

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

LISA KULISEK, on behalf of her children  
N.C. and C.C.; AMY MCNEIL, on behalf  
of her children M.M. and T.M.; and  
MARYBETH LINSE, on behalf of J.Z.,

Plaintiffs,

v.

SUSANA A. MENDOZA, Comptroller of  
Illinois; and the ILLINOIS STATE  
BOARD OF EDUCATION.

Defendants,

No. \_\_\_\_\_

**COMPLAINT FOR MANDAMUS, INJUNCTIVE, AND OTHER RELIEF**

Plaintiffs Lisa Kulisek, on behalf of her children N.C. and C.C.; Amy McNeil, on behalf of her children M.M. and T.M.; and MaryBeth Linse, on behalf of her child, J.Z., by and through their attorneys, Perkins Coie LLP, state as follows for their Complaint against Illinois Comptroller Susana A. Mendoza, and the Illinois State Board of Education (collectively, "Defendants"):

**NATURE OF ACTION**

1. Plaintiffs are parents of public school students, including students of City of Chicago School District #299, who face irreparable harm due to the failure of Comptroller Mendoza, and the Illinois State Board of Education ("ISBE") to honor the requirements of Illinois law. Specifically, these parents and students have been injured by these state officials' failure to pay amounts properly invoiced and due to their school districts – funds which would have supported vital special education and nutrition programs at these schools. In addition, Plaintiffs and their children would be irreparably harmed by any failure of Defendants to distribute funds

appropriated for FY 2018 in any way other than using an “evidence-based” funding allocation as required by Illinois’ new state budget. Accordingly, Plaintiffs seek an order of this Court requiring the State to pay those amounts invoiced and due to all Illinois school districts including those of Plaintiffs, and enjoining Defendants from allocating funds in a manner inconsistent with state law.

2. For decades, Illinois has had one of the most inequitable school funding formulas in the nation. Illinois’ historical disparity in school funding has left Illinois with one of the largest gaps in the country between spending on the wealthiest versus the poorest school districts, and the state’s formula was particularly unfair and damaging to the K-12 students in poorer districts more heavily reliant on state resources.

3. Moreover, throughout the unprecedented budget stalemate that has plagued Illinois in recent years, Illinois’ quarterly disbursements to school districts for special programs—often called “mandated categoricals”—have been delayed, prorated, or otherwise skipped, which has further exacerbated the ability of schools to budget, care for students, and provide efficient and effective education and support programs to the children of Illinois.

4. In July 2017, following the political stalemate that had left the state without a full budget for more than two years, the Illinois legislature voted to override Governor Bruce Rauner’s veto of a state budget as set forth in legislation known as SB 6 (Public Act 100-0021). Significantly, however, SB 6 also drew from the extensive work and recommendations of the bipartisan, bicameral Illinois School Funding Reform Commission that Governor Rauner had created a year earlier and required that the funds appropriated to the ISBE be allocated through evidence-based funding.

5. Illinois' adoption of evidence-based funding through SB 6 was a clear rejection of Illinois' historical, and indisputably broken, approach to school funding, which experts and politicians of both parties generally agreed had been failing Illinois' children.

6. To date, Defendants have failed to distribute General State Aid payments to Illinois school districts using evidence-based funding as required by SB 6. The first of such payments were to be issued on August 10, 2017.

7. An evidence-based funding model, SB 1, was passed by the Illinois House and the Illinois Senate. However, on August 1, 2017 Governor Rauner issued an amendatory veto that leaves the status of funding of Illinois school districts uncertain.

8. The situation for school districts is made more dire by the fact that Comptroller Mendoza has failed to disburse over \$400 million of mandated categorical funds for FY 2017,<sup>1</sup> which further exacerbates cash flow problems for district's across the state and enhance the threats to the stability of Illinois' school districts and ability to fund critical programs such as special education, transportation, and free and reduced-priced lunches.

9. In recent weeks, each of the major political parties have accused the other of playing politics with school funding reform, but the law as set forth in SB 6 requires that the General State Aid funds appropriated by the legislature be allocated using an evidence-based funding model. Any other approach would be contrary to law. Likewise, Comptroller Mendoza's continued refusal to make required full distributions of categorical payments to school districts also is improper and contrary to law.

10. As a result, this lawsuit is brought on behalf of parents of children in Cook, McHenry, and Williamson counties in order to (a) seek a writ of mandamus requiring Comptroller Mendoza to release and distribute the withheld FY 2017 categorical payments; and

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<sup>1</sup> For Illinois school districts, FY 2017 ran from July 1, 2016 through June 30, 2017.

(b) enjoin and restrict Defendants from vouchering and distributing General State Aid for FY 2018 using anything other than an evidence-based funding model created by law as required by SB 6.

### PARTIES

11. Plaintiffs are located in Cook, McHenry, and Williamson counties, and are parents of children in schools and school districts that are funded in part by the State of Illinois, as required by the Illinois Constitution and the Illinois School Code.

12. Plaintiff Lisa Kulisek is the mother of N.C. and C.C., children that attend Andrew Jackson Language Academy in the City of Chicago. If the Chicago Public Schools are closed due to lack of funds, Ms. Kulisek will be unable to continue working.

13. Plaintiff Amy McNeil is the mother of M.M. and T.M., children with autism who are nonverbal. M.M. is part of the full time special education program at Herrin High School, and T.M. will be entering kindergarten at Tri-C Elementary School in the Carterville Community Unit School District #5 in Williamson County.

14. Plaintiff Marybeth Linse is the mother of J.Z. and resides in McHenry County. J.Z. is a quadriplegic who qualifies for special education services at her local school, but she has not lived at home for two years due to the lack of funding for home care services. The Linse's moved from their home in Lake County to McHenry County in order to seek more affordable care following state budget cuts due to Illinois's historic budget impasse. If J.Z. were able to obtain home care, she would attend school in the City of McHenry in McHenry County.

15. Defendant Illinois State Board of Education is an agency created by Article 2 of the Illinois School Code and is responsible for overseeing and evaluating education programs and overseeing, administering, and disbursing funds appropriate for public education in Illinois.

16. Defendant Susana A. Mendoza is the Comptroller of the State of Illinois. The Comptroller is responsible for maintaining the State's central fiscal accounts, and ordering payments into and out of the funds held by the State.

### **JURISDICTION AND VENUE**

17. This Court has jurisdiction under 735 ILCS 5/2-209. Venue is proper under 735 ILCS 5/2-101 and 5/2-103 because Defendants' wrongful conduct occurred in Cook County, among other places in Illinois.

### **FACTS**

#### **Plaintiffs' Dependency Upon Funding of Illinois' Public Schools**

18. A state budget for FY 2018 was enacted in SB 6, over Governor Rauner's veto. The Public Act includes sufficient funding for education in an effort to ensure that Illinois school districts would receive funds providing appropriately for the students of Illinois school districts and, most importantly, those students most in need. The appropriation for school districts included in SB 6 requires ISBE to distribute the funds according to law. Specifically, ISBE is to distribute the money according to a formula established in a new section of the Illinois School Code, which was to be enacted in SB 1. Whereas the historical funding model was widely acknowledged to be inequitable and unfair, an evidence-based funding adopted into law through SB 6, in conjunction with SB 1, helps ensure that the state's school districts and students most in need of additional funding will benefit from funding allocations first.

19. Plaintiff Amy McNeil's oldest daughter, 18-year-old M.M., is diagnosed with autism and has been nonverbal all of her life. M.M. depends on the special education program at Herrin High School, part of the Carterville Community Unit School District #5 in Williamson County, to learn in an environment conducive to her needs. Plaintiff McNeil's younger son,

T.M., is similarly nonverbal and autistic. T.M. depends on Carterville Elementary School's special education program for his schooling, which can provide him access to trained and specialized educators through SB 6's funding.

20. Without the funds owed by the State, Williamson County could be forced to close its doors given delays in appropriate state funding. Williamson County is currently borrowing money to make up for delayed state reimbursements, but the County's lender refuses to extend credit further for the next fiscal year

21. Plaintiff Marybeth Linse's daughter, J.Z., is a quadriplegic and qualifies for special education services in McHenry County.

22. Plaintiff Lisa Kulisek, living in Cook County, has two children attending Chicago Public Schools ("CPS"). Without SB 6, CPS is at risk of temporarily closing many of its needy schools due to the state's failure to appropriately fund schools consistent with the law. In fact, CPS is owed hundreds of millions of dollars from the state and, without such payments, CPS educators have been forced to consider shutting its doors for the 2017-2018 school year. Ms. Kulisek and her children depend on CPS and if the schools closed she would be required to stay at home to care for her children. Not only will Ms. Kulisek be prevented from providing for her family, her children may be deprived of their education.

23. The Defendants' failure to provide these school districts with the funds required under the evidence-based model directly causes harm to the Plaintiffs seeking, for their children, the necessary education and attention required to succeed. Maintaining the old funding model will exacerbate inequitable distribution of state aid, and perpetuate the state's failure to properly fund schools. Evidence-based funding would enable these children to receive the education and

special care required under current legislation—without it, Defendants are unlawfully failing its disadvantaged students.

### **Illinois' Failure to Make Categorical Payments**

24. Under Illinois law, school districts are legally mandated to provide certain services, including items such as free lunch/breakfast programs, special education, and transportation. The law also provides for state reimbursement for the costs of such services. These legally mandated programs and related state reimbursements are frequently referred to as Mandated Categoricals.

