

**Callahan v Carey**

2012 NY Slip Op 30400(U)

February 21, 2012

Sup Ct, NY County

Docket Number: 42582/79

Judge: Judith J. Gische

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

PRESENT: Gische  
JUDITH J. GISCHE, J.S.C. Justice

PART 10

Callahan, Robert  
- v -  
Carey, Hugh

INDEX NO. 42582/79  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 017  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for Injunctive Relief

	PAPERS-NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits	_____
Replying Affidavits	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION

Status Conference 3/16/12 @ 9:30am

**FILED**

FEB 22 2012

Dated: 2/21/12  
FEB 21 2012

J  
JUDITH J. GISCHE, J.S.C. CLERK'S OFFICE  
NEW YORK

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDGE.  SETTLE ORDER/ JUDGE.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Supreme Court of the State of New York  
County of New York: IAS 10

-----X  
Robert Callahan, et. al.,

Plaintiffs,

-against-

Hugh L. Carey, as Governor of the State  
of New York, et. al.

Defendants.  
-----X

Louise F. Eldredge, et. al.,

Plaintiffs,

-against-

Edward I. Koch, as Mayor of the City of  
New York, et. al.

Defendants.  
-----X

In the Matter of the Application of  
The Council of the City of New York,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

The Department of Homeless Services of the  
City of New York and Seth Diamond,  
Commissioner for the Department of Homeless  
Services of the City of New York,

Respondents.  
-----X

Hon. Judith J. Glsche:

Decision/Order

Index# 42582/79  
Mot. Seq. # 16

Index # 42582/79

**FILED**

FEB 22 2012

NEW YORK  
COUNTY CLERK'S OFFICE  
Index # 403154/11  
Mot. Seq. # 01

Pursuant to CPLR 2219(a) the following numbered papers were considered by the court on these motions:

PAPERS	NUMBERED
<b>Motion Seq. # 016 (Index # 42582/79)</b>	
OSC, SB affirm dated 11/10/11.....	1
SB affirm. Pursuant to CPLR §1101 dated 11/10/11, PM affd. dated 11/11, Dr. EZ affd. dated 11/11, exhibits.....	2
AG affirm in Opp. Dated 12/29/11, exhibits.....	3
SB affirm. Dated 1/10/12, exhibits.....	4
SB affirm dated 1/19/12, exhibits.....	5
 <b>Mot Seq. # 001 (Index # 403154/11)</b>	
OSC, JPM affirm dated 12/7/11, exhibits.....	1
Notice of Cross-Motion to Dismiss.....	2
AG affirm. dated 12/19/11, exhibits.....	3
 Stenographic Minutes of hearing dated 11/10/11	
Stenographic Minutes of hearing dated 11/21/11	
Stenographic Minutes of hearing dated 12/9/11	
Stenographic Minutes of hearing dated 1/20/12	

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*Upon the foregoing papers the decision and order of the court is as follows:*

These related matters each challenge Procedure No.12-400 of the New York City Department of Homeless Services ("DHS"), entitled "Single Adults Eligibility Procedure" ("SAEP"), which sets out a new application process to determine whether single adults seeking temporary housing assistance (sometimes "THA") in the New York City Shelter system are legally eligible. As more fully set forth below, this court finds that the SAEP was promulgated in violation of the public vetting process required by the City Administrative Procedure Act ("CAPA"). Consequently, the SAEP is a nullity and may not be implemented at this time.

Procedural Posture of the Current Dispute Before the Court

In 1981, a Final Judgment by Consent was entered in the case of Callahan v.

Carey ("consent decree"). The consent decree requires the City defendants ("City") to provide temporary shelter to eligible, single, homeless, adult men. By subsequent court decision, the provisions of the consent decree apply with equal force to eligible, single, homeless, adult women. See: Eldrege v. Koch, 98 AD2d 675 (1<sup>st</sup> dept. 1983).

On November 3, 2011, the City notified the plaintiffs that DHS planned to implement the SAEP on November 14, 2011. Plaintiffs then brought this motion to enforce the consent decree and obtain a preliminary and permanent injunction against implementation of the SAEP by the City. Plaintiffs not only claim that the substance of the SAEP is contrary to the City's obligations under the consent decree, but also that it was adopted by DHS in violation of CAPA. New York City Charter § 1401, et. seq.

