

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

In the Matter of an Article 78 Proceeding

Lisa Shaw, Karen Sproxal, Shino Tanikawa,
Isaac Carmignani, On Behalf of Themselves and their Children,
,

Index No. 2550-13

Petitioners,
-against-

**VERIFIED PETITION
FOR WRIT OF
MANDAMUS**

JOHN B. KING, New York State Commissioner of Education,
NEW YORK STATE EDUCATION DEPARTMENT,

Respondents.

Petitioners, by their undersigned attorneys, as and for their Petition herein,
respectfully allege as follows:

PRELIMINARY STATEMENT

1. This is a special proceeding under CPLR Article 78 brought by the above-named Petitioners seeking a Writ of Mandamus ordering and directing JOHN B. KING, Commissioner of Education of the State of New York (“Commissioner”) and the NEW YORK STATE EDUCATION DEPARTMENT, to comply with New York Education Law Section 211-d by (a) establishing a schedule for the Contract for Excellence (“C4E”) plan providing that borough-wide C4E hearings and Community Education Council (“CEC”) meetings pursuant to N.Y.S. Education Law 211-d (4) (b) and (c) be held in May or June 2013, rather than in September 2013, and be held in May or June for

all subsequent years; (b) setting forth a timeline that provides for public hearings in each borough of New York City to be held prior to the submission of New York City's 2013-2014 Contract for Excellence to the Commissioner, and that the public process be conducted prior to submission of the district's Contract for Excellence in all subsequent years; and (c) establishing a date for submission of the finalized C4E plan to the Commissioner for approval which date is prior to the start of the school year; (d) such other and further relief as the Court may deem appropriate.

PARTIES

2. Petitioner Lisa Shaw is a parent of children who attend in New York County. She brings this Petition on her own behalf and on behalf of her minor children. Petitioner Shaw's Affidavit is attached as Exhibit A.

3. Petitioner Karen Sprowal is a parent of one child who attends in New York County. She brings this Petition on her own behalf and on behalf of her minor child. Petitioner Sprowal's Affidavit is attached as Exhibit B.

4. Petitioner Shino Tanikawa is a parent of one child who attends in New York County, and one child who attends in New York County . She brings this Petition on her own behalf and on behalf of her minor children. Petitioner Tanikawa's Affidavit is attached as Exhibit C.

5. Petitioner Isaac Carmignani is a parent of an student at , NY, located in Queens County. He brings this Petition on his own behalf and on behalf of his minor child. Petitioner Carmignani's Affidavit is attached as Exhibit D.

6. Respondent JOHN B. KING is employed as Commissioner of Education of the State of New York, with offices at 89 Washington Avenue, Albany, NY, 12234, in Albany County. Respondent KING oversees New York State's public schools and is responsible for the implementation of the C4E law. Among other things, Respondent KING is responsible for establishing the schedule for the public process involved in the development of each school district's C4E plan and the timeline for submission of the C4E plans to him. Respondent KING is the Chief Executive of the New York State Education Department.

7. Respondent NEW YORK STATE EDUCATION DEPARTMENT ("NYSED") is located at 89 Washington Avenue, Albany, NY, 12234, in Albany County. Respondent NYSED, under the direction of Respondent KING, oversees the state's public school districts and is responsible for implementing New York State's Education laws, including the C4E law.

FACTS

8. The Contract for Excellence ("C4E") law, N.Y. Education Law §211-d was enacted in 2007. Its purpose is to promote greater transparency, to improve school and student performance by linking new investments to proven practices and programs, and to foster accountability by ensuring that those new investments go to the proven practices and programs appropriate for that district. Districts subject to the C4E law must specify in a contract, approved by the State Commissioner of Education, how they will spend increases in funding received from the State. The majority of the increase must be spent on proven educational programs and practices enumerated in the law, including smaller class size, more time on task, pre-kindergarten, and full-day kindergarten.

9. The C4E law mandates that an annual Contract for Excellence be prepared by any district that has “at least one school identified as in corrective action or restructuring status, or as a school requiring academic progress” and if “that school district is estimated to receive an increase in total foundation aid for the current year compared to the base year in an amount that equals or exceeds either fifteen million dollars or ten percent of the amount received in the base year, whichever is less, or receives a supplemental educational improvement plan grant.” Education Law §211-d 1.

10. A major goal of the C4E law is to guarantee public participation in the development of the C4E spending plan. Accordingly, pursuant to N.Y. Education Law §211-d 4, a district’s annual Contract for Excellence “shall be developed through a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator.”

11. The C4E law further mandates that the district must conduct public hearings as part of their public process, and in a city with a million or more inhabitants, there must be a public hearing in every county of the city. Education Law §211-d 4(b).

12. Upon completion of the public hearings, the C4E law requires the district to submit the Contract for Excellence to the State Commissioner of Education (“Commissioner”) for approval. Transcripts of the hearings must be included in the district’s submission to the Commissioner. Education Law §211-d 4(b).

13. In addition to the statutorily mandated hearings, ¶211-d 4(c) of the Contract for Excellence law mandates that, in New York City, “each community district contract for excellence shall be consistent with the citywide contract for excellence and shall be

submitted by the community superintendent to the community district education council for review and comment at a public meeting.”

14. Although the Commissioner is authorized, by the C4E regulations, to prescribe a timeline for development and submission of the contract, the language of the statute makes clear that the contract must be developed prior to the district’s expenditure of the C4E funds. For example, the provision mandating that New York City develop a contract for excellence provides that “each contract for excellence **shall** describe how the amounts apportioned to the school district in the current year...**shall be used to support new programs.**” N.Y.S. Education Law §211-d (2) a.(v) (emphasis added) The use of the phrase “shall be used to support new programs” clearly denotes that the plan must be developed before the spending begins.

15. If the plan were developed after the district started spending the C4E money, it would prevent compliance with the provisions mandating public participation in the development of the C4E spending plan.

16. The New York City school district (“DOE”) is subject to the C4E law. The district has at least one school identified as in corrective action or restructuring status, or as a school requiring academic progress.

17. New York City’s budget is determined annually in June. The New York State budget is generally passed in April. At about that time, C4E amounts are determined. New York City preliminary school budgets are determined in May or June. These budgets represent the core financing for schools, including C4E allocations. The school year begins in September. Thus, the C4E spending plan for New York City must be

developed before allocation decisions are made for New York City schools and certainly prior to the start of the school year.

18. In the first three years of implementation of the Commissioner's schedule for development and submission of the plan called for the public process to begin in May. This timetable enabled the public to provide input into the spending plan prior to the implementation of that plan, thus fulfilling the goal of the public process; i.e. to have the public participate in the development of the spending plan.

19. However, for at least the past two years, the Commissioner's schedule called for the public process to begin in September after the school year began and after the district began spending the money. This schedule defeats the goal of the public process provision of the C4E law, because the public has been unable to provide input in the development of the C4E plan until after spending had already begun.

20. Moreover, the Commissioner has violated both the C4E law and implementing regulations by reversing the order of the public process.

21. Both the C4E law and its implementing regulations provide that each district's public process, i.e. public hearings and submission of written comment by the public, must occur prior to that district's submission of the C4E plan to the Commissioner.

22. The C4E law mandates that “[a] transcript of the testimony presented at such public hearings shall be included when the contract for excellence is submitted to the commissioner, for review when making a determination pursuant to subdivision five of this section. N.Y. Education Law §211-d 4(b). Thus, clearly the submission of the plan to the Commissioner must occur subsequent to the hearings.

23. The regulations implementing the C4E law are even more explicit. They provide that:

(a) A school district shall not submit its contract for excellence to the Commissioner for approval pursuant to subdivision (b) of this section until after:

- (1) the 30-day public comment period has ended;
- (2) all public hearings have been conducted;
- (3) the public comment record has been prepared; and
- (4) the public comment assessment has been prepared and posted on a school district website.

(b) Each school district submitting a contract for excellence to the Commissioner for approval pursuant to subdivision (b) of this section shall, within 48 hours of such submission, post a copy of such contract for excellence on its website.

8 NYCRR 100.13 (d) (emphasis added)

24. Thus, both the law and regulations mandate that public hearings and public comment occur before submission of the C4E plan to the Commissioner.

