

NEW YORK SUPREME COURT
APPELLATE DIVISION: FIRST DEPARTMENT

In the Matter of the Application of
MICHAEL P. THOMAS,
Petitioner-Respondent,
and

LETITIA JAMES, Public Advocate for the City of New York, and
CLASS SIZE MATTERS,
Petitioners-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-Appellants.

RECORD ON APPEAL

ZACHARY W. CARTER,
Corporation Counsel of the
City of New York,
Attorney for Respondents-Appellants,
100 Church Street,
New York, New York 10007.
(212) 356-0832
jgordon@nyc.law.gov

MICHAEL P. THOMAS,
Pro Se Petitioner-Respondent ,
343 East 92nd Street, Apt. 5W,
New York, New York 10128.
(917) 545-4254

(List of Attorneys Continued on Inside Cover)

(List of Attorneys Continued from Cover)

ADVOCATES FOR JUSTICE,
Attorneys for Petitioner-Intervener Letitia James,
225 Broadway, Suite 1902,
New York, New York 10007.
(212) 285-1400

NEW YORK LAWYERS FOR THE PUBLIC INTEREST,
Attorneys for Petitioner-Intervener Class Size Matters,
151 West 30th Street, 11th Floor,
New York, New York 10001.
(212) 244-4664

TABLE OF CONTENTS

	<u>Page</u>
Pre-Argument Statement In Lieu of Statement Pursuant to CPLR 5531	1
Notice of Appeal, Dated May 22, 2015	5
Judgment Appealed from and Memorandum Decision of the Honorable Peter H. Moulton, Dated April 16, 2015.....	8
Notice of Petition, Dated May 17, 2014.....	21
Verified Petition, Sworn to May 17, 2014, with Annexed Exhibits.....	24
Exhibit A - Email Transmission, Dated March 19, 2014, from Victoria Trombetta to Michael P. Thomas	32
Exhibit B - Regulation of the Chancellor A-655 School and District Leadership Teams Abstract, Dated March 24, 2010	34
Exhibit C - Letters, Dated March 17, 2014, from Michael P. Thomas to Various School Officials of I.S. 49 Berta A. Dreyfus	45
Exhibit D - Email Transmission, Dated March 18, 2014, from Victoria Trombetta to Michael P. Thomas	50
Verified Answer, Sworn to August 19, 2014, with Annexed Exhibits.....	52
Exhibit G - Regulation of the Chancellor B-801 School-Based Budgeting Summary of Changes, Issued January 20, 2011, with Additional Document	62
Exhibit H - Regulation of the Chancellor C-30 Pedagogical Personnel Summary of Changes, Issued April 10, 2014, with Additional Documents	69
Exhibit I - Regulation of the Chancellor A-414 Safety Plans Summary of Changes, Issued March 24, 2014, with Additional Document	91

	<u>Page</u>
Affidavit of Linda Hill, Sworn to August 15, 2014, Read in Support of Verified Answer, with Annexed Exhibits	95
Exhibit A - Regulation of the Chancellor A-655 School and District Leadership Teams Summary of Changes, Issued March 24, 2010, with Additional Documents	101
Exhibit B - Letter, Dated March 17, 2014, from Michael P. Thomas to Linda Hill.....	128
Exhibit C - Email Transmission, Dated March 18, 2014, from Victoria Trombetta to Michael P. Thomas	130
Exhibit D - School Leadership Team By-Laws for Dreyfus Intermediate School 49, Adopted January 2013	132
Exhibit E - Email Transmission, Dated March 19, 2014, from Victoria Trombetta to Michael P. Thomas	136
Exhibit F - Email Transmission, Dated March 19, 2014, from Michael P. Thomas to Victoria Trombetta	138
Verified Reply, Sworn to August 26, 2014, with Annexed Exhibits	140
Exhibit 1 - Department of Education Template for Comprehensive Education Planning Goals and Action Plans	154
Exhibit 2 - Regulation of the Chancellor A-655 School and District Leadership Teams Summary of Changes, Issued August 7, 2007	156
Exhibit 3 - Decision, Dated December 31, 2008, in <u>Pollicino et al v. New York City of Department of Education et al.</u>	168
Exhibit 4 - Decision and Order, Dated November 4, 2013, in <u>Portelos v. Board of Education of the City School District of the City of New York.</u>	175
Letter, Dated January 20, 2015, from Lesley Berson Mbaye to Hon. Peter H. Moulton, with Additional Document	182
Letter, Dated January 22, 2015, from Michael P. Thomas to Hon. Peter H. Moulton.....	197

	<u>Page</u>
Letter, Dated January 22, 2015, from Lauara D. Barbieri and Mark Ladov to Hon. Peter H. Moulton	202
Statement of No Other Opinion	207
Certification Pursuant to CPLR 2105	208

PRE-ARGUMENT STATEMENT IN LIEU OF STATEMENT PURSUANT TO CPLR 5531
(pp. 1-5)

REPRODUCED FOLLOWING

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

----- X

In the Matter of the Application of
MICHAEL P. THOMAS

Petitioner,

**PRE-ARGUMENT
STATEMENT**

Index No. 100538/2014

and

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

Petitioners-Interveners,

For a 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

PLEASE TAKE NOTICE that the respondents, for their pre-argument
statement, allege as follows:

1. The full names of the original parties and the names, addresses and
telephone numbers of counsel for respondents and petitioner are as follows:

Respondents: New York City Department of Education
Carmen Fariña, Chancellor of the New York City Department of Education

Attorney for Respondents:

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007

Petitioner: Michael P. Thomas

Attorney for Petitioner: Michael P. Thomas, *pro se*
343 E. 92nd St. #5W
New York, NY 10128
(917) 545-4254

Petitioner-Intervener: Letitia James, Public Advocate for the City of New York

Attorney for Petitioner-Intervener: Laura D. Barbieri
225 Broadway, Ste. 1902
New York, NY 10007
(212) 285-1400

Petitioner-Intervener: Class Size Matters

Attorney for Petitioner-Intervener: Mark Ladov & J. McGregor Smyth
New York Lawyers for the Public Interest
151 W. 30th St., 11th Fl.
New York, NY 10001
(212) 244-4664

There has been no change in the parties or their counsel in this proceeding.

2. This is an appeal from a judgment of the Supreme Court, New York County, (Moulton, J.) entered in the office of the Clerk of New York County on April 23, 2015 and served on April 24, 2015. No other appeal is pending in this action.

3. This is a CPLR Article 78 proceeding in which petitioner seeks an order (1) declaring that a School Leadership Team (“SLT”) meeting is a meeting of a public body which must be open to the general public pursuant to the Open Meetings Law; (2) finding that respondents violated the Open Meetings Law by not permitting Petitioner to attend an SLT meeting at Intermediate School 49 on April 1, 2014; (3) ordering Respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law; and (4) awarding costs, fees, and disbursements.

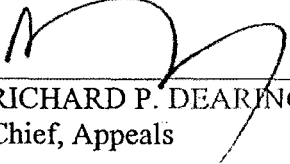
4. The Court below found that SLT meetings entail a public body performing governmental functions and, therefore, were subject to the Open Meetings Law.

5. Respondents seek reversal of this judgment on the grounds that SLTs are not public bodies subject to the Open Meetings Law because they operate only in an advisory capacity and have no authority to make final decisions or implement their decisions.

Dated: New York, New York
May 22, 2015

Yours, etc.,

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street
New York, N.Y. 10007
(212) 356-2500

By: 
RICHARD P. DEARING
Chief, Appeals

NOTICE OF APPEAL, DATED MAY 22, 2015
(pp.5-7)

REPRODUCED FOLLOWING

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

-----X
In the Matter of the Application of
MICHAEL P. THOMAS,

Petitioner,

NOTICE OF APPEAL

Index No. 100538/14

and

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

Petitioners-Intervenors,

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

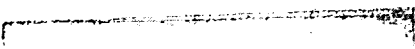
-against-

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

Respondents.

-----X
PLEASE TAKE NOTICE that respondents New York City Department of
Education and Carmen Fariña hereby appeal to the Appellate Division of the Supreme Court,
First Department, from the decision and judgment (one paper) of the Hon. Peter H. Moulton,
herein dated April 16, 2015 and entered in the office of the Clerk of New York County on
April 23, 2015. This appeal is taken from each and every part of said decision and judgment
(one paper) as well as from the whole thereof.

Dated: New York, New York
May 22, 2015



NEW YORK
COUNTY CLERK'S OFFICE

MAY 22 2015

NOT COMPARED
WITH COPY FILE

ZACHARY W. CARTER,
Corporation Counsel of the City of New York,
Attorney for Respondents
New York City Department of Education
and Carmen Fariña,
100 Church Street,
New York, New York 10007.
(212) 356-2500

By

RICHARD P. DEARING
Chief, Appeals

TO:

MICHAEL P. THOMAS,
Pro Se,
343 East 92nd Street, #5W,
New York, New York 10128.
(917) 545-4254

ADVOCATES FOR JUSTICE,
Attorneys for the Petitioner-Intervener Letitia James,
225 Broadway, Suite 1902,
New York, New York 10007.
(212) 285-1400

NEW YORK LAWYERS FOR THE PUBLIC INTEREST,
Attorneys for Petitioner-Intervener Class Size Matters,
151 West 30th St., 11th Floor,
New York, New York 10001.
(212) 244-4664

CLERK
County of New York

JUDGMENT APPEALED FROM AND MEMORANDUM DECISION OF THE
HONORABLE PETER H. MOULTON, DATED APRIL 16, 2015
(pp.8 -20)

REPRODUCED FOLLOWING

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

FA
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.*

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

FILED
COUNTY CLERK'S OFFICE
NEW YORK

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

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 intervenor 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.

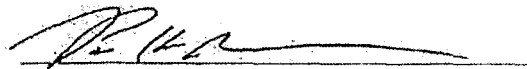
³For the reasons stated herein, this court is not persuaded by the decision of the Supreme Court in Portelos v Board of Education, 2013 NY Misc LEXIS 5170.

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

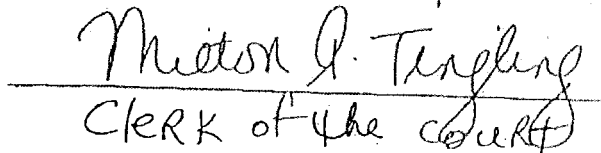
For the reasons stated it is Ordered and Adjudged that respondents' failure to open School Leadership Team Meetings to the general public pursuant to the Open Meetings Law is arbitrary and capricious and contrary to law. The parties shall contact chambers at hkingo@nycourts.gov concerning a briefing 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 CLERKS OFFICE
NEW YORK

Index No. 100538/2014

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

Thomas, Michael P.

Plaintiff,

-against-

New York City Dept. of Education

Defendants.

DECISION AND JUDGMENT

Mark Loden, 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 11:25 AM
AT CLERKS OFFICE

NOTICE OF PETITION, DATED MAY 17, 2014
(pp. 21-23)

REPRODUCED FOLLOWING

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

In the Matter of

MICHAEL P. THOMAS,

Petitioner,

NOTICE OF PETITION

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

Index No. 100538/14

-against-

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

Respondents.

PLEASE TAKE NOTICE that upon the annexed petition, verified on May 17, 2014, and the exhibits annexed thereto, petitioner will make an application at the New York County Courthouse, located at 60 Centre Street, County of New York, State of New York, in the Motion Support Courtroom, Room 130, on June 27, 2014 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order and judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules: (1) declaring that a School Leadership Team meeting is a meeting of a public body which must be open to the general public pursuant to the Open Meetings Law; (2) finding that Respondents violated the Open Meetings Law; (3) ordering Respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law conducted by the staff of the Committee on Open Government pursuant to Public Officers Law § 107(1); and (4) awarding costs, fees, and disbursements, together with such other and further relief as may be just and proper; and

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 7804(c), answering papers, if any, shall be served at least five (5) days prior to the return date of the instant proceeding.

Dated: New York, New York
May 17, 2014

Respectfully submitted,

Michael P. Thomas

Michael P. Thomas
Petitioner, *pro se*
343 East 92nd Street, Apt. 5W
New York, New York 10128
(917) 545-4254
michaelphomas@hotmail.com

To:

New York City Department of Education
52 Chambers Street
New York, New York 10007

Hon. Carmen Fariña
Chancellor
New York City Department of Education
52 Chambers Street
New York, New York 10007

VERIFIED PETITION, SWORN TO MAY 17, 2014
(pp. 24-31)

REPRODUCED FOLLOWING

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

In the Matter of

MICHAEL P. THOMAS,

Petitioner,

Index No. 100538/14

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

VERIFIED PETITION

-against-

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

Respondents.

Petitioner Michael P. Thomas, as and for his Verified Petition, respectfully alleges
and states the following:

PARTIES

1. Petitioner Michael P. Thomas (“petitioner”) is a resident of New York City and was employed by the New York City Department of Education as a mathematics teacher at Manhattan Center for Science and Mathematics from September, 1989 to July 1, 2012, the effective date of his retirement from the New York City Department of Education.
2. Respondent New York City Department of Education (“DOE”) is a school board organized under and existing pursuant to the Education Law of the State of New York.
3. Respondent Carmen Fariña is the Chancellor of the New York City Department of Education and is responsible for the operation of the DOE and its compliance with applicable law and regulations, including compliance with the Open Meetings Law and the Education Law.

NATURE OF PROCEEDING

4. This is a proceeding brought pursuant to Article 78 of the CPLR challenging the determination of Respondents that School Leadership Team (“SLT”) meetings are not open to the general public as required by the Open Meetings Law. An email from Victoria Trombetta, SLT Chairperson, prohibiting petitioner from attending SLT meetings at Intermediate School 49 Berta A. Dreyfus is annexed hereto as Exhibit “A.”

5. Petitioner asserts that the determination prohibiting the general public from attending SLT meetings is an error of law.

VENUE

6. Pursuant to CPLR §§ 7804(b) and 506(b), venue in this proceeding lies in New York County, in the judicial district where the principal office of Respondents is located.

STATEMENT OF FACTS

7. Chancellor’s Regulation A-655 provides for the formation of a School Leadership Team (“SLT”) in every New York City public school to ensure compliance with state and federal law and regulations concerning school-based management and shared decision-making. A copy of Chancellor’s Regulation A-655 is annexed hereto as Exhibit “B.” The SLT is composed of parents, teachers, and administrators who are responsible for developing school-based educational policies, set forth in the school’s Comprehensive Educational Plan (“CEP”), and ensuring that resources are aligned to implement those policies. *See* Chancellor’s Regulation A-655, Verified Pet., Ex. “B.”

8. The three mandatory members of the SLT are the school’s principal, the Parent Association/Parent-Teacher Association President, and the United Federation of Teachers

Chapter Leader, or their designees. *See* Chancellor's Regulation A-655(III)(B), Verified Pet., Ex. "B" at 2. Once the team is constituted, the SLT selects a Chairperson or Co-Chairpersons from its membership. *See* Chancellor's Regulation A-655(III)(D)(1), Verified Pet., Ex. "B" at 4.

9. SLTs meet at least once a month during the school year, and meetings must take place on school or DOE premises. *See* Chancellor's Regulation A-655(VII), Verified Pet., Ex. "B" at 7.

10. On or about March 17, 2014, petitioner requested permission from the SLT Chairperson and the three mandatory members of the SLT to attend the next meeting of the SLT at Intermediate School 49 Berta A. Dreyfus ("I.S. 49"), a middle school located in Staten Island. Copies of letters to the SLT Chairperson and mandatory members of the SLT from petitioner are annexed hereto as Exhibit "C."

11. In an email dated March 18, 2014, the SLT Chairperson, Victoria Trombetta, invited petitioner to attend the SLT meeting on April 1, 2014 at 4:00 p.m. A copy of the email is annexed hereto as Exhibit "D."

12. The next day, however, the SLT Chairperson informed petitioner by email that he would not be permitted to attend the SLT meeting. *See* Verified Pet., Ex. "A." According to the SLT Chairperson, the SLT by-laws of I.S. 49 specifically state that only members of the school community may attend SLT meetings. *See id.* Petitioner – who is not a parent, teacher or administrator of I.S. 49 – is therefore not allowed to attend SLT meetings at the school.

13. On April 1, 2014 at approximately 3:50 p.m., petitioner entered I.S. 49 and informed School Safety Agent ("SSA") Meyer, SSA Wall, and SSA Villacis that he wanted to observe the SLT meeting. Petitioner also informed the school safety agents that he was not a

member of the school community, and requested that they obtain authorization before allowing him to attend the meeting.

14. SSA Villacis contacted Linda Hill, Principal of I.S. 49, and she prohibited petitioner from attending the SLT meeting because he was not a member of the school community. Petitioner immediately left the school building.

CAUSE OF ACTION

15. Petitioner repeats and realleges the allegations set forth in Paragraphs 1 through 14 as if set forth herein.

16. Pursuant to Public Officers Law § 102, a “public body” is 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 an agency or department thereof. A “meeting” is defined by the section as the official convening of a public body for the purpose of conducting public business. *See* Public Officers Law § 102(1).

17. Public Officers Law § 103 provides that every meeting of a public body shall be open to the general public.

18. As explained below, an SLT is a public body since 1) it performs a governmental function for the state or for an agency or department thereof; 2) it conducts public business; 3) it consists of two or more members; and 4) a quorum is required in order to conduct public business.

19. First, the SLT performs a governmental function for the DOE. Chancellor’s Regulation A-655 provides that there must be an SLT in every New York City Public School, and, pursuant to Education Law § 2590-h, the SLT is responsible for developing an annual school

Comprehensive Educational Plan (“CEP”) that is aligned with the school-based budget for the ensuing school year. *See* Chancellor’s Regulation A-655(I) and (II)(A)(1), Verified Pet., Ex. “B” at 1.

20. Second, the SLT has the power to conduct public business. A principal cannot override a decision of the SLT pertaining to the CEP and cannot make the final determination on the CEP. Therefore, the SLT does not merely advise the principal and make recommendations, but has the power to conduct public business.

21. Third, an SLT has two or more members. Chancellor’s Regulation A-655 requires that all SLTs have a minimum of ten members and a maximum of 17 members. *See* Chancellor’s Regulation A-655(III)(A), Verified Pet., Ex. “B” at 2.

22. Finally, a quorum of the SLT is required to conduct public business. Chancellor’s Regulation A-655(XII) provides that every SLT must develop bylaws which specify the minimum number of members required to constitute a quorum.

23. Therefore, the SLT fulfills the requirements for a public body, and SLT meetings should be open to the general public.

24. Respondents improperly prevented petitioner from attending the SLT meeting on April 1, 2014 at I.S. 49, and petitioner has standing pursuant to Public Officers Law § 107(1) to bring the instant Article 78 proceeding.

WHEREFORE, petitioner respectfully requests the Court to grant an Order and Judgment

1. declaring that a School Leadership Team meeting is a meeting of a public body

which must be open to the general public pursuant to the Open Meetings Law;

2. finding that Respondents violated the Open Meetings Law;

3. ordering Respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law conducted by the staff of the Committee on Open

Government pursuant to Public Officers Law § 107(1); and

4. awarding costs, fees, and disbursements, together with such other and further relief as may be just and proper.

Dated: New York, New York
May 17, 2014

By: Michael P. Thomas

Michael P. Thomas
Petitioner, *pro se*
343 East 92nd Street, Apt. 5W
New York, New York 10128
(917) 545-4254
michaelpthomas@hotmail.com

EXHIBIT A – ANNEXED TO THE VERIFIED PETITION
Email Transmission, Dated March 19, 2014,
from Victoria Trombetta to Michael P. Thomas
(pp. 32-33)

REPRODUCED FOLLOWING

From: **Trombetta Victoria (31R049)** (VTrombe@schools.nyc.gov)
Sent: Wed 3/19/14 5:14 PM
To: michaelphomas@hotmail.com (michaelphomas@hotmail.com)

Michael

In an effort to assure all procedures were followed, I reviewed the SLT By Laws. During my read of said laws, I realized you would not be permitted to attend, even with prior notice, as you not a member of the school community. Our By Laws are quite specific as to whom is considered school community members and states that only such members may attend.

Please accept my deepest apologies.

Victoria Trombetta

I.S. 49R

EXHIBIT B – ANNEXED TO THE VERIFIED PETITION
Regulation of the Chancellor A-655 School and District
Leadership Teams Abstract, Dated March 24, 2010
(pp. 34-44)

REPRODUCED FOLLOWING

ABSTRACT

This regulation ensures the formation of School Leadership Teams (SLTs) in every New York City Public School and District Leadership Teams (DLTs) in every community school district. It also includes the central plan for school-based planning and shared decision making.

I. INTRODUCTION

There must be an SLT in every New York City Public School. SLTs play a significant role in creating a structure for school-based decision making and shaping the path to a collaborative school culture. SLTs are a vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies. Functioning in a collaborative manner, SLTs assist in the evaluation and assessment of a school's educational programs and their affect on student achievement.

II. SCHOOL LEADERSHIP TEAM RIGHTS AND RESPONSIBILITIES**A. Comprehensive Educational Plan and School-Based Budget**

1. Pursuant to State Education Law section 2590-h, the SLT is responsible for developing an annual school Comprehensive Educational Plan (CEP) that is aligned with the school-based budget for the ensuing school year. The school-based budget provides the fiscal parameters within which the SLT will develop the goals and objectives to meet the needs of students and the school's educational program.
2. The CEP shall be developed concurrently with the development of the school-based budget so that it may inform the decision-making process of the budget and result in the alignment of the CEP and the budget. The principal, who is responsible for developing the school-based budget, shall consult with the SLT during this development process so that the budget will be aligned with the CEP. The principal makes the final determination concerning the school-based budget.
3. To ensure the alignment of the CEP and the school-based budget, any SLT member may request (on behalf of the SLT) the Galaxy Table of Organization Report entitled "Public/SLT View" (with job ID and confidential information redacted) up to two times per semester and, in response, the principal shall provide this report within 5 school days. In addition, any member of the SLT may obtain from the DOE web site the Galaxy Budget Allocations, which are posted when allocations are issued for the new fiscal year, and the Galaxy Table of Organization Summary Reports, which are posted at the beginning of each academic year.
4. The SLT must use consensus based decision-making and must seek assistance if it is unable to reach consensus on the CEP. If it is unable to reach consensus on developing a CEP that aligns with the school-based budget, the SLT shall seek assistance from the District Leadership Team (DLT), and if that is not successful, then it shall seek assistance from the community or high school superintendent. The community or high school superintendent shall try to facilitate consensus among the SLT. If, even after seeking and receiving these forms of assistance, the SLT is still not able to reach consensus on the CEP, then the superintendent shall make the determination on developing the CEP. However, the superintendent makes the determination on the CEP only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed.
5. The principal must submit the proposed school-based budget to the community or high school superintendent for approval, along with a written explanation justifying that the school-based budget is aligned with the CEP. To become final, the budget must be approved by the community or high school superintendent, who must certify that the budget is aligned with the CEP. The superintendent prescribes the form and manner of submission of the written justification. (A suggested form is attached as Attachment No.1.)

6. If the members of the SLT (other than the principal) agree that the school-based budget is aligned with the CEP, the SLT does not need to submit a response to the principal's justification. If, however, the SLT members (other than the principal) reach a consensus that they disagree with the principal's justification that the school-based budget is aligned with the CEP, and that the principal's proposed budget is inconsistent with the goals and policies set forth in the CEP, the SLT may submit a written response to the justification to the community or high school superintendent within 10 school days. (A suggested form is attached as Attachment No. 1.)
7. If the members of the SLT (other than the principal) submit a response, then the community or high school superintendent shall provide a written response to the SLT within 10 school days. The superintendent's response shall include a determination regarding the dispute as to whether the school-based budget is aligned with the CEP, a description of the information reviewed and the basis for the decision. (A suggested form is attached as Attachment No. 2). Following receipt of this decision, the SLT and principal must immediately revise the school-based budget and CEP in accordance with the directives in the superintendent's response.
8. SLT members, other than the principal, may dispute any decision made by the principal where members of the SLT (other than the principal) reach a consensus that the decision is inconsistent with the goals and policies set forth in the school's existing CEP, by submitting a written objection to the community or high school superintendent. The superintendent shall provide a written response to the SLT and the principal within 10 school days of receiving the initial complaint, which response shall include a description of the information reviewed and the basis of the superintendent's decision regarding the dispute.
9. The final CEP and the school-based budget shall be posted on the DOE's or the school's official website and a copy shall be provided to each SLT member upon request at the school.

B. Other Responsibilities

1. The SLT is not responsible for the hiring or firing of school staff. However, consistent with Chancellor's Regulation C-30, the SLT must be consulted prior to the appointment of a principal or assistant principal candidate to the school.
2. The SLT shall provide an annual assessment to the community district or high school superintendent of the principal's record of developing an effective shared decision-making relationship with the SLT members during the year. (A sample assessment form is attached as Attachment No. 3).

III. COMPOSITION

A. Size of the Team

All SLTs should have a minimum of ten members and a maximum of 17 members. In determining the size of the team, budget allocations must be considered.

B. Mandatory Members

The only three mandatory members of the SLT are the school's principal, the Parent Association/Parent-Teacher Association (PA/PTA) President¹ and the United Federation of Teachers (UFT) Chapter Leader, or their designees.

C. Non-Mandatory Members

1. In addition to the mandatory members, SLTs must include other parents and staff (pedagogic and/or non-pedagogic) from the school. SLTs must have an equal number of parents and staff.

¹ In the case of co-presidents, the remaining PA/PTA officers shall determine which co-president will serve as the mandatory member of the SLT.

a. Election of Parents and Staff:

To ensure that all members of the school community have the opportunity to be included and to encourage broad participation on the SLT, parents and staff must be elected by their own constituent groups in a fair and unbiased manner determined by each constituent group, and all elections must be advertised widely, with reasonable advance notice given. Elections must be open to all members of the constituent group (e.g., PA/PTA, CSA, UFT, DC 37) and must be held in accordance with the term limits as set forth in the team's bylaws.

A minimum of ten calendar days' notice is required prior to the PA/PTA's election of its SLT parent members. In the case of a PTA, only parent members of the school's association may vote to elect parent representatives for the SLT. PA/PTAs are encouraged to stagger the terms of the non-mandatory parent members of the SLT.

SLT elections must be held after the PA/PTA elections in the spring (see Chancellor's Regulation A-660).

b. Eligibility

i. Parents

Parents² from the school are eligible to be elected by the school's PA/PTA to serve on the SLT.

Parents may not serve on the SLT as a parent member in schools in which they are employed, but they may serve in other schools where they have a child in attendance.

Parents may be elected to serve on more than one SLT as long as they meet the requirements set forth in this regulation.

Parent members of the CEC (and in an election year, candidates for the CEC) may serve as parent members of an SLT in the school their child attends.

ii. Staff

Parent coordinators may not serve as members of the SLT in any capacity in the school where they are employed. However, parent coordinators may be invited to attend meetings as observers or presenters in schools in which they are employed. They also may be asked to serve on SLT subcommittees.

Other school staff may not serve as parent members on the SLT in the school(s) where they are employed. Both the parent coordinator and other school staff members may, however, serve as parent members in other schools their children attend.

District office staff may not serve on any SLT as a parent member in the district in which they are employed.

Staff of the School Support Organizations (SSOs) may not serve as parent members on an SLT in any school that purchases services from the SSO.

2. Students and Community Based Organizations

SLTs also may include students (minimum of two students is required in high schools) and representatives of Community Based Organizations (CBOs). Students and CBO

² A parent is defined as a parent (by birth or step-parent), legally appointed guardian, foster parent or person in parental relation to a child. A person in parental relation refers to a person who has assumed the care of a child because the child's parents or guardians are not available, whether due to, among other things, death, imprisonment, mental illness, abandonment of a child, or living outside of the state.

members of the SLT do not count when determining if a team has an equal number of parents and staff (see Section III.C.1).

D. Chairperson/Co-Chairpersons

1. Once the team is constituted, it must select a Chairperson or Co-Chairpersons from among its membership. The Chairperson or Co-Chairpersons need not be mandatory members. SLTs may select members who are not mandatory members as Chairperson or Co-Chairpersons to maximize participation on the SLT.
2. The Chairperson is responsible for scheduling meetings, ensuring that team members have the information necessary to guide their planning, and focusing the team on educational issues of importance to the school. The Chairperson ensures that voices of all team members are heard.

E. Secretary

Each SLT must select a member of the SLT to serve as secretary. The secretary will be responsible for sending SLT meeting notices and for keeping the minutes of SLT meetings. Such minutes must be maintained at the school, with a copy provided to the PA/PTA. The school principal may designate an office staff member to assist the SLT secretary.

F. Community and Citywide Education Councils

Community Education Council (CEC) members act in a liaison capacity with the SLTs of the schools in their respective community school districts. Members of the Citywide Council on High Schools (CCHS) serve in a similar capacity for the high schools throughout the system, as do the members of the Citywide Council of Special Education (CCSE) with regard to District 75 schools. The liaison function includes attending meetings as observers and/or presenters, and participating on SLT committees and subcommittees when invited by members of the SLT.

IV. ESTABLISHING A SCHOOL LEADERSHIP TEAM

A. In a new school:

In order to establish a SLT, a school must first establish a PA/PTA. Chancellor's Regulation A-660 sets forth the process for doing this. Once the PA/PTA has been established, the school must follow the procedure below.

B. In a school with an existing PA/PTA:

The PA/PTA President or designated Co-President, the Principal and the UFT Chapter Leader or their designees must work together to draft bylaws for the SLT. It is then the responsibility of each of the constituent groups to elect or select³ its member representatives in accordance with the SLT's bylaws.

1. In elementary schools, middle/intermediate schools, District 75, and District 79, the mandatory members of the team may contact DOE parent engagement staff and Presidents' Council, as well as community district superintendents, for technical assistance and guidance through this process (see Section VI below).
2. In high schools, the mandatory members of the team may contact their DOE parent engagement staff and Borough High School Presidents' Council, as well as high school superintendents, for technical assistance and guidance (see Section VI herein).

Once the entire SLT is in place, it must review and adopt the team's bylaws and may amend those by-laws, if necessary.

Schools that have multiple sites will have one SLT, but the SLT may create subcommittees to assess the needs of all the sites and to report their findings to the SLT.

³ Parent and staff members must be elected; other members may be selected.

V. DISTRICT LEADERSHIP TEAMS

A. Rights and Responsibilities

Pursuant to Section 100.11 of the Regulations of the Commissioner of Education, each community superintendent must develop a district plan for the participation by teachers, parents, and administrators for school-based planning and decision making. The superintendent is responsible for developing the district plan in collaboration with "a committee composed of administrators selected by the district's administrative bargaining organization(s), teachers selected by the teachers' collective bargaining organization(s), and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by school-related organizations." In New York City, this committee is the District Leadership Team (the DLT).

A DLT must be formed in each community school district consisting of representatives from the elementary, middle, and high schools that are geographically located within that community school district. DLTs fulfill the requirements of Section 100.11 of the Commissioner's Regulations regarding the district-level plan for the participation of parents and staff in school-based planning and shared decision making.

The DLT will develop the District Comprehensive Educational Plan (DCEP), which includes annual goals and objectives that are aligned with the district's and the Chancellor's goals, and also incorporates the following six categories of the district 100.11 plan:

1. the educational issues that will be subject to shared planning at the building level;
2. the manner and extent of the expected involvement of all parties on the SLT;
3. the means and standards by which all parties shall evaluate improvement in student achievement;
4. the means by which all parties will be held accountable for the decisions which they share in making;
5. the process for dispute resolution in the SLTs; and
6. the manner in which state and federal requirements for the involvement of parents in planning and decision making will be met.

DLTs also will provide support, guidance, technical assistance, and conflict resolution to the SLTs in their districts. The Office of School Improvement will provide guidance and technical assistance to the superintendent and the DLT in the development of District Comprehensive Educational Plans (DCEPs).

In addition, DLTs must conduct a biennial review of the district's 100.11 plan to evaluate the effectiveness of shared decision making in the district. The DLT must complete the Biennial Review Form (Attachment A) and submit it to the Office for Family Engagement and Advocacy by January 15th of each even-numbered calendar year. The outcome of this Biennial Review must be submitted to the New York State Education Department by February 1st of each even-numbered year.

B. Composition

The required members of the DLT are:

- Community superintendent (or designee)
- High school superintendent(s) responsible for high schools that are geographically located within the district (or designee(s))
- CSA representative
- UFT representative
- DC 37 representative
- President of the district's Presidents' Council (or designee)

- President of the borough high school Presidents' Council (or designee)
- Chairperson of the Title I District Parent Advisory Council (or designee)

Community based organizations (CBOs), the president of the District CEC (or designee), and a member of the Citywide Council on High Schools whose child attends a high school geographically located within the district also may be included on the DLT.⁴

C. Citywide High School Subcommittee

To ensure that the needs and special issues impacting high schools and their students are fully represented in DLT discussions, a citywide subcommittee of high school representatives will be formed and will meet monthly to review relevant data and identify issues impacting student performance at the high school level. The outcome of the high school subcommittee meetings will be reported by members of the subcommittee (who will serve as liaisons) to the DLTs during the monthly DLT meetings as a standing agenda item. The DLTs will continue to include any high school-level constituency representatives and will discuss the issues raised by the subcommittee liaisons as part of the district's overall K-12 strategic planning and problem solving.

The required members of the citywide high school subcommittee are:

- High School Superintendents (or designees)
- District 79 Superintendent (or designee)
- UFT High School representative
- CSA High School representative
- DC 37 High School representative
- One parent representative from each High School President's Council.

VI. SUPPORT FOR SCHOOL AND DISTRICT LEADERSHIP TEAMS

Every community school district, borough, and District 75 will have a designated member of the Office for Family Engagement and Advocacy (OFEA) staff, who will provide comprehensive services to assist SLTs and DLTs, including professional development and technical support. Further, superintendents may seek the assistance of OFEA in the formation of DLTs.

As appropriate, designated OFEA staff will act as facilitators to assist all team structures in carrying out their roles and responsibilities. They will work closely with their respective district and school teams to facilitate their ability to fulfill their responsibilities as described in this regulation.

The designated OFEA engagement staff will work in coordination with the Community Superintendent to support and assist DLTs. They will provide regular training sessions to the SLTs and DLTs in their districts.

The designated OFEA engagement staff will provide regular training sessions to the SLTs in the high schools.

Key areas for training include, but are not limited to:

- roles and responsibilities
- team operations;
- assessing school-wide needs;
- understanding the school budget; and

⁴ A DLT also is required for District 75. The District 75 DLT shall consist of the Superintendent of District 75, a CSA and UFT representative, and the president of the District 75 Presidents' Council (or designee). CBOs and the president of the Citywide Council on Special Education (or designee) also may be included on the District 75 DLT.

- engaging families and communities in the review and development of a comprehensive educational plan, in conjunction with the Office of School Improvement.

Additionally, DLTs will collect information from PAs/PTAs in order to provide the Office for Family Engagement and Advocacy with a quarterly status report on SLT and DLT activities beginning December 1 of each year. A template for the report will be provided by the Office for Family Engagement and Advocacy.

The Office of School Improvement will provide training to SLTs on the development of Comprehensive Educational Plans (CEPs) and responding to Title I program requirements.

VII. SCHEDULING OF MEETINGS

SLTs should meet at least once a month during the school year. Meetings must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening). Mandatory members or their designees are expected to attend all meetings of the SLT.

Notice of meetings must be provided in a form consistent with the open meetings law.

VIII. DECISION MAKING/PROBLEM SOLVING

SLTs must use a consensus-based decision-making process as their primary means of making decisions. Teams must develop methods for engaging in collaborative problem solving and solution seeking and, when necessary, effective conflict resolution strategies.

When a team has made every effort to resolve an issue and members cannot reach agreement, the team should seek assistance from the DLT and if that is not successful, then it shall seek assistance from the community or high school superintendent. The community or high school superintendent shall try to facilitate consensus among the SLT. If, after seeking and receiving these forms of assistance from the DLT and the superintendent, the SLT is still not able to reach consensus on the CEP, then the superintendent makes the final determination on developing a CEP. However, the superintendent makes the final determination on the CEP only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed.

Where team members have difficulty obtaining information or wish to obtain assistance in resolving issues relating to consultation with the school principal, they may seek assistance from the DLT or superintendent or designated OFEA engagement staff.

IX. REMUNERATION/RECORD KEEPING

A. To be eligible to receive the annual remuneration of \$300, SLT members, including students and CBO representatives, must complete 30 hours of service on the SLT and attend a mandatory training session relating to CEPs and budget issues each year, which training shall be offered by the Department of Education (DOE). Team members who attend training but serve less than 30 hours may request remuneration on a pro-rata basis.

- Team members are responsible for ensuring that all records documenting the number of hours served are submitted to the Chairperson for processing.
- Individual members must choose whether to accept or waive the annual remuneration and donate the funds to be used for other school purposes. Team bylaws may not dictate any specific choice.

B. Attendance and minutes must be recorded at every meeting.

X. SLT RELATIONSHIP WITH OTHER SCHOOL BASED ENTITIES

In its role as the school's planning and review body, the SLT is the central coordinating team in the school, and it should help to facilitate communication among the various school committees.

