

**Matter of Moms for Liberty, Inc. of Wayne County v
State of N.Y. State Educ. Dept.**

2025 NY Slip Op 33036(U)

March 17, 2025

Supreme Court, Albany County

Docket Number: Index No. 910036-24

Judge: Denise A. Hartman

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
MOMS FOR LIBERTY, INC. OF WAYNE COUNTY
AND REVEREND JACOB MARCHITELL,

DECISION & ORDER
(MOTION #4)

Petitioners,

Index No. 910036-24

-against-

March 17, 2025

STATE OF NEW YORK STATE EDUCATION
DEPARTMENT; BOARD OF EDUCATION OF
CLYDE-SAVANNAH CENTRAL SCHOOL DISTRICT,

Respondent(s).

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

HON. DENISE A. HARTMAN, AJSC

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Hartman, J.

Presently pending before the Court in this CPLR article 78 proceeding challenging the determination of the State of New York State Education Department is the motion of New York State United Teachers and Emilie Bastian to intervene as party respondents (Motion #4). Petitioners Moms of Liberty, Inc. of Wayne County and Reverend Jacob Marchitell oppose the motion. For the reasons that follow, the motion is granted in part, as to Emilie Bastian, and otherwise denied.

I. Background

A. Facts and Procedural History

Petitioners commenced this CPLR article 78 proceeding to challenge an April 2024 decision of respondent State of New York State Education Department (SED), which upheld the September 2023 determination of the Board of Education of Clyde-Savannah Central School District (Board) to reinstate five books to the junior and senior high school library. The challenged books are not for curricular use but are shelved in the School District's junior and senior high school library and available for voluntary use. Proposed intervenor-respondent Emilie Bastian, the School District's designated library media specialist, selected the books for inclusion in the library pursuant to her authority under the Board's policy.

In April and May 2023, petitioner Marchitell made oral and written requests to the Board to remove five challenged books from the junior/senior high school library on the ground that the books contained explicit language and/or sexually explicit material inappropriate for junior and senior high school students. Pursuant to District policy, the Board referred Marchitell's requests to a six-person committee to review the challenged books and make recommendations as to the appropriateness of retaining or removing them. Bastian, as the library media specialist, was the only mandatory member of the committee. The committee voted to retain the books. Nevertheless, at its August 2023 meeting, the Board voted 5-3 to remove all five books from the library shelves.

Bastian and another teacher in the District then filed an Education Law § 310 administrative appeal to the Commissioner of SED. But the Board revisited the matter at its September 2023 meeting, rescinded its prior decision, and voted 6-2 to reinstate the five challenged books. As a result, Bastian withdrew her administrative appeal of the Board's prior determination. Petitioners then filed their own Education Law § 310 administrative appeal of the Board's September 2023 determination to SED.

SED sustained the Board's decision and dismissed that appeal by decision dated April 25, 2024. Petitioners then commenced the present CPLR article 78 proceeding to challenge SED's determination as arbitrary, an abuse

of discretion, and based on a misapplication of the First Amendment, and to enjoin respondents from shelving the challenged books.¹

By notice of motion (Motion #4) dated January 9, 2025, Bastian and NYSUT seek to intervene as party respondents in this proceeding to oppose the relief sought by petitioners. Petitioners oppose the motion. Respondents do not oppose. Oral argument was held on March 10, 2025, at which time the Court entertained arguments from petitioners, proposed intervenors, and respondents.²

B. Arguments of the Proposed Intervenors and the Parties

Bastian seeks to intervene individually as the District's library media specialist on the ground that the outcome of this proceeding will be binding upon her and will impact her ability to perform the duty expressly delegated to her by the Board of selecting books for the library. She points out that she developed and drafted the District's Guidebook that established the policies and procedures for selecting media for the library, including the five books at issue in this proceeding. Bastian argues that the policies and procedures

¹ Petitioners originally commenced this proceeding in Wayne County. On consent of the parties, the matter was transferred to this Court by Order (Supreme Court, Wayne County, Healy, J.) dated September 20, 2024 (*see* NYSCEF Doc No. 11).

