

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

IN THE MATTER OF DAVID A. CURRY,
LUIS NIVELLO, and ROMEL ALVAREZ,

Petitioners,

- against -

NEW YORK STATE EDUCATION
DEPARTMENT, NEW YORK STATE BOARD
OF REGENTS, MARYELLEN ELIA as
COMMISSIONER OF EDUCATION, and
MERRYL H. TISCH as CHANCELLOR OF
THE BOARD OF REGENTS,

Respondents.

VERIFIED PETITION

Index No. 175-19

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PRELIMINARY STATEMENT

1. Petitioners, on behalf of their school-age children, seek an order under Article 78 of the Civil Practice Law and Rules ("CPLR") directing Respondents to perform their duty, enjoined on them by the New York Constitution, to provide all students in the East Ramapo Central School District ("East Ramapo" or the "District") with the opportunity to receive a sound basic education.

2. The New York Court of Appeals has held that Article XI, §1 of the New York Constitution (the "Education Article") imposes on the State of New York (the "State") an affirmative, non-discretionary duty to provide every student with the opportunity to receive a "sound basic education." To meet its duty, the State must ensure that New York school districts have the resources they need to provide a sound basic education, including a sufficient number of

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qualified teachers, appropriate class sizes, adequate curricula, and expanded services for at-risk students.

3. The State has delegated to Respondents its duty under the Education Article to ensure that New York school districts have the resources necessary to provide all students the opportunity for a sound basic education. Local boards of education are responsible for allocating those resources, but where Respondents have determined that a board, through a continuing pattern of neglect and mismanagement, has failed to deliver the resources necessary to provide a sound basic education, Respondents have an affirmative, non-discretionary duty to intervene and take any necessary and appropriate actions to remedy the board's failure.

4. More than a year ago, the New York State Board of Regents commissioned a comprehensive investigative report of the East Ramapo Board of Education (the "Board"), which had for years grossly mismanaged the District's finances. The report concluded that as a direct result of the Board's ongoing mismanagement and neglect, East Ramapo students had been deprived of the resources necessary for a sound basic education—resources the State has a duty to provide—and were suffering dismal education outcomes.

5. In the last year, Respondents have received three additional reports documenting and confirming that the Board has not met its obligation to provide essential resources to the District's schools and has left thousands of students without the basic staff, programs, and services necessary for them to achieve State-mandated academic standards.

6. Despite documenting the Board's continuing failures over the past year, Respondents have not taken any concrete or meaningful action to remedy the Board's fiscal mismanagement. In the meantime, the Board continues to cut essential teachers, staff, and education programs and the District's academic performance continues to decline.

7. Given the dire and deteriorating situation in East Ramapo, which is causing direct and substantial harm to Petitioners' children, Petitioners seek an order compelling Respondents to comply with their constitutional duty to intervene in the District and provide all District students with the opportunity for a sound basic education. While Respondents can determine the appropriate means by which to remedy the Board's ongoing mismanagement, Respondents' obligation to act is affirmative and non-discretionary. The Court may therefore order Respondents to take all necessary and appropriate action to immediately remedy the ongoing constitutional violations in East Ramapo.

PARTIES

8. Petitioner David A. Curry is the parent of two students who attend school in East Ramapo. He has a child in grade attending School and a child in grade at Ramapo High School.

9. Petitioner Luis Niveló is the parent of a student who attends school in East Ramapo. He has a child in attending School.

10. Petitioner Romel Alvarez is the parent of two students who attend school in East Ramapo. He has a child in grade attending School and a child in grade attending School.

11. Respondent New York State Board of Regents ("Regents") is responsible for the general supervision of all educational activities within New York State. Under Education Law § 207, "the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and, except, as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to education, and the functions, powers, duties and trusts conferred or charged

upon the university and the education department.” N.Y. EDUC. LAW § 207 (Consol. 2015). The Regents comprise seventeen members: one from each of the State’s thirteen judicial districts and four who serve at large. Members are elected to five-year terms by the State Legislature.

12. Respondent MaryEllen Elia is the Commissioner of Education for the State of New York (“Commissioner”). Under Education Law § 301, the Commissioner “shall . . . exercise the judicial functions conferred by law upon the commissioner of education and, subject to rules of the regents, to make, execute and issue in the name of the department such determinations, decisions, orders, notices and certificates as may be required for the exercise and performance of the functions, powers and duties conferred or imposed upon the department.” N.Y. EDUC. LAW § 301 (Consol. 2015). The Commissioner oversees more than 7,000 public and independent elementary and secondary schools serving 3.1 million students, as well as hundreds of other educational institutions across New York State including higher education, libraries, and museums.

13. Respondent New York State Education Department (“SED”) is the department of the New York State government that “is charged with the general management and supervision of all public schools and all of the educational work of the state, including the operations of The University of the State of New York and the exercise of all the functions of the education department, of The University of the State of New York, of the regents of the university and of the commissioner of education and the performance of all their powers and duties.” N.Y. EDUC. LAW § 101 (Consol. 2015). SED holds itself out to be one of the most complete, interconnected systems of educational services in the United States. Its mission is to raise the knowledge, skill, and opportunity of all the people in New York.

14. Respondent Merryl Tisch is the Chancellor of the Regents (“Chancellor”). The Chancellor is an elected officer of the Regents. N.Y. EDUC. LAW § 203 (Consol. 2015).

JURISDICTION AND VENUE

15. The New York State Supreme Court has jurisdiction over Petitioners’ cause of action under CPLR Article 78 § 7804(b).

16. Venue is proper in Albany County for proceedings against Respondents under CPLR § 506(b)(2).

FACTS RELEVANT TO ALL CLAIMS

17. Petitioners repeat and reallege the allegations set forth in paragraphs 1 through 16 of this Verified Petition as if fully stated herein.¹

18. The New York Court of Appeals has held that the Education Article of the New York Constitution guarantees each student the right to a “sound basic education”—*i.e.*, “a meaningful high school education, one which prepares them to function productively as civic participants.” *Campaign for Fiscal Equity v. State*, 86 N.Y.2d 307, 316 (1995); *see also* N.Y. Const. Art. XI, § 1.

19. The New York Legislature has delegated to the Regents and SED the duty to oversee local boards of education to ensure they fulfill their responsibility to allocate all funding in a way that provides the constitutional right to a sound basic education to all students. *See* N.Y. EDUC. LAW §§ 101, 207.

20. The New York Legislature has delegated to local boards of education the responsibility for providing to all district students the resources necessary for a sound basic education. *See* N.Y. EDUC. LAW § 1709 (Consol. 2015). Boards of education have broad

¹ Unless otherwise indicated, “Ex.” refers to exhibits attached to the accompanying Affirmation of Brad M. Elias.

authority to allocate resources, but they must do so in a manner that ensures the opportunity for a sound basic education to all students, and their power over education resources must be “subject to restrictive policies which reflect . . . public concerns.” *Board of Education v. Areman*, 41 N.Y.2d 527, 531 (1977).

21. When boards of education, as agents of the state, engage in an ongoing pattern of fiscal mismanagement and neglect that impairs the delivery of a sound basic education, the State must intervene, because “the State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights.” *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 922 (2003). Because the State, through Respondents, has extensively documented and acknowledged such failures by its agents in East Ramapo, it has an affirmative, non-discretionary duty to intervene and correct the Board’s failures.

22. The Board, through mismanagement and neglect, has failed to provide the resources necessary for a sound basic education to District students. Accordingly, the State, through Respondents, has an affirmative and non-discretionary duty to intervene immediately to remedy the Board’s failures, which have “sabotage[d] the measures by which [the State] secures for its citizens their constitutionally-mandated rights.”

A. Background on East Ramapo Central School District

23. The East Ramapo Central School District is located in Rockland County, about 25 miles from New York City. Ex. A, East Ramapo School District, http://www.ercsd.org/pages/East_Ramapo_CSD/District_Pages/About_East_Ramapo (last visited Dec. 2, 2015).

24. Many of the villages covered by the District are highly diverse. For example, Spring Valley, which is home to both of the District’s high schools, comprises people of over

100 different nationalities, and 66.4% of its residents speak a language other than English at home. Ex. B, Henry M. Greenberg, *East Ramapo: A School District In Crisis*, Investigative Report (Nov. 17, 2014) (“Greenberg Report”), at 5.

25. The student demographics in East Ramapo, however, are heavily skewed. Approximately 24,000 of the 33,000 school-age children in the district attend private school, and nearly all of those children attend yeshivas, which are Orthodox Jewish schools.² Ex. B at 6. The other approximately 9,000 students in East Ramapo attend public schools.³ *Id.*

26. East Ramapo’s Board of Education (the “Board”) comprises nine district residents who are elected by district voters to three-year terms. Ex. D, East Ramapo School District, *Board of Education*, http://www.ercsd.org/pages/East_Ramapo_CSD/Board_of_Education; *see also* Ex. B at 10.

27. Since 2005, members of the Orthodox Jewish community have held a majority of the Board’s seats. Ex. B at 10.

28. In recent years, families of public school students in East Ramapo have accused the Board of improperly providing financial aid to yeshiva students while cutting public school programs and financing. Ex. E, Kate Taylor, *East Ramapo School Board Is Criticized by New York State Monitor*, N.Y. TIMES (Nov. 17, 2014) at 1, <http://www.nytimes.com/2014/11/18/nyregion/east-ramapo-school-board-is-criticized-by-new-york-city-monitor.html>.

29. Legal action has often accompanied these accusations. In 2012, fourteen residents petitioned SED to remove five of the seven Orthodox Jewish members of the Board

² Many of these students have disabilities requiring special education services. Ex. B at 6.

³ 91% of public school students are African-American, Latino, or Haitian; 83% are economically disadvantaged; 20% have disabilities; and 27% are classified as English Language Learners (“ELLs”), meaning that according to test results, they cannot communicate fluently or learn effectively in English. Ex. B at 6; *see also* Ex. C, Available Data for East Ramapo CSD (Spring Valley) Enrollment (2013 - 14), <http://data.nysed.gov/enrollment.php?year=2014&instid=800000039112>.

and to appoint a monitor to oversee the district. Ex. E at 1–2. Their claims are part of an ongoing federal lawsuit. *Id.*; see also *Montesa v. Schwartz*, 7:12-cv-06057 (S.D.N.Y. 2015).

30. On June 10, 2014, in response to this conflict, then-Commissioner John B. King, Jr. appointed Henry M. Greenberg, a former federal prosecutor and advisor to the New York attorney general, to investigate the Board’s conduct and fiscal decisions. Ex. E at 2; Ex. B at 2.

B. The Greenberg Report

31. On November 17, 2014, Greenberg delivered his report to SED. He concluded that the Board had: (i) shown favoritism toward Orthodox Jewish students who attended private schools in East Ramapo; (ii) exercised “abysmal” fiscal management, putting the district “on the precipice of fiscal disaster”; and (iii) shown an “inexcusable” lack of transparency. Ex. E at 2–3.

32. One of Greenberg’s most prevalent concerns was that the Board “appears to favor the interests of private schools over public schools.” Ex. B at 29. He concluded that this preference was clear from the way in which the Board handled the District’s budget in past years. *Id.*

33. Greenberg found that the vast majority of school funding cuts came at the expense of public schools and public school students, leaving private schools and private school students largely unscathed. Indeed, Greenberg’s report showed that the Board made no meaningful effort to distribute the “pain of deep budget cuts fairly among private and public schools.” Ex. B at 33.

34. In 2009, for example, the Board made draconian cuts to public school programs and services in order to balance its budgets. Ex. B at 29. Between 2009 and 2012, it eliminated 400 public school personnel, including teachers, social workers, and administrators, and it reduced or did away with several public school academic and extracurricular programs,

including full-day kindergarten, instrumental music, high school electives, athletics, and transportation for field trips. *Id.* at 30.

35. Public school cuts continued through the following two school years. In 2012-13, the Board eliminated more jobs and froze purchases of supplies, materials, and equipment. Ex. B at 31. And in 2013-14, the Board cut an additional 45 jobs, eliminated non-English language courses from the seventh grade, and cut funding for sports, clubs, and central administration. *Id.* at 32.

36. During the same period in which the Board cut funding, programs, and staff from public schools, it substantially *increased* funding that benefitted private school students. Transportation spending, a significant portion of which covered gender-segregated busing of Orthodox Jewish children to over fifty yeshivas, grew from \$22 million in 2009-10 to \$27.3 million in 2013-14. Ex. B at 14, 33. Transportation spending now commands over 11% of East Ramapo's budget—nearly twice the state average as a percentage of total spending. *Id.* at 16.

37. Special education spending increased as well, topping \$60 million in 2013-14. Ex. B at 17. Special education spending took up 26% of East Ramapo's 2013-14 budget, compared to a statewide average of 21%. *Id.* at 12. As with transportation spending, most of the District's special education spending benefitted private school students, who received special education services in as many as forty different yeshivas and other schools outside the District. *Id.* at 17.

38. This trend favoring private schools is hardly new: transportation spending for private schools in East Ramapo has increased by 76.6% since 2006-07—more than three times the state average. Ex. B at 15. Greenberg noted that, based on enormous growth in the private school population, special education costs will only continue to rise. *Id.* at 17.

39. Through these fiscal allocations, the Board has allowed public schools and public school students to bear the majority of the loss associated with budget cuts while shielding private school students, and in doing so, has generated the widespread perception in East Ramapo that the Board treats the budget process as a zero sum game in which private schools always win at the expense of public schools. Ex. B at 37. Greenberg echoed this point in his recommendations, stating that as a result of the dominant private school interest on the Board, public school needs have been given short shrift, especially in times of crisis. *Id.* at 42.

40. Greenberg found that the Board had mismanaged East Ramapo's budget by repeatedly failing to grasp the relationship between financial stewardship and the needs of the community. Four of the Board's past five proposed annual budgets have been rejected, based on inaccurate estimates and unrealistic revenue projections, which have ultimately led to the depletion of nearly all of the District's resources. Ex. B at 21–22.