A. Chancellor's Regulation C-30 Level I Committee

- All members of the SLT shall be consulted prior to the appointment of any principal or assistant principal candidate to the school.

2. SLT members are eligible to serve on the Level I C-30 Committee, subject to the requirements set forth in Chancellor's Regulation C-30. However, if parents from the SLT are not available to serve on the Level I C-30 Committee, the Chairperson of the Level I Committee shall offer the officers of the school's PA/PTA the opportunity to serve.⁵

B. School Restructuring Plans

The superintendent will consult with the SLT regarding any school restructuring plans for the school. With respect to all proposals to close a school or make a significant change in school utilization, the SLT shall participate in the joint public hearing held at the school. See Chancellor Regulation A-190. For more information about restructuring requirements for schools identified for improvement (SINI and SURR schools) under NCLB/SED mandates, please contact the Office of School Improvement at OSI@schools.nyc.gov. For more information about school phase-outs and closings, please contact the Office of Portfolio Development at portfolio@schools.nyc.gov.

C. Others Schools in the Building

In buildings that house multiple schools, the SLTs are encouraged to meet at least twice a year to discuss issues of mutual concern.

XI. CONSULTATION WITH PARENTS

To meet No Child Left Behind requirements, School and District Leadership Teams will serve as the vehicle for consultation with parent representatives regarding the use of federal reimbursable funding and program planning (e.g., Title I). School and District Leadership Teams should maintain documentation on file to verify that this required consultation has taken place.⁶

XII. BYLAWS

Every SLT and DLT must develop bylaws and operating guidelines to provide clear direction about SLT and DLT responsibilities. All bylaws must be consistent with this regulation. A bylaw template is attached as Attachment No. 4. Bylaws should incorporate key decisions about team membership and operations.

All bylaws must address the following areas:

- the roles of team members and Chairperson;
- team composition;
- quorum;
- method of election of parent and staff members;
- method of selection of Chairperson;
- method of selecting CBOs and student members where applicable;
- length of term and term limits;
- process for removal of Chairperson and members;
- method for making decisions (i.e. consensus or majority rule) and procedures to be followed if the team has a need for conflict resolution;
- filling vacancies;
- role of observers during meetings;
- who can speak at meetings;
- how agendas are established;

⁵ See Chancellor's Regulation C-30 for additional information.

⁶ Please refer to the Department of Education Title I Parent Involvement Guidelines memorandum which is disseminated by the Office for Family Engagement and Advocacy.

- that the team must meet at least ten times per school year;
- number of meetings that can be missed, and consequences of missing more than the designated number of meetings;
- whether the terms of non-mandatory parent members should be staggered; and
- that there is a secretary.

SLTs and DLTs may require through their bylaws that they meet and coordinate with other school committees such as the Parent Association/Parent Teacher Association and the Title I Committee to ensure that all school-wide committees are working toward the same goals set forth in the CEP.

SLT and DLT bylaws should be reviewed by the team at least biennially. Each SLT must provide a list of its members and a copy of its current bylaws to the DLT annually, by October 31. The DLT must provide a list of all SLT member names from the schools in the district and a list of its own members and bylaws to the Chief Family Engagement Officer (CFEO) annually, by November 15. If the SLT makes changes in its bylaws or there is a change in membership, notice of the changes must be forwarded to the DLT, which will then forward this information to the CFEO.

XIII. CENTRAL PLAN FOR SCHOOL-BASED PLANNING AND SHARED DECISION MAKING

The Central plan for school-based planning and shared decision making incorporates the individual district plans adopted by DLTs in accordance with Section 100.11 of the Regulations of the Commissioner of Education as well as the procedures set forth in this Regulation. The Office of School Improvement is responsible for maintaining copies of each district's plan and for compiling them into the Central plan. The Citywide Committee that approves the Central plan for school-based planning and shared decision making shall include a senior UFT representative, a senior CSA representative, a senior DC 37 representative, and representatives designated by the Chancellor.

XIV. GRIEVANCES

- A. Parents may file a written complaint regarding the election of parents to serve on the SLT in a school their child attends.
- B. Such complaint must be filed with the appropriate superintendent⁷ within seven (7) school days of the election. A decision will be rendered by the superintendent within seven (7) school days of receipt of the complaint. If a decision cannot be rendered within seven (7) school days because of a continuing investigation or a referral to other authorities, the superintendent must issue a response explaining the reason for the delay within the seven (7) school-day period, and must include a projected date for a final decision. Where interim remedies are appropriate, they should be included in the response.
- C. Parents may appeal the decision of the superintendent to the Chancellor. Such appeal must be filed within ten (10) school days of receipt of the superintendent's decision. Appeals must be sent to the Chancellor c/o The Office of Legal Services, 52 Chambers Street, Room 308, New York, NY 10007. The Chancellor will render a decision within fourteen (14) school days of receipt of the appeal. If a decision cannot be rendered within fourteen (14) school days because of a continuing investigation or a referral to other authorities, the Chancellor must issue a response explaining the reason for the delay within the seven-day period, and must include a projected date for the final decision. Where interim remedies are appropriate, they should be included in the response. The decision of the Chancellor on appeal is final.

⁷ Complaints regarding community district schools are filed with community superintendent; complaints regarding high schools are filed with the high school superintendent; complaints regarding District 75 schools are filed with the District 75 superintendent.

XV. GUIDANCE AND ASSISTANCE

The Office for Family Engagement and Advocacy will provide guidance and respond to inquiries regarding the implementation of this regulation.

The Office of School Improvement will provide guidance and technical assistance regarding the development and review of school and district level Comprehensive Educational Plans, District 100.11 Plans, Title I programmatic requirements and required federal and state school and district improvement processes. (See Section VI.)

The Office for Family Engagement and Advocacy in consultation with other central offices also may issue guidelines to supplement this regulation.

All other general inquiries pertaining to this regulation should be addressed to:

Telephone:	<i>Office for Family Engagement and Advocacy</i> N.Y.C. Department of Education 49 Chambers Street – Room 503 New York, NY 10007	Fax:
212-374-2323		212-374-0076

EXHIBIT C – ANNEXED TO THE VERIFIED PETITION
Letters, Dated March 17, 2014, from Michael P. Thomas
to Various School Officials of I.S. 49 Berta A. Dreyfus
(pp. 45-49)

REPRODUCED FOLLOWING

343 East 92nd Street, Apt. 5W
New York, NY 10128

March 17, 2014

Linda Hill
Principal
I.S. 49 Berta A. Dreyfus
101 Warren Street
Staten Island, NY 10304

**BY CERTIFIED AND
ELECTRONIC MAIL**

Dear Ms. Hill:

I am a retired mathematics teacher of the New York City Department of Education who is interested in the role of School Leadership Teams ("SLTs") in the utilization of Title I funds.

I would like to attend, as an observer, the next SLT meeting at I.S. 49 Berta A. Dreyfus. The school's website for the PTA indicated that the next SLT meeting was at 6:00 p.m. on April 8, 2014 and a written request was required to attend. However, the announcement did not indicate where to send the written request, and I am therefore directing my request to each of the core members of the SLT.

SLTs serve a vital function pertaining to the welfare of the community, and I thank you for the opportunity to attend the SLT meeting at I.S. 49 Berta A. Dreyfus on April 8, 2014.

Very truly yours,

Michael P. Thomas

Michael P. Thomas
michaelpthomas@hotmail.com

cc: Francesco Portelos, UFT Chapter Leader (By e-mail)
Laura Cavalerri, PTA President (By certified mail)

343 East 92nd Street, Apt. 5W
New York, NY 10128

March 17, 2014

Victoria Trombetta
SLT Chairperson
I.S. 49 Berta A. Dreyfus
101 Warren Street
Staten Island, NY 10304

**BY REGULAR MAIL
AND E-MAIL**

Dear Ms. Trombetta:

I am a retired mathematics teacher of the New York City Department of Education who is interested in the role of School Leadership Teams ("SLTs") in the utilization of Title I funds.

I would like to attend, as an observer, the next SLT meeting at I.S. 49 Berta A. Dreyfus. The school's website for the PTA indicated that the next SLT meeting was at 6:00 p.m. on April 8, 2014 and a written request was required to attend. However, the announcement did not indicate where to send the written request, and I directed my request to each of the core members of the SLT.

I was subsequently informed that you are the SLT Chairperson, and I believe that I should also direct my request to you.

SLTs serve a vital function pertaining to the welfare of the community, and I thank you for the opportunity to attend the SLT meeting at I.S. 49 Berta A. Dreyfus on April 8, 2014.

Very truly yours,

Michael P. Thomas

Michael P. Thomas
michaelpthomas@hotmail.com

cc: Linda Hill, Principal (By certified and e-mail)
Laura Cavalerri, PTA President (By certified mail)
Francesco Portelos, UFT Chapter Leader (By e-mail)

343 East 92nd Street, Apt. 5W
New York, NY 10128

March 17, 2014

Laura Cavalerri
PTA President
I.S. 49 Berta A. Dreyfus
101 Warren Street
Staten Island, NY 10304

Dear Ms. Cayalerri:

I am a retired mathematics teacher of the New York City Department of Education who is interested in the role of School Leadership Teams ("SLTs") in the utilization of Title I funds.

I would like to attend, as an observer, the next SLT meeting at I.S. 49 Berta A. Dreyfus. The school's website for the PTA indicated that the next SLT meeting was at 6:00 p.m. on April 8, 2014 and a written request was required to attend. However, the announcement did not indicate where to send the written request, and I am therefore directing my request to each of the core members of the SLT.

SLTs serve a vital function pertaining to the welfare of the community, and I thank you for the opportunity to attend the SLT meeting at I.S. 49 Berta A. Dreyfus on April 8, 2014.

Very truly yours,

Michael P. Thomas

Michael P. Thomas
michaelpthomas@hotmail.com

cc: Linda Hill, Principal (By certified and electronic mail)
Francesco Portelos, UFT Chapter Leader (By e-mail)

343 East 92nd Street, Apt. 5W
New York, NY 10128

March 17, 2014

Francesco Portelos
UFT Chapter Leader
I.S. 49 Berta A. Dreyfus
101 Warren Street
Staten Island, NY 10304

BY E-MAIL

Dear Mr. Portelos:

I am a retired mathematics teacher of the New York City Department of Education who is interested in the role of School Leadership Teams ("SLTs") in the utilization of Title I funds.

I would like to attend, as an observer, the next SLT meeting at I.S. 49 Berta A. Dreyfus. The school's website for the PTA indicated that the next SLT meeting was at 6:00 p.m. on April 8, 2014 and a written request was required to attend. However, the announcement did not indicate where to send the written request, and I am therefore directing my request to each of the core members of the SLT.

SLTs serve a vital function pertaining to the welfare of the community, and I thank you for the opportunity to attend the SLT meeting at I.S. 49 Berta A. Dreyfus on April 8, 2014.

Very truly yours,

Michael P. Thomas

Michael P. Thomas
michaelpthomas@hotmail.com

cc: Linda Hill, Principal (By certified and electronic mail)
Laura Cavalerri, PTA President (By certified mail)

EXHIBIT D – ANNEXED TO THE VERIFIED PETITION

Email Transmission, Dated March 18, 2014,
from Victoria Trombetta to Michael P. Thomas
(pp. 50-51)

REPRODUCED FOLLOWING

From: **Trombetta Victoria (31R049)** (VTrombe@schools.nyc.gov)
Sent: Tue 3/18/14 6:12 PM
To: michaelphomas@hotmail.com (michaelphomas@hotmail.com)

It would be a pleasure to have you attend. Please note the meeting was changed on 3/4 to April 1 at 4:00. Three of the teaching staff will be grading the ELA on the 8th. The first is in line with scheduling anyway as it is the first Tuesday of the month. I hope this works for you and we will see you on the first. If you need any directions etc. please do not hesitate to ask.

Victoria Trombetta

I.S. 49R

VERIFIED ANSWER, SWORN TO AUGUST 19, 2014
(pp. 52-61)

REPRODUCED FOLLOWING

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

----- x

In the Matter of the Application

MICHAEL P. THOMAS,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law
and Rules

VERIFIED ANSWER

-against-

Index No. 100538/2014
Hon. Peter H. Moulton

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

Respondents

----- x

Respondents New York City Department of Education (“DOE”) and Carmen Fariña, Chancellor of the New York City Department of Education, by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their Verified Answer to the Verified Petition, dated May 17, 2014, respectfully allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “1” of the Verified Petition, except admit that Petitioner was employed by the New York City Department of Education (“DOE”) as a mathematics teacher at Manhattan Center for Science and Mathematics from September 1989 until he retired on July 1, 2012.

2. Deny the allegations set forth in paragraph “2” of the Verified Petition, and respectfully refer the Court to New York State Education Law § 2590 et seq. for a complete and accurate description of the organization, powers, and purpose of the DOE.

3. Deny the allegations set forth in paragraph “3” of the Verified Petition, except admit that Carmen Fariña is the Chancellor of the DOE, and respectfully refer the Court to New York State Education Law § 2590-h for a complete and accurate description of the powers and duties of the Chancellor of the DOE.

4. Deny the allegations set forth in paragraph “4” of the Verified Petition, except admit that Petitioner purports to proceed as set forth therein and that Petitioner has attached the indicated document as an exhibit to the Verified Petition, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

5. Deny the allegations set forth in paragraph “5” of the Verified Petition, except admit that Petitioner purports to proceed as set forth therein.

6. Deny the allegations set forth in paragraph “6” of the Verified Petition, except admit that Petitioner purports to establish a basis for venue as set forth therein and that the DOE maintains offices in New York County, and respectfully refer the Court to the statutes cited in paragraph “6” for a complete and accurate statement of their provisions.

7. Deny the allegations set forth in paragraph “7” of the Verified Petition, except admit that Chancellor’s Regulation A-655 requires the formation of School Leadership Teams in every New York City public school and that Petitioner has attached the indicated document as an exhibit to the Verified Petition, and respectfully refer the Court to that document for a complete and accurate statement of its contents.

8. Admit the allegations set forth in paragraph “8” of the Verified Petition.

9. Deny the allegations set forth in paragraph "9" of the Verified Petition, and respectfully refer the Court to the Regulation cited therein for a complete and accurate statement of its contents.

10. Deny the allegations set forth in paragraph "10" of the Verified Petition, except admit that Petitioner wrote letters to the mandatory members of the I.S. 49 School Leadership Team ("SLT"), that copies of those letters are attached to the Verified Petition as Exhibit "C", and respectfully refer the Court to those letters for a complete and accurate statement of their contents.

11. Deny the allegations set forth in paragraph "11" of the Verified Petition, except admit that a copy of an email from Victoria Trombetta to Petitioner is annexed to the Verified Petition as Exhibit "D," and respectfully refer the Court to that exhibit for a complete and accurate statement of its contents.

12. Deny the allegations set forth in paragraph "12" of the Verified Petition, except admit that a copy of an email from Victoria Trombetta to Petitioner is annexed to the Verified Petition as Exhibit "A", and respectfully refer the Court to that exhibit for a complete and accurate statement of its contents, and admit that the SLT bylaws of I.S. 49 state that only members of the school community may attend SLT meetings, and admit that Petitioner is not a parent, teacher or administrator of IS 49 and, therefore, not allowed to attend the SLT meetings at the school.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Verified Petition, except admit that Petitioner entered I.S. 49 on April 1, 2014 and asked to attend the School Leadership Team meeting.

14. Deny the allegations set forth in paragraph "14" of the Verified Petition, except admit that Principal Linda Hill did not permit Petitioner to attend the School Leadership Team meeting because Petitioner was not a member of the school community.

15. Respondents repeat and reallage their responses as set forth in paragraphs "1" – "14" as if fully set forth herein.

16. Deny the allegations set forth in paragraph "16" of the Verified Petition, and respectfully refer the Court to the statute cited therein for a complete and accurate statement of its provisions.

17. Deny the allegations set forth in paragraph "17" of the Verified Petition, and respectfully refer the Court to the statute cited therein for a complete and accurate statement of its provisions.

18. Deny the allegations set forth in paragraph "18" of the Verified Petition.

19. Deny the allegations set forth in paragraph "19" of the Verified Petition, except admit that Chancellor's Regulation A-655 provides that every New York City public school must establish a School Leadership Team, and respectfully refer the Court to that Regulation and the statute cited in paragraph "19" for a complete and accurate statement of their contents and provisions.

20. Deny the allegations set forth in paragraph "20" of the Verified Petition.

21. Deny the allegations set forth in paragraph "21" of the Verified Petition, and respectfully refer the Court to the Regulation cited therein for a complete and accurate statement of its contents, except admit that an SLT has more than two members.

22. Deny the allegations set forth in paragraph "22" of the Verified Petition, except admit that Chancellor's Regulation A-655 contains requirements concerning bylaws and

quorums, and respectfully refer the Court to that Regulation for a complete and accurate statement of its contents.

23. Deny the allegations set forth in paragraph “23” of the Verified Petition.

24. Deny the allegations set forth in paragraph “24” of the Verified Petition.

**FOR A STATEMENT OF PERTINENT AND
MATERIAL FACTS, RESPONDENTS
RESPECTFULLY ALLEGE:**

School Leadership Teams

25. School Leadership Teams are comprised of representatives from the school community. There are three mandatory members: the school’s principal, the Parent Association/Parent-Teacher Association (“PA/PTA”) President and the United Federation of Teachers (“UFT”) Chapter Leader, or their designees. In addition, there are non-mandatory members, consisting of parents and other staff (pedagogic and/or non-pedagogic) from the school. SLTs must have an equal number of parents and staff, for a total number of between 10 and 17 members. See Chancellor’s Regulation A-655, annexed to the Affirmation of Linda Hill, dated August 15, 2014 (“Hill Aff.”) as Exhibit “A” (“Chan. Reg. A-655”) at § III(B); see also Hill Aff. at ¶ 4.

26. The School Leadership Team (“SLT”) is comprised of representatives of school administrators, teachers and parents. The SLT discusses educational matters and policies, establishes goals for the following school year, and consults on the development of school safety plans and the selection of administrators. See Hill Aff. at ¶ 5. The SLT also evaluates school programs and their effect on student achievement. Id.; Chan. Reg. A-655 at §§ I, II(A).

27. School Leadership Teams are responsible for devising educational goals at a school, which are consolidated into an annual school comprehensive education plan (“CEP”),

and consulting on the school-based budget to ensure that the CEP is aligned with the school's budget. See Hill Aff. at ¶¶ 5, 6; Chan. Reg. A-655 at § II(A); N.Y. Educ. L. § 2590-h(15)(b-1). The CEP must then be submitted to the community superintendent, along with the school budget and the principal's written explanation of how the CEP and budget are aligned. If the SLT members (other than the principal) agree that the school-based budget and the CEP are not aligned, they can submit a response to the principal's explanation. The superintendent is responsible for approving the school budget and certifying that the CEP and budget are aligned. If there is a dispute concerning the alignment, the superintendent must make a determination and, if he or she determines that they are not aligned, he or she must give direction as to how alignment can be achieved. See Hill Aff. at ¶ 6; N.Y. Educ. L. § 2590-h(15)(b-1); Chan. Reg. A-655 at § II.

28. The principal, who is responsible for the day-to-day operation of the school, is responsible for creating the school budget (after consulting with the SLT) and for implementing the CEP. See Hill Aff. at ¶ 6; Chancellor's Regulation A-655 at § II; see also, Chancellor's Regulation B-801, annexed hereto as Exhibit "G"; N.Y. Educ. Law 2590-i(i); N.Y. Educ. Law 2590-r(b).

29. Additionally, School Leadership Teams are obligated to consult on the appointment of a principal or assistant principal candidate to the school pursuant to Chancellor's Regulations A-655 § II(B)(1) and C-30 § XI(A)(I)(f) (annexed hereto as Exhibit "H"). During this consultation process, SLT members are provided with and discuss candidates' confidential personnel records and information. See Hill Aff. at ¶ 7.

30. Pursuant to Chancellor's Regulation A-655 § VII, "SLTs should meet at least once a month during the school year. . . . Mandatory members or their designees are expected to attend all meetings of the SLT."

31. SLTs discuss confidential information frequently and without notice, such as school security measures, certain of which are not to be disclosed to the public pursuant to Chancellor's Regulation A-414. A copy of Chancellor's Regulation A-414 is annexed hereto as Exhibit "I"; see also Hill Aff. at ¶ 7.

32. SLTs do not have the authority either to create the budget or implement the CEP; the principal or school administration performs these tasks.

FOR A FIRST DEFENSE:

33. The Verified Petition fails to state a claim upon which relief can be granted.

FOR A SECOND DEFENSE:

34. At all times relevant to the Petition, Respondents have not failed to perform a duty enjoined upon them by law.

FOR A THIRD DEFENSE:

35. Respondents' determination in this matter had a rational basis and was not made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion.

FOR A FOURTH DEFENSE:

36. Respondents have not violated any of Petitioner's rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York, or of any political subdivision thereof.

FOR A FIFTH DEFENSE:

37. SLTs are not “public bodies” and thus are not subject to the Open Meetings Law.

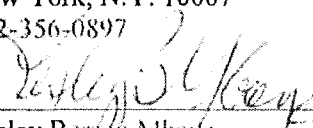
CONCLUSION

WHEREFORE, Respondents New York City Department of Education and Carmen Fariña, Chancellor of the New York City Department of Education, respectfully request that the Verified Petition be denied in its entirety, that the court enter judgment for Respondents, and that Respondents be granted costs, fees, and disbursements, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 19, 2014

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street, Room 2-306
New York, N.Y. 10007
212-356-0897

By: _____


Lesley Berson Mbaye
Assistant Corporation Counsel

To: By first-class mail
Michael P. Thomas
Petitioner, pro se
343 East 92nd Street, Apt 5W
New York, NY 10128

VERIFICATION

Robin F. Singer, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms under penalty of perjury that I am an attorney in the Office of the General Counsel at the New York City Department of Education (“DOE”); that I have read the foregoing Verified Answer to the Verified Petition in The Matter of MICHAEL P. THOMAS v. NEW YORK CITY DEPARTMENT OF EDUCATION, et al., New York State Supreme Court, County of New York, Index No. 100538/2014; and that I know the contents thereof to be true, except as to matters alleged therein upon information and belief, and as to those matters, I believe them to be true, based upon my review of DOE records, my review of the exhibits attached to the Verified Answer, and conversations with DOE and other City employees.

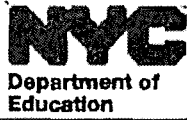
Dated: New York, New York
August 19, 2014



Robin F. Singer

EXHIBIT G – ANNEXED TO THE VERIFIED ANSWER
Regulation of the Chancellor B-801 School-Based Budgeting
Summary of Changes, Issued January 20, 2011,
with Additional Document
(pp. 62-68)

REPRODUCED FOLLOWING



Regulation of the Chancellor

Category: INSTRUCTION

Issued: 1/20/11

Number: **B-801**

Subject: SCHOOL-BASED BUDGETING

Page: 1 of 1

SUMMARY OF CHANGES

This regulation amends Chancellor's Regulation B-801 dated April 21, 2010.

Changes:

- Clarifies that school leadership teams in schools subject to the jurisdiction of the Chancellor have the ability to submit written comments regarding whether a school's school-based budget is aligned with its comprehensive educational plan (§§ II.A and II.B).
- Conforms the language of the regulation to more closely mirror that of Chancellor's Regulation A-655 and the relevant statute (§§ II.A and II.B).

ABSTRACT

This regulation amends regulation B-801 dated April 21, 2010. It sets forth rules and regulations governing the allocation of revenue among schools and districts, and the processes by which school-based budgets are developed, approved, adopted, and monitored in accordance with State Education Law section 2590-r. The regulation establishes a process of local autonomy for budget-making by establishing common guidelines and expectations in support of a system focused on improving student outcomes.

I. ALLOCATION PROCEDURES**A. Allocation Formulas**

1. Annually, the Chancellor shall develop objective formulas for use in allocating projected revenues among community districts and their schools.
2. The allocation formulas shall reflect, to the maximum extent possible, the relative educational needs of the districts and their schools as determined by the Chancellor. Relative educational needs shall be determined by objective empirical measures and data, such as enrollment, income levels, English language learner status and special needs.
3. Once the proposed allocation formulas have been completed, the Chancellor or his/her designee shall send the proposed allocation formulas to the community education councils ("CECs") and community superintendents for review and comment. The Chancellor shall also inform the CECs and community superintendents whether and how the proposed allocation formulas differ from the allocation formulas in effect for the current year. After reviewing the comments and recommendations, if any, of the CECs and community superintendents, the Chancellor may make such changes to the allocation formulas as appropriate.
4. The Chancellor or his/her designee shall also submit the proposed allocation formulas to the Panel for Educational Policy ("PEP") for approval, subject to the requirements of section 2590-g of the Education Law.

B. Allocations to Department Programs and Schools

1. Following the release of the Mayor's Executive Budget, the Chancellor or his/her designee shall issue preliminary allocation memoranda to the principal of each city school. These memoranda shall enumerate the federal, state and city funds preliminarily allocated in support of schools and programs, consistent with the Mayor's Executive Budget and the allocation formulas described in Section I.A. above.
2. The Chancellor or his/her designee shall also develop preliminary allocations of revenue to be used to support the PEP and the CECs as well as all Department of Education (the "Department") offices and functions, including administrative and operational expenditures.
3. The Chancellor or his/her designee shall, at least once during the school year, review school allocations to ensure that the funds reflect actual enrollment data, and shall adjust the allocations where necessary and practicable.
4. Any increase or reduction in the total sum of monies approved for use by the Department subsequent to the release of the Mayor's Executive Budget shall be distributed on a pro rata basis according to the allocation formulas, unless otherwise provided for by the city council. Where necessary, the Chancellor or his/her designee shall issue a revised allocation memorandum enumerating the revised federal, state and city funds allocated in support of the affected school or program.

II. SCHOOL BUDGET DEVELOPMENT PROCESS**A. Development of School-Based Budgets**

1. At the time the Chancellor or his/her designee issues the preliminary allocation memoranda, he/she shall also issue to all principals memoranda that set forth the guidelines for scheduling the allocated funds. These memoranda shall also include the Chancellor's goals and objectives and a financial outlook for the next fiscal year.
2. Each DOE school shall develop a proposed school-based budget in accordance with these memoranda and the school's Comprehensive Education Plan ("CEP").
3. Each school's principal shall be responsible for developing the proposed school-based budget for his/her school. Such proposed school-based budgets must be consistent with the funding levels set forth in the preliminary allocation memorandum, each school's CEP, any other guidelines promulgated by the Chancellor, and federal and state funding guidelines.
4. The principal shall consult with his/her school's School Leadership Team ("SLT") when creating the proposed school-based budget. The principal shall also solicit the input of the school community with respect to the proposed school-based budget.
5. When reasonably requested, the Chancellor or his/her designee shall provide training and technical support to SLT members or members of the school community in order to support their participation in the school-based budget development process.
6. Principals of schools under the jurisdiction of a community superintendent shall provide, in a form and manner to be prescribed by the community superintendent, written justification demonstrating that the proposed school-based budget is aligned with the school's CEP.
7. Principals of schools under the jurisdiction of the Chancellor shall provide, in a form and manner to be prescribed by the Chancellor or his/her designee, a written justification demonstrating that the proposed school-based budget is aligned with the school's CEP.
8. For those schools subject to the jurisdiction of a community superintendent, principals shall submit the proposed school-based budget and the written justification to the community superintendent with jurisdiction over the school. For those schools subject to the jurisdiction of the Chancellor, principals shall submit the proposed school-based budget and the written justification to the Chancellor or his/her designee.
9. The members of the SLT other than the principal shall have the opportunity to submit to the community superintendent or, for schools subject to the Chancellor's jurisdiction, the Chancellor or his/her designee, a written response to the principal's written justification if they reach a consensus that they disagree with the principal's written justification that the school-based budget is aligned with the CEP. In accordance with Chancellor's Regulation A-655, the SLT's response must reflect the consensus of all members other than the principal, and be submitted to the community superintendent or, for schools subject to the Chancellor's jurisdiction, to the Chancellor or his/her designee within ten school days.

B. Review, Aggregation, and Adoption of School-Based Budgets

1. The community superintendent for each district shall develop a proposed budget for the administrative and operational expenses of his/her office, the district and, where applicable, the district CEC. Such proposed budget shall be consistent with the preliminary allocation memoranda and any other guidelines promulgated by the Chancellor.

2. For each school in his or her jurisdiction, the community superintendent shall review the proposed school-based budget, the principal's written justification demonstrating that the proposed school-based budget is aligned with the school's CEP, and the SLT's comments on the principal's written justification, if any.
3. For each school under the jurisdiction of the Chancellor, the Chancellor or his/her designee shall review the proposed school-based budget, the principal's written justification demonstrating that the proposed school-based budget is aligned with the school's CEP, and the SLT's response to the principal's written justification, if any.
4. Following his/her review, the community superintendent or Chancellor's designee shall either:
 - a. approve the school-based budget, and, as designee of the Chancellor, certify that the proposed school-based budget is sufficiently aligned with the school's CEP; or
 - b. within ten school days of receiving the SLT's written response to the principal's justification, provide a written response to the SLT and principal which shall include a determination regarding the dispute as to whether the school-based budget is aligned with the CEP. Following receipt of this decision, the SLT and principal must immediately revise the school-based budget and CEP in accordance with the superintendent's response, and return it to the community superintendent or Chancellor's designee for further modification (if necessary), approval, and certification.
5. The final school-based budget shall be posted on the DOE's or the school's official website and a copy shall be provided to each SLT member upon request.
6. Following the approval and certification of the proposed school-based budgets for all schools under his/her jurisdiction, the community superintendent shall aggregate the school-based budgets with the proposed budget for the administrative and operational expenses of the district, the CEC, and/or his/her office. Community superintendents shall submit these aggregated budgets to the Chancellor.
7. The Chancellor or his/her designee shall review such aggregated budgets, and if necessary, may modify any aggregated budget or any school-based budget after consultation with the relevant community superintendent.
8. The Chancellor or his/her designee shall develop a proposed budget for the administrative and operational expenses of the PEP, the Chancellor, and the Department, and consolidate the same with the aggregated district budgets submitted by the community superintendents, subject to any modifications made by the Chancellor.
9. The Chancellor shall submit this consolidated budget to the PEP for its approval, subject to the requirements of section 2590-g of the Education Law.
10. At any time after the adoption of the consolidated budget:
 - a. a school may amend its budget schedules to implement educational programs consistent with the school's CEP and within program and fund source guidelines, so long as the amendments do not result in the school exceeding its overall approved funding levels;
 - b. a community superintendent may amend a district's budget schedules consistent with the needs of the administrative and operational expenses of the district, the CEC, and/or his/her office, so long as the amendments do not result in the district or CEC exceeding its overall approved funding levels; and

- c. the Chancellor or his/her designee may amend the budget schedules for the administrative and operational expenses of the PEP and the Chancellor, so long as the amendments do not result in the Department exceeding its overall approved funding levels.

C. Update of Capital Plan

1. Following the publishing of the annual draft capital plan amendment (the "Draft Amendment") by the School Construction Authority ("SCA"), the superintendent and principal of each school shall have the opportunity to submit written comments on the Draft Amendment.
2. Comments by school principals, if any, shall be submitted to the superintendent with jurisdiction over that school. Each superintendent shall aggregate his or her comments, if any, with the comments of the principals. The superintendent or his or her designee shall submit the aggregated comments to the appropriate CEC in advance of the CEC's submission of its comments to the SCA, as provided for in section 2590-p of the Education Law.

III. **BUDGET AND EXPENDITURE REPORTING**

A. System-wide Financial Status Reports

1. The Chancellor or his/her designee shall prepare and issue regular reports on the financial condition of the city school district. Budgets and expenditures shall be reported by units of appropriation. The Chancellor or his/her designee shall issue such reports at least four times annually, including a year-end report.
2. Such reports shall include:
 - a. a detailed summary of the adopted and current revenue budget, including all modifications and revenue from all sources;
 - b. a detailed summary of year-to-date expenditures by unit of appropriation; and
 - c. an update, based on the most recent payroll information, on the administrative and operational personnel system-wide, including the number of filled pedagogical and non-pedagogical positions, and the total number of active employees.
3. The year-end report shall also include:
 - a. an analysis of the relative funding levels of the city, state, and federal governments, along with any other sources of funds; and
 - b. a comparison of the level of such funding against the previous year's total expenditures.
4. The reports described in subsections (1) through (3) shall be made available to the public and members of the education community.

B. District and School-Based Reports

1. The Chancellor or his/her designee shall also prepare annual expenditure reports which shall set forth in detail the funds expended by the school system and each and every district and school in the system.
2. Such reports shall provide an analysis of the distribution of expenditures, including:
 - a. by purpose or function, such as amounts for classroom instruction, textbooks, instructional supplies, and administration;
 - b. by location, at the school, district, and system-wide levels;

B-801 SCHOOL-BASED BUDGETING

1/20/11

5 of 5

- c. by student service type; and
 - d. by source, including city funds, state operating aid, and federal or private grants.
3. The reports described in subsections (1) and (2) shall be made available to the public and members of the education community.

IV. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

<u>Telephone:</u> 212-374-6104	<i>Division of Financial Planning & Management</i> N.Y.C. Department of Education 52 Chambers Street New York, NY 10007	<u>Fax:</u> 212-374-5585
-----------------------------------	--	-----------------------------

EXHIBIT H – ANNEXED TO THE VERIFIED ANSWER
Regulation of the Chancellor C-30 Pedagogical Personnel
Summary of Changes, Issued April 10, 2014,
with Additional Documents
(pp. 69-90)

REPRODUCED FOLLOWING

Regulation of the Chancellor

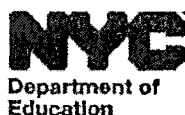
Category:	<u>PEDAGOGICAL PERSONNEL</u>	Issued: 04/10/14	Number: C-30
Subject:	REGULATION GOVERNING THE SELECTION, ASSIGNMENT AND APPOINTMENT OF PRINCIPALS AND ASSISTANT PRINCIPALS	Page:	1 of 1

SUMMARY OF CHANGES

This regulation governs the process of selection and appointment of principals and assistant principals, and supersedes Regulation C-30 dated October 31, 2013.

Changes:

- Principals must have at least seven years of prior full-time pedagogic experience to be eligible for selection and appointment. Qualifying prior pedagogic positions for principals are: classroom teacher, dean, instructional coach, guidance counselor, school social worker, assistant principal, teacher assigned, education administrator, and all pedagogic supervisory titles contained in the Collective Bargaining Agreement between the CSA and the DOE. (p. 2, Section VII)
- Effective for the 2014-2015 school year, assistant principals must have at least five years of prior full-time pedagogic experience to be eligible for selection and appointment. Qualifying prior pedagogic positions for assistant principals are: classroom teacher, dean, instructional coach, guidance counselor, school social worker, teacher assigned, education administrator, and all pedagogic supervisory titles contained in the Collective Bargaining Agreement between the CSA and the DOE. (p. 2, Section VII)
- Applicants with fewer than seven years of prior pedagogic experience are eligible to be evaluated for admission to the Principal Candidate Pool, but are not eligible to apply for principal positions unless they have at least seven years of prior pedagogic experience.
- Interim-acting principals must have at least seven years of prior full-time pedagogic experience to be eligible for assignment. (p. 10, Section XII)
- Effective for the 2014-2015 school year, interim-acting assistant principals must have at least five years of prior full-time pedagogic experience to be eligible for assignment. (p. 10, Section XII)
- The Office of Leadership will promulgate guidance regarding the prior pedagogic experience requirements for principals and assistant principals. (p. 2, Section VII)
- Requests for waivers from the Chancellor regarding the new pedagogic experience requirements shall be directed to the Senior Deputy Chancellor or his/her designee, 52 Chambers St., Room 320, New York, NY 10007. (p. 11, Section XIII)
- Assistant principal and principal appointments in community school districts are subject to rejection for cause by the Senior Deputy Chancellor or his/her designee on behalf of the Chancellor. (p. 6, Section XI.D)
- Executive principal appointments in community district schools are subject to rejection for cause by the Senior Deputy Chancellor or his/her designee on behalf of the Chancellor. (p. 8, Section XI.G.5)
- Interim-acting principals must be in the Principal Candidate Pool, except in exigent circumstances, when the Senior Deputy Chancellor or his/her designee may authorize assignment of an interim-acting principal prior to completion of an evaluation. (p. 10, Section XII)
- Attachment No. 1 has been revised for clarity. (see Attachment No. 1)

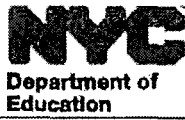


Regulation of the Chancellor

Category: PEDAGOGICAL PERSONNEL Issued: 4/10/14 Number: **C-30**
 Subject: REGULATION GOVERNING THE SELECTION, ASSIGNMENT, AND APPOINTMENT OF PRINCIPALS AND ASSISTANT PRINCIPALS Page: 1 of 2

TABLE OF CONTENTS

Section	Topic	Page(s)
I.	INTRODUCTION	1
II.	DEFINITION OF VACANCY	1
III.	LICENSURE/QUALIFYING ELIGIBLE LISTS	1
IV.	NOTICE OF VACANCY	1
V.	FILING PROCEDURES	1
VI.	APPLICATIONS	1
VII.	SELECTION CRITERIA FOR PRINCIPALS AND ASSISTANT PRINCIPALS	1-2
VIII.	PRINCIPAL CANDIDATE POOL	2
IX.	RECRUITMENT	3
X.	TRANSFERS	3
XI.	SELECTION PROCESS	3-10
	A. Delegations of Authority	3-4
	B. General Procedures	4-5
	C. Level I Committee for Community School District Positions	5-6
	D. Level II and Appointment Process for Community School District Positions	6
	E. Level I Committee for High School, District 75, and District 79 Positions	6
	F. Level II and Appointment Process for High School, District 75, and District 79 Positions	7
	G. Executive Principal Selection Process	7-8
	H. Confidentiality of C-30 Process/Required Certification Forms	8
	I. Staff Involvement	9
	J. Parent Involvement	9-10
	K. Student Involvement (High Schools Only)	10
XII.	INTERIM-ACTING ASSIGNMENTS	10
XIII.	GENERAL PROCEDURES FOR IMPLEMENTATION	10-11
XIV.	TIME LIMIT FOR COMPLETION OF SELECTION PROCESS	11
XV.	APPOINTMENT AND ASSIGNMENT	11



Regulation of the Chancellor

Category: **PEDAGOGICAL PERSONNEL** Issued: 4/10/14 Number: **C-30**
 Subject: REGULATION GOVERNING THE SELECTION, ASSIGNMENT, AND APPOINTMENT OF PRINCIPALS AND ASSISTANT PRINCIPALS Page: 2 of 2

Section	Topic	Page(s)
XVI.	COMPLAINT PROCEDURES	11-12
XVII.	PENALTIES FOR INAPPROPRIATE ACTION/MISCONDUCT	12
XVIII.	INQUIRIES	12

ATTACHMENTS

1. Level I Committee Form
2. Proper Interviewing Techniques
3. Agreement of Confidentiality/Certification Form
4. Agreement of Confidentiality – School Leadership Team Consultation

ABSTRACT

This regulation governs the process of selection, assignment, and appointment of principals and assistant principals. It supersedes Chancellor's Regulation C-30 dated October 31, 2013.