By separate Article 78 Proceeding ("Article 78 Proceeding"), the Council of the City of New York ("City Council"), has also mounted a challenge to the SAEP, claiming it was promulgated in violation of CAPA. The City has cross-moved to dismiss the Article 78 Proceeding.

On December 9, 2011, the court consolidated for consideration, the Callahan motion and the Article 78 Proceeding, but only insofar as they both raise CAPA challenges to the SAEP. In addition, on that date the court bifurcated the CAPA dispute, to be considered separately and before the court reaches any substantive challenges to the SAEP. Although the State of New York ("State") is a named party in the Callahan action, it has expressly represented to the court that it is taking no position in this dispute.

Through a series of agreements made in open court, the City is temporarily forbearing from implementing the SAEP. Currently, the agreements on forbearance

extend through the next court date for this matter, which is set forth later in this decision.<sup>1</sup>

## Discussion

### The Nature of the Dispute

There is no dispute between the parties that, in seeking to implement the SAEP, the City did not follow any of CAPA's procedural requirements. The City claims that CAPA does not apply to the SAEP. If CAPA does apply, then the SAEP may not be implemented by DHS until it follows the express procedures required for the adoption of a rule by a city agency. If CAPA does not apply, then DHS has the right to implement the SAEP, without any further process, subject still to a determination on the substantive challenges. Plaintiffs and the City Council claim that the SAEP is an exercise of rule making by DHS, implicating the protections of CAPA before its adoption. The City argues that the SAEP does not involve rule making, but that even if it did, it is subject to exceptions expressly stated in CAPA.

### The Applicable Law

CAPA is contained in Chapter 45 of the New York City Charter. Pursuant to CAPA §1043, no City agency may adopt a rule without following express, rigorous procedures which ensure prior vetting by the City Council, the Corporation Counsel and the public. The procedures include, but are not limited to, publication and public hearing concerning the rule prior to its adoption. According to the Charter Revision

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<sup>1</sup> The parties agreed that regardless of the outcome in this decision, the court should set at least one further court date, at which time the parties could address issues regarding any need for a stay (Transcript 1/20/12 Hearing pp.66-67).

Commission, CAPA's definition of a "rule" is "to be construed broadly to accommodate the act's basic objectives." 2 Report of NY City Charter Rev Commn: Dec. 1986-Nov. 1988, at 86. "CAPA's fundamental objective is to inform and gather input from the public on the development and promulgation of the myriad of City agency rules that affect New Yorkers: to provide accountability and openness. (2 Charter Review, at 10-11 [fall 1988]; NY City Charter Rev Commn Summary & Comments on Initial Proposals [summer 1988]; Lane, When Is a Rule a Rule?, 3 City L, at 3.)" 1700 York Assoc. v Kaske, 182 Misc.2d 586, (NY Co. Sup. Ct., 1999, Billings, J.).

What constitutes a "rule" is defined in CAPA § 1041, as it has been interpreted by case law. In general CAPA § 1041.5 defines a rule as follows:

"Rule" means the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication

Insofar as pertinent to this inquiry, CAPA § 1041.5(a) provides further:

"Rule" shall include, but not be limited to, any statement or communication which prescribes . . . (vii) standards for the granting of loans or other benefits.

CAPA § 1041.5(b) also expressly provides for certain exceptions to what is considered a "rule." The exceptions relevant to this decision are as follows:

"Rule" shall not include any . . . (i) statement or communication which relates only to internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; [or] (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; . . . "

The definition of a rule under CAPA is consistent with the definition a rule under the State Administrative Procedure Act ("SAPA")<sup>2</sup>. Consequently, legal authority interpreting SAPA is persuasive and may be relied upon in this court's inquiry. See: Street Vendor Project v. City of New York, 10 Misc3d 978 (NY Co. 2005); 1700 York Associates v. Kaskel, *supra*.

CAPA's rule making process is mandated when an agency establishes precepts that remove its discretion by dictating specific results in particular circumstances. DeJesus v. Roberts, 296 AD2d 307 (1<sup>st</sup> Dept. 2002). Only a fixed general principle to be applied by an administrative agency, without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers, constitutes a rule or regulation that must be formally adopted. Matter of Roman Catholic Diocese of Albany v. New York State Dept. of Health, 66 NY2d 948 (1985 ); Matter of 439 Owners Corp. v. Tax Commn. Of the City of New York, 307 AD2d 203 (1<sup>st</sup> dept. 2003). Rules are not implicated where there is the ability for *ad hoc* decision making (Alca Industries v. Delaney, 92 NY2d 775 [1999 ]) or where decision makers are vested with significant discretion to independently exercise their professional judgment. Matter of Medical Society of the State of New York v. Serio, 100 NY2d 854 (2003). Nor are rules implicated by interpretative statements, or statements of general policy, that have no legal effect. Childs v. Bane, 194 AD2d 221 (3<sup>rd</sup> dept. 1993) lv to app den 83 NY2d 479 (1994).