41. The mismanagement in East Ramapo is not a new development: The Board has failed to adopt sound financial practices for over a decade. Greenberg found that the District has operated at a deficit for seven of the past ten years. Ex. B at 22. And the Board has rarely addressed budget gaps with long-term solutions, preferring “one shot” salvos to durable fixes. *Id.*

42. In fact, the Board's poor fiscal decisions have almost completely exhausted the District's reserve funds, which are critical to covering both expected and unexpected variances during the current and subsequent budget years. Ex. B at 23. As recently as 2008, the District had over \$5 million in reserve funds, but by 2013, less than \$500,000 remained. *Id.* at 25. Without reserve funds, the Board risks losing the ability to manage the District's finances, which in turn puts East Ramapo students at risk.

43. The Board's poor fiscal management is not confined to budgeting decisions. The district's special education program, for instance, has been "a source of controversy, litigation and misunderstanding." Ex. B at 18. After a Department of Education investigation revealed that the Board approved special education placements in private schools when appropriate placements in public facilities were available, East Ramapo was found to be in violation of Individuals with Disabilities Education Act ("IDEA"), and was left to foot the bill for all of its unlawful placements. *Id.*

44. The Board's unbridled spending on legal fees has also jeopardized the District's ability to remain financially solvent. From 2008-09, the District's legal fees rose over 668%, encompassing more than \$7 million paid to 13 different law firms. Ex. B at 27. One out-of-state firm received compensation in excess of \$2.4 million in 2013-14 alone. *Id.*

45. The Board's choice of counsel damaged more than the financial health of East Ramapo. In 2009, the Board hired a firm that took an aggressive and adversarial posture toward parents and students, and did not fire that firm until 2013, when a widely-publicized incident involving one of the firm's partners persuaded the Board to seek new representation. Ex. B at 28. But during the summer of 2014, the Board announced that it would rehire its original counsel, "sparking public furor and condemnation from elected officials." *Id.* In June 2015, Judge Bucaria of the Supreme Court held that the Board had overpaid other outside counsel by more than \$2 million. Ex. F, *East Ramapo Central Sch. Dist. v. New York Sch. Ins. Reciprocal*, No. 600963/13 (N.Y. Sup. Ct. June 15, 2015).

46. The Board's fiscal mismanagement limits the ability of public schools to recover from budget cuts because it restricts the District's ability to assist those schools in reestablishing lost services and personnel. Indeed, Greenberg predicted that it will take many years for the

District's public schools to recover from the budget cuts of the last few years. Those cuts total an estimated \$30 to \$40 million. Ex. B at 37.

47. Frustration in the East Ramapo community continued to grow as a result of the Board's closed-door dealings. While the Board sometimes held open meetings in which the community could monitor and participate in the Board's process, it regularly spent 60 to 70% of its meetings in "executive sessions," which were closed to public. Ex. B at 35.

48. Even when the Board held open meetings, it limited opportunity for public participation by refusing to hear public comment until the ends of the meetings—around 10:00 or 11:00 P.M. Ex. B at 35.

49. Greenberg prescribed several remedies to the issues plaguing East Ramapo. Most importantly, he recommended that the State provide an enforceable mechanism to ensure that funds are allocated fairly and to protect public school students. Ex. B at 41.

50. The Greenberg Report also recommended additional State funding for East Ramapo, warning that without "State intervention, it will be impossible for the District to achieve fiscal stability now or in the foreseeable future." Ex. B at 50. And it recommended that the State should monitor the District to ensure the Board allocates appropriate resources and provides appropriate services to ELL and immigrant students. Ex. B at 57. These recommendations have not been implemented, and District students continue to suffer the consequences of the Board's irresponsible actions.

C. The ELL Report

51. In February 2015, SED released a monitoring report detailing its evaluation of East Ramapo's ELL programs. *See generally* Ex. G, State Education Department Office of Bilingual Education and World Languages Monitoring Report (Feb. 25, 2015) ("ELL Report").

SED found that the District had woefully underserved (or in some cases, failed to serve at all) its ELL students—which comprise *at least 27%* of East Ramapo students.

52. The data in the ELL Report came from several sources. Staff from SED’s Office of Bilingual Education and World Languages (“OBEWL”) met with District staff, reviewed documents at the central District office, toured facilities, met with administrators and teachers, and observed classroom instruction in five schools. Additionally, OBEWL reviewed data reports that the District prepared pursuant to the Commissioner’s regulations on ELLs. Ex. G at 1.

53. OBEWL also received community reports indicating that the District had inadequately assessed and placed Spanish-speaking ELLs, and had failed to credit the schoolwork done by ELLs from other countries, provide mandated ESL credits, and provide services for disabled ELLs. Ex. G at 13. At least one report expressed concern that the District had scheduled some ELLs for multiple study halls in one day and changed their class schedules several times over the course of a single semester. *Id.*

54. The ELL Report showed that during the 2014-2015 school year, the Board funded only *one* Spanish Transitional Bilingual Education program, *which served just 27 of the District’s 1,604 Spanish speaking ELLs*. Ex. G at 1–2.

55. The ELL Report also revealed that the Board failed to provide core course options to Beginner and Intermediate ELLs: the District’s only Beginner and Intermediate ELL courses are electives and do not lead to the accrual of credits toward graduation. Ex. G at 2. SED warned that “this is a serious problem and a barrier to educational access that must be remedied immediately.” *Id.* at 3.

56. The ELL Report found several additional ELL program deficits, including inadequate translation services for parents, and a failure to implement accurate data systems or adjust the state-mandated core curriculum in order to make it accessible to ELLs. Ex. G at 6–7.

57. The ELL Report required the District to submit and implement a Corrective Action Plan (“CAP”) to address the numerous areas in which it had failed to comply with the Commissioner’s ELL regulations. Ex. G at 13; *see also* Ex. H, East Ramapo School District, Part 154: Corrective Action Plan (Apr. 24, 2015) (“CAP”).

58. The CAP addressed five areas in which the District had failed to comply with the Commissioner’s ELL regulations: (i) failure to orient parents to and identify interest in bilingual education; (ii) failure to provide access to the core curriculum and a pathway to graduation; (iii) requirement of documentation that may discourage or chill students from seeking free public education; (iv) failure to install adequate data systems; and (v) failure to adequately identify ELLs’ home languages. Ex. H at 5–12.

59. The CAP addressed five additional areas in which the District’s practices needed to improve, according to the Commissioner’s ELL regulations: (i) failure to provide ELLs with adequate differentiated instruction appropriate to their grade level and English proficiency; (ii) failure to provide sufficient native language instructional materials in bilingual education classes; (iii) class scheduling failures; (iv) failure to adequately inform ELLs and their parents about their educational rights; and (v) failure to timely identify new ELLs. Ex. H at 13–26.

60. Although neither the CAP nor the ELL Report state explicitly which of the Commissioner’s regulations the District violated, it is likely that the District failed to fulfill its obligations to:

- provide ELLs with equal access to all school programs and services, including access to programs required for graduation, *see* CR Part 154-2.1;
- administer a questionnaire to parents, interview the ELL student, determine disability, if any, and test the student’s English proficiency, *see* CR Part 154-2.3(a);
- maintain an ELL program that can accommodate at least seventy percent of the expected incoming ELLs, *see* CR Part 154-2.3(d)(2); and
- provide professional development to all teachers and administrators that specifically addresses the needs of English Language Learners, *see* CR Part 154-2.3(k).

61. To date, and in spite of the CAP, neither the Board nor Respondents have taken any significant action to remedy these deficits. As a result, thousands of East Ramapo ELL students are being denied the language services necessary to provide them a sound basic education—services that the Commissioner’s regulations mandate.

D. The Focus Report

62. In June 2015, SED published another evaluation of East Ramapo, this time pursuant to East Ramapo’s status as a “Focus” district. Focus district status relates directly to poor academic performance. *See* Ex. I, Methodology Used to Calculate Progress of Focus Districts, *available at* <http://www.p12.nysed.gov/accountability/documents/ProgressoffocusDistricts2015-16.doc>. The June evaluation shows that the Board failed to improve the District’s ability to raise student achievement. *See generally* Ex. J, NYSED Diagnostic Tool for School and District Effectiveness, District Final Report (June 4–5, 2015) (“Focus Report”) (showing “Inadequate” ratings for East Ramapo on six different district improvement metrics).

63. The Board has taken no action to address inadequate public school staffing. Layoffs have stretched thin the public schools' personnel reserves, and although remaining staff took on more responsibility to cover lost positions, the schools' capacity to improve student performance and promote student growth was greatly diminished. Ex. J at 6. This means the District is not responding to the urgent need to improve student academic achievement. *Id.*

64. Nor has the Board supported public school student development in any other meaningful way. It has not supported students' academic growth through Common Core standards. Ex. J at 13. And it has not supported opportunities or initiatives to increase students' social and emotional development health. *Id.* at 15. Indeed, the SED noted in its evaluation "that there is little clarity about the district's vision for student success or alignment between school and district goals." *Id.* at 7.

65. The Board has failed also to develop a financial plan to secure the District's future. Quite the opposite, the Board has conceded that it allocates funds spuriously according to its "views," and not according to analysis of readily-available data on student need. Ex. J at 8.

66. Even where funds are allocated to a particular program, the Board has no system to evaluate their impact. Ex. J at 8. This allows for enormous waste, generating "too many activities in the district [that] lack purpose," *id.* at 12, and causing the depletion of already-scarce resources, *id.* at 9. This Report, like the ELL and Greenberg Reports, shows the Board's continued failure to provide sustainable support to all students in East Ramapo.

E. The OCR Report

67. In October 2015, the U.S. Department of Education's Office of Civil Rights ("OCR") addressed allegations by the Spring Valley chapter of the N.A.A.C.P. that the District discriminated against certain students on the bases of race and national origin. Ex. K, Letter

from Timothy C. J. Blanchard, Director, Dept. of Ed. Office of Civil Rights, to Willie Trotman, President, Spring Valley N.A.A.C.P. (Oct. 27, 2015) (“OCR Report”).

68. The OCR Report found alarming racial discrepancies in the District’s special education placements. In 2010-11, nearly 40 percent (151/381) of eligible white students received out-of-district special education placements, while only 14.3 percent (6/42) of eligible Asian students, 12.7 percent (92/725) of eligible black students, and 6 percent (21/349) of eligible Latino students received such placements. Ex. K at 3. This clearly constitutes “a statistically significant disproportionate number of white disabled students placed out-of-district in school year 2010-2011, as compared to non-white disabled students.” *Id.*

69. There is no reasonable basis for this placement discrepancy. In one case, OCR determined that the District had placed a white student out-of-district while placing black and Latino students with substantially similar special education needs in-district. Ex. K at 4–5. When asked to justify this disparate treatment, the District stated that the white student had limited language skills and cognition and that the out-of-district placement was most similar to the student’s previous education in Israel. *Id.* at 5. When asked why the similarly-situated black and Latino students did not merit the same treatment, the District said only that in-district classes were able to “support [those students’] academic achievement.” *Id.* None of the District’s claims was supported by documentary evidence. *Id.*

70. The OCR Report also uncovered evidence of discrimination in how the District managed bilingual special education programs. The District did not evaluate students’ English language proficiency before admitting them to bilingual programs, despite a legal obligation to do so; indeed, some students who were admitted to the programs identified their native language as English. Ex. K at 8.

71. The District also treated Spanish/English bilingual programs differently from Yiddish/English bilingual programs. Students in Spanish/English programs interacted with other children in their schools and adhered to their schools' normal schedules; students in Yiddish/English programs did not. Ex. K at 8. The District justified this disparate treatment by reference to the Yiddish/English students' youth and "medically fragile conditions." *Id.* at 9. The Yiddish/English students' IEPs do not support these assertions. *Id.*

72. Neither the Spanish/English nor the Yiddish/English bilingual special education programs were run according to "any educational theory that is recognized as sound by some experts in the field or is considered a legitimate experimental strategy." Ex. K at 9. Teachers could not identify the programs' educational goals and did not receive guidance from the District. *Id.*

73. On September 8, 2015, the District entered into a resolution agreement with OCR, whereby OCR has suspended its investigation and will monitor the District's implementation of the agreement during the coming year. Ex. L, Voluntary Resolution Agreement, East Ramapo Central School District, OCR Case Nos. 02-11-1091 & 02-15-1140 (executed Sept. 8, 2015).

F. The Appeal of David A. Curry

74. Shortly after SED released the Focus Report, the Commissioner ruled on an appeal submitted by Petitioner David A. Curry, whose son attends elementary school in East Ramapo. Mr. Curry sought the reinstatement of recently-eliminated elementary school art and music programs, which are required by regulation. Ex. M, *Appeal of David A. Curry*, Appeal No. 19878, Decision No. 16795 (July 24, 2015); *see also* 8 NYCRR §§ 100.3(b)(1)(v), 100.4(b)(1)(v).

75. Mr. Curry alleged that although the Board pledged that it would train elementary school teachers to teach art and music (rather than hiring certified art and music teachers), it had failed to do so. Ex. M at 8.

76. The Board did not refute these allegations. Instead, it averred that it did not have knowledge or information sufficient to respond to Mr. Curry's claim, a position that, according to the Commissioner, "appear[ed] to be disingenuous and evasive." Ex. M at 9.

77. The Commissioner responded that if the Board does not know whether Mr. Curry's son is receiving a constitutionally-guaranteed education, "it is its duty to find out." Ex. M at 9. The Commissioner directed SED's Office of Curriculum and Instruction "to provide guidance and technical assistance to the district in order to ensure that it provides such instruction in accordance with the Commissioner's regulations." *Id.* at 10.

78. Despite the Commissioner's directive, Mr. Curry's son continues to be deprived of essential educational resources, including art and music instruction.

G. The Monitors' Report

79. In an attempt to respond to the persistent problems in East Ramapo, SED announced on August 13, 2015, that it would appoint a team of three experts (the "Monitors") to assess, evaluate and monitor the Board's activities for four months and make recommendations to SED for further action in December 2015. Ex. N, Kate Taylor, *Education Dept. Appoints Team to Study East Ramapo School District*, N.Y. TIMES (Aug. 13, 2015), http://www.nytimes.com/2015/08/14/nyregion/education-dept-appoints-team-to-study-east-ramapo-school-district.html?_r=0.

80. The Monitors conducted numerous school visits, announced and unannounced, and met with the Board, SED, and community members. Ex. O, Jane Lerner, *East Ramapo*

monitor Dennis Walcott: 'Our goal is for action' (Sept. 1, 2015), <http://www.lohud.com/story/news/education/2015/09/01/east-ramapo-monitor-dennis-walcott-interview/71508530/>.

81. On December 14, 2015, the Monitors presented their report to Respondents. The report confirmed yet again that “the East Ramapo Board of Education has persistently failed to act in the best interests of public school students.” Ex. P, D. Walcott et al., *Opportunity Deferred: A Report on the East Ramapo Central School District*, Dec. 14, 2015, at 4 (“Monitors’ Report”).

82. Like the Greenberg Report, the Monitors’ Report acknowledged at the outset “the District’s failing educational and operational infrastructures, as well as the total breakdown of the community trust facing the school community in East Ramapo.” Ex. P at 5.

83. The Monitors’ Report showed that years of distress had worn away “the fundamental building blocks the District needs to successfully educate its students – competent leaders who support teaching and learning in the District and understand and respect community needs; fiscal stability; and community confidence and support.” Ex. P at 9. In order to help restore these building blocks, the Report recommended changes targeting three overlapping areas of concern in East Ramapo: governance and rebuilding community trust; teaching and learning; and fiscal management. *Id.* at 11–25.

84. The team’s top governance issue was accountability. Like the Greenberg Report, the Monitors’ Report recommended “increased authority . . . including the power to veto board decisions where necessary.” Ex. P at 11–12. It also recommended an independent monitor to review issues connected to school board elections, such as polling place locations and electoral results. *Id.* at 12–13. The report urged the Regents to help the Board continue to better

understand its role by expanding Board member training requirements and scheduling meetings for the Board with a human rights expert. *Id.* at 14.

85. To address teaching and learning issues, the Monitors' Report advised the Regents to adopt several remedial measures, all of which require the Board to provide additional resources to District schools. First, it recommended making sure that teachers in positions established with federal Title I funds do not have to cover classrooms, but can instead focus on providing targeted interventions to struggling students, which is their charge. It also recommended that the Regents ensure the provision of full-day kindergarten, as well as enriched academic options for all students. Ex. P at 15–16. Second, it recommended staff-oriented changes, including enhanced professional development opportunities and a more rigorous hiring protocol. *Id.* at 16–17.

86. The team's fiscal management recommendations centered on efficiency and the need for financial support. The Monitors' Report recommended streamlining the District's general operations and considering longer transportation contracts and more efficient bus routes. Ex. P at 18–20. It also urged the Regents to review policies and procedures governing ELL programs in the District and reinstate support services for *all* students where they are needed. *Id.* at 20–22. And it recommended responsible local contributions to the District's budget, as well as dedicated State support. *Id.* at 22–25.

87. The financial issues highlighted by the Monitors' Report are dire. Less than a week after the report was released, Moody's affirmed a negative outlook for the District's outstanding debt obligation of nearly \$11 million. Ex. Q, Moody's Investors Service, *Rating Action: Moody's affirms East Ramapo CSD, NY's Baa2 GO rating; outlook remains negative* (Dec. 21, 2015), <https://www.moody.com/research/Moodys-affirms-East-Ramapo-CSD-NYs->

Baa2-GO-rating-outlook--PR_903031339. Moody’s analysis noted that “the district will continue to face financial strain from rising special education, instruction and transportation costs,” and that “[w]ithout additional revenues or expense reductions, the [district’s] fund balance will likely deteriorate.” *Id.*

88. When the Monitors presented their report to the Regents, they made clear that their recommendations were a complete set, and not a menu of options from which the Regents were meant to “pick and choose.” The Regents unanimously accepted all of the Monitors’ recommendations.

89. The Monitors’ Report documents and confirms as of December 2015 the Board’s continuing fiscal mismanagement of the District’s funding and resources—mismanagement the Greenberg Report identified *over a year ago*—and further documented the Board’s neglect of ELL and special education students, as detailed in the SED’s ELL and Focus Reports.

H. Petitioners’ Letter to Respondents

90. On August 31, 2015, Petitioners’ counsel sent a letter to Respondents laying out much of the same historical background discussed in this Petition, and setting forth the legal authority for Respondents’ constitutional duty to provide all students with the opportunity for a sound basic education. Ex. R, Aug. 31, 2015 Ltr. from Petitioners’ Counsel to SED and Regents at 3–4. The letter noted the appointment of the Monitors in August 2015 and acknowledged that the Monitors would need time to conduct their review and make recommendations to the Board. *Id.* at 4. The letter also stressed that substantive actions by the Board were necessary to address the clear and continuing lack of a constitutional education to District students. *Id.* The letter concluded by cautioning that “[i]f the Board fails to adopt such measures in the coming weeks,

and the State fails to intervene directly, we will have no alternative but to take legal action to compel such intervention.” *Id.* at 5.

91. Nearly half of the 2015-2016 school year has passed since Respondents received Petitioners’ letter, and, despite the Monitors’ efforts over the last several months, the Board has made no meaningful changes or corrected its misuse and mismanagement of District funding and resources. Put simply, the Monitors have done all they can do, and the obligation to act is now on the Respondents. Because the Board has not taken necessary and appropriate corrective action, even as recommended in four separate investigations and reports by Respondents, Respondents must intervene immediately and take all necessary and appropriate remedial action to ensure that the Board allocates the resources necessary to provide East Ramapo students the right to a sound basic education. Accordingly, Petitioners now submit this petition to compel Respondents to do so.

FIRST CAUSE OF ACTION
**FOR AN ORDER COMPELLING RESPONDENTS TO INTERVENE
IN EAST RAMAPO TO ENSURE ALL STUDENTS HAVE THE
RESOURCES NECESSARY FOR A SOUND BASIC EDUCATION**

92. Petitioners repeat and reallege each and every allegation in paragraphs 1 through 91 as if fully stated herein.

93. The Education Article of the New York Constitution guarantees all public school children the right to a sound basic education.

94. Respondents have an affirmative, non-discretionary duty to ensure that East Ramapo students have the resources essential to afford them the opportunity for a sound basic education.

95. Respondents have an affirmative, non-discretionary duty to ensure that the Board uses State funding to provide students with the resources essential to afford them the opportunity for a sound basic education.

96. Through numerous and separate investigations and reports, Respondents have documented the Board's fiscal mismanagement, misuse of funding and resources, and favoritism toward private school students, and have concluded that the Board's actions have caused and continue to cause the denial of essential education resources and services to East Ramapo students, including but not limited to (i) an adequate number of qualified teachers and staff, (ii) basic services for ELLs, children with disabilities, and children with special needs, (iii) required educational programs such as music and art, and (iv) necessary equipment and supplies. These resources and services are necessary for the provision of a sound basic education.

97. Under these circumstances, Respondents have an affirmative, non-discretionary duty to intervene and take prompt remedial action as may be necessary and appropriate to ensure that East Ramapo public school students have the resources necessary to ensure the opportunity for a sound basic education.

98. Petitioners, as residents of New York, have a clear right to relief.

99. The duty enjoined on Respondents is an affirmative constitutional duty involving no exercise of discretion.

100. Accordingly, Petitioners seek an order compelling Respondents to perform the duty enjoined on them by law by taking any necessary and appropriate action to ensure that all students in East Ramapo have the resources necessary for a sound basic education.

PRIOR APPLICATION

101. No prior application has been made for the relief requested herein.

RELIEF REQUESTED

WHEREFORE, for the reasons stated herein and in the accompanying papers,

Petitioners respectfully request that the Court issue an order:

- i. Requiring Respondents to intervene and take such action as may be necessary and appropriate to remedy the ongoing violation of students' constitutional right to a sound basic education in East Ramapo;
- ii. Requiring Respondents to implement such recommendations from the Greenberg, ELL, Focus, and Monitors' Reports as are necessary to fulfill their constitutional duty to East Ramapo students;
- iii. Requiring Respondents to report their progress to the Court within 30 days of the issuance of the order, and periodically thereafter; and
- iv. Affording such additional relief as the Court may deem just and proper.

Dated: New York, New York
January 13, 2016

Respectfully submitted,

O'MELVENY & MYERS LLP

By: 

Gary Svirsky

Brad M. Elias

Matthew Schock

Times Square Tower

7 Times Square

New York, New York 10036

Telephone: (212) 326-2000

Facsimile: (212) 326-2061

EDUCATION LAW CENTER

Wendy Lecker

60 Park Place, Suite 300

Newark, New Jersey 07102

Telephone: (973) 624-1815

Facsimile: (973) 624-7339

Attorneys for Petitioners