25. However, for at least the past two years, in contravention of the law and regulations, the Commissioner's schedule mandated that districts submit the C4E plan before the public process occurred. For example, for the 2012-2013 C4E plan, September 14, 2012 was the "Deadline for districts to certify and submit Contracts to NYSED." Then, on September 14, school districts were to publicize the proposed 2012-13 C4E plan and post for 30-day comment period, which public comment period was to end on October 14, 2012. http://www.p12.nysed.gov/mgtser/C4E/12-13_C4E/doc/C4E_Calendar_for_2012-13.htm.

26. Not only is this reversal of the statutory order a violation of law, it has also caused delays that prevented public hearings from occurring at all. In February 2013, the

New York City Department of Education (“DOE”) still had not scheduled the public hearings on the 2012-2013 C4E plan. When petitioners, through their lawyers, wrote to DOE demanding that the public hearings begin, the DOE responded that the delay was caused by the DOE’s submission of the plan to NYSED. (A copy of the letter from petitioners’ attorney to the DOE is attached as Exhibit E; DOE’s response is attached as Exhibit F; Petitioners’ attorneys’ reply is attached as Exhibit G.)

27. There have been no borough-wide public hearings in 2012-2013 on New York City’s C4E plan, as required by Education Law §211-d 4(b). There were only presentations of the community C4E plans at most, but not all, of the CEC meetings. Those presentations occurred in late February and March, after more than half of the school year had already elapsed.

28. Requiring the DOE to submit its plan to the Commissioner prior to the public process, in violation of both the C4E law and regulations, causes unnecessary delays in the public process and prevents the public from providing timely input into the development of the C4E plan.

29. On February 21, 2013, petitioners, through their counsel, wrote to Respondent King requesting that he correct the timeline for the C4E public process and that he begin the public process in May or June. (A copy of this letter is attached as Exhibit H.), Petitioners received no reply.

30. On March 14, 2013, petitioners, through their counsel, sent another letter to Respondent King indicating that petitioners received no reply to the February 21 letter and again requesting that he correct the timeline for the C4E public process and that he

begin the public process in May or June. (A copy of the follow-up letter is attached as Exhibit I). Again, petitioners received no reply.

AS TO THE CAUSE OF ACTION FOR A WRIT OF MANDAMUS

PURSUANT TO ARTICLE 78 OF NY CPLR

31. Petitioners repeat and reallege every allegation set forth in Paragraphs 1-30 of this Petition.

32. By scheduling the public process to occur after the school year has started and after spending decisions are made for the New York City school district, Respondents have violated the requirements of the C4E law, Education Law §211, and regulations, 8 N.Y.C.C.R.R. 1001.13.

33. Moreover, Respondents have further violated the C4E law and its implementing regulations by mandating that DOE submit its C4E plan to the Commissioner prior to holding the required public hearings on the C4E plan.

34. Respondents' violations of the C4E law and regulations have deprived Petitioners of their statutory rights to provide input on how the C4E funds are to be spent.

35. For the reasons stated above, the Court should enter a judgment directing Respondents to schedule the C4E public process described in the C4E statute and regulations, including five borough-wide hearings in each county of New York City, to begin in May or June each year, for the public process described in the C4E statute and regulations to precede any submission to the Commissioner of the C4E plan by DOE, and for submission of the finalized C4E plan to the Commissioner for approval to occur prior to the start of the school year.

36. Petitioners have made no prior request for the relief requested herein.

WHEREFORE, Petitioner requests the Court to issue a Writ of Mandamus ordering and directing Respondents to:

- (a) schedule the C4E public process described in the C4E statute and regulations, including five borough-wide hearings in each county of New York City, to begin in May or June for the 2013-2014 school year and all subsequent years;
- (b) Provide in the Commissioner's C4E schedule, for 2013-2014 and all subsequent years, that the public process described in the C4E statute and regulations to precede any submission to the Commissioner of the C4E plan by school districts;
- (c) establishing a date for submission of the finalized C4E plan to the Commissioner for approval which date is prior to the start of the school year; and
- (d) Granting such other and further relief as the Court may deem appropriate.

Dated: Stamford, Connecticut
May 9, 2013

WENDY LECKER, ESQ.
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Attorney for Petitioner

VERIFICATION

State of Connecticut)
 s.s.:
County of Fairfield }

WENDY LECKER, being duly sworn, says that she is the attorney of record for the Petitioners and that she has read the foregoing Petition and that it is true to the best of her knowledge and belief.

Sworn to before me this
____ day of April, 2013

Notary Public