

**New Yorkers For Students' Educ. Rights ("NYSER")
v State of New York**

2014 NY Slip Op 32930(U)

November 17, 2014

Supreme Court, New York County

Docket Number: 650450/14

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ Justice

PART 13

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS ("NYSER"), RUBNELLA AGOSTINE, MIRIAM ARISTY-FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARCIA, G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOUILLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, and ANDY WILLARD,

INDEX NO. 650450/14
MOTION DATE 10-22-14
MOTION SEQ. NO. 005
MOTION CAL. NO.

Plaintiffs,

-against-

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

Defendants.

The following papers, numbered 1 to 5 were read on this Motion to Dismiss :

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...
Answering Affidavits – Exhibits cross motion
Replying Affidavits

PAPERS NUMBERED

1 - 3

4

5

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is Ordered that defendants' motion pursuant to CPLR §3211 [a],[3],[4] and [7] to dismiss the Amended Complaint and this action with prejudice, is denied.

Plaintiffs, consisting of an unincorporated association of organizations and individuals, along with individual parents, representing nine school districts in New York State, brought this action seeking declaratory and injunctive relief derived from the alleged inadequacies of the current state education system and failure to provide adequate funding for purposes of providing a sound basic education.

Defendants' motion pursuant to CPLR §3211 [a],[3],[4] and [7] seeks to dismiss the Amended Complaint and this action with prejudice.

Defendants contend that this action should be dismissed pursuant to CPLR §3211[a],[3], because the individual plaintiffs lack standing due to the failure to allege any injury in fact or specific deficiencies in educational opportunities afforded to students. Defendants claim that since only nine of the approximately 700 school districts in New York State are represented, and there has been no showing of deficiencies in educational opportunities on a district by district basis, there is a lack of standing for the claims asserted.

The plaintiffs suing as individuals claim the assertions in the Amended Complaint are derived from the current legislation's failure to comply with a statewide funding formula previously devised by the defendants for providing a sound basic education. They

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

contend that they have standing because as parents of school children they fall within the zone of interest that is protected by the New York State Constitution.

An action may be dismissed pursuant CPLR §3211[a],[3], on the grounds that the plaintiff lacks either standing or the capacity to sue. The determination of standing requires that the party seeking relief sufficiently establish a recognizable stake in the proceedings and their outcome so that the dispute is capable of judicial resolution (Community Bd. 7 of Borough of Manhattan v. Schaffer, 84 N.Y. 2d 148, 639 N.E. 2d 1, 615 N.Y.S. 2d 644 [1994]). A determination of standing, "should not be heavy handed" or applied, "...in an overly restrictive manner" (Matter of Association for a Better Long Is., Inc. v. New York State Dept. of Env'tl. Conservation, 22 N.Y. 3d 1, 11 N.E. 2d 188, 988 N.Y.S. 2d 115 [2014]). Plaintiffs by establishing that the claims are of, "a sufficient nexus to fiscal activities of the State," may obtain standing without having to demonstrate an injury in fact (Saratoga County Chamber of Commerce v. Pataki, 100 N.Y. 2d 801, 798 N.E. 2d 1047, 66 N.Y.S. 2d 654 [2003]). Plaintiffs must establish that, "the State's funding methodology deprives school children in the State of New York of a "minimum adequate education." There is, "no reason to close the courthouse doors to parents and children with viable constitutional claims" (Hussein v. State of New York, 19 N.Y. 3d 899, 973 N.E. 2d 752, 950 N.Y.S. 2d 342 [2012]).

This Court will not "close the courthouse doors" on the individual plaintiffs' potentially viable constitutional claims affecting schoolchildren in New York State. The individual plaintiffs as parents have standing based on the potential effect of the legislation on funding derived from the New York State Constitution Art. XI, §1's requirement of a sound basic education.

Defendants pursuant CPLR §3211[a],[3], argue that NYSER has failed to demonstrate organizational standing, and cannot show that at least one of its members would have standing to sue, or that it is representative of the purposes asserted.

Organizational standing requires that at least one member of the organization has standing to sue, that the organization is representative of the interests sought to be protected and that individual members would not be required to participate in the action. The two part test for determining organizational standing requires: (1) a showing that plaintiff suffered a specific "injury in fact" derived from an administrative action that is being challenged, and (2) that the asserted injury falls within the "zone of interests" the challenged statutory provision was meant to either promote or protect. (New York State Assn. Of Nurse Anesthetists v. Novello, 2 N.Y. 3d 207, 810 N.E. 2d 405, 778 N.Y.S. 2d 123 [1004]). Standing in a declaratory judgment action requires a demonstration of, "cognizable harm" to members organizations that, "...has been or will be injured," a mere tenuous claim of harm is not enough to require judicial intervention (New York State Assn. Of Nurse Anesthetists v. Novello, 2 N.Y. 3d 207, supra at 214).

The individual plaintiffs as member of NYSER have standing, the defendants have failed to establish that NYSER as an organization is not representative of the interests it seeks to protect, or that every school district in the state needs to be individually represented. NYSER in addition to those specifically named individual plaintiffs, is acting in its representative capacity on behalf of organizations that have membership in every district in the State of New York, and all potential individual members of the organization are not required to participate in this action. NYSER's stated mission is to ensure that all students in the State of New York receive the opportunity for a sound basic education. The claims asserted by plaintiffs are not tenuous, there is a potential risk of harm to public school students and to school districts derived from financial distress.

Defendants contend that NYSER members, specifically school districts, school boards, school staff as in superintendents, assistant superintendents, teachers and administrators, do not have the capacity to bring this action. They claim that organizations that represent a school's staff fail to assert any constitutional injury since they cannot allege any direct injury from the funding system.

The capacity to sue is the litigant's ability to appear and bring its grievance to the Court. The general rule is that the State of New York created municipal corporate bodies, including counties, cities, towns, and school districts. They act as its agents for the purpose of carrying out governmental powers, therefore, they lack the capacity to sue to invalidate. Municipal administrative or legislative boards and their members, as well as individual municipal officials, also generally lack the capacity to sue the State of New York because they are also deemed agents (*City of New York v. State of New York*, 86 N.Y. 2d 286, 655 N.E. 2d 649, 631 N.Y.S. 2d 553 [1995]). An exception to the general rule barring local governmental challenges to New York State legislation applies to State legislation adversely affecting a municipality's proprietary interest in a specific fund of moneys (*City of New York v. State of New York*, 86 N.Y. 2d 286 at pages 291-292).

An organization bringing an action on behalf of its entire membership can be found to have capacity to sue where it has a mixed membership, which includes individuals or entities that individually would lack capacity along with other individuals or groups that have capacity (*Campaign for Fiscal Equity v. State*, 86 N.Y. 2d 307, 655 N.E. 2d 661, 631 N.Y.S. 2d 565 [1995]).

NYSER has established that it has capacity to sue because of its mixed membership which includes individual parents of public schoolchildren that have capacity to bring this action against the defendants. NYSER also has capacity to sue because of the alleged proprietary interest in the funds specifically set aside under the Budget and Reform Act of 2007, which has not been repealed or amended. The subsequent removal of funding by the defendants could be found to impair a proprietary interest.

Defendants have not stated any arguments for their claim pursuant to CPLR §3211[a],[4], related to another action pending between the same parties on the same cause(s) of action, in any court located in New York State or the United States. Defendants failed to identify either the Court or which causes of action asserted in the Amended Complaint in this case are pending elsewhere, however, pursuant to CPLR §3211[a],[4], dismissal is not mandated on this ground, the Court may, "... make such order as justice requires." (*Posada v. New York State Dept. of Health*, 54 A.D. 3d 1100, 866 N.Y.S. 2d 785 [3rd Dept., 2008] and *McKinney's*, CPLR Rule 3211).

The Amended Complaint asserts four causes of action seeking declaratory and injunctive relief. In the First Cause of Action, plaintiffs allege that the defendants have failed to comply with the decisions of the Court of Appeals as stated in, *Campaign for Fiscal Equity v. State*, 86 N.Y. 2d 307, 655 N.E. 2d 661, 631 N.Y.S. 2d 565 [1995] (CFE I), *Campaign for Fiscal Equity v. State*, 100 N.Y. 2d 893, 801 N.E. 2d 326, 769 N.Y.S. 2d 106 [2003] (CFE II), *Campaign for Fiscal Equity v. State* 8 N.Y. 3d 14, 801 N.E. 2d 326, 769 N.Y.S. 2d 106 [2006] (CFE III), because New York City Public Schoolchildren are not being provided with the opportunity for a sound basic education required by New York Constitution Article XI §1.

The Second Cause of Action alleges that defendants failed to provide individual plaintiffs and numerous other students in school districts throughout the State of New York the opportunity for a sound basic education, by failing to provide the minimal constitutional level of funding necessary to ensure students an opportunity for a sound

basic education, through failure to implement a state aid system the legislature determined was necessary in 2007, deferring compliance with a four year phase in period while imposing an arbitrary gap elimination adjustment, imposing an arbitrary cap on future increases in state appropriations, and imposing a statewide cap on local property taxes except for New York City, Buffalo, Syracuse and Yonkers.

The Third Cause of Action alleges defendants violated New York Constitution Article XI §1 since 2009 by failing to respond appropriately to changes in fiscal and educational conditions and to maintain a statewide system of education by: identifying and notifying the school districts and schools of essential course of study, types of services, supports and resources; failing to provide methods for improving efficiency and cost effectiveness of their operations; failing to ensure a system of accountability that measures whether every school has sufficient resources; failing to develop rational cost study methodology to determine the actual cost of providing students with a sound basic education; and failing to revise state aid formulas and mechanisms to ensure that all public schools, in fact, have sufficient funds to provide a sound basic education.

The Fourth Cause of Action alleges that the State Defendants have failed and are continuing to fail to provide students throughout New York State with an opportunity for a sound basic education in violation of Article XI, §1 of the New York State Constitution.