I. INTRODUCTION

This regulation sets forth procedures to be followed in the selection, assignment, and appointment of principals and assistant principals. It is intended to ensure that the supervisory selection process is equitable and based on principles of merit and fitness. Collective bargaining agreements also may contain provisions pertinent to the supervisory selection process. This regulation does not pertain to the filling of vacancies pursuant to lawful excessing and reversion procedures which are governed by provisions of state law and union contract, or to transfers by community superintendents or the Chancellor pursuant to state law or collective bargaining agreement.

II. DEFINITION OF VACANCY

For purposes of this regulation, a vacancy is defined as a position that is newly created or that is unfilled because of the transfer, resignation, retirement, terminal leave, promotion, termination, or death of the incumbent.

III. LICENSURE/QUALIFYING ELIGIBLE LISTS

Only those applicants who are on qualifying supervisory eligible lists based on possession of a Certificate of Eligibility for Supervisory Placement issued by the Division of Human Resources and Talent may apply for supervisory positions.

IV. NOTICE OF VACANCY

- A. All vacancies shall be posted on the Department of Education's ("DOE's") website. These postings shall constitute the required notice of vacancy. The Department of Education's Division of Human Resources and Talent may conduct additional outreach and place advertisements in newspapers and other media. Advertisements must include the minimum eligibility requirements for the position.
- B. To enable potential candidates to learn of vacancies and have reasonable time to submit applications, vacancies will be posted a minimum of fifteen (15) calendar days.

V. FILING PROCEDURES

Candidates must apply for vacancies using the DOE website. An e-mail address will be required to apply.

VI. APPLICATIONS

The Division of Human Resources and Talent will maintain a list of all applicants for posted positions.

VII. SELECTION CRITERIA FOR PRINCIPALS AND ASSISTANT PRINCIPALS

In addition to meeting minimum eligibility requirements established by law and in Chancellor's regulations, applicants for positions of principal and assistant principal must demonstrate their capacity to lead a school in which all students are on track to graduate from high school ready for college and careers, as measured by current DOE accountability structures. Furthermore, applicants for the position of principal and assistant principal must meet the following educational, managerial, administrative, and pedagogic experience qualifications:

- A. Instructional Leadership
 - 1. Supporting implementation of rigorous, engaging and coherent curricula.

2. Ensuring research-based, effective instruction that yields high quality student work.
 3. Ensuring that assessment practices are aligned to curricula and inform instruction.
- B. School Culture
1. Establishing and maintaining structures for positive learning environment, inclusive culture, and student success.
 2. Establishing and supporting a culture of learning that communicates high expectations for all learners.
- C. Structures for School Improvement
1. Aligning resources to support school goals and meet student needs.
 2. Fostering support for a school-wide theory of action and goals across the school community.
 3. Supporting and evaluating teachers through a research-based, common teaching framework.
 4. Engaging teacher teams in collaborative practices using the inquiry approach to improve classroom practice.
 5. Regularly evaluating school level decisions with a focus on rigorous and engaging curriculum standards.
- D. Prior Pedagogic Experience
1. Principals must have at least seven years of prior full-time experience in a pedagogic position¹ to be eligible for selection and appointment.
 2. Assistant principals must have at least five years of prior full-time experience in a pedagogic position² to be eligible for selection and appointment.³
 3. The Office of Leadership will promulgate guidance regarding the prior pedagogic experience requirements for principals and assistant principals

Candidates must meet educational requirements established by the State Education Department. In addition, candidates' record of performance in comparable positions will be evaluated via methods such as review of resume, review of past performance evaluations, and reference checks.

VIII. PRINCIPAL CANDIDATE POOL

All new candidates must meet the minimum eligibility requirements established by the State Education Department and must participate in an evaluation by the Office of Leadership aligned with the selection criteria set forth in Section VII before they may be placed into a pool of candidates eligible to apply for advertised positions (Principal Candidate Pool).

Evaluation results will be maintained by the Office of Leadership and will be available for hiring managers.

Applicants who have fewer than seven years of prior pedagogic experience are eligible to be evaluated for admission to the Principal Pool, but are not eligible to apply for principal positions

¹ Qualifying prior pedagogic positions for principals are: classroom teacher, dean, instructional coach, guidance counselor, school social worker, assistant principal, teacher assigned, education administrator, and all pedagogic supervisory titles contained in the Collective Bargaining Agreement between the CSA and the DOE.

² Qualifying prior pedagogic positions for assistant principals are: classroom teacher, dean, instructional coach, guidance counselor, school social worker, teacher assigned, education administrator, and all pedagogic supervisory titles contained in the Collective Bargaining Agreement between the CSA and the DOE.

³ The prior experience requirement for assistant principals is effective at the beginning of the 2014-2015 school year.

unless they have at least seven years of prior pedagogic experience, as defined in Section VII above.

IX. RECRUITMENT

- A. To expand recruitment of principals, parents and staff may recommend qualified individuals to the Office of Leadership for inclusion in the Principal Candidate Pool. The Office of Leadership will contact the individuals and provide information on the process for applying to the Principal Candidate Pool.
- B. To expand recruitment of assistant principals, parents and staff may recommend qualified individuals to principals for consideration as assistant principal candidates.

X. TRANSFERS

- A. Application for Inter-District Transfer to Advertised Vacancy in License Area

The Level I Committee must interview the five (5) most senior supervisors who apply for transfer to an advertised vacancy in the license area in which they are serving. This transfer provision is governed by Article IX-A of the Agreement between the Board of Education and the Council of Supervisors and Administrators (CSA).

- B. Supervisory-Pedagogical Intra-District Transfer Plan

Article IX-C of the Agreement between the Board of Education and CSA permits the establishment of a voluntary pool of supervisors who may be transferred within their districts. Supervisors must have completed probation to be eligible for inclusion in the pool. The pool lasts for a two (2) year period, and is renewable for additional two (2) year periods. Supervisors may reject a transfer only once during the two (2) year period and may opt out of the pool only at the time they reject a transfer. Transfers pursuant to Article IX-C of the Agreement are not subject to the procedures set forth in this regulation.

- C. Transfers of Principals by Superintendents or the Chancellor

Pursuant to State Education Law, in certain circumstances the Chancellor and the Community Superintendent may transfer principals without a C-30 process.

XI. SELECTION PROCESS

- A. Delegations of Authority

1. The following delegations of authority have been made via memoranda:
 - a. The Chancellor has delegated the authority to reject for cause the appointment of all principals and assistant principals to the Chief Executive Officer of the Division of Human Resources and Talent.
 - b. The Chancellor has delegated the authority to appoint principals of high schools to high school superintendents.
 - c. The Chancellor has delegated the authority to appoint principals of District 75 schools to the District 75 Superintendent.
 - d. The Chancellor has delegated the authority to appoint principals of District 79 programs to the District 79 Superintendent.
 - e. The Chancellor has delegated the authority to appoint assistant principals in high schools, District 75 schools, and District 79 programs to the principals of those schools.
 - f. The Chancellor has delegated the authority to consult with school leadership teams prior to the appointment of principals to the high school superintendents, District 75 superintendent and District 79 superintendent for schools and programs under their respective jurisdictions.

- g. The Chancellor has delegated the authority to consult with school leadership teams prior to the appoint of assistant principals in high schools, District 75 schools and District 79 programs to the principals of those schools and programs.
2. Where community superintendents delegate to principals the authority to appoint assistant principals, principals will be the appointing authority; where they do not, superintendents will be the appointing authority.
- B. General Procedures
1. The Children First Network (CFN) teams will maintain records of membership on the Level I Committee on a Level I Committee Form (see Attachment No. 1).
 2. The appointing authority (superintendent for principal positions/principal for assistant principal positions shall serve as the "Hiring Manager".⁴
 3. The selection process for positions under the jurisdiction of community school districts consists of two steps: Level I and Level II. For principal positions, the appointment is made by the community superintendent as more fully set forth below. For assistant principal positions, the selection and appointment are made by the principal.
 4. The selection process for high school positions consists of two steps: Level I and Level II. For principal positions, the selection and appointment is made by the high school superintendent. For assistant principal positions, the final selection and appointment is made by the principal.
 5. The selection process for District 75 positions consists of two steps: Level I and Level II. For principal positions, the selection and appointment is made by the District 75 superintendent. For assistant principal positions, the final selection and appointment is made by the principal.
 6. The selection process for District 79 positions consists of two steps: Level I and Level II. For principal positions, the selection and appointment is made by the District 79 superintendent. For assistant principal positions, the final selection and appointment is made by the principal.
 7. The Hiring Manager should form the Level I Committee within thirty (30) days of the date the Hiring Manager receives the list of eligible applicants, and sets the date for interviews. The constituent groups on the School Leadership Team shall select their representatives for the Level I Committee. However, if parents from the School Leadership Team are not available to serve on the Level I Committee, the Chairperson of the Level I Committee shall offer the officers of the school's Parent Association the opportunity to serve. If parents from the School Leadership Team and Parent Association officers are not available to serve, then the Hiring Manager will authorize the President of the Parent Association to identify alternative methods to designate parents to serve on the Committee, subject to the approval of the Hiring Manager. The Hiring Manager may waive the minimum number requirement at any time. Upon receipt of applications, the Hiring Manager shall conduct a preliminary review of all applicants from the pool of eligible candidates. The Hiring Manager shall review the applications submitted, and may consult with the appropriate Network Leader or other DOE employees. The Hiring Manager will identify 3-5 candidates for evaluation by the Level I Committee and may conduct interviews. If a minimum of three candidates cannot be identified, the position may be reposted on the DOE website.
 8. The Level I Committee interviews the candidates submitted by the hiring manager.

⁴ Community superintendents who do not delegate to principals the authority to appoint assistant principals shall serve as the hiring manager for assistant principals.

Attachment No. 2, "Proper Interviewing Techniques," must be consulted for guidance on appropriate interviewing techniques. A copy of this regulation along with Attachment No. 2 should be made available to all committee members at least one week prior to the orientation and pre-interview meeting of the committee.

9. After interviews have been completed, the Level I Committee, as a whole, must discuss the merits of each applicant interviewed and each member must complete rating sheets for all candidates. The Chairperson of the Level I Committee must submit the rating sheets to the Hiring Manager along with any other information/recommendations the Level I Committee wishes to submit regarding applicants interviewed. The Level I Committee shall complete its deliberations, including rating candidates, within sixty (60) days of the date the Committee was formed by the Hiring Manager.
10. The Hiring Manager shall consider the application materials, along with ratings, evaluations, and recommendations submitted by the Level I Committee, and also may consider the applicant's results on the Principal Candidate Pool evaluation when determining which candidates to interview at Level II.
11. If the Hiring Manager evaluates the candidates and determines that no selection can be made, a request may be made to readvertise the position, and it will be reposted on the DOE website.

C. Level I Committee for Community School District Positions

1. Principal Positions

- One (1) supervisor from the school or another school within the same community district supported by the same Cluster, but if none is available, a supervisor from a school within the same borough supported by the same Cluster, but if none is available, a supervisor from a school within the same borough;
- Two (2) UFT members;
- One (1) school support staff member represented by D.C. 37, Local 372;
- Four (4) to seven (7) parents
- One (1) designee of Cluster (chairperson);
- One (1) designee of Partnership Support Organization (only for schools that are supported by the Partnership Support Organization);
- One (1) designee of intermediary organization as appropriate (see footnote 4, p. 6).

2. Assistant Principal Positions

- One (1) supervisor from the school or another school within the same community district supported by the same Cluster, but if none is available, a supervisor from a school within the same borough supported by the same Cluster, but if none is available, a supervisor from a school within the same borough;
- Two (2) UFT members;
- One (1) school support staff member represented by D.C. 37, Local 372;
- Four (4) to seven (7) parents;
- One (1) designee of the Cluster;

- One (1) designee of intermediary organization as appropriate⁵;
- Principal (chairperson).⁶

The Level I Committee must interview and evaluate the candidates submitted to it by the Hiring Manager.

D. Level II and Appointment Process for Community School District Positions

- At Level II, the Hiring Manager shall consider the ratings, evaluations, and recommendations submitted by the Level I Committee, and also may consider the applicant's results on the Principal Candidate Pool evaluation. In addition, the hiring manager may interview the candidates and/or utilize other professional evaluation techniques other than written tests.
- Prior to the appointment of a principal, the superintendent must consult with members of the school leadership team. Prior to the appointment of an assistant principal, the principal must consult with members of the school leadership team.⁷ The Division of Human Resources and Talent will establish procedures and timeframes for such consultations.
- Assistant principal and principal appointments are subject to rejection for cause by the Senior Deputy Chancellor or his/her designee on behalf of the Chancellor.

E. Level I Committee for High School, District 75, and District 79 Positions

1. Principal Positions

- One (1) supervisor from the school or another school within the same borough supported by the same Cluster, but if none is available, a supervisor from a school within the same borough (for high schools only);⁵
- Two (2) UFT members;
- One (1) school support staff member represented by D.C. 37, Local 372;
- Four (4) to seven (7) parents;
- One (1) to two (2) students (for high schools only);
- One (1) designee of the Cluster (chairperson);
- One (1) designee of Partnership Support Organization (only for schools that are supported by the Partnership Support Organization);
- One (1) designee of intermediary organization as appropriate (see footnote 4, p. 6).

⁵ An intermediary organization is an organization that serves as the lead partner (such as a university, youth development agency, non-profit or other educational organization) in the development and ongoing support of new schools or small learning communities, as recognized by the Division of Portfolio Development. The intermediary organization may delegate its seat to a local community-based organization (known as CBO partner) that maintains an ongoing working relationship with an individual school. In the event that the intermediary organization is affiliated with or part of the Partnership Support Organization, only one designee will represent both the Partnership Support Organization and the intermediary organization. Questions regarding intermediary organizations should be directed to the Division of Portfolio Planning.

⁶ Community superintendents who do not delegate to principals the authority to appoint assistant principals shall serve as the chairperson.

⁷ Community superintendents who do not delegate to principals the authority to appoint assistant principals must consult with the school leadership team prior to the appointment of an assistant principal.

2. Assistant Principal Positions

- One (1) supervisor from the school or another school within the same borough supported by the same Cluster, but if none is available, a supervisor from a school within the same borough (for high schools only);⁸
- Two (2) UFT members;
- One (1) school support staff member represented by D.C. 37, Local 372;
- Four (4) to seven (7) parents;
- One (1) to two (2) students (for high schools only);
- One (1) designee of the Cluster;
- One (1) designee of intermediary organization as appropriate (see footnote 2, p. 6);
- Principal (chairperson).

The Level I Committee must interview and rate the candidates submitted to it by Hiring Manager.

F. Level II and Appointment Process for High School, District 75, and District 79 Positions

At Level II, the Hiring Manager shall consider the ratings, evaluations, and recommendations submitted by the Level I Committee, and also may consider the applicant's results on the Principal Candidate Pool evaluation. In addition, the hiring manager may interview candidates and/or utilize other professional evaluation techniques other than written tests prior to making an appointment.

Prior to the appointment of a principal, the high school, District 75, or District 79 superintendent, as appropriate, must consult with the members of the school leadership team. Prior to the appointment of an assistant principal, the high school, District 75, or District 79 principal, as appropriate, must consult with the members of the school leadership team. The Division of Human Resources and Talent will establish procedures and timeframes for such consultations.

G. Executive Principal Selection Process

1. Eligibility Criteria

In addition to the criteria set forth in section VII of this Regulation, candidates for Executive Principal also must meet the following selection criteria:

- a. Has a minimum of three years' experience as principal of an established school or four years' experience as a founding principal of a new school; and
- b. Demonstrates a sustained record of significant, broad-based increases in student achievement, as shown by progress report metrics (for current NYC principals) as well as other quantitative indicia of student achievement growth (for all applicants).

2. Application Process

An Executive Principal posting will be on the DOE's website throughout the year. Applicants for Executive Principal should submit their resume via the DOE's website. Applications will be reviewed and evaluated by the Division of Human Resources and Talent and the Division of Academics, Performance and Support for evidence that they meet eligibility criteria. Only applicants determined to be qualified by the Division of Human Resources and Talent will be eligible for Executive Principal positions.

⁸ Supervisors for District 75 and District 79 vacancies may come from any school within the District.

3. Level I for Executive Principal

- a. The hiring manager will identify a minimum of two (2) qualified candidate(s) to participate in Level I interviews, and may conduct interviews. If there is only one applicant for the position who has been reviewed and deemed qualified by the Division of Human Resources and Talent, the hiring manager may proceed with that candidate.
- b. The composition of the Level I Committee for Executive Principal position is:
 - One (1) supervisor from the school or another school within the same community district supported by the same Cluster (for community district positions) or same borough (for high school positions);
 - Members of the School Leadership Team, except the principal;
 - One (1) designee of Cluster (chairperson);
 - One (1) designee of Partnership Support Organizations (only for schools that are supported by a Partnership Support Organization);
 - One (1) designee of intermediary organization, as appropriate (see footnote 2, page 5)

4. Level II for Executive Principal

The hiring manager should consider the ratings, evaluations, and recommendations submitted by the Level I Committee and may interview the candidates and/or utilize other professional evaluation techniques other than written tests.

5. Appointment process for Executive Principal

- a. Prior to the appointment of an Executive Principal, the superintendent must consult with members of the School Leadership Team.
- b. Executive principal appointments in community district schools are subject to rejection for cause by the Senior Deputy Chancellor or his/her designee on behalf of the Chancellor.

H. Confidentiality of C-30 Process/Required Certification Forms

All matters concerning applicants, interviewing, selection of candidates, and the deliberations and recommendations of the Level I Committee are of a highly confidential nature. Information concerning applicants that was learned outside of the selection process shall not be revealed during the selection process. Information concerning applicants shall not be revealed except as may be required by law or regulation. All Level I Committee members must sign the Agreement of Confidentiality/Certification Form (see Attachment No. 3).

No one may serve on a Level I Committee if s/he is a close relative or member of the household of any applicant interviewed for the position. In addition, by executing the Agreement of Confidentiality/Certification Form, each committee member affirms that s/he has reviewed the list of candidates selected for interview, that there is no impediment to his/her serving on the committee in a fair and unbiased manner, and that to the best of his/her knowledge, s/he is not the subject of an investigation by the Office of Special Investigations, Office of Personnel Investigation, the Special Commissioner of Investigation, the Office of Equal Opportunity, or any law enforcement or other agency.

Members of the School Leadership Team also must sign an Agreement of Confidentiality Form (see Attachment No. 4).

I. Staff Involvement

1. General

- a. Staff members may not serve on Level I Committees or participate in the selection of faculty who will serve on the Level I Committee for specific positions for which they are applicants.
- b. UFT, CSA, and DC 37 staff members on the School Leadership Team who are full-time employees of the school and have received annual satisfactory ratings for the prior three years are eligible to serve on Level I Committees. Staff who are the subject of an investigation by the Office of Special Investigations, the Office of Personnel Investigation, the Special Commissioner of Investigation, the Office of Equal Opportunity, or any law enforcement or other agency, or who are suspended or the subject of disciplinary proceedings, are ineligible to serve.

2. UFT Representation

- a. The two (2) UFT representatives must be from the school's School Leadership Team. The UFT Chapter Chair is not a required member of the Level I Committee. However, if such representatives are not available, the UFT may designate other UFT representatives from the school at which the vacancy exists to serve on the Level I Committee.
- b. Substitutes may not serve on Level I Committees;
- c. If no designee is appointed after fifteen (15) calendar days of the request for participation, the committee may move forward with the Level I interview process without UFT representation.

3. School Support Staff Representation

- a. The DC 37, Local 372 representative must be from the school's School Leadership Team.⁹ However, if there is no representative on the School Leadership Team, the DC 37 District Chair shall designate another representative from the school at which the vacancy exists.
- b. If no designee is appointed after fifteen (15) calendar days of the request for participation, the committee may move forward with the Level I interview process without DC 37 representation.

4. Supervisory Representation

- a. The CSA shall designate supervisors to serve on Level I Committees.
- b. Only properly selected supervisors who are appointed in their positions are eligible to serve on Level I Committees. Interim-acting supervisors are ineligible to serve on Level I Committees.
- c. If no designee is appointed after fifteen (15) calendar days of the request for participation, the committee may move forward with the Level I interview process without CSA representation.

J. Parent Involvement

1. All parent representatives must be parents, guardians, or persons in parental relation to children currently attending a public school where the vacancy occurs and must be members of the School Leadership Team. However, if parents from the School Leadership Team are not available to serve on the Level I Committee, the Chairperson of the Level I Committee shall offer the officers of the school's Parent

⁹ Parent Coordinators are not eligible to serve on the School Leadership Team in the school at which they are employed.

Association the opportunity to serve. If parents from the School Leadership Team and Parent Association officers are not available to serve, then the appointing superintendent (or principal for assistant principal positions) will authorize the President of the Parent Association to identify alternative methods to designate parents to serve on the Committee, subject to the approval of the Hiring Manager. The Hiring Manager may waive the minimum number requirement at any time.

2. Parents may not serve on a committee if they are the subject of an investigation by the Office of Special Investigations, the Office of Personnel Investigations, the Special Commissioner of Investigation, the Office of Equal Opportunity, the Office for Family Engagement and Advocacy, or any law enforcement or other agency.
3. Parents may not serve on a committee in any school in which they are employed. Parents who are employed in other schools are eligible to serve on screening committees unless the parent's immediate supervisor is a candidate for the position.

K. **Student Involvement (High Schools Only)**

All student representatives must be students currently attending the high school at which the vacancy exists and must be on the School Leadership Team. They must be at all times students in good standing.

XII. INTERIM-ACTING ASSIGNMENTS

Hiring Managers should anticipate, post, and complete the selection process by the time a vacancy actually occurs. If this is not possible, an interim-acting supervisor may be assigned temporarily by the Hiring Manager, in accordance with procedures promulgated by the Chief Executive Officer of the Division of Human Resources and Talent. The process used to place a supervisor in an interim-acting assignment is not to be used to substitute the interview and selection process outlined in the regulation.

Interim-acting supervisors must possess the appropriate state certification and meet any experience requirements for the position, including the prior pedagogic experience requirements set forth in Section VII (D) above.¹⁰ In addition, interim-acting principals must be in the Principal Candidate Pool, except in exigent circumstances, when the Senior Deputy Chancellor or his/her designee may authorize assignment of an interim-acting principal prior to completion of an evaluation for the Principal Candidate Pool. Parent associations should be notified concerning the person assigned on an interim-acting basis.

Hiring Managers must notify the Division of Human Resources and Talent of all interim-acting assignments prior to the effective date of the assignment.

XIII. GENERAL PROCEDURES FOR IMPLEMENTATION OF THE C-30 PROCESS

- A. Interviews must not be scheduled during periods when applicants or committee members are unavailable because of religious observance.
- B. Except for Executive Principal interviews, Level I interviews must be conducted after school hours.
- C. Written records must be kept of interviews, attendance at meetings, and ratings.
- D. Interviews may be scheduled during the summer provided that all committee members and those applicants to be interviewed are available.
- E. Résumés must be maintained in a secure location to ensure confidentiality.
- F. During a pre-interview meeting to be held immediately preceding the candidates' interviews, the committee must decide on specific questions to be asked during the interviews. Each

¹⁰ The prior pedagogic experience requirements for interim-acting principals are effective immediately; for interim-acting assistant principals, the requirements are effective at the beginning of the 2014-2015 school year.

candidate must be asked the same questions in the same order. It is suggested that at least 4 or 5 questions that yield evidence of the selection criteria set forth in Section VII be asked. Follow-up questions may be asked, and need not be established in advance, but they must relate to the candidate responses given and not be leading questions which give hints about the appropriate answer to the question. The same approximate amount of time should be allowed for each interview. Committee members should determine acceptable key answers at the time they set the questions.

- G. Reasonable notification must be given to the committee members and to applicants regarding the date, time, and place of meetings.
- H. A standardized rating sheet must be utilized by all Level I Committee members during each Level I process.
- I. No alternate committee members are authorized to serve once the selection process has begun. No substitution of representatives is permitted.
- J. Where a Level I Committee meeting has been scheduled with reasonable notification provided to committee members, the Level I Committee may proceed with its work even if a member(s) of the committee is absent.
- K. References indicated on applications of candidates may be checked only by the Hiring Manager or the Division of Human Resources and Talent.
- L. The Division of Human Resources and Talent shall provide technical assistance and interpretation on the implementation of this regulation. In its discretion, the Division of Human Resources and Talent may assign a non-voting observer to the committee to ensure that the selection process comports with the regulation and is fair and equitable. No other observers are permitted.
- M. The Chancellor reserves the right to waive this regulation or any portion(s) thereof if s/he determines it to be in the best interests of the school system. Requests for waivers from the Chancellor regarding the prior pedagogic experience requirements set forth in Section VII above shall be directed to the Senior Deputy Chancellor's designee at, 52 Chambers St., Room 320, New York, NY 10007. Requests for all other waivers from the Chancellor shall be directed to the Chief Executive Officer of the Division of Human Resources and Talent, 65 Court St., Room 405, Brooklyn, NY 11201.

XIV. TIME LIMIT FOR COMPLETION OF SELECTION PROCESS

Vacancies should be filled within three months of the date of the posting.

XV. APPOINTMENT AND ASSIGNMENT

The Division of Human Resources and Talent must ensure that all candidates' backgrounds and performance levels meet all necessary qualifications and criteria and that the names of candidates recommended for appointment are submitted to the Office of Special Investigations, the Office of the Special Commissioner of Investigation, and the Office of Personnel Investigations for clearance.

XVI. COMPLAINT PROCEDURES

These procedures are not intended to modify or waive any grievance procedures that are part of collective bargaining agreements.

- A. Any complaint concerning the selection process shall be referred to the Chancellor.
- B. Time-Frame for Filing Complaints
 - 1. Any complaint concerning the selection process must be filed within fifteen (15) days of the date of the alleged violation or within fifteen (15) days of the date that the complainant became aware of the violation.

If the complaint is not filed on time, the complainant must show good cause as to why it was not filed in accordance with the established time-frame.

2. Complaints should be filed in writing with supporting evidence/documentation of the alleged violation.
3. Upon receipt of a complaint, the Chancellor or designee will initiate an appropriate investigation into the matter and issue a ruling in writing within twenty (20) days of the completion of the investigation.

XVII. PENALTIES FOR INAPPROPRIATE ACTION/MISCONDUCT

- A. There will be strict penalties for any retaliation against committee members or their children by DOE personnel on the basis of their participation or rating on C-30 selection committees.
- B. Any perceived attempt to influence committee members involved in supervisory selection committees must be reported immediately to the Office of the Special Commissioner of Investigation for the New York City School District, 80 Maiden Lane – 20th floor, New York, NY 10038.
- C. Any member of a Community or Citywide Education Council who attempts to interfere or become involved in the selection and appointment process of supervisors will be subject to removal from office. This interference must be reported immediately to the Office of the Special Commissioner of Investigation for the New York City School District at the above address.

XVIII. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone:
718-935-2822

Office of Supervisory Support
N.Y.C. Department of Education
65 Court Street – Room 405
Brooklyn, NY 11201

Fax:
718-935-5214



Department of Education

OFFICE OF SUPERVISORY SUPPORT SERVICES
65 Court Street, Room 405
Brooklyn, New York 11201
MAIN (718) 935-2822 FAX (718) 935-3366

Chancellor's Regulation C-30
Attachment No. 1
Page 1 of 1

C-30 LEVEL I COMMITTEE FORM

DISTRICT & SCHOOL: POSITION: VACANCY POSTING DATE:

INTERVIEW DATE: INTERVIEW TIME: HIRING MANAGER:

PART A CSA REPRESENTATIVE:

For AP positions, the hiring manager requests CSA approval via email to C30@CSA-NYC.ORG. For Principal positions, the C-30 Coordinator requests CSA approval.

1.

PART B UFT REPRESENTATIVES:

1. 2.

PART C CFN REPRESENTATIVE:

1.

PART D PTA/PA REPRESENTATIVES (MINIMUM OF FOUR):

1. 2.
3. 4.
5. 6.
7. 8.

PART E DC 37 REPRESENTATIVE (MAY NOT BE A PARENT COORDINATOR):

1.

PART F STUDENT REPRESENTATIVE (HIGH SCHOOL ONLY; MINIMUM OF ONE):

1. 2.

PART G INTERMEDIARY ORGANIZATION REPRESENTATIVE (if applicable):

1.

CERTIFICATION STATEMENT: This is to confirm that the Level I Committee members listed above were selected in accordance with Chancellor's Regulation C-30.

Name of C-30 Coordinator:

Signature of HR Manager: Date:

Please sign the completed form and fax to:

Office of Supervisory Support Services - (718) 935-3366
Attn. C-30 Coordinator

PROPER INTERVIEWING TECHNIQUES**Age**

- **Do not** ask the candidate's age or birth date.
- **Do not** ask the candidate to produce documents that contains his/her age (e.g., birth certificate, passport, driver's license).

Birth Control

- **Do not** ask the candidate about his/her capacity to reproduce, or advocate any form of birth control or family planning.
- **Do not** ask the candidate whether s/he is planning to have children soon.

Citizenship

- **Do not** ask the candidate of what country s/he is a citizen.
- **Do not** ask the candidate when s/he acquired citizenship in this country.
- **Do not** ask the candidate to produce naturalization papers.
- **You may** ask whether the candidate is a United States citizen or whether s/he has the legal right to remain in the United States.

Classes of Individuals

- **Do not** ask about actual or perceived age, race, religion, creed, color, national origin, alienage, citizenship status, disability, sex, sexual orientation, or marital status.
- **Do not** ask about the candidate's relationship with an individual in any of the above classes.

Criminal Record

- **Do not** ask whether the candidate has been arrested.
- While it is legally permissible to ask whether a candidate has been convicted of a crime or about an arrest that is pending, **do not** ask these questions during the interviews, as they are covered in the fingerprint/background check process.

Disability

- **Do not** ask the candidate if s/he is disabled.
- **Do not** ask the candidate if s/he has been treated for certain diseases, either physical or mental.
- **Do not** ask the candidate whether s/he has had a drug or alcohol problem.

Driver's License

- **Do not** ask the candidate to produce a driver's license.

Education

- **You may** ask the candidate about his/her education (including whether s/he graduated) and which schools s/he attended.
- **Do not** ask dates of attendance or date of graduation.

Foreign Language

- **Do not** ask the candidate what his/her native language is or how s/he acquired the ability to read, write, or speak a language other than English.
- **You may** ask the candidate what languages s/he speaks and writes, if it is relevant to the position.



Marital Status

- **Do not** ask the candidate whether s/he is married, single, divorced, or separated.
- **Do not** ask a female candidate whether she would prefer to be called Ms., Mrs., or Miss.

Miscellaneous

- **Do not** ask for information regarding the candidate's spouse.

Military Experience

- **Do not** ask the candidate about his/her experience other than in the Armed Forces of the United States or in a State Militia.
- **You may** ask the candidate about his/her military experience in the Armed Forces of the United States or in a State Militia.
- **You may** ask whether the candidate received a dishonorable discharge, but you must indicate that a dishonorable discharge is not an absolute bar to employment.

Name

- **Do not** ask the maiden name of a married woman or of a woman who may be married.
- **Do not** ask the original name of someone whose name has been changed by court order or otherwise.
- **You may** ask whether additional information regarding a candidate's name is required to enable a check of the candidate's work record.
- **You may** ask whether the candidate has worked for the New York City Department of Education under a different name.

National Origin

- **Do not** ask about the candidate's ancestry, lineage, national origin, descent, parentage, or nationality.
- **Do not** ask the candidate about his/her birthplace, or the birthplace of his/her relatives.

Notice in Case of Emergency

- **Do not** ask the candidate for a contact in case of an emergency.

Organizations

- **Do not** ask the candidate to list all clubs and organizations of which s/he is a member.
- **You may** ask whether the candidate is a member of any organization that is relevant to the position.

Photograph

- **Do not** ask the candidate to submit a photograph in order to be considered for the position.

Race/Color

- **Do not** ask any questions about the candidate's race or color.

Relatives

- **Do not** ask the candidate for names, addresses, or ages of relatives not employed by the New York City Department of Education.
- **You may** ask the candidate for names of relatives who are employed by the New York City Department of Education.



Religion

- **Do not** inquire into the candidate's religious denomination or affiliations, parish, church, synagogue, or religious holidays observed.
- **Do not** ask the candidate to forego any religious practice (including any aspect of the candidate's appearance) as a condition for employment with the New York City Department of Education.

Sex

- **Do not** ask the candidate's sex.

Work Experience

- **You may** ask the candidate about his/her work experience.


HUMAN RESOURCES
AGREEMENT OF CONFIDENTIALITY/CERTIFICATION FORM

Position Title	School	District
----------------	--------	----------

Agreement of Confidentiality: I understand that all matters regarding the selection procedure are of a highly confidential nature. By agreeing to serve as a committee member, I accept full responsibility for maintaining complete confidentiality and will not reveal any information concerning applicants to any person either during or after the selection process. Any breach of this agreement will disqualify me from membership on this committee and may disqualify me from participating on future committees.

Certification Statement: In accordance with C-30, no one may serve on a Level I Committee if s/he is a close relative or member of the household of an applicant.

Are you a close relative* or member of the household of any applicant referred for evaluation to the Level I Committee for this position? Yes ___ No ___

Note: If you answered YES, you will be disqualified from serving on this selection committee.

ATTESTATION:

1. I have reviewed the list of applicants referred for evaluation to the Level I Committee.
2. I understand that should any circumstances change regarding my relation to a candidate, I will immediately notify the Chairperson of the Level I Committee and withdraw from the selection process.
3. To the best of my knowledge, there is no impediment to my serving on the Level I Committee in a fair and unbiased manner.
4. I affirm that to the best of my knowledge, I am not the subject of an investigation by the Office of Special Investigations, Office of the Special Commissioner of Investigation for the City of New York City School District, or any law enforcement or other agency.
5. I affirm that I have been rated satisfactorily for the prior three years and am not the subject of any disciplinary proceeding. (For employees only)
6. I hereby certify that my statements contained herein are to the best of my knowledge and belief, true and correct.

WARNING: A person knowingly making false statements will be disqualified from serving on this Level I Committee and may be disqualified from serving on future committees.

Signature of Committee Member	Date
-------------------------------	------

(Check Affiliation) CSA ___ UFT ___ Parent ___ DC 37 ___ HS Student ___

*Close relative shall mean a parent, spouse, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, or the spouse or child of any of them, or a person bearing the same relationship to the employee's spouse.



**NEW YORK CITY DEPARTMENT OF EDUCATION
 65 COURT STREET
 BROOKLYN, NEW YORK 11201**

**Agreement of Confidentiality
School Leadership Team Consultation.**

School Name	Location Code (e.g., K000)	District
--------------------	--------------------------------------	-----------------

I understand that all matters regarding the C-30 selection procedure are of a highly confidential nature. As a member of the School Leadership Team (SLT), I accept full responsibility for maintaining complete confidentiality and will not reveal any information concerning applicants to any person either during or after the selection process. Any breach of this agreement may disqualify me from participating in future C-30 consultations.

I hereby certify that my statements contained herein are to the best of my knowledge and belief, true and correct.

