Matter of Charter Sch. of Educ. Excellence v New York State Board of Regents
2024 NY Slip Op 34572(U)
February 13, 2024
Supreme Court, Albany County
Docket Number: Index No. 908568-23
Judge: Denise A. Hartman

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

IN THE MATTER OF CHARTER SCHOOL OF EDUCATIONAL EXCELLENCE,

Petitioner,

-against-

NEW YORK STATE BOARD OF REGENTS: NEW YORK STATE EDUCATION DEPARTMENT; BETTY A. ROSA, as New York State Commissioner of Education,

Respondents.

DECISION AND ORDER

Index No. 908568-23

February 13, 2023

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

Barton Gilman, LLP, New York (*Stephen Adams* and *Paul T. O'Neill* of counsel), for petitioner.

Letitia James, Attorney General, Albany (*Alexander Powhida* of counsel), for respondents.

Hartman, J.

Petitioner Charter School of Educational Excellence (CSEE) is a school chartered by defendant New York State Board of Regents (the Regents) and located within the Yonkers School District (District or School District). CSEE commenced this CPLR article 78 proceeding claiming that in its most recent charter renewal the Regents and New York State Education Department (SED) forced it to adopt and/or continue an unlawful admissions and enrollment policy that requires it to maintain a ratio of new students of 50 percent from inside the School District and 50 percent from outside the School District. Specifically, CSEE alleges that respondents, by forcing them to adopt a 50/50 enrollment policy, acted in excess of their statutory authority and/or in violation of Education Law § 2854 (2) (b), which provides for in-district enrollment priorities.

Respondents SED and the Regents move, pre-answer, to dismiss. For the reasons that follow, defendants' motion is denied.

Background

From 2005 to 2018, CSEE served hundreds of children residing in the Yonkers School District from kindergarten through eighth grade. In 2018, CSEE applied to the Regents for approval of a material change in its charter expand the school to educate students through the 12th grade. Negotiations between CSEE and SED and, as part of its expansion, CSEE ultimately agreed

to respondents' demand that it change its admission and enrollment policy to require that 50% of all new students in all grades would come from outside the District, while 50% would continue to come from within the district, thereby requiring CSEE's to transition to a "regional school." On May 31, 2018, the Regents formally voted to approve CSEE's charter renewal, amended to allow it to expand to include high-school grades and including the 50/50 enrollment rule. From February 2019 through 2022, CSEE attempted to negotiate with respondents to allow it at least to implement permutations of the 50/50 rule, for example, to allow siblings of admitted in-district students to be prioritized over out-out of district students, or to limit the 50/50 rule to enrolling high school students.

On November 4, 2022, a number of parents of in-district students, along with CSEE, commenced an earlier action alleging that, in "brokering a political compromise instead of following the text" of the New York Charter Schools Act, defendants' conduct violated Education Law § 2854, which, when the number of charter school applications exceeds the school's capacity, provides for an enrollment preference to be given to students who reside in the charter school's district and siblings of students enrolled in the charter school. Defendants moved, pre-answer, for dismissal of the complaint on grounds, among others, that the declaratory judgment action should be converted to a proceeding under article 78 of the CPLR and dismissed as untimely.

The Court, by decision and order dated July 13, 2023, agreed with defendants, converted the declaratory judgment action to a proceeding for mandamus, dismissed it for non-compliance with the four-month statute of limitations. The Court reasoned that the claim for mandamus relief arguably could have accrued when defendants insisted on agreement to the 50/50 rule into CSEE's charter revision, which the Regents ratified on May 31, 2018; from the ambiguous approval of CSEE's revised admissions and enrollment policy applying the 50/50 rule for new applicants only after giving a preference to returning students and their siblings on August 30, 2019; or from SED's rejection of CSEE's proposed revised policy limiting the 50/50 rule to the high school grades, which was communicated to CSEE on April 12, 2022. Under any of the alternative accrual dates, the Court held in its July 13, 2023 decision, the claim was time-barred.

In the meantime, SED and the Regents renewed CSEE's charter on May 15, 2023, which became effective in August 2023. CSEE commenced this new proceeding on September 12, 2023, expressly to challenge the May 15, 2023 renewal determination. CSEE alleges that respondents, when renewing the charter, continued to insist on the 50/50 rule for enrollment of in-district and out-of-district students, and that CSEE capitulated to the rule so that it would not be forced to close its doors. In its petition, CSEE again seeks to assert its claim that respondents, in imposing the 50/50 rule, this time in the May 15,

2023 charter renewal, exceeded their authority and violated Education Law § 2854 (2)(b). That provision establishes enrollment preferences as follows:

> "[S]tudents shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school." (Education Law § 2854 [2] [b].)

The petition alleges that as a result of the 50/50 mandate, CSEE has incurred substantial expenses for certain enrolled in-district students after Yonkers School District withheld per pupil funding for them, and that it has incurred increased transportation costs for out-of-district students, and for costs associated with recruitment of out-of-district students and out-of-district advertising. Attached to the petition were numerous exhibits, including various communications between the parties regarding the enrollment policy.

Respondents SED and the Regents have now, once again, moved to dismiss the instant petition by pre-answer motion. They argue (1) that CSEE's claim is barred by the doctrine of res judicata; (2) that its claim is barred by the statute of limitations; (3) that its claim is barred by the doctrines of laches and estoppel; (4) that CSEE fails to state a claim; and (5) that CSEE has failed to join the City School District of the City of Yonkers as a necessary party. Attached to respondents' motion submissions were CSEE's 2023 charter renewal agreement and respondents' 2023 charter renewal decision.

Analysis

Res Judicata

The Court rejects respondents' assertion that the doctrine of res judicata precludes CSEE from pursuing its claim in this new CPLR article 78 proceeding. Because CSEE now challenges respondents' charter renewal decision of May 15, 2023, which was not subject to challenge in the prior lawsuit, this proceeding is not barred by the doctrine of res judicata.

Under the doctrine of res judicata, "a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter" (*Matter of Hunter*, 4 NY3d 260, 269 [2005]). Under the transactional analysis approach, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*id.* [internal quotation marks and citations omitted]; *see Maki v Bassett Healthcare*, 141 AD3d 979, 981 [2016], *appeals dismissed, lv dismissed and lv denied* 28 NY3d 1002, 1130, 1141 [2017]). And it is true that dismissal on the ground of the statute of limitations, while technically not on the merits, maybe deemed equivalent to a determination on the merits for res judicata purposes (*see Cohen v Glass*, 173 AD3d 580, 580 [1st Dept 2019]; *Williams v City of Yonkers*, 160 AD3d 1017, 1018 [2d Dept 2018]; *see generally*

Smith v Russell Sage Coll., 54 NY2d 185, 194 [1981]; 10 Weinstein-Korn-Miller, NY Civ Prac 5011.11, at 50-116 [2d ed]).

But the gravamen of CSEE's current petition is that it was forced to accept the 50/50 rule in order to obtain approval for its renewed five year charter on May 15, 2023. That fact was not operative when the prior litigation was commenced. Rather, the possible accrual dates governing the statute of limitations issue in the prior lawsuit were CSEE's charter approval in 2018, when CSEE agreed to the 50/50 rule notwithstanding its objections in exchange for getting approval to expand the school to grades K through 12, and other determinations that occurred during the prior charter period when respondents rejected CSEE's attempts to modify the rule or its implementation. In this new lawsuit, petitioner seeks to assert the same or similar objection, but to respondents' May 15, 2023 charter renewal determination. Under the circumstances here, res judicata does not operate to bar the instant proceeding (*cf. Bank of Am., N.A. v Ali*, 202 AD3d 726, 733 [1st Dept 2022]). In seeking "to deny a litigant two days in court, courts must be careful not to deprive [a litigant] of one" (*Matter of Reilly v Reid*, 45 NY2d 24, 28, 5 [internal quotation marks omitted]).

Statute of Limitations

The applicable limitations period for an action or proceeding brought against government officers, such as the instant case, is four months after the

determination to be reviewed becomes final and binding (*see* CPLR 217; *Matter of O'Neill v Pfau*, 23 NY3d 993, 995 [2014]; *Smith v. State of New York*, 201 AD3d 1225, 1228 [3d Dept 2022]). "A proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner" (CPLR 217 [1]). The two requirements for determining finality are "the agency must have arrived at a definite position on the issue inflicting actual injury, and the injury may not be significantly ameliorated either by further administrative action or steps taken by the complaining party" (*Matter of Comptroller of City of N.Y. v Mayor of City of N.Y.*, 7 NY3d 256, 262 [2006]; *see Smith v. State of New York*, 201 AD3d at 1228). The governmental agency bears the initial burden of establishing the defense (*see Sloane v. Power Auth. of the State of N.Y.*, 214 AD3d 1150, 1151 [3d Dept 2023], *lv denied* 40 NY3d 902 [2023]; *Smith v. State of New York*, 201 AD3d at 1229).

