

ORAL ARGUMENT REQUESTED

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

In the Matter of an Article 78 Proceeding

Nidia Cortes, Virgil Dantes, AnnMarie Heslop,
Curtis Witters,
On Behalf of Themselves and their Children,

Index No. _____

Petitioners,

VERIFIED PETITION

-against-

ROBERT MUJICA, Director, New York State
Division of Budget; NEW YORK STATE
DIVISION OF BUDGET, MARYELLEN ELIA, New York
State Commissioner of Education, NEW YORK STATE
EDUCATION DEPARTMENT,

Respondents.

PRELIMINARY STATEMENT

1. This is a special proceeding under Article 78 brought by the above-named Petitioners seeking a Writ of Mandamus ordering Respondents ROBERT MUJICA, Director of the New York State Division of Budget (“Director”), the NEW YORK STATE DIVISION OF BUDGET (“DOB”), to comply with Chapter 53 of the Laws of 2015 and immediately release the 2016-17 installment of the “Transformation Grants” to the NEW YORK STATE EDUCATION DEPARTMENT (“SED”); and for MARYELLEN ELIA, the Commissioner of Education of the State of New York (“Commissioner”) and SED to then

distribute those funds to nine schools removed by the Commissioner from the persistently failing schools list, including Roosevelt High School, JHS 80 The Mosholu Parkway Middle School, and William S. Hackett Middle School; and for such other and further relief as the Court may deem appropriate.

PARTIES

2. Petitioner Virgil Dantes is a parent of a child who attends Roosevelt High School in Yonkers, Westchester County. She brings this petition on her own behalf and on behalf of her minor child.

3. Petitioner AnnMarie Heslop is a parent of a child who attends Roosevelt High School in Yonkers, Westchester County. She brings this petition on her own behalf and on behalf of her minor child.

4. Petitioner Nidia Cortes is a parent of a child who attends JHS 80 The Mosulu Parkway Middle School, in the Bronx. She brings this petition on her own behalf and on behalf of her minor child.

5. Petitioner Curtis Witters is a parent of a child who attends William S. Hackett Middle School, Albany. He brings this petition on his own behalf and on behalf of his minor child.

6. Respondent Robert Mujica is Director of the New York State Division of Budget. Pursuant to Chapter 53 of the Laws of 2016, the Director of DOB is charged with approving the spending plan for Transformation Grants to persistently failing schools developed by New York State Education Department and releasing those Grants to eligible schools.

7. Respondent New York State Division of Budget (“DOB”) oversees implementation of the duly enacted New York State budget for each fiscal year.

8. Respondent New York State Education Department (“SED”) oversees public education in New York State. Under Chapter 53 of the Laws of 2015, L. 2015, ch. 53, SED was directed to develop a spending plan for the Persistently Struggling Schools Transformation Grant (“Transformation Grant”) funded by the law. SED also developed the Transformation Grant application and issued Grant guidance to eligible schools.

9. Respondent MaryEllen Elia is Commissioner of Education of New York State (“Commissioner”). The Commissioner is Chief Executive Officer of SED, charged by New York Education Law Section 305 with enforcing “all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents.”

FACTS

TRANSFORMATION GRANT PROGRAM: YEAR 1

10. In 2015, the Legislature enacted New York Education Law §211-f, regarding takeover and restructuring of public schools, which took effect on April 13, 2015. The law targets the lowest performing schools in the state and mandates various intervention strategies to improve performance in these schools.

11. Education Law §211-f mandates that the Commissioner designate schools as “persistently failing” based on the test results and other outcome data.

12. New York State’s appropriations law for FY2017, specifically Chapter 53 of the Laws of 2015, directed that schools designated by the Commissioner as “persistently failing” pursuant to Education Law §211-f were eligible to receive a two-year

Transformation Grant to support school improvement “pursuant to a spending plan developed by the commissioner of education and approved by the director of the budget.” L 2015, ch. 53.

13. The Transformation Grants are designed to enable persistently failing schools to provide additional staff, services and programs to support school improvement. L 2015, ch. 53. Among permitted uses of the Grant under Chapter 53 are health, mental health, counseling, legal and/or nutritional services; expanded learning time for students; professional development for staff; and mentoring for at-risk youth.

