



Educational Providence

New York courts close one door, federal money opens another

by JOSHUA DUNN

In March 2010, to Mayor Michael Bloomberg's and Chancellor Joel Klein's chagrin, a New York State trial judge stopped the planned closure of 19 chronically failing schools in New York City. As a result, 19 demonstrably dreadful schools will remain open for at least another school year. Yet the case and its aftermath show

that school districts can, with sufficient effort and creativity, partially maneuver around such judicially imposed obstacles.

Klein, who has sought to close underperforming schools as part of his effort to improve the lagging district, had announced that he would seek to both close the schools in December of 2009 and to recycle some of the facilities as charter schools. The United Federation of Teachers (UFT) attempted to manufacture a political controversy over the closures by renting 50 buses to transport protesters to hearings before the city's Panel for Educational Policy. In the final hearing, which lasted nine hours, the panel approved Klein's recommendations. The UFT promptly sued and was joined by the local branch of the NAACP, which claimed, despite the dreadful education that the schools inflicted on pupils, that children's rights had not been considered.

The lawsuit centered on the state legislature's 2009 revision and reauthorization of mayoral control of the school district. The revised law set out the conditions that the city must follow when closing or significantly changing the use of a school. The requirement under dispute is that the city must provide an "educational impact statement" (EIS) for each school slated for closure. The UFT claimed that the city's impact statements were insufficient. Naturally, the city thought that it had provided the requisite information, including the budgetary implications, effects on administrators and teachers, and the schools' progress reports and graduation rates.

Judge Joan Lobis sided with the union. While admitting that "the statute does not specify the information that an EIS should include," she nevertheless ruled that the city's impact statements contained "boilerplate" and insufficient details. Significantly, Lobis's ruling failed to explain what information the city would need to provide to satisfy the law. The city appealed but fared no better. In July, an appellate court, echoing Judge Lobis, ruled that the city had failed to meet its obligations by providing only "obvious" information.

While the city vowed to eventually close all 19 schools, Klein appears to have found a less controversial, if still partial and delayed, route around this judicial roadblock. The city

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announced in June, prior to the appellate ruling, that it was going to "transform" 11 of the district's schools and dramatically overhaul or close 23 others under a \$300 million federal School Improvement Grant (SIG) program. Eight of those 23 were on the original list of schools the district wanted to shutter. Under the grant program, the options for the 23 schools are established by the

federal Department of Education. The district can impose one of three plans: turnaround, restart, or closure. The turnaround plan requires firing the principal and at least 50 percent of the teachers. The restart plan replaces the district school with a charter school. The closure plan's consequences are self-evident. These reforms, though, will not be implemented until the 2011–12 school year. The transformation model, reserved for the 11 "least-worst" schools, involves replacing the principal, bringing in more support services, and making curricular changes. Opposing these measures would put the teachers union in an uncomfortable position since it would mean rejecting the federal money. So far the UFT has not announced plans to sue in the event that the district chooses to close or restart any schools, the two most likely options for the schools previously slated for closure.

In addition to sidestepping litigation, this grant program has helped the city convince the teachers union to accept a limited form of performance pay for teachers. Schools scheduled for transformation will be able to hire teachers with two new designations, master teacher and turnaround teacher. Teachers at both levels will receive 30 percent more in their base salary. To receive this designation a teacher must have demonstrated the ability to raise student test scores.

Since students in 19 schools will be subjected to at least one more year of educational mediocrity, this outcome is hardly optimal. But the city's response shows that school districts and their long-suffering students do not have to be completely victimized by litigation.

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