The Court of Appeals, however, has acknowledged that there is no clear bright

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<sup>2</sup>SAPA is that State Law that sets out procedures that must be followed before the State Agency can adopt a rule.



line between a rule or regulation and an interpretative policy. Cubas v. Matinez, 8 NY3d 611 (2007)(“Our cases show that there is no clear bright line between a ‘rule’ or ‘regulation’ and an interpretive policy:....”). As a consequence, the inquiries are necessarily circumstance driven, where determinations turn on matters of degree where rules being generally broader and with more direct public impact, than interpretative policies. Cubas v. Matinez, *supra*.

### The SAEP

The SAEP is organized into seven sections, respectively entitled: Purpose (Section I); Investigation of Eligibility (Section II); Eligibility Criteria (Section III); Application and Eligibility Determination Process (Section IV); Agency Conference Regarding Denial of THA; (Section V); Fair Hearing (Section VI); and Re-applicant Procedure (Section VII). It sets forth the standards by which DHS will determine whether individuals who apply for temporary housing assistance are eligible. It provides that the requirements for eligibility are derived from the consent decree, New York State Social Services Regulation 18 NYCRR §352.35 (“State Regulation”) and State Administrative Directives 94 ADM-20, 96 ADM-20 and 05 ADM-07 (collectively “State Administrative Directives”).

The SAEP states as part of its purpose:

...DHS will utilize this Procedure to determine whether an applicant for THA is an eligible homeless person. This determination will be based on an assessment of whether the applicant has a viable housing option where s/he can live even on a temporary basis and/or whether s/he possess sufficient financial resources to secure such housing. ...The procedure also sets forth the requirements with which applicants for shelter must comply in order to receive THA. (Emphasis added) (SAEP Section I)

DHS is required to investigate an applicant's eligibility. A determination is then made based upon the "totality of the applicant's circumstances, with an analysis of each applicant's situation in accordance with all relevant factors including those enumerated in Section III. ..." (SAEP Section IIA).

An applicant is required to cooperate by providing all information and documentation necessary to determine eligibility. Without a valid excuse, the failure to produce documentation constitutes a failure to cooperate. When an applicant fails to cooperate in completing the assessment, then the application for THA must be denied. The only exception is when such failure is due to a "verified mental or physical incapacity." (SAEP Section IIB).

In the context of eligibility criteria, the SAEP states that the determination will be based on the "totality of the circumstances underlying each individual's application for shelter." Certain factors are enumerated for DHS' consideration, including:

[1] "Available Housing" within which DHS will consider "tenancy," "overcrowded/unsafe conditions," "domestic violence," and "health and safety" and [2] "Financial Resources," within which DHS will consider "income" and "assets." (SAEP Section III).

Notwithstanding language in the SAEP that the determination must be based upon the totality of circumstances and after consideration of factors, embedded within the SAEP are certain criteria that are outcome determinative.

The following are a few examples: The SAEP provides that "an individual cannot elect to be homeless...by not utilizing other resources to obtain housing." (SAEP Section IIIA). Consequently, DHS has no discretion to find someone eligible for THA who has not utilized other resources to obtain housing. The SAEP provides that " a

primary tenant's claim, oral or written, that the applicant can no longer reside in the viable housing option is not, by itself, sufficient to establish that the housing is no longer available." (SAEP Section IIIA). Consequently, when DHS receives only a statement from the primary tenant that s/he can no longer reside in a particular apartment, it must deny the application. The SAEP provides that, with certain limitations, "residential treatment...deemed necessary by a qualified DHS staff person or third party evaluator shall be considered an available housing option....provided a bed can be secured." (SAEP Section IIIA) Consequently, when residential treatment is deemed necessary and a bed is available, DHS must deny the application. The SAEP provides that where there is no imminent threat to health or safety, if an applicant has tenancy rights at any housing option, that residence will be deemed the viable housing option and the applicant will be found ineligible. (SAEP Section IIIA). Consequently, unless certain exceptions apply, a finding that an applicant has tenancy rights at any housing option mandates a finding of Ineligibility by DHS.

