

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

-----X

In the Matter of the Petition of

MICHAEL P. THOMAS,

Petitioner;

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

-against-

**Affirmation in Support of  
Motion to Intervene or, in  
the Alternative, to File a  
Brief as *Amicus Curiae***

Index No. 100538/2014

NEW YORK CITY DEPARTMENT OF EDUCATION,  
and CARMEN FARIÑA, Chancellor of the NEW YORK  
CITY DEPARTMENT OF EDUCATION,

Respondents.

-----X

STATE OF NEW YORK            )  
  :        ss.  
COUNTY OF NEW YORK        )

LETITIA JAMES, The Public Advocate for the City of New York and an attorney duly licensed to practice law in the State of New York, hereby affirms, under penalty of perjury:

1. I make this affirmation in support of the instant motion to intervene in the *pro se* Petition of Michael P. Thomas, which seeks a declaration that School Leadership Team meetings are subject to the Open Meetings Law (N.Y. Pub. Off. Law § 100), and are therefore required to be open to the public.

2. The Petition advances an important argument in favor of transparency in government operations, an issue that speaks to core functions of the Office of the Public Advocate. Moreover, if successful, this Petition would permit greater community involvement in school decision-making around budgets and curricula, an issue that has consistently been of grave concern to me, as well as previous Public Advocates.

3. The Office of the Public Advocate was established by the New York City Charter as an elected government “watchdog.” Under the Charter, the Public Advocate is the elected official empowered and charged with overseeing all City agencies, including investigating any shortcomings or failures in the provision of services to New York City residents.

4. Courts have described the Public Advocate as “an independent public official to monitor the operations of City agencies with the view to publicizing any inadequacies, inefficiencies, mismanagement and misfeasance found, with the end goal of pointing the way to right the wrongs of government.” *Green v. Safir*, 174 Misc.2d 400, 403 (Sup. Ct. N.Y. Cty. 1997), *aff'd*, 255 A.D.2d 107 (1st Dep’t 1998), *leave to appeal denied*, 93 N.Y.2d 882 (1999). The Charter vests the Public Advocate with the authority and responsibility to review systemic complaints relating to city services and programs, and investigate and attempt to resolve such complaints, “[i]n addition to other duties and responsibilities,” Charter of the City of New York (“Charter”) § 24(f).

5. The Charter expressly grants the Public Advocate authority to review the documents of City agencies for the purposes of investigating and resolving complaints. Section 24(j) provides that “[t]he public advocate shall have timely access to those records and documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews required” under the Charter.

6. The Public Advocate must work with City agencies and make “specific recommendations” in an effort to resolve complaints and systemic problems. Charter § 24(g). Where a City agency does not act to resolve the concern, the Public Advocate is authorized to issue a formal report to the City Council and the Mayor, “describ[ing] the conclusions of the investigation and mak[ing] such recommendations for administrative, legislative, or budgetary

action, together with their fiscal implications, as the public advocate deems necessary to resolve the individual complaint or complaints or to address the underlying problems discovered in the investigation.” *Id.*

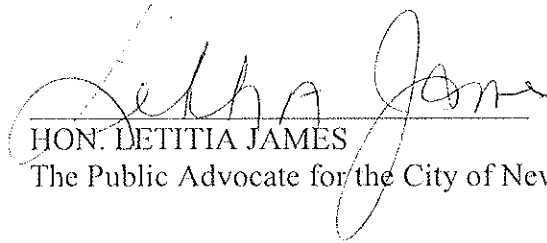
7. Further, under § 1061 of the Charter, the Public Advocate is the Chair of the Commission on Public Information and Communication (COPIC). The Commission is charged with “assist[ing] the public in obtaining access to [city produced or maintained] information;” and “review[ing] city information policies ... [including] ... agency compliance with various notice, comment, and hearing provisions of the charter and other laws.” Charter § 1061.