Defendants argue that pursuant to CPLR §3211[a][7] the Amended Complaint fails to state any causes of action and that the arguments presented are conclusory and should be dismissed. They contend that plaintiffs have only made generic allegations about the present funding system preventing a sound basic education and cannot establish causation or that the withholding of funding was irrational or unreasonable. Defendants also argue that plaintiffs are seeking determinations related to budgetary considerations that are outside the scope of this Court's authority, because the 2007 Budget Reform Act exceeded the Constitutional minimum for a sound basic education required as a result of CFE I, CFE II and CFE III, and the plaintiffs have failed to provide proof that the legislated removal of funding results in a failure to meet the minimum requirements of the New York State Constitution. Defendants contend that the assessments sought in the third cause of action were rejected in CFE I, CFE II and CFE III, and should not be imposed by this Court.

Plaintiffs contend that at this pleading stage of the action on a motion to dismiss pursuant to CPLR §3211[a][7], they have stated causes of action that have potential merit and that further proof of their claims will be provided as this action progresses. They argue that causation has been stated and derived from their claims related to the "gap elimination adjustment" set forth in N.Y. Educ. Law §3602.17, the cap on state aid increases set forth in N.Y. Educ. Law §3602[dd], and the supermajority requirements concerning increases in local property tax levies together with penalty provisions of L. 2012, ch. 57, Part A, §1 and L. 2013, ch. 57, Part A §1, and combined with related penalties, were irrational or unreasonable. Plaintiffs contend that their arguments are derived from defendants failure to reach a constitutional level of compliance with minimally adequate accountability to measure whether the reforms actually provide a sound basic education as stated in CFE II. They argue the current system is not the same as that found to be adequate in CFE III, and there are no guidelines for implementation of the new learning standards developed by the Regents' under the state's substantially reduced funding to education.

The Courts generally do not have the authority to intrude into either the Governor or the New York State Legislature's budgetary function as it relates to financing for education. The Court's province is only to determine whether those branches of government have met their constitutional obligations, and to the extent they fail to do so,

to order redress for violations (Campaign for Fiscal Equity v. State 8 N.Y. 3d 14, 801 N.E. 2d 326, 769 N.Y.S. 2d 106 [2006] and Hussein v. State of New York, 19 N.Y. 3d 899, 973 N.E. 2d 752, 950 N.Y.S. 2d 342 [2012]). Judicial intervention pertaining to state budget should be invoked when the state financing plan is patently irrational or unreasonable (Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14, 861 N.E. 2d 50, 828 N.Y.S. 2d 235 [2006]).

Article XI, §1 of the New York State Constitution applies to education, it ensures that students, have a "sound basic education." The claimants are required to specifically allege facts that establish educational inadequacies that if proven can support a claim that minimal educational opportunities cannot be obtained (Campaign for Fiscal Equity, Inc. v. State, 86 N.Y. 2d 307, 655 N.E .2d 661, 631 N.Y.S. 2d 565 [1995] (CFE I) and Campaign for Fiscal Equity, Inc. v. State of New York, 100 N.Y. 2d 893, 801 N.E. 2d 326, 769 N.Y.S. 2d 106 [2003](CFE II)). A sound basic education requires the provision of basic literary, verbal skills, and calculation skills. The curricula should include reading, writing, math, science and social studies, taught by personnel trained in those subjects. Inadequacies include lack of minimally adequate facilities and classrooms and access to desks, chairs, pencils, and reasonably updated textbooks. The lack of a sound basic education can be established by an actual showing of a lack of minimal facilities, inability to provide trained teachers and reasonable curricula, or by establishing outcome like poor test scores (Campaign for Fiscal Equity, Inc. v. State, (CFE I) 86 N.Y. 2d 307, supra at 317-318).

Plaintiffs have stated potentially meritorious claims of violations of the requirements of a sound basic education under the New York State Constitution. Dismissal pursuant to CPLR §3211[a][7], requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified and it is properly pled. A cause of action does not have to be skillfully prepared but it does have to present facts so that it can be identified and establish a potentially meritorious claim. Allegations are generally deemed true in favor of the non-moving party (Leon v. Martinez, 84 N.Y. 2d 83, 638 N.E. 2d 511, 614 N.Y.S. 2d 972 [1994]). Plaintiffs allegations of unconstitutional finance and budgetary legislation affecting funding and the provision of a sound basic education are presumed true, and the "gap elimination adjustment," set forth in N.Y. Educ. Law §3602.17, the cap on state aid increases set forth in N.Y. Educ. Law §3602[dd], and the supermajority requirements concerning increases in local property tax levies together with penalty provisions of L. 2012, ch. 57, Part A, §1 and L. 2013, ch. 57, Part A §1, and related penalties could potentially be found irrational, arbitrary or capricious and capable of preventing a sound basic education.

Accordingly, it is ORDERED that defendants' motion pursuant to CPLR §3211 [a],[3],[4] and [7] to dismiss the Amended Complaint and this action with prejudice, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.



MANUEL J. MENDEZ,
J.S.C.

Dated: November 17, 2014

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