14. Chapter 53 further provides that a portion of the grant “shall be available by July 1 of each such school year.” L 2015, ch. 53.

15. As required by Chapter 53, the Commissioner developed a spending plan, called The Persistently Struggling Schools/Transformation Grant Expenditure Plan (“Expenditure Plan”) for the two-year Transformation Grant for persistently failing schools. Affirmation of Wendy Lecker, Exhibit A (“Lecker Affirmation”).

16. The Expenditure Plan identified twenty schools as persistently failing and eligible to apply for a Transformation Grant under Chapter 53 to support school improvement. Lecker Affirmation, Exhibit A, p. 3.

17. The Expenditure Plan specified the Transformation Grant as a two-year grant over the 2015-16 and 2016-17 school years to each eligible school. The Expenditure Plan also set forth the total two-year amount set aside for each school. Exhibit A, p. 3.

18. The Expenditure Plan allowed schools to use the entire Transformation Grant in the first year, or expend the funds over the two-year grant period. The Expenditure Plan states that the eligible school:

may plan to use the school's Transformation Allocation over one year or two years, but schools should anticipate receiving no more than 50 percent of the Transformation Allocation for the 2015-16 school year. If a SCEP requires more than 50 percent of the allocation in the first year, the school district must submit a request for accelerated funding, as detailed in the next paragraph.

Lecker Affirmation, Exhibit A, p. 5.

19. On October 15, 2105, DOB approved the Expenditure Plan prepared by SED, thereby allowing the twenty eligible schools to apply for the Transformation Grants over the specified two-year period. Lecker Affirmation, Exhibits A and C.

20. SED provided eligible schools with a Persistently Struggling Schools Grant (PSSG) Application (“Transformation Grant Application”). The Transformation Grant Application stated that the twenty schools were eligible to apply for and receive Transformation Grants “[b]eginning July 1, 2105.” Lecker Affirmation, Exhibit B, p. 2.

21. The Transformation Grant Application specified that the Transformation Grants would cover a two-year period, or from July 1, 2015 to March 31, 2017. Lecker Affirmation, Exhibit B, p. 1.

22. The Transformation Grant Application made clear that the purpose of the Transformation Grants is to support school improvement over a 21-month period, stating that:

Beginning on July 1, 2015, schools identified as Persistently Struggling will be eligible for a portion of \$75 million to support and implement turnaround efforts over a 21 month period.

Lecker Affirmation, Exhibit B, p. 1.

23. Nowhere in Chapter 53, nor in the Expenditure Plan or Transformation Grant Application, does it provide that schools applying for and receiving Transformation Grants may forfeit or otherwise not receive the second year of the Grants should the

Commissioner remove the schools from the persistently failing schools designation at any time during the two-year grant period.

24. Among the twenty schools eligible for Transformation Grants are Roosevelt High School, Yonkers; JHS 80 The Mosholu Parkway Middle School, Bronx; and William S. Hackett Middle School, Albany. Lecker Affirmation, Exhibit A p. 3.

ROOSEVELT HIGH SCHOOL

25. In 2015, Roosevelt High School, in the Yonkers school district, was designated by the Commissioner as persistently failing under Education Law §211-f and eligible for a Transformation Grant under Chapter 53. Lecker Affirmation, Exhibit A, p. 3 and Exhibit B, p. 3.

26. On November 12, 2015, Roosevelt submitted a Transformation Grant Application to SED (“Roosevelt Application”). Lecker Affirmation, Exhibit D.

27. Roosevelt’s Transformation Grant Application requested a Transformation Grant of \$3,763,581, over two years, the amount allocated by SED to the school. Lecker Affirmation, Exhibits A and D.

28. Roosevelt’s Transformation Grant Application was approved by SED. Lecker Affirmation, Exhibit E.

29. Roosevelt’s Transformation Grant was to provide additional social workers trained in mental health; a full-time literacy/numeracy coach; extended learning for both struggling students and higher achievers; family, community outreach and parent engagement services; professional development; and student health services. Lecker Affirmation, Exhibits D and F.

30. In February 2016, the Commissioner removed Roosevelt High School from the list of schools designated as persistently failing.

THE MOSHOLU PARKWAY MIDDLE SCHOOL

31. In 2015, JHS 80 The Mosholu Parkway Middle School (“JHS 80”), a New York City public school located in the Bronx, was designated by the Commissioner as persistently failing under Education Law §211-f and eligible for a Transformation Grant under Chapter 53. Lecker Affirmation, Exhibit A, p. 3 and Exhibit B, p. 3.

32. In November 2015, JHS 80 submitted a Transformation Grant Application to SED to support implementation of additional programs and services for the two year grant cycle, or from July 1, 2015 through March 31, 2017. Lecker Affirmation, Exhibit G. The Transformation Grant Application was approved by SED. Lecker Affirmation, Exhibit E.

33. The Transformation Grant to JHS 80 was to provide additional programs and services to support school improvement, including mentoring of academically at-risk students; social work and guidance counseling services; expanded learning time; and curriculum and staff development. Lecker Affirmation, Exhibits G and H.

34. In February 2016, the Commissioner removed JHS 80 from the list of schools designated as persistently failing.

HACKETT MIDDLE SCHOOL

35. In 2015, William S. Hackett Middle School (“Hackett”), in the Albany school district, was designated by the Commissioner as a persistently failing school under Education Law §211-f and eligible for a Transformation Grant under Chapter 53. Lecker Affirmation, Exhibit A, p. 3 and Exhibit B, p. 3.

36. In November 2015, Hackett submitted a Transformation Grant Application for a SED. Lecker Affirmation, Exhibit I. Hackett requested the Transformation Grant to support school improvement by providing expanded learning time; college tutors for struggling students; a data coach; professional development for teachers on cultural competency; stress management and reduction training for staff and students; a school improvement supervisor; a school culture and climate survey; and additional administrative support. Lecker Affirmation, Exhibits I and J.

37. The Transformation Grant Application for Hackett was approved by SED. Lecker Affirmation, Exhibit E.

38. In February 2016, the Commissioner removed Hackett from the list of schools designated as persistently failing.

TRANSFORMATION GRANT PROGRAM – YEAR 2

39. In early 2016, SED sent guidance to schools awarded a Transformation Grant for the 2015-16 school year regarding the second year – 2016-17 -- of the Grant. Lecker Affirmation, Exhibit K (The Receivership and Non-Receiverhsip Schools 2016-17 Continuation Plan Guidance) (“Continuation Guidance”).

40. In the Continuation Guidance, SED sets forth two conditions that may result in withholding of Transformation Grant for the second year: if the approved activities are not performed and/or the funds are expended inappropriately. Lecker Affirmation, Exhibit K, p.1. The Continuation Guidance does not provide that the second year of Transformation Grant would be withheld if an eligible school were removed by the Commissioner from the persistently failing school designation.

41. The Continuation Guidance makes clear that Transformation Grants are for a full two school years. The Guidance instructs schools that they “must set aside a portion of the grant (no less than 5%) to pay for an external evaluator to assess program implementation in Year 2.” Lecker Affirmation, Exhibit K, p. 2. The Guidance further provides that schools must submit a budget narrative, a 2016-17 FS10, a budget summary chart, and a Sustained Activities Certification for the second year of the Transformation Grant by April 29, 2016. Lecker Affirmation, Exhibit K, p. 2.

42. In February 2016, the Commissioner removed nine of the twenty schools that received Transformation Grants under Chapter 53 from the persistently failing schools designation.

43. Following the Commissioner’s removal of the nine schools from the persistently failing designation, Governor Andrew Cuomo announced that his Office would withhold the second year of the Transformation Grants from those schools. See, e.g., <http://www.timesunion.com/local/article/Extra-aid-for-New-York-state-schools-in-dispute-7941171.php>

44. Three of the nine schools removed by the Commissioner from the persistently failing designation are Roosevelt High School, JHS 80 Middle School and Hackett Middle School. The remaining six schools are: Grant Middle School, Syracuse; Buffalo Elementary School of Technology, Burgard Vocational High School, and South Park High School, Buffalo; and Automotive High School and PS 328 Phyllis Wheatley School, Brooklyn.

45. On June 9, 2016, SED sent a memo to the nine schools removed from the persistently failing schools designation that a decision on whether the second year of

Transformation Grants would be withheld “is still pending approval” by DOB. Lecker Affirmation, Exhibit L.

