

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR

PART IAS MOTION 5

Justice

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

INDEX NO. 157166/2020

MOTION DATE 09/18/2020

- v -

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

MOTION SEQ. NO. 001

ORDER VACATING TRO AND
TRANSFERRING ACTION

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On September 14, 2020, the Court granted a Temporary Restraining Order (the "TRO")
permitting Petitioners the opportunity to work remotely and enjoining Respondents from
deducting accrued leave and/or withholding pay on that basis, pending an expedited hearing,
which the parties agreed could be conducted upon the submission of additional papers and
without fact witnesses (NYSCEF 14-15).

After the Court issued the TRO, on September 17, 2020, Respondents informed the Court
that in consultation with UFT and the Council of School Supervisors & Administrators ("CSA"),
a separate union representing New York City principals, DOE had decided to delay the
resumption of in-person education, transitioning instead to a phased-in rollout. Pursuant to the
new plan, pre-K, Pre-K3, and District 75 (special education) students would return as previously
scheduled on September 21, elementary school students would return on September 29, and
middle, high school, and transfer school/adult education students would return on October 1,
2020 (NYSCEF 21; see also N.Y.C. Will Again Delay Start of In-Person Classes for Most
Students, N.Y. Times, Sep. 17, 2020 [https://www.nytimes.com/2020/09/17/nyregion/nyc-
schools-reopening.html] ["Many principals and teachers only heard about the shift from the
news, they said in emails shared with The New York Times... ."]).

In Respondents' answer and memorandum of law to dismiss (NYSCEF 16-20),
Respondents argued that the City of New York is an improper party because DOE and the City
are distinct legal entities, and that the Petition had not made any allegations against the City. At
the virtual hearing on the record on September 18, 2020, Petitioners agreed that DOE is a "non-
mayoral agency," and that the City was not a proper party to the action. Indeed, the City should
be dismissed (Perez v City of New York, 41 AD3d 378, 379 [1st Dept 2007] ["the City and the
Board remain separate legal entities"]). Upon dismissal of the City as a Respondent, the
remainder of the Petition should be transferred to a non-City Part.

Additionally, the parties also agreed that Petitioner Severson had already received an
accommodation, rendering the Petition moot as to him only. Accordingly, the Petition is

dismissed as to Petitioner Severson, and the caption shall be amended to reflect the absence from the Petition of the City and Severson.

Finally, with respect to the TRO currently in place, the new, phased-in reopening plan applies only to teachers in Pre-K, Pre-K3, and District 75, none of which include Petitioners, who would return to teaching children in-person on October 1, 2020. Accordingly, the imminent harm and balance of the equities presented to the Court in the initial application are no longer the same. This is particularly true because Petitioners have now raised the possibility of a secondary, “comfort” accommodation policy, not mentioned in the Petition, which Petitioner’s counsel was unable—despite numerous Court queries, hundreds of pages of submissions, and two arguments—to discuss as it applied to Petitioners; that is, whether Petitioners had applied, on what basis, and what the result was.¹ It is therefore

ORDERED that the TRO is vacated; and it is further

ORDERED that Respondents shall, within 24 hours of receipt, e-file and serve by email with notice of entry a copy of this order upon all parties; and it is further

ORDERED and ADJUDGED that the Clerk of Court shall enter judgment dismissing the Petition as against Respondent City of New York; and it is further

ORDERED that the caption shall be amended to read:

SHANNON CORWIN, UMANG DESAI, TAMDEKA
HUGHES-CARROLL, and WANDA CAIN,
Petitioners,

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION and
RICHARD CARRANZA,
Respondents.

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; and it is further

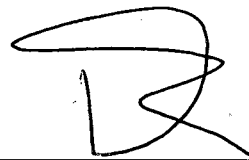
¹ Examples cited by Petitioner’s counsel at argument referenced phone calls to which the Court was not privy, and teachers who are not parties to this Petition. To the extent that approximately three “proposed intervenor” affidavits mention the secondary accommodation policy, the Court does not consider them. At neither oral argument did Petitioner’s counsel—again, despite the Court’s numerous attempts to solicit precedential or statutory support—raise the standards of, or even identify, CPLR 7802(d) (“The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene.”)).

ORDERED that the remainder of the Petition shall be severed and the Clerk of Court shall transfer the Petition to a Justice of a Non-City IAS Part.

This constitutes the decision and order of the Court.

9/18/20

New York, NY



DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE