At a term of Supreme Court of the State of New York, held in and for the City and County of Albany, State of New York

PRESENT: HON. GEORGE R. BARTLETT, III

STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY
In the Matter of the Application of

C,K,, individually and on behalf of N.A., an Infant; W.L. and N.N., individually and on behalf of M.N., an Infant; D.B. and S.B., individually and on behalf of R.B., an Infant; and A.T. and R.Y., individually and on behalf of C.Y., an Infant,

Petitioners,

DECISION AND ORDER
Index No. 909127-2019

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

-against-

SHANNON TAHOE, in her capacity as the Commissioner of the NEW YORK STATE EDUCATION DEPARTMENT; and the NEW YORK STATE EDUCATION DEPARTMENT,

Respondents.

-and-

RICHARD A. CARRANZA, in his capacity as the Chancellor of the NEW YORK CITY DEPARTMENT OF EDUCATION; and the NEW YORK CITY DEPARTMENT OF EDUCATION,

Nominal Respondents.

APPEARANCES:

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BARTLETT, J.:

Petitioners commenced this CPLR Article 78 proceeding challenging a determination of the New York State Department of Education ("SED") that affirmed a decision of the New York City Department of Education ("NYCDOE") that denied admission to four students to Specialized High Schools ("SHS") in the City of New York. The petitioners claim the August 29, 2019 decision of the SED was arbitrary and capricious and lacks a rational basis. The petitioners also move for an order pursuant to CPLR § 408 for disclosure from the NYCDOE. The respondents assert a general denial and seek dismissal of the petition for failing to state a cause of action pursuant to CPLR 3211(a)(7). The respondents oppose the Article 78 petition and the motion for discovery.

The petitioners maintain their children were unlawfully denied admission to an SHS as a result of a discovery program promoted by Mayor De Blasio. Petitioners allege the Dc Blasio

Discovery Program ("Program") was utilized to reduce the Asian population in SHSs in order to boost the African-American and Hispanic populations in those schools. Petitioners contend the NYCDOE concedes that "but for" the Discovery Program, three of the four children would have been admitted to an SHS. The petitioners claim the NYCDOE failed to abide by the required administrative procedures before the Program was enacted.

The NYCDOE operates nine SHSs. Admission is highly competitive and governed by the Hecht-Calandra Act. (see, Education Law § 2590-g(1)(b)). For many years, admission to an SHS required a qualifying score on the Specialized High School Admissions Test ("SHSAT"). The Hecht-Calandra Act provided for an alternative route for admission via a discovery program. The discovery program allowed students to be considered for admission if they 1) take the SHSAT and score below the cut-off score, 2) are certified by his or her local school as disadvantaged, 3) are recommenced by the local school as having a high potential for the special high school program and 4) attend and then pass a summer preparatory program administered by the special high school demonstrating his or her ability to successfully cope with the special high school program.

On June 3, 2018, the Chancellor of the NYCDOE sought to promote "racial, ethnic, geographic and socioeconomic diversity" by expanding the discovery program and refining the criteria used to identify disadvantaged students. The revised program required a student to 1) have taken the SHSAT and scored below the lowest cut-off score, 2) was recommended by the school for the discovery program, 3) the application information is accurate and 4) the student attends a school with an Economic Need Index ("ENI") of 60% which is used to estimate each school population's overall economic need.

The petitioners took the SHSAT in 2019 and identified their SHS choices for the 2019-2020 school year. Each student scored below the cut off score for the SHSs of his or her choice. On March 18, 2019, the students were notified by NYCDOE that they would not be admitted to a SHS due to their SHSAT scores. The students appealed the decision of NYCDOE which were denied on May 10, 2019.

The petitioners maintain the Mayor De Blasio Discovery Program is illegal and violates the provisions of the Hecht-Calandra Act, the NYC Administrative Procedure Act ("CAPA"), the State Administrative Procedures Act ("SAPA") and the By-laws of the NYC Department of Education. ("PEP"). The petitioners appealed the determinations of NYCDOE. On August 29, 2019, the SED dismissed the appeals.

The respondents contend the discovery program complies with the Hecht-Calandra Act and all other applicable laws and regulations. The respondents maintain the decision to expand and modify the discovery program was within the authority of the Chancellor and not subject to CAPA, SAPA or PEP. The respondents allege the petitioners lack standing and their appeal is time-barred. The respondents claim the decision of the Commissioner was not arbitrary or capricious. The petitioners now bring this CPLR Article 78 proceeding.

Initially, the petitioners contend this Court should grant their motion for disclosure pursuant to CPLR § 408 before a decision is rendered. Petitioner claims the De Blasio Administration expanded the scope of this proceeding beyond the issues considered by the Commissioner which demonstrates a need for disclosure. The petitioners allege the NYCDOE has raised additional issues in this proceeding and the information is within the exclusive possession and knowledge of the De Blasio Administration. The petitioners seek to obtain data

used by two employees in the Office of Student Enrollment ("OSE") of the NYCDOE relating to student enrollment in the SHSs. The petitioners contend this information is relevant and material.

The NYCDOE alleges petitioners' motion is deficient as it does not specify what disclosure is being requested. The NYCDOE claims the petitioner failed to reference what data is being sought. The NYCDOE alleges disclosure in a Article 78 special proceeding should be denied as the petitioners have not demonstrated the need for discovery. In addition, the NYCDOE alleges judicial review is limited to the factual record before the administrative agency. The NYCDOE claims the petitioners seek information that was not part of the record considered by the SED.

A trial Court must use its sound discretion in resolving discovery disputes. (Andon v. 302-304 Mott St. Associates, 94 NY2d 740 [2000]). In a CPLR Article 78 special proceeding, disclosure is available only by leave of court. (see, CPLR § 408; Matter of Town of Pleasant Val. v. New York State Bd. of Real Prop. Servs., 253 AD2d 8 [3rd Dept. 1999]). "Because discovery tends to prolong a case, and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is need for such relief." (Aylward v. Assessor, City of Buffalo, Bd. of Assessment Review, 125 AD3d 1344 [4th Dept. 2015]). The test for disclosure is one of usefulness and reason. (Allen v. Crowell-Collier Publ. Co., 21 NY2d 403 [1968]). The movant bears a "heavy burden" of demonstrating the need for disclosure under CPLR § 408. (In re Protect the Adirondacks! Inc., 38 Misc3d 1235(A) [2013]).

Among the factors considered in a request for discovery is whether the requested information is material and necessary. (Suit Kote Corp. v. Rivera, 137 AD3d 1361 [3rd Dept. 2016]. After a review of the record, the Court concludes the petitioners failed to adequately

specify what disclosure is being requested. The petitioners have not identified what information they deem is material and necessary. More importantly, the petitioners seek information that was not considered by the SED in its determination. The review of an administrative determination is limited to the facts and the record adduced before the agency. (Kelly v. Safir, 96 NY2d 32 [2001]). In addition, the petitioners have failed to demonstrate the requested discovery was necessary and that providing the requested discovery would not unduly delay this proceeding. (Matter of City of Glen Cove Ins. Dev. Agency v. Doxey, 79 AD3d 1038 [2nd Dept. 2010]). Petitioners' motion seeking discovery pursuant to CPLR § 408 is denied.

The judicial standard of review of administrative determinations pursuant to CPLR Article 78 is whether the determination is arbitrary and capricious, and a reviewing court is therefore restricted to an assessment of whether the action in question was taken "without sound basis in reason and . . . without regard to the facts." (see, CPLR § 7803; Matter of Murphy v. New York State Division of Housing and Community Renewal, 21 NY3d 649 [2013]; Matter of Pell v. Board of Education, 34 NY 2d 222 [1974]). The test usually applied in deciding whether a determination is arbitrary and capricious or an abuse of discretion is whether the determination has a rational or adequate basis. (Matter of Peckham v. Calogero, 12 NY3d 424 [2009]). The reviewing court in a proceeding pursuant to CPLR Article 78 will not substitute its judgment for that of the agency unless it clearly appears to be arbitrary, capricious or contrary to the law. (Paramount Communities, Inc v. Gibraltar Cas Co., 90 NY2d 507 [1997]).

"[When] the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference." (Matter of Flacke v. Onondaga Landfill System, Inc., 69 NY2d 355

[1987]). Moreover, in order to maintain the limited nature of review, it is incumbent upon the court to defer to the agency's construction of statutes and regulations that it administers as long as that construction is not irrational or unreasonable. (Matter of 427 W. 51st St. Owners Corp. v. Division of Hous. and Community Renewal, 3 NY3d 337 [2004]; Lorillard Tobacco Co. v. Roth, 99 NY2d 316 [2003]).

