

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

EA
4/16/15
ES

Index Number : 100538/2014

PART 50

THOMAS, MICHAEL P.

vs
NYC DEPARTMENT OF EDUCATION

INDEX NO. _____

Sequence Number : 001

MOTION DATE _____

ARTICLE 78

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*Decided in accordance with the
written decision of the judge later*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

RECEIVED
APR 21 2015
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

FILED
APR 23 2015
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/16/15

HON. PETER H. MOULTON _____, J.S.C.
J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

Supreme Court of the State of New York
New York County: Part 50

-----X
MICHAEL P. THOMAS,

Petitioner,

and

Index No.:
100538/2014

LETITIA JAMES, Public Advocate for
the City of the York, and
CLASS SIZE MATTERS,

Petitioner-Interveners

For an Order and Judgment Pursuant to Article
78 of the Civil Practice Law and Rules

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION, and
CARMEN FARIÑA, Chancellor of the New York
City Department of Education,

Respondents.

-----X

Peter H. Moulton, J.S.C.

In this Article 78 proceeding petitioner Michael Thomas seeks an adjudication that meetings of School Leadership Teams at New York City Public Schools are meetings of "public bodies" that must be open to the general public pursuant to the Open Meetings Law (POL § 100 et seq). Intervener petitioners Letitia James, the Public Advocate for the City of New York, and Class Size Matters, a not-for-profit that advocates for smaller class sizes in New York City and the rest of the nation, seek similar relief. Respondents are the City's Department of Education ("DOE") and the Chancellor

of the DOE.

Under state law and DOE regulation, every New York City Public School must have a School Leadership Team ("SLT"). As discussed at greater length below, SLTs are composed of school administrators, teachers and parents who are charged with developing the school's Comprehensive Education Plan and with other tasks involving collaborative decision-making at schools.

Petitioners argue that the SLT meetings meet all the criteria for meetings specified in the Open Meetings Law and so should be open to members of the public.

In response, respondents argue that SLTs play a limited advisory role in school governance and therefore are not public bodies subject to the law. Respondents argue that DOE therefore has the power to close such meetings to the general public.

As there is no objection to the intervention motion, the interveners are granted leave to intervene and their papers are part of the record before the court.

BACKGROUND

Petitioner Michael P. Thomas ("Thomas"), who is representing himself pro se, is a retired teacher. In March 2014 he wrote to the SLT chairperson at IS 49 on Staten Island to seek permission to attend an upcoming SLT meeting on April 1, 2014 at the school. After initially receiving a green light in email correspondence

dated March 18, 2014, he was informed by the chairperson the next day that he would not be allowed to attend the meeting. According to this second email, the SLT's by-laws provided that only members of the "school community" are allowed to attend SLT meetings. It is undisputed that Thomas has no affiliation with IS 49. Despite the second email, Thomas attempted peacefully to gain entry to the April 1 meeting and was peacefully rebuffed. Thomas probably was not surprised at this development as he had previously attempted to attend an SLT meeting at another public school in the City and was met with the same response. The intervenor petitioners point out that the closure of SLT meetings to the public is a City-wide phenomenon.

In order to determine whether SLT meetings should be open to the general public, it is first necessary to look at the statutory and regulatory framework that creates SLTs and defines their mission.

DOE is a school board organized under the State Education Law. In 2002 its structure was amended to provide for thirteen board members, the majority appointed by the mayor, who under the board's by-laws would be known as the Panel for Educational Policy. The preamble to the by-laws provides that the "governance structure" of the City School District of the City of New York includes SLTs:

The Panel for Educational Policy is a part of the governance structure responsible for the City School District of the City of New York, subject to the laws of the State of New York

and the regulations of the State Department of Education. Other parts of the structure include the Chancellor, superintendents, community school boards, principals, and school leadership teams. Together this structure shall be designated as the Department of Education of the City of New York.

(Available at <http://schools.nyc.gov> [emphasis added].)

SLTs must be established in every public school pursuant to New York Education Law § 2590-h, Commissioner's Regulation 100.11 and the Chancellor's Regulation A-655. Pursuant to Education Law § 2590-h(15)(b-1)(i) each school's SLT is responsible for developing an annual school Comprehensive Education Plan ("CEP"). A CEP sets forth a school's goals, needs and strategies for the coming school year. The Chancellor is required to ensure that each school's CEP is "easily accessible" to the public including through the DOE's website. The school's principal must consult with the SLT in formation of the school's budget, and the SLT and the principal must work together to insure to align the budget to the CEP. (See Education Law §§ 2590-h(15)(b-1)(i); 2590-r(b).) SLTs also must participate in DOE decisions to close the SLT's school or to co-locate other schools in the SLT's school's building. (See Mulgrew v Board of Education, 75 AD3d 412.)

Chancellor's Regulation A-655¹ was promulgated to ensure the formation of SLTs in the City's schools in conformance with

¹The Chancellor's Regulation is available at <http://schools.nyc.gov>.

Education Law § 2590-h. The regulation provides, inter alia, that there are three mandatory members of an SLT: the school's principal, the parent-teacher association president, and the United Federation of Teachers Chapter Leader. The minimum number of SLT members is 10 and the maximum number is 17, but the regulation provides that the SLT's roster of parents and faculty must be balanced. The regulation further provides that SLT meetings must take place on school or DOE premises and be scheduled at a time that parents can attend. Finally, and significantly, the regulation states that "[n]otice of meetings must be provided in a form consistent with the open meetings law." (Education Law § 2590-h (b-1)(iii).) This means that SLT meetings must be announced to the public at least a week in advance. (POL § 104.) The required announcement is not limited to the school's "community," however that term is defined.

DISCUSSION

The Legislative Declaration that begins the Public Officers Law states in part:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

(POL § 100.)

A "meeting" is defined in the Open Meetings Law as "the official convening of a public body for the purpose of conducting public business." (POL § 102(1).) A "public body" is defined in relevant part as:

any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for any agency or department thereof... .

(POL § 102(2).)

It is undisputed that SLTs have more than two members, require a quorum, and are meant to advance the mission of DOE, an agency of the state. The principal dispute between the parties concerns whether SLTs are performing a governmental function. "[N]ot every entity whose power is derived from state law is deemed to be performing a governmental function." (Matter of Perez v City University of New York, 5 NY3d 522, 528.) In determining if an entity created by the state is a "public body" the court must examine

the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies.

(Matter of Smith v City University of New York, 92 NY2d 707, 713.)

In Perez the Court of Appeals held that the Open Meetings Law applied to the Hostos College Senate and the Senate's Executive

Committee. Hostos is of course part of the City University of New York. The Perez Court recognized that the Hostos College Senate had been charged with a number of the responsibilities delegated by the state legislature to the CUNY Board, and that the Senate and its executive committee performed functions of "both advisory and determinative natures which are essential to the operation and administration of the college." (Perez, supra, 5 NY3d at 530.) Similarly, in Smith the Court of Appeals held the Open Meetings Law applies to meetings of the LaGuardia Community College Association, an organization comprised of administrators, faculty members and students that, among other tasks, collected and disbursed student activity fees.

In both Perez and Smith the Court of Appeals recognized that decisions made at meetings of organizations associated with publicly funded schools are governmental decisions subject to the Open Meetings Law.

Under the factors set forth in Smith and Perez, SLT meetings entail a public body performing governmental functions. Accordingly, SLT meetings are subject to the Open Meetings Law.

First, SLTs are established pursuant to the Education Law, which gives them a role in school governance. DOE's own by-laws specify that SLTs are part of the "governance structure" of New York City's Schools. The public's interest in SLT meetings is demonstrated by the fact that announcement of such meetings must be

made in accordance with the Open Meetings Law.

