



PRESS RELEASE

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STATE EDUCATION COMMISSIONER RULES ON CO-LOCATION CASES

State Education Commissioner Makes Clear That Special Education Schools Are Protected By State Law

New York City. New York State Education Commissioner David Steiner issued yesterday afternoon decisions in two appeals that Advocates for Children of New York, Inc. filed on behalf of public school parents challenging the New York City Department of Education's decision to give more public school space to two charter schools. The decisions reaffirmed that the DOE must follow state law and cannot move or change space utilization for any schools – including those that serve children with the most severe disabilities – without full disclosure to affected communities and opportunity for public comment.

The Commissioner annulled the DOE's decision to give more public school space to Girls Preparatory Charter School, ruling that the DOE had failed "to analyze the impact of a significant change in school utilization on affected students" at P.S. 94, a school that serves only students with autism. The DOE planned to expand Girls Prep's space in the building it shares with P.S. 94 and P.S. 188 by phasing out and moving two P.S. 94 grades from the building. Although the Education Law requires public disclosure of all proposed changes in the use of school space, the DOE did not disclose the impact that this move would have on potential and current P.S. 94 students. The DOE claimed that District 75 schools, which serve students with the most severe disabilities, such as P.S. 94, were not subject to the disclosure requirements.

The Commissioner rejected the DOE's argument, ruling that "District 75 schools are public schools that are located within the city school district, and Education Law §2590-h(2-a) does not exempt them from their application. Accordingly, DOE's contention that District 75 schools should be excluded is not supported by the plain language of the statute." The Commissioner ordered that the expansion of Girls Prep could not go forward until the DOE held a vote on the expansion after full public disclosure of the impact on P.S. 94 students.

P.S. 94 parent Jessica Santos stated, "P.S. 94 has been moved five times over the past five years. For students with autism, each of these moves has a significant impact on their learning, stability, and emotional growth. The Commissioner's decision means that the DOE can no longer move our students at will. We hope that in the future, the DOE follows the proper procedures and takes into account the impact that these changes have on students with disabilities."

Rebecca Shore, AFC's Director of Litigation, stated, "The Commissioner's decision confirms that students at District 75 schools are entitled to receive as much legal protection as all other New York City students."

David Fioccola from Morrison & Forrester, LLP, who also represented the public school parents noted, “This decision is also important in cases where multiple public schools share the same building. The DOE must now assess the impact of any change in utilization on both current and future students of co-located schools.”

In another decision yesterday, the Commissioner upheld the DOE’s vote to expand the co-location of PAVE Academy Charter School with P.S. 15 Patrick F. Daly in Brooklyn. The appeal asserted that the DOE failed to disclose to the public the impact that the expansion would have on P.S. 15’s educational programs, especially the services for students with special needs, and presented an independent assessment that the building lacked space for the contemplated expansion. The Commissioner relied on the DOE’s representation that the “DOE believed that there was more than adequate space in the building for both schools to serve their students,” to hold that the DOE did not abuse its discretion in the disclosure of the impact on P.S. 15 students because the DOE’s disclosure was “sufficient to inform members of the public with respect to their comments.”

John Battis, one of the P.S. 15 parents who challenged the expansion, stated, “I’m disappointed with the Commissioner’s interpretation of the law. I think that the impact of the co-location on the students at P.S. 15 has not been fully disclosed.” Lydia Bellahcene, another P.S. 15 parent, added, “Special education services are being compromised by being shifted around the building into hallways and crowded rooms. My daughter’s potential to show progress has been adversely impacted by the lack of appropriate space for her therapies.”

Ms. Shore concluded, “We hope that as a result of these appeals the DOE will more fully disclose and consider the impact on students with special needs before making significant space utilization decisions in the future.”

Copies of the decisions are available at <http://www.advocatesforchildren.org/>.

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For more than 38 years, Advocates for Children of New York has been serving the most educationally vulnerable students in New York City public schools and speaking out on their behalf. More information on the organization and its programs is available at www.advocatesforchildren.org.