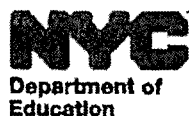
Name of SLT Member	Signature	Date
---------------------------	------------------	-------------

Check Affiliation:

- Principal
- Assistant Principal
- UFT Chapter Leader
- PTA President
- Parent
- Teacher
- Other: _____

EXHIBIT I – ANNEXED TO THE VERIFIED ANSWER
Regulation of the Chancellor A-414 Safety Plans
Summary of Changes, Issued March 24, 2014,
with Additional Document
(pp. 91-94)

REPRODUCED FOLLOWING



Regulation of the Chancellor

Category: **STUDENTS**

Issued: 3/24/10

Number: **A-414**

Subject: SAFETY PLANS

Page: 1 of 1

SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-414 dated September 5, 2000.

Changes:

- The members of the school safety committee have been expanded to include community members and local ambulance and other emergency response agencies (p. 1, Section I.C).
- The role and responsibilities of the Safety Committee are set forth in more detail (p. 1, Sections I.A, B & D).
- The School Safety Committee must hold at least one annual meeting which is open to all parents in that school (p.1, Section I.F).
- The principal/designee must submit documentation of the safety committee's monthly meeting on a monthly basis (p.1, Section I.F).
- In campus settings principals must ensure that the safety plan contain specific information for each school on campus and campus information that pertains to the entire school building (p.1, Section II.C).
- A hard copy of the plan must be kept in a secure location by the Principal(s) of the school/campus (p.2, Section II.H).
- The emergency response information of each School Safety Plan must be confidential and may not be disclosed (p.2, Section II.I).

ABSTRACT

This regulation supersedes and replaces Chancellor's Regulation A-414 dated September 5, 2000. Maintaining a safe and secure school environment is the shared responsibility of the entire school community, including school safety, pedagogical, non-pedagogical and custodial personnel, parents, and students. As part of a continuing effort to provide the safest possible environment, each school must have a Safety Committee which meets on a monthly basis and must develop a safety plan on an annual basis.

I. SCHOOL SAFETY COMMITTEE

- A. All members of the school community, including administrators, staff, students, parents, the NYPD, community leaders and community agencies must engage in meaningful ongoing dialogue and collaboration to ensure safe schools. The creation of safety committees at the school/campus level provides a basis for such dialogue and for drawing upon school and community resources to enhance safety.
- B. Every school/campus must have a School Safety Committee. It is the responsibility of the Principal(s) to ensure that such a committee is established and meets on a monthly basis. The committee plays an essential role in the establishment of safety procedures, the communication of expectations and responsibilities of students and staff, and the design of prevention and intervention strategies and programs specific to the needs of the school.
- C. The committee shall, at a minimum, be comprised of the following individuals: Principal(s); designee of all other programs operating within the building; UFT Chapter Leader; Custodial Engineer/designee; In-house School Safety Agent Level III/designee; local law enforcement officials; Parent Association President/designee; Dietician/designee of food services for the site; community members; local ambulance or other emergency response agencies; representative of the student body (when appropriate); and any other persons deemed appropriate by the Principal(s).
- D. The committee is responsible for addressing safety matters on an ongoing basis and making appropriate recommendations to the Principal when it identifies the need for additional security measures, intervention, training, etc.
- E. The Principal/designee must submit documentation of the Safety Committee's monthly meetings and agendas via the online School Safety Plan portal on a monthly basis.
- F. Each Principal must ensure that its School Safety Committee holds at least one annual meeting which is open to all parents in that school. The meeting shall be conducted for the purpose of allowing parents to raise and discuss safety concerns regarding the school, including, but not limited to, matters relating to school safety agents.

II. SCHOOL SAFETY PLAN

- A. The committee is responsible for developing a comprehensive safety plan which defines the normal operations of the site and what procedures are in place in the event of an emergency. The plan must be consistent with the prescribed safety plan shell, which is made available online via the web-based School Safety Plan portal on an annual basis.
- B. Safety plans must be updated annually by the School Safety Committee in order to meet changing security needs, changes in organization and building conditions and other factors. In addition, the committee should recommend changes in the safety plan at any other time when it is necessary to address security concerns.
- C. In campus settings, Principals on the campus must ensure that the safety plan contain both school specific information for each school on campus and campus information that pertains to the entire building.

- D. Principals must submit completed safety plans online for approval by the Safety Administrator from the Central Office of School and Youth Development by the end of the third week of September of each school year.
- E. The Safety Administrator shall review each plan to ensure that it is satisfactory and consistent with the safety plan shell. The Safety Administrator will return unsatisfactory plans to the Principal for appropriate revisions.
- F. The Safety Administrator shall submit each school's approved plan to the Commanding Officer, School Safety Division by the end of October of each school year. Safety plans deemed unsatisfactory by the Commanding Officer, School Safety Division will be returned to the Safety Administrator for appropriate follow up. The Safety Administrator shall incorporate the necessary revisions, and re-submit for certification to the Commanding Officer by November 15th of each school year.
- G. The Office of School and Youth Development is available to provide ongoing technical assistance to the School Safety Committee in developing the safety plan and in addressing ongoing safety related matters.
- H. A hard copy of the approved plan (printed from the School Safety Plan web-based portal) should be maintained by each Principal in a secure location at each school.
- I. The emergency response information of each School Safety Plan must be confidential and may not be posted online or disclosed in any fashion.

III. VIOLATION OF SAFETY PLAN

- A. A complaint by a teacher or UFT Chapter Leader, that there has been a violation of the safety plan should be made to the Principal as promptly as possible.
- B. The Principal will attempt to resolve the complaint within 24 hours after receiving the complaint.
- C. If the teacher or UFT Chapter Leader is not satisfied, an appeal may be made to the Office of School and Youth Development through the UFT Division of Safety, for a mediation session within 48 hours.
- D. If the teacher or the UFT Chapter Leader is not satisfied with the results of the mediation, an appeal may be made by an expedited arbitration process, to be developed by the parties.

IV. INQUIRIES

Inquiries pertaining to this regulation should be addressed to:

Telephone: 212-374-4368	<i>Office of School and Youth Development</i> N.Y.C. Department of Education 52 Chambers Street - Room 218 New York, NY 10007	Fax: 212-374-5751
----------------------------	--	----------------------

AFFIDAVIT OF LINDA HILL, SWORN TO AUGUST 15, 2014, READ IN SUPPORT OF
VERIFIED ANSWER
(pp. 95-100)

REPRODUCED FOLLOWING

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

----- x

In the Matter of the Application

MICHAEL P. THOMAS,

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law
and Rules

-against-

**AFFIDAVIT OF LINDA
HILL IN SUPPORT OF
RESPONDENTS'
VERIFIED ANSWER**

Index No. 100538/2014
Hon. Peter H. Moulton

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 RICHMOND)

LINDA HILL, being duly sworn deposes and says:

1. I am the Principal of Berta Dreyfus Intermediate School 49 ("I.S. 49"), a New York City Department of Education ("DOE") intermediate school, which provides instruction for students in grades six through eight, and is located at 101 Warren Street, Staten Island, New York. I have been the principal of this school for almost ten years, since March 2005. As principal, I am the instructional leader of the school and am responsible for overseeing the school's operations, including creating the school-based budget and serving on the School Leadership Team as a mandatory member to discuss school policies and goals that promote student achievement.

2. I submit this affidavit in support of the Respondent DOE's Verified Answer in response to the Verified Petition submitted by Michael Thomas ("Petitioner"). I base the statements made in this affidavit on personal knowledge, discussions with DOE employees and School Safety Agents, and my review of DOE records.

3. I have been informed by counsel that Petitioner has filed a Verified Petition pursuant to Article 78 of the Civil Practice Law and Rules challenging my decision to refuse to allow him to attend a School Leadership Team meeting that took place at IS 49 on April 1, 2014.

4. As principal, one of my responsibilities is to serve as a mandatory member of the I.S. 49 School Leadership Team. Pursuant to Chancellor's Regulation A-655 (a copy of which is annexed as Exhibit A), the School Leadership Team is composed of the three mandatory members – me (as principal), the Parent Association President, and the United Federation of Teachers Chapter Leader. There are also seven non-mandatory members on the SLT, who represent the following constituencies: teachers and parents. Exh. A, Section III.

5. The SLT, a committee comprised of representative groups within the school community, discusses educational matters in the school and establishes goals for the following school year. The groups represented on the SLT are: administrators, teachers, and parents. The SLT discusses educational policies, consults on a host of issues, such as school safety plans and the selection of administrators, and develops the Comprehensive Educational Plan ("CEP"), which sets forth the school's educational goals and priorities for the following academic year. Working in a collaborative manner, through discussion and consensus, the SLT evaluates school programs and their effect on student achievement. See Exh. A, Sections I and II.A.

6. As principal, I am responsible for the day-to-day operation of the school and for creating the school-based budget, and, along with my administration, for implementing the

goals in the CEP and the budget. The SLT ensures that the budget is aligned with the CEP. After it has been developed by the SLT, the CEP is submitted to the community superintendent, along with my written explanation justifying that the school-based budget is aligned with the CEP, and the superintendent is responsible for approving the budget and for certifying that the budget is aligned with the CEP. If a dispute arises concerning whether the budget is aligned with the CEP, the superintendent makes a determination on this issue, and then provides directives concerning any changes that need to be made. Exh. A, Section II.A.

7. In addition to developing the CEP, the School Leadership Team discusses important and confidential issues affecting the school. For example, the SLT consults on the appointment of a principal or assistant principal candidate to the school. During this process, SLT members are given candidates' confidential personnel records and information. In addition, the SLT discusses confidential information relating to school security, such as the School Safety Plan.

8. In mid-March 2014, I received a letter from Petitioner, who presented himself as a retired mathematics teacher who was not a member of the school community, requesting permission to attend the School Leadership Team meeting scheduled to take place on April 8, 2014. I forwarded this letter to SLT Co-Chair Victoria Trombetta ("Ms. Trombetta") for a response. A copy of Petitioner's letter is annexed hereto as Exhibit "B"

9. Ms. Trombetta responded to Mr. Thomas in an e-mail dated March 18, 2014, informing him that he could attend the meeting. She also informed him that the meeting had been changed from April 8 to April 1, 2014 at 4:00 p.m. A copy of that email is annexed hereto as Exhibit "C".

10. However, after Ms. Trombetta sent the March 18th email to Mr. Thomas, she discussed her response with me, and asked whether individuals who are not members of the school community can attend SLT meetings. I told her that I did not think so, but suggested that she review the SLT By-Laws. I believe that she did, as she then realized that the By-Laws limit attendance at SLT meetings to members of the school community. The By-Laws state (Article III, Section 3):


The regularly scheduled team meetings will be open to members of the school community. The school community shall consist of parents of children currently attending the school, staff and liaisons to the school (i.e., CEC representatives). Members of the school community, who are not team members, may request speaking time at meetings to discuss specific topics. All such requests must be submitted in writing to the Chairperson or liaison, at least one week in advance of the scheduled meeting.

A copy of those by-laws is annexed hereto as Exhibit "D."

11. Ms. Trombetta then sent Petitioner an email dated March 19, 2014, informing him that, in fact, he would not be permitted to attend the School Leadership Team meeting because the SLT By-laws prohibit anyone who is not a member of the school community from attending SLT meetings. A copy of that email is annexed hereto as Exhibit "E."

12. Petitioner responded by email dated March 19, 2014, telling Ms. Trombetta that he "under[stood] completely" and that the "bylaws are consistent with DOE policy." In the email, Petitioner further stated that he wished to "challenge that policy in court," and, in order to have standing to do so, he must "be denied entrance onsite." Petitioner wrote, "I would like to come to I.S. 49 on April 1 and have security at the front entrance write on a copy of your latest email that I was 'denied entry.' Nobody, except the security officer, will ever know I was there!" A copy of Petitioner's email is annexed hereto as Exhibit "F."

13. In advance of the April 1st SLT meeting, I informed the School Safety Agents at the school building entrance that Petitioner might seek admission to the SLT meeting, and that he should be denied admittance since he is not a member of the school community. The day after the SLT meeting, Level III Agent Meyer and School Safety Agent Wall, who were on duty on April 1st, informed me that Petitioner had come to the school at approximately 4 p.m. that day and had asked to be admitted to the SLT meeting, but was denied admission, pursuant to my instructions, because he was not a member of the school community.


LINDA HILL

Sworn to before me this
15 day of August, 2014.


NOTARY PUBLIC

ANNA MARIA SAMSEL
NOTARY PUBLIC STATE OF NEW YORK
NO. 01SA6250209
QUALIFIED IN RICHMOND COUNTY
COMMISSION EXPIRES OCTOBER 24, 2016

EXHIBIT A – ANNEXED TO THE AFFIDAVIT OF LINDA HILL
Regulation of the Chancellor A-655 School and District
Leadership Teams Summary of Changes, Issued March 24, 2010,
with Additional Documents
(pp. 101-127)

REPRODUCED FOLLOWING



Regulation of the Chancellor

Category: **STUDENTS**

Issued: 03/24/10

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 1 of 2

SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-655 dated December 3, 2007.

Changes:

- The SLT is responsible for developing the school's Comprehensive Educational Plan (CEP) and ensuring that it is aligned with the school-based budget. (Page 1, Section II.A.1)
- SLTs must use a consensus-based decision-making process as their primary means of decision-making. (Page 7, Section VIII.)
- The principal is responsible for developing the school-based budget, after consulting with the SLT, and ensuring that it is aligned with the CEP. (Page 1, Section II.A.2.)
- To ensure the alignment of the CEP and the school-based budget, any member of the SLT may request (on behalf of the SLT) the Galaxy Table of Organization Report up to two times per semester and, in response, the principal shall provide this report within 5 school days. In addition, any member may obtain from the DOE website the Galaxy Budget Allocations, which are posted when allocations are issued for the new fiscal year, and the Galaxy Table of Organization Summary Reports, which are posted at the beginning of each academic year. (Page 1, Section II.A.3.)
- The principal determines that the school-based budget is aligned with the CEP and sends a written justification to the superintendent. (Page 1, Section II.A.5.)
- SLT members, other than the principal, may provide a written response to the justification within 10 school days if they reach a consensus that they disagree with the principal's justification that the school-based budget is aligned with the CEP, and that the principal's proposed budget is inconsistent with the goals and policies set forth in the CEP. The superintendent must then make a determination. (Page 2, Section II.A.6.)
- SLT members, other than the principal, may dispute any decision made by the principal where members of the SLT (other than the principal) reach a consensus that the decision is inconsistent with the goals and policies set forth in the school's existing CEP, by submitting a written objection to the community or high school superintendent. The superintendent shall provide a written response to the SLT and the principal within 10 school days of receiving the initial complaint, which response shall include the information reviewed and the basis of the superintendent's decision regarding the dispute. (Page 2, Section II.A.8.)
- If the SLT cannot reach agreement on the CEP, it should seek assistance from the District Leadership Team (DLT), and if that is not successful, then the community or high school superintendent. The community or high school superintendent shall try to facilitate consensus among the SLT. If no agreement can be reached following this assistance, then the superintendent makes the final determination on the CEP. However, the superintendent makes the determination only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed. (Page 1, Section II.A.4; also Page 7, Section VIII.)



Regulation of the Chancellor

Category: **STUDENTS** Issued: 03/24/10 Number: **A-655**
 Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS Page: 2 of 2

- Support is provided to SLTs and DLTs by parent engagement staff or superintendents. (Page 6, Section VI; also Page 7, Section VIII.) The final CEP and the school-based budget shall be posted on the DOE's or the school's official website and a copy shall be provided to each SLT member upon request at the school. (Page 2, Section II.A.9.)
- SLT meetings, which must take place at least once a month during the school year, must take place on school or DOE premises. (Page 7, Section VII.)
- Notice of SLT meetings must be provided in a form consistent with the open meetings law. (Page 7, Section VII.)
- The SLT must be consulted prior to the appointment of a principal or assistant principal candidate to the school. (Page 7, Section X.A.)
- The SLT shall provide to the superintendent an annual assessment of the principal's record of developing an effective shared decision-making relationship with SLT members. (Page 2, Section II.B.2)
- Parent members of the CEC (and in an election year, candidates for the CEC) may serve as parent members of an SLT in the school their child attends. (Page 3, Section III.C.b(i).)
- The SLT may amend its by-laws, if necessary. (Page 4, Section IV.B.)
- The superintendent will consult with the SLT regarding any school restructuring plans. The SLT shall participate in the joint public hearing regarding proposals to close a school or make significant changes in school utilization. (Page 8, Section X.B.)
- The DLT develops the District Comprehensive Educational Plan (DCEP), which includes annual goals and objectives for the district aligned with the Chancellor's goals. (Page 5, Section V.A.)
- The Central Plan for school-based planning and shared decision making incorporates the individual district 100.11 plans adopted by the DLTs as well as the procedures set forth in this Regulation. The Office of School Improvement is responsible for maintaining copies of each district's plan and for compiling them into the Central Plan. (Page 5, Section V.A.)
- A citywide high school subcommittee will be formed to meet on a monthly basis to review relevant data and identify issues impacting student performance at the high school level and will report on a monthly basis to the DLTs. (Page 6, Section V.C.)
- Each SLT must provide a list of its members and a copy of its current by-laws to the DLT annually, by October 31. (Page 8, Section XII.)
- Each DLT must provide a list of all SLT member names from the schools in the district and a list of its own members and by-laws to the Chief Family Engagement Officer annually, by November 15. (Page 8, Section XII.)
- Parents may file grievances regarding the election of parents to serve on the SLT in the school their child attends within 7 school days of the election. (Page 9, Section XIV.A and B.)
- Parents may appeal grievance decisions to the Chancellor (c/o The Office of Legal Services) within 10 days of receipt of the superintendent's decision. (Page 9, Section XIV.C.)

ABSTRACT

This regulation ensures the formation of School Leadership Teams (SLTs) in every New York City Public School and District Leadership Teams (DLTs) in every community school district. It also includes the central plan for school-based planning and shared decision making.

I. INTRODUCTION

There must be an SLT in every New York City Public School. SLTs play a significant role in creating a structure for school-based decision making and shaping the path to a collaborative school culture. SLTs are a vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies. Functioning in a collaborative manner, SLTs assist in the evaluation and assessment of a school's educational programs and their affect on student achievement.

II. SCHOOL LEADERSHIP TEAM RIGHTS AND RESPONSIBILITIES**A. Comprehensive Educational Plan and School-Based Budget**

1. Pursuant to State Education Law section 2590-h, the SLT is responsible for developing an annual school Comprehensive Educational Plan (CEP) that is aligned with the school-based budget for the ensuing school year. The school-based budget provides the fiscal parameters within which the SLT will develop the goals and objectives to meet the needs of students and the school's educational program.
2. The CEP shall be developed concurrently with the development of the school-based budget so that it may inform the decision-making process of the budget and result in the alignment of the CEP and the budget. The principal, who is responsible for developing the school-based budget, shall consult with the SLT during this development process so that the budget will be aligned with the CEP. The principal makes the final determination concerning the school-based budget.
3. To ensure the alignment of the CEP and the school-based budget, any SLT member may request (on behalf of the SLT) the Galaxy Table of Organization Report entitled "Public/SLT View" (with job ID and confidential information redacted) up to two times per semester and, in response, the principal shall provide this report within 5 school days. In addition, any member of the SLT may obtain from the DOE web site the Galaxy Budget Allocations, which are posted when allocations are issued for the new fiscal year, and the Galaxy Table of Organization Summary Reports, which are posted at the beginning of each academic year.
4. The SLT must use consensus based decision-making and must seek assistance if it is unable to reach consensus on the CEP. If it is unable to reach consensus on developing a CEP that aligns with the school-based budget, the SLT shall seek assistance from the District Leadership Team (DLT), and if that is not successful, then it shall seek assistance from the community or high school superintendent. The community or high school superintendent shall try to facilitate consensus among the SLT. If, even after seeking and receiving these forms of assistance, the SLT is still not able to reach consensus on the CEP, then the superintendent shall make the determination on developing the CEP. However, the superintendent makes the determination on the CEP only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed.
5. The principal must submit the proposed school-based budget to the community or high school superintendent for approval, along with a written explanation justifying that the school-based budget is aligned with the CEP. To become final, the budget must be approved by the community or high school superintendent, who must certify that the budget is aligned with the CEP. The superintendent prescribes the form and manner of submission of the written justification. (A suggested form is attached as Attachment No.1.)

6. If the members of the SLT (other than the principal) agree that the school-based budget is aligned with the CEP, the SLT does not need to submit a response to the principal's justification. If, however, the SLT members (other than the principal) reach a consensus that they disagree with the principal's justification that the school-based budget is aligned with the CEP, and that the principal's proposed budget is inconsistent with the goals and policies set forth in the CEP, the SLT may submit a written response to the justification to the community or high school superintendent within 10 school days. (A suggested form is attached as Attachment No. 1.)
 7. If the members of the SLT (other than the principal) submit a response, then the community or high school superintendent shall provide a written response to the SLT within 10 school days. The superintendent's response shall include a determination regarding the dispute as to whether the school-based budget is aligned with the CEP, a description of the information reviewed and the basis for the decision. (A suggested form is attached as Attachment No. 2). Following receipt of this decision, the SLT and principal must immediately revise the school-based budget and CEP in accordance with the directives in the superintendent's response.
 8. SLT members, other than the principal, may dispute any decision made by the principal where members of the SLT (other than the principal) reach a consensus that the decision is inconsistent with the goals and policies set forth in the school's existing CEP, by submitting a written objection to the community or high school superintendent. The superintendent shall provide a written response to the SLT and the principal within 10 school days of receiving the initial complaint, which response shall include a description of the information reviewed and the basis of the superintendent's decision regarding the dispute.
 9. The final CEP and the school-based budget shall be posted on the DOE's or the school's official website and a copy shall be provided to each SLT member upon request at the school.
- B. Other Responsibilities
1. The SLT is not responsible for the hiring or firing of school staff. However, consistent with Chancellor's Regulation C-30, the SLT must be consulted prior to the appointment of a principal or assistant principal candidate to the school.
 2. The SLT shall provide an annual assessment to the community district or high school superintendent of the principal's record of developing an effective shared decision-making relationship with the SLT members during the year. (A sample assessment form is attached as Attachment No. 3).

III. COMPOSITION

A. Size of the Team

All SLTs should have a minimum of ten members and a maximum of 17 members. In determining the size of the team, budget allocations must be considered.

B. Mandatory Members

The only three mandatory members of the SLT are the school's principal, the Parent Association/Parent-Teacher Association (PA/PTA) President¹ and the United Federation of Teachers (UFT) Chapter Leader, or their designees.

C. Non-Mandatory Members

1. In addition to the mandatory members, SLTs must include other parents and staff (pedagogic and/or non-pedagogic) from the school. SLTs must have an equal number of parents and staff.

¹ In the case of co-presidents, the remaining PA/PTA officers shall determine which co-president will serve as the mandatory member of the SLT.

a. Election of Parents and Staff:

To ensure that all members of the school community have the opportunity to be included and to encourage broad participation on the SLT, parents and staff must be elected by their own constituent groups in a fair and unbiased manner determined by each constituent group, and all elections must be advertised widely, with reasonable advance notice given. Elections must be open to all members of the constituent group (e.g., PA/PTA, CSA, UFT, DC 37) and must be held in accordance with the term limits as set forth in the team's bylaws.

A minimum of ten calendar days' notice is required prior to the PA/PTA's election of its SLT parent members. In the case of a PTA, only parent members of the school's association may vote to elect parent representatives for the SLT. PA/PTAs are encouraged to stagger the terms of the non-mandatory parent members of the SLT.

SLT elections must be held after the PA/PTA elections in the spring (see Chancellor's Regulation A-660).

b. Eligibility

i. Parents

Parents² from the school are eligible to be elected by the school's PA/PTA to serve on the SLT.

Parents may not serve on the SLT as a parent member in schools in which they are employed, but they may serve in other schools where they have a child in attendance.

Parents may be elected to serve on more than one SLT as long as they meet the requirements set forth in this regulation.

Parent members of the CEC (and in an election year, candidates for the CEC) may serve as parent members of an SLT in the school their child attends.

ii. Staff

Parent coordinators may not serve as members of the SLT in any capacity in the school where they are employed. However, parent coordinators may be invited to attend meetings as observers or presenters in schools in which they are employed. They also may be asked to serve on SLT subcommittees.

Other school staff may not serve as parent members on the SLT in the school(s) where they are employed. Both the parent coordinator and other school staff members may, however, serve as parent members in other schools their children attend.

District office staff may not serve on any SLT as a parent member in the district in which they are employed.

Staff of the School Support Organizations (SSOs) may not serve as parent members on an SLT in any school that purchases services from the SSO.

2. Students and Community Based Organizations

SLTs also may include students (minimum of two students is required in high schools) and representatives of Community Based Organizations (CBOs). Students and CBO

² A parent is defined as a parent (by birth or step-parent), legally appointed guardian, foster parent or person in parental relation to a child. A person in parental relation refers to a person who has assumed the care of a child because the child's parents or guardians are not available, whether due to, among other things, death, imprisonment, mental illness, abandonment of a child, or living outside of the state.

members of the SLT do not count when determining if a team has an equal number of parents and staff (see Section III.C.1).

D. Chairperson/Co-Chairpersons

1. Once the team is constituted, it must select a Chairperson or Co-Chairpersons from among its membership. The Chairperson or Co-Chairpersons need not be mandatory members. SLTs may select members who are not mandatory members as Chairperson or Co-Chairpersons to maximize participation on the SLT.
2. The Chairperson is responsible for scheduling meetings, ensuring that team members have the information necessary to guide their planning, and focusing the team on educational issues of importance to the school. The Chairperson ensures that voices of all team members are heard.

E. Secretary

Each SLT must select a member of the SLT to serve as secretary. The secretary will be responsible for sending SLT meeting notices and for keeping the minutes of SLT meetings. Such minutes must be maintained at the school, with a copy provided to the PA/PTA. The school principal may designate an office staff member to assist the SLT secretary.

F. Community and Citywide Education Councils

Community Education Council (CEC) members act in a liaison capacity with the SLTs of the schools in their respective community school districts. Members of the Citywide Council on High Schools (CCHS) serve in a similar capacity for the high schools throughout the system, as do the members of the Citywide Council of Special Education (CCSE) with regard to District 75 schools. The liaison function includes attending meetings as observers and/or presenters, and participating on SLT committees and subcommittees when invited by members of the SLT.

IV. ESTABLISHING A SCHOOL LEADERSHIP TEAM

A. In a new school:

In order to establish a SLT, a school must first establish a PA/PTA. Chancellor's Regulation A-660 sets forth the process for doing this. Once the PA/PTA has been established, the school must follow the procedure below.

B. In a school with an existing PA/PTA:

The PA/PTA President or designated Co-President, the Principal and the UFT Chapter Leader or their designees must work together to draft bylaws for the SLT. It is then the responsibility of each of the constituent groups to elect or select³ its member representatives in accordance with the SLT's bylaws.

1. In elementary schools, middle/intermediate schools, District 75, and District 79, the mandatory members of the team may contact DOE parent engagement staff and Presidents' Council, as well as community district superintendents, for technical assistance and guidance through this process (see Section VI below).
2. In high schools, the mandatory members of the team may contact their DOE parent engagement staff and Borough High School Presidents' Council, as well as high school superintendents, for technical assistance and guidance (see Section VI herein).

Once the entire SLT is in place, it must review and adopt the team's bylaws and may amend those by-laws, if necessary.

Schools that have multiple sites will have one SLT, but the SLT may create subcommittees to assess the needs of all the sites and to report their findings to the SLT.

³ Parent and staff members must be elected, other members may be selected.

V. DISTRICT LEADERSHIP TEAMS

A. Rights and Responsibilities

Pursuant to Section 100.11 of the Regulations of the Commissioner of Education, each community superintendent must develop a district plan for the participation by teachers, parents, and administrators for school-based planning and decision making. The superintendent is responsible for developing the district plan in collaboration with "a committee composed of administrators selected by the district's administrative bargaining organization(s), teachers selected by the teachers' collective bargaining organization(s), and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by school-related organizations." In New York City, this committee is the District Leadership Team (the DLT).

A DLT must be formed in each community school district consisting of representatives from the elementary, middle, and high schools that are geographically located within that community school district. DLTs fulfill the requirements of Section 100.11 of the Commissioner's Regulations regarding the district-level plan for the participation of parents and staff in school-based planning and shared decision making.

The DLT will develop the District Comprehensive Educational Plan (DCEP), which includes annual goals and objectives that are aligned with the district's and the Chancellor's goals, and also incorporates the following six categories of the district 100.11 plan:

1. the educational issues that will be subject to shared planning at the building level;
2. the manner and extent of the expected involvement of all parties on the SLT;
3. the means and standards by which all parties shall evaluate improvement in student achievement;
4. the means by which all parties will be held accountable for the decisions which they share in making;
5. the process for dispute resolution in the SLTs; and
6. the manner in which state and federal requirements for the involvement of parents in planning and decision making will be met.

DLTs also will provide support, guidance, technical assistance, and conflict resolution to the SLTs in their districts. The Office of School Improvement will provide guidance and technical assistance to the superintendent and the DLT in the development of District Comprehensive Educational Plans (DCEPs).

In addition, DLTs must conduct a biennial review of the district's 100.11 plan to evaluate the effectiveness of shared decision making in the district. The DLT must complete the Biennial Review Form (Attachment A) and submit it to the Office for Family Engagement and Advocacy by January 15th of each even-numbered calendar year. The outcome of this Biennial Review must be submitted to the New York State Education Department by February 1st of each even-numbered year.

B. Composition

The required members of the DLT are:

- Community superintendent (or designee)
- High school superintendent(s) responsible for high schools that are geographically located within the district (or designee(s))
- CSA representative
- UFT representative
- DC 37 representative
- President of the district's Presidents' Council (or designee)

- President of the borough high school Presidents' Council (or designee)
 - Chairperson of the Title I District Parent Advisory Council (or designee)
- Community based organizations (CBOs), the president of the District CEC (or designee), and a member of the Citywide Council on High Schools whose child attends a high school geographically located within the district also may be included on the DLT.⁴

C. Citywide High School Subcommittee

To ensure that the needs and special issues impacting high schools and their students are fully represented in DLT discussions, a citywide subcommittee of high school representatives will be formed and will meet monthly to review relevant data and identify issues impacting student performance at the high school level. The outcome of the high school subcommittee meetings will be reported by members of the subcommittee (who will serve as liaisons) to the DLTs during the monthly DLT meetings as a standing agenda item. The DLTs will continue to include any high school-level constituency representatives and will discuss the issues raised by the subcommittee liaisons as part of the district's overall K-12 strategic planning and problem solving.

The required members of the citywide high school subcommittee are:

- High School Superintendents (or designees)
- District 79 Superintendent (or designee)
- UFT High School representative
- CSA High School representative
- DC 37 High School representative
- One parent representative from each High School President's Council.

VI. SUPPORT FOR SCHOOL AND DISTRICT LEADERSHIP TEAMS

Every community school district, borough, and District 75 will have a designated member of the Office for Family Engagement and Advocacy (OFEA) staff, who will provide comprehensive services to assist SLTs and DLTs, including professional development and technical support. Further, superintendents may seek the assistance of OFEA in the formation of DLTs.

As appropriate, designated OFEA staff will act as facilitators to assist all team structures in carrying out their roles and responsibilities. They will work closely with their respective district and school teams to facilitate their ability to fulfill their responsibilities as described in this regulation.

The designated OFEA engagement staff will work in coordination with the Community Superintendent to support and assist DLTs. They will provide regular training sessions to the SLTs and DLTs in their districts.

The designated OFEA engagement staff will provide regular training sessions to the SLTs in the high schools.

Key areas for training include, but are not limited to:

- roles and responsibilities
- team operations;
- assessing school-wide needs;
- understanding the school budget; and

⁴ A DLT also is required for District 75. The District 75 DLT shall consist of the Superintendent of District 75, a CSA and UFT representative, and the president of the District 75 Presidents' Council (or designee). CBOs and the president of the Citywide Council on Special Education (or designee) also may be included on the District 75 DLT.

- engaging families and communities in the review and development of a comprehensive educational plan, in conjunction with the Office of School Improvement.

Additionally, DLTs will collect information from PAs/PTAs in order to provide the Office for Family Engagement and Advocacy with a quarterly status report on SLT and DLT activities beginning December 1 of each year. A template for the report will be provided by the Office for Family Engagement and Advocacy.

The Office of School Improvement will provide training to SLTs on the development of Comprehensive Educational Plans (CEPs) and responding to Title I program requirements.

VII. SCHEDULING OF MEETINGS

SLTs should meet at least once a month during the school year. Meetings must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening). Mandatory members or their designees are expected to attend all meetings of the SLT.

Notice of meetings must be provided in a form consistent with the open meetings law.

VIII. DECISION MAKING/PROBLEM SOLVING

SLTs must use a consensus-based decision-making process as their primary means of making decisions. Teams must develop methods for engaging in collaborative problem solving and solution seeking and, when necessary, effective conflict resolution strategies.

When a team has made every effort to resolve an issue and members cannot reach agreement, the team should seek assistance from the DLT and if that is not successful, then it shall seek assistance from the community or high school superintendent. The community or high school superintendent shall try to facilitate consensus among the SLT. If, after seeking and receiving these forms of assistance from the DLT and the superintendent, the SLT is still not able to reach consensus on the CEP, then the superintendent makes the final determination on developing a CEP. However, the superintendent makes the final determination on the CEP only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed.

Where team members have difficulty obtaining information or wish to obtain assistance in resolving issues relating to consultation with the school principal, they may seek assistance from the DLT or superintendent or designated OFEA engagement staff.

IX. REMUNERATION/RECORD KEEPING

A. To be eligible to receive the annual remuneration of \$300, SLT members, including students and CBO representatives, must complete 30 hours of service on the SLT and attend a mandatory training session relating to CEPs and budget issues each year, which training shall be offered by the Department of Education (DOE). Team members who attend training but serve less than 30 hours may request remuneration on a pro-rata basis.

1. Team members are responsible for ensuring that all records documenting the number of hours served are submitted to the Chairperson for processing.
2. Individual members must choose whether to accept or waive the annual remuneration, and donate the funds to be used for other school purposes. Team bylaws may not dictate any specific choice.

B. Attendance and minutes must be recorded at every meeting.

X. SLT RELATIONSHIP WITH OTHER SCHOOL BASED ENTITIES

In its role as the school's planning and review body, the SLT is the central coordinating team in the school, and it should help to facilitate communication among the various school committees.

A. Chancellor's Regulation C-30 Level I Committee

1. All members of the SLT shall be consulted prior to the appointment of any principal or assistant principal candidate to the school.

2. SLT members are eligible to serve on the Level I C-30 Committee, subject to the requirements set forth in Chancellor's Regulation C-30. However, if parents from the SLT are not available to serve on the Level I C-30 Committee, the Chairperson of the Level I Committee shall offer the officers of the school's PAVPTA the opportunity to serve.⁵

B. School Restructuring Plans

The superintendent will consult with the SLT regarding any school restructuring plans for the school. With respect to all proposals to close a school or make a significant change in school utilization, the SLT shall participate in the joint public hearing held at the school. See Chancellor Regulation A-190. For more information about restructuring requirements for schools identified for improvement (SINI and SURR schools) under NCLB/SED mandates, please contact the Office of School Improvement at OSI@schools.nyc.gov. For more information about school phase-outs and closings, please contact the Office of Portfolio Development at portfolio@schools.nyc.gov.

C. Others Schools in the Building

In buildings that house multiple schools, the SLTs are encouraged to meet at least twice a year to discuss issues of mutual concern.

XI. CONSULTATION WITH PARENTS

To meet No Child Left Behind requirements, School and District Leadership Teams will serve as the vehicle for consultation with parent representatives regarding the use of federal reimbursable funding and program planning (e.g., Title I). School and District Leadership Teams should maintain documentation on file to verify that this required consultation has taken place.⁶

XII. BYLAWS

Every SLT and DLT must develop bylaws and operating guidelines to provide clear direction about SLT and DLT responsibilities. All bylaws must be consistent with this regulation. A bylaw template is attached as Attachment No. 4. Bylaws should incorporate key decisions about team membership and operations.

All bylaws **must** address the following areas:

- the roles of team members and Chairperson;
- team composition;
- quorum;
- method of election of parent and staff members;
- method of selection of Chairperson;
- method of selecting CBOs and student members where applicable;
- length of term and term limits;
- process for removal of Chairperson and members;
- method for making decisions (i.e. consensus or majority rule) and procedures to be followed if the team has a need for conflict resolution;
- filling vacancies;
- role of observers during meetings;
- who can speak at meetings;
- how agendas are established;

⁵ See Chancellor's Regulation C-30 for additional information.

⁶ Please refer to the Department of Education Title I Parent Involvement Guidelines memorandum which is disseminated by the Office for Family Engagement and Advocacy.

- that the team must meet at least ten times per school year;
- number of meetings that can be missed, and consequences of missing more than the designated number of meetings;
- whether the terms of non-mandatory parent members should be staggered; and
- that there is a secretary.

