

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

BUFFALO TEACHERS FEDERATION, INC.,

Petitioner-Plaintiff,

For an Order and Judgment Pursuant to
CPLR Article 78

-against-

MARYELLEN ELIA as Commissioner of the
New York State Education Department, the
NEW YORK STATE EDUCATION
DEPARTMENT, the STATE OF NEW YORK,
DR. KRINER CASH, as the Superintendent of the
Buffalo Public Schools, the BOARD OF
EDUCATION OF THE BUFFALO PUBLIC
SCHOOLS, and the BUFFALO PUBLIC SCHOOLS,
also known as the BUFFALO CITY SCHOOL
DISTRICT,

Respondents-Defendants.

STATE OF NEW YORK :
: ss.:
COUNTY OF ALBANY :

ROBERT T. REILLY, being duly sworn, deposes and says:

1. I am of counsel to Richard E. Casagrande, Esq., the attorney for petitioner-plaintiff Buffalo Teachers Federation, Inc. ("BTF"), in the above-captioned action.

2. I submit this affidavit in support of the petition/complaint in this action seeking to vacate and annul the decision and order of the Commissioner of Education dated November 8, 2015, a decision and order re-writing the BTF's collective bargaining agreement.

ATTORNEY
AFFIDAVIT

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Assigned Justice:

3. Respondent-defendant Dr. Kriner Cash, is the Superintendent of Schools of the Buffalo Public Schools (“District”), and as such he is the superintendent receiver of the five “persistently struggling” schools in the District at issue in this matter. On October 28, 2015, he submitted a request for resolution of bargaining proposals regarding negotiation of a receivership agreement with the BTF to the New York Commissioner of Education pursuant to Education Law § 211-f(8) and section 100.19(g)(5)(iii)(d) of the Commissioner’s Regulations. A copy of the October 28, 2015 submission to the Commissioner, consisting of a letter from Dr. Cash dated October 28, 2015 and Attachments “A” through “E” are annexed hereto as Exhibit “A”.

4. Pursuant to section 100.19(g)(5)(iii)(d) of the Commissioner’s Regulations, on October 30, 2015, the BTF submitted its responding papers to the October 28, 2015 submission of the superintendent receiver to the Commissioner. A copy of the BTF’s October 30, 2015 submission, consisting of Declarations in the form of a letter from Phil Rumore, BTF President, Affidavit of Robert T. Reilly and Memorandum of Law, all dated October 30, 2015 are annexed hereto as Exhibit “B”.

5. Pursuant to section 100.19(g)(5)(iii)(d) of the Commissioner’s Regulations, the superintendent receiver submitted a reply to BTF’s responding papers, dated November 2, 2015. A copy of the reply, in the form of a letter dated November 2, 2015 from Dr. Kriner Cash, with Attachments “A” through “C” is annexed hereto as Exhibit “C”.

6. Section 100.19 of the Commissioner’s Regulations, the regulation pertaining to receivership, was first issued as an emergency regulation in effect from June 23, 2015 to September 20, 2015. A copy of section 100.19, in effect from June 23, 2015 to September 20, 2015, is annexed hereto as Exhibit “D”.

7. A second version of section 100.19 was again issued as a new emergency regulation and was in effect from September 21, 2015 to October 26, 2015. A copy of section 100.19, in effect from September 21, 2015 to October 26, 2015, is annexed hereto as Exhibit "E".

8. A third version of section 100.19, again in the form of an emergency regulation, went into effect on October 27, 2015 and is the version currently in effect. A copy of section 100.19, currently in effect, is annexed hereto as Exhibit "F".

9. And, as is more fully set forth in the affidavit of Peter Applebee accompanying the petition/complaint, the State has chronically underfunded the District, a district that is dependent on State aid for approximately 85% of its entire budget.

10. Clearly, student poverty and budget shortfalls have much more to do with why the at issue schools are persistently struggling than do the procedures for reassigning and transferring teachers or any of the other factors addressed by the Commissioner in her decision.

11. Likewise, the Commissioner's decision seems jarring when seen in the larger context of educational best practices. Even under Federal law, namely the Elementary and Secondary Education Act ("ESEA"), were a school district to take so-called corrective action, it could not alter collective bargaining agreements. (20 USCA §6316(d)). Here the Commissioner re-wrote the parties' collective bargaining agreement, in stark contrast to ESEA provisions.

12. Section 211-f should be applied consistent with how the ESEA is administered. Section 211-f's use of the term "priority school" comes directly from guidance published by the United States Department of Education under the ESEA. On

November 13, 2014, the Secretary of Education published guidance explaining how ESEA waivers granted pursuant to 20 USC §7861 would be administered, requiring, in part, that all state education agencies create and keep up to date a list of the state's "priority schools", available at:

<http://www2.ed.gov/policy/elsec/guid/esea-flexibility/flex-renewal/index.html>,

last visited January 12, 2016. To be used along with that guidance, the Secretary published the definitions of, among other things, "priority schools", available at:

<http://www.ed.gov/sites/default/files/demonstrating-meet-flex-definitions.pdf>,

last visited January 12, 2016. Copies of these two guidance documents are attached to this affidavit together as Exhibit "G". The definition of priority school is based in part on student achievement, the high school graduation rate, and eligibility for school improvement grants (SIG).

13. President Barack Obama signed the latest re-authorization of the ESEA on December 10, 2015.

14. Coincidentally, also on December 10, 2015, the New York Common Core Task Force issued its Final Report to Governor Andrew M. Cuomo. A copy of that report is annexed hereto as Exhibit "H."

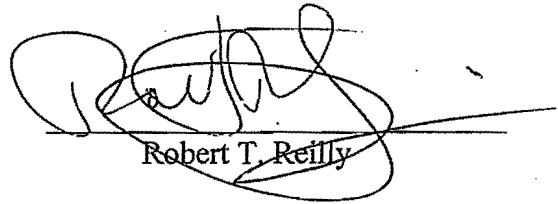
15. The very first recommendation of that Task Force is to "adopt high quality New York education standards with input from local districts, educators, and parents through an open and transparent process."

16. But, here, the Commissioner did just the opposite, she refused to consider a proposal made by the BTF because the Superintendent did not choose it as a subject for negotiations, and accepted for consideration the Superintendent's proposals even though

he gave no explanation as to why they were needed. They were proposals that the Community Engagement Team and the local stakeholders had not requested.

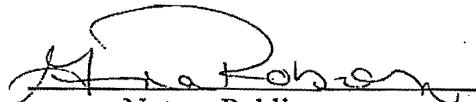
17. Finally, the Commissioner made her decision in a process that was not transparent but so opaque as to be mysterious, where the term “standard collective bargaining principles” was used as an incantation; not an explanation. The process was not transparent to the BTF. If the process was transparent to the Superintendent, it was transparent, no doubt, only because of the Commissioner’s prior direct involvement in the process when she met with the District’s Board, telling the Board that she would “fast track” the Superintendent’s submission.

WHEREFORE, the petition/complaint should be granted in all respects.



Robert T. Reilly

Sworn to before me this
4th day of February, 2016.



Notary Public

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GINA ROBINSON
Notary Public, State of New York
No. 01RO6138977
Qualified in Schenectady County
Commission Expires 12/27/17