

Memorandum

To: Community Education Councils considering dezoning

From: Leonie Haimson, Class Size Matters

Date: 6/1/2013

Re: DOE's proposal to eliminate school attendance zones

Summary: If a Community Education Council approves DOE's proposal to eliminate school zones, this would also eliminate the right of children to attend a public school near their home, and allow the DOE to close any elementary or middle school in the district and replace it with a charter school.

The sole legal authority of the CECs that the DOE currently acknowledges is to approve or disapprove changes in attendance zones. See: *Article 52-A - § 2590-E Powers and Duties of Community District Education Council* http://law.onecle.com/new-york/education/EDN02590-E_2590-E.html

In February 2009, Chancellor Klein announced he would close three zoned elementary schools: PS 194 and PS 241 in Harlem and PS 150 in the Ocean Hill-Brownsville, and put charters in their place. (According to emails later obtained by Juan Gonzalez of the Daily News, Eva Moskowitz had asked Klein the year before to give her the two schools in Harlem to expand her charter chain; see <http://bit.ly/R3pDw9>)

On March 24, 2009, the NYCLU and UFT sued DOE in the NY Supreme Court, pointing out that the decision to close a zoned public school must first be put to a vote of the CEC, as this would involve eliminating an attendance zone. Plaintiffs included parents at the closing schools and CEC members from Districts 3 and 23:

"Plaintiffs asked in the lawsuit that the court rule that the DOE's policy in these cases is a violation of state education law, order the DOE to stop it and reserve such zone alterations to Community Education Councils."

An article about this lawsuit is here: <http://shar.es/c1dNF> and the legal complaint posted here: http://www.nyclu.org/files/CEC_Suit_03.24.09.PDF

Less than two weeks later, the DOE had dropped its plans to close these schools: <http://bit.ly/R3odlj>

Presumably, Klein realized that the CECs in District 3 and 23 would never approve his plan to eliminate the zones for these schools, knowing full well that he intended to replace them

with charters. Here is the NYCLU's announcement that the DOE had withdrawn the proposal:

April 2, 2009 — The New York City Department of Education has apparently decided to keep three schools open after public school parents, guardians and community leaders filed a lawsuit last week. That lawsuit charged the DOE with violating state education law by making zoning changes that affect neighborhood schools without approval from Community Education Councils, effectively denying parents and children access to neighborhood schools without a voice in the process.

The DOE did not respond to the lawsuit in court, but today told the media that the three schools would remain open.

"It shouldn't take a lawsuit to make the DOE follow the law," said New York Civil Liberties Union Executive Director Donna Lieberman. "Zoning laws are the one small area of oversight that parents were allowed to keep under mayoral control. The state legislature should take note of the fact that we had to take the DOE to court to get the public's voice heard as prescribed by law."

The vast majority of schools that DOE has closed up to now are unzoned Middle and High Schools. In a few cases, they have closed a zoned public school, but have been forced to open up another zoned public school in the same building.

In conclusion, CECs should be very cautious before eliminating school attendance zones, unless they would like to eliminate their sole legal power and allow DOE to close neighborhood schools and put charter schools in their place.

Please feel free to follow up if you have any questions.

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