

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

EDWARD SIMMS, et al.,

Plaintiff,

v.

CASE NO.: CV-2018-000092

ED RICHARDSON, in his individual and
official capacities, REGINALD EGGLESTON,
in his individual and official capacities, and
GORDON STONE, in his individual and official
capacities;

Defendants.

AFFIDAVIT OF JASON TAYLOR

STATE OF ALABAMA)
MONTGOMERY COUNTY)

Before the undersigned authority, a notary public in and for said county and state, personally appeared Jason Taylor, who is known to me and who, after being by me first duly sworn, does depose and state under oath as follows:

1. My name is Jason Taylor. I am over the age of nineteen (19) years, of sound mind, and not otherwise disqualified from giving testimony under oath. I have personal knowledge of the matters asserted herein.

2. In April, 2017, the Alabama State Department of Education (“the ALSDE”) engaged my services¹ to “provide professional services which may include, but may not be limited

¹ Before the State Department of Education employed me to support its efforts in Montgomery, I served for several years as the Chief School Financial Officer of the Huntsville City Board of Education. Prior to my employment in Huntsville, the Board’s general fund was operating at a \$20 million deficit. After my engagement by the Huntsville Board, between 2012 and 2016, the Board’s financial position improved to reflect a positive reserve of approximately \$30 million. During this same term, the Board implemented an aggressive facilities construction and rehabilitation program, divested more than \$22 million in District-owned real estate, realized millions of dollars in annual cost savings through contracting (outsourcing) of

to; oversight of the ALSDE intervention in the Montgomery County Public Schools (“MPS”) with specific concentration on review, analysis, and change implementation relevant to general administration, finance and business administration, operations and maintenance, information technology, child nutrition programs, other auxiliary functions within MPS.” To discharge my responsibilities, it was necessary for me to become familiar with the history of the Montgomery intervention initiative, including the problems that led to its approval, the steps that have been taken to address those problems, and additional issues that came to light after intervention was approved. While gaining this understanding, I have been instrumental in developing a number of proposals for addressing short and long-term issues that are likely to impede realization of intervention goals without corrective or remedial measures.

3. On February 9, 2017, the Alabama State Board of Education approved the recommendation by then Alabama State Superintendent Michael Sentance to intervene in the operations of Montgomery Public Schools (“MPS”).² As predicate for intervention into Montgomery County School System, the ALSDE identified a number of deficiencies in the areas of finance, operations, transportation, and academic achievement, such as low academic proficiency scores, low graduation rates, high/chronic student/teacher absentee rates, persistent school safety and transportation compliance concerns, and recurring non-compliance with statutory requirements pertaining to fiscal accountability, including missed reporting deadlines (including submission of the annual budget), overdue supplements to financial statements, and

auxiliary services, and successfully concluded negotiations with the U.S. Department of Justice on a joint consent order that addressed, among other things, the equitable allocation of student resources.

² The Montgomery County Board of Education (“MCBOE” or “Board”) (a/k/a Montgomery Public Schools or “MPS”) serves both the City of Montgomery and unincorporated Montgomery County. It does not serve or fund the provision of educational services to residents of the Town of Pike Road, which operates an independent municipal board of education.

delayed or unfiled applications for federal funds, the loss of which would translate into deprivation of educational services for students. In accordance with the *Educational Accountability and Intervention Act* (“the EAIA”), the ALSDE provided the Montgomery Board a Notice to Show Cause (“Show Cause Letter”) summarizing and setting forth the grounds for intervention (attached as Exhibit A).

4. The Show Cause Letter itself identified multiple instances of non-compliance with the *School Fiscal Accountability Act, Alabama Code Sec. 16-13A-1 et seq.* and other concerns:

I have determined that MPS is not in compliance with the *School Fiscal Accountability Act*, as codified in Chapter 13A of Title 16 of the *Code of Alabama*. One example of this noncompliance is that MPS does not have a permanent Chief School Financial Officer, which is a requirement under Ala. Code § 16-13A-4(a) (1975). Additionally, there are a number of required financial statements and federal budget applications, as well as an annual budget, required under Ala. Code § 16-13A-5 and 16-13A-6, which have not been submitted or not timely submitted.

But financial reasons are only one component of my concerns about MPS. Other areas include academic, Child Nutrition Program, and student transportation/bus concerns. These additional concerns may, but do not necessarily, overlap with MPS's financial deficiencies. As another basis for intervention, I have determined that a majority of MPS schools are Priority Schools pursuant to Section 16-6E-3(3) of the Act, including that they are substantially and sometimes chronically underperforming their potential considering the totality of circumstances (including, but not limited to, indicators such as low proficiency scores, low graduation rates, high chronic absentee rates, fiscal deficiencies, and persistent or substantial school safety or transportation concerns).