8. The Public Advocate also possesses independent capacity to bring suit “to implement the power set forth in the Charter.” *Green v. Safir*, 174 Misc.2d at 406. I have exercised that capacity to challenge the Department of Education’s approval of school co-locations over the strong objection of members of the school communities affected. *See, James v. Bd. Of Ed.*, S.Ct. Index No. 101751/2013.

9. As Public Advocate, I have the duty to oversee the operation of City government agencies, including the Department of Education. In my role as City ombudsman and in my capacity as the Chair of the City Commission charged with ensuring transparency in government, I have a particular interest in the outcome of this litigation. The instant Petition goes far beyond the grievance of one individual who was denied access to a meeting; it seeks to advance open government -- a goal shared by my office.

WHEREFORE, I respectfully request that the within motion be granted.

DATED: January 6, 2015  
New York, New York



HON. DETITIA JAMES  
The Public Advocate for the City of New York

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

----- X  
In the Matter of Application of :  
 :  
MICHAEL P. THOMAS, : Index No. 100538/2014  
 :  
 : Petitioner, : Hon. Peter H. Moulton  
and :  
 :  
 :  
LETITIA JAMES, Public Advocate for the City of New York, and :  
CLASS SIZE MATTERS, : **AFFIDAVIT OF LISA**  
 : **DONLAN**  
 :  
 : Proposed Petitioners-Intervenors, :  
 :  
 :  
For a Judgment under 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

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

Lisa Donlan, being duly sworn, deposes and says:

1. I am a member of petitioner Class Size Matters, and I am submitting this affidavit to describe my personal experience with the Department of Education’s (DOE) attempt to exclude me and other members of the public from School Leadership Team (SLT) meetings.

**BACKGROUND INFORMATION**

2. Since 2007 I have been the President of the Community Education Council (CEC) for District One on the Lower East Side of Manhattan. As our mission statement explains, the CEC’s goal “is to help District One families and educators to exercise self-determination and local control over education policy and practices

participate in decision-making at the level of family, school and community.” (See <http://cecd1.org/about/mission-statement/>.)

3. I sit on the CEC as a community appointee of the Manhattan Borough President. I am not currently a parent of an NYC public school student. There are two community members (who may not necessarily be parents) appointed by the borough president to every CEC in New York City.
4. As CEC president I, like all CEC members, liaise with district schools to share information, and report back on policy and issues that affect the larger District 1 community. As a result, I often attend school SLT meetings, where school communities practice shared decision making around schools goals and priorities, policies and practices.
5. I have found the DOE’s position with regard to public access to SLT meetings to be inconsistent and sometimes unclear. At times I have seen members of the public attend school governance meetings without any problem. However, on multiple occasions schools have taken steps to keep me and other community members (including representatives of the press) out of SLT meetings.
6. In particular, I have encountered the most resistance to attending SLT meetings when discussion of controversial DOE policies (such as school closings or co-locations) takes place. I find such meetings to be the most important to attend, because these policy decisions affect the entire larger community, including parents whose children are not currently attending that school, and all residents who recognize the importance of successful schools for our City’s development.

**THE DOE'S ATTEMPT TO DENY ACCESS TO THE SEPTEMBER 2013  
UNIVERSITY NEIGHBORHOOD HIGH SCHOOL SLT MEETING**

7. For example, in September 2013, DOE employees attempted to prevent me and a reporter from attending the regular monthly SLT meeting at University Neighborhood High School (located at 200 Monroe Street on the Lower East Side). Although we were ultimately able to argue our way into the meeting, I fear that community members with less understanding of education laws and regulations (and less clout than a CEC President and a journalist) would be less successful in gaining access.
8. At the time, this school was being considered for a co-location of a new Career and Technical Education (CTE) school. The DOE's Office of Portfolio Planning was formally presenting the plan to the SLT for the first time.
9. I was then, as now, serving as President of CEC 1. Ed Litvak, a reporter for The Lo-Down, a local blog that provides news about the Lower East Side to community residents, accompanied me to the meeting.
10. When we first tried to enter the meeting at University Neighborhood High School, Ed and I were told by the school's principal we could not attend the meeting, as she had been told by her network that the SLT meetings were not open to the public. (Every public school in New York City belongs to one of the DOE's nearly 60 networks, who provide operational and other support to principals. For more on these networks see <http://schools.nyc.gov/AboutUs/schools/support/default.htm>.)
11. I told the principal that this position conflicted with the Open Meetings Law, as well as the Chancellor's Regulation (A-655) that governs School Leadership Teams. I stated clearly that both Ed and I had the right to attend the meeting, which

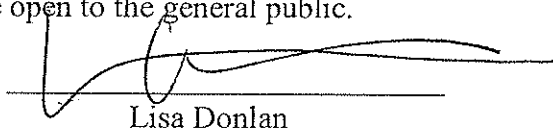
was being held in a public school building. I also emphasized that Ed and I were there to attend the meeting and presentation purely as observers, and that we would not speak or otherwise participate in the meeting unless the SLT invited us to, consistent with the SLT's own bylaws.

12. The meeting was delayed as the principal held Ed and me in the hallway outside of the classroom where the SLT was preparing to meet.
13. During this conversation, the principal said her Network Leader had told her we could not attend the meeting. I then asked to speak to the Network Leader directly. I was sure the Network Leader was misinformed or had misspoken, because it is my understanding that SLTs must follow the Open Meetings Law.
14. I then was given the principal's cell phone so that I could speak to the legal counsel for the Network. This person told me that anyone who was not a current parent or staff member at the school was not allowed to attend an SLT meeting. In response, I cited the Chancellor's Regulation, which requires that notice of SLT meetings "must be provided in a form consistent with the open meetings law." (This requirement can be found in Section VII of Chancellor's Regulation A-655.) As a representative of the District One community for many years I have always understood that the public notice requirement exists to ensure that community members can know about and attend SLT meetings where various educational policy issues, goals and concerns are discussed and decided upon.
15. I also explained that if we were unable to attend the meeting, then the news coverage that would result would necessarily focus on the DOE's refusal to allow a journalist and a CEC President to observe a school-based meeting of a public body about a controversial high school co-location plan – even though this proposal

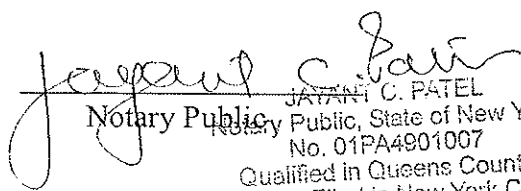


would affect the entire neighborhood and beyond, as high schools are citywide institutions that admit students from the entire city.

16. In the end, after a long debate that delayed the meeting, the DOE folks backed down, and we attended the meeting. Ed and I observed, but did not speak or otherwise participate in the SLT meeting.
17. As I expected, the Office of Portfolio Planning's co-location proposal was not welcomed by the University Neighborhood High School community, and was greeted with statements of opposition from parents, students, teachers and staff.
18. Ed later wrote a news report describing the meeting for community members who could not attend. (That article is attached as an exhibit to this Affidavit, and can be found on-line at <http://www.thelodownny.com/leslog/2013/09/parents-students-urge-doe-to-rethink-new-high-school-on-les.html>.) After this article was published, Ed continued to report on the co-location proposal, including additional public hearings and the protests led by community members and local elected officials.
19. The press coverage of this SLT meeting and the ensuing debate is a perfect example of why open meetings are critical to democratic school governance. SLTs are public bodies who play a critical role in local school governance, pursuant to Chancellor's Regulation A-655 and State Education Law. The decisions that an SLT makes under this authority affect the entire neighborhood and community served by a school, and its deliberations need to be open to the general public.

  
\_\_\_\_\_  
Lisa Donlan

5 day of January, 2015

  
Notary Public  
JAYANTI C. PATEL  
Notary Public, State of New York  
No. 01PA4901007  
Qualified in Queens County  
Certificate Filed in New York County 5  
Commission Expires July 13, 2015

