SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

----------X

W.E. (Infant Plaintiff), an infant by his Mother and Natural Guardian, CATHY BRADFORD,

Plaintiffs,

- against -

POUGHKEEPSIE CITY SCHOOL DISTRICT, POUGHKEEPSIE HIGH SCHOOL; P.A.C.E. PROGRAM; PHEE SIMPSON, EXECUTIVE PRINCIPAL; JAYQUAN FLOYD, ASSISTANT PRINCIPAL; JESSICA LOVINSKY, ASSISTANT PRINCIPAL; DANIEL WILSON, ASSISTANT PRINCIPAL; DR. VIJAY GILES, P.A.C.E. ACADEMY PRINCIPAL,
As employees/agents

Defendants.

----------X

DECISION & ORDER

Index No. 51311/2017

C. A. SPROAT, J.S.C.

Defendants Poughkeepsie City School District; Poughkeepsie High School ; P.A.C.E. Program; Phee Simpson, Executive Principal; Jayquan Floyd, Assistant Principal; Jessica Lovinsky, Assistant Principal; Daniel Wilson, Assistant Principal; Dr. Vijay Giles, P.A.C.E. Academy Principal as employees, agents, move for an order pursuant to Section 3211(a)(7) dismissing the complaint for failure to state a cause of action. Plaintiff opposes the motion.

The following papers were read:

Notice of Motion, Affirmation in Support, Lewis R. Silverman, Esq., Exhibit A, Affidavit of Service

Affirmation in Opposition, Ryanne Konan, Esq., Exhibits A-H, Affidavit of Service

Reply Affirmation, Jennifer A. Robinson, Esq., Affidavit of Service

Upon the foregoing papers it is hereby ORDERED that the defendants' motion to dismiss the complaint is hereby granted to the extent that the first cause and third causes of action are dismissed against all defendants. That portion of the motion seeking dismissal of the second cause of action is

granted as it pertains to the individual defendants and denied so far as it pertains to the Poughkeepsie City School District.

The infant plaintiff W.E.[1], by his mother and natural guardian, Cathy Bradford, is seeking damages from the Poughkeepsie City School District and several individuals as employees and as agents of the school district. The complaint consists of three causes of action. The first alleges that the school district and the named individual employees have failed to provide plaintiff with a sound education. Specifically, the plaintiff alleges that the school district's placement of him in P.A.C.E., an alternative high school program, at the beginning of his junior year, was improper. In addition, it is claimed that the resources, academic curriculum and physical building provided for P.A.C.E. students were inadequate.

The second cause of action alleges that the school district was negligent in the maintenance of the building resulting in damage to the plaintiff's health. The second cause of action contains no allegation of any negligent acts or omissions by the individual defendants.

The third cause of action purports to seek recovery for damages incurred by Cathy Bradford, mother of the infant plaintiff. However, Cathy Bradford has only sued on behalf of W.E. and has not brought any action on her own behalf.

The Education Article of the New York State Constitution (NY Const. Art. X1, §1) requires the State to offer all children the opportunity of a sound basic education consisting of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and acting on a jury. (Campaign for Fiscal Equality v. State, 86 NY2d, 307 (1995). In that case, the Court of Appeals held that the Education Article of the New York State Constitution requires the State to offer all children the opportunity for a sound, basic education. (Emphasis added). (See also, Board of Education v. Levittown Union Free School District v. Nyquist, (57 NY2d 27); Reform Educ. Fin. Inequities Today v. Cuomo, (86 NY2d 279). The cases brought based upon the Education Article have in common that they each allege a failure of the State to provide a sound basic education to students in certain school districts. Indeed, both cases relied upon by plaintiff's counsel involved litigation against the State. Campaign for Fiscal Equality v. State, *supra*, involved a claim of inadequate and unfair school funding formulas in the New York City schools. In Payntner v. State, the plaintiffs claimed that the combination of poverty and racial isolation in the Rochester Central School District made it impossible to receive a sound basic education as required by the New York State Constitution. Suit was initially brought against the State. The Appellate

[1]The infant plaintiff is named as W.E. in the caption on the complaint, but is named as M.E. in plaintiff's opposition.