² Pending and not addressed in this decision, the Board moved pre-answer to dismiss petition and for summary judgment (*see* NYSCEF Doc No. 38), and SED filed an answer and supporting memorandum of law in opposition to the petition (*see* NYSCEF Doc Nos. 41, 65).

established through her Guidebook would be impacted by an unfavorable ruling. In further support, Bastian points out that she personally pursued an administrative appeal of the Board's initial determination to remove the challenged books from the library. In addition, Bastian seeks to intervene as the only mandatory member of the six-person committee assigned by the Board to review the challenged books.

NYSUT contends that it should be permitted to intervene because it has an interest in ensuring school districts and SED uphold the academic/intellectual freedom of teachers and library specialists and because the relief petitioners seek directly impacts its ability to advance its organization's goal that educators remain free from political interference in the exercise of their duties. NYSUT also cites its interest in ensuring that school districts and SED adhere to and implement Diversity Equity and Inclusion (DEI) guidance and policies. In support of its motion, NYSUT notes that it filed an amicus brief before SED.

Petitioners oppose intervention on the ground that neither Bastian nor NYSUT have a cognizable legal claim in the present proceeding. Petitioners contend that Bastian lacks a sufficient interest in the proceeding to warrant intervention because petitioners challenge the Board's decision on the basis that it misapplied the law, which is a decision only the Board can make and a reversal of which would have no impact to the terms and conditions of her

employment or Guidelines, or on her status as a member of the six-person review committee. In addition, petitioners argue that NYSUT's purported interests are vague and attenuated and do not sufficiently implicate its members' interests to warrant intervention.

Respondents take no position on the intervenor motion.

II. Analysis

“[A] court ‘may allow other interested persons’ to intervene in a special proceeding” (*Matter of People v Schofield*, 199 AD3d 5, 9 [3d Dept 2021]). The determination to permit intervention “lies within the [C]ourt’s discretion” (*Matter of Pace-O-Matic, Inc. v New York State Liq. Auth.*, 72 AD3d 1144, 1145 [3d Dept 2010] [citations omitted]). CPLR 7802 (d) “grants the [C]ourt broader authority to allow intervention in an article 78 proceeding than is provided pursuant to CPLR 1013 . . . , which requires a showing that the proposed intervenor’s ‘claim or defense and the main action have a common question of law or fact’” (*Matter of Greater N.Y. Health Care Facilities Assn v DeBuono*, 91 NY2d 716, 720 [1998], quoting CPLR 1013; *see Schofield*, 199 AD3d at 9; *Matter of Tennessee Gas Pipeline Co. v Town of Chatham Bd. of Assessors*, 239 AD2d 831, 832 [3d Dept 1997]).

In determining whether to grant intervention, the Court “‘may properly balance the benefit to be gained by intervention, and the extent to which the proposed intervenor may be harmed if it is refused, against other factors, such

as the degree to which the proposed intervention will delay and unduly complicate the litigation” (*Schofield*, 199 AD3d at 9, quoting *Matter of Pier v Board of Assessment Review of Town of Niskayuna*, 209 AD2d 788, 789 [3d Dept 1994]), as well as any prejudice intervention would work to the other parties (*see id.*, citing *Jones v Town of Carroll*, 158 AD3d 1325, 1328 [4th Dept 2018], *lv dismissed* 31 NY3d 1064 [2018]).

A. Bastian’s motion to intervene is granted.

Under the unique circumstances of this matter, the Court finds that Bastian has satisfied the liberal standard under CPLR 7802 (d) to the extent she seeks intervention in her individual capacity as the School District’s library media specialist. Bastian is the sole individual in the School District with the expressly delegated duty to select the print materials to shelve in the library, and she will be bound by the Court’s decision. If the Court grants petitioners’ requested relief—an injunction requiring the removal of the challenged books—Bastian’s discretion in selecting print media under the School District’s guidelines will be directly impacted. In this Court’s opinion, Bastian, as the library media specialist, has a substantial interest in the outcome of this proceeding such that intervention under CPLR 7802 (d) is warranted.

Petitioners’ arguments in opposition do not carry the day. Petitioner’s contention that Bastian lacks a cognizable legal claim is of no moment. “The

bases for permissive intervention are broader than they are for standing to originate the proceeding” (*Matter of Ball v Town of Ballston*, 173 AD3d 1304, 1306 [3d Dept 2019]). And counsel does not dispute that Bastian had a sufficient interest to bring her own administrative appeal of the Board’s initial decision to remove the challenged books, which undercuts petitioners’ contention that she lacks a sufficient interest here. Further, under CPLR 7802 (d)’s liberal standard, Bastian is not required to establish that respondents’ representation of her interests are or may be inadequate (*cf.* CPLR 1012 [a] [2]).

The Court finds similarly unavailing petitioners’ contention that the motion to intervene is untimely. “In examining the timeliness of [a] motion [to intervene], courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party” (*Jones*, 158 AD3d at 1328). And “[p]ermission to intervene in an article 78 proceeding may be granted at any point of the proceeding, including after judgment for the purposes of taking an appeal” (*DeBuono*, 91 NY2d at 720).

Here, the motion to intervene was filed just five months after commencement, and three months after the proceeding was transferred here from Wayne County. Given the alignment of her position with those of respondents, it should take counsel little time to tailor the proposed answer

and supporting memorandum of law for Bastian individually, or for petitioners to file responsive pleadings. And the Court will keep a tight rein on these filing deadlines to minimize any delay attendant to her intervention. Bastian has been involved with this proceeding from the beginning, and even prosecuted her own administrative appeal of the Board's original determination, such that petitioners "cannot credibly claim surprise or prejudice arising from the assertions of [Bastian]" (*Schofeld*, 199 AD3d at 10).

The Court, however, finds that Bastian lacks sufficient interest to intervene as a member of the six-person review committee. Petitioners are correct that the outcome of this proceeding will not impact Bastian's status as a committee member. And the committee's recommendation regarding the challenged books is merely one step in the administrative review process that is independent of Bastian's one-sixth committee vote and is ultimately appealable to SED and subject to judicial review pursuant to CPLR article 78. In any event, that issue is rendered academic in light of the Court's decision to allow Bastian's to intervene in her individual capacity.

B. NYSUT's motion to intervene is denied.

NYSUT has not demonstrated an interest in this proceeding sufficient to meet even the liberal standard for intervention under CPLR 7802 (d). NYSUT, a state-wide organization representing education professionals and advocating for education policy, will not be directly impacted or bound by any judgment in

this proceeding. The issue presented here is whether the Commissioner properly affirmed the Board's exercise of discretion in denying petitioners' challenge to retaining five books in the School District's junior and senior high school library.

Further, NYSUT's asserted interest of safeguarding against politicization is not directly implicated here. Petitioners challenge the retention of the books in the library because of explicit and/or sexually explicit language in certain passages contained in the books—not specific viewpoints, themes, or ideology, if any, expressed. Similarly unpersuasive is NYSUT's argument that intervention is warranted based on its general interests in ensuring intellectual freedom for educators and school districts' adherence to DEI guidance. These general concerns are more appropriately channeled through an amicus brief—the path NYSUT took in the proceedings before SED. NYSUT has not asked to submit an amicus brief here, and nothing prevents it from making such request here. The Court has already granted the New York Civil Liberties Union's request to file an amicus brief (*see* NYSCEF Doc No. 95). NYSUT's motion to intervene is, therefore, denied.

III. Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion to intervene (Motion #4) is **GRANTED, IN PART**, as set forth herein, and Emilie Bastian is permitted to intervene in this

proceeding in her individual capacity as library media specialist; and it is further

ORDERED that the caption shall be amended to add Emilie Bastian as an intervenor-respondent; and it is further

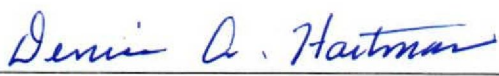
ORDERED that the motion to intervene (Motion #4) is otherwise **DENIED**; and it is further


ORDERED that Emilie Bastian shall file and serve her answer and memorandum of law in support thereof within ten (10) days of service of notice of entry of this decision and order; and it is further

ORDERED that petitioners shall file and serve any response to Emilie Bastian's submissions within ten (10) days of service of such submissions.

This constitutes the Decision & 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 Emilie Bastian shall promptly serve notice of entry on all other parties entitled to such notice.

Dated: Albany, New York
March 17, 2025


Hon. Denise A. Hartman, AJSC


03/18/2025

Papers Considered

NYSCEF Doc Nos. 1-5, 7, 11, 29-42, 65, 72, 76-77