Here, respondents issued the challenged charter renewal determination on May 15, 2023. It became final and binding on that date. That is when petitioner became newly aggrieved as it began implementing the 50/50 rule as it enrolled students for the 2023-2024 school year. Petitioner commenced this proceeding by filing the petition on September 12, 2023, within the four-month period prescribed by CPLR 217.

The Court rejects respondents' argument that CSEE's challenge is effectively to the same determination respondents made when they renewed CSEE's charter in 2018 – a determination that CSEE agreed to in exchange for permission to expand to a K through 12 school. The New York Charter Schools Act (Education Law art 56) creates no constitutionally protected property interest in renewal (*see Pinnacle Charter Sch. v Board of Regents of the Univ. of the State of N.Y.*, 108 AD3d 1024, 1026 [4th Dept 2013], *appeal dismissed* 21 NY3d 1029 [2013], *lv denied* 22 NY3d 951 [2013]; *Matter of New Covenant Charter School Educ. Faculty Assn. v Board of Trustees of the State Univ. of N.Y.*, 30 Misc 3d 1205[A], 2010 NY Slip Op 52287[U], *3 [Sup Ct, Albany County 2010]). Each renewal determination stands on its own.

Here, in May 2023, respondents issued a new determination, one to which CSEE did not agree. Rather, CSEE alleges that respondents forced it to accept the 50/50 rule on pain of non-renewal, which would have shut down its operations entirely, leaving hundreds of students unable to continue their education at the relatively high-performing CSEE. Respondents do not dispute CSEE's allegation that CSEE did not propose in its 2023 charter renewal application elimination of the 50/50 rule from its enrollment policy because respondents had advised it that any renewal application eschewing the 50/50 rule would be denied.

Under the circumstances, the Court finds that respondents have failed to meet their burden to demonstrate that the instant litigation is barred by the four-month statute of limitations.

Laches and Estoppel

Respondents' contention that this proceeding is barred by the doctrines of laches and estoppel is also rejected.

Laches is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party" (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 816 [2003], *cert denied* 540 US 1017 [2003]; *see Matter of Barabash*, 31 NY2d 76, 81 [1972]). "The essential element . . . is delay prejudicial to the opposing party" (*Matter of Barabash*, 31 NY2d at 81; *see Saratoga County Chamber of Commerce v Pataki*, 100 NY2d at 816-818; *Matter of Schulz v State of New York*, 81 NY2d 336, 348 [1993]). And equitable estoppel is a doctrine imposed as a matter of fairness that "preclude[s] a person from asserting a right after having led another to form the reasonable belief that the right would not be asserted, and loss or prejudice to the other would result if the right were asserted" (*Matter of Shondel J. v Mark D.*, 7 NY3d 320, 326 [2006]; *see Matter of Aron Law PLLC v. Town of Fallsburg*, 199 AD3d 1286, 1290 [3d Dept 2021]).

Taking the allegations in the pleadings as true, as it must at this juncture in the case, respondents have not established either affirmative

defense. The petition alleges that CSEE has repeatedly challenged the imposition of the 50/50 rule in 2018, during the prior charter term, and in the months leading up to the 2023 renewal application submission. During that same time period, they joined with parents of potential students in the prior litigation challenging the imposition of the rule for the prior 2018-2023 charter term. Respondents have no basis to argue that they have been ambushed by CSEE's continued challenge to the 50/50 rule. Respondents argument that CSEE should be estopped from claiming the rule is unlawful because it obtained the benefit of its bargain in 2018 – it was given authority to expand educational services to include students in grades 9 through 12 in exchange for acceding to the 50/50 rule -- unavailing. Like CSEE, respondents have already enjoyed the benefit of the bargain underlying renewal approval in 2018 for the previous five-year renewal term. Neither CSEE nor respondents could justifiably rely on approval of a new charter, unchanged, when it came up for renewal in 2023. Accordingly, respondents have not demonstrated that they are prejudiced by CSEE's attempt to raise again the lawfulness of the 50/50 mandate in connection with the 2023 charter renewal.

Failure to State a Cause of Action

The Court likewise rejects respondents' argument that CSEE's petition should be dismissed on the ground that it fails to state a claim. Respondents

contend that a charter school cannot challenge the renewal determination because judicial review is unavailable under Education Law § 2852 (6).

Education Law § 2852 (6) provides that the denial (and by extension the approval, with conditions) of an application for a charter school by a charter entity "is final and shall not be reviewable in any court or by any administrative body." That provision applies with equal force to both the denial of an application to renew a charter and the denial of an initial charter application (*see Matter of Fahari Academy Charter Sch. v Board of Educ. of City Sch. Dist. of City of N.Y.*, 137 AD3d 1127, 1128-1129 [2d Dept 2016], *lv denied* 27 NY3d 1120 [2016]; *Pinnacle Charter Sch. v Board of Regents of the Univ. of the State of N.Y.*, 108 AD3d at 1026; *Matter of New Covenant Charter School Educ. Faculty Assn v Board of Trustees of the State Univ. of N.Y.*, 2010 NY Slip Op 52287[U], *2-3; *see also* Education Law § 2851 [4]).

But, "[e]ven where judicial review is proscribed by statute, the courts have the power and the duty to make certain that the administrative official has not acted in excess of the grant of authority given . . . by statute or in disregard of the standard prescribed by the legislature" (*Matter of Fahari Academy Charter Sch. v Board of Educ. of City Sch. Dist. of City of N.Y.*, 137 AD3d at 1129, quoting *Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318, 323 [1991]; *Pinnacle Charter Sch. v Board of Regents of the Univ. of the State of N.Y.*, 108 AD3d at 1026;

Matter of De Guzman v State of N.Y. Civ. Serv. Commn., 129 AD3d 1189, 1191 [3d Dept 2015], *lv denied* 26 NY3d 913 [2015]). Thus, notwithstanding the language of Education Law § 2852 (6), limited judicial review may be appropriate to assess whether the subject determination was made in excess of authority or in disregard of the enabling statute.

At this stage of the litigation, pre-answer, the Court cannot hold as a matter of law that CSEE fails to state a cause of action, whether it is for mandamus or prohibition, for a judicial determination that respondents acted without authority or in violation of the statute.

Failure to Join a Necessary Party

Respondents next argue that the petition must be dismissed on the ground that CSEE failed to join the City of Yonkers School District as a necessary party. This argument is also rejected.

CPLR 1001(a) requires joinder of "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action." "[I]n the context of governmental policies and programs which inevitably entail the involvement of numerous agencies, departments and officials, only those governmental entities that are primarily responsible for the challenged policy are necessary parties" (*Matter of Mid Is. Therapy Assoc., LLC v. New York*

State Dept. of Educ., 99 AD3d 1082, 1083 [3d Dept 2012], quoting *Joanne S. v Carey*, 115 AD2d 4, 9 [1st Dept 1986]).

The Court does not find that the Yonkers School District is a necessary party. To the extent that adjudication of CSEE's claim may result in financial consequences to the District, such consequences will occur by operation of law. In short, the Court does not find that the District has "such an interest in the litigation that the court cannot settle the controversy without necessarily considering the interests of the proposed party" (*Joanne S. v Carey*, 115 AD2d at 7).

In any event, as CSEE points out, the remedy for nonjoinder would not be dismissal; rather, absent a jurisdictional bar, the Court would summon the party to join the litigation CPLR 1001 (b) (*see Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 727 [2008]). The Court declines to order a summons. Should that party seek to assert its interests, it may seek permissive joinder under CPLR 1002 (*see Matter of Board of Educ. of Roosevelt Union Free School Dist. v Board of Trustees of State Univ. of N.Y.*, 282 AD2d 166, 174 [2001]).

Accordingly, it is

ORDERED that the motion to dismiss the petition is denied; and it is

ORDERED that respondents shall file their answer and any supporting documents on or before March 15, 2024.

This constitutes the Decision and Order of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for petitioner shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
February 13, 2024

Denise A. Hartman
HON. DENISE A. HARTMAN
Acting Justice of the Supreme Court

Papers Considered
NYSCEF Doc Nos. 1-39

02/13/2024