest are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.

*In re Peierls Family Inter. Trusts*, 59 A.3d 471 at 477(citing *Rollins Int’l, Inc. v. Int’l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973).

A dispute is considered ripe “where the ‘material facts are static’ and litigation ‘sooner or later appears to be unavoidable’.” *Cummings*, 2013 Del. Ch. LEXIS 65 at \*28, 2013 WL 979417. As this Court noted in *In re Peierls Family Inter. Trusts*, “to the extent that the judicial branch contributes to law creation in our legal system, it legitimately does so interstitially and because it is required to do so by reason of

specific facts that necessitate judicial judgment.” 59 A.3d at 477 (citations omitted). If the “court examines a matter where facts are not fully developed, it runs the risk of not only granting an incorrect judgment, *but also of taking an inappropriate or premature step in the development of the law.*” *Cummings*, 2013 Del. Ch. LEXIS 65 at \*28, 2013 WL 979417 (emphasis added); *see also In re Peierls Family Inter. Trusts*, 59 A.3d at 477.

What Plaintiffs’ plea for a declaratory judgment, truly seeks is an advisory opinion from the Court. Plaintiffs seek this advisory opinion without demonstrating that there is an actual controversy. Thus, this litigation is not ripe. Along the same lines, Plaintiffs ask this Court to step into the shoes of the legislature and act *sua sponte* to change innumerable statutes related to the public school system and the process of funding the state-wide educational system. Specifically, Plaintiffs ask this Court to determine what Defendants “must do to comply” with the Education Clause of Delaware’s Constitution, Compl. at ¶ 178, and assert that Plaintiffs are “entitled to an order that requires defendants to cure that violation.” *Id.* at ¶ 180. Similarly, in Count II, the Complaint states that “Plaintiffs are entitled to an order that will require that Delaware cease its violation and meet its constitutional obligations.” *Id.* at ¶ 184. Count III also asks this Court to enter an “order that will require compliance with 9 *Del. C.* § 8306(a).” Compl. at ¶ 189. Again, this request for relief effectively requests that the Court make law, which is the province of the General Assembly.

For these reasons, as well, this Court should dismiss Plaintiffs' Complaint in its entirety.

**D. The Court Should Dismiss Gina Jennings From The Litigation As She Is An Improper Party to the Suit.**

Pursuant to 14 *Del. C.* § 121, it is the *Department of Education* that has been delegated the power to “exercise general control and supervision over the public schools of the State.” 14 *Del. C.* § 121(a). These general powers include: developing and executing the educational policies and laws of the State and promoting public sentiment in support of public education; causing the provisions of this title to be carried into effect, so as to *provide a general and efficient system of public schools* throughout the State; deciding certain types of controversies and disputes involving the administration of the public-school system. 14 *Del. C.* § 121(a)(1), (a)(11), (a)(12). Thus, Counts I and II of Plaintiffs' Complaint should be dismissed, with prejudice, against Defendant Jennings. Defendant Jennings is not a member of the Department of Education, rather she is a member of the Department of Finance of Sussex County, and she is appointed by Sussex County, *not by the Department of Education or the Governor*. See 9 *Del. C.* § 7004(b). As the Director of Finance her duty, among other obligations, is to collect taxes. 9 *Del. C.* § 7004(c). Thus, she has not been delegated power to exercise general control and supervision over the public schools in this State, nor does she have the power to develop and execute any educational policies to be carried out so as to provide a general and efficient system

of public schools. Therefore, this Court must dismiss Counts I and II against Defendant Jennings.

Additionally, Count III against Defendant Jennings must be dismissed for failure to state a claim. Plaintiffs allege that Defendant Jennings violated 9 *Del. C.* § 8306(a) because taxes collected in Sussex County are based on property assessments from 1974. Compl. ¶¶ 185-186. Pursuant to 9 *Del. C.* § 8306(a), “all property subject to assessment shall be assessed at its true value in money.” Plaintiffs essentially claim because the property assessments are based on the year 1974, this violates the “true value in money” portion of 9 *Del. C.* § 8306(a).

Defendant Jennings, however, has no authority to levy taxes for school purposes. That authority lies with the district. *See* 14 *Del. C.* § 1902. Along these same lines, 9 *Del. C.* § 7001 vests Sussex County with the power to “fix the rate upon the assessed valuation of all real property in Sussex County subject to assessment by the County.” There are five (5) members of the County, and this does not include Defendant Jennings. 9 *Del. C.* §§ 7002(a). Thus, Count III of Plaintiffs’ Complaint against Defendant Jennings should be dismissed because Defendant Jennings does not have the power to set the tax rates on property or levy taxes for school purposes. For the reasons stated above, this Court should dismiss the claims against Defendant Jennings as she is an improper party to this action.

**E. Plaintiffs' Claims Should Be Dismissed For Failure To Exhaust Administrative Remedies.**

Plaintiffs failed to demonstrate that they exhausted their administrative remedies. “Delaware law strongly favors the exhaustion of administrative remedies before reporting to judicial intervention. Pursuant to this doctrine, ‘where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.’” *Christiana Town Ctr. LLC v. New Castle County*, 2003 Del. Ch. LEXIS 60, at \*16-17. The exhaustion doctrine prescribes, “where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.” *SimplexGrinnell, L.P. v. Del. DOL*, 2012 Del. Ch. LEXIS 254, at \*13 (Del. Ch. Oct. 31, 2012)(citation omitted). This doctrine is a discretionary judicial doctrine that is “closely related to the ripeness doctrine in that it seeks to relieve courts from having to interfere with an administrative body’s shifting proceed when issues have yet to run their course and when an administrative body might resolve the dispute without unnecessary premature judicial action.” *Id.* (internal quotations omitted). Four exceptions to the exhaustion of remedies doctrine exist:

- 1) where administrative review would be futile;
- 2) where there is a need for prompt decision in the public interest

- 3) where the issues do not involve administrative expertise or discretion and only a question of law is involved; and
- 4) where irreparable harm would otherwise result from denial of immediate judicial relief.

*Id.* at \*14.

Pursuant to 14 *Del. C.* § 121(a)(12), “the State Board of Education is empowered to decide ‘all controversies and disputes involving the administration of the public school system’.” *Smith v. Christiana Sch. Dist.*, 1997 Del. Ch. LEXIS 2, at \*4 (Del. Ch. Jan. 2, 1997)(citing *Morris v. Board of Education of Laurel Sch. Dist.*, 401 F.Supp. 188, 203-04 (D. Del. 1975)). Thus, “considerable autonomy is given to the various and local school districts, pursuant to a legislatively established administrative procedure whereby the school board initially decides all controversies involving its own rules and regulations, with the aggrieved party being entitled to appeal to the State Board of Education.” *Id.* at \*4-5. Plaintiffs failed to demonstrate that they exhausted their administrative remedies with the State Board of Education, and the Court should therefore dismiss Plaintiffs’ Complaint.

## V. CONCLUSION

This Court should dismiss Plaintiffs' Complaint pursuant to Court of Chancery Rule 12(b)(6) for four reasons. This Court lacks jurisdiction over this case, Plaintiffs' declaratory judgment action truly seeks an advisory opinion, Defendant Jennings is an improper party to this litigation, and Plaintiffs' failed to demonstrate that they exhausted their administrative remedies before seeing judicial review of this action. Therefore, for the reasons discussed herein, Defendant Jennings respectfully asks this Court to dismiss Plaintiffs' Complaint in its entirety, and in the alternative, dismiss all counts against Defendant Jennings as she is an improper party to this action.

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