

In the last months, Rhode Island has seen questions about the efficacy and fairness of “High Stakes Testing” raised – by the students who will suffer the consequences of this state mandate, by commentators in the state’s newspaper of record, by the Rhode Island General Assembly, and by local and national leaders in education. Students and parents have brought their concerns about “High Stakes Testing” to multiple public forums. They have appeared before the Rhode Island General Assembly, representatives of the Governor’s office and the state Board of Education. Most recently, a coalition of groups and individuals filed a petition with the new Rhode Island Board of Education seeking review of the high school graduation regulation.

In the context of this extraordinary public attention, the Board of Education is on the verge of conducting its discussion of high school graduation requirements **in a closed meeting outside all public view.**

The Plaintiffs file the within Complaint for Declaratory and Injunctive Relief to insure that the debate over High Stakes Testing remains a **public** debate by seeking enforcement of the Open Meetings Act.

PARTIES AND JURISDICTION

1. Plaintiff Christine L. Egan is a citizen of the State of Rhode Island and the parent of a child in the public high school in East Greenwich, Rhode Island. Ms. Egan’s child is a rising senior and therefore subject to Title L – Secondary Design, Chapter 6, L-6-3.0, et seq., *Rhode Island Graduation Requirements*.

2. Plaintiff Rick Richards is a citizen of the State of Rhode Island and member of the ACLU/RI and a retired employee of the Rhode Island Department of Education’s Offices of Testing, School Improvement and School Transformation. He has testified at a number of public hearings in opposition of the use of high stakes testing.

3. Plaintiff Edward Benson is a citizen of the State of Rhode Island and a member of Coalition to Defend Public Education, a group of educators and parents from Rhode Island who have been testifying, demonstrating, and lobbying against high stakes testing.

4. Defendant Eva-Marie Mancuso is the Chair of the Rhode Island Board of Education.

5. Defendant Rhode Island Board of Education (“RIBOE”) is the administrative agency responsible for promulgation of high school graduation requirements.

6. Jurisdiction over this Complaint for Declaratory Relief is vested in the Superior Court pursuant to R.I.G.L. § 9-30-1, et seq.

7. Jurisdiction over this Complaint for Injunctive Relief is vested in the Superior Court pursuant to R.I.G.L. § 42-46-8 *Remedies available to aggrieved persons or entities*, specifically:

- (c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter;
- (d) ... The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter.

FACTS GIVING RISE TO PLAINTIFFS’ COMPLAINT FOR INJUNCTIVE RELIEF

History of High Stakes Testing

8. The Rhode Island Board of Regents for Elementary and Secondary Education¹ promulgated regulations pursuant to which, and as applied, a high school diploma will be denied to

¹ The Rhode Island Board of Regents for Elementary and Secondary Education was replaced by the Rhode Island Board of Education as of January 1, 2013, pursuant to R.I.G.L. § 16-97-1, et seq.

otherwise eligible students who, with limited exceptions, do not attain a designated score on the Math and Reading tests.²

9. The test chosen by the defendant BOE to implement L-6-3.3 is the NECAP test.

10. The report issued by the testing agency that developed the NECAP tests stated:

NECAP is only one indicator of student performance ... and **should not be used for** referring students to special education or for **making promotion and/or graduation decisions.**

11. If L-6-3.3 remains in effect and is implemented as planned, 40% of Rhode Island high school juniors are at risk of not graduating because of their NECAP scores.

12. The risk of not graduating falls with even greater weight on disadvantaged students. Ninety percent of current limited English proficiency students, 83% of students with disabilities and 58% of economically disadvantaged students are at risk of not graduating in 2014 by virtue of the operation of L-6-3.3 and their NECAP scores.

13. The state's High Stakes Testing policy has been challenged and debated in the General Assembly, before the Rhode Island Board of Regents (now the BOE), and with representatives from the Governor's office. The High Stakes Testing policy has been the subject of intensive news coverage and public forums throughout the state.

Formal Challenge to High Stakes Testing and Board of Education Response

14. Currently pending before defendant BOE is a petition filed by numerous organizations addressing the controversy surrounding the NECAP graduation requirement, filed pursuant to R.I.G.L. 42-35-6. Said petition seeks "timely, meaningful and structured consideration of this critical issue." A true and accurate copy of the June 21, 2013 letter and Petition is attached as *Exhibit 2*.

² See Title L – Secondary Design, Chapter 6, L-6-3.0, et seq., *Rhode Island Graduation Requirements*, attached as *Exhibit 1*.

15. By letter to ACLU/RI dated July 12, 2013, RIBOE Chair Mancuso responded to the petitioners by stating the **RIBOE board members would be receiving “from RIDE staff members and from national experts, an in-depth informational briefing on the relationship between large-scale assessments and graduation requirements” at an annual retreat on August 24 and 25. *Exhibit 3.***

16. A regularly scheduled meeting of the RIBOE was held on June 6, 2013. The minutes of that meeting, attached hereto as *Exhibit 4*, included:

9. DISCUSSION ITEMS

For the benefit of the audience, Chair Mancuso listed the issues the Board of Education **plans to discuss** at its August retreat:

1. Analysis of High School Graduation Requirements

17. The agenda for the June 6, 2013 scheduled meeting of the BOE also listed “Analysis of High School Graduation Requirements” as an “Issue for Discussion” at its August retreat. See Agenda, 6/6/13, attached as *Exhibit 5*.

18. Notwithstanding the clear, repeated and evidenced plan by the defendant BOE to discuss high school graduation requirements at a meeting of the RIBOE on August 24-25, 2013, plaintiffs believe and therefore aver that the RIBOE intends to close said meeting to the public. Specifically, defendant Chair Mancuso has expressed to the press the intent to close this meeting to the public, and, although the meeting is clearly planned, no notice of it has been posted as is required for an open meeting.

19. Any discussion undertaken, or testimony received, at the scheduled retreat is likely to significantly inform any action taken by the BOE on the issue of high stakes testing at future meetings.

19. Each of the individual plaintiffs desires to attend the August 24-25, 2013 meeting of the Rhode Island Board of Education.

COUNT I
(Declaratory Judgment)

20. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs as if fully restated herein.

21. Rhode Island General Laws § 42-46-1, et seq. Open Meetings sets forth the public policy of the State of Rhode Island as follows:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

R.I.G.L. § 42-46-1

22. Rhode Island General Laws § 42-46-1, et seq. Open Meetings further describes a 'meeting' as follows:

- (1) *Meeting* means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term "*meeting*" expressly includes, without limiting the generality of the foregoing, so-called "*workshop*," "*working*," or "*work*" sessions.

23. An actual case or controversy exists between Plaintiffs and Defendants as to whether Defendants are entitled to exclude Plaintiffs from the meeting of the Rhode Island Board of Education scheduled for August 24-25, 2013 at which the RIBOE plans to discuss and hear invited testimony on the public policy concerning high school graduation requirements.

24. Plaintiffs are entitled to a declaration that the August 24-25, 2013 meeting of the RIBOE constitutes a "*meeting*" under and pursuant to the Open Meetings Act, § 42-46-1, et seq. and therefore must be open to the public.

COUNT II
(Injunctive Relief)

25. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs as if fully restated herein.

26. Plaintiffs are likely to succeed on the merits of their claim that the August 24-25, 2013 meeting of the RIBOE constitutes a *meeting* under and pursuant to the Open Meetings Act, § 42-46-1, et seq. and therefore must be open to the public.

27. If the August 24-25, 2013 meeting of the RIBOE proceeds as a meeting closed to the public, the plaintiffs will suffer irreparable harm, specifically, the permanent and irreplaceable loss of the opportunity to have “public business be performed in an open and public manner” and “be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” R.I.G.L. § 42-46-1.

28. The public interest favors protection of the Plaintiffs’ rights pursuant to the Open Meetings Act, § 42-46-1, et seq. as protection of those rights advances the precise public policy the statute was intended to protect, that is, “the maintenance of a democratic society that public business be performed in an open and public manner.” R.I.G.L. § 42-46-1.

29. Plaintiffs are entitled to a temporary restraining order, and, after a hearing, a preliminary and permanent injunction, enjoining Defendants from proceeding with the meeting of the RIBOE on August 24-15, 2013, or in the alternative enjoining Defendants from proceeding unless said meeting is open to the public.

WHEREFORE, Plaintiffs respectfully request that the Court grant them judgment on their claim against Defendants and grant them the following relief:

- a. Enter a temporary restraining order, and a preliminary and permanent injunction, enjoining the Defendants from proceeding with the meeting of the RIBOE on August 24-25, 2013, or in the alternative enjoining Defendants from proceeding unless said meeting is open to the public.

- b. Enter a declaration that the August 24-25, 2013 meeting of the RIBOE constitutes a *meeting* under and pursuant to the Open Meetings Act, § 42-46-1, et seq. and therefore must be open to the public.
- c. Award Plaintiffs reasonable attorneys' fees and costs.
- d. Order such other relief as the Court deems just and proper.

Plaintiffs,
By their attorneys,

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DATED: August 2, 2013

VERIFICATION

I, Edward Benson, verify that I have read the allegations contained in this Verified Complaint; that I have personal knowledge of the facts stated therein; that, other than the allegation made upon information and belief, the allegations are true to the best of my knowledge and that I believe the allegations made upon information and belief are true.

SIGNED UNDER THE PENALTIES OF PERJURY THIS _____ DAY OF AUGUST,
2013.

EDWARD BENSON