46. On July 28, 2016, Petitioner’s counsel sent a letter to DOB Director Mujica asking whether DOB will release the second year of the Transformation Grants to the nine schools removed from the persistently failing schools designation. Lecker Affirmation, Exhibit M.

47. To date, neither Director Mujica or anyone from the DOB has responded to Petitioner’s counsel request.

AS TO THE CAUSE OF ACTION FOR A WRIT OF MANDAMUS
PURSUANT TO NY CPLR ARTICLE 78

48. Petitioners repeat the allegations set forth in paragraphs 1-46 of this Petition.

49. DOB Director Mujica and/or the DOB approved the SED Expenditure Plan for Transformation Grants under Chapter 53 to schools designated as persistently failing by the Commissioner under Education Law §211-f.

50. The Transformation Grants under the Expenditure Plan approved by the DOB are to provide programs and services to support improvement in eligible schools in the 2015-16 and 2016-17 school years, or between July 1, 2015 and March 31, 2017. The Grant amounts under Chapter 53, as set forth in the Expenditure Plan, were for this two-year period.

51. The SED Transformation Grant Application specified that the eligible schools could apply for the two-year Transformation Grant under Chapter 53.

52. The SED Transformation Grant Application explicitly provided for a Grant funding period of 21 months, ending on March 31, 2017.

53. Roosevelt High School, JHS 80, and Hackett Middle School were among the twenty schools statewide eligible to apply for Transformation Grants on July 1, 2015.

54. SED approved the Applications for Transformation Grant funds to Roosevelt High School, JHS 80 and Hackett Middle School and the other remaining seventeen schools for the two-year Transformation Grant period.

55. Pursuant to the approved Applications, Roosevelt, JHS 80, Hackett Middle School received the first year allocation of Transformation Grants and utilized those funds to provide the programs and services to support school improvement as specified in the schools' Applications.

56. In February 2016, the Commissioner removed Roosevelt High School, JHS 80, Hackett Middle School, and the six other schools listed in paragraph 44, supra, from the persistently failing schools designation.

57. The DOB has, to date, refused to release the second year of the Transformation Grants approved under Chapter 53 to Roosevelt High School, JHS 80, Hackett Middle School and the six other schools removed from the persistently failing schools designation.

58. The DOB's refusal to release the second year of Transformation Grants means that Roosevelt High School, JHS 80, Hackett Middle School and the other six schools will not be able to continue to provide the programs and services specified in their approved Transformation Grant Applications. These programs and services are

essential to continue school improvement in 2016-17, thus jeopardizing the improvements made in the first year.

59. DOB is required by Chapter 53 of the Laws of 2015, and by the express terms of the Expenditure Plans approved by DOB to provide Transformation Grants to Roosevelt High School, JHS 80, Hackett Middle School and all other eligible schools for the full two-year grant period established by law.

60. The DOB's refusal to release the second year of Chapter 53 Grant funds from Roosevelt High School, JHS 80, Hackett Middle School and the other six schools listed in paragraph 44, supra, is arbitrary, capricious and violates the agency's ministerial and mandatory duty to release the Transformation Grants under Chapter 53.

61. The Court should enter a Judgment directing DOB Director Mujica and the DOB to immediately release to SED the Transformation Grants for the 2016-17 school year to Roosevelt High School, JHS 80, Hackett Middle School and the the other six schools removed from the persistently failing schools designation.

62. The Court should also enter a Judgment directing the Commissioner and SED to immediately release those funds to Roosevelt High School, JHS 80, Hackett Middle School and the the other six schools removed from the list persistently failing schools designation.

63. Petitioners have made no prior request for the relief herein.

WHEREFORE, Petitioners request the Court to issue an Order of Mandamus:

- (a) Ordering and directing Respondents Mujica and DOB to immediately release to SED the Transformaton Grants for 2016-17 to Roosevelt High School, JHS 80

and Hackett Middle School, and the other six schools removed from the persistently failing schools designation list to SED

- (b) Ordering and directing SED to immediately distribute said Transformation Grants to these schools;
- (c) An order admitting David G. Sciarra, Esq. pro hac vice representing petitioners;
and
- (d) For such other and further relief as this Court may deem appropriate.

Dated:

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