

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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INDEX NO. 157166/2020

SHANNON CORWIN, UMANG DESAI, ERIC SEVERSON,
TAMDEKA HUGHES-CARROLL, WANDA CAIN

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF EDUCATION, RICHARD CARRANZA,

ORDER - INTERIM

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30

were read on this motion to/for Amend the Petition.

Background Facts

In this Article 78 proceeding, Petitioners Shannon Corwin¹, Umang Desai, Eric Severson², Tamdeka Hughes-Carroll and Wanda Caine (“Petitioners”) seek an order: (i) declaring the “COVID-19 Reasonable Accommodation Process for Fall 2020” (the “Accommodation Guidelines”) issued by the New York City Department of Education (“DOE”) to be arbitrary, capricious, made in bad faith and/or irrational; and (ii) compelling Respondents New York City (“City”)³, DOE and its chancellor, Richard Carranza, (collectively, the “Respondents”) to allow Petitioners, and those similarly situated, to continue remote teaching without loss of salary and without having to use their Cumulative Absence Reserve or sick days in the absence of eligibility for remote teaching based on the Accommodation Guidelines until at least December 31, 2020 or until a safe and effective vaccine approved by the Centers for Disease Control and Prevention (“CDC”) and/or US Food and Drug Administration is made available.

Simultaneous to the filing of the Petition, Petitioners also sought, by Order to Show Cause, a Temporary Restraining Order (“TRO”) and preliminary injunction pending hearing. The OSC was assigned to Hon. Dakota Ramseur who granted the TRO on September 14, 2020.

¹ In his email of September 22, 2020, counsel for Petitioners informed the Court that Petitioner Corwin was offered accommodation and her claim is now moot.

² This case was eventually dismissed as moot with respect to Petitioner Severson (Hon. Ramseur’s September 18, 2020 Order; NYSCEF doc No. 28).

³ This case was eventually dismissed as against the City for being an improper party (Hon. Ramseur’s September 18, 2020 Order; NYSCEF doc No. 28).

Respondents filed their Answer to the Petition on September 16, 2020, to which Petitioners responded by filing a Reply on September 18, 2020. In their Reply, Petitioners attached affidavits of twenty (20) more teachers whose situations are allegedly similar to the situations of Petitioners' named herein. Petitioners sought that these individuals be allowed to intervene.

On September 18, 2020, Hon. Ramseur vacated the TRO and denied Petitioners' request to have 20 individuals intervene as additional petitioners in this proceeding. The remainder of the Petition was severed and transferred to this Court on September 21, 2020.

On September 22, 2020, counsel for Petitioners wrote an email informing this Court of his intention "to file a new amended petition...with approximately 25 additional petitioners who have signed onto the case".

September 23, 2020 Hearing

On September 23, 2020, this Court held a Skype hearing with all the parties to address procedural issues, including Petitioners' application to amend their Petition.

At the hearing, this Court found that Petitioners' application to amend should be denied as Hon. Ramseur's September 18, 2020 Order ruled on whether "intervenor" (as used in Petitioners' Reply) or "new petitioners" (as used in Petitioners' Amended Petition) can be added. This Court holds that it may not overturn the September 18, 2020 Order which was issued by a court of concurrent jurisdiction.

Petitioners' counsel, however, sought an alternative relief of allowing him to withdraw the Petition without prejudice so he could file the Amended Petition as a new Petition. The Court found that the alternative remedy should likewise be denied.

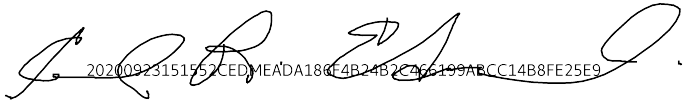
First, CPLR 3217 (a)(1) provides that a party asserting a claim may discontinue the same "by serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or, if no responsive pleading is required, within twenty days after service of the pleading asserting the claim and filing the notice with proof of service with the clerk of the court". Here, Respondents already filed their Answer and this Petition has already been fully briefed. While CPLR 3217(b) allows discontinuance of an action by a party asserting a claim "upon order of the court", this Court deems it improper as to do so would be tantamount to overriding Hon. Ramseur's September 18, 2020 which already precluded the addition of new petitioners.

Second, to the extent that the Amended Petition seeks to add new petitioners, the Amended Petition will not change the issue presented by this Article 78 proceeding, *i.e.*, whether or not the Accommodation Guidelines are arbitrary, capricious or irrational.

Therefore, in accordance with the "So-Ordered" Transcript September 23, 2020 (Anne Marie Scribano, Court Reporter), it is hereby

ORDERED that Petitioners' application to amend their Petition of September 4, 2020 is denied; and it is further

ORDERED that Petitioners' application for alternative relief of withdrawing the Petition without prejudice is denied.


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9/23/2020
DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE