

**New Yorkers for Students' Educ. Rights v State of  
New York**

2014 NY Slip Op 33764(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. 004
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 7 were read on this Motion to/for: leave to Intervene:

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

PAPERS NUMBERED

1 - 3

4 - 5

6 - 7

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers it is ordered that the CITY OF YONKERS' motion pursuant to CPLR §1012, §1013 and §1014 for leave to intervene, is granted.

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 education system and failure to provide adequate funding for a sound basic education.

The City of Yonkers (hereinafter referred to as "Yonkers") seeks an Order granting it leave to intervene in this action either "as of right" pursuant to CPLR §1012 [a][2], alternatively pursuant to CPLR §1013 by permission of this Court because of common questions of law and fact. Pursuant to CPLR §1014, a copy of the proposed amended pleadings are provided setting forth Yonker's claims related to funding and the ability to provide a sound basic education for its students.

Defendants oppose the motion arguing that Yonkers should not be permitted to intervene because of lack of capacity and that there is currently a motion to dismiss this action pursuant to CPLR 3211[a][3], in part relying on the same grounds as to the remaining plaintiffs. Defendants contend that as a municipality, Yonkers is a "creature of the state," and has failed to state a viable claim because it cannot sue the State of New York challenging the constitutionality of the educational funding system.

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

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 cities, which act as its agents in carrying out its governmental powers, therefore, they lack the capacity to sue to invalidate Legislation (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]).

There are four exceptions to the general rule barring local governmental challenges to New York State legislation and they are: "(1) an express statutory authorization to bring such a suit...(2) where the State legislation adversely affects a municipality's proprietary interest in a specific fund of moneys...(3) where the statute impinges upon 'Home Rule' powers of a municipality constitutionally guaranteed under article IX of the State Constitution...and (4) where the municipal challengers assert that if they are obliged to comply with the State statute they will by that very compliance be forced to violate a constitutional proscription..."(City of New York v. State of New York, 86 N.Y. 2d 286 at pages 291-292).

Yonkers contends that it has capacity to sue because of a proprietary interest in specifically identified funds. Yonkers claims that the Budget and Reform Act of 2007 allocated specific funding to it. In 2010 the Gap Elimination Adjustment Act ("GEAA") was introduced to close a ten billion dollar deficit. Yonkers argues that the GEAA resulted in a "take back" of state aid appropriations and that together with an imposed 2% tax cap, results in a shortfall of funding totaling \$90,447, 595.00 from 2010 through the 2013-2014 school year.

The capacity to challenge legislation results from a proprietary entitlement to a specific fund which has not been repealed or amended, and subsequent Legislation which impairs that entitlement (County of Rensselaer v. Regan, 80 N.Y. 2d 988, 607 N.E. 2d 793, 592 N.Y.S. 2d 646 [1992]).

Yonkers has stated capacity to sue because it has a 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 pre-designated funds pursuant to GEAA, could be found to impair the proprietary interest.

Yonkers contends that it should be granted leave to intervene pursuant to CPLR §1012 [a][2], because it would be bound by a final judgment and has a real and substantial interest in the outcome of this action, which may not be adequately represented by the current parties. Yonkers argues that there are distinctly different and conflicting financial circumstances for its students and taxpayers which would be directly affected by this litigation, requiring intervention.

Pursuant to CPLR §1012 [a][2], intervention as of right is conferred by a timely application that establishes: (1) the party seeking to intervene may be bound by the final judgment and, (2) representation of the party's interests by the current parties to the action are, or may be, inadequate (Vantage Petroleum v. Board of Assessment Review of the Town Babylon, 61 N.Y. 2d 695, 460 N.E. 2d 1088, 472 N.Y.S. 2d 603 [1984]). Inadequate representation requires that the intervenor have privity, but also that it has additional interests that might conflict with those of parties to the action (New York State Public Employment Relations Bd. v. Board of Ed. of the City of Buffalo, 46 A.D. 2d 509, 363 N.Y.S. 2d 365 [4<sup>th</sup> Dept., 1975]).

Yonkers has not stated a basis to intervene pursuant to CPLR §1012 [a][2], it has failed to state additional interests that might conflict with those of other plaintiffs.

Yonkers also seeks to intervene in this action pursuant to CPLR §1013. Yonkers contends that there would be no undue delay because this motion is being made within three months of plaintiffs' filing of an Amended Complaint. Yonkers argues that this Court in its

discretion should grant intervention because there is at least one common question of law and fact in the proposed pleadings related to funding.

Pursuant to CPLR §1013, the Court in its discretion may confer the right to intervene when there are common questions of law or fact and there would be no undue delay. Intervention by permission should be granted where the intervenor has a real and substantial interest or an actual legal stake in the outcome of the action (County of Westchester v. Department of Health of State of N.Y., 229 A.D. 2d 460, 645 N.Y.S. 2d 534 [2<sup>nd</sup> Dept., 1996] and Hildene Capital Management, LLC v. Bank of New York Mellon, 105 A.D. 3d 436, 963 N.Y.S. 2d 38 [1<sup>st</sup> Dept., 2013]).

Yonkers has stated a basis to intervene pursuant to CPLR §1013, the application is timely and there are common questions of law and fact that should be heard together with the those of the plaintiffs. Yonkers has also established that it has a real and substantial interest in the outcome of this action related to financing and providing a sound basic education. Defendants have not opposed the timeliness of this application, or established that Yonkers should be prohibited from intervening.

Accordingly, it is ORDERED that THE CITY OF YONKERS' motion for leave to intervene, is granted and that THE CITY OF YONKERS be permitted to intervene in this action as a party plaintiff, and it is further,

ORDERED, that the proposed Intervenor Verified Complaint, adding THE CITY OF YONKERS as a Proposed Intervenor-Plaintiff, in the caption, shall be substituted for the Amended Complaint in this action, and it is further,

ORDERED, that the Intervenor Verified Complaint in the form annexed to the motion papers shall be deemed served upon service of a copy of this Order with Notice of Entry on all parties, the County Clerk (Room 141B) and the General Clerk's Office (Room 119), and it is further,

ORDERED, that the defendants shall answer the Intervenor Verified Complaint within twenty (20) days from the date of service of a copy of this Order with Notice of Entry, and it is further,

ORDERED, that upon receipt of a copy of this Order with Notice of Entry, the County Clerk (Room 141B) and the General Clerk's Office (Room 119) are directed to amend their records to reflect such change in the caption herein.

ENTER:

MANUEL J. MENDEZ  
J.S.C.  
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MANUEL J. MENDEZ,  
J.S.C.

Dated: November 17, 2014

Check one:  FINAL DISPOSITION    X NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST                     REFERENCE