The Hecht-Calandra Act and Education Law § 2590-g(4) provides that the day-to-day administration of the SHSs, including the discovery program, is within the exclusive province of the Chancellor of the NYCDOE. Education Law § 2590-h(1)(b) vests the authority to control and operate SHSs with the Chancellor.

The Commissioner of Education "shall enforce all general and special laws relating to the educational system of the state." (see, Education Law § 305(1)). Under Education Law § 1709(3), boards of education are given broad discretion with respect to student placement. Education Law § 2590-g precludes PEP from exercising control over executive and administrative functions including establishing admissions criteria for the SHS discovery program.

The decision of the Commissioner determined the Chancellor had the authority to implement the challenged changes to the discovery program without approval by PEP. The Commissioner also found CAPA and SAPA do not apply to the decisions of the Chancellor. The Commissioner found "as the Act exists today, the Chancellor is well within his authority in establishing the parameters for determining the number of seats and defining 'disadvantaged' students for purposes of admittance to the discovery program for SHSs under Hecht-Calandra". (see, Education Law § 2590-h(1)(b)).

The decision of the Commissioner addressed the issues raised by the petitioners in relation to SHS admissions and the discovery program. After a review of the record, the Court finds the determination of the Commissioner was rational and not arbitrary or capricious. The standard of review of administrative decisions of the Commissioner of Education is limited. (Matter of Kelley v. Ambach, 83 AD2d 733 [3rd Dept. 1981]. The Commissioner of Education's decision involving her interpretations of the relevant statutes and regulations she administers are entitled to great weight. (Matter of Lezette v. Board of Ed., Hudson City School District, 35 NY2d 272 [1974]). As a result, the Court must give deference to and not substitute its judgment for factual evaluations within an agency's area of expertise. (Matter of Abramoski v. New York State Education Department, 134 AD3d 1183 [3rd Dept. 2015]; Matter of Madison-Oneida Bd. of Co-op Educational Services v. Mills, 4 NY3d 51 [2004]). The Court finds the Commissioner did not exceed her statutory authority.

The Court has reviewed the petitioners remaining contentions and concludes they either lack merit or are unpersuasive given the Court's determination. (Hubbard v. County of Madison, 71 AD3d 1313 [3rd Dept. 2010]). In addition, the Court has reviewed the two amicus curiae briefs submitted in support of the CPLR Article 78 petition.

Accordingly, the CPLR Article 78 petition is denied.

This Memorandum shall constitute both the Decision and Order of the Court. The Original Decision and Order are returned to the attorneys for the SED respondents. A copy of this Decision and Order and all other papers are delivered to the Albany County Clerk. The signing of this Decision and Order and delivery of a copy of this Decision and Order to the Albany County Clerk shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the

applicable provisions of that rule respecting filing, entry and Notice of Entry.

Dated: Schoharie, New York
October 22, 2020

ENTER

George R. Bartlett, III
Acting Supreme Court Justice

Papers Considered:

1. Notice of Petition dated December 24, 2019;
2. Verified Petition dated December 24, 2019 with annexed exhibits 1-10;
3. Memorandum of Law undated;
4. Verified Answer of SED dated June 25, 2020;
5. Affidavit of Tanya L. Davis dated February 24, 2020;
6. Memorandum of Law of SED dated June 25, 2020;
7. Verified Answer of NYCDOE dated June 26, 2020 with annexed exhibits 1 & 2;
8. Memorandum of Law of NYCDOE dated June 26, 2020;
9. Petitioners' Reply Memorandum of Law undated;
10. Notice of Motion dated July 16, 2020;
11. Affirmation of Caroline Rule dated July 16, 2020 with annexed exhibits 1-13;
12. Petitioners' Memorandum of Law dated July 16, 2020;
13. Correspondence of Shannan C. Krasnokutski, Esq. dated July 24, 2020;
14. Memorandum of Law of NYCDOE dated July 29, 2020;
15. Petitioners' Reply Memorandum of Law undated;
16. Amicus Curiae Brief of Christa McAuliffe Intermediate School PTO dated May 11, 2020
17. Amicus Curiae Brief of Justice Randal T. Eng date June 5, 2020