

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Debrah Howes

v.

Frank Edelblut, Commissioner New Hampshire Department of Education

v.

Jessica Ash, Amy Shaw, and Karl Jackson

Docket # 217-2022-CV-01115

MOTION TO INTERVENE AS DEFENDANTS AND ORAL HEARING REQUESTED

Applicants Jessica Ash, Amy Shaw, and Karl Jackson (“Parents”), by and through counsel, hereby move this Court for leave to intervene as Intervenor-Defendants in the above-styled action pursuant to Superior Court Civil Rule 15 (formerly Rule 139). Parents seek leave to intervene to defend the Education Freedom Account (“EFA”) Program. Parents’ counsel provides the following Memorandum in Support of their Motion to Intervene.

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Jessica Ash is the mother of three children. Her middle and youngest children are beneficiaries of the Education Freedom Account (“EFA”) Program. Amy Shaw is the mother of two children who are beneficiaries of the Program. Likewise, Karl Jackson is the father of six children, of which five are beneficiaries of the Program. Each parent qualifies for—and indeed *depends on*—the Program’s Education Freedom Accounts. These accounts can be used to purchase a variety of educational services, such as private school tuition, speech or occupational therapies, home-schooling supplies, transportation, or other necessities.

Plaintiff's Complaint, however, seeks to enjoin the EFA Program. Parents therefore apply to intervene in this case. They wish to defend the very Program they depend on to afford the educational options that best fit their families.

Not only do Parents have a strong interest in defending their families' educational needs, but they also have a statutory right to intervene in this case: "If any part of this chapter is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or EFA students shall be permitted to intervene as of right in such lawsuit for the purposes of defending the EFA program's constitutionality." RSA 194-F:9(III). Because Parents have an unequivocal statutory right to intervene, as well as a substantial interest in this litigation, their motion for intervention should be granted.

STATEMENT OF FACTS

1. The Education Freedom Account Program and the Lawsuit Challenging It.

The EFA Program is an educational choice program enacted by the New Hampshire General Court in 2021 to offer alternatives to students seeking a nonpublic education. The Program creates additional opportunity and flexibility in education for New Hampshire families. It also helps address disparities in educational options available to children throughout the state.

The Program's beneficiaries are low- and middle-income families. The Program is limited to elementary or secondary school students "whose annual household income is . . . less than or equal to 300 percent of the federal poverty guidelines as updated annually in the Federal Register by the United States Department of Health and Human Services under 42 U.S.C. section 9902(2)." RSA 194-F:1(VI).

This Program authorizes education savings accounts—called Education Freedom Accounts—that qualifying families can use for various education expenses. Qualifying education

expenses include tuition for private schools, non-public online learning programs, or higher education institutions; services contracted for and provided by public, charter, or independent schools; instructional materials; fees for standardized, advanced placement, or college admissions-related examinations; educational services or therapies; education-related transportation; and any other authorized educational expense. N.H. Stat. § 194-F:2 (II).

On December 8, 2022, Plaintiff Debrah Howes filed this lawsuit challenging the EFA Program on state constitutional grounds. Specifically, Plaintiff argues that the EFA Program violates the Education Trust Fund statute and two provisions of the New Hampshire Constitution: Part II, Article 6-b and Part II, Article 2.

2. The Parents

Applicants Jessica Ash, Amy Shaw, and Karl Jackson are parents of children who use the EFA Program. As such, they are the Program’s direct beneficiaries. They now seek leave to intervene in this case to defend the programs and their interests in them.

Ash Family

Jessica Ash is a single mother who lives in Newport with her three children. Attachment A (Ash Aff.) ¶¶ 1–2. Her middle and youngest child, respectively C.A. and O.R., rely on New Hampshire’s Education Tax Credit Program (“Tax Credit Program”) to pay for their tuition to attend Newport Montessori School. *Id.* ¶ 7. Jessica began to use a scholarship from the Tax Credit Program to send her daughter to the Montessori school after C.A. unfortunately witnessed domestic violence directed at her mother. *Id.* ¶¶ 9–10. The chaotic environment at her assigned public school triggered her post-traumatic stress disorder, causing her grades to fall and for her to become withdrawn. *Id.* ¶¶ 8–9 Jessica relies on the scholarship, along with contributions from family, to pay for C.A.’s tuition. *Id.* ¶ 10. Since attending Newport Montessori, C.A. is a

different kid who loves going to school and is “soaring.” *Id.* ¶ 11. Due to C.A.’s experience, Jessica also enrolled O.R. at Newport Montessori. *Id.* ¶ 12. At the school, he can learn at his own pace and benefit from the school’s small class sizes and individual attention. *Id.* ¶ 13.

