

At ~~IAS~~ Part 1015 of the Supreme Court of the State of New York, at the Courthouse Thereof, located at 60 Centre Street, New York, on the 9th day of March 2013

PRESENT: ~~NON FETERIL MOUNTAIN~~
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

In the Matter of an Article 78 Proceeding

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

Index No. 100393/13

Petitioners,

ORDER TO SHOW CAUSE

-against-

DENNIS WALCOTT, Chancellor, New York City
Department of Education; NEW YORK CITY
DEPARTMENT OF EDUCATION,

Respondents.

Upon reading the annexed and accompanying Verified Article 78 Petition, dated February 28, 2013, and the exhibits annexed thereto, it is hereby:

67-1107 9-800000

ORDERED that the Respondents, or their counsel, shall appear and show cause before this Court, at the Courthouse, located at 60 Centre St., New York, New York, Room 623 at 111 on the ~~12th~~ 11th day of March, 2013, at 315 o'clock in the PM noon, or as soon thereafter as counsel can be heard why an order should not be issued directing Respondent to: Centre
ST

- 1) publish an expedited schedule for a public hearing to be held in each county of New York City on New York's 2012-2013 Contract for Excellence ("C4E") plan;
- 2) extend the March 18, 2013 for public comment and post the new deadline prominently on the Contract for Excellence page of the DOE website;
- 3) post on its website transcripts of the hearings and/or a summary of said transcripts;
- 4) produce and post on its website its final C4E, revised based on public input;
- 5) submit the final C4E to the New York Commissioner of Education; and
- 6) such other and further relief as the Court may deem appropriate.

and it is further

ORDERED that service of this Order and papers upon which it is based be made on or before the 5th day of March, 2013, in accordance with C4E by personally delivering copies of such papers to § 403 (c) Respondents' attorney at the address listed below; and that said service be deemed sufficient:

~~Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007~~

ORDERED that service of opposition papers, if any, be made on or before the 17th day of March, 2013, 2013 by delivering copies thereof by hand delivery or email to Wendy Lecker,

by 12 noon

Esq, Education Law Center, 60 Park Place Suite 300, Newark, NJ 07102,
wlecker@edlawcenter.org, attorney for Petitioners, and it is further

Aud Chambers
Room 82

ORDERED that service of reply papers, if any, be made on or before the 12th day of
March, 2013 by delivering thereof by hand delivery or email to Respondents' counsel at the
address above

Laud Chambers by 230 PM

ENTER:

[Handwritten Signature]

J.S.C.

SON. FETERIL MOUITIN

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-against-

VERIFIED PETITION
FOR WRIT OF
MANDAMUS

DENNIS WALCOTT, Chancellor, New York City
Department of Education; NEW YORK CITY
DEPARTMENT OF EDUCATION,

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 DENNIS WALCOTT, Chancellor of the New York City Department of Education, to perform the non-discretionary ministerial duty of publishing expedited dates for a public hearing on New York's proposed 2012-2013 Contract for Excellence ("C4E") plan to be held in each county of New York City; extending the March 18, 2013 deadline for public comment and posting the new deadline prominently on the Contract for Excellence page of the DOE website; posting on its website transcripts of the hearings and/or a summary of said transcript; producing and posting on its website a final C4E based on public

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comment; and submitting the final C4E to the New York Commissioner of Education for review and approval and the Commissioner's certification that the expenditure of the additional aid is in accordance with the requirements of the C4E law.

PARTIES

2. Petitioner Lisa Shaw is a parent of children who attend P.S. 163 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 P.S. 75/Emily Dickinson School 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 P.S. 3 in New York County, and one child who attends LaGuardia High School 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 11th grade student at Benjamin Cardozo High School, 57-00 223 Street, Queens, NY 11264, 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 DENNIS WALCOTT is employed as Chancellor of the New York City Department of Education ("DOE"), with offices at Tweed Courthouse, 52 Chambers Street, in New York County. Respondent Walcott is the chief executive officer of the DOE.

7. Respondent NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) is located at Tweed Courthouse, 52 Chambers Street, in New York County. The DOE is responsible for the governance of the New York City school district. As the governing body of the school district, the DOE is responsible for developing the C4E pursuant to New York law.

FACTS

8. The Contract for Excellence (“C4E”) law, N.Y. Education Law §211-d was enacted in 2007. Its purpose was 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 annual 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. 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 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. It is clear from the plain language of the statute that the community education council (CEC) meetings described in Education Law §211-d 4 (c) are separate and distinct from the county hearings prescribed in Education Law §211-d 4(b).

15. Pursuant to regulations promulgated by the Commissioner to implement the C4e law, districts are to submit their contracts pursuant to a timeline prescribed by the Commissioner. 8 N.Y.C.C.R.R 100.13(b)(1)

16. For the 2012-2013 school year, The Commissioner required districts to publicize their proposed 2012-13 Contract for Excellence and post for a thirty-day public

comment period by September 14 2012. The public comment period was to end by October 13, 2012. Contracts were to be submitted to the Commissioner for approval by October 31 2012.

17. The New York City school district 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. In addition, according to the New York State Department of Education, the New York City district is to receive an increase in State foundation aid of \$530,800,851 for the 2012-13 school year.

18. Respondents did not publicize its proposed 2012-2013 C4E for the New York City district, or post a proposed C4E for public comment by September 14, 2012.

19. On January 11, 2013, Petitioners, through their counsel, notified Respondents by letter of the New York City district's failure to comply with the requirements of the C4E law and regulations in 2012-13. Petitioner's January 11 letter is attached as Exhibit E.

20. In a letter dated January 23, 2013, Respondent DOE's general counsel claimed that Respondents had not yet complied with the requirements of the C4E law because they were awaiting approval by the New York State Education Department ("SED") of Respondents' class size plan. Respondent's January 23 letter is attached as Exhibit F.

21. On January 24, Petitioners, through their counsel, notified Respondents by letter that a class size plan must be part of the C4E plan, and nothing in the C4E law provides for a separate submission to SED of a class size plan. Moreover, neither the statute nor regulations promulgated thereunder provide for submission of a districts' C4E

plan or any part thereof to SED prior to the public process. To the contrary, the C4E statute specifically provides that the C4E be developed “through a public process,” commencing with the posting of a proposed C4E for comment and holding public hearings on the proposal prior to submission of the proposed C4E to SED for review and approval. Education Law 211-d(4)a-c. Petitioner’s January 24 letter is attached as Exhibit G.

22. On February 14, 2013 the DOE posted its proposed 2012-2013 C4E plan on the C4E page of its website.

23. The DOE has failed to clearly indicate for the public the date that public comment is due. That date, March 18, 2013, is not posted on the C4E page of the DOE website. If one were to click on the link entitled “public comment,” the deadline is not posted anywhere on the destination page. The March 18 deadline only appears on the last page of the proposed plan. Thus, a member of the public would have to know to click, not on the “public comment” link, but rather on the “Proposed Citywide plan” link, click again on the link in the paragraph entitled “Overview of Plan” then go to the very last page of the power point to ascertain the deadline date.

24. The DOE has failed to post a hearing schedule. If one clicks on the “public comment link,” the destination webpage has a section entitled “Hearing Schedule.” However no hearing schedule is posted under that heading. Instead, any CEC meetings that are scheduled so far have been posted. The chart under the heading “Hearing Schedule” only has spaces for CEC meetings, not for county hearings.

25. As noted above, the requirement for CEC meetings is separate than the statutory requirement for a hearing in every county. The hearings in each county are to

be run by DOE staff with knowledge of the City's C4E plan, and who can convey the feedback to the DOE. Moreover, the law requires that the DOE submit a transcript of each county hearing when submitting the C4E plan to the commissioner for approval and certification. By contrast, a CEC hearing pertains to the community C4E plan submitted by the community superintendent. It is clear that the law intended for both county hearings and CEC meetings to occur.