25. In connection with Mandated Categoricals, the ISBE is required to periodically prepare and send vouchers to the Comptroller for the payment of funds due school districts, other education agencies, and providers of services for programs administered by the State Board of Education from state school funds.

26. Comptroller Mendoza is legally required, in turn, to make payments to school districts as soon as possible after receipt of vouchers, subject only to the Illinois legislature appropriating funds for such purposes.

27. Comptroller Mendoza has made payments to school districts for Mandated Categoricals for Q1 and Q2 of FY 2017.

28. On July 6, 2017, the Illinois legislature voted to override Governor Rauner's veto of the full state budget in SB 6, Public Act 100-0021. As part of SB 6, the Illinois legislature appropriated over \$1.7 billion to the Illinois State Board of Education for payment of Mandated Categoricals for FY 2017.

29. Upon information and belief, the ISBE has processed and issued to Comptroller Mendoza's office the voucher payments for Mandated Categoricals for Q3 and Q4 of FY 2017.

30. On August 10, 2017, Comptroller Mendoza issued a press release stating that she had directed the payment of \$429 million in Mandated Categorical grants.

31. However, this is only a portion of the outstanding Mandated Categorical funds owed to Illinois schools. To date, Comptroller Mendoza has failed to promptly distribute such funds to school districts, including the school districts attended by Plaintiffs' children, despite the appropriation of such funds to the ISBE by the Illinois legislature and notwithstanding her legal obligation to distribute Mandated Categorical reimbursements for FY 2017.

32. Comptroller Mendoza has clear authority to make payments of remaining Mandated Categorical reimbursements for FY 2017, yet has refused to do so.

33. Further demands for payment of the Mandated Categorical reimbursements for FY 2017 to Comptroller Mendoza would be futile. Numerous such demands have been made previously, including publicly by superintendents of districts across the state, but critical funds have remain unpaid.

**For General State Aid, Illinois Law Now Requires Evidence-Based Funding of Schools**

34. In addition to reimbursing Mandated Categoricals, Illinois provides General State Aid to schools, as required by the state Constitution and Illinois law. However, by 2016 and even before, there was widespread consensus among Illinois politicians, subject matter experts, and families that the funding formula for Illinois schools in place prior to FY 2018 was broken and failing.

35. As has been regularly reported in the press and according to numerous studies, Illinois comes in last place among all states in the amount of state funding contributed to its public schools, and there are few, if any, states in the country with larger gaps between spending on the wealthiest versus the poorest school districts. As a result, Illinois' old funding model was



one of the least equitable education funding systems in the country, and particularly detrimental to poorer districts that were more heavily reliant on state resources.

36. In addition to inequities across school districts, Illinois funding levels have dropped precipitously. According to the ISBE, between FY 2010 and FY 2016, Illinois cumulatively lost roughly \$3.8 billion in education funding compared to FY 2009 levels.

37. In part due to this educational funding crisis, Governor Bruce Rauner created the bipartisan, bicameral Illinois School Funding Reform Commission (the "Commission") in July 2016. The goal of the Commission was to present recommendations for a new K-12 funding formula that would increase state support for education, better define adequate funding for education, and distribute funds in a more equitable manner. The Commission held 18 large group meetings and 13 smaller working group meetings, and heard from numerous subject matter experts, and issued its final report to the Illinois General Assembly and Governor Rauner on February 1, 2017.

38. One significant contribution of the Commission's work was to recommend a framework for a new K-12 funding formula that would establish a unique funding target ("adequacy target") for each district that would reflect the particular needs of children in that district and lead to improved outcomes for students.

39. Referred to as evidence-based funding, the research-based approach recommended by the Commission recognized that low income children and those who live in areas of concentrated poverty require additional resources and attention to reach their academic potential. Evidence-based funding is designed, *inter alia*, to allocate additional resources as needed for children with disabilities, children who are English learners, and children who live in families that are considered low-income or live in areas of concentrated poverty.

40. When utilizing evidence-based funding, a unique adequacy target is calculated for each school district based on considerations of staffing, student populations, and administration and operation needs; enrollment; demographics; and relative regional costs. Then, in order to ensure that each child in Illinois attends an adequately funded school, each school district is placed in a tier based on how its spending relates to its adequacy target, and under evidence-based funding districts that are farthest away from their adequacy target receive the greatest benefit from increases in school funding or changes in the funding formula.

41. On July 6, 2017, the Illinois legislature voted to override Governor Bruce Rauner's vetoes of a state budget and tax increase through passage of SB 6 (Public Act 100-0021), ending a deadlock that had left Illinois without a full budget for more than two years. As a result of SB 6, the State was and is required to provide funding to Illinois school districts utilizing evidence-based funding.

42. Specifically, SB 6—which as of July 6, 2017 became Illinois law, appropriated over \$6 billion to the ISBE “for Evidence-Based Funding, provided for in Section 18-8.15 of the School Code.”

43. The Illinois legislature also passed Section 18-8.15 in SB 1, which provided for a specific evidence-based funding model and plan for distribution of the funds appropriate to the ISBE for evidence-based funding as set forth in SB 6. On August 1, 2017, however, Governor Rauner issued an amendatory veto of SB 1.

44. Under Illinois law, the responsibility for funding and determining the thoroughness of the school system is for the legislature to answer. As it relates to the amount and method of funding Illinois' school district, the Illinois legislature has answered such question through the adoption of evidence-based funding in SB 6—after overriding Governor Rauner's

veto. The Illinois legislature further answered this question through the passage of SB 1, notwithstanding the Governor's amendatory veto.

45. Though the Illinois legislature has scheduled further hearings to address the funding of Illinois' schools, including potential consideration of Governor Rauner's amendatory veto of SB 1, recent news reports have indicated that Defendants may attempt to circumvent funding requirements as set forth in SB 6 as well as the legislative intent set forth in SB 1. Any such attempts to circumvent the new state budget requirements, however, would be contrary to Defendants' legal authority and contrary to law. SB 6 is crystal clear: the funds appropriated for the school districts for FY 2018 must be distributed using an evidence-based funding model.

### COUNT I

#### *Writ of Mandamus – Illinois Comptroller*

46. Plaintiffs hereby incorporate paragraphs 1 through 45 of this Complaint to this Count I as though fully set forth herein.

47. Plaintiffs and the school districts in which their children attend have a right to the benefit of funds appropriated for FY 2017 Mandated Categoricals under SB 6.

48. Comptroller Mendoza has the duty and obligation to make quarterly disbursements of Mandated Categoricals to school districts in accordance with vouchers submitted to Comptroller Mendoza by the ISBE.

49. Demand upon Comptroller Mendoza for payment of the outstanding FY 2017 payments for Mandated Categoricals would be futile. Among other reasons, these amounts have been properly invoiced and outstanding for considerable time without payment.

50. Absent a writ of mandamus, Plaintiffs have no other adequate remedy.

WHEREFORE, Plaintiffs, individually and collectively, demand an order requiring payment of the remaining amounts invoiced and due for FY 2017 and such further and additional relief as the court deems appropriate.

## **COUNT II**

### **(Injunctive Relief - Defendants)**

51. Plaintiffs hereby incorporate paragraphs 1 through 45 of this Complaint to this Count II as though fully set forth herein.

52. Through the enactment of SB 6 (Public Act 100-0021), Illinois law mandated an evidence-based funding model and plan for distribution of the state school funds. While SB 1, enacted by the General Assembly, provided a foundation for such an evidence-based funding model, Governor Rauner vetoed this initial attempt.

53. On information and belief, Defendants directly or indirectly—through instruction from others—intend to ignore the requirement in the new state budget to allocate state education funds on an “evidence-based” model. For example, potentially by reverting to older state models which did not provide the evidence-based rigor mandated by the new state budget.

54. Students in the Chicago Public Schools and the other school districts represented by Plaintiffs will suffer irreparable harm of reduced funding under the non-evidence based models used in the past.

55. Any refusal to follow state law and to submit evidence based school funding models consistent with SB 1 will reduce funding for vital school programs in these districts including special education and school nutrition programs.

56. If the evidence-based funding requirements of SB 6 are ignored by Defendants, Plaintiffs will have no adequate remedy at law.

57. The balance of the hardships is decidedly in favor of the Plaintiffs who will lose vital state funding while the Defendants will simply be required to honor their obligations under the new state budget and Illinois law.

WHEREFORE, Plaintiffs seek an injunction barring Defendants from adopting a school funding formula inconsistent with an evidentiary based model as required by SB 6 (Public Act 100-0021) and as further defined by SB 1, or directing the distribution of funds inconsistent with an evidence-based model. Plaintiffs seek the imposition of this injunction to allow the General Assembly and Governor Rauner appropriate time to implement an evidentiary model consistent with SB 6 (Public Act 100-0021). Plaintiffs, individually and collectively, respectfully seek the entry of such an injunction along with such further and additional relief as the court deems appropriate.

Dated: August 10, 2017

By:   
One of the attorneys for Plaintiffs

Christopher B. Wilson  
Jon R. Buck  
PERKINS COIE LLP  
131 South Dearborn Street  
Suite 1700  
Chicago, Illinois 60603-5559  
Tel: (312) 324-8400  
Fax: (312) 324-9400  
Firm ID. No. 39225