SLTs and DLTs may require through their bylaws that they meet and coordinate with other school committees such as the Parent Association/Parent Teacher Association and the Title I Committee to ensure that all school-wide committees are working toward the same goals set forth in the CEP.

SLT and DLT bylaws should be reviewed by the team at least biennially. Each SLT must provide a list of its members and a copy of its current bylaws to the DLT annually, by October 31. The DLT must provide a list of all SLT member names from the schools in the district and a list of its own members and bylaws to the Chief Family Engagement Officer (CFEO) annually, by November 15. If the SLT makes changes in its bylaws or there is a change in membership, notice of the changes must be forwarded to the DLT, which will then forward this information to the CFEO.

XIII. CENTRAL PLAN FOR SCHOOL-BASED PLANNING AND SHARED DECISION MAKING

The Central plan for school-based planning and shared decision making incorporates the individual district plans adopted by DLTs in accordance with Section 100.11 of the Regulations of the Commissioner of Education as well as the procedures set forth in this Regulation. The Office of School Improvement is responsible for maintaining copies of each district's plan and for compiling them into the Central plan. The Citywide Committee that approves the Central plan for school-based planning and shared decision making shall include a senior UFT representative, a senior CSA representative, a senior DC 37 representative, and representatives designated by the Chancellor.

XIV. GRIEVANCES

- A. Parents may file a written complaint regarding the election of parents to serve on the SLT in a school their child attends.
- B. Such complaint must be filed with the appropriate superintendent⁷ within seven (7) school days of the election. A decision will be rendered by the superintendent within seven (7) school days of receipt of the complaint. If a decision cannot be rendered within seven (7) school days because of a continuing investigation or a referral to other authorities, the superintendent must issue a response explaining the reason for the delay within the seven (7) school-day period, and must include a projected date for a final decision. Where interim remedies are appropriate, they should be included in the response.
- C. Parents may appeal the decision of the superintendent to the Chancellor. Such appeal must be filed within ten (10) school days of receipt of the superintendent's decision. Appeals must be sent to the Chancellor c/o The Office of Legal Services, 52 Chambers Street, Room 308, New York, NY 10007. The Chancellor will render a decision within fourteen (14) school days of receipt of the appeal. If a decision cannot be rendered within fourteen (14) school days because of a continuing investigation or a referral to other authorities, the Chancellor must issue a response explaining the reason for the delay within the seven-day period, and must include a projected date for the final decision. Where interim remedies are appropriate, they should be included in the response. The decision of the Chancellor on appeal is final.

⁷ Complaints regarding community district schools are filed with community superintendent; complaints regarding high schools are filed with the high school superintendent; complaints regarding District 75 schools are filed with the District 75 superintendent.

XV. GUIDANCE AND ASSISTANCE

The Office for Family Engagement and Advocacy will provide guidance and respond to inquiries regarding the implementation of this regulation.

The Office of School Improvement will provide guidance and technical assistance regarding the development and review of school and district level Comprehensive Educational Plans, District 100.11 Plans, Title I programmatic requirements and required federal and state school and district improvement processes. (See Section VI.)

The Office for Family Engagement and Advocacy in consultation with other central offices also may issue guidelines to supplement this regulation.

All other general inquiries pertaining to this regulation should be addressed to:

Telephone:
212-374-2323

Office for Family Engagement and Advocacy
N.Y.C. Department of Education
49 Chambers Street – Room 503
New York, NY 10007

Fax:
212-374-0076

SCHOOL-BASED BUDGET AND CEP SUMMARY

The School-Based Budget and CEP Summary describes the major goals of the CEP and demonstrates that the school-based budget is aligned with the CEP. It lists the major goals and programs provided for in the CEP and the budget allocations that support and are aligned with these goals and programs.

I. Overall summary of CEP (educational goals, programs, initiatives to be implemented at the school in the coming year)

This section should provide an outline of the CEP for the coming year in this space; then, in the boxes below, each CEP Goal or Program should be listed separately in each box.

II. Budget Summary

A worksheet should be provided reflecting the overall school-based budget for the coming year (either in this space or attached hereto); then, in the boxes below, the budget allocation (funding source) should be provided for each goal or program in the CEP.

III. Alignment of School-Based Budget with CEP

In this section, the principal must demonstrate using the boxes below whether there is alignment of each CEP goal/program with budget allocations for the coming year.

CEP Goal or Program

Budget Allocation (Funding)

<u>CEP Goal or Program</u>	<u>Budget Allocation (Funding)</u>

<u>CEP Goal or Program</u>	<u>Budget Allocation (Funding)</u>

Submitted by:

(Signature)

(Printed name)

Principal of _____

Date: _____

SUPERINTENDENT'S DETERMINATION

TO: SLT of [insert school name]
FROM: [insert name]
RE: Determination Regarding Dispute as to whether School-Based Budget
 Is Aligned with the CEP
DATE: [insert]

In response to the dispute that has arisen between the SLT and the principal of [insert name of school] concerning whether the school-based budget is aligned with the CEP, I have determined that there is [or is not] alignment on the following aspects of the school based budget. [Either state that there is alignment or, alternatively, list each aspect for which there is not alignment and explain why alignment is lacking.]

In reaching this determination, I have reviewed the following materials:
 [list all materials that have been submitted by the principal, the SLT, as well as materials that have been reviewed independently.]

If there is not alignment, then state: The SLT and/or principal must make the following revisions in order to create alignment between the CEP and the school-based budget: [list items].

If there is alignment, then certify that there is alignment, stating: I certify that, based on the materials I have reviewed, there is alignment between the school's CEP and the school-based budget for the _____ school year.

Dated: _____

By: _____
 Superintendent of District _____

[School Letterhead]

Bylaws of the School Leadership Team of **[Name of School]**

Adopted **[Date]**

Article I – School Leadership Team Mission Statement *[and]* Educational Vision

The mission of the School Leadership Team of **[Name of School]** is ***[Insert collaboratively designed mission statement. Some teams may elect to also include an educational vision statement.]***

Article II – Team Composition

Section 1 Size of Team

The total number of members shall be ***[Insert total number.]*** The team shall maintain an equal number of parent and staff members, ***[Insert number from each constituency]*** from each constituency.

Section 2 Mandatory Members

The only three mandatory members of the SLT are the school's principal, the Parent Association/Parent-Teacher Association (PA/PTA) President¹ and the United Federation of Teachers (UFT) Chapter Leader. Mandatory members of the SLT may designate another member of their constituent group to serve in their stead.

Section 3 Members at Large

The remaining members of the team shall consist of:

- ***[Insert number]*** elected parent members
- ***[Insert number]*** elected UFT member(s)
- ***[Insert number]*** elected DC 37 member(s)
- ***[Insert number - must be at least 2 for high schools]*** students
- ***[Insert number - optional]*** community based organization members(s)

Section 4 Election of Team Members

Parent and staff SLT members must be elected by their own constituent group in a fair and unbiased manner determined by each constituent group. All elections must be advertised widely, with reasonable advance notice given. Elections must be open to all members of the constituent group and must be held in accordance with the term limits set forth in these bylaws.

Parent member elections must be scheduled after PA/PTA elections are held each Spring. Parents must be provided a minimum of ten calendar days notice prior to the election. The PA/PTA is encouraged to stagger the terms of the non-mandatory parent members of the SLT.

[High schools and other teams wishing to include student members must add: Student members will be selected by the student body and shall serve for a period of one year. Student team members will be included in the total number of team members, but will not be counted when determining the balance of parent and staff members.]

¹ In the case of co-presidents, the remaining PA/PTA officers shall determine which co-president will serve as the mandatory member of the SLT

Community based organizations may also serve on SLTs. The SLT will create a process for the organizations to apply for membership. A member of the team may also recommend an organization for membership. This will be done on an annual basis. Community based organization members will be included in the total number of team members, but will not be counted when determining the balance of parent and staff members.

Elections held to fill vacancies due to resignation, cessation of member eligibility, or removal pursuant to Article ____ will be conducted by the appropriate constituent group prior to the next scheduled team meeting. Team members elected to fill vacancies shall be eligible to serve until the completion of that term.

Section 5 Chairperson/Co-Chairpersons

Selection Method - The Chairperson shall be selected by consensus of the team and shall serve for a period of **[Insert Chairperson's term length]** years. If the team opts to elect Co-Chairpersons, they will share the role of Chairperson as outlined in these bylaws. The election shall take place at the September meeting. [The Chairperson is responsible for scheduling meetings, ensuring that team members have the information necessary to guide their planning, and focusing the team on educational issues of importance to the school. The Chairperson ensures that voices of all team members are heard.]

Section 6 Additional Leadership Roles

Secretary – The secretary will be responsible for sending SLT meeting notices and for keeping the minutes of SLT meetings. Such minutes must be maintained at the school, with a copy provided to the PA/PTA. The school principal may designate an office staff member to assist the SLT secretary.

Facilitator – The Facilitator shall advise the Chairperson and other team members on matters of Parliamentary Procedure.

Financial Liaison – The Financial Liaison shall assume responsibility for documenting member participation for the purposes determining eligibility for the annual SLT remuneration.

Timekeeper – The Timekeeper ensures that all agenda items are discussed by monitoring the allotment of time afforded each item.

Selection Method – Additional leadership roles will be filled by consensus of the team at the **[Insert month]** meeting and shall serve for a period of **[Insert term length]** years.

Section 7 Length of Term and Term Limits

Team members, with the exception of mandatory members, student members, and community based organization members, are elected for **[Insert number of years]** year terms. However, all members must remain eligible to serve pursuant to Chancellor's Regulation A-655 for the duration of their term.

Members may not serve more than **[Insert number of terms]** consecutive terms. However, if no other willing, eligible candidate is identified for a particular constituent group, a member may be elected for an additional term.

Section 8 Responsibilities of School Leadership Team Members

Team members, including those additional roles outlined in these bylaws, are responsible for developing an annual school Comprehensive Educational Plan (CEP) that is aligned with the school-based budget for the ensuing school year. The school-based budget provides the fiscal parameters within which the SLT will develop the goals and objectives to meet the needs of students and the school's educational program.

The SLT shall provide an annual assessment to the community or high school superintendent of the principal's record of developing an effective shared decision-making relationship with the SLT members during the year.

The SLT will serve as the vehicle for consultation with parent representatives regarding federal reimbursable funding (e.g., Title I). The SLT will coordinate with other school committees such as the Parent Association/Parent Teacher Association and the Title I Committee to ensure that all school-wide committees are working toward the same goals set forth in the CEP.

Team members must work collaboratively by sharing their ideas and concerns and listening to the ideas and concerns of others; engaging in collaborative problem-solving and solution-seeking that will lead to consensus-based decisions.

Team members must communicate effectively with their constituent groups and share the views of their constituencies with the team.

Article III – Team Meetings

Section 1 Schedule of Meetings

The School Leadership Team shall meet at least once a month during the school year. All meetings shall be held on ***[Insert day of each month (i.e., first Thursday of every month)]*** from ***[start time]*** to ***[end time]***. Additional meetings will be scheduled by the Chairperson as needed or upon request by the team members. Meetings will be scheduled at a time convenient for parent members on the team. Parent members will be polled each year to determine a convenient time for team meetings.

Members who miss more than two consecutive meetings without rendering in writing a good and valid excuse will be subject to removal from the team.

Section 2 Notice of Team Meetings

The School Leadership Team will establish a yearly calendar which shall be posted in the general office, front security desk, in the parent coordinator's office and ***[Insert addition locations as needed (i.e., school website, SLT bulletin board, etc.)]*** at the beginning of each school year. The calendar shall be distributed at the first meeting of the parent association each school year. The Chairperson will send meeting reminders one week prior to all meetings by school mailbox and backpack, postal mail, email, or telephone.

Section 3 Meeting Attendance

School Leadership Team members are expected to attend all meetings. If team members are unable to attend the meeting, they must contact the Chairperson in advance of the meeting.

Section 4 Quorum

[Insert quorum number or a majority clause such as, "A majority of SLT members including representation from each constituent group"] shall constitute a quorum. Each constituent group shall be responsible for ensuring that their group is adequately represented at each meeting.

Section 5 Order of Business

- Call to Order
- Reading and Approval of the Previous Meeting's Minutes
- Committee Reports
- Discussion of Unfinished Business Agenda Items
- Discussion of New Business Agenda Items
- Creation of Agenda for the Next Meeting
- Adjournment

Article IV – Removal of a School Leadership Team Member

Section 1 Removal Process

Team members who fail to attend [*insert number of meetings*] consecutive meetings, fail to perform their roles and responsibilities as outlined in these bylaws, or behave in a manner that is disruptive and undermining to the work of the Team will be removed by consensus of the remaining team members. The School Leadership Team must have a quorum of members present and reach unanimous agreement when deciding to remove a member. The member shall be provided a written notice of the Team's decision. The letter shall include the reason for the removal and the member's right to appeal the decision. The letter shall be signed by the Chairperson or Co-Chairpersons and shall be sent by registered return receipt mail delivery to ensure proper notification and receipt.

Section 2 Filling a Vacancy

When a member resigns or is removed, the vacancy will be advertised to the appropriate constituent group and an election will be held in accordance with these bylaws.

Article V – Decision-Making

Section 1 **[Consensus-based decision-making must be the primary means of making School Leadership Team decisions. Consensus should be defined as reaching an agreement acceptable to all members. The team should develop methods for engaging in collaborative problem-solving and solution seeking and, when necessary, effective conflict resolution strategies. The agreed upon procedures should be summarized here.]**

Article VI – Conflict Resolution

Section 1 Assistance from the District Leadership Team (DLT)

The School Leadership Team will seek assistance from the DLT or appropriate superintendent when members cannot reach agreement on an issue. Where team members have difficulty obtaining information or wish to obtain assistance in resolving issues relating to consultation with the school principal, they may seek assistance from the DLT or superintendent. If after receiving assistance from the DLT or superintendent, the Team still cannot reach agreement on the CEP, the superintendent will make the final determination.



Section 2 Assistance from the Office for Family Engagement and Advocacy (OFEA)
If the DLT or superintendent is unable to resolve such issues to the satisfaction of team members, team members may send a written request for assistance to the designated OFEA engagement staff.

Article VII – Bylaws Review and Amendment

The bylaws may be amended at any regular meeting of the team, provided notice of any proposed changes has been given at a previous meeting. In addition, the bylaws will be reviewed annually, at the start of the school year to ensure that the document's provisions meet the needs of the team and remain consistent with Chancellor's Regulation A-655.

These bylaws were amended on **[insert date of last amendment]** and are on file in the principal's office.

Principal Name

Principal Signature

PA/PTA President Name

PA/PTA President Signature

UFT Chapter Leader Name

UFT Chapter Leader Signature

[District Letterhead]

Bylaws of the District Leadership Team of **[Name of District]**

Adopted **[Date]**

Article I – District Leadership Team Mission Statement **[and]** Educational Vision

The mission of the District Leadership Team of **[Name of District]** is **[Insert collaboratively designed mission statement. Some teams may elect to also include an educational vision statement.]**

Article II – Team Composition

Section 1 Size of Team

The total number of members shall be **[Insert total number.]**

Section 2 Mandatory Members

The mandatory members of the DLT are:

- Community superintendent (or designee)
- High school superintendent(s) responsible for high schools that are geographically located within the district (or designee(s))
- CSA representative
- UFT representative
- DC 37 representative
- President of the district's Presidents' Council (or designee)
- President of the borough high school Presidents' Council (or designee)
- Chairperson of the Title I District Parent Advisory Council (or designee)
- ELL representative

Section 3 Members at Large

Indicate all other included members in this section.

[The remaining members of the team may consist of representatives of community based organizations, the president of the District CEC (or designee), and a member of the Citywide Council on High Schools whose child attends a high school located within the district.]

Section 4 Citywide High School Subcommittee

A citywide subcommittee of high school representatives will be formed to ensure that the needs and special issues impacting high schools and their students are fully represented in DLT discussions. The high school subcommittee will meet monthly. The results of the meetings will be reported by a member of the subcommittee (who will serve as a liaison) at monthly DLT meetings as a standing agenda item. The DLT will continue to include any high school constituency representatives and will discuss the issues raised by the subcommittee liaisons as part of the district's overall K-12 strategic planning and problem solving.

Section 5 Chairperson/Co-Chairpersons

Selection Method - The Chairperson shall be selected by consensus of the team and shall serve for a period of **[Insert Chairperson's term length]** years. If the team opts to elect Co-Chairpersons, they will share the role of Chairperson as outlined in these bylaws. The election shall take place at the September meeting.

Role - The Chairperson is responsible for scheduling meetings, ensuring that team members have the information necessary to guide their planning, and focusing the team on educational issues of importance to the school. The Chairperson ensures that voices of all team members are heard.

Section 6 Additional Leadership Roles

Secretary – The secretary will be responsible for sending DLT meeting notices and for keeping the minutes of DLT meetings. Such minutes must be maintained at the district office. The superintendent may designate an office staff member to assist the SLT secretary.

Facilitator – The Facilitator shall advise the Chairperson and other team members on matters of Parliamentary Procedure.

Financial Liaison – The Financial Liaison shall assume responsibility for documenting member participation for the purposes determining eligibility for the annual SLT remuneration.

Timekeeper – The Timekeeper ensures that all agenda items are discussed by monitoring the allotment of time afforded each item.

Selection Method – Additional leadership roles will be filled by consensus of the team at the **[Insert month]** meeting and shall serve for a period of **[Insert term length]** years.

Section 7 Responsibilities

The District Leadership Team will develop the District Comprehensive Educational Plan (DCEP), which includes annual goals and objectives that are aligned with the district's and the Chancellor's goals, and incorporates the following six categories of the district 100.11 plan:

1. the educational issues that will be subject to shared planning at the building level;
2. the manner and extent of the expected involvement of all parties on the SLT;
3. the means and standards by which all parties shall evaluate improvement in student achievement;
4. the means by which all parties will be held accountable for the decisions which they share in making;
5. the process for dispute resolution in the SLTs; and
6. the manner in which state and federal requirements for the involvement of parents in planning and decision making will be met.

The DLT will provide support, guidance, technical assistance, and conflict resolution to the SLTs in the district.

The DLT will conduct a biennial review of the district's 100.11 plan to evaluate the effectiveness of shared decision making in the district and will complete the Biennial Review Form (Attachment No. 1 of Chancellor's Regulation A-655) and submit it to the Office for Family Engagement and Advocacy by January 15th of each even-numbered year.

Article III – Team Meetings

Section 1 Schedule of Meetings

The District Leadership Team shall meet at least once a month during the school year. All meetings shall be held on **[Insert day of each month (i.e., first Thursday of every month)]** from **[start time]** to **[end time]**. Additional meetings can be scheduled by the Chairperson as needed or upon request by the team members. Meetings will be scheduled at a time convenient for parent members on the team. Parent members will be polled each year to determine a convenient time for team meetings.

Section 2 Notice of Team Meetings

The District Leadership Team will establish a yearly calendar which shall be posted in the district office **[Insert addition locations as needed (i.e., doe website, etc.)]** at the beginning of each school year. The calendar shall be distributed at the first meeting of the Presidents' Council each school year. The Chairperson will send meeting reminders one week prior to all meetings by school mailbox and backpack, postal mail, email, or telephone.

Section 3 Meeting Attendance

District Leadership Team members are expected to attend all meetings. If team members are unable to attend the meeting, they must contact the Chairperson in advance of the meeting.

Section 4 Quorum

[Insert quorum number or a majority clause such as, "A majority of DLT members including representation from each constituent group"] shall constitute a quorum. Each constituent group shall be responsible for ensuring that their group is adequately represented at each meeting.

Section 5 Order of Business

- Call to Order
- Reading and Approval of the Previous Meeting's Minutes
- Committee Reports including High School Subcommittee
- Discussion of Unfinished Business Agenda Items
- Discussion of New Business Agenda Items
- Creation of Agenda for the Next Meeting
- Adjournment

Article IV – Decision-Making

Section 1 Consensus-Based Decision-Making

Consensus-based decision-making must be the primary means of making decisions. Consensus should be defined as reaching an agreement acceptable to all members. **[The team should develop methods for engaging in collaborative problem-solving and solution seeking and, when necessary, effective conflict resolution strategies. The agreed upon procedures should be summarized here.]**

Article V – Bylaws Review and Amendment

The bylaws may be amended at any regular meeting of the team, provided notice of any proposed changes has been given at a previous meeting. In addition, the bylaws will be reviewed annually, at the start of the school year to ensure that the document's provisions meet the needs of the team and remain consistent with Chancellor's Regulation A-655.

These bylaws were amended on **[insert date of last amendment]** and are on file in the principal's office.

_____	_____
Superintendent Name	Superintendent Signature
_____	_____
High School Superintendent Name	High School Superintendent Signature
_____	_____
CSA Representative Name	CSA Representative Signature
_____	_____
UFT Representative Name	UFT Representative Signature
_____	_____
DC-37 Representative Name	DC-37 Representative Signature
_____	_____
District Presidents' Council President Name	District Presidents' Council President Signature
_____	_____
High School Presidents' Council President Name	High School Presidents' Council President Signature
_____	_____
Title I DPAC Chairperson Name	Title I DPAC Chairperson Signature
_____	_____
ELL Representative Name	ELL Representative Signature

EXHIBIT B – ANNEXED TO THE AFFIDAVIT OF LINDA HILL

Letter, Dated March 17, 2014,
from Michael P. Thomas to Linda Hill
(pp. 128-129)

REPRODUCED FOLLOWING

343 East 92nd Street, Apt. 5W
New York, NY 10128

March 17, 2014

Linda Hill
Principal
I.S. 49 Berta A. Dreyfus
101 Warren Street
Staten Island, NY 10304

**BY CERTIFIED AND
ELECTRONIC MAIL**

Dear Ms. Hill:

I am a retired mathematics teacher of the New York City Department of Education who is interested in the role of School Leadership Teams ("SLTs") in the utilization of Title I funds.

I would like to attend, as an observer, the next SLT meeting at I.S. 49 Berta A. Dreyfus. The school's website for the PTA indicated that the next SLT meeting was at 6:00 p.m. on April 8, 2014 and a written request was required to attend. However, the announcement did not indicate where to send the written request, and I am therefore directing my request to each of the core members of the SLT.

SLTs serve a vital function pertaining to the welfare of the community, and I thank you for the opportunity to attend the SLT meeting at I.S. 49 Berta A. Dreyfus on April 8, 2014.

Very truly yours,

Michael P. Thomas

Michael P. Thomas
michaelpthomas@hotmail.com

cc: Francesco Portelos, UFT Chapter Leader (By e-mail)
Laura Cavalerri, PTA President (By certified mail)

EXHIBIT C – ANNEXED TO THE AFFIDAVIT OF LINDA HILL
Email Transmission, Dated March 18, 2014,
from Victoria Trombetta to Michael P. Thomas
(pp. 130-131)

REPRODUCED FOLLOWING

From: **Trombetta Victoria (31R049)** (VTrombe@schools.nyc.gov)
Sent: Tue 3/18/14 6:12 PM
To: michaelphomas@hotmail.com (michaelphomas@hotmail.com)

It would be a pleasure to have you attend. Please note the meeting was changed on 3/4 to April 1 at 4:00. Three of the teaching staff will be grading the ELA on the 8th. The first is in line with scheduling anyway as it is the first Tuesday of the month. I hope this works for you and we will see you on the first. If you need any directions etc. please do not hesitate to ask.

Victoria Trombetta

I.S. 49R

EXHIBIT D – ANNEXED TO THE AFFIDAVIT OF LINDA HILL
School Leadership Team By-Laws for
Dreyfus Intermediate School 49, Adopted January 2013
(pp. 132-135)

REPRODUCED FOLLOWING

133
School Leadership Team By-Laws
For
Dreyfus Intermediate School 49
Adopted January 2013

Article I – Mission Statement/Educational Vision

The mission of Dreyfus Intermediate School 49 is to provide a child centered environment that will inspire and challenge all of our students to become independent thinkers, problem solvers and lifelong learners and to work as a collaborative unit of parents, faculty and staff to ensure that all children reach their academic goals.

Article II – Team Composition

Section I – Membership

The number of parent and staff members on the team shall be **five** from each constituency. The total number of members shall be **ten**.

1.1 Core members of the team shall be the principal, United Federation of Teachers (UFT) Chapter Chairperson (or Delegate), and the Parent Association (PA) or Parent-Teacher Association (PTA) President or Co-President. Core members of the School Leadership Team have the option to designate another member of their constituent group to serve in their stead on the team for the period of the term.

1.2 The remaining members of the team shall consist of:

- a. **Three** elected UFT members
- b. **Four** elected parent members

Section II – Organization Structure

Chairperson or Co-Chairpersons
Recorder

Financial Liaison (may be filled by Chair or Co-Chair)

Title One Liaison (optional)

Section III – Length of Term

The length of term for team members (with the exception of the core members) shall be **three** years, provided the individual team member is eligible to serve in accordance with the **Chancellor's Regulation A-655**. Team members may not serve for more than **three** consecutive terms or **nine** years.

Section IV – Selection and Role of the Chairperson(s)

4.1 The Chairperson shall be elected by consensus of the team and shall serve for a period of **one** year or until his/her successor is elected. If the team opts to elect Co-Chairpersons, they will share the role and responsibilities as outlined in these By Laws. The election shall take place at the September meeting.

4.2 The role of the Chairperson(s) shall be to schedule meetings by **consensus** and ensure that the team meetings are effectively organized; preside at all meetings; interface with the Principal and core members; facilitate discussions during meetings; set meeting agendas in collaboration with other team members; coordinate team and subcommittee efforts; ensure that information is disseminated to all team educational issues; and secure all records of the team.

Section V – Selection and Roles of Additional Organizational Structure Members

5.1 The Recorder shall keep an accurate, written record (minutes) of all team meetings, including member attendance; will distribute minutes to all team members; and will post minutes for the entire school community within **three** business days. Minutes are to be posted on the parent bulletin board in the first floor hallway of the school building and on the Berta49 web site. The Recorder shall also prepare responses to correspondence addressed to the team. The position of Recorder may be rotated amongst the team members.

5.2 The Financial Liaison shall assume responsibility for the financial affairs of the team. The Financial Liaison shall be responsible for maintaining a file of attendance records for verification of member participation. The Financial Liaison shall keep remuneration logs up to date and be responsible to have all members sign off on same in June.

Section VI – Role and Responsibility of Team Members

6.1 Team members, including those additional roles outlined in these By Laws, are responsible for: participating in the development and review of the Comprehensive Education Plan (CEP); ensuring that the budget is aligned to support the CEP; working collaboratively with other team members by sharing their

ideas and concerns; listening to the ideas and concerns of others; engaging in collaborative problem-solving and solution-seeking that will lead to consensus-based decisions that meet the needs of all students; sharing the views of their constituencies with the team; and engaging in conflict resolution processes when necessary. **Special emergency meetings may be called to facilitate the completion and/or revisions needed on the CEP. These meetings shall be called by the Principal and forwarded to the Chairperson(s). The Chairperson(s) is responsible for contacting all members in regards to emergency meetings.**

6.2 In addition, team members have the responsibility to: attend all team meetings; to identify concerns and issues to be discussed during SLT meetings; to review minutes and give feedback; Chair and/or serve on team subcommittees; and to communicate effectively with their constituent groups.

6.3 The constituent groups on the School Leadership Team (SLT) shall select their representatives for the C-30 Level I Committee subject to the manner proscribed in Chancellor's Regulation C-30. **The DC 37 members shall be supplied by the District Office.**

Article III – Team Meetings

Section I – Schedule of Meetings

1.1 The minimum number of monthly meetings shall be **ten (10)**. All meetings shall be held on the **first Tuesday of the month**. Additional meetings will be scheduled as needed either by the Chairperson, or upon the request of the members of the team, after a consensus of the Team. Meetings will be scheduled at a time that is most convenient for parent members on the Team. Parent members will be polled each year to determine the time most convenient for Team meetings.

1.2 Members who miss more than **two (2)** consecutive meetings, without rendering in writing a good and valid excuse, will be subject to removal from the team.

Section 2 – Notice of Team Meetings

The Team will establish a yearly calendar which shall be posted in the Parent Coordinator's office and on the PTA bulletin board on the first floor, in the hallway, at the beginning of each school year. The calendar shall be distributed at the first meeting of the Parent Association/Parent Teacher Association each year. The date of the next month's meeting will be posted on the Principal's board by the **PA/PTA President**. The Chairperson or liaison will remind members **one week in advance**, by telephone or e-mail, of all meetings.

Section 3 – Meeting Attendance

The regularly scheduled team meetings will be open to members of the school community. The school community shall consist of parents of children currently attending the school, staff and liaisons to the school (i.e. CEC representatives). Members of the school community, who are not team members, may request speaking time at meetings to discuss specific topics. **All such requests must be submitted in writing to the Chairperson or liaison, at least one week in advance of the scheduled meeting.** Non-members are encouraged to bring issues of concern to their constituent representative(s) on the team prior to team meetings. Requests for topics of discussion should be submitted in writing **at least one week** in advance of the meeting date.

Section 4 – Quorum

A minimum of **three** SLT members from each constituent group shall constitute a quorum in order for any voting/consensus or new business to take place. Each constituent group shall be responsible for ensuring that their group is adequately represented at each meeting.

Section 5 – Order of Business

Call to Order
 Reading and Approval of Prior Month's Meeting Minutes
 Subcommittee(s) Report
 Old Business Agenda Items
 New Business Agenda Items
 Adjournment

Article IV – Team Member Elections

To ensure that all members of the school community shall have the opportunity to participate and to encourage the broadest possible participation, parents and staff will be elected by their own constituent group in an election that is widely advertised, with reasonable advance notice, open to all members of the constituent group and in a way that is public and perceived fair and unbiased. PA/PTA elections for parent

member representatives must allow for a minimum of **ten (10)** calendar days' notice. Team members elected to fill vacancies shall be eligible to serve until the completion of their term.

Any parent vacancies on the School Leadership Team will be filled at the first scheduled PA/PTA meeting by a vote, as set forth in these by laws. Any staff vacancies will be filled in September through a vote as set forth in these by laws.

Article V – Removal of a Team Member

Team members who fail to attend **two (2)** consecutive meetings; and/or fail to perform their roles and responsibilities, as outlined in these by laws and/or behave in a manner during meetings that is disruptive and undermines the work of the team will be removed by consensus of the remaining members.

The process for removing a team member shall require that the team have a **quorum** of members present; that they reach consensus in their decision to remove the member; and when the member resigns or is removed, the vacancy will be advertised to the appropriate constituent group and an election will be held in accordance with these by laws. The member shall be officially notified in writing by the team of its decision. The letter shall include the reason for the removal and the member's right to appeal the decision. The letter shall be signed by the Chairperson(s) and shall be sent by registered, return receipt mail delivery to ensure proper notification and receipt.

Article VI – Decision Making

The team will develop methods for engaging in collaborative problem-solving and solution seeking that will lead to consensus-based decisions and when necessary, effective conflict resolution strategies.

Consensus, defined as reaching an agreement acceptable to all of the team members, will be the team's primary decision-making tool.

In the spirit of meaningful, collaborative decision-making, should an issue arise resulting in an impasse due to the non-agreement on the part of one team member; the team will table the issue for **one** meeting. The dissenting team member will prepare a brief statement of interest and present their views at the beginning of the next meeting. The entire team will then work toward consensus on the issue during the meeting. If consensus still cannot be reached, the team should contact the appropriate District Support Personnel for further assistance.

In cases where an urgent or time-sensitive decision must be made and the entire team cannot be consulted or cannot reach a consensus, the team must contact the appropriate District Support Personnel for further assistance.

Article VII – Conflict Resolution

In the case of an impasse, the team has the obligation to seek assistance from the District Support Personnel, the Superintendent, or other external sources after every effort has been made to resolve the issue internally.

A team member may seek external assistance when said member deems it necessary. In such situations, the team will have access to a variety of supports including, but not limited to, the District Leadership Team.

Article VIII – By Laws Review and Amendment

The By Laws may be amended at any regular meeting of the team, provided notices of any proposed changes have been given at a previous meeting. In addition, the By Laws will be reviewed annually, at the start of the school year to ensure that the document's provisions meet the needs of the team.

These By Laws were amended and approved, January 8, 2013, and are on file in the Principal's Office.

EXHIBIT E – ANNEXED TO THE AFFIDAVIT OF LINDA HILL
Email Transmission, Dated March 19, 2014,
from Victoria Trombetta to Michael P. Thomas
(pp. 136-137)

REPRODUCED FOLLOWING

From: Trombetta Victoria (31R049)
Sent: Wednesday, March 19, 2014 1:14 PM
To: michaelthomas@hotmail.com
Subject: SLT meeting

Michael

In an effort to assure all procedures were followed, I reviewed the SLT By Laws. During my read of said laws, I realized you would not be permitted to attend, even with prior notice, as you not a member of the school community. Our By Laws are quite specific as to whom is considered school community members and states that only such members may attend.

Please accept my deepest apologies.

Victoria Trombetta
I.S. 49R

EXHIBIT F – ANNEXED TO THE AFFIDAVIT OF LINDA HILL
Email Transmission, Dated March 19, 2014,
from Michael P. Thomas to Victoria Trombetta
(pp. 138-139)

REPRODUCED FOLLOWING

From: Michael Thomas [michaelphomas@hotmail.com]
Sent: Wednesday, March 19, 2014 2:28 PM
To: Trombetta Victoria (31R049)
Subject: RE: SLT meeting

Victoria,

I understand completely, and your bylaws are consistent with DOE policy. I would like to challenge that policy in court and to have "standing" – according to the New York City Law Department – I must be denied entrance onsite.

I appreciate the vital purpose of SLTs, and I do not want to disrupt your SLT meeting in any way. I would like to come to I.S. 49 on April 1 and have security at the front entrance write on a copy of your latest e-mail that I was "denied entry." Nobody, except the security officer, will ever know I was there!

Please let me know if this will be a problem.

Thank you,
Mike

VERIFIED REPLY, SWORN TO AUGUST 26, 2014
(pp. 140-153)

REPRODUCED FOLLOWING

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

In the Matter of

MICHAEL P. THOMAS,

Petitioner,

VERIFIED REPLY

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

Index No. 100538/14
I.A.S. Part 57
(Moulton, J.)

-against-

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

Respondents.

Petitioner Michael P. Thomas, as and for his Verified Reply, respectfully alleges and states the following:

PRELIMINARY STATEMENT

1. Petitioner brought this Article 78 proceeding to challenge the determination of Respondent New York City Department of Education (“DOE”) that School Leadership Team (“SLT”) meetings are not open to the general public. Petitioner seeks declaratory judgment that SLT meetings are subject to the Open Meetings Law. If this proceeding is not brought in the proper form, petitioner respectfully requests the Court to make whatever order is required for its proper execution pursuant to CPLR § 103(c).

2. The Commissioner of Education found that an SLT has final decision-making authority in the development of a school’s Comprehensive Educational Plan (“CEP”). The CEP

describes the goals for a school's educational program, the instructional strategies and activities that will be used to achieve these goals, and the fiscal and human resources that will be required. Chancellor's Regulation A-655 provides that the principal must justify, and the superintendent must certify, that the budget is aligned with the CEP, thereby ensuring that the CEP will be implemented. An SLT therefore performs a governmental function and should be subject to the Open Meetings Law.

3. Respondents assert that this Court should be guided by a previous Supreme Court decision which found that SLTs are not public bodies. However, the decision did not consider the holding of the Commissioner of Education that an SLT has final authority over the CEP. Therefore, petitioner respectfully requests this Court to find that SLT meetings should be open to the general public.

STATEMENT OF FACTS

The School Leadership Team develops the school's Comprehensive Educational Plan that is aligned with the school-based budget.

4. Pursuant to Chancellor's Regulation A-655, every New York City public school must form an SLT to ensure compliance with State and Federal law and regulations concerning school-based management and shared decision-making. *See* Chancellor's Regulation A-655, Verified Pet., Ex. "B" at 1; *see also* Education Law § 2590-h(15)(b). The SLT is composed of parents, teachers, and administrators who are responsible for developing the school's CEP that is aligned with the school-based budget. *See* Chancellor's Regulation A-655(II)(A)(1) and (III), Verified Pet., Ex. "B" at 1, 2-3. The CEP describes the goals for a school's educational program, the instructional strategies and activities that will be used to achieve these goals, and the fiscal and human resources that will be required. A copy of the DOE template for CEP Goals and Action

Plans is annexed hereto as Ex. "1."

5. The principal makes the final determination concerning the school-based budget. *See* Chancellor's Regulation A-655(II)(A)(2), Verified Pet., Ex. "B" at 1. The principal must submit the proposed school-based budget to the superintendent for approval, along with a written explanation justifying that the school-based budget is aligned with the CEP. *See* Chancellor's Regulation A-655(II)(A)(5), Verified Pet., Ex. "B" at 1. To become final, the budget must be approved by the superintendent, who must certify that the budget is aligned with the CEP. *See id.*

6. If the SLT members (other than the principal) reach a consensus that that they disagree with the principal's justification that the school-based budget is aligned with the CEP, the SLT may submit a written response to the justification to the superintendent. *See* Chancellor's Regulation A-655(II)(A)(6), Verified Pet., Ex. "B" at 2. The superintendent must then determine whether the school-based budget is aligned with the CEP, and, if not, provide direction as to how alignment can be achieved. *See* Chancellor's Regulation A-655(II)(A)(7), Verified Pet., Ex. "B" at 2.

Petitioner was not permitted to attend the SLT meeting at I.S.49 on April 1, 2014.

7. On or about March 17, 2014, petitioner requested permission to attend the next meeting of the SLT at Intermediate School 49 Berta A. Dreyfus ("I.S. 49"), a middle school located in Staten Island. *See* Verified Pet., Ex. "C." In an email dated March 18, 2014, the SLT Chairperson invited petitioner to attend the SLT meeting on April 1, 2014 at 4:00 p.m. *See* Verified Pet., Ex. "D."

8. The next day, however, the SLT Chairperson informed petitioner by email that he would not be permitted to attend the SLT meeting. *See* Verified Pet., Ex. "A." According to the

SLT Chairperson, the SLT by-laws of I.S. 49 specifically state that only members of the school community may attend SLT meetings. *See id.* Petitioner – who is not a parent, teacher or administrator of I.S. 49 – is therefore not allowed to attend SLT meetings at the school. *See id.*

9. On April 1, 2014 at approximately 3:50 p.m., petitioner entered I.S. 49 and informed School Safety Agent (“SSA”) Meyer, SSA Wall, and SSA Villacis that he wanted to observe the SLT meeting. *See Verified Pet.* ¶ 13. Petitioner also informed the school safety agents that he was not a member of the school community, and requested that they obtain authorization before allowing him to attend the meeting. *See id.*

10. SSA Villacis contacted Linda Hill, Principal of I.S. 49, and she prohibited petitioner from attending the SLT meeting because he was not a member of the school community. *See Verified Pet.* ¶ 14. Petitioner immediately left the school building. *See id.*

11. Petitioner thereby brought the instant proceeding pursuant to Article 78 of the CPLR to challenge the determination that SLTs are not subject to the Open Meetings Law.

ARGUMENT

I. The Commissioner of Education holds that School Leadership Teams have final authority over the CEP.

12. On or about August 7, 2007, the Chancellor issued a revised version of Chancellor’s Regulation A-655. A copy of Chancellor’s Regulation A-655 that was issued on or about August 7, 2007 is annexed hereto as Exhibit “2.” The amended regulation provided that “the principal makes the final determination on the CEP and the budget allocation.” Chancellor’s Regulation A-655(II), Verified Reply, Ex. “2” at 1.

13. Prior to June 30, 2009, Education Law § 2590-h provided that SLTs possessed the power and duty to “develop an annual school comprehensive educational plan that is aligned with

the school based budget.” Education Law § 2590-h(15)(b-1)(i).

14. An appeal was brought to the Commissioner of Education (“Commissioner”) alleging that the revised version of Chancellor’s Regulation A-655 gave each principal final decision-making authority over the CEP in violation of Education Law § 2590-h. A copy of *Appeal of Pollicino, et. al.*, 48 Ed Dept Rep 279 (Decision No. 15,858), is annexed hereto as Exhibit “3.”

15. The Commissioner found in *Pollicino* that the revised language, providing the principal with final authority over the CEP, violated Education Law § 2590-h(b-1). *See Pollicino, Verified Reply, Ex. “3”* at 5. The Commissioner held that the revised language stripped the SLT of the basic, statutorily mandated authority to develop the CEP and improperly allowed the principal to make the “final determination on the CEP,” thus allowing the principal to override any judgment of an SLT. *See id.* The Commissioner ordered the DOE and the Chancellor to revise the language of Chancellor’s Regulation A-655. *See Pollicino, Verified Reply, Ex. “3”* at 6.

16. On or about March 24, 2010, the Chancellor issued the current version of Chancellor’s Regulation A-655. *See Chancellor’s Regulation A-655, Verified Pet., Ex. “B”* at 1.

17. In compliance with the Commissioner’s order, Chancellor’s Regulation A-655 now provides that, “[p]ursuant to State Education Law section 2590-h, the SLT is responsible for developing an annual school Comprehensive Educational Plan (CEP) that is aligned with the school-based budget for the ensuing school year.” Chancellor’s Regulation A-655(II)(A)(1), *Verified Pet., Ex. “B”* at 1.

18. The language parallels that of Education Law § 2590-h(15)(b-1)(i), and the only

possible interpretation, in accordance with the finding of the Commissioner in *Pollicino*, is that an SLT has final authority over the CEP.

II. SLTs perform a governmental function and are public bodies under Public Officers Law § 102.

19. The Open Meetings Law mandates that, except for executive sessions, “[e]very meeting of a public body shall be open to the general public.” Public Officers Law § 103(a). A “public body” is defined 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 an agency or department thereof.” Public Officers Law § 102(2).

20. The Court of Appeals has held that an entity performs a governmental function if “[i]t is invested with decision-making authority to implement its own initiatives and, as a practical matters, operates under protocols and practices where its recommendations and actions are executed unilaterally and finally, or receive merely perfunctory review or approval.” *Matter of Smith v City Univ. of New York*, 92 NY2d 707, 714 (1999).

21. The Commissioner held in *Pollicino* that an SLT has final decision-making authority over the CEP and exercises more than an advisory function in the development of the school’s educational policies and programs. *See Pollicino*, Verified Reply, Ex. “3” at 5. Furthermore, pursuant to Chancellor’s Regulation A-655, the school-based budget must be aligned with the CEP, thereby ensuring that the educational policies and programs of an SLT will be implemented. *See* Chancellor’s Regulation A-655(II)(A), Verified Pet., Ex. “B” at 1-2. Indeed, Chancellor’s Regulation A-655 sets forth that “SLTs are a vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies.” Chancellor’s Regulation A-655(I), Verified Pet., Ex. “B” at 1. The principal develops the school-

based budget, but he or she is constrained by the school's CEP when doing so. Hence, an SLT performs a governmental function.

22. An SLT thus performs a governmental function, a quorum is required for an SLT to conduct business (*see* Chancellor's Regulation A-655[XII]), and an SLT consists of more than two members (*see* Chancellor's Regulation A-655[III][A]). Pursuant to Public Officers Law § 102(2), an SLT is a public body which is subject to the Open Meetings Law.

III. This Court should not be bound by the decision of the Supreme Court in *Portelos*.

23. Respondents assert that the court in *Matter of Portelos v Board of Educ. of the City Sch. Dist. of the City of New York*, Index No. 100813/13 (Sup. Ct., NY County 2013), previously held that SLTs are not public bodies subject to the Open Meetings Law and this Court should be guided by that decision. *See* Respondents' Mem of Law in Opp'n to Pet. 8. A copy of the decision and order for *Portelos* is annexed hereto as Exhibit "4."

24. The court in *Portelos* held that "the SLT's primary purpose is an advisory one -- it makes recommendations concerning educational policy and establishes education goals for the school, which are consolidated into a Comprehensive Educational Plan." *Portelos*, Verified Reply, Ex. "4" at 5-6.

25. The court's holding in *Portelos* is in direct conflict with the holding of the Commissioner in *Pollicino* that an SLT has final decision-making authority over the CEP.

26. In *Donohue v Copiague Union Free Sch. Dist.*, 47 NY2d 440, 444 (1979), the Court of Appeals noted that "[c]ontrol and management of educational affairs is vested in the Board of Regents and the Commissioner of Education." The Court observed that all matters pertaining to the general school system of the State should be within the authority and control, on

the State level, of the Commissioner of Education and removed so far as possible and practicable from controversies in the courts.¹ See *Donohue*, 47 NY2d at 444. Thus, courts should uphold the construction given the Education Law by the Commissioner of Education, and this Court should not hold that the primary purpose of an SLT is advisory in nature. See *Howard v Wyman*, 28 NY2d 434, 438 (1971) (“the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld”).

27. Moreover, this Court is not bound by *stare decisis* to follow the decision in the *Portelos* case. A decision of a court of equal or inferior jurisdiction is not necessarily controlling, though entitled to respectful consideration. See McKinney’s Cons Laws of NY, Book 1, Statutes § 72 at 143-144.

28. The court in *Portelos* was apparently unaware of the Commissioner’s holding in *Pollicino* that an SLT has final authority over the CEP, and this Court is not bound to follow a erroneous new precedent. The Court of Appeals opined the following in *People v Hobson*, 39 NY2d 479, 488 (1976):

“The nub of the matter is that *stare decisis* does not spring full-grown from a ‘precedent’ but from precedents which reflect principle and doctrine rationally evolved. Of course, it would be foolhardy not to recognize that there is potential for jurisprudential scandal in a court which decides one way one day and another way the next; but it is just as scandalous to treat every errant footprint barely hardened overnight as an inescapable mold for future travel.”

¹ The instant proceeding is properly brought before the Supreme Court. “Public Officers Law § 107 vests exclusive jurisdiction over complaints alleging violations of the Open Meetings Law in the Supreme Court of the State of New York, and alleged violations thereof may not be adjudicated in an appeal to the Commissioner.” *Appeal of Instone-Noonan*, 39 Ed Dept Rep 413 (Decision No. 14,275).

29. This Court should not follow, and thereby further establish, a precedent which does not have a sound basis in law.

IV. Respondents' determination that SLT meetings were not subject to the Open Meetings Law is arbitrary and capricious and not in accordance with DOE regulations and policies.

30. Generally, in Article 78 proceedings seeking the review of a determination by an administrative agency, "[t]he courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious." *Pell v Board of Educ.*, 34 NY2d 222, 231 (1974)(internal quotation marks omitted).

31. However, the correct standard of review in an Article 78 proceeding regarding a violation of the Open Meetings Law is whether the determination was affected by an error in law. Public Officers Law § 107(1) provides that a court shall have the power, upon good cause shown, to declare that the public body violated the Open Meetings Law if the court determines that the public body failed to comply with the law.

32. Respondents assert that "[i]t was not arbitrary or capricious for the DOE to construe School Leadership Teams created by Chancellor's Regulation A-655 as not being public bodies subject to the Open Meetings Law." Respondents' Mem. of Law in Opp'n to Pet. 15. Notwithstanding Respondents' reliance on an improper standard of review, Respondents' assertion is without merit.

33. Respondents rightfully assert that the SLT, *at times*, serves in an advisory capacity. The principal is responsible for the day to day operation of the school and carries out these duties in consultation with the SLT. *See* Education Law § 2590-i(1). The principal is responsible for proposing the school-based budget after soliciting input on budget priorities from the SLT. *See*

Education Law § 2590-r(b). The SLT must be consulted prior to the appointment of a principal or assistant principal candidate to the school. *See* Chancellor's Regulation A-655(II)(C)(1).

34. Nevertheless, Chancellor's Regulation A-655(II)(A)(1) provides that, "[p]ursuant to State Education Law 2590-h, the SLT is responsible for developing an annual school Comprehensive Educational Plan" and, in accordance with the finding of the Commissioner in *Pollicino*, the SLT has final decision-making authority over the CEP.² The CEP, which describes the educational policies and programs of a school, imposes significant constraints on the school-based budget, which must be aligned with the CEP. An SLT thus performs a governmental function, and Respondents' determination that an SLT is not a public body is arbitrary and capricious.

35. Finally, Respondents claim, in a conclusory manner, that many of the topics discussed in SLT meetings are confidential or sensitive. *See* Respondents' Mem. of Law in Opp'n to Pet. 15. Issues cited by Respondents as being confidential or sensitive in nature include school safety measures, student academic or disciplinary histories, and SLT review of personnel records of principal or assistant principal candidates. *See id.*

36. The only safety issue considered confidential by the DOE is the emergency response information of the School Safety Plan which should not be disclosed in any fashion (*see* Chancellor's Regulation A-414[II][I], Verified Answer, Ex. "P" at 3), and consequently should

² Since June 30, 2009, Education Law § 2590-h(15) has not included the provision that school based management teams possess the power and duty to develop an annual school comprehensive educational plan. However, the provision is included in the current version of Chancellor's Regulation A-655, and "an agency's rules and regulations promulgated pursuant to statutory authority are binding upon it." *Lehman v Board of Educ. of the City Sch. Dist. of the City of New York*, 82 AD2d 832, 834 (2d Dept 1981).

not be discussed in SLT meetings. The academic or disciplinary histories of students are not properly discussed in SLT meetings and implicate privacy considerations beyond those related to the Open Meetings Law. *See* 34 CFR § 99.30 of the Family Educational Rights and Privacy Act. Pursuant to Chancellor's Regulations A-655 and C-30, the SLT must be consulted prior to the appointment of a principal or assistant principal candidate. *See* Chancellor's Regulation A-655(II)(B)(1), Verified Pet., Ex. "B" at 2; Chancellor's Regulation C-30(XI)(D) and (C), Verified Answer, Ex. "H" at 6, 7. While all matters concerning the selection process are of a highly confidential nature (*see* Chancellor's Regulation C-30[XI][H], Verified Answer, Ex. "H" at 8), the consultation could be conducted in executive session if SLTs were subject to the Open Meetings Law (*see* Public Officers Law § 105[1]).

37. Therefore, Respondents' determination that SLTs are not subject to the Open Meetings Law is arbitrary and capricious in addition to being an error of law.

WHEREFORE, petitioner respectfully requests the Court to grant an Order and Judgment:

1. declaring that a School Leadership Team meeting is a meeting of a public body which must be open to the general public pursuant to the Open Meetings Law;
2. finding that Respondents violated the Open Meetings Law;
3. ordering Respondents to participate in a training session concerning the obligations imposed by the Open Meetings Law conducted by the staff of the Committee on Open

Government pursuant to Public Officers Law § 107(1); and

4. awarding costs, fees, and disbursements, together with such other and further relief as may be just and proper.

Dated: New York, New York
August 26, 2014

By: Michael P. Thomas

Michael P. Thomas
Petitioner, *pro se*
343 East 92nd Street, Apt. 5W
New York, New York 10128
(917) 545-4254
michaelpthomas@hotmail.com

VERIFICATION

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

MICHAEL P. THOMAS being duly sworn, deposes and says that he is the petitioner in this proceeding; that he has read the annexed foregoing **VERIFIED REPLY, In the Matter of Michael P. Thomas against New York City Department of Education, et al.,** Index No. 100538/14, and supporting papers, and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Michael P. Thomas
Michael P. Thomas
Petitioner, *pro se*

Subscribed and sworn to before
me this 26th day of
August 2014

Nicholas D. Petronio
Notary Public

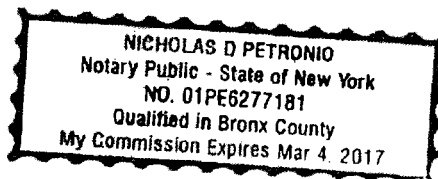


EXHIBIT 1 – ANNEXED TO THE VERIFIED REPLY
Department of Education Template for Comprehensive
Education Planning Goals and Action Plans
(pp. 154-155)

REPRODUCED FOLLOWING

Comprehensive Educational Planning

CEP Goals and Action Plans

ANNUAL GOAL #1 AND ACTION PLAN

Use this template to identify an annual goal. Respond to each section to indicate strategies and activities in support of accomplishing this goal.

Annual Goal #1

- Describe a goal you have identified for the year. Refer to the directions and guidance for assistance in developing your goals.

Comprehensive needs assessment

- Describe the identified need that generated this goal. The needs assessment should encompass the entire school and be based on the performance of students in relation to State academic content and student achievement standards.

Instructional strategies/activities

- Describe the research-based instructional strategies and activities that will be used to achieve this goal. Include descriptions of the following in your response:
 - strategies/activities that encompass the needs of identified student subgroups,
 - staff and other resources used to implement these strategies/activities,
 - steps taken to include teachers in the decision-making regarding the use of academic assessments to evaluate the effectiveness of the strategies/activities,
 - timeline for implementation.

Strategies to increase parental involvement

- Cite the strategies and activities in your school's Title I Parent Involvement Policy (PIP) that will be implemented to achieve this goal. The PIP template is provided on pages 11 through 15 in this CEP.

Strategies for attracting Highly Qualified Teachers (HQT)

- Describe the strategies and activities that will be used to attract Highly Qualified Teachers, as defined by NCLB, or to ensure that current staff become highly qualified, in order to achieve this goal.

Services and program coordination

- Describe how Federal, State and local services, including programs supported under NCLB (i.e., violence prevention programs, nutrition programs, housing programs, Head Start) are being coordinated with the instructional strategies/activities to achieve this goal.

Budget and resource alignment

- Describe the fiscal and human resources that will be used to achieve this goal, referencing specific FY 12 PS and OTRPS budget categories (i.e., Title I, PSF, Title III, Title III, etc.) that will support the actions/strategies/activities described in this action plan.

EXHIBIT 2 – ANNEXED TO THE VERIFIED REPLY
Regulation of the Chancellor A-655 School and District
Leadership Teams Summary of Changes, Issued August 7, 2007
(pp. 156-167)

REPRODUCED FOLLOWING



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 1 of 11
Issued: 8/7/07

SUMMARY OF CHANGES

This regulation supersedes A-655 dated February 3, 2004.

Changes:

- Changes have been made to reflect the new structure of the Department.
- The responsibilities of the School Leadership Teams have been modified.
- The inclusion of additional mandatory members to the team is now prohibited.
- Each SLT must designate a secretary who must maintain minutes of SLT meetings and provide a copy of minutes to the PA/PTA.
- District Office staff and staff of School Support Organizations may not serve on a School Leadership Team as a parent member in the district where they are employed or in a school that purchases services from the School Support Organization that employs them.
- The role of Community Education Council members as liaisons has been clarified (i.e., they may be invited to attend team meetings, make presentations and/or serve on team subcommittees).
- Language has been added to mandate parent consultation in conformance with the No Child Left Behind Act.
- Team members may donate their remuneration to the school.
- SLT members must participate in mandatory training in order to receive their remuneration.
- The SLT may request to meet with the school's SSO a maximum of two times per year to discuss the SSO's involvement with the school.
- Each Community School District and District 75 is required to form a District Leadership Team.
- The composition and role of the District Leadership Team has been defined.
- District Family Advocates are required to report on SLT and DLT activities on an annual basis.
- PA/PTAs are encouraged to stagger the election of parent members of the SLT.
- A grievance procedure has been added.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 2 of 11
Issued: 8/7/07

ABSTRACT

This regulation establishes guidelines to ensure the formation of effective School Leadership Teams (SLTs) in every New York City Public School, and District Leadership Teams (DLTs) in each community school district as well as in District 75. This regulation is the New York City Department of Education's Plan for the Participation of Parents, Teachers and Administrators in School-Based Planning and Shared Decision Making in accordance with Section 100.11 of the Regulation Commissioner of Education.

I. INTRODUCTION

In December 1996, amendments to the New York State Education Law required the Chancellor to take steps to ensure that SLTs were in place in every New York City Public School. SLTs play a significant role in creating a structure for school-based decision making and shaping the path to a collaborative school culture. SLTs are a vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies. Functioning in a collaborative manner, SLTs assist in the evaluation and assessment of a school's educational programs and their effect on student achievement.

II. SCHOOL LEADERSHIP TEAM RIGHTS AND RESPONSIBILITIES

The SLT is responsible for developing an annual school comprehensive educational plan (CEP) that is aligned with the school-based budget. The SLT is not responsible for the hiring or firing of school staff.

To ensure alignment of the CEP with the school-based budget, the principal shall provide the SLT with a report from the DOE Galaxy budgeting system within a reasonable period of time after the school receives it. The school-based budget provides the fiscal parameters within which the SLT will develop the goals and objectives to meet the needs of students and the school's educational program. The principal shall present the proposed school-based expenditure budget to the SLT to solicit input prior to submission to the community superintendent. However, the principal makes the final determination on the CEP and the budget allocation.

The SLT may request that a representative of the School Support Organization (SSO) meet with the SLT a maximum of two times per year to provide information and updates regarding the SSO's involvement with the school. SSOs are expected to make every effort to accommodate such requests.

III. COMPOSITION

A. Size of the Team

All SLTs should have a minimum of ten members and a maximum of 17 members. In determining the size of the team, budget allocations must be considered.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 3 of 11
Issued: 8/7/07

B. Mandatory Members

The only three mandatory members of the SLT are the school's principal, the Parent Association/Parent-Teacher Association (PA/PTA) President¹ and the United Federation of Teachers (UFT) Chapter Leader, or their designees.

C. Non-Mandatory Members

1. In addition to the mandatory members, SLTs must include other parents and staff (pedagogic and/or non-pedagogic) from the school. SLTs must have an equal number of parents and staff.

a. Election of Parents and Staff:

To ensure that all members of the school community have the opportunity to be included and to encourage broad participation on the SLT, parents and staff must be elected by their own constituent groups in a fair and unbiased manner, and all elections must be advertised widely, with reasonable advance notice given. Elections must be open to all members of the constituent group (e.g., PA/PTA, CSA, UFT, DC 37) and must be held in accordance with the term limits as set forth in the team's bylaws.

A minimum of ten calendar days' notice is required prior to the PA/PTA's election of its SLT parent members. In the case of a PTA, only parent members of the school's association may vote to elect parent representatives for the SLT. PA/PTAs are encouraged to stagger the terms of the (non-core) parent members of the SLT.

SLT elections must be held after the PA/PTA elections in the spring (see Chancellor's Regulation A-660).

b. Eligibility

i. Parents

Parents² from the school are eligible to be elected by the school's PA/PTA to serve on the SLT.

Parents may not serve on the SLT as a parent member in the school in which they are employed, but they may serve in other schools where they have a child in attendance.

¹ In the case of co-presidents, the remaining PA/PTA officers shall determine which co-president will serve as the mandatory member of the SLT.

² A parent is defined as a parent (by birth or step-parent), legally appointed guardian, foster parent or person in parental relation to a child. A person in parental relation refers to a person who has assumed the care of a child because the child's parents or guardians are not available, whether due to, among other things, death, imprisonment, mental illness, abandonment of a child, or living outside of the state.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 4 of 11
Issued: 8/7/07

Parents may be elected to serve on more than one SLT as long as they meet the requirements set forth in this regulation.

Parent members of the CEC may serve as a parent member on the SLT in the school their child attends.

ii. Staff

Parent Coordinators may not serve as members of the SLT in any capacity in the school where they are employed. However, Parent Coordinators may be invited to attend meetings as observers or presenters in schools in which they are employed. They also may be asked to serve on SLT subcommittees.

Other school staff may not serve as parent members on the SLT in the school(s) where they are employed. Both the parent coordinator and other school staff members may, however, serve as parent members in other schools their children attend.

District office staff may not serve on any SLT as a parent member in the district in which they are employed.

Staff of the School Support Organizations (SSOs) may not serve as parent members on an SLT in any school that purchases services from the SSO.

3. Students and Community Based Organizations

SLTs also may include students (minimum of two students is required in high schools) and representatives of Community Based Organizations (CBOs). Students and CBO members of the SLT and do not count when determining if a team has an equal number of parents and staff (see Section III(C)(1)).

D. Chairperson/Co-Chairpersons

1. Once the team is constituted, it must select a Chairperson or Co-Chairpersons from among its membership. The Chairperson or Co-Chairpersons need not be core members. SLTs are encouraged to consider selecting members who are not core members as Chairperson or Co-Chairpersons to maximize participation on the SLT.
2. The Chairperson is responsible for scheduling meetings, ensuring that team members have the information necessary to guide their planning, and focusing the team on educational issues of importance to the school. The Chairperson ensures that voices of all team members are heard.

E. Secretary

Each SLT must select a member of the SLT to serve as secretary. The secretary will be responsible for sending SLT meeting notices and for keeping the minutes of SLT meetings. Such minutes must be maintained at the school, with a copy provided to the PA/PTA.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 5 of 11
Issued: 8/7/07

F. Community and Citywide Education Councils

Community Education Council (CEC) members act in a liaison capacity with the SLTs of the schools in their respective community school districts. Members of the Citywide Council on High Schools (CCHS) serve in a similar capacity for the high schools throughout the system, as do the members of the Citywide Council of Special Education (CCSE) with regard to District 75 schools. The liaison function includes attending meetings as observers and/or presenters, and participating on SLT committees and subcommittees when invited by members of the SLT.

IV. ESTABLISHING A SCHOOL LEADERSHIP TEAM

A. In a new school:

In order to establish a SLT, a school must first establish a PA/PTA. Chancellor's Regulation A-660 sets forth the process for doing this. Once the PA/PTA has been established, the school must follow the procedure below.

B. In a school with an existing PA/PTA:

The PA/PTA President or designated Co-President, the Principal and the UFT Chapter Leader or their designees must work together to draft bylaws for the SLT. It is then the responsibility of each of the constituent groups to elect or select³ its member representatives in accordance with the SLT's bylaws.

1. In elementary schools, middle/intermediate schools, District 75, and District 79, the mandatory members of the team may contact their District Family Advocate and Presidents' Council for technical assistance and guidance through this process (see Section VI below).
2. In high schools, the mandatory members of the team may contact their Borough Director (BD) for the Office for Family Engagement and Advocacy and Borough High School Presidents' Council for technical assistance and guidance (see Section VI herein).

Once the entire SLT is in place, it must review and adopt the team's bylaws.

Schools that have multiple sites will have one SLT, but the SLT may create subcommittees to assess the needs of all the sites and to report their findings to the SLT.

V. DISTRICT LEADERSHIP TEAMS

District Leadership Teams (DLTs) must be formed in each community school district and District 75. DLTs will fulfill the requirements of Section 100.11 of the Commissioner's Regulations regarding the district-level plan for the participation of parents and staff in school-based planning and shared decision-making.

³ Parent and staff members must be elected; other members may be selected.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: **SCHOOL AND DISTRICT LEADERSHIP TEAMS**

Page: 6 of 11
Issued: 8/7/07

The role of the DLT is to develop and review the District Comprehensive Educational Plan (DCEP), including annual goals and objectives which must be aligned with the District's and Chancellor's goals. DLTs will provide recommendations to the community superintendent, or in the case of District 75 to the District 75 Superintendent, regarding the alignment of the district's budget with the DCEP. In addition, DLTs will provide support, guidance, technical assistance, and conflict resolution to the SLTs within their districts.

Administrators, teachers, and parents must be included on the DLT. Parent representatives should be chosen from the members of the District Presidents' Councils and Title I parent group members.⁴ Each constituent group must select its own participants.⁵ Community based organizations may also be included. Decisions about the size and the composition of the DLT shall be made by the community superintendent (for community districts) and the District 75 Superintendent for District 75, in consultation with the District CSA representative, District UFT representative and the District Presidents' Councils.

In addition, the community superintendent and the District 75 Superintendent, in collaboration with the District CSA representative, District UFT Representative, and representatives of the District Presidents' Council (review team) will conduct a biennial review of the District's plan to evaluate the effectiveness of school-based planning in the District. The review team shall complete the Biennial Review of Shared Decision Making (Attachment A) and submit the completed and signed copy to the Office for Parent Engagement and Advocacy by January 15th of each even-numbered year beginning in school year 2007-2008.

VI. SUPPORT FOR SCHOOL AND DISTRICT LEADERSHIP TEAMS

Every community school district and District 75 will have a District Family Advocate (DFA), and each borough will have a Borough Director for the Office of Family Engagement and Advocacy (BD) to work with high schools, who will provide comprehensive services to assist SLTs and DLTs, including professional development and technical support.

DFAs and BDs, as appropriate, will act as facilitators to assist all team structures in carrying out their roles and responsibilities. The DFAs and BDs will work closely with district and school teams to facilitate their ability to fulfill their responsibilities as described in this regulation.

The DFA will work in coordination with the Community Superintendent to support and assist DLTs. DFAs will provide regular training sessions to the SLTs and DLTs in their district.

⁴ Note that inclusion of all of these constituent groups on the DLT will meet consultation requirements of No Child Left Behind.

⁵ DLT members do not have to be elected by their constituencies; other methods of selection may be utilized.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 7 of 11
Issued: 8/7/07

The BDs will provide regular training sessions to the SLTs in the high schools.

Key areas for training include, but are not limited to:

- roles and responsibilities
- team operations;
- assessing school-wide needs;
- understanding the school budget; and
- engaging families and communities in the review and development of a comprehensive educational plan.

Additionally, DFAs and BDs will collect information from PAs/PTAs in order to provide the Office for Family Engagement and Advocacy with a status report on SLT and DLT activities by December 1 of each year. A template for the report will be provided to DFAs and BDs by the Office for Family Engagement and Advocacy.

VII. SCHEDULING OF MEETINGS

SLTs should meet at least once a month during the school year. Meetings must take place on school premises and be scheduled at a time convenient to parent members (day or evening). Core members or their designees are expected to attend all meetings of the SLT.

VIII. DECISION MAKING/PROBLEM SOLVING

School Leadership Teams and District Leadership Teams must decide on a decision-making process (e.g., majority vote or consensus-based decision making).

When a team has made every effort to resolve an issue, and members cannot reach agreement, the team should seek assistance from its DFA (for community district schools) or BD (for high schools). Where team members have difficulty obtaining information or wish to obtain assistance in resolving issues relating to consultation with the school principal, they may seek assistance from the DFA or BD. If the DFA or BD is unable to resolve such issues to the satisfaction of team members, team members may send a written request for assistance to the Chief Family Engagement Officer.

IX. REMUNERATION/RECORD KEEPING

- A. To be eligible to receive the annual remuneration of \$300, SLT members, including students and CBO representatives, must complete 30 hours of service on the SLT and attend mandatory training sessions offered by the Office for Family Engagement and Advocacy. Team members who serve fewer hours may request remuneration on a pro-rata basis.
1. Team members are responsible for ensuring that all records documenting the number of hours served are submitted to the Chairperson for processing.
 2. The entire team or individual members may waive the annual remuneration and donate the funds to be used for other school purposes.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 8 of 11
Issued: 8/7/07

B. Attendance and minutes must be recorded at every meeting.

X. **SLT RELATIONSHIP WITH OTHER SCHOOL BASED ENTITIES**

In its role as the school's planning and review body, the SLT is the central coordinating team in the school, and it should help to facilitate communication among the various school committees.

A. Chancellor's Regulation C-30 Level I Committee

In accordance with Chancellor's Regulation C-30 governing the selection of Principals and Assistant Principals, members of the SLT are eligible to serve on the Level I C-30 Committee, subject to the requirements set forth in Chancellor's Regulation C-30. However, if parents from the SLT are not available to serve on the Level I C-30 Committee, the Chairperson of the Level I Committee shall offer the officers of the school's PA/PTA the opportunity to serve.⁵

B. School Redesign/Planning Teams

The superintendent or his/her designee will consult with the SLT regarding any redesign or restructuring plans for the school.

For more information on School Redesign/Planning Teams and mandates for SURR and NCLB/SED Planning for Restructuring schools, please contact the Office of Accountability at (212) 374-6099.

C. Others Schools in the Building

In buildings that house multiple schools, the SLTs are encouraged to meet at least twice a year to discuss issues of mutual concern.

XI. **CONSULTATION WITH PARENTS**

To meet No Child Left Behind requirements, School and District Leadership Teams will serve as the vehicle for consultation with parent representatives regarding federal reimbursable funding. School and District Leadership Teams should maintain documentation on file to verify that this required consultation has taken place.⁷

XII. **BYLAWS**

Every SLT must develop bylaws and operating guidelines to provide clear direction about SLT responsibilities. All bylaws must be consistent with this regulation. A bylaw template is attached as Attachment B. Bylaws should incorporate key decisions about team membership and operations.

All bylaws **must** address the following areas:

- the roles of team members and Chairperson;

⁵ See Chancellor's Regulation C-30 for additional information.

⁷ Please refer to the Department of Education Title I Parent Involvement Guidelines memorandum which is disseminated by the Office for Family Engagement and Advocacy.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 9 of 11

Issued: 8/7/07

- team composition;
- quorum;
- method of election of parent and staff members;
- method of selection of Chairperson;
- method of selecting CBOs and student members where applicable;
- length of term and term limits;
- process for removal of Chairperson and members;
- method for making decisions (i.e. consensus or majority rule) and procedures to be followed if the team has a need for conflict resolution;
- filling vacancies;
- role of observers during meetings;
- who can speak at meetings;
- how agendas are established;
- that the team must meet at least ten times per school year;
- number of meetings that can be missed, and consequences of missing more than the designated number of meetings;
- whether the terms of non-core parent members should be staggered.
- that there is a secretary

SLTs may require through their bylaws that they meet and coordinate with other school committees such as the Parent Association/Parent Teacher Association and the Title I Committee to ensure that all school-wide committees are working toward the same goals set forth in the CEP.

SLT bylaws should be reviewed by the team at least biennially. Each team must provide a list of its members and a copy of its current bylaws to the District Family Advocate or Borough Director for the Office of Family Engagement and Advocacy, whichever is appropriate, annually, by October 31. If the SLT makes changes in its bylaws or there is a change in membership, notice of the changes must be forwarded to the District Family Advocate or Borough Director for the Office of Family Engagement and Advocacy.



Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: SCHOOL AND DISTRICT LEADERSHIP TEAMS

Page: 10 of 11
Issued: 8/7/07

XIII. GRIEVANCES

- A. Parents may file a written complaint regarding the election of parents to serve on the SLT in a school their child attends.
- B. Such complaint must be filed with the appropriate superintendent⁸ within seven days of the election. A decision will be rendered by the superintendent within seven days of receipt of the complaint. If a decision cannot be rendered within seven days because of a continuing investigation or a referral to other authorities, the superintendent must issue a response explaining the reason for the delay within the seven day period, and must include a projected date for a final decision. Where interim remedies are appropriate, they should be included in the response.
- C. Parents may appeal the decision of the superintendent to the Chancellor. Such appeal must be filed within three days of receipt of the superintendent's decision. Appeals must be sent to the Chancellor c/o The Office of Legal Services, 52 Chambers Street, Room 308, New York, NY 10007. The Chancellor will render a decision within seven days of receipt of the appeal. If a decision cannot be rendered within seven days because of a continuing investigation or a referral to other authorities, the Chancellor must issue a response explaining the reason for the delay within the seven day period, and must include a projected date for the final decision. Where interim remedies are appropriate, they should be included in the response. The decision of the Chancellor on appeal is final.

XIV. GUIDANCE AND ASSISTANCE

The Office for Family Engagement and Advocacy will provide guidance and respond to inquiries regarding the implementation of this regulation.

The Office of Accountability will address inquiries regarding the development and review of school and district level Comprehensive Educational Plans and the role of SURR and School Redesign teams (See section X).

The Office for Family Engagement and Advocacy in consultation with other central offices also may issue guidelines to supplement this regulation.

All other general inquiries pertaining to this regulation should be addressed to:

<p>Telephone: 212-374-2323</p>	<p><i>Office for Family Engagement and Advocacy</i> NYC Department of Education 49 Chambers Street – Room 503 New York, NY 10007</p>	<p>Fax: 212-374-0076</p>
------------------------------------	--	------------------------------

⁸ Complaints regarding community district schools are filed with community superintendent; complaints regarding high schools are filed with the high school superintendent; complaints regarding District 75 schools are filed with the District 75 superintendent.



NEW YORK CITY DEPARTMENT OF EDUCATION

Regulation of the Chancellor

Category: **STUDENTS**

Number: **A-655**

Subject: **SCHOOL AND DISTRICT LEADERSHIP TEAMS**

Page: **11 of 11**
Issued: **8/7/07**

EXHIBIT 3 – ANNEXED TO THE VERIFIED REPLY
Decision, Dated December 31, 2008,
in Pollicino et al v. New York City of Department of Education et al
(pp. 168-174)

REPRODUCED FOLLOWING

Appeal of MARIE POLLICINO, COMMUNITY DISTRICT EDUCATION COUNCIL 26, UNITED FEDERATION OF TEACHERS and MELVYN L. MEER from action of the New York City Department of Education and Joel I. Klein, Chancellor, regarding the issuance of a Chancellor's regulation.

Decision No. 15,858

(December 31, 2008)

Erik M. De Paula, Esq., attorney for petitioner-intervenor Community District Education Council 26

Adam S. Ross, Esq., attorney for petitioner-intervenor United Federation of Teachers

Michael A. Cardozo, Esq., Corporation Counsel, attorney for respondents, Emily Sweet, Esq., of counsel

MILLS, Commissioner.--Petitioners challenge amendments made to a regulation of the Chancellor of the New York City Department of Education ("Chancellor") governing school and district leadership teams in New York City. The appeal must be sustained in part.

On December 3, 2007, the Chancellor issued a revised version of Chancellor's Regulation A-655 ("A-655"), the New York City Department of Education's Plan for the Participation of Parents, Teachers and Administrators in School-Based Planning and Shared Decision-Making (the "Plan"). Thereafter, petitioner Marie Pollicino ("Pollicino") initiated this appeal challenging A-655 on behalf of herself and all parents of New York City public school children. Pollicino is a district resident, a member of Community District Education Council 26 ("CDEC 26") and a parent of a child enrolled in P.S. 98Q.

On January 17, 2008, Melvyn Meer, a parent of two children in P.S. 188Q and then a member of its school leadership team ("SLT") requested to intervene.^[1] CDEC 26 and the United Federation of Teachers ("UFT") requested to intervene on February 7 and February 11, 2008, respectively. Pursuant to §275.1 of the Commissioner's regulations and by letter dated April 25, 2008, my Office of Counsel notified the parties that the intervention requests of CDEC 26, UFT and Meer (collectively referred to as "petitioners-intervenors") had been granted. All requests for interim relief were denied.

