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REPORT ON LEGISLATION BY THE EDUCATION & THE LAW COMMITTEE

**A.5355
S.3821**

**M. of A. Jaffee
Sen. Carlucci**

AN ACT to Authorize the Commissioner of Education to Appoint a State Monitor to Oversee the East Ramapo Central School District, and Establish the Powers and Duties of the State Monitor.

THIS BILL IS APPROVED

The New York City Bar Association is a voluntary association of more than 24,000 attorney and law student members and more than 150 committees. Founded in 1870 in response to growing public concern over corruption among judges and lawyers, the City Bar's mission includes "harnessing the expertise of the legal profession to identify and address legal and public policy issues in ways that promote law reform, ethics and the fair and effective administration of justice." The Education and the Law Committee ("the Committee") of the New York City Bar addresses the full range of legal issues surrounding education from pre-K through higher education, including education finance, governance, legislative proposals, and special education.

SUMMARY OF THE PROPOSED BILL

A.5355/S.3821 ("the bill") would require the State Education Commissioner to appoint a state monitor to oversee, and have veto power, over decisions of the East Ramapo School Board ("Board"). The bill would empower the state monitor to propose alternative courses of action to those chosen by the Board, supervise all fiscal and operational activities in the district, issue directives to override Board decisions, and direct the Board members to undergo any training deemed necessary. The bill would also require the monitor to "develop a five-year academic and fiscal improvement plan" within six months of appointment.

BACKGROUND

The East Ramapo school district has been in decline for a number of years. The decisions of the Board have come under fire by legislators, members of the general public, the local community, and a state-appointed fiscal monitor, as having had a negative impact on the public school population, while favoring the private school population. Fiscal mismanagement has led to the slashing of public school programs, both educational and extra-curricular. In

addition, the lack of transparency in Board decisions has possibly violated the Open Meetings Law.

The current state of the public schools in East Ramapo points to a failure to uphold the constitutionally-mandated “sound basic education” to which all students in New York are entitled. A recent report by the state-appointed fiscal monitor, Henry Greenberg, made numerous recommendations for turning the district around, one of which was the appointment of a state monitor to oversee, and have veto power over, Board decisions. Due to the extreme crisis in East Ramapo, the Committee supports the proposed legislation to appoint a state monitor over the East Ramapo Central School District.

THE EAST RAMAPO SCHOOL BOARD HAS VIOLATED THE STATE CONSTITUTION

The Board currently denies public school students a sound basic education¹, in violation of the New York State Constitution. A “sound basic education” is one in which children have:

“minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.”²

In *Campaign for Fiscal Equity, Inc. v. State of New York*, the New York Court of Appeals established the framework for judging whether a sound basic education is being provided. The court established a test of “inputs” versus “outputs,” and used objective metrics to determine whether the state was providing sufficient resources to meet the constitutional standard. The “inputs” were designated as Teaching, School Facilities and Classrooms, and Instrumentalities of Learning (i.e. classroom supplies, textbooks, libraries, and computers).³ The “outputs” were designated as School Completion and Test Results.

In the report of his investigation, “East Ramapo: A School District in Crisis,” Henry Greenberg illustrates that East Ramapo violates the sound basic education by all input measures.⁴ Since 2009, nearly 450 teaching positions have been eliminated in the district, along with an exhaustive list of cuts to guidance counselors, social workers, Dean positions, and severe cuts to

¹ *Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643 (1982).

² *Campaign for Fiscal Equity, Inc. v. State of New York*, 100 N.Y.2d 893, 907 (2003).

³ *Id.*

⁴ Report of Investigation, “East Ramapo: A School District in Crisis,” Greenberg, Henry M. November 17, 2014 (“Greenberg”).

academic programs⁵. In 2012-13, the Board froze purchases on “supplies, materials and equipment,” one of the necessary inputs for a sound basic education, and this freeze occurred after many years of consistent cuts to the equipment budget. The Supervisor of Technology and all teacher training for technology has been eliminated. With a lack of technology and technology support, the Board is failing its students in providing one of the most important Instrumentalities of Learning in 2015.

A review of output measures for East Ramapo further indicates the district’s failure to provide a sound basic education. Student graduation rates in East Ramapo are at 64%, compared to a statewide average of 74.9%. The district has a drop-out rate of 17%,⁶ compared with a statewide average of 7% in 2014.⁷ Students in grades 3-8, 84% are either well-below or below proficient in English Language Arts, while 87% are well-below or below proficient in Math.

