



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EAST CLEVELAND CITY SCHOOL
DISTRICT BOARD OF EDUCATION
1843 Stanwood Road
East Cleveland, OH 44112

Plaintiff,

vs.

STATE OF OHIO
c/o Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215

and

OHIO DEPARTMENT OF
EDUCATION
25 South Front Street
Columbus, OH 43215

and

PAOLO DeMARIA
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, OH 43215

SERVE ALSO:

STATE OF OHIO
c/o Mike DeWine, Ohio Attorney General
30 East Board Street, 14th Floor
Columbus, OH 43215

Defendants.

CASE NO

Judge: STEVEN E GALL

CV 18 904006

**VERIFIED COMPLAINT AND
APPLICATION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION,
AND DECLARATORY JUDGMENT**

Evidentiary Hearing Requested

FILED
2018 SEP 19 P 2:11
CLERK OF COURTS
CUYAHOGA COUNTY

Plaintiff East Cleveland City School District (“District”) Board of Education (“Plaintiff” or “Board”) hereby submits its Complaint against Defendants State of Ohio (“State”), Ohio Department of Education (“ODE”), and Paolo DeMaria (“State Superintendent”) (collectively, “Defendants”), and hereby avers and alleges as follows:

SUMMARY OF THE CASE

1. This case centers on the ability of a school district's local board of education to make incremental, positive changes over time to address the needs of the "whole child" and help its students succeed both academically and in life. Based on an improper reading of Ohio law, flawed report card, and unconstitutional legislation, Defendants seek to wrest control away from the Board mid-school year and impose an unelected academic distress commission ("ADC") over it – i.e., impose takeover of the District by the State. The Board seeks to enjoin Defendants from unlawfully placing the District under an ADC. The Board also seeks declaratory judgment regarding (1) the interpretation of the Ohio law governing ADCs, and (2) the constitutionality of the legislation which empowered Defendants to establish an ADC in this manner.

PARTIES, JURISDICTION, AND VENUE

2. The Board is the duly constituted and acting board of education for the District, located in Cuyahoga County. Pursuant to R.C. §3313.17, the Board is a body politic and corporate, organized and existing pursuant to the laws of the State of Ohio, capable of suing and being sued, and capable of contracting and being contracted with.
3. Defendant State is the statewide governmental body that passes legislation through its General Assembly, which is then signed into law by its Governor. The State oversees, employs, and directs the other co-Defendants and is ultimately responsible for the State's public education system.
4. ODE oversees the State's public education system, which includes city, local, and exempted village public school districts, joint vocational school districts, and charter schools. The ODE is responsible for administering the school funding system, developing academic standards and curricula, administering achievement tests and assessments, and

issuing district and school report cards and overall letter grades, among other things. The ODE is also responsible for the licensing and education of teachers, administrators, treasurers, superintendents, and other education personnel.

5. The State Superintendent, in his official capacity as Superintendent of Public Instruction, is responsible for establishing ADCs for any school district that meets the conditions outlined in R.C. §3302.10 (the “ADC Statute”). The State Superintendent’s responsibility under the ADC Statute includes appointing three of the five commission members and designating a chairperson of the ADC. The ADC then appoints a chief executive officer (“CEO”), who exercises “complete operational, managerial, and instructional control over the district.” R.C. §3302.10(C)(1).
6. This Court has jurisdiction over this dispute pursuant to R.C. §§2727.02 and 2727.03.
7. Venue is proper in this Court pursuant to Ohio Civ. R. 3(C)(3) and (6).

FACTS COMMON TO ALL CLAIMS

8. The Board restates each and every allegation set forth in Paragraphs 1 through 7 of this Complaint as if fully rewritten herein.
9. In or around the 2014-2015 school year,¹ the State and the ODE were scheduled to begin issuing State report cards to school districts in Ohio, evaluating them on various criteria. Included in those criteria was student performance on State-required tests.
10. In or around the 2014-2015 school year, the ODE transitioned to a new test for students known as PARCC assessments.

¹ A school year, pursuant to R.C. §3313.62, runs from July 1 to June 30 of the succeeding calendar year.

11. Due to testing errors and statewide outcry about the PARCC assessments, on or around March 16, 2015, the General Assembly created and passed emergency legislation to insulate students and school districts from the 2014-2015 State test results. 2015 H.B. 7. The General Assembly declared in House Bill 7 that “immediate action is needed in order to address in a timely manner issues related to the administration of state elementary and secondary assessments for the 2014-2015 school year.” *Id.*, at Section 6.
12. House Bill 7 expanded R.C. §3302.036, commonly known as “Safe Harbor,” which prevented the ODE from assigning overall letter grades to any school district or building for the 2014-2015 school year due to the issues with the PARCC assessments.
13. On or around June 30, 2015, the General Assembly enacted its Fiscal Year 2016-2017 Budget Bill, House Bill 64. 2015 H.B. 64. The Budget Bill defunded the State’s assessment provider, required a new test provider for the 2015-2016 school year, and demanded the State Superintendent overhaul the 2015-2016 assessments. *Id.*, at Section 263.620.
14. With all the changes in testing, the Budget Bill also prevented the ODE from assigning an overall letter grade to schools for the 2015-2016 and 2016-2017 State report cards. The Budget Bill enacted R.C. §3302.03(B)(4), which declared “There shall not be an overall letter grade for a school district or building for the 2013-2014, 2014-2015, 2015-2016, and 2016-2017 school years.” *Id.* (eff. Sept. 29, 2015).
15. In a similar vein, the Budget Bill further expanded the Safe Harbor statute to prohibit the ODE from assigning overall letter grades to any school district or building for the 2014-2015, 2015-2016, and 2016-2017 school years. R.C. 3302.036 (eff. Sept. 29, 2015).
16. The ODE issued a public statement regarding Safe Harbor indicating that “To give schools, teachers and students time to adjust, new Ohio law suspends many of the consequences for

the 2014-2015, 2015-2016 and 2016-2017 school years.” ODE, Safe Harbor Guidance, available at <http://education.ohio.gov/Topics/Data/Report-Card-Resources/Safe-Harbor-Guidance> (last accessed July 25, 2018).

17. The District is in the poorest city in Ohio and the fourth-poorest city in the United States. According to the most recent census, 61.6% of children in East Cleveland live in poverty. Comen, America’s Poorest Towns, 24/7 Wall Street (June 11, 2018) (*citing* U.S. Census Bureau, American Community Survey (2016)).
18. Recognizing the realities that come with being the poorest city in Ohio and the fourth-poorest city in the United States, the District has initiated programs and partnerships that are designed to meet every student’s academic, wellness, and emotional needs – i.e., to meet the needs of the “whole child.” Staff have been trained in trauma-informed classrooms, and the District was the first in the State to create a wellness center. The District provides medical, mental health, dental, and vision services at no charge to its students. Similarly, breakfast, lunch, and dinner are available for free to all students. By addressing the needs of the whole child, the District is overcoming initial obstacles and positioning students to succeed.
19. During the same time that the General Assembly was grappling with how Ohio evaluates students, teachers, administrators, and school districts through testing and report cards, the Board and the District were making every effort possible and permitted by law to respond to new State testing. The District also continued to address the needs of the whole child.
20. On or around June 24, 2015, the 131st General Assembly passed Amended House Bill 70 (“HB 70”). HB 70 was approved and signed into law on or around July 17, 2015 and went into effect on October 15, 2015.

21. When HB 70 was originally introduced in the House of Representatives, it proposed only to enact three new sections to the Revised Code which permitted local school governing bodies to create community learning centers in their districts; it was only 10 pages long. HB 70 was passed by the House and sent to the Senate, where the Senate referred it to committee.
22. The Senate committee returned a substitute version of HB 70 which vitally altered the original bill. HB 70 was so heavily changed that it exploded in length to 77 pages, amended numerous other provisions of the Revised Code which had not been considered by the House, enacted additional new sections of the Revised Code, and repealed an existing section of the Revised Code.
23. Specifically, substitute HB 70 enacted the current ADC Statute, which was never discussed in the original bill.
24. The substitute version of HB 70 was not read and considered on three different days before its passage. It was only read and considered on one day, and the legislature did not vote to suspend the requirements of Article II, Section 15(C) of the Ohio Constitution.
25. The ADC Statute in HB 70 permits the State Superintendent to create a new ADC over a school district only if that district “has received an overall grade of ‘F’ under [R.C. 3302.03(C)(3)] for three consecutive years.” R.C. §3302.10(A)(1).
26. Also within HB 70 is an uncodified law (the “Uncodified Law”). H.B. 70, at Section 6. The Uncodified Law states that “If the requirement to assign an overall letter grade for school districts under [R.C. 3302.03(C)] is delayed beyond the report card issued for the 2015-2016 school year, [ODE] shall use the following equivalencies for [the ADC Statute] until such time as [ODE] is authorized to assign an overall letter grade for districts[.]”

27. The Uncodified Law addresses the possibility of future legislation – i.e., if future legislation were to delay assigning overall letter grades, then ODE would have to use equivalencies.
28. Upon information and belief, no future legislation delaying assigning overall letter grades was ever enacted. Rather, such legislation was enacted prior to HB 70 and prior to the Uncodified Law.
29. The Uncodified Law, which is a contingent law, was never triggered.
30. Defendants nevertheless appear to have interpreted Ohio law to permit the use of equivalency grades for the 2015-2016 and 2016-2017 State report cards to determine a school districts' ADC eligibility.
31. On or around September 1, 2018, ODE provided preliminary reports to school districts containing the data on which their 2017-2018 report card grades will be based. A true and accurate copy of the District's 2017-2018 Preliminary Report is attached hereto as Exhibit 1 (the "Preliminary Report").
32. The Preliminary Report contains numerous mathematical errors on its face. For example, the Gap Closing Component's weighted points states " $1 \times 15.00\% = 0.75$," which is mathematically incorrect. Additionally, the Prepared for Success Component's weighted points states " $.5 \times 15.00\% = .200$," which is also mathematically incorrect.
33. The Preliminary Report contains data inconsistencies on its face. For example, it indicates three separate Gap Closing "component points" – .500 points, 0.750 points, and 1.00 point – when the data can be expressed only one way. There are also several instances in which the Component Points indicated in the top half of the Preliminary Report do not match the Component Points laid out in the calculations on the bottom left side of the Preliminary Report.

34. Upon information and belief, the data and information on the Preliminary Report, including but not limited to that outlined above, are inaccurate, incomplete, and unreliable. Since the Preliminary Report is the basis for the final report card, the inaccuracy of the Preliminary Report calls into question the accuracy of the District's final report card.
35. On or around September 13, 2018, the State Superintendent contacted the Superintendent of the District and represented that the District would be taken over by an ADC this year. The State Superintendent further represented that he would be contacting the city mayor and the Board president to discuss appointing members to the ADC that same day.
36. On or around September 13, 2018, the ODE issued report cards to school districts for the 2017-2018 school year.
37. On or around September 13, 2018, Defendants sent written notice to the Board and the District that the District is being taken over by an ADC pursuant to the ADC Statute (the "Notice"). A true and accurate copy of the Notice is attached hereto as Exhibit 2.
38. The Notice states, "Since the East Cleveland City School District (the 'School District') has received an overall grade of 'F' on the Ohio School Report Card for three consecutive years, this triggers the obligation to create an academic distress commission under ORC §3302.10(A)(1)."
39. The Notice includes a timeline for the creation of the ADC. In the Notice, Defendants represent that the members of the ADC must be appointed within 30 days of the date of the Notice – in other words, appointments were to be made as soon as September 14, 2018 and no later than October 13, 2018. The Notice further states that the ADC will begin to meet and take action by October of 2018.

40. Upon information and belief, ADCs have been ineffective, unreliable, and disruptive to academics, finances, and growth, and they have not been successful in producing the measurable positive results promised.
41. Upon information and belief, both the public and the Legislature have since questioned the utility of ADCs. The 132nd General Assembly recently enacted Senate Bill 216, which requires the State Superintendent to “review all policies and procedures regarding academic distress commissions established under section 3302.10 of the Revised Code and prepare a report of its findings” by “not later than May 1, 2019.” That report will be required to include recommendations for improving the appointment of members to the ADCs, the duties and powers of the CEOs, and the results of the ADCs.
42. In or around August of 2018, ODE and the State Superintendent announced a new education plan for 2019-2024 called “Each Child Our Future.” ODE, Each Child Our Future, Ohio Strategic Plan For Education: 2019-2024, available at <http://education.ohio.gov/getattachment/About/Ohios-Strategic-Plan-for-Education/Final-Strategic-Plan-Board-Approved.pdf.aspx?lang=en-US> (last accessed Sept. 11, 2018). The new Plan seeks to measure student success beyond State testing and State report cards and aims to develop the “whole child” – precisely as the Board and the District have been doing over the past several years.
43. Upon information and belief, the Ohio Supreme Court is currently deciding whether to accept jurisdiction over a constitutional challenge to HB 70 in Youngstown City School Dist. Bd. of Edn. v. State, No. 2018-1131 (appealing the decision in Youngstown City School Dist. Bd. of Edn. v. State, 10th Dist. No. 17AP-775, 2018-Ohio-2532). Among other things, the case asks the Supreme Court to decide whether HB 70 violates the Ohio Constitution’s Three-Reading Rule. Ohio Constitution, Art. II, § 15(C).

44. Upon information and belief, none of the school districts in Ohio which have become subject to an ADC has ever been able to remove itself from the yoke of an ADC once imposed.

COUNT I – DECLARATORY JUDGMENT (INTERPRETATION OF STATE LAW)

45. The Board restates each and every allegation set forth in Paragraphs 1 through 44 of this Complaint as if fully rewritten herein.

46. Pursuant to the ADC Statute, Defendants have no legal authority to establish an ADC for a school district unless that district meets the conditions specified under R.C. §3302.10(A).

47. Defendants have wrongfully and illegally classified the Board and the District as falling within the ADC Statute as a school district receiving an “overall grade of ‘F’ . . . for three consecutive years[,]” and have notified the Board of their intent to establish an ADC in clear violation of Ohio law. Defendants’ classification of the Board under this statute is premised on the District’s 2015-2016, 2016-2017, and 2017-2018 State report cards.

48. The “overall grade” referred to in R.C. §3302.10 is defined by reference to R.C. §3302.03(C)(3) (“Grading Statute”). R.C. §3302.10(A)(1). The Grading Statute requires the State Board of Education to “establish a method to assign an overall letter grade for a school district or school building for the 2017-2018 school year and each school year thereafter.”

49. Since the Grading Statute only addresses the 2017-2018 report card grade, the 2017-2018 report card is the first year to be considered for purposes of the ADC Statute.

50. The Uncodified Law was not triggered, so ODE was not permitted to use equivalency grades for purposes of the ADC Statute.

51. Even if the Uncodified Law had been triggered, the Uncodified Law only permits ODE to use equivalencies for overall letter grades for the ADC Statute “beyond the report card

issued for the 2015-2016 school year.” In contravention to the plain language of the Grading Statute and Uncodified Law, Defendants have classified the District as requiring an ADC using an overall grade equivalency *for* the 2015-2016 report card, which is not permitted.

52. The Uncodified Law cannot supersede existing language in a codified statute, such as R.C. §§3302.03(B)(4) and 3302.036.

53. Defendants’ improper interpretations of the relevant statutes places school districts, including the District, under control of an ADC prematurely and without legal authority.

54. In order to resolve this controversy, it is necessary for this Court to determine and declare the Board’s rights and Defendants’ obligations under the relevant statutes, and to determine which school year starts the count of “three consecutive years” for a school district’s eligibility for an ADC.

COUNT II – DECLARATORY JUDGMENT (CONSTITUTIONALITY OF H.B. 70)

55. The Board restates each and every allegation set forth in Paragraphs 1 through 54 of this Complaint as if fully rewritten herein.

56. Art. II, § 15(C) of the Ohio Constitution requires that “every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house.” *See also Hoover v. Bd. of Cty. Commrs.*, 19 Ohio St.3d 1 (1985).

57. The three-reading rule is a mandatory rule. *See Hoover, supra.*

58. The absence of entries in the legislative journals reflecting that a particular step in the enactment process have been taken renders the enactment invalid. *See Id.*

59. Amended HB 70 was vitally altered from the original HB 70 such that it no longer contained a common purpose or theme. Upon information and belief, this vital alteration resulted in 24 of the original sponsors of the bill revoking their sponsorship and voting against it, and one House member who introduced the original bill also voting against it.
60. This vital alteration of HB 70 triggered a requirement for three new readings of the amended bill on three different days before the General Assembly could lawfully pass it.
61. The legislative journals establish that the amended version of HB 70 was considered on only one day: June 24, 2015.
62. Upon information and belief, the General Assembly did not vote to suspend the requirements of the three-reading rule relative to the consideration of HB 70.
63. By passing the bill without adhering to the three-reading rule, the Board, the District, the legislators, and citizens of the State were deprived of the opportunity to discuss and consider the merits and impact of the bill, including its impact on the evaluation of school districts.
64. Because HB 70 violates the three-reading rule of the Ohio Constitution, HB 70 is unconstitutional and invalid.
65. Because HB 70 is unconstitutional and invalid, the ADC Statute and the Uncodified Law within HB 70 are also unconstitutional and invalid, and they cannot serve as the basis for Defendants to establish an ADC over the Board.

COUNT III – TEMPORARY RESTRAINING ORDER

66. The Board restates each and every allegation set forth in Paragraphs 1 through 65 of this Complaint as if fully rewritten herein.
67. Defendants, as indicated in the Notice, are taking immediate action to create an ADC, and they intend to establish the full ADC by no later than October 13, 2018.

68. Defendants' action in creating the ADC is premature and unlawful. Specifically, for the reasons outlined above and herein, the District has not received three overall "F" grades which would trigger the ADC Statute, and HB 70 is unconstitutional.
69. The Board has already suffered and will continue to suffer immediate irreparable harm because of its wrongful classification under the ADC Statute, the unlawful conduct of Defendants in notifying the Board that the District is subject to the provisions of the ADC Statute, and Defendants' taking action to establish the ADC.
70. Unless Defendants are enjoined from establishing an ADC over the District, the Board and the District will suffer and continue to suffer irreparable harm, including the imposition of an ADC (from which no school district has ever been released), disruption in services offered to and academic progress being achieved by the students and administration in the middle of an academic year, and other harm.
71. The Board has no adequate remedy in the ordinary course of law. There is no appeals or reconsideration process in the ADC statute.
72. Contemporaneously with the filing of this Complaint, the Board is filing a Motion for a Temporary Restraining Order and Memorandum in Support of the Motion pursuant to this Court.
73. As outlined above and herein and in the contemporaneous filings of Paragraph 72, a temporary restraining order is necessary to prevent further harm and maintain the status quo until this Court can hold a hearing on the Board's request for a preliminary injunction (outlined in Count IV below).

COUNT IV – PRELIMINARY AND PERMANENT INJUNCTION

74. The Board restates each and every allegation set forth in Paragraphs 1 through 73 of this Complaint as if fully rewritten herein.
75. The Board has suffered and will continue to suffer irreparable harm because of its wrongful classification under the ADC Statute and the unlawful conduct of Defendants in declaring that the Board and the District are subject to the ADC Statute.
76. Unless Defendants are enjoined from creating an ADC and proceeding under the ADC Statute, the Board and the District will suffer and continue to suffer irreparable harm. That harm includes, but is not limited to:
- a. Reconstituting schools during the 2018-2019 school year;
 - b. Replacing school administrators, teachers, and staff during the 2018-2019 school year;
 - c. Re-opening collective bargaining agreements;
 - d. Encouraging students to enroll in other schools, including private or charter schools, which will destabilize and decrease the Board's funding, and which will force the Board and the District to cut programming offered to students;
 - e. Other harm to be established at further hearings on this matter.
77. This harm is particularly irreparable in a community like East Cleveland, where the District and the Board are a hub of safety, reliability, and stability for children and families residing within the District's boundaries.
78. None of the irreparable injury outlined above is recoverable from the State at law, so the Board has no adequate remedy in the ordinary course of law.
79. The granting of injunctive relief will impose no burden upon Defendants, and no third parties will be harmed by the granting of the injunctive relief.

80. The public interest will be served by granting the Board injunctive relief.

81. Plaintiff is not required to post a bond or other security in relation to this claim.

WHEREFORE, Plaintiff respectfully requests relief as follows:

1. For Count I, that this Court declare the rights and obligations of the parties, and further declare that:
 - A. Pursuant to R.C. §3302.03(B)(4) and R.C. §3302.036, the 2017-2018 school year is the first year which Defendants are legally permitted to assign an overall letter grade for a school or school district;
 - B. Pursuant to R.C. §3302.10, an ADC cannot be appointed until a school district has been assigned “three consecutive years” of overall “F” grades;
 - C. Pursuant to R.C. §3302.10, the earliest possible date an ADC could be appointed for a school district is after the release of the 2019-2020 Report Card;
 - D. Defendants lack the legal authority under R.C. §3302.10 and related statutes to assign an overall grade of “F” for Plaintiff for school years 2015-2016, 2016-2017 and 2017-2018; and,
 - E. The State Superintendent lacks the legal authority to appoint an ADC for the District.
2. For Count II, that this Court declare HB 70 unconstitutional and invalid for violation of the Ohio Constitution’s Three-Reading Rule;
3. For Count III, that the Court issue a temporary restraining order against Defendants enjoining them from taking any steps toward creating an ADC over Plaintiff and its school district until this Court can hold an evidentiary hearing on Plaintiff’s request for a preliminary injunction.

4. For Count IV, that the Court issue a preliminary injunction for the duration of this lawsuit – and ultimately a permanent injunction – enjoining Defendants from taking any steps toward enacting an ADC over Plaintiff and the District until this Court determines the rights and obligations of the parties as outlined above and herein.
5. That this Court award Plaintiff its reasonable attorney fees and costs incurred in this matter pursuant to R.C. §2335.39.
6. That this Court award such other and additional relief, in law or equity, as it may deem just and proper.

Respectfully submitted,



Donna M. Andrew, Esq. (0066910)
Christian M. Williams, Esq. (0063960)
Brian J. DeSantis, Esq. (0089739)
Samantha A. Vajskop, Esq. (0087837)
Pepple & Waggoner, Ltd.
Crown Centre Building
5005 Rockside Road, Suite 260
Cleveland, OH 44131-6808
Tel.: 216-520-0088
Fax: 216-520-0044
E-mail: dandrew@pepple-waggoner.com
cwilliams@pepple-waggoner.com
bdesantis@pepple-waggoner.com
svajskop@pepple-waggoner.com

Attorneys for Plaintiff East Cleveland
City School District Board of Education

2018 All Grades for East Cleveland City School District

IRN: 043901
Address: 1843 Starwood Rd
East Cleveland, OH 44112-2501

County: Cuyahoga
ITC: NCC
District Type: City School District



Achievement

The Achievement component represents the number of students who passed the state tests and how well they performed on them.

Performance Index 47.0% F
Indicators Met 0.0% F

[VIEW MORE DATA](#)

[VIEW GIFTED DATA](#)

COMPONENT GRADE
F

COMPONENT POINTS
0.750



Progress

The Progress component looks closely at the growth that all students are making based on their past performances.

Value-Added Overall F
Gifted F
Lowest 20% in Achievement F
Students with Disabilities F

[VIEW MORE DATA](#)

COMPONENT GRADE
F

COMPONENT POINTS
1.000



Gap Closing

The Gap Closing component shows how well schools are meeting the performance expectations for our most vulnerable populations of students in English language arts, math and graduation.

Annual Measurable Objectives 23.3% F

[VIEW MORE DATA](#)

0.750

COMPONENT GRADE
F

COMPONENT POINTS
0.500



Graduation Rate

The Graduation Rate component looks at the percent of students who are successfully finishing high school with a diploma in four or five years.

Graduation Rates
67.7% of students graduated in 4 years F
73.1% of students graduated in 5 years F

[VIEW MORE DATA](#)

COMPONENT GRADE
F

COMPONENT POINTS
1.000



Improving At-Risk K-3 Readers

The K-3 Literacy component looks at how successful the school is at getting struggling readers on track to proficiency in third grade and beyond.

K-3 Literacy Improvement 29.1% D

[VIEW MORE DATA](#)

COMPONENT GRADE
D

COMPONENT POINTS
1.750



Prepared for Success

Whether training in a technical field or preparing for work or college, the Prepared for Success component looks at how well prepared Ohio's students are for all future opportunities.

[VIEW DATA](#)

COMPONENT GRADE
F

COMPONENT POINTS
0.500

Component	Component Points	Component Weight	Weighted Points
Achievement Points:	0.750	x 20.00%	= 0.150
Progress Points:	1	x 20.00%	= 0.200
Gap Closing Points:	1	x 15.00%	= 0.075
Graduation Rate Points:	1	x 15.00%	= 0.150
K-3 Literacy Points:	2	x 15.00%	= 0.263
Prepared for Success Points:	0.50	x 15.00%	= 0.200

Overall Points: 0.913



FINAL GRADE
F

A = 4.125 - 5.000
B = 3.125 - 4.124
C = 2.125 - 3.124
D = 1.125 - 2.124
F = 0.000 - 1.124

[Click here](#) to see the Secure Data Center - Status of Reports report

EXHIBIT
1

John R. Kasich, Governor
Paolo DeMaria, Superintendent of Public Instruction

September 13, 2018

Via Certified Mail and Electronic Delivery

Dr. Myrna Loy Corley, Superintendent
East Cleveland City School District
1843 Stanwood Road
East Cleveland, OH 44112

RE: Academic Distress Commission

Dear Dr. Corley:

Ohio Revised Code ("ORC") Section 3302.10 provides that the State Superintendent of Public Instruction shall establish an academic distress commission for any school district that has received an overall grade of "F" on the Ohio School Report Card for three consecutive years.

Since the East Cleveland City School District (the "School District") has received an overall grade of "F" on the Ohio School Report Card for three consecutive years, this triggers the obligation to create an academic distress commission under ORC Section 3302.10(A)(1).

This letter serves as notice of the establishment of an academic distress commission (the "Commission") for the School District. The Commission will be comprised of five voting members; three of whom are appointed by me, one appointed by the Mayor of East Cleveland, and one appointed by the President of the District Board of Education.

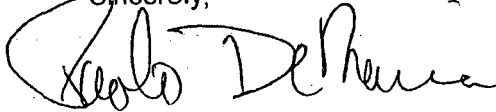
The law requires all appointments to the Commission to be made within 30 days from the date of this letter. Once I designate the chairperson, that person will be responsible for calling meetings, setting meeting agendas, and serving as a liaison between the Commission and the chief executive officer (the "CEO"). Enclosed is a timeline that explains the process for the creation of the Commission, the appointment of Commission members, the hiring of the CEO, and the creation of a plan to improve the School District's academic performance.

The primary statutory purpose of the Commission is to appoint a CEO for the School District. The CEO must be appointed within 60 days after the commission chairperson is designated. The CEO has complete operational, managerial, and instructional control of the district, and serves at the pleasure of the Commission. The CEO will convene a group of community stakeholders for the district, and for each school. Using this group as a resource, the CEO will create a plan to improve the district's academic performance. The plan must be submitted to the Commission within 90 days after the appointment of the CEO. Within 30 days after the submission of the plan, the Commission shall approve the plan, or submit modifications to the plan.

September 13, 2018
RE: Academic Distress Commission
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I look forward to continuing to work with you toward the success of the East Cleveland City Schools. If you have questions or concerns throughout this process, please do not hesitate to contact Deputy Superintendent John Richard. He can be reached at (614) 466-0010 or John.Richard@education.ohio.gov.