Despite the help she receives from the Tax Credit Program, it is a major challenge for Jessica to pay tuition to Newport Montessori. *Id.* ¶ 15. That is where the EFA comes in handy: It is a “lifesaver” that enables Jessica to pay for most of her children’s expenses. *Id.* ¶¶ 16, 18. If Plaintiff’s lawsuit succeeds, however, Jessica would either endure great financial hardship to send her children to school or simply send them to a school that is not right for them. *Id.* ¶¶ 20–21.

Shaw Family

Amy Shaw and her husband live in Rochester with their two children. Attachment B (Shaw Aff.) ¶¶ 1–2. Her children, K.Y. and A.S., rely on the Program to help pay for tuition at Portsmouth Christian Academy (“PCA”) in Dover, which they attend, respectively, as sixth and first graders. *Id.* ¶¶ 10, 13. Amy believes in sending her children to the schools that best suit their needs. *Id.* ¶ 14. She initially sent K.Y. to a private school, but after becoming concerned that the school did not address her neurodiverse needs, she sent K.Y. to public school instead. *Id.* ¶ 6.

Unfortunately, the public school did not meet her needs either. Amy had disagreements with K.Y.’s evaluators over her neurodiverse behaviors and the way her teachers addressed them. *Id.* ¶ 7. Amy believed the teachers did not treat K.Y. with care and made her feel ignored and picked on. *Id.* ¶¶ 7, 8. For example, K.Y. was accidentally locked out of school in the middle of January and was then reprimanded by her teacher. A teacher also ostracized K.Y. by removing the hook for her outerwear and storing her outerwear in a different area away from her peers,

which added to her feeling of being different. *Id.* ¶ 8. In Amy’s view, the teachers “failed” K.Y. and any relationship between Amy and the teachers is irretrievably broken. *Id.* ¶ 16.

Today, Amy sends both daughters to PCA. *Id.* ¶ 10. She likes that PCA accommodates K.Y.’s needs and makes her feel loved and wanted. *Id.* ¶ 11. She also likes that A.S. benefits from the services at PCA she receives as a student on the autism spectrum. *Id.* ¶ 12. Amy also appreciates that PCA requires students to wear uniforms. *Id.* ¶ 11. Her family does not have a lot of money and school uniforms mean that all students are dressed the same way. *Id.*

It is a major challenge for Amy to pay tuition to PCA. The EFA Program makes a huge difference for her family and allows her daughters to get more opportunities than she and her husband would ever be able to provide them. *Id.* ¶ 15. If Amy were unable to keep the EFAs for her daughters, she would have to either send her children to a school district that failed them and with which she has a failed relationship, or she would have to homeschool her children. *Id.* ¶ 16. If Plaintiff’s lawsuit succeeded, she would be unable to afford to send her children to PCA, and a program she relies on for her daughters’ education would be eliminated. *Id.* ¶ 17.

Jackson Family

Karl Jackson and his wife live in Pembroke with their six children. Attachment C (Jackson Aff.) ¶¶ 1–2. Five of their children—E.J., L.J., O.J., G.J., and M.J.—rely on the Tax Credit Program to attend their schools. *Id.* at ¶¶ 2, 15. E.J. and O.J. attend Holy Family Academy in Manchester. *Id.* at ¶¶ 7–8. They enrolled their children at the school after becoming concerned that the students at their assigned public school were influencing their behavior in ways that clashed with what the Jacksons modeled at home. *Id.* Similarly, they enrolled L.J. at Bishop Brady High School in Concord after becoming concerned by the lack of discipline in his

assigned public school. *Id.* at ¶¶ 10–11. The Jacksons also send G.J. and M.J. at Saint John Regional School in Concord for similar reasons as their other children. *Id.* at ¶ 13.

In addition, the Jacksons are practicing Catholics who are raising their children in the Catholic faith. *Id.* at ¶ 6. A major reason why five of their children are enrolled in their respective schools is because they teach the Catholic faith. *Id.* at ¶¶ 6, 9, 11.

The Jackson family also relies on the EFA Program to educate their children. *Id.* at ¶ 15. The EFA Program enables their children to attend the school that is right for them. It ensures that they will not be put in a position of choosing which child will be able to get the right education for them, and which will not. *Id.* at ¶ 16. If they are unable to use the EFA Program, they fear that they would have to send their children to schools that are not right for them or endure great financial hardship to attend their schools. *Id.* at ¶ 18.

ARGUMENT

Intervention should be granted because parents have a clear statutory right to intervene. The Legislature has declared that “[i]f any part of” the EFA Program “is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or EFA students ***shall be permitted to intervene as of right*** in such lawsuit for the purposes of defending the EFA Program’s constitutionality.” RSA 194-F:9(III) (emphasis added). That statutory right alone is enough. But even if it did not exist, intervention would be appropriate anyway because New Hampshire courts “freely allow[]” intervention “as a matter of practice,” and “*should* grant a motion to intervene” when a party has a right “involved in the trial” and a “direct and apparent” interest. *Brzica v. Trs. of Dartmouth Coll.*, 147 N.H. 443, 446 (2002) (quotation omitted) (emphasis added). As the intended beneficiaries of educational choice programs, parents are routinely granted leave to intervene when the constitutionality of such programs is challenged.

Parents therefore have a right to intervene in this case under both Section 194-F:9’s statutory guarantee and general intervention principles.

1. The EFA Act Explicitly Grants Parents a Right to Intervene.

The New Hampshire Supreme Court explained in *In re Stapleford* that “[w]hen construing a statute, we examine its language, ascribing the plain and ordinary meaning to the words used by the legislature.” 156 N.H. 260, 262–63 (2007). Here, the “plain and ordinary meaning” of the EFA Act is that applicants like Parents have a right to intervene. The Act guarantees that “[i]f any part of [the Act] is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or EFA students ***shall be permitted to intervene as of right*** in such lawsuit for the purposes of defending the EFA Program’s constitutionality.” § 194-E:9(III) (emphasis added).

Parents meet the criteria to intervene. First, their children are EFA students. They can—and do—receive EFAs because they are state residents “eligible to enroll in a public elementary or secondary school and whose annual household income is less than or equal to 300 percent of the federal poverty guidelines[.]” § 194-E:1(VI). Second, this lawsuit challenges the Act “as violating either the state or federal constitutions.” Specifically, Plaintiff’s lawsuit challenges the constitutionality of the EFA Program, arguing specifically that the Program violates Articles 6-b and 2 of Part II of the New Hampshire Constitution, as well as the Education Trust Fund Statute. *See* Compl. ¶¶ 5–7.

Both because Parents’ children receive EFAs and because this litigation challenges the constitutionality of the EFA Program, the plain text of the EFA Act establishes that Parents “shall be permitted to intervene as of right.” § 194-E:9(III). In short, Parents have an unconditional statutory right to intervene.

2. Even If Parents Did Not Have a Statutory Right to Intervene, They Have a Direct and Apparent Interest in the Litigation That Would Suffer if the Court Denied Intervention.

In New Hampshire, an intervenor's "interest must be direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege." *Stapleford*, 156 N.H. at 263 (quotation omitted). Although Parents already have a statutory right to intervene, they also meet the "interest" standard. First, Parents have a "direct and apparent" interest in the Program since they rely on it for the education of their children. Second, Parents' interest in the Program would be completely extinguished if Plaintiff succeeds in her goal of abolishing the Program.

A. Parents Have a Direct and Apparent Interest in the Litigation.

In New Hampshire, an intervenor's "interest must be direct and apparent." *Stapleford*, 156 N.H. at 263 (quotation omitted). Here, Parents' interest is not only "direct and apparent," but it is inextricably intertwined with their fundamental liberty interest in "direct[ing] the upbringing and education of" their children. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925). The very purpose of the Program, after all, is to empower parents and guardians to exercise this liberty interest. And, as noted above, the very purpose of this legal challenge is to destroy the Program, deprive Applicants' children of their current education, and restrict Applicants' right to direct the upbringing of their children.

