

In the Matter of an Article 78 Proceeding

NADIA CORTES, VIRGIL DANTES, ANNEMARIE  
HESLOP, CURTIS WITTERS, on Behalf of Themselves  
and Their Children,

Index No.: 05102-16  
RJI No.: 01-16-ST8123

Hon. Kimberly A. O'Connor

Petitioners,

-against-

ROBERT MUJICA, Director, New York State  
Division of Budget; NEW YORK STATE DIVISION  
OF BUDGET, MARYELLEN ELIA, New York State  
Commissioner of Education, NEW YORK STATE  
EDUCATION DEPARTMENT,

Respondents.

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**NOTICE OF APPEAL**

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Karl J. Sleight, Esq.  
Aubrey A. Roman, Esq.  
*Counsel for Respondents-Appellants*  
*Robert Mujica, Director, New York State*  
*Division of Budget and New York State*  
*Division of Budget*  
*677 Broadway, Suite 1101*  
*Albany, New York 12207*  
*(518) 701-2716*

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of an Article 78 Proceeding

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Division of Budget; NEW YORK STATE DIVISION  
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Commissioner of Education, NEW YORK STATE  
EDUCATION DEPARTMENT,

Kimberly A. O'Connor

Respondents.



PLEASE TAKE NOTICE that the Respondents, Robert Mujica, Director, New York State Division of Budget, and New York State Division of Budget (collectively, "Respondents-Appellants"), hereby appeal to the Appellate Division of the New York Supreme Court in and for the Third Department, from a Decision and Order/Judgment of the Supreme Court of the State of New York, County of Albany, dated December 28, 2016, entered in the Albany County Clerk's Office on January 5, 2017 and served by Petitioners, Nadia Cortes, Virgil Dantes, AnneMarie Heslop, and Curtis Witters, on behalf of themselves and their children (collectively, "Petitioners-Respondents"), with Notice of Entry, on January 5, 2017, attached hereto, which Decision and Order/Judgment denied Respondents-Appellants' motion to dismiss and granted Petitioners-Respondents' Article 78 Petition to the extent that the Court directed Respondents-Appellants to immediately release certain appropriated transformation grant funds to Respondent New York State Education Department.

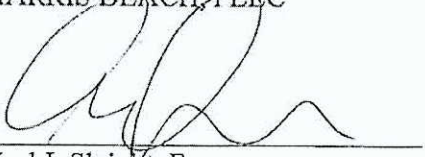
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ALBANY COUNTY CLERK

This appeal is taken from each and every part of the December 28, 2016 Decision and Order/Judgment, as well as the whole thereof, insofar as it aggrieves Respondents-Appellants.

DATED: February 3, 2017  
Albany, New York

HARRIS BEACH, PLLC

By:



Karl J. Sleight, Esq.  
Aubrey A. Roman, Esq.  
*Counsel for Respondents-Appellants*  
*Robert Mujica, Director, New York State*  
*Division of Budget and New York State*  
*Division of Budget*  
677 Broadway, Suite 1101  
Albany, New York 12207  
Tel.: (518) 701-2716

TO: Wendy Lecker, Esq.  
Education Law Center  
*Attorneys for Petitioners-Respondents*  
60 Park Place, Suite 300  
Newark, New Jersey 07102  
Tel.: (203) 536-7567

Aaron Baldwin, Esq.  
Office of Counsel  
New York State Education Department  
*Attorney for Respondents*  
*MaryEllen Elia, New York State*  
*Commissioner of Education and New*  
*York State Education Department*  
89 Washington Avenue, Room 112  
Albany, New York 12234

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Petitioners,

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OF BUDGET, MARYELLEN ELIA, New York State  
Commissioner of Education, NEW YORK STATE  
EDUCATION DEPARTMENT,

Respondents.

