

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MIRIAM ARISTY-FARER, JACQUELINE COLSON, MONA)
DAVIDS, NICOLE JOB, FATIMAH MOHAMMED,)
HECTOR NAZARIO, CHRIS OWENS, SAM PIROZZOLO,)
PATRICIA PADILLA, EETIAH FRANCOIS SANDLER,)
and ROBERT JACKSON,)

Plaintiffs,)

vs.)

THE STATE OF NEW YORK, ANDREW M. CUOMO,)
as Governor of the State of New York, and JOHN B. KING, Jr.)
as President of the University of the State of New York,)

Defendants)

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This suit challenges the constitutionality of a penalty provision in a state statute that will deprive plaintiffs and approximately one million other students attending public schools in the City of New York of approximately \$250 million in state aid during the current school year and possibly even greater amounts during the next school year. The \$250 million represents a substantial reduction of the amount of state aid that the governor and the legislature themselves determined last spring to be necessary for these students to obtain the opportunity for a sound basic education guaranteed to them by Article XI, § 1 of the New York State Constitution and the decision of the Court of Appeals in *Campaign for Fiscal Equity (“CFE”) v. State of New York*, 100 N.Y.2d 893 (2003).

2. Pursuant to L. 2012, Ch. 57, Part A, the state must revoke the increase in general support aid for the current school year (approximately \$250 million for New York City) from any school district that failed by January 17, 2013 to reach agreement with the collective bargaining agents for its teachers and principals and to obtain approval from the commissioner of education on a plan for a new system for annual professional performance reviews (“APPR”) of its teachers and principals. The New York City Department of Education (“DOE”) failed to reach such an agreement with the United Federation of Teachers (“UFT”) by the specified date, and the governor has announced that no extensions will be granted. Accordingly, barring an order from this court, approximately \$250 million will shortly be deducted from the state’s apportionment of general school aid payments for education to the City of New York.
3. Plaintiffs take no position on the specifics of a new APPR plan or on the reasons the DOE and the UFT were unable to reach agreement. Their basic claim is that imposing a penalty in the form of reduced funding and reduced educational services on public school students for actions or inactions of certain public officials and unions violates the constitutional right of plaintiff students and the approximately one million other students attending the New York City public schools to a meaningful opportunity for a sound basic education and to due process and equal protection of the laws.

PARTIES

4. Miriam Aristy-Farer sues on her own behalf and on behalf of her minor child, Linus V. Farer, who is a student in the third grade at P.S. 314 in Manhattan.
5. Jacqueline Colson sues on her own behalf and on behalf of her minor children, Adrian Colson, who is a student in the 10th grade at MS/HS 252, Queens, and Darius Colson, who is a student in the 5th grade at P.S. 201, Queens.

6. Mona Davids sues on her own behalf and on behalf of her minor child, Mymoena Davids, who is a student in the 9th grade at the Fiorella H. LaGuardia High School in Manhattan.
7. Nicole Job sues on her own behalf and on behalf of her minor child, Karizma Job, who is a student in the 6th grade at MS 340 in Brooklyn.
8. Fatima Mohammed is 19 years old and is a student in the Deaf and Hard of Hearing Department at the Murray Bergtraum High School in Manhattan.
9. Hector Nazario, who is the President of Community Education Council 4 in Manhattan, sues on his own behalf and on behalf of his minor child, Ethan Nazario. Ethan is a student who attends high school at the Manhattan Village Academy.
10. Chris Owens sues on his own behalf and on behalf of his minor children, Elijah Dixon Owens, who is a student in the 10th grade at the Brooklyn Latin School, and Sampson Omari Dixon Owens who is a student in the 7th grade at the Innovate Manhattan Charter School Age.
11. Patricia Padilla sues on her own behalf and on behalf of her minor son, Ricardo A. Burgos, Jr who is a student in the 1st grade at P. S. 153 in Manhattan.
12. Sam Pirozzolo, who is the President of Community Education Council 31 in Staten Island, sues on his own behalf and on behalf of his minor children, Samantha Pirozzolo who is a student in the 7th grade at IS 27 in Staten Island, and Franklin who is a student in the 4th grade at P.S. 69 in Staten Island.
13. Etiah Francois Sandler sues on her own behalf and on behalf of her minor children, Jaylin Francois, who is a student in the 5th grade at P.S. 307, Brooklyn, Jaden Francois, who is a student in the 3rd grade at P.S. 307, Brooklyn and Jalil Francois, who is a student attending Kindergarten at P.S. 307, Brooklyn.

14. Robert Jackson is the chairman of the Education Committee of the New York City Council, and a taxpayer and resident of the borough of Manhattan. He was the chairman of the board of the Campaign for Fiscal Equity, Inc. and an individual plaintiff in *CFE v. State of New York*.
15. Defendant the State of New York (“state”) appropriates and allocates financial aid to school districts, including the City School District of the City of New York pursuant to the provisions of the Education Law and through an annual budget for state aid to localities.
16. Defendant Andrew M. Cuomo is the Governor of the State of New York and is sued in his official capacity.
17. Defendant John B. King, Jr. is President of the University of the State of New York and Commissioner of Education of the State of New York and is sued in his official capacity. Defendant King has overall responsibility for the administration of the university and the state education department, including responsibility to distribute, expend and administer state aid payments to school districts throughout the state of New York, including the City School District of the City of New York.

FACTUAL BACKGROUND

18. Article XI, § 1 of the Constitution of the State of New York (“the Education Article”) provides that:

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

19. The Court of Appeals has determined that the Education Article requires the state to ensure the availability of a “sound basic education” to all its students, and that such an education means affording “New York City schoolchildren the opportunity for a meaningful high school

education, one which prepares them to function productively as civic participants.” *CFE v. State of New York*, 100 N.Y.2d 893, 902, 908 (2003).

20. Each year, the governor submits proposed school aid appropriations to the legislature as part of the state’s executive budget process. The legislature then reviews and enacts school aid appropriations and other related legislation to implement the budget. The largest appropriation is for operating aid, of which “foundation aid” is the principal component. Educ. Law § 3602.
21. For fiscal year 2012-2013, the legislature approved combined major operating aids, including foundation aid, for New York City of approximately \$7.9 billion, which included an increase in general support aid of approximately \$250 million over the appropriation for the previous fiscal year.
22. At the request of the governor, and to induce school districts to comply with the governor’s desire for prompt implementation of the new APPR system set forth in Educ. Law § 3012-c, the legislature also adopted a “penalty provision” that read as follows:

Notwithstanding any inconsistent provision of law, no school district shall be eligible for an apportionment of general support for public schools from the funds appropriated for the 2012-13 school year in excess of the amount apportioned to such district for the same time period during the base year unless such school district has submitted documentation that has been approved by the commissioner of education by January 17, 2013 demonstrating that it has fully implemented new standards and procedures for conducting annual professional performance reviews of classroom teachers and building principals to determine teacher and principal effectiveness

.... If any such payments in excess of the amount apportioned to such district for the same time period during the base year were made the total amount of such payments shall be deducted by the commissioner from future payments to the school district....

L. 2012, ch. 57, Part A, § 1.

23. The specifics of the APPR process and of the plan that each school district must submit for approval to the commissioner of education are set forth in Educ. Law § 3012-c. Under that statute, before submitting the required APPR plan, the school district must obtain the agreement of the collective bargaining agents for its teachers and principals regarding certain of the procedures and assessment measures to be utilized in the plan. Educ. Law § 3012-c(2)(j) & (k).
24. The penalty provision also states, in a clause that applies only to the City School District of the City of New York, that the city will lose its general state support increase for 2012-2013 if the city has not adopted, with the agreement of the collective bargaining agents, “an expeditious appeals process pertaining to the annual professional performance review of classroom teachers and building principals.” L. 2012, ch. 57, Part A, § 1(5)(a).
25. Governor Cuomo has also included in his budget proposal to the legislature for fiscal year 2013-2014 an additional penalty provision that would deny a scheduled increase in state aid for that school year to any school district that has not negotiated with its unions and adopted the required APPR plan by September 1, 2013. 2013-14 New York State Executive Budget, Education, Labor and Family Assistance, Art. VII Legislation, Part A, § 1, available at http://publications.budget.ny.gov/eBudget1314/fy1314artVIIbills/ELFA_ArticleVII.pdf.
26. The governor’s executive budget proposal to the legislature for fiscal year 2013-2014 contains an additional continuing penalty provision, which states that “the apportionment of general support for public schools from the funds appropriated for the 2013-2014 school year *and thereafter* shall be reduced by the APPR past non-compliance penalty.” *Id.* § 1.3 (emphasis added).
27. For 2013-2014, the governor has also recommended that New York be prohibited from obtaining an additional \$30 million for which it would otherwise be eligible for new program initiatives in pre-kindergarten, extended day, community school, master teacher bonuses and

early college high school programming. 2013-14 New York State Executive Budget, Aid to Localities Budget, pp. 158-161, available at

<http://publications.budget.ny.gov/eBudget1314/fy1314appropbills/Local.pdf>.

28. On information and belief, the City School District of the City of New York is scheduled to receive a combined total in general support aid and new initiatives funding for 2013-2014 of approximately \$280 million under the governor's proposed executive budget.
29. Although the DOE had entered into intensive negotiations with the UFT to reach agreement on an APPR plan on a timely basis, no such agreement was, in fact, reached by these parties as of January 17, 2013, and no APPR plan was submitted to the commissioner for his approval. As of the date of the filing of this complaint, the DOE and the UFT have still not reached agreement on necessary components of an APPR plan.
30. On January 17, 2013, Governor Cuomo stated that:

Today is the final deadline for the handful of school districts, including New York City, that have failed to get their teacher evaluation systems in place. Please hear me - there will be no extensions or exceptions....The remaining districts and their unions have until midnight tonight to [implement an APPR plan] or they will forfeit the increase in education aid they have been counting on and both parties will have failed the children they serve.

31. The \$250 million reduction in funding for the 2012-2013 school year, all of which will be imposed on students during the second half of the current school year, will have substantial detrimental effects on plaintiffs and the other approximately one million students attending the New York City public schools. New York City Mayor Michael Bloomberg and schools chancellor Walcott have stated that, effective February 13, 2013 and for the rest of this school year, vacant teacher, guidance counselor and other positions will not be filled, all school aides' hours will be reduced, professional development opportunities for teachers, afterschool programs

and test preparation programs will be abridged, and extra-curricular student activities such as student newspapers and chess, science, and technology clubs will be sacrificed. Funding will also be reduced for pre-kindergarten special education and anti-bullying programs. Moreover, schools will be required to utilize teachers from the Absent Teacher Reserve pool composed of teachers laid off from other schools rather than teachers of their own choice to fill substitute positions. The DOE also is cancelling the Deferred Planning Initiative that allowed principals to roll over money into the following school year to facilitate planning and programming stability.

32. Even if the DOE and the unions reach agreement on an APPR plan by September 1, 2013, in the event that the governor's executive budget proposal is adopted by the legislature, New York City students will be deprived of an additional \$250 million for school year 2013-2014, plus compounded annual increases on that amount, each year thereafter. This deprivation will result in continuing detrimental impacts on the educational opportunities of the individual plaintiffs and the approximately one million other students attending New York City schools for years to come.

33. If the DOE and the UFT fail to reach agreement on an APPR plan by September 1, 2013 and the governor's executive budget proposal is adopted by the legislature, New York City students will be deprived of an additional approximately \$280 million, the scheduled increase in combined operating aids and new initiative funding for New York City for 2013-2014, plus the \$250 million referred to in the preceding paragraph, resulting in a total reduction of more than \$530 million, and cumulatively increasing sums for years thereafter, with attendant detrimental impacts on the individual plaintiffs and the approximately one million other students attending the New York City public schools.

FIRST CAUSE OF ACTION

34. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 33.
35. The Court of Appeals has determined that in order to meet the state's constitutional obligation to provide all students in New York City the opportunity for a "sound basic education," the state must "ascertain the actual cost of providing a sound basic education in New York City," and it must ensure that "every school in New York City [shall] have the resources necessary for providing the opportunity for a sound basic education." *CFE v. State of New York*, 100 N.Y.2d 893, 930 (2003).
36. The Court of Appeals also repeatedly specified that the state's funding system must "align funding with need," *id.* at 929, that resources must be "calibrated to student need," *id.* at 929, and that the state aid system must "bear a perceptible relation to the needs of City students." *Id.* at 930; *CFE v. State of New York*, 8 N.Y.3d 14, 21 (2006).
37. The \$250 million increase appropriated for the New York City schools for the current school year provides resources that are vitally needed to provide the plaintiffs and the approximately one million other students attending the New York City public schools the opportunity for a sound basic education.
38. The imposition of a \$250 million penalty that denies plaintiffs and the approximately one million other students attending New York City public schools funding that is vitally needed to provide them the opportunity for a sound basic education ---- for reasons wholly unrelated to student need ---- violates Art. XI, §1 of the New York State Constitution.

SECOND CAUSE OF ACTION

39. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 38.

40. The governor's recommendations in his executive budget proposals to impose a continuing "APPR past non-compliance penalty" on the plaintiffs and the approximately one million other students attending the New York City public schools of more than \$250 million per year for 2013-2014 school year and for all the years thereafter, as well as a further penalty of \$280 million if the DOE and the unions fail to reach agreement on an acceptable APPR plan by September 1, 2013, will deprive the plaintiffs and all other New York City students ---- for reasons wholly unrelated to student need ---- of substantial resources that are needed to provide these students the opportunity for a sound basic education. These recommendations, if adopted into law by the legislature and the governor, will, therefore, be in violation of Art. XI, § 1 of the New York State Constitution.

THIRD CAUSE OF ACTION

41. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 40.
42. On information and belief, defendants enacted the penalty provision in order to motivate and compel school boards and local unions to complete negotiations on an APPR plan by January 17, 2013. Assuming that sanctions were necessary to induce the parties to meet this deadline, the defendants had available a range of alternative mechanisms for accomplishing this end that would not detrimentally impact plaintiffs' educational opportunities. Such alternative mechanisms could have included authorizing the commissioner of education to supersede the powers of a local school board and its unions to develop and implement such a plan or appointing mediators or arbitrators to facilitate a prompt resolution of the issues.
43. In fact, on or about January 30, 2013, the governor announced that if the DOE and the UFT do not promptly reach agreement on an APPR plan, he would ask the legislature to empower the commissioner of education to develop an APPR plan and to impose it on the New York City

DOE and unions. Even if this happens, the governor reiterated that he would not ask the legislature to revoke the penalty provision.

44. Instead of putting school districts and unions on notice last spring that the commissioner of education would develop and impose an APPR plan if they did not meet the deadline, or utilizing an alternative sanction, the legislature and the governor chose to impose a substantial penalty on the plaintiffs and the approximately one million other students attending the New York City schools by decreeing that \$250 million would be taken away from them in the middle of the year, even though these students had no involvement in or responsibility whatsoever for these negotiations.
45. The funding cut-off required by Chapter 57 is immediate, non-revocable and non-appealable. It provides no opportunity for review of the facts, agreement on voluntary compliance, consideration of extenuating circumstances, extensions of time, mediation, arbitration, or other normal due process procedures.
46. Defendants' failure to pursue readily available alternative mechanisms for inducing school boards and unions to negotiate APPR agreements by a date certain, and the inflexibility of the penalty provision they did enact, were arbitrary, capricious and unreasonable and deprived plaintiffs of the right to due process of law under Art. I, § 6 of the New York State Constitution.

FOURTH CAUSE OF ACTION

47. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 46.
48. Although all school districts throughout the State of New York were required under the penalty provision to negotiate with their local collective bargaining agents and have an approved APPR plan by January 17, 2013, only the City School District of the City of New York was required to

also negotiate the terms of a specific “expeditious appeals process” with its unions. L. 2012, ch. 57, Part A, § 1(5)(a).

49. All of the approximately 700 school districts in the State of New York except New York City and five small upstate districts reached agreements with their unions and had APPR plans approved by the commissioner of education by January 17, 2013.
50. Accordingly, all of the approximately two million students attending schools in school districts throughout the State of New York other than the plaintiffs and the approximately one million other students attending New York City public schools and several thousand students in the five small upstate districts will receive the full level of funding that the governor and the legislature had determined was needed to provide them the opportunity for a sound basic education for the 2012-2013 school year.
51. Defendants’ denial to the plaintiffs and the approximately one million other students attending New York State schools of the funding levels that the governor and the legislature had determined to be necessary to provide them the opportunity for a sound basic education, while such full funding levels are being provided to virtually all other students in the State of New York, is a violation of plaintiffs’ right to equal protection of the laws under Art. I, § 11 of the New York State Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter judgment as follows:

1. Declaring that the penalty provision of L. 2012, ch. 57, Part A, § 1 and any other statutes or regulations that impose penalties that result in a reduction of state funding needed to provide

students the opportunity for a sound basic education violate Article 11, § 1 of the New York State Constitution and are null and void.

2. Declaring that the penalty provision of L. 2012, ch. 57, Part A, § 1 is arbitrary, capricious and unreasonable, violates Article I, § 6 of the New York State Constitution, and is null and void.
3. Declaring that the penalty provision of L. 2012, ch. 57, Part A, § 1 and any other statutes or regulations that impose penalties on students attending schools in New York City but not on students attending schools in other parts of the state that result in a reduction of state funding needed to provide these students the opportunity for a sound basic education violate the equal protection clause of Article 1, § 11 of the New York State Constitution and are null and void.
4. Preliminarily and permanently enjoining defendant commissioner from subtracting from any payments due to the City School District of the City of New York for state education aid apportioned and appropriated for the City School District of the City of New York by the legislature for the 2012-2013 school year the amount of any penalty required by L. 2012, Ch.57, Part A or any other penalties resulting from the failure of the DOE and its unions to reach agreement on an APPR plan and further enjoining the commissioner from failing to provide state aid payments to the City School District of the City of New York for the 2012-2013 school year in accordance with the payment schedules applicable generally to all other school districts in the state.
5. Preliminarily and permanently enjoining the defendants from enacting statutes or regulations, and from issuing executive budget proposals, that impose penalties that result in a reduction of state funding for any public schools that is needed to provide students the opportunity for a sound basic education.

6. Awarding plaintiffs their reasonable attorney's fees, disbursements and costs in bringing this action; and
7. Providing such other and further relief as the Court may deem just and proper.

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