

Appeal of A.M., on behalf of her children, from action of the Board of Education of the East Ramapo Central School District regarding a budget vote.

## **Interim Decision and Order**

### **I. Introduction**

Petitioner appeals from action of the Board of Education of the East Ramapo Central School District (“East Ramapo” or “respondent”) regarding its failure to adopt a budget that protects the health, safety, and welfare of its public school students. The record substantiates numerous, serious violations of some of the board’s most fundamental obligations. These include the duty to ensure that respondent provides safe buildings and clean water to all students as well as instructional services for English Language Learners (ELLs).

Given the history of public school neglect described herein, I find that the revote budget adopted by respondent on June 18, 2024 is arbitrary, capricious, and violative of educational policy due to the ways in which it inequitably favors nonpublic school students at the expense of public school students (*e.g.*, *Appeal of McMillan, et al.*, 61 Educ Dept Rep, Decision No. 18,058; *Appeal of Mathis and Dahlia*, 28 *id.* 347, Decision No. 12,132). To give effect to my decision, respondent is directed to adopt a budget providing for an additional 4.38 percent increase of the property tax levy; *i.e.*, the 5.38 percent recommended by the superintendent less the one percent approved by the voters on June 18, 2024. The board shall be authorized, and directed, to raise by tax upon the taxable property of the district a sum sufficient to pay such costs (Education Law § 311 [4]; *People ex rel. Bd. of Educ. of Union Free Sch. Dist. No. 2 of Town of Brookhaven, Suffolk Cnty., v. Graves*, 243 NY 204 [1926]).

### **II. Facts and Procedural History**

#### **A. *Historical Background***

To place this appeal in context, it is necessary to examine the district's longstanding, institutional failures. The East Ramapo Central School District is home to a large number of students who attend nonpublic schools. These nonpublic students "are almost all white (98%)" and almost exclusively attend yeshivas (*Natl. Assn. for Advancement of Colored People, Spring Valley Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 368, 376 [SD NY 2020]). Public school students, by contrast, are overwhelmingly students of color. As of March 23, 2024, 93 percent of the district's 10,427 public school students are Hispanic or African American. Many of these students are economically disadvantaged (84 percent) and English Language Learners (52 percent).<sup>1</sup>

In 2014, the State Education Department's fiscal monitor, Henry M. Greenberg, issued a report describing the conditions in East Ramapo. He characterized the district as being in crisis.<sup>2</sup> Below are the primary problems identified in the 2014 report:

- **Transportation.** The district provided universal, gender-segregated transportation for its nonpublic school students, which comprised a substantial portion of its budget.
- **Fiscal instability.** The district was fiscally unstable "[b]y any measure," operating at a deficit for 7 out of the preceding 10 years and filling budget gaps with "one-shot" funding opportunities.
- **Favoritism toward nonpublic schools.** The board made "[n]o meaningful effort ... to distribute [the] pain of deep budget cuts fairly among private and public schools." Between 2009 and 2012, the board cut 400 positions and reduced extracurricular opportunities by 50 percent—all while paying an ever-increasing amount on its universal, gender-segregated transportation program for nonpublic school students.<sup>3</sup> The report also noted the filing of "[c]riminal charges arising from the sale of a closed school," a reference to the attempted sale of Hillcrest Elementary School "to a yeshiva at a sweetheart price."<sup>4</sup>

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<sup>1</sup> Letter from Bruce Singer and Shelley Jallow to Betty A. Rosa, "Monitor Findings and Recommendations Regarding the East Ramapo Central School District's Proposed 2024–2025 School Year Budget," 3 (Apr. 11, 2024) ("April 2024 Monitor Report").

<sup>2</sup> I have considered this report, as well as other official records or reports on file with the State Education Department, in reaching my determination (8 NYCRR 276.6).

<sup>3</sup> The monitors have confirmed that respondent continues to provide gender-segregated busing to nonpublic students.

<sup>4</sup> *Nat'l Ass'n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 414–15 (SD NY 2020). The Commissioner annulled this sale in *Appeal of White* (50 Ed Dept Rep, Decision No. 16,239) as well as a subsequent short-term lease in *Appeal of Forrest* (53 Ed Dept Rep, Decision No. 16,501, judgment granted dismissing petition, January 29, 2014, Sup. Ct., Albany Co. [McDonough, J.]).

Mr. Greenberg concluded the report with several recommendations, the first of which focused on board governance. It included the following findings and insights:

- At the heart of the District’s crisis is a governance problem stemming from [a]:
  - Unique demographic mix between public and private school students and
  - Board composition that reflects and magnifies this demographic.
- Statutory and regulatory scheme for public school governance assumes board members understand vital role of public schools.
- East Ramapo turns existing statutory and regulatory structure on its head.
- Board is comprised primarily of persons from the private school community, with limited understanding of public school students and their families.
- As a result, public school needs have been given short shrift, especially in times of fiscal crisis.

Following this report, the Legislature and State Education Department subjected the district to increasing levels of oversight. The Department appointed three individuals to serve as monitors in August 2015. The following year, the Legislature authorized these monitors to oversee East Ramapo’s fiscal and budgetary planning (L 2016, ch 89). The Commissioner was also given an ability to review, and make suggestions concerning, the district’s proposed budget.

The board made some initial progress with this additional support. A report for the 2016-2017 school year, for example, reported the Comptroller’s “upgrad[ing] ... of East Ramapo from significant stress in the prior two years to moderate fiscal stress” primarily due to “the District’s ... restoration of fund balance and several years of balanced budgets.”<sup>5</sup>

But old habits die hard. In the 2017-2018 school year, the majority of voters rejected the district’s proposed budget. By December 2018, the monitors reported that the district was at a “crossroads.” It had made progress, but “[t]he only way for the District to catch up [would be] to begin passing small tax levy cap overrides.” The monitors predicted that “the District [could not] sustain another contingency budget.”

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<sup>5</sup> The district’s website reports the preceding four years of tax levy increases as follows: [2016-17](#): 1.69% approved in initial vote; [2015-16](#): 1.26% approved in initial budget; [2014-15](#): 3.9% approved in initial budget; [2013-14](#): 2.8% approved in revote.

Yet that is what the voters delivered. Beginning with the 2017-2018 rejection, only two of the next eight school years were accompanied by approved budgets. This reliance on contingency budgets decimated the district's resources. A 2019 report by the State Education Department, for example, noted that budget gaps were filled from three sources: the district's fund balance, reducing payments on a capital bond project, and "cuts to staff and services."<sup>6</sup>

Amidst this fiscal instability, many members of the board were preoccupied with "maintaining political power rather than meeting the needs of the district's students."<sup>7</sup> Current and former board members did so by vetting board candidates through the nonpublic school community to ensure that white, nonpublic students received benefits at the expense of Latino and African American public school students (*Nat'l Ass'n for Advancement of Colored People*, 462 FSupp3d at 395).

### *B. The Voting Rights Act Litigation*

On May 25, 2020, the United States District Court for the Southern District of New York held that East Ramapo violated the Voting Rights Act (VRA) of 1965 by suppressing minority votes (*Natl. Assn. for Advancement of Colored People, Spring Valley Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 368 [SD NY 2020], *aff'd Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 219 [2d Cir 2021]). The problem, as described by the United States Court of Appeals for the Second Circuit, was that "[i]nfluential members of the white, private-school community [adopted] an informal slating process by which preferred Board candidates [we]re selected, endorsed, promoted, and elected." The court dismissed the district's arguments to the contrary, noting, among other things,

the scant evidence supporting the District's claim that policy preferences, not race, cause election results; the Board's blatant neglect of minority needs; the lack of minority-preferred success in elections; the exclusive, white-dominated slating organization; and evidence suggesting the District acted in bad faith throughout the litigation.<sup>8</sup>

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<sup>6</sup> Jhone M. Ebert, "Update on the East Ramapo Central School District," Jan. 31, 2019, available at <https://www.regents.nysed.gov/sites/regents/files/219p12d1.pdf> (last accessed Jul. 31, 2024).

<sup>7</sup> *Appeal of White*, 61 Ed Dept Rep, Decision No. 18,053.

<sup>8</sup> *Clerveaux*, 984 F3d at 219.

The court’s opinion dispelled the notion that the board acted separately from the majority of voters. The court found that “[t]here is every reason to believe that the [financial] improvements [we]re because of the state monitors, and in spite of the machinations of some Board members.” While the court acknowledged that some budgetary “cuts may ... have been necessitated by the financial crisis or a state funding formula that is unfair to the District,” it nevertheless concluded “that the Board has not been responsive to the concerns of black and Latino persons” (*Nat’l Ass’n for Advancement of Colored People*, 462 F Supp 3d at 415).

For relief, the court: (1) prohibited the district “from holding any further elections under its at-large system”; (2) ordered the district to “propose a remedial plan ...” that “divide[d] the District into nine voting wards – one for each Board seat”; and (3) “require[d] that only those residents living in a voting ward may vote for that ward’s seat” (*Nat’l Ass’n for Advancement of Colored People*, 462 FSupp3d at 417). The court expressed doubt as to whether its order would “change the way the schools in the District are run.” Nevertheless, it reasoned that its decision was necessary to ensure that “black and Latino voters in the District” enjoyed “equal access to the electoral process” (*id.*).

From the 2021-2022 to the 2023-2024 school years, the district’s finances were temporarily buoyed by the phase-in of Foundation Aid and its receipt of onetime federal COVID stimulus funds.<sup>9</sup> This issue was the subject of a report by the Office of the State Comptroller, which advised the district “to be cognizant that these are onetime revenues” that could “only temporarily defer the need to address structural budget imbalances.”<sup>10</sup>

The board did not heed this advice. Based on these and other financial practices, I conditionally approved the district’s 2021-2022 budget, informing the district that its “existing budgeting and fiscal control practices [we]re unacceptable and must be improved.” I further observed that the district’s recent “academic progress ... ha[d] been placed at great risk by financial mismanagement.”<sup>11</sup> That suggestion went unaddressed, culminating in the 2024-2025 budget at issue herein.<sup>12</sup>

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<sup>9</sup> The district’s State Aid increased from \$46.5 million in 2021-2022 to \$85.9 million in 2023-2024. It is currently projected to be \$92.2 million in 2024-2025.

<sup>10</sup> N.Y. State Office of the State Comptroller, “East Ramapo Central School District – Budget Review (B21-5-4),” Div. of Local Gov’t and Accountability (May 5, 2021), available at <https://www.osc.ny.gov/files/local-government/audits/2021/pdf/east-ramapo-budget-review-b21-5-4.pdf> (last accessed Jul. 31, 2024).

<sup>11</sup> Letter from Betty A. Rosa to Yehuda Weissmandl dated May 7, 2021, available at <https://www.nysed.gov/sites/default/files/programs/accountability/budget-letter-to-ercsd-board-president.pdf> (last accessed Jul. 31, 2024).

<sup>12</sup> Like the Comptroller, I cautioned the district in an April 27, 2022 letter approving the 2022-2023 budget that it would “face a number of challenges as federal COVID-19 response monies

### *C. The 2024 Budget Process*

In spring 2024, the school district administration proposed a budget containing a 5.38 percent increase in the local tax levy combined with \$4.7 million in reductions.<sup>13</sup> These reductions, though drastic, left the district with a \$20 million deficit.<sup>14</sup>

The board rejected the administration’s proposed budget, instead offering a budget with a 1.99 percent tax levy increase. The board proposed obtaining additional revenue from its reserve funds.

On April 11, 2024, the monitors submitted a report concluding that the proposed budget was “not fiscally sound because of an over-reliance on unrestricted fund balance that will exacerbate the district’s trajectory towards fiscal instability.” “By holding the tax levy flat” for several years, the monitors wrote, “... the district effectively crippled itself by leaving unrealized tax levy receipts of up to \$108 million between the 2018–2019 and 2023–2024 school years.” The monitors recommended that respondent “reduce [its] reliance on one-time resources and revenues,” which “could be accomplished by combining a larger proposed increase to the tax levy and evaluations of administrative, operational, and programmatic expenditures ....” The monitors made this “recommendation with extreme reluctance” given the “historical evidence that the community will not support tax levy increases ....” The monitors also “implore[d] [respondent] to work with the governor and legislature to create a new financial structure for the district ... to meet the needs of the district’s resident students ....”

On April 16, 2024, I wrote to respondent, requesting that it explain how it would “[a]ddress the cash-flow shortfall that [was] currently projected to result in the district exhausting all reserves ... in July 2024.” I further requested that the district perform additional work to develop a budget aligned with its long-term plan.

In a response received on April 29, 2024, the board offered no concrete plan to raise revenue or otherwise close this gap other than asking the Legislature for additional money. The board also reported that it was

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phase out, and the Board of Education will need to provide diligent and prudent stewardship of the district’s resources in order to remain on track to long-term fiscal stability and improved student outcomes.” Letter from Betty A. Rosa to Yehuda Weissmandl dated Apr. 27, 2021, available at <https://www.nysed.gov/sites/default/files/programs/accountability/east-ramapo-csd-2020-21-budget-approval-letter-4-27-22.pdf> (last accessed Jul. 31, 2024).

<sup>13</sup> Given the voters’ history of rejecting tax levy increases, this amount would not implicate the “supermajority” requirement in Education Law § 2023-a (6) requiring 60 percent voter approval.

<sup>14</sup> The specific amount was \$19.8776 million.

experiencing cash-flow issues due, in part, to the expiration of “\$30 million dollars of federal [COVID] funding.”<sup>15</sup>

On May 1, 2024, I “conclude[d] that additional action [was] necessary to better balance [respondent’s] projected revenues and expenditures; improve the district’s trajectory towards fiscal stability; and increase the extent to which the proposed budget aligns with the district’s Long Term Strategic Academic and Fiscal Improvement Plan” (“strategic plan”). I therefore directed the district to take additional action, including communicating with the Legislature and Executive branches concerning its need for additional funds; adopting a budget that decreased reliance on reserves by approximately \$2 million (an amount obtained via updated State Aid calculations); and “[h]old[ing] ... emergency meetings as may be necessary....”

On May 21, 2024, voters rejected the proposed budget. Petitioner indicates that the budget was overwhelmingly supported in wards consisting largely of public school families and opposed in wards composed primarily of nonpublic school families.

On May 23, 2024, Assemblyman Kenneth Zebrowski introduced a bill proposing a fiscal control board for East Ramapo in the Assembly. This legislation, consistent with the recommendation in the April 2024 Monitor Report, proposed a comprehensive solution to voters’ longstanding neglect of the public school system.

On June 3, 2024, the Senate introduced a competing bill that would provide the district with “an accelerated payment of twenty million dollars” in State Aid “to provide the funds necessary for the district to meet its payroll obligations.” These funds would be reserved “solely for the benefit of the public school students within the district.” This bill also “order[ed] the district to increase its property tax levy for the 2024-2025 school year by not less than one percent.” The 2024 legislative session ended thereafter without passage of either the Senate or Assembly bills.

On June 11, 2024, the Board of Regents called upon the Legislature “to reconvene and take immediate action to pass [the Assembly bill], which [would] establish [] a fiscal control board for the East Ramapo Central School District.”<sup>16</sup>

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<sup>15</sup> The specific funding source was the American Rescue Plan Act, or ARPA. As indicated above, the Comptroller and I both warned respondent of this inevitability.

<sup>16</sup> New York State Board of Regents, Resolution (Jun. 11, 2024), *available at* <https://www.regents.nysed.gov/sites/regents/files/ERCSD%20Resolution%20-%20Final.pdf> (last accessed Jul. 31, 2024).

On June 18, 2024, voters narrowly approved a revote budget containing a one percent tax levy increase—the very amount that would be compelled by the Senate bill. As with the May 2024 vote, the budget was supported in wards consisting largely of public school families and opposed in wards composed primarily of nonpublic school families. The budget otherwise maintained the unsalutary aspects of the original proposal, pulling approximately \$18 million from the district’s unrestricted reserves and \$1.2 million from the Teachers’ Retirement System reserve fund.

### III. The Instant Appeal

#### *A. Petitioner’s Allegations*

Petitioner is the parent of two children who attend respondent’s public schools. One of them attended Elmwood Elementary and will enter Chestnut Ridge Middle School this fall. Petitioner also has a child who attends Margetts Elementary. Both students planned to attend a summer program, the Fine and Performing Arts Academy, which was cancelled due to budgetary constraints.

Petitioner argues that the 2024 revote budget violates East Ramapo’s strategic plan, the cornerstone of the 2016 monitor legislation. This plan demands “minimum reliance on the District’s fund balances”; the creation of “a transportation system that is efficient and cost effective”; and maintenance of “clean, well maintained, and up-to-date schools.”<sup>17</sup> Petitioner primarily complains of the budget’s failure to address health and safety concerns and the provision of services to ELLs. She asserts that these deficiencies loom while the district’s transportation budget remains untouched. For relief, she seeks “[a]n order ... [that] modifies the ‘revote budget’ and directs the imposition of a tax that will provide sufficient funding that allows the District to comply with New York law and regulations and with sound educational policy and prudent fiscal responsibility.”

#### *B. Health and Safety*

East Ramapo’s buildings are a tangible example of the board and voting majority’s neglect of its public schools. In a 2023 study conducted by the district, all 14 of the district’s buildings received a failing or unsatisfactory

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<sup>17</sup> East Ramapo Central School District, 2020-2025 (Long Term) Strategic Academic and Fiscal Plan, (rev. Nov. 15, 2022), 53, 59, 62, available at <https://www.nysed.gov/sites/default/files/programs/innovation-schoolreform/ercsd-long-term-report-2020-2025-strategic-academic-fiscal-plan-revised-11-15-22.pdf> (last accessed Jul. 31, 2024).



grade in overall building quality.<sup>18</sup> Eleven of these schools had unsatisfactory ventilation systems, a condition that is particularly dangerous for students, like one of petitioner’s children, with asthma. The report identified numerous other deficiencies with the schools that petitioner’s children attend. For example, at Margetts Elementary, the district identified 23 conditions, 11 of which were categorized as “unsatisfactory” and 1 of which (water outlets/taps for drinking/cooking purposes) was “non-functioning.” Petitioner asserts, which respondent does not contest, that the estimated cost of remediating these conditions is over \$236 million.

The district has also struggled to ensure that its public school students have access to clean water. In 2020, 73 percent of the drinking fountains and kitchen sinks in the district exceeded lead-safety limits and were turned off, rendering them inaccessible. The district’s efforts to remediate this issue have fallen short. In 2024, the Office of the Attorney General found that the replacement water supplied by the district was insufficient to meet building code standards. Specifically, several schools did not have enough water coolers while others possessed coolers that were not refilled or maintained properly.

### *C. Services to English Language Learners (ELLs)*

The district has a large portion of English Language Learners (ELLs) and immigrant students who are inadequately served by the 2024 budget. Respondent has long struggled to meet the needs of ELLs, a group that is continually growing.<sup>19</sup> In 2022-2023, just 6 percent of English learners tested at the “Commanding” level on the New York State English as a Second Language Achievement Test. This is below the target goal of 13 percent established by the strategic plan—and a decrease from the previous year. Respondent has also failed to create, and staff, a sufficient number of bilingual education classrooms (8 NYCRR 154-2.3 [d] [2] [school districts with 20 or more ELLs who share the same home language and grade in a district “shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education programs available in the district for at least 70 percent” of these students]).

These deficiencies informed the monitors’ conclusion that the 2024 budget was “academically unsound.” The monitors specifically observed that the budget did not allocate any resources to address “the equitable

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<sup>18</sup> East Ramapo Central School District, “Building Condition Survey Review,” Jun. 20, 2023, *available at* <https://www.ercsd.org/site/handlers/filedownload.ashx?moduleinstanceid=18631&dataid=34194&FileName=2023-06-20%20BOE%20BCS%20Presentation%20ERCSD.pdf> (last accessed Jul. 31, 2024).

<sup>19</sup> Between July and October 2022 alone, respondent enrolled 938 new ELLs in its district.

procurement and distribution of curricular materials for the education of ELL students”; “the estimated increase of 800 public school students for the next school year”; or the fact that programs for recently arrived students are “scarce or nonexistent.”<sup>20</sup>

#### *D. Transportation*

In marked contrast to the above deficiencies in the public schools, respondent continues to offer universal, gender-segregated transportation to nonpublic schools in excess of its statutory obligations. This policy is the result of public referenda submitted more than 25 years ago and is preserved at all costs by the nonpublic school community despite its increasingly negative impacts on the district’s operations.<sup>21</sup>

It has also been administered in a careless manner. A 2019 report by the Comptroller requested a random sampling of 300 nonpublic students’ transportation records. East Ramapo was unable to produce 93 of them, attributing the error, in part, to a “missing box.” Of the 207 files produced, 193 were new applications—and 91 of these were deficient in one or more respects. The Comptroller also found that the district: (1) inexplicably destroyed transportation files prior to the 2017-2018 school year; and (2) paid hundreds of thousands of dollars to yeshiva bus contractors to transport ineligible students. The Comptroller issued eight recommendations, none of which had been implemented four years later.<sup>22</sup> This falls far short of the strategic plan’s goal of developing “a transportation system that is efficient and cost effective.”

#### *E. Respondent’s Contentions*

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<sup>20</sup> April 2024 Monitor Report at 13-14.

<sup>21</sup> Respondent derives this entitlement from the second propositions on the district’s 1986 and 1993 ballots. The 1986 proposition asked: “Shall the Budget as proposed in Proposition No. 1, if adopted, be increased by the sum of \$207,000 to provide transportation to all students in grades Kindergarten through 6, who live less than one mile from the school they legally attend?” The 1993 proposition asked: “Shall the School District be authorized to raise by tax levy and expend the sum of \$6,010,386 to provide ... a. Transportation to students in grades kindergarten through 8 living within two miles of the school they legally attend and transportation to students in grades 9 through 12 living within three miles of the school they legally attend, since these students will not otherwise receive transportation .... This proposition provides an increase in transportation over current levels for those students in grades 7 through 12.”

<sup>22</sup> N.Y. State Office of the State Comptroller, “East Ramapo Central School District – Transportation Audit Follow Up (2019M-107-F),” Div. of Local Gov’t and Accountability (Jul. 14, 2023), available at <https://www.osc.ny.gov/local-government/audits/school-district/2023/07/14/east-ramapo-central-school-district-transportation-audit-follow-2019m-107> (last accessed Jul. 31, 2024). The webpage contains both the 2019 audit and the 2023 follow-up. In 2023, the district did not implement six recommendations and “could not ... determine []” compliance with the remaining two.

Respondent raises a host of procedural objections. First, respondent contends that it “has no information or explanation as to what the Commissioner is *sua sponte* considering [s]taying.” However, in at least three locations—most notably, in its request for relief—petitioner seeks the imposition of an additional tax levy increase. Thus, I find that respondent had ample notice of the relief sought by petitioner. Moreover, the Office of Counsel is not responsible for providing legal advice in connection with administrative appeals (*Appeal of Lovinsky and Simpson*, 57 Ed Dept Rep, Decision No. 17,422 [“[t]he appeal process authorized by Education Law § 310 is adversarial in nature[;] as such, it would not be appropriate for [the] Office of Counsel to ... render [] advice in connection therewith”]).

To the extent respondent argues that there is no action to “stay,” the instant order stays respondent’s enforcement of its revote budget in favor of the budget originally proposed by the administration. But even if this order can be characterized as affirmative relief, the Commissioner can issue, and has issued, interim orders compelling boards of education to take affirmative action.<sup>23</sup> The Commissioner’s power “[t]o determine whether an appeal shall stay proceedings”<sup>24</sup> must be read in conjunction with the “explicit power [ ]” to “institute quasi-judicial proceedings” under Education Law § 310 (*United States v. City of Yonkers*, 96 F3d 600, 618 [2d Cir 1996]).

Next, respondent argues that I should recuse myself based on a recent public statement made in connection with the appointment of a new fiscal monitor in East Ramapo. This statement was as follows:

East Ramapo’s Board of Education continues to ignore the needs of the district’s children and families. The district consistently fails to meet its most basic and necessary fiscal and operational tasks — like developing and implementing a balanced budget, transporting students, and maintaining an educational environment that is safe and welcoming for all students and staff.

These public, factual statements do not require my recusal. The evidence herein demonstrates the ways in which the board has ignored the needs of its

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<sup>23</sup> See, for example, the order dated January 10, 2023 issued in connection with *Appeal of Moster and YAFFED*, 63 Ed Dept Rep, Decision No. 18,225 [ordering a district to complete its investigation into the substantial equivalency of instruction provided at certain nonpublic schools by a specific date]; and the stay order dated October 24, 2019 granted in *Appeal of Vanunu*, Appeal No. 21,293, Withdrawal No. 2,447 [ordering a school district to re-calibrate its distance measurement tool and re-measure a distance within 10 days and submit an affidavit containing the results thereof].

<sup>24</sup> Education Law § 311 (2).

public school students. The 2024 budget is, in the monitors' own words, "not fiscally sound." The district's network of private, contracted, and gender-segregated buses is costly, inefficient, and, on too many occasions, deadly.<sup>25</sup> And the district's facilities, as shown in its 2023 review, are neither safe nor welcoming. Given my statutory responsibility to review this appeal, I find no basis to, and therefore decline, to recuse myself (*see Application of McCray, et al.*, 57 Ed Dept Rep, Decision No. 17,307 [fact that Commissioner and State Education Department were respondents in previous litigation insufficient for recusal]; *see also Application of Simmons*, 53 Ed Dept Rep, Decision No. 16,596; *Appeal of Wayne*, 39 *id.*, Decision No. 14,298).

Respondent also contends that the appeal is untimely. **An appeal to the Commissioner must be commenced within 30 days from the decision or act complained of, unless any delay is excused by the Commissioner for good cause shown (8 NYCRR 275.16; *Appeal of Saxena*, 57 Ed Dept Rep, Decision No. 17,239; *Appeal of Lippolt*, 48 *id.* 457, Decision No. 15,914).** Here, petitioner challenges respondent's adoption of the revote budget on June 18, 2024. While respondent argues that petitioner should have appealed following the board's proposal of the revote budget on May 30, 2024, I find that petitioner was aggrieved by the actual vote and its adoption by respondent (*cf. Appeal of Gallagher*, 59 Ed Dept Rep, Decision No. 17,858 [administrator aggrieved by planned abolition of his position as well as resolution effectuating said abolition]). Indeed, the budget did not have legal effect until the conclusion of the election on June 18, 2024. Thus, petitioner permissibly elected to appeal the board's adoption of the revote budget.

Respondent further argues that petitioner lacks standing to challenge certain of its programmatic and budgetary decision, particularly ELL services. **An individual may not maintain an appeal pursuant to Education Law § 310 unless aggrieved in the sense that he or she has suffered personal damage or injury to his or her civil, personal, or property rights (*Appeal of Abitbol*, 57 Ed Dept Rep, Decision No. 17,333; *Appeal of Waechter*, 48 *id.* 261, Decision No. 15,853). Only an individual who is directly affected by an action has standing to commence an appeal therefrom (*Appeal of Abitbol*, 57 Ed Dept Rep, Decision No. 17,333; *Appeal of Waechter*, 48 *id.* 261, Decision No. 15,853).**

Petitioner is a district resident and taxpayer whose children attend respondent's public schools. She argues that respondent adopted a budget that

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<sup>25</sup> The Department is aware of the following school bus incidents in East Ramapo in 2024 alone: (1) January 29, 2024: an eight-year-old student was killed by a school bus as he was walking home from school; (2) February 8, 2024: a school bus was involved in an accident whereby the driver suffered minor injuries but no children were harmed; (3) February 16, 2024: a five-year-old student was killed crossing the street by her own bus; (4) March 26, 2024: a six-year-old student was struck by a bus in Monsey; and (5) April 12, 2024: a student was struck by a private school bus in Monsey.

is inconsistent with the district’s strategic plan and educational policy. While she describes the effect of respondent’s budgeting decisions on the health and safety of public school students and ELLs, these are identified as illustrative examples of the ways in which the budget irrationally supports nonpublic schools while neglecting public ones. Moreover, respondent does not contest that petitioner has standing to challenge the quality of her children’s school buildings. As such, I decline to dismiss the appeal for lack of standing.

Finally, respondent suggests that I am precluded from issuing relief as the monitors could have, but did not, veto the proposed budget(s). The monitors do not have this power. The 2021 monitor with veto power legislation authorizes the “the monitor or monitors” to overrule “an adopted resolution or motion, a proposed resolution or motion, or ... the board’s failure to act” in accordance with law (L 2021, ch 173).<sup>26</sup> The monitors’ budgetary authority is set forth in a separate subdivision that merely tasks them with “review[ing] the budget to ensure that it, to the greatest extent possible, is consistent with the long term strategic academic and fiscal improvement plan ... and expands educational programming for students ....” This language and structure cannot be read to impliedly bestow the monitors with authority over the district’s budget—authority that would render the fiscal control board legislation superfluous.<sup>27</sup>