The Montgomery Board consented to implementation of intervention measures (attached as Exhibit B).

5. The Montgomery Board faces significant long-term financial and operational challenges that will require sustained administrative and fiscal discipline, system-wide structural

reforms, and politically sensitive, difficult decision-making in order to overcome. As was true in this case, local board of education members are sometimes unwilling or unable to squarely address (or even acknowledge) the deficient administrative and financial circumstances that led to intervention and are frustrated by the loss of control that is implicit in the nature of intervention. Nonetheless, rigorous structural and operational reform is inevitably required in order to return the system to sustainable financial and operational functioning. That stability, in turn, provides the foundation for implementing needed academic initiatives and reforms.

6. The embedded impediments to sustained operational efficiency and financial integrity in Montgomery include, but are not limited to, the following:

- ***Inadequate Financial Reserves.*** The Montgomery Board's General Fund reserve balance has lingered at approximately 75% of its statutorily required fund balance since 2014, and the Board's financial position has remained deficient by an average balance of \$4.9 million (when normalized to account for a recurring \$3.915 million accounting error; See paragraph 8, below).
- ***Minimal Local Funding.*** Montgomery County provides the minimum allowable rate of ad valorem taxes for education (10 mills). In addition, the Montgomery County Commission has notified the MCBOE of its intent to withhold (or redirect) \$3.8 million in annual countywide sales tax revenues levied and collected for the benefit of public education.
- ***Consistent Decline in Student Enrollment.*** Since 2013, the Montgomery Board has seen a consistent decline in student enrollment, with an average annual loss of 585 students, or 1.85%, per year. Declining enrollment has a negative impact on proportional revenue allocations from the State Education Trust Fund (Foundation Program). The reduction in enrollment for the most recent measurement period (approximately 790 students) will translate into a proportional loss of revenues from the State Foundation Program approximating \$4.5 million for the 2019 fiscal year. This reduction is in addition to a \$1.2 million reduction in funds for the current (2018) fiscal year. (The projected reduction in State funding is based solely on preliminary legislative ETF appropriation data relevant to the 2019 fiscal year provided by the Alabama State Department of Education).
- ***Other Circumstances.*** Programmatically, Montgomery schools are lagging in transitioning to 21st century digital learning environments. Operationally, the Board has a substantial backlog of unfunded deferred capital maintenance

requirements. The Board's Child Nutrition Program ("CNP") generates net operating losses averaging \$2.56 million per year over the past 5 fiscal years. Under federal regulations, the annual losses must be mitigated by a transfer of capital from the General Fund to the CNP Fund. For the Montgomery Board to realize and maintain its required general fund balance and to optimize capital reinvestment in student resources and instruction, the operating efficiency of the Child Nutrition Program will require prompt improvement.

7. Between April 2017 to December 2017, the ALSDE intervention team took a number of steps to achieve short term improvement in the Board's financial position.

Specifically, the team:

- a. Realigned certain fund balances and effected two flexibility waivers by taking advantage of legislative accommodations included in the annual appropriations bill. These measures enabled the MCBOE finance office to retain \$9.4 million in the General Fund. This measure was necessary to offset revenue shortfalls and expenditure overruns in the 2017 fiscal year and to provide a partial hedge against a cash flow shortfall in December of 2017.
- b. Negotiated the sale of Georgia Washington Middle School to the Town of Pike Road for an amount of \$9,850,000. Selling the school to Pike Road is expected to result in an annual recurring operational costs savings between \$325,000 and 500,000;
- c. Negotiated a treasury management relationship with Cadence Bank which is expected to generate between \$275,000 and \$300,000 in recurring annual interest income for the Board;
- d. Reorganized the Child Nutrition Program personnel to provide for direct reporting of all CNP personnel staff to the CNP Director. Previously, some CNP employees had reported to their school principals, while others reported to the CNP Director. This measure is expected to enhance operating efficiencies and accountability across CNP operations;
- e. Reorganized the Board's Logistics Division to require direct reporting of all custodial personnel to the Director of Logistics. Previously, some custodial employees reported to their school principals while others reported to the Director of Logistics. The reorganization should also enhance operating efficiencies and accountability across custodial services operations; and
- f. Began review and revision of the MCBOE Policy Manual, which will entail development and/or revision of subordinate Finance, Transportation, and §504 Compliance Manuals.

