

5. The PTA appeared at the hearing¹ and submitted substantial evidence showing that the proposed contract price undervalues the property by \$6.8 million, that the proposed sale would be extremely detrimental to JEI's nonprofit educational mission, and that the transaction was deeply mired in political, business, diplomatic, personal and legal connections involving the Trustees, the Trustees' business corporations, JEI's Executive Secretary, the Japanese Foreign Ministry, the buyer's Vice President, the buyer, and a United States Senator.

6. JEI's response was to tell Justice Abdus-Salaam that she should ignore all of this evidence because the Attorney General gave a "no objections" notice.

7. The Attorney General's "no objections" notice was based on the assumption that the Court would receive and consider the PTA's objections. It is my understanding that only this Court has the legal authority to approve or disapprove the proposed sale; the Attorney General's role is merely to express an opinion or the absence of an opinion or objection. The Court needs to consider the PTA's evidence and make an independent determination whether the sale of Greenwich Campus met the legal requirements for disposing of charitable assets.²

8. JEI is asking the Court to treat the "no objections" notice as an authoritative approval (which it is not) and at the same time to ignore that the notice was joined with the Attorney General's directive that JEI serve the PTA with the petition and hearing notice. The PTA's right to object and be heard was part and parcel of the Attorney General's no objections notice. For JEI to put great (and undue) weight on the no objection notice but then to challenge the PTA's right to present evidence to the Court is hypocritical.

¹ I attended the hearing.

² The PTA's attorney informs us that the Attorney General is not the decision-maker. Rather, the Attorney General has a right to see the petition and express its point of view as a preliminary matter, but the Court has to decide.

9. JEI's request was also based on a misrepresentation. JEI's attorney said that the Court does not have to look at the PTA's evidence because it is the same material reviewed by the Attorney General. This is not true. The PTA continued its investigation of this improvident transaction and of the business, political, diplomatic, personal and legal connections and pressures that drove it to a contract signing. We have submitted significant new evidence to the Court that was not considered by the Attorney General.³

The PTA Is An Interested Party

10. The PTA has submitted a great deal of evidence to the Court showing that the parents and the PTA have an interest in the proposed transaction. I especially refer the Court to ¶¶ 27-44 of my first affidavit,⁴ to the affidavit of former PTA President Takanori Adachi sworn to on March 23, 2006, and to the accompanying affidavits of two parents, Mrs. Hamako King⁵ and Mr. Hiroyoshi Watanabe, and the head of the English Department, Kunion Kay Nitta, Ph.D.

11. I would just like to add a little information about the PTA's standing as an organization, which is in addition to its standing as a representative of its parent members.

12. The parents of the Japanese School of New York ("JSNY") formed the PTA on June 19, 1976. I am the 22nd President. I am giving the Court a historical listing of the 22 Presidents. See Exhibit A.

³ Our attorney also advises us that the Attorney General's directive that JEI give the PTA its petition and notice of hearing is based on a long-standing policy of the Attorney General favoring liberal standing in these cases for objectors who are beneficiaries of the organizations. He has noted that JEI's draft petition submitted to the Attorney General seeking a no objections letter listed a former Chief of the Charities Bureau as "of counsel," but that the counsel's name is absent from JEI's brief saying that beneficiaries of nonprofit organizations cannot file objections or intervene in these statutory proceedings.

⁴ Affidavit of Emil F. Jachmann sworn to on March 28, 2006.

⁵ The accompanying affidavit of Mrs. King is sworn to on April 6, 2006. See also Mrs. King's affidavit sworn to on March 27, 2006.

13. The PTA has a past, a present, and a future. It has an organizational interest in preserving, protecting and developing the school not only for the families of current enrollees, but also for the families of enrollees or potential enrollees for many years to come.

14. JEI's attorney made the cynical argument that the parents have no interest because they will all be sent back to Japan within three years. Mrs. King's affidavit explodes this argument.

15. On behalf of the PTA as an organization I want to add to Mrs. King's points that the PTA has a mission to support the healthy continuation of this unique Japanese day school for the benefit of generations to come. The PTA organization has a legitimate and substantial interest in a fundamental corporate transaction that would sacrifice the long term future of the school (as well as the immediate future) on the altar of JEI's unrepresentative and autocratic governance practices. The PTA has an interest in demonstrating that the transaction does not meet legal standards and that it is driven by extraneous business, political and diplomatic interests of the corporate executives and diplomats who have complete control over the JEI governance apparatus.

16. JEI is flaunting its undemocratic governance structure. JEI's lawyer told the Court that the PTA doesn't have standing or a right to intervene because the PTA is not a JEI "officer" or "member." On paper, JEI has no members at all. So its only formal governing body is the Board of Trustees. There is no representation on the Board for the beneficiaries of the organization or for the parents' 30 year old representative body, the PTA.

17. In the interests of fairness, justice and accuracy of information, the exclusion of the PTA and parents from any role in JEI governance is a strong reason why the PTA should be heard in Court as an objector and intervenor. When a dramatically closed organization like JEI

wants Court approval of a fundamental transaction, the participation of the beneficiaries at the Court's hearing is absolutely necessary to afford any semblance of checks and balances.

18. When JEI tells the Court that the PTA should be shut out of the hearing because the PTA and the parents have been excluded from the Board of Trustees and because JEI does not have any membership body at all, we hope the Court's response will be that this is one of the reasons why the Court needs to allow the PTA to be heard before the Court makes a decision.

19. The PTA has demonstrated its interest in the proposed transaction and in the future of the school through the PTA parents' intensive volunteer work to uncover the facts about the selling plan, to develop alternatives, and to try to communicate this information to the school community and the JEI Trustees. This work is already reflected in the papers and documents the PTA has given to the Court. It is also demonstrated by the website that the PTA created for the dedicated purpose of monitoring the attempted sale of the Greenwich Campus, and posting facts and PTA positions. The website is www.saveourjapaneseschool.org. I am attaching as Exhibit B a copy of the English language home page (we have both Japanese and English versions) along with a print-out of the statement of the PTA's position that is found through the link, "Our Claim." The position statement is dated July 6, 2005, which is one indication of for how long we have been working vigorously on this issue.

20. JEI is also misrepresenting the position of its beneficiaries by understating the breadth and intensity of the parents' opposition to the sale. JEI's attorney says that the selling of the Greenwich Campus for \$20 million without having identified a new permanent home for the school is a proper decision that is only opposed by an unreasonable handful of parents. In previous statements JEI's attorney has tried to boil the opposition down to one person -- me. The attorney has resorted to such misleading tricks as giving the name "Jachmann Appraisal" to the

Complete Appraisal and Self-Contained Report dated January 17, 2006, authored by an independent expert, Christopher K. Kerin, MAI, CCIM. (The lawyer did this in a long letter to the Attorney General that he has not provided to the Court.)

21. I would ask the Court to consider that if the sale plan was reasonable and in the best interests of the parents, JEI would not have kept it a secret from the parents for over a year. Once the parents learned about the plan, they used the PTA organization as the means to analyze the proposed sale, its rationale, and its impact on the school and their families. The PTA investigated the fiscal issues facing JEI and it formulated and proposed solutions.

22. I became president six months after the parents first called for a PTA meeting to question the decision of JEI and to vote to oppose the sale. By the time I became President, the PTA parents had already voted on several occasions by an overwhelming majority to oppose the proposed sale in a progression of steps that followed each JEI refusal to consider a succession of pleas and proposals by the PTA. Specifically there were parent membership votes held on May 29, 2005, September 12, 2005, and October 1, 2005. At each PTA meeting there were parents who reported that they had received pressure from their employers to cease their opposition to JEI actions.

23. On December 10, 2005 (the first PTA general meeting after I became President), the PTA parents voted to have their objections submitted to government officials and to the Court. I wrote a letter to the PTA parents reporting on the December 10th meeting, and the PTA's next steps. See Exhibit C. This gives the Court additional information about the parents' well-founded belief that the only avenue left to them to get a hearing before a fair and impartial decision maker was to appear before this Court.

24. During this period there were also meetings of the PTA Officers and of the PTA Task Force, which was a working group appointed by the PTA to investigate and formulate alternative solutions to selling the school to review by the PTA.

25. The PTA Task Force also organized phone calls by the parents to each of the Trustees seeking an audience to present the PTA's rental solution.