Division, Fourth Department held that the Rochester Central School District and neighboring school district had to be joined as necessary parties because any relief awarded could impact the manner in which school districts were constituted, administered and funded. Payntner v. State, 270 AD2d 819. After the school districts were joined, the Supreme Court dismissed the claims against them on the ground that plaintiff set forth no allegations and sought no remedies against them. Payntner v. State, 187 Misc.2d 227. At the same time the trial court dismissed the cause of action brought under the Education Article against the State.) The complaint was dismissed against the State as well. Payntner v. State, 270 AD2d 819, 290 AD2d 101, *aff'd* 100 NY2d 434.

The Court has reviewed the verified complaint which, as conceded by plaintiffs' attorney, seeks redress for failure to provide a sound education. That claim is more properly brought against the State, not a local school district. The allegations in the complaint and documentation provide by plaintiff's counsel more accurately form the basis for a cause of action for educational malpractice. Such claims are not recognized in New York State. Hoffman v. Board of Education, 49 NY2d 121 (1979); Donahue v. Copiague UFSD, 47 NY2d 440 (1979). See, also McGovern v. Nassau Cty Dept. of Soc. Services, 60 AD3d 1016 (2nd Dept., 2009).

In addition, a fair reading of the complaint, when viewed in the light most favorable to the plaintiff, (Leon v. Martizez, 84 NY2d 83 (1994) reveals that the first cause of action is based upon plaintiff's objection to placement in the PACE program and dissatisfaction with the program itself. The proper remedy for issues involving the professional judgment and discretion of those responsible for the administration of public schools is an appeal to the New York State Commissioner of Education. Walker v. Board of Education, 78 AD2d 982 (4th Dept., 1980); Patti Ann H. v. N.Y. Med. Coll., 88 AD2d 296 (2nd Dept., 1982); RB v. Dept. of Educ. of City of New York, 115 AD3d 440. In the case of RB v. Dept. of Educ. of City of New York, the plaintiffs challenged the failure of the school to place the infant plaintiff in a gifted and talented program. The case was dismissed because the plaintiffs failed to exhaust their administrative remedies under Education Law §310(7).

As held by the Court of Appeals, "the court system is not the proper forum to test the validity of the educational decision to place a particular student in one of the many educational programs offered by the schools of the State of New York. Any dispute concerning the proper placement of a child in a particular educational program can best be resolved by seeking review of such professional judgment through the administrative processes provided by the State. N.Y. Educ. Law §310(7)." Hoffman v. Board of Education, *supra*. Questions of "judgment, discretion, allocation of resources and priorities lodged in school administration are inappropriate for judicial resolutions." Bennett v. City School District, 114 AD2d 58 (2nd Dept., 1985).

Accordingly the first cause of action is dismissed against all defendants.

The allegations in the second cause of action are sufficient to support a claim of negligence against the Poughkeepsie City School District on a motion to dismiss under CPLR 3211(a)(7). On such a motion, the Court is limited to examining the pleading to determine whether it states a cause of action (see Guggenheimer v. Ginzberg, 43 NY2d 268, 275). In examining the sufficiency of the pleading, the Court must accept the facts alleged therein as true and interpret them in the light most favorable to the plaintiff (see Matter of Board of Educ. v. State Educ.Dept., 116 AD2d 939 [3rd Dept. 1986]).

Defendants' motion to dismiss the first cause of action against all defendants is granted. The motion to dismiss the second cause of action is granted as to the individual defendants and denied as to the Poughkeepsie City School District. The third cause of action is dismissed. Cathy Bradford has brought suit only on behalf of W.E., the infant plaintiff and not on her own behalf.

This matter is adjourned to June 27, 2018 at 9:30 a.m. for a pre-trial conference.

This shall constitute the Decision and Order of this Court.

Dated: October 5, 2017
Poughkeepsie, New York

HON. CHRISTINE A. SPROAT
Justice of the Supreme Court

To: Ryanne Konan, Esq.
Attorney for Plaintiff
4 Marshall Road, Suite 107
Wappinger Falls, NY 12590

Jennifer A. Robinson, Esq.
Silverman & Associates
Attorneys for Defendants
445 Hamilton Ave., Suite 1102
White Plains, NY 10601