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**PRE-CALENDAR STATEMENT**

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Karl J. Sleight, Esq.  
Aubrey A. Roman, Esq.  
*Counsel for Respondents-Appellants*  
*Robert Mujica, Director, New York State*  
*Division of Budget and New York State*  
*Division of Budget*  
*677 Broadway, Suite 1101*  
*Albany, New York 12207*  
*(518) 701-2716*



New York State Division of Budget	Respondent	Appellant
MaryEllen Elia, New York State Commissioner of Education	Respondent	Unknown
New York State Education Department	Respondent	Unknown

**Counsel for Respondents-Appellants:**

Harris Beach PLLC  
 Karl J. Sleight, Esq.  
 Aubrey A. Roman, Esq.  
 677 Broadway, Suite 1101  
 Albany, New York 12207  
[ksleight@harrisbeach.com](mailto:ksleight@harrisbeach.com)  
[aroman@harrisbeach.com](mailto:aroman@harrisbeach.com)  
 Tel.: (518) 701-2716  
 Fax: (518) 427-0235

**Counsel for Petitioners-Respondents and Counsel for Other Parties:**

Wendy Lecker, Esq.  
 Education Law Center  
*Attorneys for Petitioners-Respondents*  
 60 Park Place, Suite 300  
 Newark, New Jersey 07102  
[wlecker@edlawcenter.org](mailto:wlecker@edlawcenter.org)  
 Tel.: (203) 536-7567

Aaron Baldwin, Esq.  
 Office of Counsel  
 New York State Education Department  
*Attorney for Respondents*  
*MaryEllen Elia, New York State*  
*Commissioner of Education and New*  
*York State Education Department*  
 89 Washington Avenue, Room 112  
 Albany, New York 12234  
[Aaron.Baldwin@nysed.gov](mailto:Aaron.Baldwin@nysed.gov)  
 Tel.: (518) 474-6400

**Court, Judge and County:**

Hon. Kimberly A. O'Connor  
Supreme Court, Albany County  
Index No. 05102-16/RJI No. 01-16-ST8123

**Nature and Object of Action or Proceeding:**

This is an Article 78 proceeding commenced by the Petitioners, Nadia Cortes, Virgil Dantes, AnneMarie Heslop, and Curtis Witters, on behalf of themselves and their children (the "Petitioners-Respondents"). The Petitioners-Respondents seek the release, by Respondents Robert Mujica, Director, New York State Division of Budget, and New York State Division of Budget (the "Respondents-Appellants"), of the 2016-2017 installment of transformation grant funds as they relate to nine schools that were removed from Respondent New York State Education Department's list of persistently failing schools.

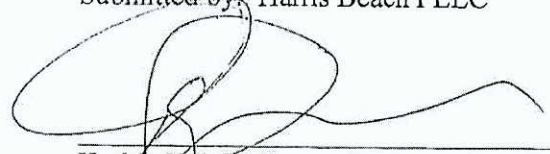
**Appellate Issues:**

- (1) Whether the Court below erred as a matter of law in denying Respondents-Appellants' motion to dismiss the Article 78 Petition?
- (2) Whether the Court below erred as a matter of law in granting the Article 78 Petition to the extent that the Respondents-Appellants were directed to immediately release the appropriated transformation grant funds to Respondent New York State Education Department, making those funds available to the school districts awarded transformation grants for their "persistently failing" schools?

**Other Related Matters:**

Not applicable

Submitted by: Harris Beach PLLC



Karl J. Sleight, Esq.  
Aubrey A. Roman, Esq.

Dated: February 3, 2017

**Attachments:**

**Check**

- |    |   |                       |
|----|---|-----------------------|
| 1. | Copy of order or judgment appealed from.                    | <u>  X  </u> attached |
| 2. | Copy of opinion or decision.                                | <u>  X  </u> attached |
| 3. | Copy of notice of appeal or order granting leave to appeal. | <u>  X  </u> attached |

TO: Wendy Lecker, Esq.  
Education Law Center  
*Attorneys for Petitioners*  
60 Park Place, Suite 300  
Newark, New Jersey 07102

Aaron Baldwin, Esq.  
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