Thus, the Board has consistently denied the students in the district a sound basic education when applying the input/output lens determined by the courts. The evidence of this denial can be seen in a review of the empirical evidence; extraordinarily low graduation rates, high drop-out rates that more than double the state average, and extremely poor performance on standardized tests.

THE SCHOOL BOARD HAS FAILED IN ITS FIDUCIARY RESPONSIBILITY TO THE DISTRICT

As public officers, “a school board member takes an oath of office to uphold the law and faithfully discharge her duties.”⁸ Also, “[i]n carrying out these duties, individual board members have a fiduciary obligation to act constructively to achieve the best possible governance of the school district.”⁹ The Board has breached this fiduciary duty, as evidenced by the fiscal management of district funds and assets.

The East Ramapo district has operated at a deficit for 7 of last 10 years, and proposed district budgets have been defeated the last 4 of 5 years, which is the highest rejection rate in the state.¹⁰ The district has depleted its unreserved funds, as well as its restricted funds, leaving the

⁵ *Id.* In his report, Greenberg noted that Kindergarten was reduced from a full-day to a half-day program, high school electives and foreign language programs have been slashed, and summer school programs have been eliminated. While public school programs were slashed or eliminated, the Board increased spending on private school programs.

⁶ Public School District Total Cohort Graduation Rate and Enrollment Outcome Summary, 2012-13 School Year, available at <http://www.p12.nysed.gov/irs/pressRelease/20140623/District-enroll-outcomes-and-diplomasJune-23-2014.pdf>.

⁷ NY STATE Public School High School Graduation Rate (2013 - 14), available at <http://data.nysed.gov/gradrate.php?year=2014&state=yes>.

⁸ N.Y. Const. Art. XIII, §1; Public Officers Law §10; *Application of Nett and Raby*, 45 Ed Dept Rep 167 (2005).

⁹ *Id.*

¹⁰ *See Greenberg.*

district with no available capital for emergencies.¹¹ Additionally, the Board has faced significant criticism over its handling of the sale of available finances and assets.

Despite the budget constraints, the Board has placed students with special needs in private school placements, even when there were services in the district schools, resulting in waste of revenues. The district also hired a new law firm in 2009, and since that time the district's legal fees rose 668%.¹²

Given the clear mismanagement of district funds, the use of those funds to favor private school students at the expense of public district programs, and the resistance to any financial oversight or assistance, it is evident that the current board members have breached their fiduciary duty to the public. A state monitor is needed in East Ramapo in order to bring the district's finances under control.

THE BILL IS NARROWLY TAILORED SO AS TO AVOID OVERREACH

The issue of state takeover of local districts is complex. The City Bar takes no position on whether New York State should takeover local districts generally. But, state intervention via the proposed bill is appropriate for East Ramapo's unique situation.

While the state has the authority to intervene in the running of local districts¹³, it has only taken control of a district once in the state's history.¹⁴ In that case, the state removed the entire Roosevelt Union Free School District Board, replaced the board with the Commissioner's appointees, and gave the Commissioner the ability to directly appoint or remove the superintendent.¹⁵ In Roosevelt, the district faced circumstances similar to those in East Ramapo; namely high student dropout rates, low academic performance on state tests, and fiscal mismanagement. State intervention over Roosevelt ended in 2013 after 11 years of close oversight and legal control, which was required by the statute's sunset provision. Notably, the state's takeover to address the unique situation in Roosevelt did not cause a domino effect of state takeover of other local school districts.

The bill at issue here clearly focuses on the East Ramapo public school district. This is an educational as well as a fiscal disaster from which it will take years to recover, necessitating drastic action on the part of the state.¹⁶ State takeover of local districts must be considered with caution, and take into account the particular circumstances of the school or district at issue. The bill, being specific to the unique needs of East Ramapo, and having a sunset provision of

¹¹ *Id.*

¹² *See Greenberg.*

¹³ N.Y. EDUC. LAW § 2590-h (giving the New York State Chancellor the power to assume joint or direct control of failing schools or districts).

¹⁴ Bruce Lambert, *State Moving to Take Over Roosevelt School District*, THE NEW YORK TIMES, April 17 2002.

¹⁵ Chapter 33 of the Laws of 2002.

¹⁶ *See Greenberg.*

December 31, 2025¹⁷, succeeds in being narrowly tailored and sufficient in time frame to return the Board to local control.

CONCLUSION

The City Bar approves the bill, as it is narrowly tailored to the particular crisis in East Ramapo, contains a sunset provision, and would provide much needed oversight of the Board to ensure the district students begin to obtain a constitutionally-mandated sound basic education.

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¹⁷ A.5355, §8.