Pollicino and petitioners-intervenors (collectively referred to as "petitioners") allege that A-655 gives each principal final decision-making authority over both the school comprehensive education plan ("CEP") and the school-based budget, in violation of Education Law

§§2590-h and 2590-r, Commissioner's regulation §100.11 and Chancellor's regulation B-801.

Petitioners also challenge the process by which A-655 was revised. Specifically, petitioners allege that the community district education councils ("CDECs") were not consulted in the amendment of the regulation, nor were any parent groups. Petitioners request that I annul the language in A-655 which states: "The principal makes the final determination on the CEP and the school-based budget" and the statement, "The principal shall consult with the SLT in developing the school-based budget" and replace them with: "The responsibilities of the SLT are to develop and review the school's CEP, including annual goals and objectives, and to consult with the principal in developing a school based budget and staffing plan aligned with the CEP." Petitioners further request that if any amendments to the regulations governing the rights and responsibilities of SLTs are proposed, the process of developing those amendments must be initiated by and include CDECs.

Respondents argue that the principal, as the "administrative and instructional leader of the school" and the individual "responsible for the day to day operations of the school" under Education Law §2590-i, and as the individual responsible for proposing a school budget under Education Law §2590-r, must have final decision-making authority over the school-based budget. In addition, respondents argue that it is entirely appropriate and consistent with State law for the principal to make a final determination as to the CEP if the SLT is unable to reach a consensus. Respondents further allege that the Chancellor has the power to promulgate regulations, pursuant to Education Law §2590-h(16), and was not required to follow any particular process in revising A-655. Respondents also allege that §100.11 of the Commissioner's regulations only applies to "district plans" and not to any overall city-wide plan. Finally, respondents contend that Pollicino, CDEC 26 and Meer lack standing and that the intervention requests were untimely.

I will first address several procedural matters. Pollicino's request for class status is denied. An appeal may only be maintained on behalf of a class where the class is so numerous that joinder of all members is impracticable and where all questions of fact and law are common to all members of the class (8 NYCRR §275.2; Appeal of Hempstead Parents/Community United, 45 Ed Dept Rep 381, Decision No. 15,357; Appeal of Hempstead Parents/Community United, 45 *id.* 354, Decision No. 15,346; Appeal of Ockimey, 44 *id.* 169, Decision No. 15,136). Pollicino has not established that the issues of fact and law in this appeal are the same for all members of the proposed class of parents. Moreover, petitioner has failed to set forth the number of individuals he or she seeks to represent and that all questions of law and fact would be common to all members of the class (Appeal of Hempstead Parents/Community United, 45 Ed Dept

Rep 381, Decision No. 15,357; Appeal of Hempstead Parents/Community United, 45 id. 354, Decision No. 15,346; Appeal of Garmeva, 43 id. 253, Decision No. 14,988). Therefore, class status is denied.

An individual may not maintain an appeal pursuant to Education Law §310 unless aggrieved in the sense that he or she has suffered personal damage or injury to his or her civil, personal or property rights (Appeal of Ramroop, 45 Ed Dept Rep 473, Decision No. 15,385; Appeal of Samuel, 45 id. 418, Decision No. 15,371; Appeal of Hubbard, 45 id. 266, Decision No. 15,316). Only persons who are directly affected by the action being appealed have standing to bring an appeal (Appeal of Ramroop, 45 Ed Dept Rep 473, Decision No. 15,385; Appeal of Samuel, 45 id. 418, Decision No. 15,371; Appeal of Hubbard, 45 id. 266, Decision No. 15,316). The purpose of shared decision-making is to foster communication among all parties involved in educating children (Appeal of Trombley, 39 Ed Dept Rep 115, Decision No. 14,189). As district residents and parents of children in New York City, Pollicino and Meer have an interest in ensuring that shared decision-making is implemented according to the Plan and that parents are represented in the process. Accordingly, I find that Pollicino and Meer have standing.

Pollicino alleges that the Chancellor improperly amended A-655 by a process that was not initiated by the CDECs. She maintains that §100.11(f) of the Commissioner's regulations requires the CDECs to begin the amendment process. I, therefore, find that CDEC 26 has an interest in this appeal and has standing on the issue of whether A-655 was improperly revised. [2]

I find that UFT also has standing. There is an elected UFT chapter leader in every school and, pursuant to Section III of A-655, that chapter leader, or his or her designee, is a mandatory member of every SLT. Moreover, one-half of each SLT is comprised of school staff members, which includes UFT-represented educators. Therefore, respondents' alleged improper limitation on an SLT's involvement in the shared-decision making process would affect UFT and its members.

Lastly, I find no merit to respondents' objections to intervention. An appeal to the Commissioner must be commenced within 30 days from the making of the decision or the performance of the act complained of, unless any delay is excused by the Commissioner for good cause shown (8 NYCRR §275.16; Appeal of O'Brien, 44 Ed Dept Rep 43, Decision No. 15,092; Appeal of Spina, 43 id. 354, Decision No. 15,016). Although petitioners-intervenors did not file their petitions within 30 days of the actions complained of, respondents' limitation of an SLT's involvement in the shared decision-making process, if improper, constitutes a continuing wrong (Appeal of Sadue-Sokolow, 39 Ed Dept Rep 6, Decision No. 14,155). The continuing wrong doctrine applies when the ongoing action is itself an unlawful action, such as unlawful appointments to a district's

shared decision-making team (Appeal of Sadue-Sokolow, 39 Ed Dept Rep 6, Decision No. 14,155) or certain ongoing expenditures under an austerity budget that did not comply with the law (Appeal of Aarseth, 32 Ed Dept Rep 506, Decision No. 12,901). Moreover, respondents did not demonstrate that intervention would unduly delay a determination or that any prejudice would result from any delay. Rather, the record indicates that petitioners-intervenors raised arguments identical to Pollicino's timely claims.

I disagree with petitioners' claim that Section II of Chancellor's Regulation A-655 violates Education Law §§2590-h and 2590-r and §100.11 of the Commissioner's regulations by giving principals final decision-making authority over the budget. Section II of A-655 provides, in pertinent part:

School Leadership Team Rights and Responsibilities

The responsibility of the SLT is to develop an annual school Comprehensive Educational Plan (CEP) that is aligned with the school-based budget. The principal shall consult with the SLT in developing the school-based budget

...

To ensure alignment of the CEP with the school-based budget, the principal shall provide the SLT with a report from the DOE Galaxy budgeting system within a reasonable period of time after the school receives it The principal makes the final determination on the CEP and the school-based budget.

As the instructional leader of a school, the principal is authorized to create a school budget. Specifically, Education Law §2590-r requires the Chancellor to establish regulations with a comprehensive process of school-based budgeting which shall include provisions for:

the principal of each school to propose a school-based expenditure budget, after soliciting input pursuant to twenty-five hundred ninety-h, and twenty-five hundred ninety -i of this article on budget priorities from all members of the school community

While A-655, as revised, reserves to principals the final authority to develop school budgets, it also properly requires principals to consult with SLTs in developing the school budgets before making final decisions on those budgets. Therefore, I do not find that A-655 violates any applicable laws and/or regulations by giving the principal final decision-making authority over the budget.

To the extent, however, that A-655 gives principals final decision-making authority over the CEP, I find that A-655 must be revised. Section 2590-h(15)(b-1) of the Education Law provides that school based management teams (known as SLTs in New York City) shall possess the following powers and duties:

(i) develop an annual school comprehensive educational plan that is aligned with the school based budget. Such plan shall be submitted to the district superintendent and be made available for public inspection

A-655, as revised, strips the SLT of this basic, statutorily mandated authority and allows the principal to make the "final determination on the CEP," thus allowing the principal to override any judgment of an SLT.

Respondents argue that the intent of A-655 is for the principal to make a determination only in the event that the SLT does not reach consensus. That is not, however, how the regulation reads. Moreover, the allegedly offending language is in Section II of the regulation, which governs the SLT's rights and responsibilities, rather than in Section VIII of the regulation, which explicitly deals with conflict resolution strategies. Its placement thus undermines respondents' argument that the principal's authority is limited to breaking a logjam where consensus is not possible. I, therefore, find that the revised language, providing the principal with final authority over the CEP, violates Education Law §2590-h(15)(b-1).

Petitioners also argue that the process by which A-655 was amended was flawed because neither the CDECs nor an official parent group was involved. Respondents argue that the Chancellor has the power to promulgate regulations pursuant to Education Law §2590-h(16) and was not required to follow any particular process to revise A-655. I disagree. A-655 constitutes "the New York City Department of Education's Plan for the Participation of Parents, Teachers and Administrators in School-Based Planning and Shared Decision-Making" and, as such, must be amended in compliance with §100.11 of the Commissioner's regulations. Section 100.11(f) of the Commissioner's regulations provides, in pertinent part:

Any amendment or recertification of a plan shall be developed and adopted in the manner prescribed by subdivision (b) and paragraphs (d)(1) and (2) of this section.

Section 100.11(b) of the Commissioner's regulations addresses the roles of the central board and community school districts in the shared decision-making process. Specifically, §100.11(b) provides, in pertinent part:

In the City School District of the City of New York, the superintendent of each community school district ... shall develop a plan in the manner prescribed by this subdivision, and each such plan shall be incorporated into a plan by the central board of education, which plan shall comply with this section.

This provision of the Commissioner's regulations requires that each community school district develop a plan for incorporation into the district's central plan. Although respondents argue that a mayoral task force was convened for this purpose, the revisions made to A-655 were never undertaken by superintendents of the community school districts in New York City, nor did they collaborate with any "committees" composed of administrators, teachers and parents, as required. Because of the foregoing deficiencies, I find that A-655 was not amended in accordance with the provisions of §100.11 of the Commissioner's regulations.

In light of this disposition, I need not address the parties' remaining contentions.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that respondents revise the language of Chancellor's Regulation A-655, the New York City Department of Education's Plan for the Participation of Parents, Teachers and Administrators in School-Based Planning and Shared Decision-Making (the "Plan"), in accordance with this decision.

IT IS FURTHER ORDERED that respondents submit the Plan to the representatives designated in §100.11 of the Commissioner's regulations for consultation and endorsement as required by §100.11.

END OF FILE

[1] On February 15, 2008, P.S. 188Q's SLT voted to remove Meer.

[2] Pursuant to Education Law §§2590-b and 2590-c and Chapter 123 of the Laws of 2003, CDECs were established in each community school district and they possess the same powers as their predecessors, the community boards.

[Back to Commissioner Decision Homepage](#) | [Back to SED Homepage](#)

EXHIBIT 4 – ANNEXED TO THE VERIFIED REPLY
Decision and Order, Dated November 4, 2013,
in Portelos v. Board of Education of the City School District of the City of New York
(pp. 175-181)

REPRODUCED FOLLOWING

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----x
In the Matter of the Application of

FRANCESCO PORTELOS,

Petitioner,

Index No. 100813/13

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

DECISION/ORDER

-against-

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK and
DENNIS M. WALCOTT, as Chancellor of the CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Respondents.

FILED
NOV 07 2013
COUNTY CLERK'S OFFICE
NEW YORK

-----x
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for
: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

-----x
Petitioner Francesco Portelos brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge respondents Board of Education of the City School District of the City of New York (the "DOE") and Dennis M. Walcott, as Chancellor of the City School District of the City of New York's ("Mr. Walcott") (hereinafter referred to collectively as "respondents") decision prohibiting petitioner from attending and participating in the monthly School Leadership Team ("SLT") meetings held at Intermediate School 49 ("IS 49"). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. Petitioner is employed as a tenured science teacher at IS 49, a school maintained and operated by the DOE, which is located at 101 Warren Street, Staten Island, New York. Additionally, petitioner has served as the elected United Federation of Teachers (“UFT”) Chapter Leader of IS 49 since mid-2012. In April 2012, petitioner was reassigned from his position on the ground that he was the subject of investigations into misconduct conducted by the Special Commissioner of Investigation (“SCI”) for the New York City School District. Petitioner was informed of his reassignment by letter dated April 26, 2012, which explicitly stated that he was not to return to IS 49 without prior written permission and that any school activities he had participated in would remain suspended until the resolution of the matter.

Petitioner alleges that on or about February 5, 2013, Linda Hill, the principal of IS 49, directed members of the SLT to refrain from providing petitioner with any information regarding the SLT meetings and instructed members not to provide petitioner with minutes or other information regarding the discussions that transpired during the meetings. Additionally, petitioner alleges that on or about February 13, 2013, the UFT was advised of the DOE’s official position that petitioner could not serve as UFT Chapter Leader on the SLT, that he must appoint a designee in his stead and that he could not be present in any capacity, including by telephone.

On April 25, 2013, the SCI issued a report “confirm[ing] most of the allegations” against petitioner, including allegations that petitioner conducted a personal real estate business during DOE working hours and subverted a school website to his personal website, which chronicled his on-going issues with the principal of IS 49 and the DOE. On May 17, 2013, the DOE served petitioner with Charges and Specifications pursuant to Education Law § 3020-a alleging that he had engaged in various acts of misconduct. A hearing before an arbitrator on the charges was scheduled for September 12, 2013.

As an initial matter, the petition must be denied on the ground that it is time-barred. There is a four month statute of limitations to bring an Article 78 proceeding. *See* CPLR § 217. “The Statute of Limitations runs from the date the administrative determination becomes final and binding.” *Matter of De Milio v. Borghard*, 55 N.Y.2d 216, 219 (1982). The DOE’s determination prohibiting petitioner from attending SLT meetings was made on April 26, 2012. Therefore, petitioner’s time to bring an Article 78 proceeding challenging such decision expired four months later, in August 2012. However, petitioner did not commence this proceeding until June 4, 2013, more than nine months after his time to do so had already expired. Petitioner’s assertion that the petition is timely because the statute of limitations began to run from February 13, 2013, the date the UFT was advised that petitioner would be prohibited from attending SLT meetings, is without merit. The DOE prohibited petitioner from attending any school activities, which included SLT meetings, in April 2012. The fact that UFT was only notified of the DOE’s position regarding petitioner’s attendance at SLT meetings in February 2013 is irrelevant to a determination as to whether the instant petition is timely.

However, even if the petition was timely, it must be denied as the DOE’s determination had a rational basis. On review of an Article 78 petition, “[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious.” *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1st Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); *see Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious

test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, respondents’ decision prohibiting petitioner from attending or participating in SLT meetings was rational as it was in accordance with respondents’ policies and procedures. According to respondents, SLTs are advisory bodies that consult and advise the principal of a DOE school, make recommendations concerning educational matters and provide a plan concerning the curricular/academic goals of the particular school and are comprised of representatives of groups within the school community such as administrators, teachers, staff and parents. Pursuant to the DOE’s Chancellor’s Regulation A-655, which was promulgated pursuant to Education Law § 2590-h, to ensure the formation of SLTs in New York City public schools, “[t]he only three mandatory members of the SLT are the school’s principal, the Parent Association/Parent-Teacher Association (PA/PTA) President and the United Federation of Teachers (UFT) Chapter Leader, or their designees.” Chancellor’s Regulation A-655(III)(B). While mandatory members are expected to attend the SLT meetings, Chancellor’s Regulation A-655 does not give SLT members the right to attend the meetings if they are prohibited from entering the school or participating in school activities due to administrative reassignment and/or pending charges of misconduct. Rather, pursuant to Chancellor’s Regulation A-655, if a mandatory member is unable to attend an SLT meeting, a designee may serve in his/her place. Furthermore, respondents have affirmed that “[i]t is DOE policy, practice, and procedure that when a staff member is either under investigation awaiting formal charges to be served, or reassigned from a particular school due to allegations of misconduct and formal charges having

been served against the staff member, the staff member is not permitted to attend school events, meetings, or activities, whether they be during school hours or after hours.”

Additionally, the petition must be denied as respondents’ decision does not violate Public Officer’s Law (“POL”) § 103(a) (the “Open Meetings Law”). Pursuant to the Open Meetings Law, except for executive sessions, “[e]very meeting of a public body shall be open to the general public.” POL § 103(a). A “public body” is defined as

an 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 an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.

POL § 102(2). “The Open Meetings Law is designed to ensure that public business is conducted in an observable manner.” *Matter of Smith v. City Univ. of N.Y.*, 92 N.Y.2d 707, 713 (1999). To determine whether an entity is a “public body,” courts must look to

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.

Id. The Court of Appeals has held that an entity is a “public body” if

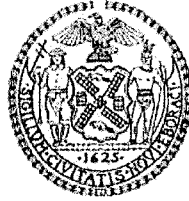
[i]t is invested with decision-making authority to implement its own initiatives and, as a practical matter, operates under protocols and practices where its recommendations and actions are executed unilaterally and finally, or receive merely prefatory review or approval.

Id. at 713-14.

In the instant action, respondents’ decision prohibiting petitioner from attending the SLT meetings does not violate the Open Meetings Law as the SLT is not a “public body.” As an initial matter, the authority of the SLT is limited and circumscribed as the SLT’s primary purpose is an

LETTER, DATED JANUARY 20, 2015, FROM LESLEY BERSON MBAYE
TO HON. PETER H. MOULTON, WITH ADDITIONAL DOCUMENT
(pp. 182-196)

REPRODUCED FOLLOWING



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

LESLEY BERSON MBAYE
phone: (212) 356-0897
fax: (212) 788-3770
email: lmbaye@law.nyc.gov
(not for service)

January 20, 2015

By E-mail (afield@nycourts.gov)

Honorable Peter H. Moulton
New York State Supreme Court, County of New York
111 Centre Street, Part 57
New York, NY 10007

Re: In the Matter of Michael P. Thomas v. New York City Dep't of Educ.
Index No. 100538/14

Dear Justice Moulton –

I am the attorney in the office of the Corporation Counsel of the City of New York assigned to represent the defendants New York City Department of Education (“DOE”) and DOE Chancellor Carmen Fariña (collectively, “defendants”) in the above-referenced matter. Thank you for this opportunity to distinguish the Hostos Community College Senate at issue in Matter of Aneudis Perez v. City Univ. of New York, 5 N.Y.3d 522 (N.Y. 2005) with the School Leadership Teams at issue in the instant matter.

In Perez, the Court applied the factors set forth in Matter of Smith v. City Univ. of New York, 92 N.Y.2d 707 (N.Y. 1999), and held that the Hostos Community College Senate (“College Senate” or “Senate”) was a “public body” subject to the Open Meetings Law due to (1) the powers conferred upon the Senate and its broad purview, (2) the authority by which the Senate was created, and (3) the finality of many of the Senate’s decisions. As will be described in detail below, School Leadership Teams (“SLT”) bear little to no resemblance to the Hostos College Senate in any of these three factors and, therefore, should not be construed to be “public bodies” for purposes of the Open Meetings Law. Most significantly, in contrast to the College Senate in Perez, SLTs do not implement their policy recommendations and do not have the power to make final determinations.

Powers and Purview

The Court in Perez found that the College Senate “has been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board.” Perez, 5 N.Y.3d at 529. The Senate had 14 standing committees to carry out these responsibilities, which included determining student appeals of academic dismissals or matriculation; implementing the college’s admissions policy; awarding scholarships and prizes; making disciplinary findings and issuing punishments; and resolving academic disputes. Perez, 5 N.Y. at 527, 529. In fact, the College Senate’s powers extended even further: no changes could be made to Hostos Community College divisions without the Senate’s approval; and only the Senate could initiate changes to the College’s Governance Charter. See id. The Perez Court relied heavily on these responsibilities in determining that the College Senate was a public body conducting public business and, therefore, subject to the Open Meetings Law.

In contrast to the broad powers delegated to the College Senate, School Leadership Teams are tasked with the following responsibilities: (1) developing a Comprehensive Educational Plan (“CEP”) that establishes goals and policies for promoting student achievement, (2) completing a yearly assessment of the school principal’s “record of developing an effective shared decision-making relationship with the SLT members” that year; (3) consulting with the superintendent prior to the appointment of a principal, or with the principal prior to the appointment of an assistant principal, to the school; (4) facilitating communication among various school committees, and (5) consulting with the superintendent regarding any school restructuring plans and participating in any joint public hearings held regarding proposals to close a school or make a significant change in school utilization. Chancellor’s Regulation A-655 § II.B and § X; Chancellor’s Regulation C-30, § XI.D.

The SLT’s most significant responsibility is developing the CEP. As evidenced in the I.S. 49 2014-2015 CEP provided to the Court at oral argument on January 12, 2015, the CEP concerns itself with academic goals for the student body, and pedagogical strategies for achieving those goals. Significantly, the SLT is not charged with implementing any of the recommendations set forth in a CEP. The school administration, not the SLT, implements the goals and policies set forth in the CEP. Nor is the SLT’s work on the CEP necessarily final action. If the SLT does not reach a consensus on the CEP or if the SLT disagrees with the school principal on the alignment of the CEP and the budget, the superintendent makes the final determination on these issues. Chancellor’s Regulation A-655 at § II.4 & 5

It is clear that the scope and finality of the College Senate’s authority markedly contrasts with the role served by School Leadership Teams. While the College Senate in Perez implements policies and makes final decisions about virtually all aspects of college life, from student discipline to fees and to academic awards, the SLTs do not do so. This clearly distinguishes the two entities, and supports a finding that the SLTs are not conducting “public business” under the Open Meetings Law.

Authority

The College Senate at issue in Perez was created pursuant to the CUNY Board of Trustees’ bylaws, which delegated to the Senate many of the vast governance powers accorded

to the Board of Trustees by the Legislature. See Perez, 5 N.Y.3d at 526; N.Y. Educ. Law §§ 6206(4), 6206(7)(a). Indeed, the Perez Court’s determination that the Senate was a “public body” hinged on, in large part, the fact that the Senate “has been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board . . .” Perez, 5 N.Y. 3d at 529.

In contrast, School Leadership Teams are created pursuant to a circumscribed regulation of the New York State Education Commissioner that requires school districts to “develop and adopt a district plan for the participation by teachers and parents with administrators and school board members in school-based planning and shared decision-making.” 8 N.Y.C.R.R. § 100.11(b). The provisions of the Education Law that mandate compliance with § 100.11(b) underscore the advisory nature of the SLT. See N.Y. Educ. Law § 2590-h (15) (b) (Chancellor must ensure parents’ and school personnel’s role in “advising” in certain decisions devolved to school by N.Y. Educ. Law §§ 2590-i and 2590-r); id. at § 2590-h(15)(b-1)(i) (empowering school-based management team to develop comprehensive educational plan “so that it may *inform* the decision-making process and result in the alignment of the comprehensive educational plan and the school-based budget”) (emphasis supplied); id. at § 2590-h(15)(b-1)(iv) (allowing parent members of such teams “*make recommendations . . .* on the selection of the school principal and have all members *be consulted* prior to the appointment of any principal candidate to its school”) (emphasis supplied). Chancellor’s Regulation A-655 implements the Commissioner’s Regulation and statutes by creating SLTs as advisory bodies that “assist in the assessment of a school’s educational programs and their affect on student achievement.” Chancellor’s Regulation A-655, § I.

Thus, the statutory and regulatory scheme authorizing SLTs reinforces the intention of the Commissioner’s Regulation to create a school-based management team composed of the school’s constituencies to act in an advisory capacity. In contrast, the College Senate in Perez was created pursuant to a scheme in which the CUNY Board of Trustees delegated many of its broad, final decision-making powers to the Senate. This critical distinction warrants the Court finding that SLTs are not “public bodies”.

Finality of Decision-Making Authority

As alluded to in the previous two sections, SLTs have no final decision-making authority or power to implement their recommendations, whereas the Senate in Perez had the final say on many issues. The major task given to the SLT by regulation – the development of the CEP – is not final until the Superintendent has certified that the CEP is aligned with the school’s budget. See Chancellor’s Reg. A-655 § II. If the SLT does not reach consensus on the CEP, or if the SLT disagrees with the school principal on the alignment of the CEP and the budget, the superintendent make the final determination on these issues. See Chancellor’s Regulation A-655 §II.A.4-7. Nor does the SLT have the power to implement the goals set forth in the CEP. The principal and school administration are responsible for implementation. As a result, the SLT does not perform public business and is not a public body. See Koubek v. County of Nassau, No. 10 Civ. 4488, 2012 WL 1107734 (E.D.N.Y. Mar. 28, 2012) (Income Supports Committee of the Nassau County Department of Social Services Advisory Council does not have “any power to actually implement any of its recommendations” and, therefore,

does not perform a governmental function and is not a public body subject to the Open Meetings Law.)¹

In contrast, in Perez, the Senate, “has been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board and ... functions as a proxy for faculty councils,” and has power to make policy in such far-reaching areas as admissions, degree requirements, curriculum design, and budget and finance, with some of its standing committees making final determinations regarding “disciplinary findings and punishments, academic disputes and scholarship awards.” See Perez, 5 N.Y.3d at 529. In addition, the Senate is “the only body that can make changes to the College Governance Charter.” Id. The Court of Appeals has consistently found that school bodies must have this type of nonreviewable power over significant school matters to be considered a “public body.” See Smith, 92 N.Y.2d at 715 (finding LaGuardia Community College Association to be public body under Open Meetings Law in part because it had exclusive power to suspend, regulate, investigate, and reinstate student publications). School Leadership Teams have no equivalent, nonreviewable power or authority and, therefore, are not “public bodies.”

Conclusion

School Leadership Teams were created to foster communication among the constituent groups of a single public school, and to allow them to collaboratively evaluate and discuss the academic needs, goals, and policies of a school community. This circumscribed school-related purpose is explicit in the statutory and regulatory authority creating SLTs. This distinguishes SLTs from the College Senate in Perez, which acted as a proxy for the CUNY Board of Trustees and the faculty councils on many aspects of academic life. We urge the Court to recognize this difference and to find that SLTs are not “public bodies” subject to the Open Meetings Law. Consequently, we request that this Court dismiss the petition.

Thank you for the consideration of this submission.

Respectfully,

/s/

Lesley Berson Mbaye
Senior Counsel

Cc: By email
Michael P. Thomas
Petitioner, pro se
michaelpthomas@hotmail.com

¹ As this case is only available on electronic databases, a copy has been appended to this letter for the Court’s and parties’ ease of reference.

Laura Barbieri, Esq.
Advocates for Justice
Attorney for Petitioner-Intervenor Letitia James, Public Advocate for the City of New York
lbarbieri@advocatesny.com

Mark Ladov, Esq.
New York Lawyers for the Public Interest
Attorney for Petitioner-Intervenor Class Size Matters
mladov@nylpi.org

Hasa A. Kingo, Esq.
Law Clerk
Hon. Peter H. Moulton
New York State Supreme Court
hkingo@nycourts.gov

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

2012 WL 1107734

Only the Westlaw citation is currently available.
United States District Court,
E.D. New York.

Richard KOUBEK, Plaintiff,

v.

The COUNTY OF NASSAU, Nassau County
Department of Social Services, Nassau County
Department of Social Services Income Supports
Committee of the Advisory Committee, Karen
Garber (in her official and individual capacity),
Commissioner John Imhof, Commissioner of the
Nassau County Department of Social Services (in
his official and individual capacity), and Nicholas
A. Esposito (in his official and individual
capacity), Defendants.

No. 10-CV-4488 (SJF)(WDW). | March 28, 2012.

Attorneys and Law Firms

Frederick K. Brewington, Law Offices of Frederick K.
Brewington, Hempstead, NY, for Plaintiff.

Pablo A. Fernandez, Jennean R. Rogers, Mineola, NY, for
Defendants.

Opinion

FEUERSTEIN, District Judge.

*1 On October 1, 2010, plaintiff Richard Koubek ("plaintiff" or "Koubek") commenced this action against defendants the County of Nassau, Nassau County Department of Social Services, Nassau County Department of Social Services Income Supports Committee of the Advisory Committee, Karen Garber ("Garber"), in her official and individual capacities, Nicholas A. Esposito ("Esposito"), in his official and individual capacities, and Commissioner John Imhof, Commissioner of the Nassau County Department of Social Services ("Commissioner Imhof or the "Commissioner"), in his official and individual capacities (collectively, "defendants"). [Docket Entry No. 1]. The complaint alleges, *inter alia*, that defendants violated the New York State Open Meetings Law, as well as plaintiff's First and Fourteenth Amendment rights. *Id.* at ¶ 1.

Before the Court is defendants' motion for judgment on

the pleadings pursuant to Federal Rule of Civil Procedure 12(c). *See* Docket Entry No. 15. For the reasons that follow, defendants' motion is granted.

I. Background'

A. The Nassau County Department of Social Services ("NCDSS") Advisory Council and the Income Supports Committee

18 N.Y.C.R.R. § 341.1 provides as follows:

(a) The social services district shall establish an advisory council in accordance with the requirements of this Part and department guidelines.

(b) The commissioner of the social services district shall appoint the members of the advisory council.

(c) The advisory council shall consist of a minimum of 20 members, subject to such exceptions as the State Commissioner of Social Services may in his discretion permit, and shall be composed of the following classes of persons:

(1) recipients of public assistance (including SSI and food stamps), medical assistance and services---at least 25 percent;

(2) providers of social services, medical services and domiciliary care (other than employees of the State or local departments of social services); and

(3) members of the general public (including but not limited to representatives of professional social work associations, schools of social work, labor organizations, public interest groups, client advocates, community organizations and the business and financial community).

(d) The advisory council shall be involved, *in an advisory capacity only*, in policy development, program planning and program evaluation carried on by the social services district with respect to public assistance, medical assistance and services.

18 N.Y.C.R.R. § 341.1 (Emphasis added).

Pursuant to this provision, Commissioner Imhof, as Commissioner of the Nassau County Department of Social Services, established the NCDSS Advisory Council. By the express language of 18 N.Y.C.R.R. § 341.1, members of the NCDSS Advisory Council serve

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

“in an advisory capacity *only*.” 18 N.Y.C.R.R. § 341.1(d) (emphasis added). These members are appointed by and serve at the will of the local social services districts. *See id.* at § 341.1(b); Complaint (“Compl.”) [Docket Entry No. 1] at ¶ 22. Members of the NCDSS Advisory Council serve for one (1) year terms, commencing on October 1 of the year of appointment. Docket Entry No. 6–2 (“Bylaws”) at III(B).

*2 The NCDSS Advisory Council’s Bylaws provide for the creation of several “standing committees,” including an Income Supports Committee “composed of individuals and representatives of community agencies and organizations concerned with employment and consumer issues.” Bylaws at V(A)(2).³

The complaint asserts the following three (3) causes of action: (1) violations of plaintiff’s rights pursuant to the First and Fourteenth Amendments of the U.S. Constitution; (2) violations of the New York Open Meetings Law; and (3) violations of Article 1, Sections 8 and 9, of the New York State Constitution. *Id.* at ¶¶ 74–110. Plaintiff seeks a declaratory judgment, injunctive relief, and attorneys’ fees. *Id.* at ¶ 111.

B. The Complaint

Plaintiff is a sixty-eight (68) year old male who, at all times relevant to this action, was employed by Catholic Charities in Nassau County. Compl. at ¶¶ 12, 17. According to the complaint, plaintiff is an “active member of the community,” *id.* at ¶ 13, who had been appointed as a member of the NCDSS Advisory Council. *Id.* at ¶ 18. In connection with that appointment, plaintiff also served as a member of the NCDSS Advisory Council’s Income Supports Committee (the “Income Supports Committee”). *See id.* at ¶¶ 3, 18. As a member of the NCDSS Advisory Council, plaintiff’s term expired on September 30, 2007, and he was not reappointed to another term. According to the Bylaws, “[e]very member of a Committee shall be a member of the full Advisory Council,” *id.* at III(C), and “[t]he Standing Committees shall be open to appointed committee members only ...,” *id.* at V(A).

Plaintiff alleges that, in July 2007, Commissioner Imhof “removed” him from both the NCDSS Advisory Council and the Income Supports Committee because plaintiff had voiced “procedural and policy related differences” with the Commissioner. *Id.* at ¶¶ 18, 41.³ Plaintiff claims that, after his term on the NCDSS Advisory Council expired, defendants prohibited him from attending meetings of the Income Supports Committee and from entering the Nassau County Department of Social Services building in

Uniondale, New York. *Id.* at ¶¶ 3–6. On or about October 23, 2007, Garber, an NCDSS employee, sent plaintiff an e-mail explaining that plaintiff could not attend the Income Supports Committee meetings because “only members appointed by the Commissioner may attend committee meetings.” *Id.* at ¶ 43. Plaintiff, however, has always been permitted to attend the NCDSS Advisory Council’s annual meetings. *See* Compl. at ¶ 42.

On or about February 12, 2009, plaintiff sent a letter to Commissioner Imhof, attaching an advisory legal opinion from Robert Freeman, Executive Director of the State of New York Committee on Open Government. *Id.* at ¶¶ 48–49; Docket Entry No. 9–2 at Ex. B. In the opinion, Freeman concluded that “a local advisory council ... constitutes a ‘public body’ required to comply with the Open Meetings Law.” *Id.* On or about April 8, 2009, Esposito, a Nassau County Deputy County Attorney, responded in a letter stating that the County disagreed with this conclusion, and that plaintiff would continue to be barred from meetings of the Income Supports Committee. *See id.* at ¶ 50; Docket Entry No. 9–2 at Ex. C.

*3 Plaintiff does not allege that he was excluded from attending meetings of the NCDSS Advisory Council, even after his term expired, and does not dispute that NCDSS Advisory Council meetings are open to the public. Bylaws at VI(E) (“[a]ll Full Advisory Council meetings shall be open to the public”); *see also* Declaration of Pablo A. Fernandez (“Fernandez Dec”) [Docket Entry No. 16–2] at Ex. C (Garber: “You are certainly invited to attend our Full Advisory Council Meetings which are open to the public.”); Compl. at ¶ 42 (acknowledging that he has been permitted to attend the NCDSS Advisory Council’s annual meetings).³ Rather, plaintiff alleges that he was excluded from meetings of the Income Supports Committee, which, according to the Advisory Council Bylaws, are “open to appointed committee members only.” Bylaws at V(A); *see also* Fernandez Dec. Ex. C (Garber: committee meetings open only to “Advisory Council members appointed by the Commissioner.”). Accordingly, the only issue presented is whether plaintiff was improperly excluded from meetings of the Income Supports Committee. *See* Plaintiff’s Brief in Opposition [Docket Entry No. 20] (“Pl. Opp.”) at 5–6.

II. Analysis

A. Standard of Review

In deciding a motion pursuant to Rule 12(c), the Court employs the same standard as in deciding a Rule 12(b)(6) motion to dismiss. *Johnson v. Rowley*, 569 F.3d 40, 43

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

(2d Cir.2009). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). “A pleading that offers ‘labels and conclusions’ or ‘a ‘formulaic recitation of the elements of a cause of action will not do.’ ” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’ ” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557).

The Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Matson v. Bd. of Educ. of the City Sch. Dist. of N.Y.*, 631 F.3d 57, 63 (2d Cir.2011); *see also Ruston v. Town Bd. for the Town of Skaneateles*, 610 F.3d 55, 59 (2d Cir.2010) (“When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.”). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S.Ct. at 1949. “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Id.* at 1950. “While a complaint need not contain detailed factual allegations, it requires more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Matson*, 631 F.3d at 63 (internal quotation marks and citation omitted).

*4 “On a 12(c) motion, the court considers ‘the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case.’ ” *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir.2011) (quoting *Roberts v. Babkiewicz*, 582 F.3d 418, 419 (2d Cir.2009)). “A complaint is [also] deemed to include any written instrument attached to it as an exhibit, materials incorporated in it by reference, and documents that, although not incorporated by reference, are ‘integral’ to the complaint.” *Id.* (quoting *Sira v. Morton*, 380 F.3d 57, 67 (2d Cir.2004)).

B. Section 1983

42 U.S.C. § 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation,

Next

custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

“The statute itself is not a source of substantive rights but ‘merely provides a method for vindicating federal rights elsewhere conferred.’ ” *Fowlkes v. Rodriguez*, 584 F.Supp.2d 561, 572 (E.D.N.Y.2008) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979)). “Thus, in order to state a cognizable claim under § 1983, plaintiff must not only allege that a person was acting under color of state law but also that he or she engaged in conduct that deprived him of rights secured by the Constitution or laws of the United States.” *Id.* (citing *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981)).

C. New York State Open Meetings Law

Section 103(a) of the New York Public Officers Law states: “Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five of this article.” “In enacting the Open Meetings Law, the Legislature sought to ensure that ‘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.’ ” *Matter of Perez v. City Univ. of N.Y.*, 5 N.Y.3d 522, 528, 840 N.E.2d 572, 806 N.Y.S.2d 460 (2005) (quoting Public Officers Law § 100).

Section 102(2) of the Public Officers Law defines a “public body” 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 an agency or department thereof” (Emphasis added). “[N]ot every entity whose power is derived from state law is deemed to be performing a governmental function.” *Perez*, 5 N.Y.3d at 528, 806 N.Y.S.2d 460, 840 N.E.2d 572. To determine whether an entity is “performing a governmental function” for purposes of the Open Meetings Law, the

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

Court “undertake[s] an analysis that centers on 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.” *Id.* (internal quotation marks and citation omitted).

