

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

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

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MICHAEL MULGREW, ADVOCATES FOR JUSTICE  
LEGAL FOUNDATION, COREY HAMILTON, ERICA  
NAIRNE-HAMILTON, ELIZABETH WEINERT, AUDRA FOX,

Petitioner,

**INDEX NO. 152847/2023**

**MOTION DATE 04/19/2023**

**MOTION SEQ. NO. 002**

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK, DAVID C.  
BANKS,

Respondent.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 36, 37, 38, 39, 40, 41

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

Non-party, Success Academy Charter Schools “Proposed Intervenor”, moves this Court for an order pursuant to CPLR § 1012 and CPLR § 1013, and in the alternative pursuant to CPLR § 7802, allowing the Proposed Intervenor to intervene in the instant action for the purpose of opposing the instant petition. Petitioners oppose the instant application, while respondents submit an affirmation in support of intervention. For the reasons set forth below, the instant application is denied.

The underlying petition arises out of allegations that respondents arbitrarily, capriciously and in violation of the law, allowed the co-location<sup>1</sup> to two Success Academy Charter Schools, one in Brooklyn and one in Far Rockaway, Queens.

The crux of the arguments set forth by the Proposed Intervenor is that its interest in

<sup>1</sup> The parties and non-parties define “co-location” as the existence of two or more school organizations located in the same building and typically share common spaces.

defending respondents' actions *may be* inadequately represented by respondents. Proposed Intervenor contends that while respondents have a procedural interest in ratification of its co-location plan, proposed intervenors interests are more practical. The Court however does not find this argument persuasive. Further, Proposed Intervenor contends that they should be permitted to intervene as a matter of right as they are interested parties and "ha[ve] a real and substantial interest in the outcome of the litigation".

In opposition, petitioners contend that Proposed Intervenor's interests are irrelevant to the ultimate issue at hand, that being whether respondents acted arbitrarily, capriciously, or unlawfully. The Court agrees. While the Court agrees that the Proposed Intervenor has an interest in the outcome of the litigation, the motion is silent as to what position they will advance that will address the underlying petition and for which the respondents cannot adequately represent. To this Court, to allow the Proposed Intervenor to intervene would be repetitive, and would delay this litigation, which the parties all agree is time sensitive.

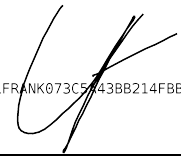
It is well established that the right to intervene is within the court's discretion. The Court having determined that the movant's arguments in favor of intervention are not persuasive and that intervention by the movant will likely unduly delay the determination of the action, and may cause confusion as the issues in this petition are limited to the conduct of the respondents.

Accordingly, it is hereby

**ADJUDGED** that the motion to intervene is denied; and it is further

**ORDERED** that respondents shall file any opposition to the underlying order to show cause on or before May 15, 2023; the petitioners shall submit any reply on or before May 22, 2023, and the parties are to appear for argument in this matter on May 25 at 10am.

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5/3/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE