

At a Special Term Part 57 of the
Supreme Court of the State of New
York, held in and for the County of
New York, at the Courthouse located at
111 Centre Street, New York, New York,
on the ___ day of January, 2015

P R E S E N T: HON. _____
Justice of the Supreme Court

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In Matter of the Application of

MICHAEL P. THOMAS,

Plaintiff/Petitioner,

and

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

Proposed Petitioners-Intervenors,

for Order and Judgment Pursuant, 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,

Defendants/Respondents.
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**ORDER TO SHOW
CAUSE**

Index No.: 100538/2014

Assigned Judge:
Hon. Peter H. Moulton

Upon the annexed affirmations of Laura D. Barbieri, dated January 6, 2015, and the
annexed affidavits of the Honorable Letitia James, The Public Advocate for the City of New
York, sworn to on January 6, 2015, and Lisa Donlan, member of Class Size Matters and
President of the Community Education Council, District One, sworn to on January 5, 2015, and
the annexed Proposed Intervenors' Verified Petition, verified on the 6th day of January, 2015,
and the exhibits annexed thereto, and upon the annexed Memorandum of Law, and good and
sufficient cause being duly shown therein, Respondents are hereby

ORDERED TO SHOW CAUSE, at the Supreme Court, State of New York, County of New York, Part 57, Room 623, 111 Centre Street, New York, New York, on the ___ day of January, 2015, at _____ o'clock in the _____ noon of that date or as soon thereafter as counsel may be heard, why an Order should not be entered, pursuant to § 1013 and § 7802(d) of the Civil Procedure Law and Rules,

- (1) Permitting the Office of the Public Advocate and the Honorable Letitia James and Class Size Matters (“Intervenors”), by and through their counsel, to intervene as a Petitioners-Intervenors in the instant proceeding; and,
- (2) Amending the caption of the within proceeding to reflect the addition of Intervenors as Petitioners-Intervenors;

OR, IN THE ALTERNATIVE,

- (3) Permitting the Office of the Public Advocate and the Honorable Letitia James, and Class Size Matters, by and through their counsel, to file the proposed memorandum of law as *amicus curiae*,

AND

- (4) Granting such other and further relief as the Court deems just and proper, including attorneys fees; and it is further

ORDERED that service of this Order to Show Cause, and the papers upon which it is granted, be made by personal service on the City of New York on behalf of itself and Respondent Chancellor, and be made by email and overnight mail on Petitioner-Plaintiff, Michael P. Thomas, on or before the _____ day of January, 2015, and shall be deemed good and sufficient service; and it is further

ORDERED that Respondents shall file, and serve by email and overnight mail, their responsive papers, if any, on or before January _____, 2015 on all parties; and it is further

ORDERED that Petitioners-Intervenors shall file, and serve by email and overnight mail, their reply papers, if any, on or before January _____, 2015.

Date: January __, 2015
New York, New York

E N T E R:

Justice of the Supreme Court

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

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In Matter of the Application of

MICHAEL P. THOMAS,

INDEX No.: 100538/2014

Plaintiff/Petitioner,

and

**AFFIRMATION OF
LAURA D. BARBIERI IN
SUPPORT OF THE
ORDER TO SHOW CAUSE**

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

Proposed Petitioners-Intervenors,

for Order and Judgment Pursuant, 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,

Defendants/Respondents.

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

LAURA D. BARBIERI, an attorney at law duly admitted to the bar of the State of New York, and the attorney for Petitioners-Intervenors The Public Advocate of the State of New York, the Honorable Letitia James, and Class Size Matters, hereby affirms under penalty of perjury that the following is true and correct.

1. Appended hereto as Exhibits A through E are true and correct copies of each respective document as follows:

Exhibit A. A copy of the letter from The Public Advocate of the City of New York, to the Honorable Carmen Fariña, Chancellor of the New York City Department of Education the, dated December 16, 2014;

Exhibit B: A copy of the response letter from Courtenaye Jackson-Chase, General Counsel, on behalf of the Honorable Carman Fariña, Chancellor of the New York City Department of Education, to the Honorable Letitia James, dated December 19, 2014;

Exhibit C: A copy of a presentation issued by the New York City Department of Education entitled: School Leadership Teams: A foundation for School-Based Planning and Shared Decision-Making, 2012, as downloaded on January 6, 2015 from the website address <http://www.learndoe.org/face/files/2012/10/School-Leadership-Teams-Foundation-revised.pdf>.

Exhibit D: A copy of an Advisory Opinion from the Committee on Open Government regarding School Leadership Teams and the applicability of the Open Meetings Law, dated December 29, 2003.

Exhibit E: A copy of New York State Education Department Commissioner's Decision No. 15,858, dated December 31, 2008, and downloaded on January 6, 2015 from the website address <http://www.counsel.nysed.gov/Decisions/volume48/d15858.htm>.

2. On January 2, 2015, I received an email from Michael Thomas wherein he provided his consent to our motion to intervene in his application before the Court, and agreed to be served by email with the Order to Show Cause together with the accompanying papers,

and with a hand delivered copy when the parties appear before the Court on the motion.

Dated: January 6, 2015



Laura D. Barbieri

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

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In the Matter of the Petition of

MICHAEL P. THOMAS,

Petitioner;

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

-against-

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

Index No. 100538/2014

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

Respondents.

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

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

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

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

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

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

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

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

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

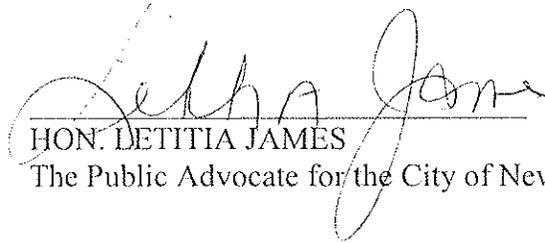
7. Further, under § 1061 of the Charter, the Public Advocate is the Chair of the Commission on Public Information and Communication (COPIC). The Commission is charged with “assist[ing] the public in obtaining access to [city produced or maintained] information;” and “review[ing] city information policies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

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

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

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

DATED: January 6, 2015
New York, New York



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

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

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In the Matter of Application of :
 :
MICHAEL P. THOMAS, : Index No. 100538/2014
 :
 : Petitioner, : Hon. Peter H. Moulton
and :
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LETITIA JAMES, Public Advocate for the City of New York, and :
CLASS SIZE MATTERS, : **AFFIDAVIT OF LISA**
 : **DONLAN**
 :
 : Proposed Petitioners-Intervenors, :
 :
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For a Judgment under Article 78 of the Civil Practice Law and Rules :
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 :
 : -against- :
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 :
NEW YORK CITY DEPARTMENT OF EDUCATION and :
CARMEN FARIÑA, Chancellor of the New York City Department :
of Education , :
 : Respondents. :
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 :
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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Lisa Donlan, being duly sworn, deposes and says:

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

BACKGROUND INFORMATION

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

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

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

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

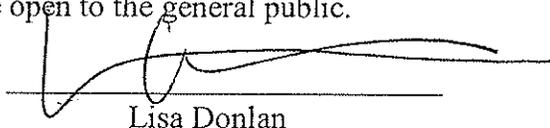
7. For example, in September 2013, DOE employees attempted to prevent me and a reporter from attending the regular monthly SLT meeting at University Neighborhood High School (located at 200 Monroe Street on the Lower East Side). Although we were ultimately able to argue our way into the meeting, I fear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

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

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

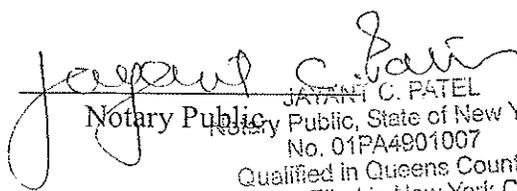
would affect the entire neighborhood and beyond, as high schools are citywide institutions that admit students from the entire city.

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



Lisa Donlan

5 day of January, 2015


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

STATE OF NEW YORK
COUNTY OF NEW YORK

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In Matter of the Application of

MICHAEL P. THOMAS,

Plaintiff/Petitioner,

Index No.: 100538/2014

and

Hon. Peter H. Moulton
Part 57, Room 623

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

Petitioners-Intervenors,

VERIFIED PETITION

for Order and Judgment Pursuant, 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,

Defendants/Respondents.