8. Alabama Law requires that the MCBOE maintain a General Fund reserve balance of not less than the equivalent of one month's operating expenses, which approximates \$18.7

million. (Ala. Code § 16-13A-9(a)). As of September 30, 2016, the MCBOE reported a General Fund balance in the amount of \$15,704,046 (which approximates 84% of its statutorily required fund balance). However, that number erroneously included restricted funds amounting to some \$3,915,990, which should have been classified in the Board's Capital Projects Fund. That error was initially identified by the ALSDE Intervention team and subsequently confirmed by the Alabama Board of Examiners of Public Accounts. When normalized to account for the \$3,915,990 error noted above, the Montgomery Board's ending General Fund balance at September 30, 2016, was actually \$11,788,056 (or 63% of the statutorily required balance).

9. During the 2017 fiscal year, the ALSDE Intervention team recommended a number of measures, adjustments, and balance reclassifications pertinent to the Board's financial accounting, reporting, and management practices. One such measure was the employment of flexibility with regard to use of fleet renewal funds and child nutrition passthrough requirements. The exercise of flexibility in these two areas resulted in significant operational benefit to the General Fund. More specifically:

- a. Flexibility with regard to child nutrition passthrough requirements avoided a cash transfer of \$6.1 million from the General Fund to the Special Revenue fund. Once transferred out of the General Fund, these funds would have become unavailable for use outside of the Board's Child Nutrition Programs pursuant to the pertinent sections of the Code of Federal Regulations; and
- b. Flexibility with regard to fleet renewal funds appropriated by the Alabama Legislature (Education Trust Fund) allowed the Board to avoid a current period capital outlay approximating \$1,680,000 related to the procurement and operation of transportation services, permitting use of those funds to pay current period operating expenditures (utility bills) and to enhance General Fund liquidity by the same amount.

10. As of September 30, 2017, the Board posted a General Fund balance in the amount of \$15,577,595. Without the measures identified, proposed, and employed by the ALSDE Intervention team described above, the Board's General Fund balance would have been \$7,797,595 (or 42% of the statutorily required balance).

11. In conjunction with development of the Board's 2018 fiscal year budget, the Board rejected a proposed sale of property that would have grossed \$11,250,000 in capital and resulted in a surplus General Fund balance and attainment of the statutorily required fund balance. Instead, the Board's preference was to approve a budget that contemplated a current period operating deficit (loss) in the amount of \$4,510,453. But for implementation of the above described remedial measures during FY2017 by the intervention team, the Montgomery Board's General Fund position would be \$3,287,142 (or 18% of the statutorily required balance) as of September 30, 2018 (as budgeted).

12. In October of 2017, the ALSDE Intervention team negotiated a line of credit ("LOC") agreement with Cadence Bank. The LOC agreement provided access to \$8.0 million in working capital in the event of cash flows deficiencies. In December of 2017, the Montgomery Board was forced to draw the entire balance of the \$8.0 million line to settle payroll and other current obligations. Without the multiple cash management measures utilized by the ALSDE Intervention team, the Montgomery Board would not have had sufficient cash on hand to settle its December payroll obligations, even with the \$8.0 million LOC facility. Neither the Montgomery Board or the MPS staff had anticipated the cashflow shortage or the need for a temporary working capital facility.

13. Although intervention initiatives to date have substantially improved the MCBOE's current financial position, those measures will not by themselves create a foundation for sustained fiscal integrity. To construct a platform for stable financial and business administrative practices, the ALSDE Intervention team intends to devote substantial energy and attention to the following initiatives during the 2018 fiscal year:

- a. Concluding the sale of Georgia Washington Middle School (more fully set forth below) to the Town of Pike Road.

- i. This measure, as revised, will inject approximately \$9,850,000 in capital into the Board's General Fund; and
 - ii. The proceeds from this transaction should enable the MCBOE to defer an otherwise immediate requirement to reduce the number of certified units (teachers). This sale, coupled with other remedial operating measures, will allow the Board to reduce FTE (full time equivalent) headcount over future operating cycles through natural attrition, as opposed to a dramatic, immediate reduction in workforce.
- b. Soliciting proposals (and executing related services contracts) for the outsourcing of certain auxiliary and non-certified personnel.
 - i. Annual recurring savings resulting from outsourcing certain auxiliary personnel is estimated to approximate \$3,400,000;
 - ii. While the Montgomery Board opted to avoid outsourcing during its latest attempt to pass a budget for the 2018 fiscal year, the ALSDE Intervention team will review the potential for outsourcing as a matter of prudence (in lieu of terminating additional instructional personnel).
 - iii. The positions likely subject to consideration of outsourcing will include; custodial staff and instructional aides. The scope of contracted positions may expand based on further analysis and consideration.
 - iv. Transition to outsourced personnel structure (if any) would occur between May 2018 and August 2018.
- c. Completing a capacity review and feasibility study of district schools.
 - i. Initial analysis indicates that the Board may be able to close 3 to 5 elementary schools and, potentially 1 additional middle school.
 - ii. The annual recurring cost savings from closures could approximate \$1.5 million to \$2.7 million per year.
- d. Implementation of integrated software to link human resources and payroll data and functions.
 - i. The Montgomery Board had no suitable management system for human capital management (HCM). The methods used for HCM by the Board's human resources and payroll offices were labor intensive, heavily susceptible to human error, inefficient and prohibitive of timely, valuable financial reporting.