26. The failure to hold county hearings, as required by law, prevents the public from contributing input into the City's C4E plan. A CEC meeting is not an appropriate or legally permissible substitute for a county hearing.

27. Moreover, several of the CEC meetings are scheduled for a date after March 18, the deadline for public comment. Thus, those members of the public seeking to contribute input into the community C4E plans will not have their input considered, as it will be given after the deadline set by DOE.

28. For those CEC's scheduling hearings prior to the March 18, deadline, there is insufficient time subsequent to those hearings for the public to submit comment. See Exhibits C and D.

29. At CEC meetings, no one from DOE responsible for development or implementation of the C4E plan is present to either hear feedback from the public or provide information or insight to the public regarding the plan. See Exhibits C and D.

30. Owing to the late date that the DOE posted the C4E plan, CEC's cannot schedule an entire meeting dedicated to presentation and discussion of the C4E plan, but rather the plan must be on the agenda with other items. Thus, very little time is accorded presentation and discussion of the C4E plan. See Exhibits C and D.

31. Thus, not only does the failure to schedule county hearings violate the plain language of the C4E law, it also prevents the public from obtaining thorough information regarding the plan and from providing meaningful input to those members of the DOE responsible for development and implementation of the plan.

32. On February 15, 2013, petitioners, through their counsel, notified Respondents that their failure to schedule hearings violated the Contract for Excellence law and requested that Respondents schedule hearings forthwith. Petitioners received no reply. Petitioners February 15 letter is attached as Exhibit H.

AS TO THE CAUSE OF ACTION FOR A WRIT OF MANDAMUS

PURSUANT TO ARTICLE 78 OF NY CPLR

33. Petitioners repeat and reallege every allegation set forth in Paragraphs 1-32 of this Petition.

34. By failing to perform its ministerial duties of scheduling public hearings, Respondents have violated the clear and unequivocal requirements of the CFE law, Education Law §211, and regulations, 8 N.Y.C.C.R.R. 1001.13.

35. Respondents' failure to schedule county hearings has deprived Petitioners and other parents of the district's school children the opportunity under the C4E law and regulations to have input how the district will allocate and utilize the 2012-13 increase in State foundation aid to essential programs, staff and other resources in the district's schools during the current school year. See Exhibit's A-D.

36. Respondents' failure to schedule county hearings on the C4E plan has deprived Petitioners from providing input as to whether the funds allocated to New York

City's school district pursuant to the C4E statute and already spent by Respondents have been spent in accordance with the requirements of the C4E statute. See Exhibit's A-D.

37. For the reasons stated above, the Court should enter a judgment directing Respondents to take all necessary actions, on an expedited schedule, to schedule hearings in every county, to extend the March 18 deadline for public comment until all hearings have been completed and to submit the final C4E to the Commissioner for review and approval.

38. 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, on an expedited schedule, to:

(b) Publish and disseminate expedited dates for a public hearing to be held in each county of New York City;

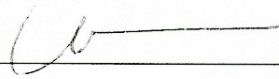
(b) Extend the March 18, 2013 deadline until all public hearings have been completed and post the new deadline prominently on the Contract for Excellence page of the DOE website;

(c) Produce and post a final C4E, revised based on public comment;

(d) Submit a final C4E to the Commissioner for review and approval; and

(e) Granting such other and further relief as the Court may deem appropriate.

Dated: New York, New York
February 28, 2013



WENDY LECKER, ESQ.
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Newark, NJ 07102
wlecker@edlawcenter.org
Phone: 203-536-7567
Fax: 973-624-7339


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.

I affirm that the foregoing statements are true, under penalties of perjury



Wendy Lecker