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Intervening Petitioners, The Public Advocate for the City of New York, the Honorable
Letitia James, and Class Size Matters, a membership organization, by their attorneys Advocates
for Justice and New York Lawyers for the Public Interest, as and for their Verified Petition,
herein respectfully allege as follows:

SUMMARY OF PETITION

1. This is an application for a declaratory judgment, pursuant to Article 78 of the
New York Civil Practice Law and Rules (“CPLR”), that respondent the New York City
Department of Education (the Board or the DOE) and respondent the Chancellor of the New

York City Department of Education (“Chancellor”) (collectively “respondents”), have an unlawful policy of denying public access to monthly School Leadership Team (“SLT”) meetings, in violation of Public Officer’s Law, Article 7, also known as the “Open Meetings Law” (“OML”) and other state laws and regulations.

2. Under state law and DOE regulation, every New York City public school must have a School Leadership Team (SLT). The SLT includes representatives of the school’s parents, teachers, staff and administration, and is the primary “vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies.” *See* Chancellor’s Regulation A-655 § I. The SLT is responsible for developing the school’s annual Comprehensive Educational Plan (CEP), which establishes the school’s goals, needs, and instructional strategies for the year. *Id.* § II. The SLT must also ensure that the school-based budget (which is developed concurrently by a school’s principal) is aligned with the CEP. *Id.*

3. SLTs also play other important roles as a school’s primary vehicle for collaborative decision making. For example, SLTs hold joint public hearings with the DOE to ensure community input into proposed school closings. *See, e.g., Mulgrew v. Bd. of Educ. of City Sch. Dist. of City of New York*, 75 A.D.3d 412, 414-15, 906 N.Y.S.2d 9 (App. Div. 1st Dep’t 2010). SLTs also serve as the vehicle for consultation with parent representatives regarding Title I and other federal reimbursable funding, as required by federal law. *See* Chancellor’s Regulation A-655 § XI.

4. In short, School Leadership Teams are a required and critical piece of the governance structure for New York City public schools. They also meet all of the requirements for applying the Open Meetings Law: they perform a necessary governmental function required by state law as part of the formal governance structure of the DOE; they perform public business,

and require a quorum to do so; and they have clearly defined authority that is not merely “advisory” in nature. The Committee on Open Government (the office of the New York Department of State responsible for overseeing the Open Meetings Law) agrees and advises that an SLT must comply with the Open Meetings Law because it is a public body. *See* Comm. on Open Gov’t, Advisory Op. OML-AO-3828 (June 22, 2004), available at <http://docs.dos.ny.gov/coog/otext/o3828.htm>; Comm. on Open Gov’t, Advisory Op. OML-AO-3728 (Dec. 29, 2003), attached as Barbieri Aff. Ex. D.

5. Nonetheless, the DOE has argued in several court proceedings that School Leadership Teams are not subject to the State’s Open Meetings Law and that therefore access to SLT meetings can be restricted and members of the public can be excluded. *See, e.g., Portelos v. Bd. of Educ. of the City of N.Y.*, 2013 N.Y. Slip Op. 32842(U) (Sup. Ct. N.Y. Cty, Nov. 4, 2013), appeal docketed, No. 100853/13, M-3716 (1st Dep’t Dec. 16, 2013) (wherein the DOE argued that SLTs were not public bodies because they possessed only advisory powers), *and see Thomas v. NYC Dep’t of Educ.*, No. 100538/14 (Sup. Ct. N.Y. Cty, filed May 19, 2014) (same)).

6. Upon information and belief, the DOE has also advised schools personnel that they can exclude members of the general public, including members of the press, from attending SLT meetings where matters of public importance are being deliberated. *See* Affidavit of Lisa Donlan ¶¶ 5-19.

7. This position is contrary to law, and it contravenes the fundamental principles of school based management and shared decision making that are required by state and federal law. Closing public school meetings to the public also violates public policy, including that which forms the basis of the Open Meetings Law.

8. SLT meetings must be open to the public for the additional reason that they are “civic meetings” that must be held at a public school (or other DOE premises) and therefore must open their doors to the general public under New York State Education Law § 414.

9. This Verified Petition advances important issues of government transparency and accountability that go beyond the interests of one or two individuals. Indeed, every citizen may be potentially impacted by the Court’s decision in this matter. At stake is the very ability of the public, which includes members of the press, to attend and observe important school governance meetings conducted by SLTs whereat school curricula and budget issues are discussed and educational planning decisions are made.

10. The DOE’s policy of excluding members of the public from attending school governance meetings conducted by the SLTs violates state law and public policy. Petitioners respectfully request that this Court render a declaration that respondents cannot exclude members of the public from SLT meetings and further recommend that members of the public be permitted to participate at SLT meetings in a manner consistent with SLT bylaws on matters of public significance.

PARTIES

Petitioners

11. Petitioner-Intervenor, The Public Advocate for the City of New York, the Honorable Letitia James, seeks permission to intervene in this action on behalf of the Office of the Public Advocate, which is charged with monitoring New York City agencies, fielding constituent complaints about their performance, and recommending measures to remedy systemic problems. New York City Charter (“Charter”) § 24.

12. The Public Advocate is charged with overseeing and monitoring all New York City agencies, including investigating any shortcomings or failures in the provision of services to city residents. In addition, the Public Advocates fields complaints about the performance of city agencies and recommends measures to remedy systemic problems. New York City Charter (“Charter”) § 24. The Public Advocate was established by the New York City Charter specifically as an elected government “watchdog.” Accordingly, the Public Advocate has a particular interest in ensuring that this litigation leads to improved transparency that will benefit the multitude of communities that comprise the City of New York.

13. Petitioner Class Size Matters (“CSM”) is a New York City based non-profit, non-partisan membership organization of parents and concerned citizens dedicated to achieving smaller class sizes in New York City and throughout the nation. CSM also serves as a clearinghouse for information on the benefits of class size reduction and the data on class size. These efforts educate parents, public officials (both elected and appointed), education advocates, and school boards, including the New York City Board of Education, on the state of class sizes in American education and need for class size reduction. Leonie Haimson is its Executive Director.

14. Affiant Lisa Donlan is a member of Class Size Matters and has been since 2007 the President of the Community Education Council (CEC) for District One on the Lower East Side of Manhattan. As its mission statement explains, the CEC’s goal “is to help District One families and educators to exercise self-determination and local control over education policy and practices and to participate in decision-making at the level of family, school and community.” See <http://cecd1.org/about/mission-statement/>.

Respondents

15. Respondent DOE is a school board organized under and existing pursuant to the New York Education Law and, for all purposes, serves as the government or public employer of all persons appointed to or assigned by it in the City of New York.

16. By chapter 91 of the Laws of 2002, New York's Education Law was amended so as to radically restructure the governance of the school district of the City of New York. The amendment provided, among other things, that the Mayor of New York was empowered to appoint a chancellor who would preside over a Board of Education which was to be expanded from seven to thirteen members, the majority of which were also to be appointed by the Mayor of the City of New York. Five Board members were to be selected by the Borough Presidents. Although that legislation itself made no specific reference to a "Department of Education of the City of New York", the bylaws subsequently adopted by the Board, provide that this thirteen member body "shall be known as the Panel for Educational Policy", which together with the Chancellor and other school employees is designated as the "Department of Education of the City of New York."

17. The by-laws of the Board state specifically that: "The Panel for Educational Policy is a part of the governance structure 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" (emphasis supplied). See <http://schools.nyc.gov/AboutUs/leadership/PEP/bylaws/default.htm>. Thus, school leadership

teams are an integral part of the governance structure of the Department of Education of the City of New York.

18. At all relevant times herein, respondent Chancellor, under the Education Law, functions as the superintendent of the district schools and chief executive officer of the City School District of the City of New York.

VENUE

19. Pursuant to CPLR §§ 7502 and 7804(b), the basis of venue is that the principal office of the Respondents is located in New York County at 52 Chambers Street, New York, New York 10007.

STATEMENT OF FACTS

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

21. In this capacity, the Public Advocate recently wrote to the DOE regarding its unlawful policy and requested that it reconsider its position regarding the propriety and legality of closing SLT meetings to the public. Joining her request were numerous members of Community Education Councils from around the City. See Barbieri Aff., Exh. A.

22. In response, the DOE acknowledged its unwritten unlawful policy and stated that it would continue to adhere to it. Specifically the DOE claimed that “SLTs serve an advisory purpose” It further asserted, “The SLT does not conduct public business and, as a result, is not a public body subject to the Open Meetings Law.” See Barbieri Aff., Exh. B.

23. The New York City school system is the largest in the county. Approximately 1.1 million students are educated in approximately 1,800 schools.¹ New York City DOE's 2014-2015 operating budget exceeds \$20 billion dollars.² According to the DOE, approximately \$10 billion of that amount is reserved to school budgets.³ Using gross calculations, these figures suggest that school budgets average \$5 million dollars per school. IS 49's budget for this school year, for example, is approximately \$5.4 million.⁴

24. Thus, SLTs are responsible for deciding issues affecting the educational curriculum of thousands of public school students and as part of that responsibility they make recommendations regarding multi-million dollar school budgets in order to align the curricula to the monies available.

25. Refusing to allow access by members of the public to SLT meetings does not serve the interests of the citizens of this City, each of whom are entitled to attend meetings held in public schools at which significant issues concerning the education of the youth of this City and the expenditure of taxpayer monies are discussed. These meetings must be open to the public and the press not only because the law so requires but also because our government officials must be accountable to the public and engage in public business in an open and transparent manner.

Applicable Statutory Provisions

26. In New York, 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

¹ See <http://schools.nyc.gov/AboutUs/default.htm> (last visited January 4, 2015).

² See <http://schools.nyc.gov/AboutUs/funding/overview/default.htm> (last visited January 4, 2015).

³ *Ibid.*

⁴ See <http://schools.nyc.gov/AboutUs/funding/schoolbudgets/fy15SchoolBudgetOverview.htm?schoolcode=R049> (last visited January 4, 2015).

Regulation A-655. Pursuant to Education Law § 2590-h(15)(b-1)(i), the SLT is responsible for developing an annual school Comprehensive Educational Plan (“CEP”). The principal must consult with the SLT in the formation of the school budget, and the SLT and the principal must work together to align the budget to the CEP. See Education Law §§ 2590-r(b) and 2590-h(15)(b-1)(i).

27. Commissioner’s Regulation 100.11 specifically mandates the participation of parents and teachers in school based planning and shared decision-making for the purposes of improving the educational performance of students. Further, and as provided therein,

[t]he plan for participation in school-based planning and shared decisionmaking shall specify: (1) the educational issues which will be subject to cooperative planning and shared decisionmaking at the building level by teachers, parents, administrators, and, at the discretion of the board of education or BOCES, other parties such as students, school district support staff, and community members.

8 N.Y.C.R.R. § 100.11(c).

28. Chancellor’s Regulation A-655 was promulgated to ensure the formation of SLTs in New York City public schools, in accordance with Education Law § 2590-h. According to the Chancellor’s Regulation A-655 (III)(B), there are three (3) mandatory members of the SLT – the parent association president, the principal and the United Federation of Teachers Chapter Leader. Chancellor’s Regulation A-655 (III).⁵ The minimum number of SLT members is 10 and the maximum is 17, but the regulation requires that the number of parents and staff must be balanced. *Id.* The Chancellor’s Regulation requires that SLT meetings “must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening),” and that “[n]otice of meetings must be provided in a form consistent with the open meetings law.” Chancellor’s Regulation A-655 § VII.

⁵ The Chancellor’s Regulation is available at <http://schools.nyc.gov/RulesPolicies/ChancellorsRegulations/default.htm>.

29. Contained within Article 7 of the Public Officer's Law, the Open Meetings Law ("OML") provides in pertinent part that, "every meeting of a public body shall be open to the general public, with the exception of executive sessions." N.Y. Pub. Officers Law § 103(a).

30. Pursuant to Section 414 of the Education Law, all civic meetings held at schools or on other property belonging to a school district "shall be non-exclusive and shall be open to the general public." N.Y. Educ. Law § 414(1)(c).

The DOE's Unlawful Policy

31. Respondents represented in various legal documents, one filed in opposition to a similar petition as that before the Court – in the matter of *Portelos v. Bd. of Educ. of the City of New York*, *supra*, and in this matter, *Thomas v. New York City Dep't of Educ.*, an unlawful unwritten policy that SLTs are not public bodies and therefore these meetings may be closed to the public. See *Barbieri Aff.*, Exh. B.

32. Respondents have enforced this policy by improperly and unlawfully prohibiting members of the public from attending SLT meetings (including *Portelos* and *Thomas* and *see* Affidavit of Lisa Donlan), and upon information and belief, continue to prohibit members of the public from attending such meetings.

SLTs are Public Bodies, Conduct Public Business And Must Comply with the Open Meetings Law

33. SLTs are "public bodies" and as such, its meetings must be held in compliance with the OML.

34. An SLT's development and determination of a school's Comprehensive Education Plan ("CEP") is public business, as are other SLT activities such as its discussions and recommendations concerning the CEP's alignment with the school's budget.

AS AND FOR A FIRST CAUSE OF ACTION

35. Petitioners repeat and reallege the allegations contained in Paragraphs 1 through 30 herein.

36. Pursuant to Education Law § 2590-h, Commissioner's regulation 100.11, and Chancellor's regulation A-655, an SLT must be established in every school.

37. Pursuant to the OML, "every meeting of a public body shall be open to the general public," with the exception of executive sessions. N.Y. Pub. Officers Law § 103(a).

38. SLTs are "public bodies" and as such, its meetings must be held in compliance with the OML. In accordance with this requirement, Chancellor's Regulation A-655 requires public notice of all SLT meetings "in a form consistent with the open meetings law."

39. SLT meetings must be held on school premises, and must be open to members of the general public, pursuant to both the Open Meetings Law and N.Y. Education Law § 414.

40. At SLT meetings the degree and manner of participation by members of the public must be established in accordance with SLT by-laws.

41. The DOE's own literature explaining the governance of SLTs provides that such meetings are open to the public. See Barbieri Aff., Exh. C, p.17.

42. The DOE's own literature regarding SLTs also provides that the members of the community may serve as members of the SLT. See Barbieri Aff., Exh. C, p.9.

43. Despite due demand by members of the public, SLTs have refused admittance to members of the general public.

44. Despite due demand by members of the public, SLTs have refused members of the general public the right to participate in SLT meetings consistent with SLTs' by-laws.

45. The respondents' refusal to ensure that SLT meetings are open to the public (and that public observers may participate in SLT meetings consistent with SLTs' own by-laws) violates the law and respondents' own policies, is arbitrary, capricious, an error of law, and violates the duties and responsibilities required by the DOE's governance structure.

WHEREFORE, Petitioners respectfully request that this Court grant judgment as follows:

1. Finding and declaring that the respondents' refusal to ensure that SLT meetings are open to the general public is arbitrary, capricious, and in violation of law.

2. Ordering respondents to comply with the law by permitting petitioners, their members, constituents, members of the school community, and members of the general public, to attend SLT meetings, and to participate in SLT meetings so long as such participation is in conformance with lawful SLT by-laws providing for same;

3. Finding and declaring that respondents violated Public Officer's Law § 103(a) by not opening School Leadership Team meetings to the general public, enjoining future violations of the Open Meetings Law, and awarding attorneys for Petitioners costs and attorneys fees in the amount to be determined by the Court;

4. Finding and declaring that SLTs are "civic meetings" within the meaning of New York Education Law Section 414(1)(c) and as such must be open to the general public;

5. 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);

6. Ordering Respondents to revise Chancellor's Regulation A-655 to explicitly direct SLTs to provide in their respective bylaws that the public shall be permitted to attend and to provide for lawful bylaws concerning the public's attendance and participation;

7. Awarding costs and reasonable attorneys fees pursuant to Public Officer's Law § 107 to Petitioners-Intervenors' attorneys; and

8. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 6, 2015

**NEW YORK LAWYERS FOR THE
PUBLIC INTEREST**

ADVOCATES FOR JUSTICE

/s/Mark Ladov

By: J. McGregor Smyth
Mark Ladov
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/s/Laura D. Barbieri

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Of Counsel to Class Size Matters

Of Counsel to The Public Advocate of the City of
New York and Class Size Matters

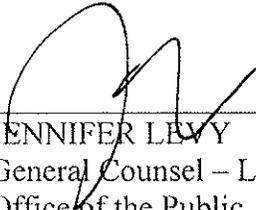
VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

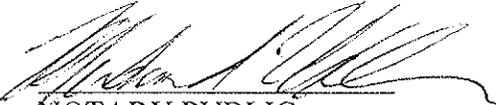
I, JENNIFER LEVY, am General Counsel in charge of Litigation for the Public Advocate for the City of New York, a petitioner herein, and have read the contents of the foregoing Verified Petition and know the contents thereof; that the same is true to this affiant's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The grounds of the affiant's belief as to all matters herein are based on the affiant's own knowledge, on telephone conversations with employees of the Office of the Public Advocate, from complaints and other correspondence, from information received from members of the public, and based on a review of documents in this matter and the files and proceedings connected herewith.



JENNIFER LEVY
General Counsel – Litigation
Office of the Public Advocate

Sworn to before me on this
6th day of January, 2015



NOTARY PUBLIC

MUHAMMAD UMAIR KHAN
Notary Public, State of New York
No. 02KH6268477
Qualified in Albany County
Commission Expires Sept. 10, 20 16

VERIFICATION

STATE OF NEW YORK

COUNTY OF NEW YORK

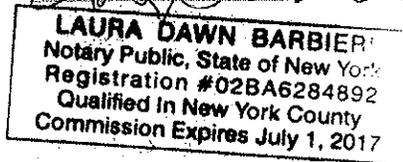
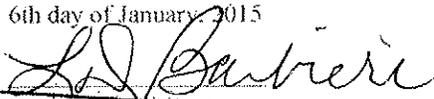
I, LEONIE HAIMSON, am a petitioner herein and have read the contents of the foregoing Verified Petition and know the contents thereof; that the same is true to this affiant's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

The grounds of the affiant's belief as to all matters herein are based on the affiant's own knowledge, on telephone conversations, email exchanges, or in-person discussions with members of Class Size Matters, education advocates, Community Education Council members, and parents, from complaints and other correspondence, from information received from members of the public, and based on a review of documents in this matter and the files and proceedings connected herewith.



Sworn to before me on this

6th day of January, 2015





PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Letitia James

December 16, 2014

Chancellor Carmen Fariña
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, NY 10007

RE: Open Meetings Law Must Apply to a School Leadership Team

Dear Chancellor Fariña:

The Department of Education (DOE) has argued in several court proceedings that School Leadership Teams (SLTs) are not subject to the State's Open Meetings Law and that therefore access to their meetings can be restricted.¹ On behalf of the Public Advocate Letitia James and the undersigned organizations, we write to urge the Department of Education to adopt the position that School Leadership Team (SLT) meetings are subject to the Open Meetings Law and cannot be closed to the public except as provided therein. If the DOE does not reconsider its position, we intend to intervene in *Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Sup. Ct N.Y. Co.) to urge the Court to find that SLT meetings are, indeed, required to be made open to the public for the following reasons.

I. School Leadership Teams are "Public Bodies"

The Open Meetings Law requires that "[e]very meeting of a public body ... be open to the general public." N.Y. Pub. Officers Law § 103(a). 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 ..." N.Y. Pub. Officers Law § 103(a).

New York State Education Law § 2590-h requires that SLTs be established in every public school. The Commissioner's and Chancellor's Regulations mandate that the SLT include at least the PA/PTA president, the UFT chapter leader, and the school's

¹ See, e.g., *Portelos v. Bd. of Educ. of the City of N.Y.*, 2013 NY Slip Op. 32842(U) (Sup. Ct. N.Y. Co., Nov. 4, 2013), *appeal docketed*, No. 100853/13, M-3716 (1st Dep't Dec. 16, 2013) (wherein the DOE argued that SLTs were not public bodies because they possessed only advisory powers), and see *Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Sup. Ct N.Y. Co., filed May 19, 2014) (same).

principal. Community-based organizations are also encouraged to participate in every public school, including as members of an SLT.² Moreover, according to Chancellor's regulations, each SLT must provide public notice of its meeting under the OML;³ develop by-laws; identify quorum requirements; determine decision-making methods; and decide on the "role of observers during meetings."⁴

The SLTs play a critical role in schools' decision-making structure pursuant to New York State Education Law § 2590-h and Commissioner's Regulation 100.11. For example, the SLT has sole authority to develop the school's Comprehensive Education Plan (CEP). The CEP establishes the school's educational goals and provides a roadmap for strategies and activities integral to the school's goal effectuation and achievement. The school's budget must align with the SLT-created CEP, and the school principal must work with the SLT in all budget determinations.

The structure, composition, and function of the SLTs have all the hallmarks of "public bodies" as that term is defined in the Open Meetings Law. Restricting attendance at an SLT meeting thus conflicts with the Law. The Committee on Open Government (the state office responsible for overseeing the Open Meetings Law) agrees and advises that an SLT must comply with the Open Meetings Law because it is a public body.⁵

II. The DOE Mischaracterizes the Role of School Leadership Teams and the Scope of the Open Meetings Law

The NYC Department of Education has argued that SLTs are merely "advisory," do not "conduct business" and are therefore not "public bodies" as defined by the Open Meetings Law. This characterization fails because shared decision-making within the school community is a fundamental principle of New York's Education Law, as is reflected in both Commissioner and Chancellor Regulations.

In deciding whether the Open Meetings Law applies, in each case the court must undertake 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" (*Matter of Smith v City Univ. of N.Y.*, 92 NY2d 707, 713 [1999]). Thus, the Court of Appeals has applied the Law even when a committee's decisions are subject to approval and potential veto by other school or other governmental authorities. *Perez v. City Univ. of New York*, 5 N.Y.3d 522, 530 (2005) (holding that a body charged with making policy proposals is subject to the

² See *id.*, and see, e.g., <http://schools.nyc.gov/community/city/cbo/>.

³ See Chancellor's Regulation A-655, p. 7, § VII: "Meetings must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening). ... Notice of meetings must be provided in a form consistent with the open meetings law."

⁴ See Chancellor's Regulation A-655 and Attachment No. 4.

⁵ See Comm. on Open Gov't, Advisory Op. OML-AO-3828 (June 22, 2004), available at <http://docs.dos.ny.gov/coog/otext/o3828.htm>; Comm. on Open Gov't, Advisory Op. OML-AO-3728 (Dec. 29, 2003).

Open Meetings Law).

The structure of school governance in New York City is designed to ensure that there are many avenues for parent and community participation in school-based decision-making. SLTs are a critical part of that contemplated democratic system of governance. Closing their meetings to the public would have a profoundly damaging impact on the transparency of the governance and operation of our schools.

III. State Education Law § 414 Requires That SLT Meetings Be Open to The Public

Like a parent association meeting, an SLT meeting is a “civic meeting” that must be held at a public school (or other DOE premises) and therefore must open its doors to the general public under New York State Education Law § 414.⁶ Recently, the Mayor’s Office was appropriately criticized for improperly excluding the press from a meeting held at a public school.⁷ Like that community meeting, a meeting held in public school such as an SLT or parent association meeting must comply with Section 414’s transparency requirements and be open to the general public.⁸

The DOE has argued that an SLT should not be open to the public because it covers sensitive subjects at times, such as school security measures or student disciplinary histories.⁹ The Department’s concerns are easily addressed within the framework of the Law. The Open Meetings Law provides that a public body may engage in private discussions by entering into an executive session. *See, e.g.*, N.Y. Pub. Officers Law § 105(1)(a) (permitting executive session for “matters which will imperil the public safety if disclosed”); *id.* § 105(1)(f) (permitting executive session for “matters leading to the . . . promotion, demotion, discipline, suspension, dismissal or removal of a particular person”). An SLT may similarly use an executive session to discuss sensitive subjects.

In short, we urge you to reconsider your position so that it complies with state law, and make clear in your guidance to schools and in Chancellor’s regulations that SLTs must comply fully with Open Meetings Law in recognition that an SLT can best function in the public’s interest by open, transparent, and participatory school governance.

⁶ Section 414 provides that schools may be used “[f]or holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public. Civic meetings shall include, but not be limited to, meetings of parent associations and parent-teacher associations.” N.Y. Educ. Law § 414 (McKinney).

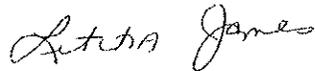
⁷ See Press Release, Special Commissioner of Investigation for the NYC School District & the NYC Department of Investigation, *DOI-SCI Investigation Finds Union Meeting At Brooklyn Public School Improperly Closed To Public And Press* (Nov. 25, 2014), available at http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr29cwarereport_112514.pdf.

⁸ See Chancellor’s Regulation A-660 § 1(G)(4).

⁹ See Brief for Defendant City at p. 14-15, *Thomas v. NYC Dep’t of Educ.*, No. 100538/14 (Supreme Court N.Y. County brief filed Aug. 19, 2014).

We would prefer to resolve these concerns without intervening in court. To that end, and because the *Thomas* and *Portelos* cases will be argued in mid-January and February 2015, respectively, we request you advise us by December 19, 2014 of your position. Otherwise, we anticipate intervening in the pending litigation.

Sincerely,



Letitia James
Public Advocate for the City of New York

Co-Signatories

Arthur Z. Schwartz, Esq., President, Advocates for Justice
Laura D. Barbieri, Esq., of Counsel, Advocates for Justice
Leonie Haimson, Executive Director, Class Size Matters
McGregor Smyth, Executive Director and Mark Ladov, Staff Attorney,
New York Lawyers for the Public Interest
Dr. Vera V. Daniels, President Community Education Council District 28*
David Goldsmith, President, Community Education Council 13*
Michael Reilly, President, Community Education Council 31*
Naila Rosario, President, Community Education Council 15*
Tesa Wilson, President, Community Education Council 14*

*Organizational affiliation for identification purposes only.



**Department of
Education**

Carrren Fariña, Chancellor

Courtenaye Jackson-Chase
General Counsel

December 19, 2014

BY FAX AND U.S. MAIL

The Honorable Letitia James
Public Advocate for the City of New York
1 Centre Street
New York, New York 10007

RE: School Leadership Teams Not Subject to the Open Meetings Law

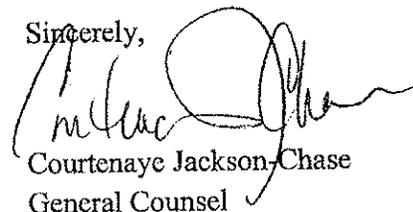
Dear Public Advocate James,

I write in response to your letter to Chancellor Fariña, dated December 16, 2014, requesting the Department of Education (the "DOE") to adopt the position that School Leadership Team ("SLT") meetings are subject to the Open Meetings Law, and stating that your office will intervene in on-going litigation on this subject if the DOE does not do so.

Unfortunately, I cannot agree to your request because the authority and responsibilities of SLTs are mandated by the New York State Education Law and Commissioner's Regulations. According to law, SLTs serve an advisory purpose – they make recommendations concerning educational policy and establish educational goals for the school, which are consolidated into the Comprehensive Educational Plan ("CEP"), and they can invoke the superintendent to ensure that the CEP is aligned with the school-based budget. The SLT does not conduct public business and, as a result, is not a public body subject to the Open Meetings Law.

The Supreme Court of the State of New York, New York County, agreed with this conclusion in *Portelos v. Bd. Of Educ. Of the City of N.Y.*, 2013 Slip Op. 32842 (Nov. 4, 2013), and the same issue is again before the Supreme Court in the pending case, *Thomas v. NYC Dep't of Education*, Index No. 100538/14 (Sup. Ct. N.Y.Cty., filed May 19, 2014). Because this is the subject of on-going litigation, I cannot comment further.

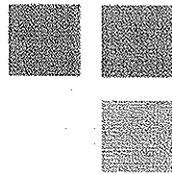
Sincerely,



Courtenaye Jackson-Chase
General Counsel



School Leadership Teams: A Foundation for School- Based Planning and Shared Decision-Making



Session Agenda

Reflection

Purpose

Governance

Comprehensive Educational Planning

Consensus-Based Decision Making

Support for SLTs

Reflection

You have been elected to serve a very important role in your school. As a member of the School Leadership Team you will have the opportunity to help shape the school's educational plan. Think carefully about what you can contribute to the team's efforts to ensure the school meets the needs of every student.

- Facilitation skills
- Pedagogical expertise
- Knowledge of family-school best practices
- School community leadership experience
- Familiarity with school accountability tools
- Past SLT experience

Session Agenda

Reflection

Purpose

Governance

Consensus-Based Decision Making

Comprehensive Educational Planning

Support for SLTs

Purpose

- Every New York City Public School must have a School Leadership Team.
- The SLT plays a significant role in creating a structure for school-based decision making and shaping the path to a collaborative school culture.
- The SLT is the primary vehicle for developing school-based educational policies and ensuring that resources are aligned to implement those policies.
- The SLT assists in the evaluation and assessment of the school's educational programs and their affect on student achievement.
- The SLT develops the school's annual Comprehensive Educational Plan (CEP) that is aligned with the school-based budget.
- In Title I schools, the SLT is responsible for facilitating consultation with Title I parent representatives regarding the joint development of the CEP, Parent Involvement Policy and School-Parent Compact.

Session Agenda

Reflection

Purpose

Governance

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Governance



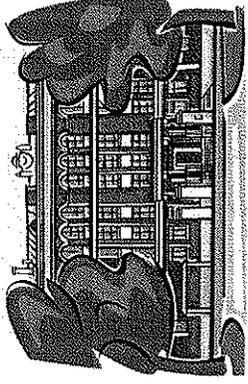
State

- New York State Education Law, Section 2590-h.
- Commissioner's Regulation 100.11



City

- Chancellor's Regulation A-655 (CR A-655)



School

- SLTs are required to establish bylaws that conform to the requirements of CR A-655.
 - Attachment 4 of CR A-655 includes a bylaws template.

Governance

SLT Bylaws

The SLT must develop bylaws that provide operating guidelines for the team. Bylaws give the team structure and serve as an important reference when discussing procedural rules.

The SLT bylaws must address the following:

<u>team composition</u>	<u>roles for each team position</u>	<u>quorum</u>
<u>length of term and term limits</u>	<u>order of business</u>	<u>monthly meeting day and time</u>
<u>method for filling vacancies</u>	<u>role of observers during meetings</u>	<u>method of decision-making</u>

The bylaws can be amended by consensus of the SLT. The final article of the SLT bylaws should include the specific amendment process.

The bylaws should also include the SLT's mission and vision statements.

Governance

[Back](#)

Team Composition

The SLT must have between 10 and 17 members.

There are 3 mandatory members of the SLT:

1. Principal
2. UFT Chapter Leader
3. Parent Association President

*Mandatory members select a designee to serve in their place.

There must be an equal number of parents and staff members on the SLT. Mandatory members are included when determining if an SLT is balanced.

Must Have Balance!

Each constituent group must ensure that SLT elections are open to all members of the constituent group. Elections must be advertised widely and conducted in a fair and unbiased manner.

The SLT may include students (high schools must have at least 2) and representatives from community based organizations (CBOs).

Governance



SLT Positions

Chairperson/Co-Chairpersons

- A Chairperson must be selected from among the SLT's membership.
- The Chairperson need not be one of the mandatory members.
- 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 SLT bylaws may be amended to create Co-Chairpersons who share the Chairperson duties.

Secretary

- A Secretary must be selected from among the SLT's membership.
- The Secretary is responsible for sending SLT meeting notices and for keeping the minutes of SLT meetings. The minutes must be maintained at the school and should be available upon request.

Other Team Positions

- The SLT may amend its bylaws to include additional positions as necessary.
- e.g., Facilitator, Timekeeper, Financial Liaison

Governance

[Back](#)

Quorum

The quorum is the minimum number of members that must be present for a meeting to be valid.

The bylaws may state a specific quorum number (i.e., the quorum shall be eight members of the school leadership team) or include a majority clause (i.e., the majority of the school leadership team members shall constitute the quorum).

Governance

[Back](#)

Term Length

CR A-655 does not dictate a required term length for elected SLT members.

The most common term length is two years.

Term Limits

CR A-655 does not require term limits for elected SLT members.

Most SLT bylaws have set term limits at two terms and include a provision that allows an individual to seek a third term if there are no other interested members of the constituent group.

Governance

[Back](#)

Order of Business

The SLT bylaws must specify the order of business for SLT meetings.

For example:

- 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

The Order of Business provision provides a framework for each meeting's agenda.

The Order of Business provision can be amended by consensus of the team.

Governance

SLT Meetings

The SLT should meet at least once a month during the school year.

SLT meetings must be scheduled at a time convenient for the parent members.

Mandatory members or *their designees* are expected to attend all SLT meetings.

The SLT should develop ways to ensure that the school community is notified of upcoming meetings.

- e.g., SLT bulletin board, email distribution list, SLT report at PA meetings

There are 4 key documents that all SLT members should have at each meeting:

1. The CEP
2. The school-based budget
3. The SLT bylaws
4. CR A-655

Governance

[Back](#)

SLT Remuneration

SLT members are eligible to receive an annual \$300 remuneration for their service, provided they complete at least 30 hours of service on the SLT and attend a mandatory training session.

- Team members who complete less than 30 hours of service 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 may choose to waive the annual remuneration and donate the funds to be used for other school purposes.

Attendance and minutes must be recorded at every meeting.

Governance

[Back](#)

Filling Team Vacancies

If a vacancy arises, the SLT chairperson should inform the appropriate constituent group of the need to fill the vacancy.

It is important for the SLT bylaws to clearly indicate how many seats on the team are allocated to each constituent group, particularly to simplify the process of filling vacancies.

For example (from the SLT bylaws template):

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)*

Governance

[Back](#)

Role of Observers

SLT meetings are open to the public. Teams may find that observers from within the school community or beyond wish to attend SLT meetings.

It is important for the SLT bylaws to clearly indicate the role of observers during meetings.

For example:

- Observers may participate upon recognition by the Chair.
- Observers must submit their requests to participate in advance of the meeting.
- Observers will be permitted to participate during the last 15 minutes of each meeting.

Session Agenda

Reflection

Purpose

Governance

Consensus-Based Decision Making

Comprehensive Educational Planning

Support for SLTs

Consensus-Based Decision-Making

Why Should SLTs Use Consensus-Based Decision-Making?

Consensus-based decision-making is empowering for all members because each member has the ability to influence team decisions.

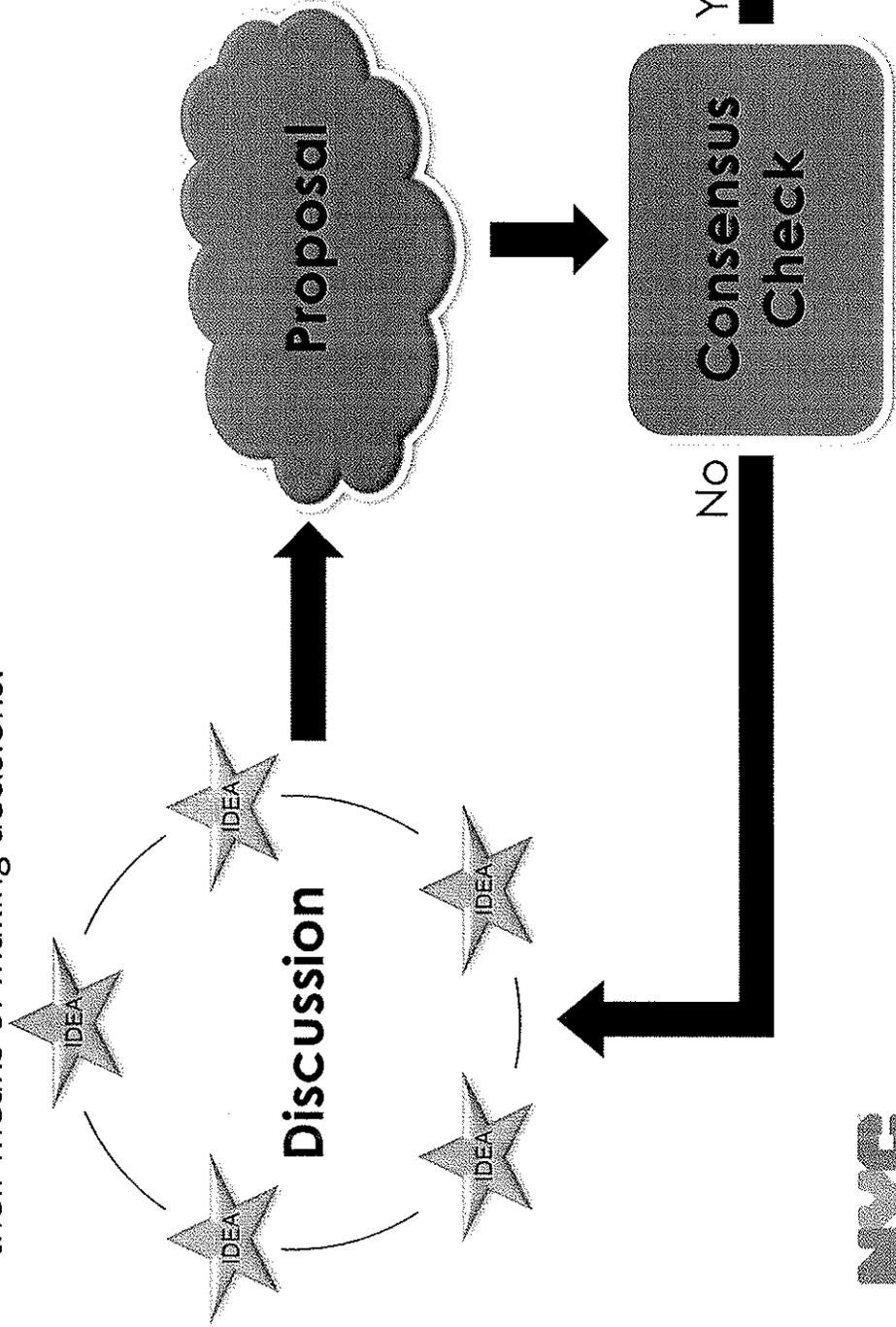
Consensus-based decision-making keeps members from disconnecting from the work of the team. If SLT decisions are made by only a few team members, those left out of the process will not feel invested in the final work product and will have no incentive to see that the team is successful. The responsibilities of the SLT are too important to students for even one member to feel disenfranchised.

Consensus-based decision-making fosters a climate where team members are willing to listen to each other's ideas because a member's concerns about a particular proposal must be addressed before the team can proceed.

Consensus-Based Decision-Making

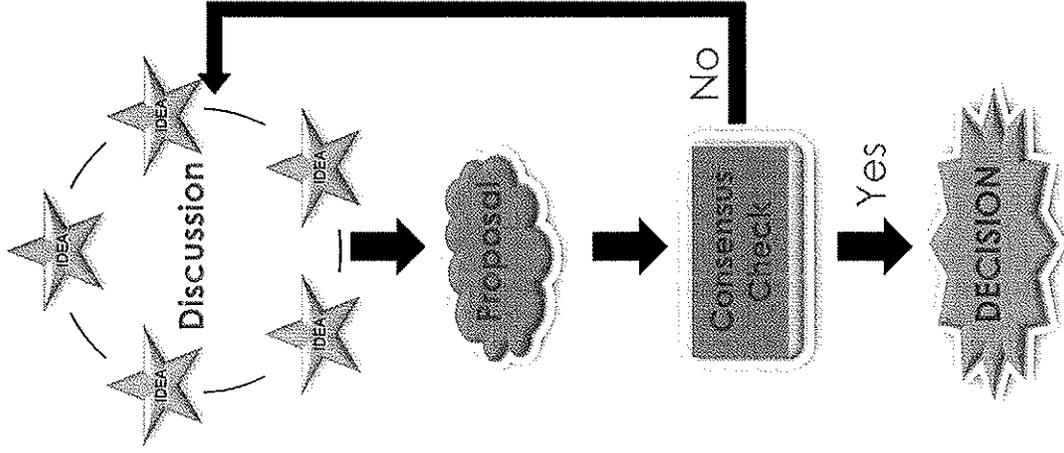
The Model

- To ensure that all members have an opportunity to express their ideas, SLTs must use consensus-based decision-making as their means of making decisions.



- If consensus is reached about a proposal, a decision is made.
- If not, modifications are made to the proposal until consensus is reached.
- Members need not agree about every decision, but those who disagree must be willing to move forward, otherwise consensus has not been achieved and a new proposal must be considered.

Consensus-Based Decision-Making



Sample Consensus Check

- One model for a Consensus Check requires all team members to rate the proposal on a scale from -3 to +3.

+3	"I believe this is the best proposal for the team to pursue."
0	"While I may not agree that this is the best proposal, I won't stop the team from moving forward"
-3	"I will work against the passage of this proposal."

- If all team members rate the proposal at a 0 or higher, consensus has been reached.
- Any team members who rate the proposal from -1 to -3 must reopen the discussion phase by explaining to the team what modifications need to be made to the proposal for them to raise their rating to at least a 0.

Consensus-Based Decision-Making

Potential Pitfalls

If consensus-based decision-making is not working for your team, consider whether the team has fallen victim to one of the common challenges below:

- The issues are not well-defined, or there is disagreement about how they should be defined. (It's important that all members have a clear understanding of the issues)
- Several members have a vested personal interest in a proposal and have lost sight of the team's common mission to serve the school. (Everyone has to be reminded that they are part of a team with a common mission)
- There is a disparity of power and/or resources among the members. The members may have different levels of expertise and different access to information about the problems. (All members have an equal voice on the team. Information should be shared so all members understand the proposals and can actively participate in discussions)

Session Agenda

Reflection

Purpose

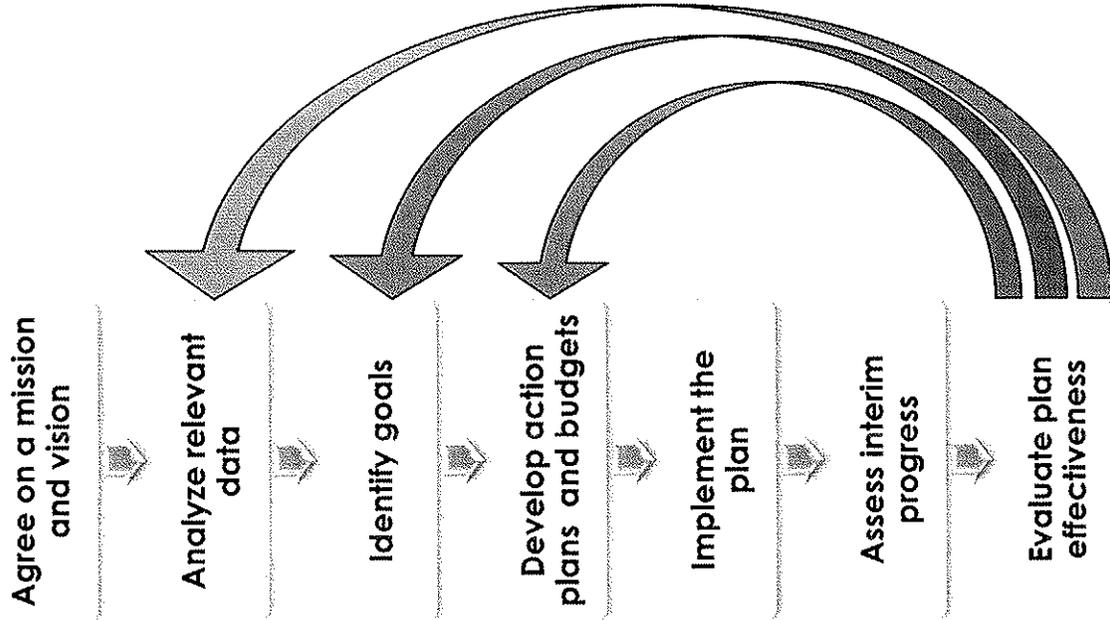
Governance

Consensus-Based Decision Making

Comprehensive Educational Planning

Support for SLTs

Comprehensive Educational Planning



Steps to Writing the CEP

1. Agree on mission and vision
2. Analyze relevant data
3. Assess and prioritize the needs of the school and identify goals consistent with priority needs
4. Develop action plans reflective of effective strategies and activities to meet goals that are aligned with resources (budget and staff)
5. Implement the plan
6. Assess interim progress toward meeting goals
7. Evaluate plan effectiveness

Comprehensive Educational Planning

CEP Template

The CEP template that streamlines the goal-setting process is available.

CEP components:

- [School Leadership Team \(SLT\) signature page](#)
- [Annual Goal & Action Plan section](#)
- [Academic Intervention Services \(AIS\) report](#)
- [Parent Involvement Policy \(PIP\) and School-Parent Compact \(SPC\)](#)

Comprehensive Educational Planning

[Back](#)

CEP Signature Page

SCHOOL LEADERSHIP TEAM (SLT) SIGNATURE PAGE

Use this page to identify SLT members and confirm their participation in the development of this Comprehensive Educational Plan (CEP), which includes goals and action plans, a summary of Academic Intervention Services, and the Parent Involvement Policy. The signatures of SLT members indicate their participation in the development of the CEP and serve as confirmation that consultation has occurred to align funding in support of educational programs. The SLT must include an equal number of parents and staff and have a minimum of 10 and a maximum of 17 members, in accordance with the Chancellor's Regulation A-655, available on the [NYC DOE Web site](#).

Directions:

1. List each SLT member in the left-hand column on the chart below. Specify any position held by the team member, e.g., Chairperson, SLT Secretary and the constituent group represented, e.g., parent, staff, student, or CEO. Core mandatory SLT members are indicated by an asterisk.
2. Ensure that SLT members review this document and sign in the right-hand column in blue ink. If an SLT member does not wish to sign this plan, he/she may attach a written explanation in lieu of his/her signature.
3. Add rows as needed to ensure that all SLT members are listed.
4. The original copy, along with any written communications pertaining to this page, is to remain on file in the principal's office and be made available upon written request.

Name	Position and Constituent Group Represented	Signature
	*Principal or Designee	
	*UFT Chapter Leader or Designee	
	*PARTA President or Designated CO-President	
	DC 37 Representative, if applicable	
	Student Representative (optional for elementary and middle schools; a minimum of two members required for high schools)	
	CEO Representative, if applicable	
	Member/	

Comprehensive Educational Planning

CEP Goals and Action Plans

<u>ANNUAL GOAL #1 AND ACTION PLAN</u>	
<p>Use this template to identify an annual goal. Respond to each section to indicate strategies and activities in support of accomplishing this goal.</p>	<p>Annual Goal #1</p> <ul style="list-style-type: none"> Describe a goal you have identified for the year. Refer to the directions and guidance for assistance in developing your goals.
<p>Comprehensive needs assessment</p> <ul style="list-style-type: none"> 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. 	<p>Instructional strategies/activities</p> <ul style="list-style-type: none"> Describe the research-based instructional strategies and activities that will be used to achieve this goal. Include descriptions of the following in your response: <ol style="list-style-type: none"> 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.
<p>Strategies to increase parental involvement</p> <ul style="list-style-type: none"> 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. 	<p>Strategies for attracting Highly Qualified Teachers (HQT)</p> <ul style="list-style-type: none"> 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.
<p>Service and program coordination</p> <ul style="list-style-type: none"> 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. 	<p>Budget and resources alignment</p> <ul style="list-style-type: none"> Describe the fiscal and human resources that will be used to achieve this goal, referencing specific FFY12 PS and OTPS budget categories (i.e., Title I, FSS, Title III, Title III, etc.) that will support the actions/strategies/activities described in this action plan.

Comprehensive Educational Planning

[Back](#)

CEP Goals and Action Plans

There are five Annual Goal and Action Plan templates included in the CEP template.

Each template is comprised of an annual goal and an action plan with six components:

1. Comprehensive needs assessment
2. Instructional strategies/assessments
3. Strategies to increase parental involvement
4. Strategies for attracting Highly Qualified Teachers
5. Service and program coordination
6. Budget and resource alignment

The responses provided for each of the action plan components should align with the specific annual goal identified.

Each school should develop 3-5 annual goals and action plans.

Comprehensive Educational Planning

[Back](#)

Academic Intervention Services (AIS) Report

AIS include two components:

- Additional instruction to supplement the general curriculum (regular classroom instruction)
- Student support services addressing barriers to improved academic performance, such as services provided by a guidance counselor, psychologist, or social worker, and/or any health-related services

All schools are required to provide:

- AIS to students who are considered at-risk for not meeting State standards in ELA, math, science, and/or social studies
- related at-risk support services.

Comprehensive Educational Planning

Parent Involvement Policy/School-Parent Compact

All Title I schools are required to develop a parent involvement policy (PIP), which includes a School-Parent Compact (SPC) as a component.

The PIP and SPC must be jointly developed and agreed upon by Title I parents and the school (through the School Leadership Team).

The PIP describes how schools will involve parents as partners in their children's education.

The PIP, through the SPC, describes how the school will work with parents to help all the students meet high academic standards.

The PIP must be evaluated annually by the school in consultation with Title I parent representatives in Title I schools.

The PIP should be translated in the dominant languages spoken by parents in the school and distributed to all parents in the school.

Session Agenda

Reflection

Purpose

Governance

Consensus-Based Decision Making

Comprehensive Educational Planning

Support for SLTs

Support for SLTs

District Leadership Team (DLT)

If the SLT is unable to reach consensus on developing a CEP that aligns with the school-based budget, the SLT may seek assistance from the appropriate DLT.

DLTs will also provide support, guidance, technical assistance, and conflict resolution to the SLTs in their districts.

Division of Family and Community Engagement (FACE)

SLTs in need of support can also contact FACE for technical support.

Questions about this presentation can be sent to FACE@schools.nyc.gov.

From: dos.sm.Coog.InetCoog [mailto:dosCOOG@dos.ny.gov]
Sent: Tuesday, November 25, 2014 3:59 PM
To: Mark Ladov
Subject: RE: Requesting copy of Advisory Opinion

Here it is.