*5 Committees that are “advisory in nature, [and that do] not perform governmental functions” are not “public bodies.” *Jae v. Bd. of Educ. of Pelham Union Free School Dist.*, 22 A.D.3d 581, 584, 802 N.Y.S.2d 228 (2d Dep’t 2005) (finding that Board of Education’s committees were not public bodies); *see also Perez*, 5 N.Y.3d at 528, 806 N.Y.S.2d 460, 840 N.E.2d 572 (“Certainly not all advisory bodies that issue recommendations to state agencies are performing governmental functions for purposes of compliance with the Open Meetings Law.”); *Matter of Poughkeepsie Newspaper Div. of Gannett Satellite Info. Network v. Mayor’s Intergovernmental Task Force on N.Y. City Water Supply Needs*, 145 A.D.2d 65, 67, 537 N.Y.S.2d 582 (2d Dep’t 1989) (task force was “advisory body” and “not performing a governmental function”); *Goodson Todman Enters., Ltd. v. Town Bd. of Milan*, 151 A.D.2d 642, 643, 542 N.Y.S.2d 373, 374 (2d Dep’t 1989) (“[i]t has long been held that the mere giving of advice, even about governmental matters, is not itself a governmental function”).

In *Perez v. City University of New York*, the New York Court of Appeals held that the Hostos Community College Senate and its Executive Committee were “exercising a quintessentially governmental function,” and were therefore subject to the Open Meetings Law. *Perez*, 5 N.Y.3d at 529, 806 N.Y.S.2d 460, 840 N.E.2d 572. The Court of Appeals noted that the College Senate (including its Executive Committee) had “been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board,” including “the power to formulate new policy recommendations and review existing policies” in “far-reaching” areas and the power to “initiate changes to the College Governance Charter.” *Id.* The College Senate was to be “consulted prior to any additions or alterations to the College’s divisions,” and it was the “sole legislative body on campus authorized to send proposals to the CUNY Board of Trustees.” *Id.* at 529–30, 806 N.Y.S.2d 460, 840 N.E.2d 572. Considering all of the facts and circumstances, the Court of Appeals concluded that the College Senate’s role was not only “advisory,” but also “determinative.” *Id.*

In contrast, 18 N.Y.C.R.R. § 341.1, which authorizes the NCDSS Advisory Council, explicitly states that members of the Council are to be involved in policy development

“in an advisory capacity only.” Similarly, the Council’s Bylaws acknowledge that its purpose is to “act in an advisory capacity to the Commissioner of Social Services.” Bylaws at II. There is nothing to suggest that the Income Supports Committee, which is a subcommittee of the larger Advisory Council, serves in anything more than an “advisory” capacity, either. The Bylaws do not delegate any powers to the Income Supports Committee. Bylaws at V(A)(2). Although plaintiff argues that the committee has recommended implementation of evening hours for NCDSS and created literature for public distribution, Pl. Opp. at 8, these acts are not inconsistent with the type of work performed by a purely advisory body. There is no indication that the committee had any power to actually implement any of its recommendations.”

*6 There is no indication from the pleadings that the committee performs a “governmental function”; on the contrary, the parties’ submissions strongly suggest that it does not. Thus, there is no basis for concluding that the Income Supports Committee is a “public body” for purposes of the Open Meetings Law.⁷ Accordingly, the Court finds that plaintiff has failed to adequately allege any violation of the New York Open Meetings Law.

D. First Amendment Claims

Even if plaintiff had stated a claim of a violation of the Open Meetings Law, and he has not, “[v]iolations of state law that do not rise to the level of constitutional violations cannot form the basis of a federal claim under 42 U.S.C. § 1983.” *Berlickij v. Town of Castleton*, 146 Fed. Appx., 533, 535 (2d Cir. Sept. 2, 2005). In other words, plaintiff cannot simply rest his First Amendment claim upon his argument that defendants violated New York’s Open Meetings Law: he must also plead a constitutional claim.

In his first cause of action, plaintiff alleges that, by excluding him from the Income Supports Committee meetings, defendants violated his rights to free speech, freedom of association, freedom of assembly, and freedom to petition. Compl. at ¶¶ 75, 87–88. Plaintiff claims that he was banned from the meetings in order to “chill his right to freedom of expression and speech,” and that his exclusion from the meetings was a “retaliatory act” for his exercise of free speech. Compl. at ¶¶ 77–78.

“As a general matter, ‘the importance of the First Amendment guarantees to individual development and to our system of representative government’ means ‘that justifiable governmental goals may not be achieved by unduly broad means having an unnecessary impact’ upon the rights guaranteed by the First Amendment.” *Zalaski v. City of Bridgeport Police Dept.*, 613 F.3d 336, 341 (2d

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

Cir.2010) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 680–81, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972)). However, “the First Amendment does not guarantee the right to communicate one’s views at all times and places or in any manner that may be desired.” *Id.* (quoting *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981)). Furthermore, “the government is permitted to exercise control over the public’s use of government-owned property for expressive purposes, and the degree of control permitted depends upon the nature of the property and the speech restrictions imposed thereon.” *Hotel Emps. & Rest. Emps. Union Local 100 v. City of N. Y. Dep’t of Parks & Rec.*, 311 F.3d 534, 544 (2d Cir.2002). “[P]laintiffs who allege a violation of their right to free speech must prove that official conduct actually deprived them of that right.” *Williams v. Town of Greenbergh*, 535 F.3d 71, 78 (2d Cir.2008) (citing *Colombo v. O’Connell*, 310 F.3d 115, 117 (2d Cir.2002)). To prove this deprivation, plaintiff must allege facts showing either that: “(1) defendants silenced him or (2) ‘defendant[s]’ actions had some actual, non-speculative chilling effect’ on his speech. *Williams*, 535 F.3d at 78 (citing *Colombo*, 310 F.3d at 117).

*7 Plaintiff argues that the Income Supports Committee meetings “[are] indeed, or should be” open to the public. PL Opp. at 6. The Court disagrees. In its Bylaws, the NCDSS Advisory Council unequivocally expressed that Income Supports Committee meetings would *not* be open to public expression. *See* Bylaws at III(C) and V(A). “Plainly, public bodies may confine their meetings to specified subject matter and may hold nonpublic sessions to transact business.” *Madison Joint Sch. Dist. v. Wisconsin Employment Relations Comm’n*, 429 U.S. 167, 175 n. 8, 97 S.Ct. 421, 426 n. 8, 50 L.Ed.2d 376 (1976).⁸ The Income Supports Committee need not open its meetings to members of the public, and it may conduct its business in private. *See generally West Farms Associates v. State Traffic Comm’n of State of Conn.*, 951 F.2d 469, 473 (2d Cir.1991) (State Traffic Commission “has no federal obligation to open all of its meetings to the public. On the contrary, it is plainly permitted by the First Amendment to conduct its business in private.”); *Berlickij*, 146 Fed. Appx. at 534 (plaintiff had “no First Amendment right” to attend non-public sessions); *see also Minn. State Bd. of Community Colleges v. Knight*, 465 U.S. 271, 285, 104 S.Ct. 1058, 79 L.Ed.2d 299 (1984) (“Nothing in the First Amendment or in [the Supreme] Court’s case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals’ communications on public issues.”).

“Freedom to speak on government property is largely dependent on the nature of the forum in which the speech is delivered.” *Bronx Household of Faith v. Community Sch. Dist. No. 10*, 127 F.3d 207, 211 (2d Cir.1997). “The Supreme Court has recognized three types of fora across a spectrum of constitutional protection for expressive activity.” *Make the Road by Walking, Inc. v. Turner*, 378 F.3d 133, 142 (2d Cir.2004). These consist of the “traditional” public forum, the “designated” public forum, including its subset, the “limited” public forum, and the “nonpublic” forum. *Id.* at 142–43. The nonpublic forum “is public property not traditionally open to public expression or intentionally designated by the government as a place for such expression.” *Id.* at 143. “[T]he State may reserve [a nonpublic forum] for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.* (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)). In a nonpublic forum, government “may limit access ... based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.” *Byrne v. Rutledge*, 623 F.3d 46, 54 (2d Cir.2010) (internal quotation marks and citation omitted). The Income Supports Committee meetings, which are apparently held in the Nassau County Department of Social Services building, are nonpublic fora. *See Berlickij*, 146 Fed. Appx. at 534.⁹

*8 The exclusion of plaintiff from the committee meetings was not unreasonable: his term had expired and he was no longer a member of the NCDSS Advisory Council. At most, plaintiff alleges that Commissioner Imhof declined to re-appoint him to the Advisory Council at some point after he had “ask[ed] questions based off of notes and minutes kept from a prior related meeting.” Compl. at ¶ 54. These allegations are insufficient to reasonably conclude that he was excluded because of any particular viewpoint. In fact, since the committee was open *only* to members of the Advisory Council, meaning plaintiff was denied access because of his status (i.e., as a non-member), rather than because of his views. *See Perry*, 460 U.S. at 49, 103 S.Ct. 948, 74 L.Ed.2d 794; *see also DeGrassi v. City of Glendora*, 207 F.3d 636, 646 (9th Cir.2000). Nor has plaintiff adequately alleged a constitutional violation based upon his alleged exclusion from the Social Services Building. *See Berlickij v. Town of Castleton*, 327 F.Supp.2d 371, 384 (D.Vt.2004), *aff’d*, 146 Fed. Appx. 533 (2d Cir. Sept.2, 2005); *see also Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 799–800, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985) (government need not “grant access to all who

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

wish to exercise their right to free speech on every type of [public] property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities."'). Moreover, it is not at all clear from the pleadings how plaintiff has been "silenced" by being unable to attend the committee meetings or that his exclusion had any "non-speculative" chilling effect on his speech.

Furthermore, plaintiff has not alleged any violation of his First Amendment right to petition. "The First Amendment right to petition the government for a redress of grievances, which is an assurance of a particular freedom of expression, is generally subject to the same constitutional analysis as the right to free speech." *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1059 (2d Cir.1993) (internal quotation marks and citations omitted). "The right to petition in general guarantees only that individuals have a right to communicate directly to government officials, and that individuals have the right of access to the courts to redress constitutional violations." *Kittay v. Giuliani*, 112 F.Supp.2d 342, 354 (S.D.N.Y.2000) (citations omitted). "[C]ourts have recognized that government may conduct its business in private consistent with the First Amendment right to petition." *Id.* (citing *West Farms*, 951 F.2d at 473). As plaintiff has not alleged that his exclusion from the meetings prevented him from communicating any grievance to elected officials, or that his access to the courts has been restricted, this element of the First Amendment claim is also dismissed. *See id.* The complaint also fails to state a claim for violations of plaintiff's rights to freedom of association or assembly, given the fact that the Income Supports Committee meetings are not public fora and are closed to non-members of the Advisory Council. *See generally Hotel Employees*, 311 F.3d at 546.

*9 Plaintiff further alleges that government officials excluded him in retaliation for the exercise of free speech. In order to state such a claim, plaintiff "must allege that (i) he has an interest protected by the First Amendment; (ii) the defendant's actions were motivated by or substantially caused by the plaintiff's exercise of that right; and (iii) the defendant's action effectively chilled the exercise of the plaintiff's First Amendment rights." *Connell v. Signoracci*, 153 F.3d 74, 79 (2d Cir.1998) (internal citations omitted). As discussed above, plaintiff does not have a First Amendment protected right to continue attending the Income Supports Committee meetings following the expiration of his appointment to the NCDSS Advisory Council, nor does he sufficiently allege that the exercise of his First Amendment rights were "chilled."

E. Fourteenth Amendment Claim

Plaintiff further claims that defendants denied him his right to procedural due process by excluding him from the Income Supports Committee meetings. Compl. at ¶ 75.

"[T]he constitutional guarantee of procedural due process has always been understood to embody a presumptive requirement of notice and a meaningful opportunity to be heard *before* the State acts to deprive a person of his property." *Mackey v. Montrym*, 443 U.S. 1, 20, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979) (emphasis in original). In adjudicating a procedural due process claim, a court must consider "two distinct issues: 1) whether the plaintiffs possess a liberty or property interest protected by the Due Process clause; and, if so, 2) whether existing state procedures are constitutionally adequate." *Kapps v. Wing*, 404 F.3d 105, 112 (2d Cir.2005). Plaintiff cites no authority for the proposition that he had a constitutionally-protected interest in attending the Income Supports Committee meetings, and the Court has found none. Furthermore, plaintiff has not demonstrated that a proceeding pursuant to Article 78 is a constitutionally inadequate state procedure. Plaintiff's Fourteenth Amendment claim is therefore dismissed.

F. Remaining State Law Claims

As discussed above, the complaint does not allege any violation of the Open Meetings Law, and the complaint's second cause of action is therefore dismissed.

Insofar as plaintiff's third cause of action seeks to allege unlawful restrictions on his rights to freedom of expression, freedom of assembly, and freedom to petition, in violation of the New York State Constitution, Compl. at ¶¶ 103–110, plaintiff has failed to adequately plead such claims, and therefore this claim is dismissed. *See Prince v. County of Nassau*, — F.Supp.2d —, 2011 WL 4406338, at *30 (E.D.N.Y. Sept.21, 2011) ("Plaintiff's claim under the New York State Constitution Article 1, § 8 is dismissed for the same reasons as plaintiff's First Amendment retaliation claim described above—namely, plaintiff has failed to adequately plead such a claim."); *see also Martinez v. Sanders*, 307 Fed. Appx. 467, 468 n. 2 (2d. Cir. Dec.12, 2008) ("The State Constitution claims at issue here are subject to the same standards as the First Amendment claims.")"

G. Leave to Amend

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

*10 Finally, plaintiff argues that he should be granted leave to amend the complaint if the Court dismisses any of his claims. This request is denied.

A party may amend a pleading once as a matter of course “within 21 days of serving it,” or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (c), or (f), whichever is earlier.” Fed.R.Civ.P. 15(a) (1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed.R.Civ.P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.*

It is well settled, however, that “the grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court.” *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)). The Court may deny leave to amend for reasons such as “undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party.” *Richard Greenshields Sec. Inc. v. Lau*, 825 F.2d 647, 653 n. 6 (2d Cir.1987) (quoting *State Teachers Retirement Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d Cir.1981)).

Footnotes

¹ “In deciding a Rule 12(c) motion, we apply the same standard as that applicable to a motion under Rule 12(b)(6), accepting the allegations contained in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party, unless the allegations are supported by mere conclusory statements.” *Havden v. Paterson*, 594 F.3d 150, 157 n. 4 (2d Cir.2010) (internal quotation marks and citations omitted).

² The Court notes that the complaint conflates the NCDSS Advisory Council, created pursuant to 18 N.Y.C.R.R. § 341.1, with the Advisory Council’s Committees, which are pursuant to the Advisory Council’s Bylaws. *See, e.g.*, Compl. at ¶ 22.

³ The Bylaws, attached to defendants’ answer as Exhibit A, provide, in relevant part:
 BY LAWS FOR TITLE XX ADVISORY COUNCIL
 ARTICLE I—NAME
 The name of this Council shall be the Advisory Council to the Nassau County Department of Social Services.
 ARTICLE II—PURPOSE
 The purpose of the Council shall be to act in an advisory capacity to the Commissioner of Social Services in regard to public assistance, medical assistance and services. The Council will:
 • recommend priorities within the total program and budget or specific programs;
 • recommend program and administrative policy;
 • recommend the continuation or modification of programs;
 • plan, participate in and evaluate full Advisory Council meetings;
 • identify community concerns for the Department;
 • help to interpret the Department’s objectives and activities for the community;
 • assist the Commissioner in communicating issues of concern to legislators;
 • assist the Department in publicizing available services.
 ARTICLE III—MEMBERSHIP

* * *

B.... Members shall be appointed [by the Commissioner] for one (1) year terms, beginning on October 1st of the year of

Plaintiff fails to set forth any basis for the proposed amendments or to attach any proposed amended pleading. However, the Court finds that any amendment would be futile; as discussed above, the facts underlying this case simply do not support plaintiff’s constitutional and state law claims. In other words, “[t]he problem with [plaintiff’s] causes of action is substantive; better pleading will not cure it.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir.2000); *see also Cortec Indus., Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 48 (2d Cir.1991) (“Of course, where a plaintiff is unable to allege any fact sufficient to support its claim, a complaint should be dismissed with prejudice.”). Accordingly, plaintiff’s application for leave to amend is denied.

III. Conclusion

For the foregoing reasons, defendants’ motion to dismiss is granted in all respects. The Clerk of Court is directed to close this case.

SO ORDERED.

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

appointment.

C. Every member of a Committee shall be a member of the full Advisory Council....

* * *

ARTICLE V—COMMITTEES

A. The Standing Committees shall be open to appointed committee members only and consist of the following:

1. An Executive Committee which shall be composed of the officers—Chair, Vice Chair and Secretary—and the Chairpersons of all Standing Committees and any other Council members who may be deemed necessary to the operation of the Committee. An officer of the Executive Committee may also serve as a Committee Chair. Officers of the Executive Committee shall be appointed by the Commissioner for an annual term beginning October 1st each year....

2. An Income Supports Committee composed of individuals and representatives of community agencies and organizations concerned with employment and consumer issues....

* * *

ARTICLE VI—FULL ADVISORY COUNCIL MEETINGS

A. Full Advisory Council meetings shall be held at least two times a year, one of which will be to review the Nassau County Department of Social Services Child and Family Services Plan.

* * *

E. All Full Advisory Council meetings shall be open to the public, but voting shall be restricted to Council members only. Discussion from the public shall be at the discretion of the Council and as directed by the Chairperson.

4 Plaintiff claims he was “removed as a member” in July 2007. Compl. at ¶ 41. However, the Court assumes that plaintiff was notified in July 2007 that his membership would not be renewed for another year, not that he was removed in the middle of his appointed term. According to meeting minutes submitted by plaintiff, plaintiff participated in the Income Supports Committee’s September 26, 2007 meeting, at which time he informed the committee that he was not being reappointed to the NCDSS Advisory Council. [Docket Entry No. 9–2 at Ex. D, p. 2]. See *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F.Supp.2d 371, 405–06 (S.D.N.Y.2001) (“[A] court need not feel constrained to accept as truth conflicting pleadings that make no sense ... or that are contradicted either by statements in the complaint itself or by documents upon which its pleadings rely”).

5 Although the Bylaws specifically require the NCDSS Advisory Council meetings to be open to the public, it is not clear that the Open Meetings Law requires them to be. This question, however, is not before the Court, and the Court expresses no opinion on the issue.

6 Moreover, Freeman’s advisory opinion, which is of course neither controlling nor dispositive, concludes only that the NCDSS Advisory Council, not the Income Supports Committee, is required to comply with the Open Meetings Law. Docket Entry No. 9–2 at Ex. B. It is noted that the “opinion” was, in any event, based upon plaintiff’s inquiry, which stated the facts upon which the “opinion” was based.

7 Moreover, plaintiff has not alleged that the Income Supports Committee has any quorum requirement, another essential element of a “public body.” See Public Officers Law § 102(2).

8 The Court notes again the lack of evidence that the Income Supports Committee even qualifies as a “public body” or that it engages in any policymaking.

9 Plaintiff claims that, in the past, the Income Supports Committee did not “check[] attendance against the Advisory Council member roster,” and that non-members had attended Income Supports Committee meetings. See Docket Entry No. 18 at ¶¶ 9–10. Even assuming that committee members did not always enforce the rule that its meetings must be non-public, this does not change the Court’s analysis. The meetings were not a traditional public forum because they have not “by long tradition or by government fiat ... been devoted to assembly and debate.” *Perry*, 460 U.S. at 45. Nor were the meetings a designated public forum, which can only be created by “purposeful governmental action.” *Arkansas Educ. Television Com’n v. Forbes*, 523 U.S. 666, 677–78, 118 S.Ct. 1633, 1641–42, 140 L.Ed.2d 875 (1998); see also *Daily v. N.Y. City Hous. Auth.*, 221 F.Supp.2d 390, 397 (E.D.N.Y.2002). Plaintiff is not alleging that the meetings were open for public discourse by virtue of any “purposeful governmental action.” At most, plaintiff suggests that non-members attended the meetings because the committee’s own policy was not strictly enforced. See *Forbes*, 523 U.S. at 677 (“The government does not create a [designated] public forum by inaction”). Even if plaintiff alleged that the meetings were limited public fora, plaintiff may be excluded from such fora as long as the limitation is reasonable and viewpoint-neutral. See *Children First Foundation v. Martinez*. — F.Supp.2d —, 2011 WL 5451762, at *9 (N.D.N.Y. Nov.8, 2011). As discussed below, plaintiff has failed to adequately allege that the restrictions were either unreasonable or that they discriminated against him on the basis of a particular viewpoint.

10 Even if any of plaintiff’s state law claims were to survive, however, the Court would decline to exercise its supplemental jurisdiction. *Baylis v. Marriot Corp.*, 843 F.2d 658, 665 (2d Cir.1988) (“When all bases for federal jurisdiction have been eliminated from a case so that only pendent state claims remain, the federal court should ordinarily dismiss the state claims.”)

Koubek v. County of Nassau, Not Reported in F.Supp.2d (2012)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

LETTER, DATED JANUARY 22, 2015, FROM MICHAEL P. THOMAS
TO HON. PETER H. MOULTON
(pp. 197-201)

REPRODUCED FOLLOWING

343 East 92nd Street, Apt. 5W
New York, New York 10128

January 22, 2015

By email (afield@nycourts.gov)
Honorable Peter H. Moulton
New York State Supreme Court, County of New York
111 Centre Street, Part 57
New York, New York 10007

Re: *In the Matter of Thomas v New York City Dept. of Educ.*
Index No. 100538/14

Dear Justice Moulton:

I am the petitioner, pro se, in the above-referenced proceeding. I write this letter in response to Respondents' letter of January 20, 2015 to demonstrate why School Leadership Teams ("SLTs") are public bodies under *Matter of Perez v City University of New York*, 5 NY3d 522 (2005).

In *Perez*, the Court of Appeals held that the College Senate of the Hostos Community College, one of 19 colleges that comprise the City University of New York ("CUNY"), was a public body, not because of the Senate's nonreviewable power or authority as claimed by Respondents, but because the Senate was essential to the governance of Hostos Community College. The Court held the College Senate had been charged with a number of the responsibilities delegated by the Legislature to the CUNY Board, and the CUNY Board's formal power to veto recommendations of the Senate did not in and of itself negate the Senate's policy-making role or render the Senate purely advisory. An analysis of the power and functions of SLTs and a realistic assessment of the decision-making authority of SLTs lead to the conclusion that SLTs, like the College Senate, are public bodies.

The Power and Functions of SLTs

The power and functions of SLTs are derived from state law. Education Law § 2590-h provides that the Chancellor must ensure that the city district and community districts remain in compliance "with state and federal law and regulations concerning school-based management and shared decision-making, including section 100.11 of the commissioner's regulations." See Education Law § 2590-h(15)(b). Chancellor's Regulation A-655 was promulgated in accordance with 8 NYCRR § 100.11 and provides that "the SLT is responsible for developing an annual school comprehensive educational plan (CEP) that is aligned with the school-based budget for the ensuing year." See Chancellor's Regulation A-655(II)(A)(1).

The scope of the power and functions of an SLT can, to a large extent, be ascertained from the required content of a CEP. Respondents provided the 2014-2015 CEP for I.S. 49 for this purpose, but the CEP does not explicitly delineate the school's plan for increasing student performance as it should.¹ Nonetheless, a description of what should be in the CEP will help clarify the power and functions of the SLT.

I.S. 49, like most schools within the New York City Department of Education, receives funds under Title I, Part A ("Title I") of the Elementary and Secondary Education Act and operates a schoolwide program. *See* I.S. 49 2014-2015 CEP at 17-18. The current version of the law, the No Child Left Behind Act, sets forth the requirements for the comprehensive educational plan of a school with a schoolwide program.² *See* 20 USC § 6314.

Under 20 USC § 6314, the CEP must describe how the school will implement the following components of a schoolwide program:

1. a comprehensive needs assessment of the entire school;
2. schoolwide reform strategies that use effective methods and instructional strategies that strengthen the core academic program in the school;
3. schoolwide reform strategies that increase the amount and quality of learning time;
4. strategies for meeting the educational needs of underserved populations, which may include counseling services and college and career guidance;
5. strategies to determine whether needs have been met;
6. instruction by highly qualified teachers;
7. strategies to attract high-quality highly qualified teachers;
8. high quality and ongoing professional development for teachers, principals, and paraprofessionals;
9. strategies to increase parental involvement;
10. measures to include teachers in the decisions regarding the use of academic assessments in order to provide information on, and to improve, the achievement of individual students and the overall instructional program;
11. activities to ensure that students who have difficulty mastering the proficient or advanced levels of academic achievement standards shall be provided with effective, timely assistance; and
12. coordination and integration of federal, state, and local services and programs.

See 20 USC § 6314(b)(1) and (2).

¹ The 2014-2015 CEP for Bronx Center for Science and Mathematics, *available at* http://schools.nyc.gov/documents/oaosi/cep/2014-15/cep_X260.pdf, is an example of a well-developed CEP.

² Pursuant to Education Law § 2590-h(15)(b), schools must comply with all federal law and regulations concerning school-based management and shared decision-making.

In addition, the CEP must describe how the school will use resources under Title I and from other sources to implement these components. *See* 20 USC § 6314(b)(2)(A)(ii). To meet No Child Left Behind Requirements, SLTs are required to serve as the vehicle for consultation with parent representatives regarding the use of federal Title I funds. *See* Chancellor's Regulation A-655(XI).

Thus, SLTs are responsible for developing the school's educational program, monitoring the effectiveness of the educational program, and ensuring that the school-based budget is aligned with the CEP in order to implement the educational program. SLTs are charged with a number of responsibilities and perform substantially more than an advisory function. Since SLTs perform functions of both determinative and advisory natures which are essential to the operation and administration of schools, they are therefore subject to the Open Meetings Law. *Compare Perez*, 5 NY3d at 530.

Decision-Making Authority of SLTs

The Commissioner of Education held in *Appeal of Pollicino*, 48 Ed Dept Rep 279 (Decision No. 15,858), that the SLT has a basic, statutorily mandated authority to make the final determination regarding the CEP. The principal makes the final determination regarding the budget, but cannot override any judgment of the SLT. The superintendent must certify that the budget is aligned with the CEP. *See* Chancellor's Regulation A-655(II)(5).

The SLT is the only body that can initiate changes to the CEP. The superintendent only becomes involved in the development of the CEP at the request of the SLT, either to resolve an impasse during the development of the CEP or to intervene if the SLT does not believe that the school-based budget is aligned with the CEP. *See* Chancellor's Regulation A-655(II)(4) and (6). In practice, the superintendent rarely becomes involved in the development of the CEP, and the possibility of the superintendent's involvement does not negate the SLT's policy-making role or render the SLT purely advisory. *Compare Perez*, 5 NY3d at 530. SLTs are therefore public bodies subject to the Open Meetings Law.

Conclusion

SLTs perform functions of both determinative and advisory natures which are essential to the operation and administration of schools. The limited influence that the superintendent exerts over the development of the CEP is not sufficient to render SLTs purely advisory. The SLT and the College Senate are entirely different entities, but both are public bodies subject to the Open Meetings Law under *Perez*.

Thank you for your consideration of this submission.

Respectfully,

Michael P. Thomas

Michael P. Thomas
Petitioner, pro se

cc: By email

Lesley Berson Mbaye
New York City Law Department
Attorney for Respondents
lmbaye@law.nyc.gov

Laura Barbieri, Esq.
Advocates for Justice
Attorney for Petitioner-Intervenor Letitia James
lbarbieri@advocatesny.com

Mark Ladov, Esq.
New York Lawyers for the Public Interest
Attorney for Petitioner-Intervenor Class Size Matters
mladov@nylpi.org

Hasa A. Kingo, Esq.
Law Clerk
Hon. Peter H. Moulton
New York State Supreme Court
hkingo@nycourts.gov

LETTER, DATED JANUARY 22, 2015, FROM LAUARA D. BARBIERI AND
MARK LADOV TO HON. PETER H. MOULTON
(pp. 202-206)

REPRODUCED FOLLOWING



New York Lawyers
 For The Public Interest, Inc.
 151 West 30th Street, 11th Floor
 New York, NY 10001-4017
 Tel 212-244-4664 Fax 212-244-4570
 TTY 212-244-3692 www.nylpi.org

January 22, 2015

By E-mail (afield@nycourts.gov)
 Honorable Peter H. Moulton
 New York State Supreme Court, County of New York
 111 Centre Street, Part 57
 New York, NY 10007

Re: *In the Matter of Michael P. Thomas v. New York City Dep't of Educ.*
 Index No. 100538/14

Dear Justice Moulton:

Petitioner-Intervenors The Office of the Public Advocate and Class Size Matters appreciate the opportunity to respond to the January 20, 2015 letter submitted by the Office of the Corporation Counsel on behalf of defendants New York City Department of Education ("DOE") and DOE Chancellor Carmen Fariña (collectively "defendants"). Defendants' letter mischaracterizes both the relevant case law and the authority of School Leadership Teams ("SLTs"). For the reasons that follow, we respectfully request that the Court hold that SLTs are public bodies and must be open to the public under both the Open Meetings Law and Section 414(c) of the Education Law.

I. *Perez Did Not Hold that a Public Body Must Implement its Own Policy Decisions to be Subject to the Open Meetings Law*

Defendants argue that "in contrast to the College Senate in [*Perez v. City University of New York*, 5 N.Y.3d 522 (2005)], SLTs do not implement their policy recommendations and do not have the power to make final determinations." (Defs.' Letter at 1.)

Contrary to defendants' mischaracterization, however, the Hostos Community College Senate considered in *Perez* did *not* implement its own policy recommendations. On the contrary, the Court of Appeals explained that this College Senate had "the power to formulate new policy recommendations and review existing policies." *Perez*, 5 N.Y.3d at 529. But any policies recommended by the College Senate required approval by the College President and the CUNY Board of Trustees. As the Court of Appeals described:

Under CUNY's comprehensive university governance scheme, the College Senate is the sole legislative body on campus authorized to send proposals to the CUNY Board of Trustees, and although the policy proposals must first be approved and forwarded by

the College President, they overwhelmingly are. While the CUNY Board retains the formal power to veto recommendations of the College Senate, that does not in and of itself negate the Senate's policy-making role or render the Senate purely advisory.

Id. at 530.

In other words, the Court of Appeals did not hold that a governmental body's decisions must be self-executing for the Open Meetings Law to apply. Instead, the Court of Appeals held that the Open Meetings Law applies when a public body plays a necessary and determinative role in setting governmental policy – a description that is true of both the College Senate in *Perez* and the School Leadership Teams in this case.

Similarly, defendants read into the Court of Appeal's decisions a nonexistent requirement that a public body's power be "nonreviewable" for the Open Meetings Law to apply. (Defendants' Letter at 4.) The Court of Appeals has found that a public body must play a necessary and determinative role in setting government policy. But the fact that those determinations may be reviewed by other governmental bodies, as part of the "power distribution or sharing model under which [the public body] exists," see *Smith v. City University of New York*, 92 N.Y.2d 707, 713 (1999), does not exempt such public bodies from complying with the Open Meetings Law.

II. SLTs are a Statutorily Mandated Part of School Governance and Have Final Decision-Making Authority over a School's Comprehensive Educational Plan

Defendants are also wrong to suggest that SLTs lack the power to make final determinations. Contrary to Defendants' characterization, an SLT has final responsibility for developing a school's Comprehensive Education Plan (CEP), which is the framework for that school's multi-million dollar budget. See Chancellor's Regulation A-655 § II.A.1.

Defendants continue to insist – in error – that SLTs merely advise a school's principal and superintendent. As Section 2590-h(15)(b-1) of the Education Law demonstrates, the district superintendent has no authority to dictate the terms of the CEP. In the rare instance where an SLT is unable to reach a consensus on its own or with help from the District Leadership Team or superintendent, the superintendent may resolve the conflict. See Chancellor's Regulation A-655 § II.A.4 ("[T]he superintendent makes the determination on the CEP only as a last resort, if all of the aforementioned methods of facilitating consensus among the members of the SLT have failed."). By contrast, the district superintendent does have authority to approve the school-based budget after certifying that it is aligned with the CEP. See *id.* § II.A.5.

This governance structure gives an SLT even more independent authority than the College Senate in *Perez*, whose policy proposals needed to be approved by the College President and then forwarded to the CUNY Board of Trustees. See *Perez*, 5 N.Y.3d at 530. But as the Court of Appeals explained in *Perez*, a governmental body is subject to the Open Meetings Law regardless of whether "its recommendations and actions [were] executed

unilaterally and finally, or receive[d] merely perfunctory review or approval.” *Perez*, 5 N.Y.3d at 529 (quoting *Smith v. City University of New York*, 92 N.Y.2d 707, 714 (1999)).¹

As we noted in our arguments, the DOE has previously tried and failed to take away SLTs’ final decision-making authority over the CEP. See *Intervenors-Petitioners’ Brief* at 12; see also *New York State Education Department, Commissioner’s Decision No. 15,858*, attached to *Intervenors-Petitioners’ brief as Barbieri Aff. Ex. E*. The State Education Commissioner ruled that any attempt to strip SLTs of their “statutorily mandated authority” to determine the CEP violated Section 2590-h(15)(b-1) of the Education Law. As a result, the State Education Commissioner took the rare step of requiring the DOE to revise one of its own regulations. The Court should firmly reject the DOE’s continued attempts to diminish the power and significance of SLTs.

Defendants once again cite to state education law to illustrate the supposedly “advisory” nature of SLTs. These quotes are not only misleading, but they ignore the fact that SLTs are a necessary part of the school governance structure, whose role in school-based decision-making is a requirement of state and federal law. At most, the defendants point to the fact that SLTs have *both* determinative and advisory roles, just like the College Senate in *Perez*. See *Perez*, 5 N.Y.3d at 530 (Open Meetings Law applies because “the college senate and the executive committee thereof constitute integral components of the governance structure of Hostos Community College. The senate and its executive committee perform functions of *both* advisory and determinative natures which are essential to the operation and administration of the college” (emphasis added, internal citation omitted).)

Moreover, it is absurd to suggest that SLTs are exempt from the Open Meetings Law because they have “circumscribed school-related purpose[s],” see *Defs’ Letter* at 4, when the *Smith* and *Perez* cases both involve bodies that would meet the same description.² In both decisions, the Court of Appeals made clear that academic decisions made at publicly-funded schools are governmental decisions subject to the Open Meetings Law.

¹ The new unreported case cited by defendants here, *Koubek v. County of Nassau*, No. 10-CV-4488, 2012 WL 1107734 (E.D.N.Y. March 28, 2012), concerns meetings of a working committee that met without any requirement for a quorum to conduct business, and that was part of an Advisory Council that operated “in an advisory capacity only;” it is simply not relevant here.

² Defendants attempted to use a similar description at oral argument to suggest that New York State Education Law § 414 does not apply to SLTs because they are school-related bodies. That argument must be rejected in light of the statutory language specifying that Section 414’s requirement for opening school-based meetings to the general public applies to parent association and PTA meetings. Notably, Defendants have failed to respond in any of their written papers to the new claims concerning Education Law § 414 made in the *Intervenors’ Verified Petition*. These claims provide an additional legal basis for finding that Defendants’ policy violates the law.

As the DOE's own guidance literature acknowledges, SLT meetings are "open to the public," and should anticipate the attendance and participation of "observers from within the school community or beyond." See *Barbieri Aff. Exh. C*, p. 17. Accordingly, the Court should reject the claims made in Defendants' supplementary letter and other pleadings, and grant the relief requested in the verified petitions submitted by Mr. Thomas and the intervening petitioners.

Respectfully submitted,

/s/ Laura D. Barbieri
ADVOCATES FOR JUSTICE
225 Broadway, Suite 1902
New York, New York 10007
(212) 285-1400, x 712

/s/ Mark Ladov
NEW YORK LAWYERS FOR THE PUBLIC INTEREST
151 West 30th Street, 11th Floor
New York, New York 10001
(212) 244-4664

Of Counsel to The Public Advocate of
the City of New York and Class Size
Matters

Of Counsel to Class Size Matters

Cc: (By email)

Michael P. Thomas
Petitioner, pro se
michaelpthomas@hotmail.com

Lesley Berson Mbaye
Counsel for Defendants
Office of the Corporation Counsel of the City of New York
lmbaye@law.nyc.gov

Hasa A. Kingo, Esq.
Law Clerk for the Hon. Peter H. Moulton
New York State Supreme Court
hkingo@nycourts.gov

STATEMENT OF NO OTHER OPINION

No other opinion was rendered herein other than that which appears at pages 9-20.

CERTIFICATION PURSUANT TO CPLR 2105

I, **JANE GORDON**, an attorney in the office of **ZACHARY W. CARTER**, Corporation Counsel, attorney for the appellants herein, do hereby certify, pursuant to CPLR 2105, that the foregoing reproduced record on appeal has been compared with the original papers on file in the office of the Clerk of the County of New York and has been found to be a true and complete copy thereof.

Dated: New York, New York
 September 25, 2015

JANE GORDON
JANE GORDON