Sincerely,



Paolo DeMaria
Superintendent of Public Instruction

Enclosure

cc: Dr. John Richard, Deputy State Superintendent
Marva Kay Jones, Senior Executive Director, Center for Continuous Improvement
Chris Woolard, Senior Executive Director, Center of Performance
Diane Lease, Chief Legal Counsel

Certified Mail: 7018 0680 0000 6295 8002

Tentative Timeline Overview

<p>September 13, 2018</p>	<p>State superintendent creates Academic Distress Commission (ADC).</p>
<p>Within 30 days of ADC establishment (Anticipated date: September 14 – October 13, 2018)</p>	<p>Appointments are made to the ADC by the state superintendent (three appointments, with one being a resident in the county in which a majority of the district's territory is located); the mayor of the city in which a majority of the district's territory is located (one appointment); and, the president of the School District Board of Education (one district teacher appointment).</p>
<p>No time period specified (October/November 2018)</p>	<p>State superintendent appoints the chair of the ADC. Typically, this coincides with the first meeting of the ADC.</p>
<p>Within 60 days of chair's appointment (October/November 2018 through Dec. 2018/Jan. 2019)</p>	<p>ADC meets and starts the process for appointing the chief executive officer (CEO).</p>
<p>Within 60 days of chair's appointment (December 2018/January 2019)</p>	<p>ADC appoints the CEO.</p>
<p>Within 30 days of CEO's appointment (January/February 2019)</p>	<p>CEO convenes a diverse group of community stakeholders to develop expectations for academic improvement in the district.</p>
<p>Within 90 days of CEO's appointment (March/April 2019)</p>	<p>CEO convenes a small group of community stakeholders for each school.</p>

<p>Within 90 days of CEO's appointment (Dec. 2018/Jan. 2019 through March/April 2019)</p>	<p>CEO, in consultation with the groups of community stakeholders, develops a plan to improve the district's academic performance.</p>
<p>Within 90 days of CEO's appointment (March/April 2019)</p>	<p>CEO submits the plan to the academic distress commission for approval.</p>
<p>Within 30 days of plan submission (April/May 2019)</p>	<p>Commission approves the plan or suggests modifications that will render it acceptable.</p> <p>If modifications are suggested, CEO may revise plan before resubmitting to the commission.</p>
<p>Within 15 days of commission's suggesting of modifications (April/May 2019 through May/June 2019)</p>	<p>CEO considers the commission's suggested modifications and makes any revisions the CEO finds appropriate.</p>
<p>Within 15 days of commission's suggestion of modifications (May/June 2019)</p>	<p>CEO resubmits the plan to the commission.</p>
<p>Within 30 days of resubmission (June/July 2019)</p>	<p>Commission approves the plan. Upon approval by the commission, the CEO implements the plan.</p>

~~Sec. 3302.10 (A) The superintendent of public instruction shall establish an academic distress commission for any school district that meets one of the following conditions:~~

(1) The district has received an overall grade of "F" under division (C)(3) of section 3302.03 of the Revised Code for three consecutive years.

(2) An academic distress commission established for the district under former section 3302.10 of the Revised Code was still in existence on the effective date of this section and has been in existence for at least four years.

(B)(1) The academic distress commission shall consist of five members as follows:

(a) Three members appointed by the state superintendent, one of whom is a resident in the county in which a majority of the district's territory is located;

(b) One member appointed by the president of the district board of education, who shall be a teacher employed by the district;

(c) One member appointed by the mayor of the municipality in which a majority of the district's territory is located or, if no such municipality exists, by the mayor of a municipality selected by the state superintendent in which the district has territory.

~~Appointments to the commission shall be made within thirty days after the district is notified that it is subject to this section.~~ Members of the commission shall serve at the pleasure of their appointing authority. The state superintendent shall designate a chairperson for the commission from among the members appointed by the state superintendent. The chairperson shall call and conduct meetings, set meeting agendas, and serve as a liaison between the commission and the chief executive officer appointed under division (C)(1) of this section.

(2) In the case of a school district that meets the condition in division (A)(2) of this section, the academic distress commission established for the district under former section 3302.10 of the Revised Code shall be abolished and a new academic distress commission shall be appointed for the district pursuant to division (B)(1) of this section.

~~(C)(1) Within sixty days after the state superintendent has designated a chairperson for the academic distress commission, the commission shall appoint a chief executive officer for the district who shall be paid by the department of education and shall serve at the pleasure of the commission.~~ The individual appointed as chief executive officer shall have high-level management experience in the public or private sector. The chief executive officer shall exercise complete operational, managerial, and instructional control of the district, which shall include, but shall not be limited to, the following powers and duties, but the chief executive officer may delegate, in writing, specific powers or duties to the district board or district superintendent:

- (a) Replacing school administrators and central office staff;
- (b) Assigning employees to schools and approving transfers;
- (c) Hiring new employees;
- (d) Defining employee responsibilities and job descriptions;
- (e) Establishing employee compensation;
- (f) Allocating teacher class loads;
- (g) Conducting employee evaluations;
- (h) Making reductions in staff under section 3319.17, 3319.171, or 3319.172 of the Revised Code;
- (i) Setting the school calendar;
- (j) Creating a budget for the district;
- (k) Contracting for services for the district;
- (l) Modifying policies and procedures established by the district board;
- (m) Establishing grade configurations of schools;
- (n) Determining the school curriculum;
- (o) Selecting instructional materials and assessments;
- (p) Setting class sizes;
- (q) Providing for staff professional development.

(2) If an improvement coordinator was previously appointed for the district pursuant to division (A) of section 3302.04 of the Revised Code, that position shall be terminated. However, nothing in this section shall prohibit the chief executive officer from employing the same individual or other staff to perform duties or functions previously performed by the improvement coordinator.

(D) The academic distress commission, in consultation with the state superintendent and the chief executive officer, shall be responsible for expanding high-quality school choice options in the district. The commission, in consultation with the state superintendent, may create an entity to act as a high-quality school accelerator for schools not operated by the district. The accelerator shall promote high-quality schools in the district, lead improvement efforts for underperforming schools, recruit high-quality sponsors for community schools, attract new high-quality schools to the district, and increase

the overall capacity of schools to deliver a high-quality education for students. Any accelerator shall be an independent entity and the chief executive officer shall have no authority over the accelerator.

(E)(1) Within thirty days after the chief executive officer is appointed, the chief executive officer shall convene a group of community stakeholders. The purpose of the group shall be to develop expectations for academic improvement in the district and to assist the district in building relationships with organizations in the community that can provide needed services to students. Members of the group shall include, but shall not be limited to, educators, civic and business leaders, and representatives of institutions of higher education and government service agencies. Within ninety days after the chief executive officer is appointed, the chief executive officer also shall convene a smaller group of community stakeholders for each school operated by the district to develop expectations for academic improvement in that school. The group convened for each school shall have teachers employed in the school and parents of students enrolled in the school among its members.

(2) The chief executive officer shall create a plan to improve the district's academic performance. In creating the plan, the chief executive officer shall consult with the groups convened under division (E)(1) of this section. The chief executive officer also shall consider the availability of funding to ensure sustainability of the plan. The plan shall establish clear, measurable performance goals for the district and for each school operated by the district. The performance goals shall include, but not be limited to, the performance measures prescribed for report cards issued under section 3302.03 of the Revised Code.

Within ninety days after the chief executive officer is appointed, the chief executive officer shall submit the plan to the academic distress commission for approval. Within thirty days after the submission of the plan, the commission shall approve the plan or suggest modifications to the plan that will render it acceptable. If the commission suggests modifications, the chief executive officer may revise the plan before resubmitting it to the commission. The chief executive officer shall resubmit the plan, whether revised or not, within fifteen days after the commission suggests modifications. The commission shall approve the plan within thirty days after the plan is resubmitted. Upon approval of the plan by the commission, the chief executive officer shall implement the plan.



Common Pleas Court of Cuyahoga County, Ohio

FILED

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

East Cleveland City School District Bd. of Ed. 2018 SEP 19 P 2:10

Plaintiff

Vs.

State of Ohio, et al.

CLERK OF COURTS
CUYAHOGA COUNTY

Judge: STEVEN E GALL

CV 18 904006

Defendant

Has this case been previously filed and dismissed? Yes No

Case #: _____ Judge: _____

Is this case related to any new cases now pending or previously filed? Yes No

Case #: _____ Judge: _____

CIVIL CLASSIFICATIONS: Place an (X) in ONE Classification Only.

Professional Torts:

- 1311 Medical Malpractice
- 1315 Dental Malpractice
- 1316 Optometric Malpractice
- 1317 Chiropractic Malpractice
- 1312 Legal Malpractice
- 1313 Other Malpractice

Product Liability:

- 1330 Product Liability

Other Torts:

- 1310 Motor Vehicle Accident
- 1314 Consumer Action
- 1350 Misc. Tort

Workers Compensation:

- 1550 Workers Compensation
- 1531 Workers Comp. Asbestos

Foreclosures:

- Utilize Separate Foreclosure Designation Form

Commercial Docket:

- 1386 Commercial Docket
- 1387 Commercial Docket with Foreclosure

Administrative Appeals:

- 1540 Employment Services
- 1551 Other

Other Civil:

- 1500 Replevin/Attachment
- 1382 Business Contract
- 1384 Real Estate Contract
- 1388 Consumer Debt
- 1390 Cognovit
- 1391 Other Contracts
- 1490 Foreign Judgment
- 1491 Stalking Civil Protection Order
- 1501 Misc. Other
- 1502 Petition to Contest Adam Walsh Act
- 1503 Certificate of Qualification for Employment

Amount of Controversy:

- None Stated
- Less than \$25,000
- Prayer Amount _____

Parties have previously attempted one of the following prior to filing:

- Arbitration
- Early Neutral Evaluation
- Mediation
- None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.
Pepple & Waggoner, Ltd.

Donna M. Andrew, Esq.

Firm Name (Print or type)
5005 Rockside Road, Suite 260

Attorney of Record (Print or Type)
0066910

Address
Cleveland, OH 44131-6808

Supreme Court #
dandrew@pepple-waggoner.com

Address
216-520-0088

Email Address

Phone

Signature