- ii. Upon completion of systems integration, the Board will employ a personnel self-service module for payroll change administration. This should substantially reduce the administrative time burden on the payroll department.
 - iii. Upon completion of systems integration, the Board will employ the Harris Solutions Human Resources position control module for full time equivalent (FTE) budget administration. This should allow for real-time visibility into the District's FTE footprint, enhanced budgetary projections, and increased control over personnel management processes.
- e. Drafting and implementation of an MPS Finance Manual, which will include:
 - i. Internal and external compliance calendars to highlight state, federal, and local reporting requirements and corresponding deadlines. This will include periodic financial reporting and annual budget deadlines;
 - ii. Training modules for local school bookkeepers;
 - iii. Relevant references to state, federal and local (Board) fiscal policy; and
 - iv. Protocols to guide standard financial accounting and reporting practices and accountability measures.
- f. Assisting the MPS with recruitment and employment of personnel with skill sets and abilities of a quality and caliber required to manage a large government entity charged with the administration of \$270+ million in public funds and oversight of 29,500 students annually.
 - i. Since early 2017, the MPS has relied on support from an interim CSFO. The Montgomery Board needs to hire a business manager with financial and operational acumen suitable to navigate the complexities and difficulties inherent in a large government entity as well as those specific to MCBOE (i.e., funding deficits, enrollment decline, etc.)
 - ii. Placement of a permanent Chief School Financial Officer should occur not later than May 31, 2018.
- g. Guiding the budget preparation and review process for the 2019 fiscal year.
- h. Drafting and implementation of a contracts administration protocol in support of the Office of Procurement.
 - i. Currently, a contracts-control protocol does not currently exist at the Board;

- ii. A protocol has been drafted but needs to be digitized and implemented.
- i. Performing revenue/cost savings analysis of universal breakfast in classroom (BIC) implementation.
 - i. Implementation of universal BIC could significantly increase the operating residuals generated by the Child Nutrition Program, which would reduce the subsidy cost burden on the General Fund dollar-for-dollar.
 - ii. If universal BIC is considered practicable and preferable, the CNP Department would promote the forward communication regarding program compliance during May – August 2018. Program would be implemented in August 2018 concurrent with the beginning of the 2018/2019 school year.
- j. Performing analysis of Medicaid reimbursement program to ensure that (1) the Board is provided timely, accurate information; and (2) relevant service-based data that is structured in the Board’s database(s) to maximize reimbursement rates.
- k. Streamlining operations and maintenance procedures to include: (1) determinable service schedules for recurring preventative maintenance; (2) standard maintenance and cleaning protocols for summer months; and (3) service-based protocol for all operations/auxiliary personnel.
- l. Reviewing and revising (as necessary) the Board’s 5-year capital plan to account for funded and unfunded deferred maintenance and capital repair, construction and renovation needs.

Sale of Georgia Washington Middle School

14. Throughout the 2017 fiscal year, members of the ALDSE Intervention team participated in negotiations for the sale of Georgia Washington Middle School to the Town of Pike Road, Alabama. Pike Road initially offered a purchase price of approximately \$5 million. Following further negotiation, Pike Road ultimately agreed to pay MPS \$9.85 million for the property. In addition, the Pike Road agreed to reimburse MPS a balance of \$1.399 million, representing an amount equal to a balance erroneously allocated to Pike Road Schools in a prior fiscal year.

15. Upon closing on the sale of the property, MPS would realize positive cash flows

in the amount of \$11.25 million, \$9.85 million of which would be deposited into its General Fund and the remainder would be deposited into its Capital Projects Fund.

16. As stated above, in conjunction with development of the Board's 2018 fiscal year budget, the Board rejected a proposed sale of Georgia Washington Middle School³, and instead elected to approve a budget that contemplated a current period operating deficit (loss) in the amount of \$4,510,453, an action prohibited by Alabama Law.

17. After the MCBOE's approval of that deficit budget, the State Superintendent directed the Montgomery Board to reconsider the budget, and further directed the Board to consider remedial financial and operational measures that would result in the Board's achieving its minimum required General Fund Balance (approximately \$18.7 million) and establishing an additional reserve balance of \$3.9 million in order to underwrite intervention-based initiatives aimed at improving academic achievement in the district.

18. During the months of November and December 2017, the Board held a series of public work sessions to review several remedial options for meeting budget related statutory mandates. Ultimately, the Montgomery Board elected to approve a budget (described internally as 'Scenario 3') which contemplated, among other measures, a significant reduction in operational and instructional personnel, including 114 teachers. The Board-approved budget did not include the sale of Georgia Washington Middle School.

19. After the Montgomery Board's vote to approve the 'Scenario 3' budget, the State Superintendent of Education met with the Montgomery Board members in December 2017 to review their decision. During the course of this meeting, the State Superintendent of Education

³ The Board was initially presented with and voted to approve a purchase and sales agreement for the conveyance of Georgia Washington Middle School to the Town of Pike Road in October 2017. The Board subsequently voted to terminate the contract.

committed to re-considering the proposed 2018 budget but declared explicitly that, in light of available alternative remedial measures, he would not approve a budget that would require the termination of teachers and other instructional staff because of the adverse impact such action would have on academic performance and the attainment of intervention goals in that area.

20. In January of 2018, the State Superintendent authorized the ALSDE Intervention team to reengage in discussions with the Town of Pike Road regarding the sale of Georgia Washington school. Following those discussions, the State Superintendent announced in February of 2018 that the sale would proceed along with consolidation and closure of multiple other MPS schools and facilities. A contract memorializing the terms of the sale of the Georgia Washington campus was executed on February 9, 2018 (see Exhibit C, attached). Each of these transactions were contemplated and authorized to establish a 2018 budget that met the legally required General Fund balance as well as an investment reserve for additional capital requirements necessitated by the academic intervention efforts. Further, each of these measures are practical, prudent, and ordinary in the course of implementing dramatic fiscal remediation. Divestiture of excess capital infrastructure when facing severe financial solvency and liquidity issues, as is the case with MPS, is not a novel practice.

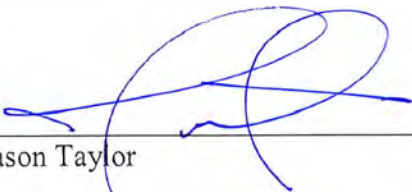
21. In order to apply a standard methodology for determining school capacities and assessing the feasibility of school closures, consolidations, and related student rezoning, the District engaged the services of TCU Consulting Services (“TCU”), an independent consulting firm. Notably, TCU was a material participant in determining school zone redistricting in the City of Huntsville, Alabama in conjunction with implementation of a joint consent order between the Huntsville City Board of Education and the U.S. Department of Justice. TCU was tasked with establishing capacity standards for Huntsville City Schools in order to facilitate and

optimize equitable access to school district facilities by district students. For the engagement in Montgomery, TCU employed facility measurement standards and capacity calculations similar to those employed in Huntsville, although certain capacity variables varied slightly from the standards established in Huntsville.

22. To date, efforts to develop and implement both immediate and long-term reform measures—including some of the initiatives outlined above—have been met with disheartening opposition from the Montgomery Board and other interests who have demonstrated unrelenting hostility to intervention initiatives. Although the State Superintendent is empowered under the EAIA to take direct action with respect to virtually all matters affecting Board operations without the involvement or approval of local board officials, Montgomery intervention team officials have tempered that approach by including the Montgomery Board in consultative and decision-making processes in order to show respect for those officials and their point(s) of view, to obtain local “buy in” with regard to important and sensitive decisions, and to assess the willingness and ability of local officials to make or endorse the kind of politically difficult decisions that are inevitably required to rectify the conditions leading to intervention and to sustain financial and operational stability. Unfortunately, those efforts have too often been met with resistance, by the Board or by its proxies. For example, the Board or individual members of it have publicly aligned themselves with plaintiffs who have filed suit to enjoin the exercise of intervention authority (See Exhibit D, attached). The MCBOE has also attempted to appoint one of the lawyers asserting those challenges in two successively filed lawsuits (including the pending suit) as the Board’s general counsel. The delay and uncertainty occasioned by litigation and similar tactics will, if successful, undermine both the theoretical premise of intervention and the ability of the Intervention team to complete the critical task of creating the kind of sustainable financial,


operational, and academic environment that is necessary to equip Montgomery students for future academic and career success.

Further the affiant sayeth not.



Jason Taylor

Sworn to and subscribed before me on this 14th day of March, 2018.



Notary Public
My commission expires: 12/8/2020