Under New Hampshire caselaw, applicants are frequently granted intervention to protect far less weighty interests. For example, in a divorce case, a plaintiff's adult children had the right to intervene to protect their interest in their divorcing parents' trust. *In re Goodlander*, 161 N.H. 490, 506 (2011). Since the children were beneficiaries of the trust, any ruling that changed the amount in the trust would "directly affect their financial interests." *Id.* Similarly, in *Snyder v. New Hampshire Savings Bank*, a lessee moved to intervene in an action to invalidate a

foreclosure sale. Since the foreclosure sale placed its lease in jeopardy, the intervenor had an interest in seeing the sale invalidated. 134 N.H. 32, 35 (1991).

Here, Parents' interests are at least as "direct and apparent" as those in *Goodlander* and *Snyder*. Parents, whose children stand to receive EFAs under the Program, have a direct interest in the Program's continued existence. RSA 194-F:1(IV) It is Parents who apply for the EFA on behalf of their children, and it is Parents who benefit from the Program when they use the EFAs to pay for their children's educations and chart their futures. *Id.* In recognition of the direct parental interest in their children's educations, courts—including the New Hampshire Supreme Court—have allowed parents to intervene in defense of educational choice programs over the past 30 years:

- *Duncan v. State*, 166 N.H. 630 (2014) (New Hampshire's tax credit scholarship program);
- *Doyle v. Taxpayers for Pub. Educ.*, 137 S. Ct. 2324 (2017) (mem.) (Douglas County, Colorado voucher program);
- *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (Arizona's tax credit scholarship program);
- *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (Ohio's Pilot Scholarship Program);
- *Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141 (Tenn. 2022) (Tennessee's Education Savings Account program);
- *State v. Beaver*, 2022 WL 17038564 (W. Va. 2022) (West Virginia's Education Savings Account program);

- *Kelly v. North Carolina*, 20-CVS-8346 (N.C. Super. Ct. 2020); *Hart v. State*, 774 S.E.2d 281 (N.C. 2015) (North Carolina’s voucher program);
- *Gaddy v. Ga. Dep’t of Revenue*, 802 S.E.2d 225 (Ga. 2017) (Georgia’s tax credit scholarship program);
- *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015) (Alabama’s tax credit scholarship program);
- *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013) (Indiana’s voucher program);
- *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013) (Arizona’s educational savings account program);
- *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009) (Arizona’s corporate tax credit scholarship program);
- *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001) (Illinois’ tax credit program); and
- *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998) (Milwaukee’s voucher program).

These cases all reflect the well-established principle that the beneficiaries of a government program have the requisite interest to intervene when that program is challenged. *See, e.g., California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (allowing health care providers to intervene to defend conscience-protection law because “Congress passed the [law] to protect health care providers like those represented by the proposed intervenors: ‘They are the intended beneficiaries of this law’”); *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (allowing Wisconsin retailers to intervene in a lawsuit challenging the state’s gasoline price-competition law because “[t]hey are the statute’s direct beneficiaries”);

Cotter v. Mass. Ass’n of Minority Law Enforcement Officers, 219 F.3d 31, 37 (1st Cir. 2000) (permitting minority police officers to intervene to defend police department’s promotion of minority officers).

In sum, Parents undoubtedly have a direct and apparent interest in the Program under New Hampshire’s standard for intervention. Parents are not just “interested” in the litigation over the Program—which is all New Hampshire requires—they are even more: the very beneficiaries of the Program who will be directly affected by the court’s ruling. *Brzica*, 147 N.H. at 446 (explaining that applicants simply need to show a “direct and apparent interest” in the subject matter of the litigation to intervene). Because Parents’ legal interests are at stake in the lawsuit, they are entitled to intervene here as a matter of right. *Snyder*, 134 N.H. at 35.

B. Parents’ Ability to Protect Their Interest Suffers Without Intervention.

Parents can easily show that their interests “would suffer if not indeed be sacrificed were the court to deny” intervention. *Snyder*, 134 N.H. at 35 (quotation omitted). Simply put, Plaintiff’s goal is to enjoin the Program. If Plaintiff prevails, the harm to Parents’ interests is anything but theoretical—it is a *certainty*. As such, Plaintiff’s lawsuit will do more than “directly affect” Parents’ interests. *In re Goodlander*, 161 N.H. at 506. Rather, if Plaintiff prevails, Parents’ ability to obtain EFAs will be extinguished.