From: Mark Ladov [mailto:mladov@nylpi.org]
Sent: Monday, November 24, 2014 3:41 PM
To: dos.sm.Coog.InetCoog
Subject: Requesting copy of Advisory Opinion

I'm doing some research into the applicability of the Open Meetings Law on School Leadership Teams in New York City. I have reviewed the Committee's advisory opinion OML-AO-3828, which addresses this issue (see <http://docs.dos.ny.gov/coog/otext/o3828.htm>). However, I haven't been able to find on your website a copy of the earlier Dec. 29, 2003 advisory opinion referenced therein.

Would it be possible to email or fax me (to the below number) a copy of the Committee's Dec. 29, 2003 advisory opinion finding that SLT's are "public bodies" required to comply with the Open Meetings Law?

Thank you so much for your assistance – best regards,

Mark

Mark Ladov

Staff Attorney, Environmental Justice Program

New York Lawyers for the Public Interest

151 West 30th Street, 11th Floor, New York, NY 10001-4017

tel: (212) 244-4664 x.279 **fax:** (212) 244-4570

<http://www.nylpi.org>

 **o3728.wpd**
27K

Mr. Melvyn Meer
December 29, 2003
Page - 2 -

29, 2003

December

Mr. Melvyn Meer
33-04 214th Street
Bayside, NY 11361

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear Mr. Meer:

As you are aware, I have received your letter of November 20 and materials related to it. You have asked whether meetings of a "school leadership team" ("SLT") in the New York City school system is subject to the Open Meetings Law, and if so, whether it is proper for an entity falling within the coverage of that statute to meet at 7:20 a.m.

The materials to which you referred in my view indicate that an SLT is known in other contexts as a "shared decision-making committee." If that is so, I believe that it is required to comply with the Open Meetings Law. In this regard, I offer the following comments.

First, you indicated that SLT's are required to be created pursuant to §2590-h(15) of the Education Law. That provision states in part that "all necessary steps" must be taken by the City District and all community districts to comply with "state and federal law and regulations concerning school-based management and shared decision-making, including section 100.11 of the Commissioner's regulations". The Commissioner in this context is the State Commissioner of Education.

Second, §100.11(b) of the regulations promulgated by the Commissioner states in relevant part that:

"By February 1, 1994, each public school district board of education and each board of cooperative educational services (BOCES) shall 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 decisionmaking. Such district plan shall be developed in collaboration with a committee composed of the superintendent of schools, 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 their peers in the manner prescribed by the board of education or BOCES, provided that those portions of the district plan that provide for participation of teachers or administrators in school-based planning and shared decisionmaking may be developed through collective negotiations between the board of education or BOCES and local collective bargaining organizations representing administrators and teachers."

The committee to which reference is made in the provision quoted above is characterized frequently as the "shared decision-making committee", a district-wide committee, or apparently, as in your letter, an SLT.

Section 100.11(d) provides in part that:

"The district's plan shall be adopted by the board of education or BOCES at a public meeting after consultation with and full participation by the designated representatives of the administrators, teachers, and parents, and after seeking endorsement of the plan by such designated representatives."

"Each board of education or BOCES shall submit its district plan to the commissioner for approval within 30 days of adoption of the plan. The commissioner shall approve such district plan upon a finding that it complies with the requirements of this section..."

Additionally, §100.11(e)(1) states that:

"In the event that the board of education or BOCES fails to provide for consultation with, and full participation of, all parties in the development of the plan as required by subdivisions (b) and (d) of this section, the aggrieved party or parties may commence an appeal to the commissioner pursuant to section 310 of the Education Law. Such an appeal may be instituted prior to final adoption of the district plan and shall be instituted no later than 30 days after final adoption of the district plan by the board of education or BOCES."

Third, the Open Meetings Law is applicable to meetings of public bodies, and §102(2) of that statute defines the phrase "public body" to mean:

"...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, 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."

Judicial decisions indicate generally that advisory bodies having no power to take final action, other than committees consisting solely of members of public bodies, fall outside the scope of the Open Meetings Law. As stated in those decisions: "it has long been held that the mere giving of advice, even about governmental matters is not itself a governmental function" [Goodson-Todman Enterprises, Ltd. v. Town Board of Milan, 542 NYS 2d 373, 374, 151 AD 2d 642 (1989); Poughkeepsie Newspapers v. Mayor's Intergovernmental Task Force, 145 AD 2d 65, 67 (1989); see also New York Public Interest Research Group v. Governor's Advisory Commission, 507 NYS 2d 798, aff'd with no opinion, 135 AD 2d 1149, motion for leave to appeal denied, 71 NY 2d 964 (1988)].

In this instance, however, although the SLT may or may not have the ability to make determinations, according to the Commissioner's regulations, it performs a necessary and integral function in the development of shared decision making plans. As stated earlier, the regulations specify that a district plan "shall be developed in collaboration with a committee." As such, a committee must, by law, be involved in the development of a plan. The regulations also indicate that a plan may be adopted only "after consultation with and full participation by" a committee, and that the Commissioner may approve a plan only after having found that it "complies with the requirements of this section", i.e., when it is found that a committee was involved in the development of a plan. Further, an appeal may be made to the Commissioner if a board has failed to permit "full participation" of a committee.

In the decisions cited earlier, none of the entities were designated by law to carry out a particular duty and all had purely advisory functions. More analogous to the status of shared decision-making committees in my view is the decision rendered in MFY Legal Services v. Toia [402 NYS 2d 510 (1977)]. That case involved an advisory body created by statute to advise the Commissioner of the State Department of Social Services. In MFY, it was found that "[a]lthough the duty of the committee is only to give advice which may be disregarded by the Commissioner, the Commissioner may, in some instances, be prohibited from acting before he receives that advice" (id. 511) and that, "[t]herefore, the giving of advice by the Committee either on their own volition or at the request of the Commissioner is a necessary governmental function for the proper actions of the Social Services Department" (id. 511-512).

Again, according to the Commissioner's regulations, which have the force and effect of law, a plan cannot be adopted absent "collaboration" and participation by a district-wide committee. If the SLT is the entity to which the regulations refer and carries out necessary functions in the development of shared decision making plans, I believe that it performs a governmental function and, therefore, is a public body subject to the Open Meetings Law.

While the Commissioner's regulations make reference to "school-based" committees, there is no statement concerning their specific role, function or authority. It is my understanding, based upon a discussion with a representative of the State Education Department, that school-based committees carry out their duties in accordance with the plans adopted individually by boards of education in each school district, and that those plans are intended to provide the committees in question varied roles in the decision-making process.

When, for example, a plan provides decision making authority to school-based committees within a district, those committees, in my opinion, would clearly constitute public bodies required to comply with the Open Meetings Law. Similarly, when a school-based committee performs a function analogous to that of the shared decision-making committee, i.e., where the school-based committee has the authority to recommend, and the decision maker or decision making body must consider its recommendations as a condition precedent to taking action, I believe that the committee would be a public body subject to the Open Meetings Law, even when the recommendations need not be followed.

Lastly, with respect to the time of the meetings, §103(a) of the Law states in part that "Every meeting of a public body shall be open to the general public..." Further, the intent of the Open Meetings Law is clearly stated in §100 as follows:

"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 an 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. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it."

As such, the Open Meetings Law confers a right upon the public to attend and listen to the deliberations of public bodies and to observe the performance of public officials who serve on such bodies.

In consideration of its intent, it has been found that it is unreasonable to schedule meetings as early as 7:20 a.m. In a decision that dealt in part with meetings of a board of education held at 7:30 a.m., it was stated that:

"It is...apparent to this Court that the scheduling of a board meeting at 7:30 a.m. -- even assuming arguendo that such meetings were properly noticed and promptly conducted -- does not facilitate attendance by members of the public, whether employed within or without the home, particularly those with school age or younger children, and all but insures that teachers and teacher associates at the school are unable to both attend and still comply with the requirement that they be in their classrooms by 8:40 a.m." (Matter of Goetchius v. Board of Education, Supreme Court, Westchester County, New York Law Journal, August 8, 1996).

Many may be unable to attend because they have small children, because of work schedules, commuting, and other matters that might effectively preclude them from attending meetings held so early in the morning.

I hope that I have been of assistance.

Sincerely,

Robert J.

Executive

Freeman

Director

RJF:jm

cc: Gwen Hopkins
Shelli Sklar



Published on *Office of Counsel* (<http://www.counsel.nysed.gov>)

[Home](#) > Decision No. 15,858

Decision No. 15,858 ⁽¹⁾

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.

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