Second, this court must also examine the "power distribution or sharing model under which [alleged public body] exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies." (Smith, supra, 92 AD2d at 713.) Consideration of these factors also leads to the conclusion that SLT meetings are subject to the Open Meetings Law. SLTs play a crucial iterative role in developing CEPs and ensuring that CEPs are aligned with the school's budget. A principal must consult with her school's SLT in developing a CEP. If the principal and her SLT cannot agree on the contours of the annual CEP, then the District Superintendent may resolve the difference. (See Chancellor's Regulation A-655(II)(4), (6).) However, the SLT must have input into the CEP's development. In December 2007 the DOE issued a prior version of Regulation A-655 which gave principals in New York City final decision making authority over the CEP. The State Education Commissioner ruled that the regulation was in derogation of Education Law § 2590-h(15)(b-1), because it stripped the SLTs of their "basic, statutorily mandated authority" to develop the CEP. (Appeal of Pollicino, New York State Education Commissioner's Decision No.

15,838.)²

The CEP is an important blueprint at each school. It describes annual goals concerning student achievement, teacher training, parent involvement, and compliance with federal law -- including Title I. The CEP also includes "action plans" to achieve those goals. As shown by the Commissioner's decision in Pollicino, the role of an SLT in formulating its school's CEP is one of decision maker. In fulfilling this role the SLT acts in conjunction with, and not subordinate to, the school's principal. If it is fulfilling its statutory role, a school's SLT is not a mere advisor to the principal. SLTs are also stakeholders and participants in school closings. These SLT activities touch on the core functions of a public school. The proper functioning of public schools is a public concern, not a private concern limited to the families who attend a given public school.³

Accordingly, the respondents' determination that SLT meetings are not subject to the Open Meetings Law is arbitrary and capricious and contrary to law. In light of this holding, it is not necessary to reach the intervener petitioners' claim under New York Education Law § 414. Petitioners have offered no authority

²Appeal of Marie Pollicino, Commissioner's Decision No. 15,838, available at www.counsel.nysed.gov/Decisions.

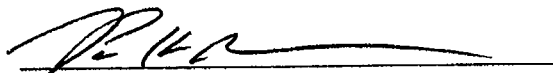
³For the reasons stated herein, this court is not persuaded by the decision of the Supreme Court in Portelos v Board of Education, 2013 NY Misc LEXIS 5170.

that would empower this court to order that DOE personnel receive "training sessions" on the Open Meeting Law, and so that prayer for relief is denied.

CONCLUSION

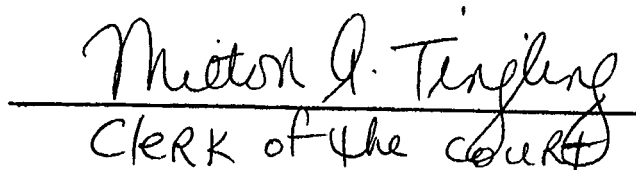
For the reasons stated it is Ordered and Adjudged that respondents' failure to open School Leadership Team Meetings to the general public pursuant to the Open Meetings Law is arbitrary and capricious and contrary to law. The parties shall contact chambers at hkingo@nycourts.gov concerning a briefing schedule on the question of whether reasonable attorneys' fees should be awarded pursuant to POL § 107(2). This constitutes the decision and judgment of the court.

DATE: April 16, 2015



J.S.C.

HON. PETER H. MOULTON
J.S.C.



Milton J. Tingling
CLERK of the court

FILED
APR 23 2015
COUNTY CLERK'S OFFICE
NEW YORK

Index No. 100538/2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Thomes, Michael P.

Plaintiff,

-against-

New York City Dept. of Education

Defendants.

DECISION AND JUDGMENT

Mark Ladan, Esq.
NEW YORK LAWYERS FOR THE PUBLIC INTEREST
151 W. 30th St, 11th Floor
New York, NY 10001
Attorneys for Interveners - Petitioners

FILED
APR 23 2015
AT 2:25 PM
N.Y. CO. CLK'S OFFICE