As noted above, Applicants also have weighty constitutional and financial interests in the Program: It empowers Applicants to “direct the upbringing and education of” their children, *Pierce*, 268 U.S. at 534–35, via the provision of financial aid. This litigation threatens those interests; if successful, Applicants will lose their aid, which enables them to choose the schools that will best serve their children’s educational needs, as well as all future aid. “[A] lost opportunity to seek a government benefit”—including, specifically, participation in an

educational choice program—is an “injury in fact” that satisfies the stringent Article III standing requirements of the U.S. Constitution. *Carson ex rel. O.C. v. Makin*, 979 F.3d 21, 31 (1st Cir. 2020).

And on a fundamental level, “[a]n applicant’s interest is plainly impaired if disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue its interest.” 6 James Wm. Moore et al., *Moore’s Federal Practice* § 24.03 (3d ed. supp. 2007). That is certainly the case here. Parents and their children not only stand to lose their EFAs—they “have no alternative forum where they can mount a robust defense.” *Lockyer*, 450 F.3d at 442. Should the Program be ruled unconstitutional, “the beneficiaries under the [Program]”—Parents and their children—“would have no chance in future proceedings to have its constitutionality upheld.” *Saunders, v. Superior Ct.*, 510 P.2d 740, 741–42 (Ariz. 1973). “This practical disadvantage to the protection of their interest . . . warrants their intervention as of right.” *Id.* at 742.

Finally, Parents cannot simply rely on the government to adequately represent their interests. Since 1998, applicants’ counsel has litigated 35 educational choice cases, of which 23 were as intervenors.¹ In each case, the intervenors made arguments that started with the premise that the rights of individual parents to educational choice differed from the interests of the government in defending educational choice programs. And those different interests led the intervenors to make arguments that the government would not, and in doing so, win cases that the government would have lost had the intervenors been unable to argue on their own behalf.

Among these cases is the last educational choice lawsuit to be heard by the New Hampshire Supreme Court. In *Duncan v. State*, 166 N.H. 630 (2014), plaintiffs seeking to throw

¹ See *All Cases*, Institute for Justice (Dec. 9, 2022), available at <https://ij.org/cases/all-cases>.

out an educational choice program relied on a statute conferring standing on taxpayers. Intervenor and the government disagreed about the constitutionality of the statute: While intervenors argued in trial court that the law was unconstitutional, the government advanced other arguments. But on appeal, the New Hampshire Supreme Court sided with intervenors—not the government—in holding that plaintiffs did not have standing because the statute was unconstitutional.

If the *Duncan* applicants had not been permitted to intervene, it is a near certainty that the government would not have advanced the arguments that prevailed in court.² Here too, Parents have a “direct and apparent” interest in the Program. *Brzica*, 147 N.H. at 446.

CONCLUSION

In nearly every legal challenge to an educational choice program over the past three decades, parents who have sought to intervene to defend the program have been permitted to do so. If the EFA Program is declared unconstitutional, Parents and many other New Hampshire parents will forever lose the opportunity to protect their interests in the greater educational opportunity and flexibility that the EFA Program provides. To protect the educational future of their children, Parents should be allowed to intervene as defendants.

WHEREFORE, Parents respectfully request that this Court grant them leave to intervene as defendants.

² The presence of an intervenor in educational choice case often determines whether a parent’s rights will be vindicated. *See, e.g., Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (where the Supreme Court ruled for intervenors on an argument that the government refused to make in lower court, and which the Court heard on appeal); *Kotterman v. Killian*, 193 Ariz. 273 (1999) (where intervenors—not the state—successfully urged the Arizona Supreme Court to confront the bigoted origins of a provision that was at heart of the plaintiffs’ claim).

Respectfully submitted this fourteenth day of
December, 2022.

/s/ Jared Bedrick
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**Pro Hac Vice Applications Forthcoming*

CERTIFICATE OF SERVICE

This is to certify that on this 14th day of December, 2022, a copy of the foregoing has been served via the Court's electronic filing system to the following:

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Counsel for Plaintiff

I further certify that the Defendant has been served with the foregoing motion and its supporting documents via U.S. First-Class Mail at the following address:

Frank Edelblut, Commissioner
New Hampshire Department of Education
101 Pleasant Street,
Concord, NH 03301

Defendant

/s/ Jared Bedrick
Jared Bedrick NH Bar #20438
Champions Law
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ATTACHMENT A

MERRIMACK COUNTY, NEW HAMPSHIRE

DEBRAH HOWES

Plaintiff,

v.

FRANK EDELBLUT
Commissioner New Hampshire Department
of Education,

Defendant,

v.

JESSICA ASH, on her own behalf and as
next friends of her children C.A. and O.R.,

Applicant for Intervention.

No. 217-2022-CV-01115

Judge _____

**AFFIDAVIT OF JESSICA ASH IN
SUPPORT OF MOTION TO
INTERVENE AS DEFENDANT
INTERVENOR**

STATE OF NEW HAMPSHIRE)
COUNTY OF SULLIVAN) ss:
)

Jessica Ash, being first duly cautioned, swears or affirms as follows:

1. I am a resident of Newport, New Hampshire and live at 125 Laurel Street. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.
2. I am a single mother of L.A., a sixteen-year-old boy, C.A, a thirteen-year-old girl, and O.R., a seven-year-old boy.
3. I have shared custody of L.A. and C.A. with my ex-husband and sole legal and physical custody of O.R.
4. My ex-husband and I separated when C.A. was six weeks old in 2009.
5. I am the sole breadwinner in my home.
6. For nearly 20 years, I have worked at Dartmouth-Hitchcock Medical Center in Lebanon, New Hampshire. Today, I am a full-time nurse.
7. C.A. and O.R. use the Education Tax Credit Program ("Program") to help pay for tuition to attend Newport Montessori School in Newport, New Hampshire where they are, respectively, an eighth grader and a first grader. Their assigned public schools are Newport Middle School and Richards Elementary School in Newport. L.A. attends Newport High School in Newport where he is a junior.
8. I learned about the Program when C.A., a fourth grader at Richards, began falling behind in school.

9. C.A. suffered from post-traumatic stress disorder (“PTSD”) after witnessing domestic violence at home. The chaotic environment at C.A.’s school triggered her PTSD and caused her grades to fall and for her to become withdrawn.

10. With contributions from C.A.’s family, plus the Program scholarship, I put together enough money to pay for C.A. to attend Newport Montessori.

11. Since attending Newport Montessori, C.A. is a different kid. She is happy, her grades are good, and she loves going to school. At Richards, I worried that she was falling behind, but at Montessori, I know that she is soaring.

12. Because of C.A.’s experience at Richards, I decided to also send O.R. to Newport Montessori.

13. O.R. really benefits from the small class sizes and individual attention he receives. He can learn at his own pace, and he truly benefits from the Montessori method.

14. It is important to me that my children attend Newport Montessori rather than their assigned public schools. It provides them with a better education and a more enriching experience than their assigned public schools. I see my children thriving at Newport Montessori and I want to see them continue to soar.

15. Even with the assistance I receive from family and the Program, it is a challenge to pay tuition to Newport Montessori.

16. But now that my children can get Education Freedom Accounts (“EFA”), most of their expenses are paid.

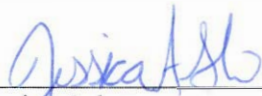
17. Because my income is at or below 300 percent of the federal poverty line, my family qualifies for the EFA.

18. The EFA is a lifesaver that enables my children to attend a school that I would otherwise not be able to afford.

19. Newport is our home, but I cannot justify sending my children to their assigned public schools. The EFA Program enables us to both stay in Newport and to get my children an education that works for them.

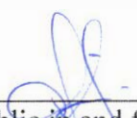
20. If I am unable to keep the EFAs for my children because of the Plaintiff's lawsuit, I would have to send them to a school that is not right for them or endure great financial hardship to enable them to attend Newport Montessori.

21. As things currently stand, I would not be able to afford to send my children to Newport Montessori if not for the EFA Program. If it were ruled unconstitutional, an important program that I expect to rely on for my children's education will be eliminated.



Jessica Ash

Sworn to or affirmed before me and subscribed in my presence the 19th day of December 2022, in the state of New Hampshire and county of Crafton



Notary Public in and for the
State of New Hampshire
My commission expires: 3/3/26



ATTACHMENT B

MERRIMACK COUNTY SUPERIOR COURT

DEBRAH HOWES,

Plaintiff,

v.

FRANK EDELBLUT

Commissioner

New Hampshire Department of Education,

Defendant,

v.

AMY SHAW, on her own behalf and as next
friends of her children, K.Y. and A.S.,

Applicant for Intervention.

No. 217-2022-CV-01115

Judge _____

**AFFIDAVIT OF AMY SHAW IN
SUPPORT OF MOTION TO
INTERVENE AS DEFENDANT
INTERVENOR**

STATE OF NEW HAMPSHIRE)
COUNTY OF STRAFFORD) ss:
)

Amy Shaw, being first duly cautioned, swears or affirms as follows:

1. My husband Robert Shaw and I are residents of Rochester, New Hampshire and live at 600 Portland Street. We are adults over the age of 18 years, have personal knowledge as to all matters contained herein, and are fully competent to make this declaration.
2. We are the parents of K.Y., an eleven-year-old girl, and A.S., a seven-year-old girl.
3. My husband works as a laborer at an auto parts supplier in Newington. I volunteer at Portsmouth Christian Academy, where I assist students. I am a Master's-level social worker and I have professional and personal experience working with children with special needs.
4. Our household income is under 300 percent of the federal poverty level, meaning that it is at or under \$83,250 for a family of four.
5. When my daughter K.Y. was four years old, I noticed that she was not neurotypical. I took her to get a psychological evaluation, where the evaluator found that she had ADHD, along with other diagnoses.
6. At the time, K.Y. was attending a private school. I removed her from the private school and enrolled her as a first grader at our local public school, Gonic School, so that she could receive an IEP and get special education services.
7. Unfortunately, her evaluators at Gonic did not agree that K.Y. had special needs. This became a source of great stress for me as her neurodiverse behaviors became more pronounced. For example, she was clearly manifesting anxiety and sensory processing difficulties.

8. I also felt that her teachers were not treating her with care. At one point, K.Y. was accidentally locked out of the school in the middle of January and then reprimanded with a write-up. The school was unable to provide an explanation for over a week for her write-up. And at another point, her teacher ostracized K.Y. by removing the hook for her outerwear and storing her outerwear in a different area away from her peers, which added to her feeling of being different.

9. At the end of first grade, I transferred K.Y. to Chamberlain Street School, which is another public school near me. Unfortunately, the school also neglected her educational needs, refused to give her an IEP or 504 plan, or provide her with accommodations.

10. I then enrolled K.Y. as a third grader at Portsmouth Christian Academy ("PCA") in Dover, which she currently attends. My younger daughter A.S. also attends PCA. I would not be able to send them both to PCA without the school's scholarships, the Education Tax Credit Program, and the Education Freedom Account ("EFA") Program. I rely on all three to send my daughters to PCA.

11. The reason I send K.Y. to PCA is because they provide her with the accommodations she needs. The students and faculty are very kind to K.Y. and always make her feel loved and welcome. I also like that they require students to wear uniforms. Our family does not have a lot of money and school uniforms mean that all students are dressed the same way.

12. My younger daughter, A.S., benefits from the services at PCA. A.S. is on the autism spectrum and the school treats her with love and kindness. The services A.S. receives from PCA are for speech and social skills.

13. Today, K.Y. is in sixth grade and A.S. is in first grade.

14. It is important to me and my husband that our children attend the schools that are right for them, whether that right school is their public school or a private school that we choose.

15. The EFA makes a huge difference for our family and enables our children to attend the schools that are right for them. The EFA Program allows our children to get an education that works for them. It allows them to get more opportunities than we would ever be able to provide them.

16. If we are unable to keep the EFAs for our children because of the Plaintiffs' lawsuit, we would have to either send our children to a school district that failed them and with which we have a failed relationship or to homeschool our children.

17. As things currently stand, we would not be able to afford to send our children to their schools if not for the EFA Program. If it were ruled unconstitutional, an important program that we rely on for our children's education will be eliminated.

Amy Shaw
Amy Shaw

Sworn to or affirmed before me and subscribed in my presence the 12 day of December 2022, in the state of New Hampshire and county of Stafford.

Sarah N. Leavitt
Notary Public in and for the
State of New Hampshire
My commission expires: 12/19/2023



ATTACHMENT C

MERRIMACK COUNTY SUPERIOR COURT

DEBRAH HOWES

Plaintiff,

v.

**FRANK EDEBLUT, Commissioner
New Hampshire Department of Education**

Defendant,

v.

**KARL JACKSON, on his own behalf and as
next friends of his children, E.J., L.J., O.J.,
G.J., and M.J.**

Applicant for Intervention.

No. 217-2022-CV-01115

Judge _____

**AFFIDAVIT OF KARL JACKSON IN
SUPPORT OF MOTION TO
INTERVENE AS DEFENDANT
INTERVENOR**

STATE OF NEW HAMPSHIRE)
COUNTY OF MERRIMACK) ss:
)

Karl Jackson, being first duly cautioned, swears or affirms as follows:

1. My wife Ellen Jackson and I are residents of Pembroke, New Hampshire and live at 746 North Pembroke Road. We are adults over the age of 18 years, have personal knowledge as to all matters contained herein, and are fully competent to make this declaration.
2. We are the parents of E.J, a seventeen-year-old girl, L.J., a sixteen-year-old boy, O.J, a fifteen-year-old boy, G.J, an eleven-year-old girl, M.J., a six-year-old boy, and M.-G.J., a two-year-old girl.
3. I work as the Director of Parish Life at the Parishes of Saint Lucy and Saint Monica at Methuen Catholic in Methuen, Massachusetts. I also teach at the Saint Monica Elementary School in Methuen.
4. Prior to the birth of M.-G., Ellen worked at Christa-McAuliffe Elementary School in Concord, as a one-on-one aide for students with autism. Today, Ellen works at Saint John Regional School in Concord teaching physical fitness. Ellen also works at Strong Foundations Charter School in Pembroke as an Orton-Gillingham reading teacher.
5. Our household income is under 300 percent of the federal poverty level, meaning that it is at or under \$133,980 for a family of eight.
6. We are practicing Catholics and we are raising our children in the Catholic faith.
7. Both E.J. and O.J. attend Holy Family Academy in Manchester, New Hampshire.
8. We enrolled E.J. and O.J. at Holy Family Academy after becoming concerned that they were being influenced by children that came from families that did not share our values.

While we liked their public school, we were concerned that our children were being influenced by behavior that conflicts with what we model at home.

9. Since attending Holy Family Academy, we have been happy with the change we have seen in E.J. and O.J. Their school has a heavy emphasis on living the Catholic faith, liberal arts, writing, and being part of one's community. We are particularly happy that Holy Family Academy has encouraged them to form good relationships with the Catholic Church.

10. We also moved our oldest son, L.J., from his public school. We were concerned by the lack of discipline in the classroom, which was affecting his ability to learn.

11. We enrolled L.J. at Saint John's Regional School in Concord. He studied there from sixth through eighth grade. By enrolling at the school, we were pleased to see that he became more disciplined and immersed in a Catholic environment.

12. Today, L.J. is currently enrolled at Bishop Brady High School in Concord. Unlike Holy Family Academy, this school is more suited to L.J. because there is less emphasis on writing and because he can participate in its sports programs. We also like that Bishop Brady is a Catholic school that models Catholic life.

13. Our daughter G.J. and son M.J. are both enrolled at Saint John in sixth grade and kindergarten. As with E.J. and O.J., we were concerned that they were being influenced by behavior that conflicts with what we model at home. We also liked that G.J. would be more academically challenged at Saint John than her public school.

14. It is important to us both that our children attend the schools that are right for them, whether that right school is their public school or a private school that we choose.

15. Currently, our five oldest children attend their private schools with the help of the Education Tax Credit Program. These children also each have an Education Freedom Account (“EFA”), which helps pay for the remainder of their tuition and educational expenses.

16. The EFA makes a huge difference for our family and enables our children to attend the schools that are right for them. It also means that we do not have to choose which child will be able to get a private education, if need be, and which will not.

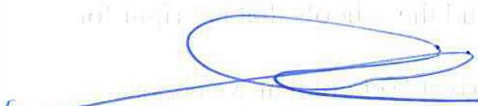
17. In short, the EFA Program allows our children to get an education that works for them.

18. If we are unable to obtain scholarships for our children because of the Plaintiff’s lawsuit, we would have to send them to a school that is not right for them or endure great financial hardship to enable them to attend their schools.

19. As things currently stand, we would not be able to afford to send our children to their schools if not for programs like the EFA Program. If it were ruled unconstitutional, an important program that we rely on for our children’s education will be eliminated.


Karl Jackson

Sworn to or affirmed before me and subscribed in my presence the 9th day of Dec., 2022, in the state of New Hampshire and county of Merrimack.


Notary Public in and for the
State of New Hampshire
My commission expires: 9/21/2027

