



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE EDUCATION COMMITTEE
MARCH 4, 2013**

Thank you for the opportunity to express my support for *House Resolution No. 12 and Senate Resolution 14, Resolution Approving the Settlement Agreement Between the United States Department of Education ("USDOE") and the Connecticut State Department of Education ("CTSDE")*. The USDOE claims that the State made false representations about the number of Connecticut students eligible to participate in the USDOE's Migrant Education Program ("MEP"), under which federal funding is provided for educational support services targeted to children of migratory workers challenged by frequent disruptions in schooling.

The United States Department of Justice ("DOJ"), which represents USDOE, claims the State received as much as \$5.3 million dollars more than it was entitled to under the MEP program. As a result, DOJ asserts that the State is liable under the federal False Claims Act and the common law for triple that amount, plus civil penalties, interest and attorneys' fees. Approval of the settlement agreement by the General Assembly is required under Conn. Gen. Stat. § 3-125a because the State's payment under the Agreement exceeds \$2.5 million dollars. The Agreement was submitted to the General Assembly on February 4, 2013.

By way of background, the MEP grant process during the relevant period was as follows. The USDOE allocated to each participating jurisdiction a maximum annual grant amount based upon its estimates of the number of children in the jurisdiction potentially eligible for assistance under the MEP program. Each jurisdiction then compiled annual counts of eligible children, which were certified to the USDOE as accurate, from which the jurisdiction's actual annual grant amount was calculated and drawn down against the allocated maximum grant.

CTSDE participated in the grant program from 1980 to 2007. Through a sub-grant, CTSDE contracted with the Capitol Region Education Council ("CREC") to administer the program. CREC worked directly with the nine participating local school districts who received MEP funding during the relevant period: Bridgeport, Danbury, Hartford, Meriden, New Britain, New Haven, New London, Waterbury and Windham. Under CREC's supervision, each of these districts was responsible for compiling counts of eligible children through interviews and other methods. Those counts were then transmitted to, and compiled by, CREC. As the grantee under the program, however, CTSDE was responsible for submitting the counts to USDOE, even though the moneys were expended primarily at the municipal level.

In 2004, the USDOE determined that there were nationwide problems related to errors in MEP child counts. States were urged to voluntarily audit their own programs using guidelines provided by USDOE. An audit performed by CTSDE for the federal fiscal years 2002, 2003, and 2004 showed significant errors in the child counts in five of the nine participating school

districts, resulting in substantial numbers of ineligible students receiving MEP-funded services. An independent review by the USDOE Office of Inspector General found errors in one additional district. Examples of errors included instances in which: the family was not engaged in qualifying migratory work; residential addresses were not properly recorded; and some parental signatures and addresses could not be verified. CTSDE met with the superintendents of the school districts in question and each confirmed CTSDE's audit findings. The results of the audit were subsequently provided to the USDOE.

In April 2006, CTSDE was notified that DOJ, on behalf of the USDOE, intended to pursue civil litigation under the federal False Claims Act and common law unless a settlement agreement could be reached. USDOE claims that the counts submitted by CTSDE for 2002 through 2004 are "false claims" because they overstated the number of children eligible for MEP assistance, resulting in the state receiving as much as \$5.3 million more MEP grant funding than it should have. DOJ does not claim – nor is there reason to believe – that any MEP funds were used for non-educational purposes. Nor does it claim that the CTSDE intentionally overstated any child counts. Rather, DOJ claims that the state failed to properly supervise, train and verify the work of its contractor, CREC, and the local employees engaged in compiling child counts.

A federal False Claims Act action, like that which DOJ will file if this agreement is not approved, is uniquely onerous. Upon a finding of liability, the court must impose financial penalties, including triple the amount of the final damages, a civil penalty ranging from \$5,000 to \$10,000 for each alleged false claim, and attorneys' fees and costs of litigation. As noted, USDOE estimates its actual damages to be as high as \$5.3 million dollars. Thus, an adverse result after trial could expose the state to: (1) treble damages equaling as much as \$15.9 million dollars; (2) civil penalties ranging from \$110, 000 to \$220,000 dollars; and (3) an unknown amount for attorneys fees and costs. The precise amount of base damages will be disputed if litigation ensues. However, we cannot contest that overstatements in child counts occurred, as CTSDE's audit found, and that those overstatements were substantial.

Significant time and effort have been spent since 2006 negotiating a settlement that is fair, reasonable and in the best interest of the State. The Agreement provides that the State will pay the federal government \$4.5 million dollars over five years with an initial lump sum payment of \$1.5 million dollars. Thus, the Agreement reduces the State's exposure to less than the USDOE's estimated actual damages and removes any risk of treble damages and penalties. The Agreement provides that there is no admission of liability of the State, but that it has been entered into to avoid the uncertainty, inconvenience and expense of litigation.

In addition to the monetary settlement, the Agreement binds the federal government in two additional, important respects. First, DOJ agrees that MEP funds used by CTSDE to conduct its audit of the program do not have to be returned. Second, if the Agreement is approved, the USDOE will not initiate any actions against the CTSDE or any of its staff to suspend or bar the agency from receiving federal education funds in the future.

While this is a matter that arose prior to the current administration, the Governor's Office, Commissioner Pryor and State Board of Education Chairman Alan Taylor have been consulted and support approval of the Agreement. We believe the Agreement represents a fair and favorable resolution, and we urge its approval.