#### IV. Discussion

Respondent does not seriously dispute the above deficiencies. For example, it concedes that repairs to its facilities are necessary but argues that it has devoted \$90 million to this task.<sup>28</sup> It does not dispute the presence of lead in its water systems but asserts that remediation is “nearly completed.”<sup>29</sup> And other than its standing argument rejected above, it offers no defense to petitioner’s allegations of inadequate ELL services. As such, I find that respondent has failed to offer “suitable and adequate facilities to accommodate the programs of such district” (8 NYCRR 155.1) as well as appropriate services to ELLs in violation of 8 NYCRR 154. Adoption of a budget that will not

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<sup>26</sup> This legislation also reduced the number of monitors from three to two.

<sup>27</sup> To the extent respondent argues that I should have vetoed the budget, the Commissioner’s authority under the current monitor law is similarly limited; the Commissioner is only afforded a limited opportunity to review and comment on the budget in the final weeks of its development. Section II.C above details my back-and-forth communications with the board during the budgetary process.

<sup>28</sup> It appears that respondent is referring to a \$90 million investment made using federal stimulus funds. This investment, according to Department records, was considered when the district developed the \$236 million estimate. But, even if it was not, the district still needs approximately \$146 million.

<sup>29</sup> Department records belie the characterization of this work as “nearly” complete; an email from respondent’s director of facilities on July 30, 2024, however, indicates that substantial work remains to replace several of the district’s water fountains.

provide sufficient resources to address the above violations is arbitrary, capricious, and violative of sound educational policy.

Respondent suggests that any award of interim relief would “permit any taxpayer and/or parent to challenge any action by any board ... including whenever they d[o] not agree with the budget....” This prediction is unfounded, however, as no other school district offers such gratuitous resources to its nonpublic school students while simultaneously neglecting its public school students. In other words, the relief ordered herein is extraordinary—but so, too, are respondent’s acts and omissions.

Respondent also suggests that it is the voters, not the board, who are responsible for depriving the public schools of needed resources. There is some truth to this proposition. However, as evidenced by the VRA trial, the board majority has not acted independently of the nonpublic school community and often acceded to its wishes. If the board prioritized its public school students, it would have filed this appeal itself—or at least supported the imposition of an additional tax levy increase.

The Commissioner of Education is responsible for ensuring the continued operation and success of the common school system. By necessity, the Commissioner has the power and duty to prevent the collapse of a public school district. This includes the ability to levy taxes in an amount deemed proper or necessary to give effect to a decision (Education Law § 311 [4]; *Town of Brookhaven*, 243 NY 204 [1926]). Therefore, in accordance with the administration’s original proposed budget, I hereby direct respondent to obtain an additional tax levy in the amount of 4.38 percent, the district’s original proposal less the one percent approved in the June 18, 2024 revote. I find that this minimal amount, which must be used to address the deficiencies identified herein, is the only feasible solution ensure the continued operation of respondent’s public schools (*Matter of Brookset Bus Corporation*, 21 Ed Dept Rep 503, Decision No. 10,770 [“The proper means or enforcing a decision of the Commissioner of Education depends upon the circumstances presented and is subject to the Commissioner’s discretion”]).

## V. Conclusion

The New York Constitution promises a “system of free common schools, wherein all the children of this state may be Educated” (N.Y. Const. Art. XI, Sec. 1). This order represents a small step toward the renewal of that commitment.

I have considered respondent’s remaining contentions and find them to be without merit.

IT IS ORDERED that the Board of Education of the East Ramapo Central School District be, and it is hereby directed, to support its public schools by adopting a tax levy providing for an additional 4.38 percent increase; *i.e.*, the 5.38 percent recommended by the superintendent less the 1 percent approved by the voters on June 18, 2024. This amount must be used to address or mitigate the public school deficiencies identified herein. The board is hereby authorized and directed to raise by tax upon the taxable property of the district a sum sufficient to pay such costs.

IN WITNESS WHEREOF, I, Betty A. Rosa,  
Commissioner of Education of the State of  
New York, for and on behalf of the State  
Education Department, do hereunto set my  
hand and affix the seal of the State Education  
Department, at the City of Albany, this    day  
of                    2024.

Commissioner of Education