



December 16, 2014

Chancellor Carmen Fariña
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, NY 10007

RE: Open Meetings Law Must Apply to a School Leadership Team

Dear Chancellor Fariña:

The Department of Education (DOE) has argued in several court proceedings that School Leadership Teams (SLTs) are not subject to the State's Open Meetings Law and that therefore access to their meetings can be restricted.¹ On behalf of the Public Advocate Letitia James and the undersigned organizations, we write to urge the Department of Education to adopt the position that School Leadership Team (SLT) meetings are subject to the Open Meetings Law and cannot be closed to the public except as provided therein. If the DOE does not reconsider its position, we intend to intervene in *Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Sup. Ct N.Y. Co.) to urge the Court to find that SLT meetings are, indeed, required to be made open to the public for the following reasons.

I. School Leadership Teams are "Public Bodies"

The Open Meetings Law requires that "[e]very meeting of a public body [be] open to the general public." N.Y. Pub. Officers Law § 103(a). A "public body" is "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function [be]fore the public." N.Y. Pub. Officers Law § 103(a).

New York State Education Law § 2590-h requires that SLTs be established in every public school. The Commissioner's and Chancellor's Regulations mandate that the SLT include at least the PA/PTA president, the UFT chapter leader, and the school's

¹ See, e.g., *Portelos v. Bd. of Educ. of the City of N.Y.*, 2013 NY Slip Op. 32842(U) (Sup. Ct. N.Y. Co., Nov. 4, 2013), *appeal docketed*, No. 100853/13, M-3716 (1st Dep't Dec. 16, 2013) (wherein the DOE argued that SLTs were not public bodies because they possessed only advisory powers), and see *Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Sup. Ct N.Y. Co., filed May 19, 2014) (same).

principal. Community-based organizations are also encouraged to participate in every public school, including as members of an SLT.² Moreover, according to Chancellor's regulations, each SLT must provide public notice of its meeting under the OML;³ develop by-laws; identify quorum requirements; determine decision-making methods; and decide on the role of observers during meetings.⁴

The SLTs play a critical role in schools' decision-making structure pursuant to New York State Education Law § 2590-h and Commissioner's Regulation 100.11. For example, the SLT has sole authority to develop the school's Comprehensive Education Plan (CEP). The CEP establishes the school's educational goals and provides a roadmap for strategies and activities integral to the school's goal effectuation and achievement. The school's budget must align with the SLT-created CEP, and the school principal must work with the SLT in all budget determinations.

The structure, composition, and function of the SLTs have all the hallmarks of "public bodies" as that term is defined in the Open Meetings Law. Restricting attendance at an SLT meeting thus conflicts with the Law. The Committee on Open Government (the state office responsible for overseeing the Open Meetings Law) agrees and advises that an SLT must comply with the Open Meetings Law because it is a public body.⁵

II. The DOE Mischaracterizes the Role of School Leadership Teams and the Scope of the Open Meetings Law

The NYC Department of Education has argued that SLTs are merely "advisory," do not "conduct business" and are therefore not "public bodies" as defined by the Open Meetings Law. This characterization fails because shared decision-making within the school community is a fundamental principle of New York's Education Law, as is reflected in both Commissioner and Chancellor Regulations.

In deciding whether the Open Meetings Law applies, in each case the court must undertake an analysis that centers on "the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies" (*Matter of Smith v City Univ. of N.Y.*, 92 NY2d 707, 713 [1999]). Thus, the Court of Appeals has applied the Law even when a committee's decisions are subject to approval and potential veto by other school or other governmental authorities. *Perez v. City Univ. of New York*, 5 N.Y.3d 522, 530 (2005) (holding that a body charged with making policy proposals is subject to the

² See *id.*, and see, e.g., <http://schools.nyc.gov/community/city/cbo/>.

³ See Chancellor's Regulation A-655, p. 7, § VII: "Meetings must take place on school or DOE premises and be scheduled at a time convenient to parent members (day or evening). Notice of meetings must be provided in a form consistent with the open meetings law."

⁴ See Chancellor's Regulation A-655 and Attachment No. 4.

⁵ See Comm. on Open Gov't, Advisory Op. OML-AO-3828 (June 22, 2004), available at <http://docs.dos.ny.gov/coog/otext/o3828.htm>; Comm. on Open Gov't, Advisory Op. OML-AO-3728 (Dec. 29, 2003).

Open Meetings Law).

The structure of school governance in New York City is designed to ensure that there are many avenues for parent and community participation in school-based decision-making. SLTs are a critical part of that contemplated democratic system of governance. Closing their meetings to the public would have a profoundly damaging impact on the transparency of the governance and operation of our schools.

III. State Education Law § 414 Requires That SLT Meetings Be Open to The Public

Like a parent association meeting, an SLT meeting is a civic meeting that must be held at a public school (or other DOE premises) and therefore must open its doors to the general public under New York State Education Law § 414.⁶ Recently, the Mayor's Office was appropriately criticized for improperly excluding the press from a meeting held at a public school.⁷ Like that community meeting, a meeting held in public school such as an SLT or parent association meeting must comply with Section 414's transparency requirements and be open to the general public.⁸

The DOE has argued that an SLT should not be open to the public because it covers sensitive subjects at times, such as school security measures or student disciplinary histories.⁹ The Department's concerns are easily addressed within the framework of the Law. The Open Meetings Law provides that a public body may engage in private discussions by entering into an executive session. *See, e.g.*, N.Y. Pub. Officers Law § 105(1)(a) (permitting executive session for matters which will imperil the public safety if disclosed); *id.* § 105(1)(f) (permitting executive session for matters leading to the . . . promotion, demotion, discipline, suspension, dismissal or removal of a particular person). An SLT may similarly use an executive session to discuss sensitive subjects.

In short, we urge you to reconsider your position so that it complies with state law, and make clear in your guidance to schools and in Chancellor's regulations that SLTs must comply fully with Open Meetings Law in recognition that an SLT can best function in the public's interest by open, transparent, and participatory school governance.

⁶ Section 414 provides that schools may be used for holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public. Civic meetings shall include, but not be limited to, meetings of parent associations and parent-teacher associations. N.Y. Educ. Law § 414 (McKinney).

⁷ See Press Release, Special Commissioner of Investigation for the NYC School District & the NYC Department of Investigation, *DOI-SCI Investigation Finds Union Meeting At Brooklyn Public School Improperly Closed To Public And Press* (Nov. 25, 2014), available at http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr29cwareport_112514.pdf.

⁸ See Chancellor's Regulation A-660 § I(G)(4).

⁹ See Brief for Defendant City at p. 14-15, *Thomas v. NYC Dep't of Educ.*, No. 100538/14 (Supreme Court N.Y. County brief filed Aug. 19, 2014).

We would prefer to resolve these concerns without intervening in court. To that end, and because the *Thomas* and *Portelos* cases will be argued in mid-January and February 2015, respectively, we request you advise us by December 19, 2014 of your position. Otherwise, we anticipate intervening in the pending litigation.

Sincerely,

A handwritten signature in black ink that reads "Letitia James". The signature is written in a cursive, flowing style.

Letitia James
Public Advocate for the City of New York

Co-Signatories

Arthur Z. Schwartz, Esq., President, Advocates for Justice
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