26. The parents undertook the making of the phone calls after they became convinced that the JEI control group was not communicating the material facts about the pending decision to the dozens of individual trustees. The trustees were not being told the substance and details of the PTA's criticism of the JEI analysis or of the PTA's alternative rental plan. It also came to light that the JEI control group had given the trustees false information. At a Board Meeting on September 23, 2005, JEI had inaccurately represented to the trustees that the Principal of JSNY had stated that he affirmatively supported the sale of the Greenwich Campus. Subsequently, the Principal emphatically confirmed in writing that he had never given his support to the JEI plan. See Memo dated October 25, 2005, from Headmaster Ryuichiro Toki to Members of the Japanese Education Council of New York (copy of certified English translation of Japanese original), copy annexed as Exhibit Y to Affidavit of Emil F. Jachmann sworn to on March 28, 2006.

27. I refer the Court to the Affidavit of Hiroyoshi Watanabe sworn to on April 6, 2006, for his description of the parents' phone calls to the trustees. I will merely supplement Mr. Watanabe's account with a capsule report on the responses of 15 of the JEI Trustees to the calls. See Exhibit C annexed hereto. Behind this summary report are hundreds of phone calls that the parents made to the Trustees offices, trying to get a response to the request for a meeting. This

short document reports on the ultimate phone calls in which a trustee or his assistant said he would not meet the parents and said why.

28. Finally, the Court should welcome the PTA's participation in this case because the PTA has a track record in producing particular facts and evidence, in contrast to JEI's reliance on vague generalizations and oral representations by its attorney unsupported by any affidavits or documentary proof.

29. For example, at the hearing Justice Abdus-Salaam asked JEI's attorney what happened with the alleged March 2004 offer of \$23 million plus a four year lease-back. The lawyer alleged that the offer was pursued but was not productive. JEI has never produced testimony or documents to show that this is true. In fact, it has not even given the Court the name of the school that made the \$23 million offer.

30. The PTA, by contrast, has not only pointed out the lack of support for JEI's allegation that it marketed the property, it has also given the Court documentary evidence and testimony affirmatively showing that JEI did not market the property and acted as if to impede the making of bids that would be competitive with the deal offered in February 2004 by Mr. Messer's organization.⁶

31. For example, after making our submission to the Attorney General the PTA obtained: a) Mr. Tatsuo Takahashi's Affidavit regarding the special relationship between Mr. Messer and JEI; b) the written statement by a major commercial realtor in Greenwich describing how JEI blocked her attempts even to confirm that the property was for sale;⁷ and c) documents

⁶ See Proposal to Purchase and Lease Back the Campus of the Greenwich Japanese School, submitted to JEI Board of Directors by Westchester Fairfield Hebrew Academy dated February 5, 2004, annexed to my first affidavit as Exhibit D.

⁷ See Letter dated March 13, 2006 from Mie Glenn, Sotheby's International Realty, to E. Jachmann, copy annexed to my first affidavit as Exhibit L.

proving that JEI's representation that the British Schools of America was not a responsible potential tenant was completely false.⁸ JEI even failed to submit to the Court an appraisal report based upon recent data that values the property as of the date of the Contract. The PTA commissioned an appropriate report and gave it to the Court (along with the evidence of the Greenwich Township assessment of \$28.3 million, which JEI did not disclose in its petition.)

32. The PTA has surely earned its place in this proceeding by producing and giving to the Court actual facts and evidence regarding issues that JEI tries to avoid altogether or to gloss over with vague statements or unsupported attorney representations.

Conclusion

33. The Japanese School of New York PTA is entitled to be heard in this proceeding. The Court should recognize the PTA's standing under N-PCL § 511(b) and should also grant the PTA the status of an intervenor-respondent.

EMIL F. JACHMANN

Sworn to before me this
7th day of April 2006

Notary Public

⁸ See Letter dated March 15, 2006 from Daniel A. Lukas of Structured Development, LLC to Whom It May Concern re: business reputation, operating standards and financial viability of WCLS Group Limited (parent of British Schools of America) copy annexed to my first affidavit as Exhibit N; and Press Release dated March 6, 2006, "The British School of Chicago Announces Plans for New Location in Lincoln Park", copy annexed to my first affidavit as Exhibit O.