

AFFIDAVIT OF THOMAS SHEPPARD

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

THOMAS SHEPPARD, being duly sworn, deposes and says:

1. My name is Tom Sheppard. I am a Bronx parent of three New York City public school students whose ages range from eleven to fourteen. I serve as the only elected member of the New York City Board of Education for the New York City School District, which the DOE calls the Panel on Education policy (or the “PEP”) (hereafter referred to as the “city board” or “BOE”).
2. I provide this affidavit in my individual capacity and not as an official member of the city board. Nonetheless, I am one of the most experienced parents in New York City regarding the functions and responsibilities of the city board, having served as its elected parent representative for the past several years.

The City Board: Composition and Functions

3. The city board functions as the Board of Education for the New York City Department of Education and currently consists of 15 members. Nine (9) members are appointed by the Mayor of the City of New York, who is currently Eric L. Adams. Each borough president appoints one member for his or her county for a total of five (5) members. Then there is me, the elected representative of the 32 Community Education Councils of the City

(CEC). I am elected by a vote of all the Presidents of the CECs. Finally, the Chancellor is a nonvoting member of the city board as are several high school students.¹

4. The city board is charged with several responsibilities including administering and managing the educational affairs of the city school district and approving the estimated education budget.
5. As part of the passage in 2002 of what is known as “mayoral control,” most powers of the city board were diverted to the Chancellor of the New York City school districts, with the city board’s administrative operations assigned to a body denominated by the Mayor as the New York City Department of Education (the “DOE”). The city board also conducts business as the Board of Education for the City.
6. Among a number of its responsibilities, detailed in the Education Law § 2590-g(1)(e), the city board is required to approve the annual estimates of the total sum of money which it deems necessary for the operation of the city district (hereafter referred to as the “estimated budget”) of the NYCDOE upon its presentation to the city board by the Chancellor.
7. In addition, the city board approves all capital contracts of expenditures for NYC public schools, which allows the NYC school district to function.

¹ The CECs replaced the City Community school boards that existed prior to the legislation that instituted “mayoral control” of the City’s education system in 2002. Each CEC is composed of nine district parents and two additional members who are appointed by the Borough Presidents. Currently, the nine (9) parents are elected directly by parents within that particular community school district. Previously, each CEC had been elected by that community school district’s Parent Teacher Association or Parent Association. In June 2019, however, when mayoral control was extended by the N.Y. State Legislature, the election process was changed to a more democratic process by including all district parents in the selection of CEC members.

The City Board: Monthly Meetings

8. All votes by the city board are conducted at public meetings and must be preceded by a public hearing on each proposed agenda item.
9. Because the public typically attends city board meetings and is entitled to speak prior to any city board vote on an agenda item, city board meetings, which usually start at 6:30 pm or 7 pm, can last until the early hours of the morning of the next day.
10. Because of the structure of its membership, and the reality of mayoral control, the mayor appointees typically vote in tandem according to the instructions of the mayor. Accordingly, it is very unusual for the city board to vote down an item on agenda that was proposed by the mayor's chancellor.

The Budget Process

11. Each January, the Mayor's Office of Management and Budget (the "OMB") prepares the mayor's preliminary budget, which includes the proposed budget for the DOE.
12. Every year between March and April, City Council is presented with the preliminary budget and conducts public hearings to discuss the budget. After these hearings, City Council sends its formal response on the preliminary budget, including its concerns and recommendations, back to the Mayor.
13. In April, after City Council sends their response back to Mayor, the Mayor releases the Executive Budget which is an updated proposed budget based on City Council's response.
14. Usually in April, once City Council has sent their formal response on the proposed budget, the city board has two functions. First, the city board must approve the Fair

Student Funding formula (the “FSF”). Once approved, the FSF formula is then applied, which supplies necessary amounts for each NYC public school.

15. Second, between April and June, the city board approves the estimated budget presented to it by the Chancellor after a public hearing.
16. Through May and June, City Council and the mayor negotiate changes to the Executive Budget which results in an agreed upon adopted budget. This agreement must be reached no later than July 1 (i.e., the start of the next fiscal year).
17. If the Mayor and City Council do not adopt the budget by July 1, the prior year’s budget remains in effect until an agreement can be reached.

The April 27, 2022 City Board Meeting

18. On April 4, 2022, after City Council responded to the Mayor’s proposed budget, the city board was presented with the FSF formula by resolution for adoption and vote.
19. The FSF formula is used to give “weights” to address the needs of every public school student in the New York City public school system.
20. On April 27, 2022, the city board did not approve the FSF formula. The vote ended with seven votes in favor of the formula, five abstentions, and one vote against, which led to the board’s non-approval, since there must be a majority vote for the formula to pass. Because the FSF did not pass, it could not be applied to the education budget to determine FSF allocations for each school.
21. Subsequently, the Chancellor told the city board that the DOE would send its budget estimate by the end of May. However, the city board was not given the estimated budget until June 12, 2022.

22. There are several reasons why I voted not to approve the FSF formula. In my view, the FSF formula failed to represent significant populations of students including students facing homelessness, students in foster care, and students facing poverty.
23. An estimated 10% of students enrolled in New York City public schools are homeless. However, city-wide averages do not reflect these numbers since the population of homeless students varies significantly from borough to borough.
24. Another complaint I have about the FSF formula is that it does not take into account child poverty after the third grade. After the student reaches the third grade, the formula uses standardized tests to determine its weights. Accordingly, “below standards” becomes the proxy for poverty, which is a poor measurement.
25. Furthermore, the FSF formula also uses average teacher salaries, which does not consider the rate at which teachers are leaving the profession or the rate at which teachers are entering, which is a much smaller population compared to those teachers that are leaving. That means average teacher salaries are declining because those leaving are the higher earning teachers, while those entering the profession are the lower earning teachers. Again, the formula fails to consider this reality.

The May 2022 City Board Meeting

26. On May 18, 2022, the city board voted to approve the FSF formula that we previously rejected on April 27, 2022. Twelve of the fifteen members of the city board voted to approve the budget with the expectation that the DOE would review the FSF formula and make changes to it for future budgets. However, many members of the education community took issue with the fact that the DOE had time to come up with a different

FSF formula before the city board voted but chose instead to send the city board the same FSF formula that it had rejected less than a month earlier.

The Chancellor's Emergency Declaration

27. On May 24, 2022, the DOE released an Amended Public Notice of the Estimated Budget.
28. On May 31, 2022, the Chancellor circumvented the budget process by adopting the Estimated Budget through the issuance of an Emergency Declaration.
29. On June 13, 2022, City Council and the Mayor adopted the FY23 budget, which included the 2022-2023 school year education budget. The City Council's vote to adopt the budget ignored the statutory requirement that the city board must vote before the vote by the City Council.
30. Last year, the Chancellor's Emergency Declaration might have been justified. For example, the N.Y. State Legislature passed a bill fully funding the New York City public schools. As a result, the total amount allotted to city schools was not determined. In addition, the budget included additional money as a result of the Covid-19 pandemic (American Rescue Plan Act and Coronavirus Relief and Response Supplemental Appropriation). This was also an additional funding source that remained unclear.
31. However, in this present year, there was no justification for the Chancellor to use his emergency declaration powers to approve the estimated budget and his continuously using his emergency declarations to circumvent the approval that is required from the city board.
32. The Chancellor has been issuing Emergency Declarations routinely for a number of years. By issuing these emergency declarations, the Chancellor has circumvented the city board's input on the budget, essentially negating its role.

33. Thus, the Chancellor has prevented the city board from fulfilling one of their basic functions outlined in N.Y. Education Law §§ 2590-g, 2590-q which requires the city board to vote on the DOE budget for the upcoming fiscal year. Moreover, the public has been deprived of their right to participate in the budget process, which is the only opportunity for it to do so that is provided by the State Education Law.
34. The Chancellor's continued issuance of emergency declarations, which prevents the city board from voting in a timely manner, fulfilling its responsibilities to contribute to the budget process, and the public from participating as statutorily required by the N.Y. Education Law, must be stopped.

The Invalid June 2022 City Council Vote

35. On June 5, 2022, the New York City Schools' Galaxy budgets were posted to the DOE's website.
36. On June 13, 2022, City Council voted to adopt the FY23 budget, which included the budget estimates from the Chancellor. However, the city board had yet to approve the estimated budget, which is required by the State Education Law.
37. On June 22, 2022, the Public Comment analysis was posted at 6:41 pm by the DOE, in which the DOE denied concerns that the Chancellor was negating the role of the city board.

The Subsequent June 2022 City Board Meeting

38. On June 23, 2022, the city board voted to approve the budget which occurred in the early hours the next day – June 24, 2022. Nearly 70 parents and teachers urged the board to vote "No." I voted against approving the budget, along with three other members of the city board.

39. Even though the DOE had promised to provide the city board with the estimated budget by the end of May, the city board was only sent the estimated budget a short time before the City Council voted to approve it. This gave virtually no time for people to understand the impact of the budget cuts on schools before City Council voted.
40. When the DOE was asked specific questions regarding how the budget was calculated, what factors the FSF formula takes into account, and what the impact of the individual school's galaxy allocations would be, the DOE failed to give the city board or the community any answers. Instead, the DOE has withheld how they calculate the formulas used to prepare these budget estimates. As a result, the city board and City Council voted on a budget without being fully informed of the impacts and consequences that would result from the budget cuts.
41. During the board meeting on June 25, 2022, the Chancellor accused members of "grandstanding" and claimed that "they" do not represent everybody. The Chancellor also told the city board that "you're not voting on whether or not you're approving the school budgets. The City Council has already approved that. This is a procedural vote tonight." The Chancellor went on to claim that the city board's vote did not matter, nor would it "impact the school budgets or the overall budgets."
42. The Chancellor is wrong. The city board's approval vote matters and does matter to the public.

The Consequences from Adopting the Budget

43. The adoption of the education budget, however, has incensed parents and teachers and engendered chaos and disruption across the New York City public school system as many teachers and staff have been let go from their positions with their home school. Students,

parents, and teachers are extremely upset over the elimination of teachers and staff positions. Students and teachers have developed longstanding relationships, which have now been eliminated. Parents have also voiced their disapproval of the budget because of the negative impact it will have on their children as more teachers have been removed from schools, which will necessarily increase class sizes.

44. Many of the teachers being removed are experienced educators, which has caused an increase in the number of inexperienced teachers in school classrooms. None of this is good for our children or for NYC public schools.

Dated: July 11, 2022
Brooklyn, New York

Thomas Sheppard

Thomas Sheppard

Sworn to and before me
this 11th day of July, 2022

Laura Barbieri

Notary Public