The Application and Eligibility Determination Process contained in SAEP Section IV provides that based upon the "Adult Eligibility Guidelines and the totality of circumstances surrounding the application, DHS eligibility specialists will make an eligibility recommendation to the Supervisor." (SAEP Section IVD). Notwithstanding this broad language, there are still certain criteria that are outcome determinative in connection with any application made. Applicants are now required under the SAEP to complete a Temporary Housing Application and an Eligibility Determination Questionnaire that collects a one year housing history. Part of the application process requires the applicant to sign a release "authorizing DHS to disclose and collect medical

and other personal information in conducting its eligibility investigation." (SAEP Section IV.B).<sup>3</sup> The SAEP expressly provides that "[a]pplicants who do not comply with the application process will be found ineligible based on non-cooperation, unless the reason for non-cooperation is mental or physical impairment as assessed by a qualified mental health or medical professional." (SAEP Section IV.B.). Consequently, unless the applicant falls within the exception, failure to complete the application documents mandates a finding of ineligibility by DHS. Any single adult with on-hand assets in excess of \$2,000 "must" utilize his/her resources to reduce or eliminate his/her need for emergency shelter. If DHS determines that such assets exist, THA eligibility must be denied.<sup>4</sup> (SAEP Section III.B).

#### Analysis

A plain reading of the SAEP makes it clear that it mandates certain results under certain circumstances. Contrary to the City's arguments, while DHS has certain discretion in weighing factors before making a finding of eligibility for temporary housing, that discretion is not unfettered. There are a considerable number of mandated outcomes which leave DHS with no discretion about whether to deny temporary housing. While in some cases there are exceptions to outcomes, the exceptions do not make otherwise make a mandated outcome discretionary. Thus, for

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<sup>3</sup>Contrary to the City's position at oral argument, there is nothing that tailors the information that an applicant is required to provide to his or her particular circumstances. For example, a release to obtain medical information is required from each and every applicant regardless of its relevance to the underlying application.

<sup>4</sup>If the assets are not immediately available, DHS will meet the applicant's immediate need for shelter while conducting an investigation to ensure that the resources do become available.

example, the failure to cooperate mandates a denial of temporary housing. While there is an exception if the applicant is suffering from a mental or physical impairment that affects his or her ability to cooperate, DHS is not free to simply disregard the mandated outcome where that applicant is not suffering from a mental or physical impairment. In fact, the investigation process to determine if someone fits within the exception is itself a rigorous process. Because there are mandated outcomes in the SAEP, the court holds that it is a rule within the meaning of CAPA. The court rejects the City's argument that the SAEP vests DHS with sufficient discretion to make decisions to fall outside the definition of a rule under CAPA.

In a closely related argument, the City claims that the SAEP is not a rule because it is not a statement of general application. This argument is also rejected.

As stated by Justice Billings in 1700 York Assoc. v Kaskel, supra, in connection with CAPA:

A statement "of general applicability" is "a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme." (Matter of Roman Catholic Diocese v New York State Dept. of Health, 66 NY2d 948, 951 [1985].) The statement need not regulate the general public; if a policy is to be "invariably applied across-the-board" to the segments of the population within its ambit "without regard to individual circumstances or mitigating factors ... as such [the policy] falls plainly within the definition of a 'rule.'" (Matter of Schwartfigure v Hartnett, 83 NY2d 296, 301 [1994]; see also, Matter of Cordero v Corbisiero, 80 NY2d 771, 772 [1992].)

The SAEP is generally applicable to all people who apply for THA and must be utilized at all DHS intake facilities. Its applicability is not a suggestion or a request, it is an across the board requirement. The fact that there may elements of discretion in

connection with determinations on individual applications does not negate the SAEP's general applicability because the discretion does not involve simply disregarding the SAEP. The court, therefore, concludes that the SAEP meets the general applicability requirement.

The City also argues that the SAEP falls within the CAPA exceptions to a rule because it has no legal effect. CAPA §1041.5(b). In making this argument, the City claims that the SAEP is only an embodiment of requirements contained in the State Regulation and relevant State Administrative Directives, with some additional details. Thus, the City argues that the SAEP has no legal effect because it implements the same legal obligations that are otherwise contained in existing law.

In Cubas v. Martinez, (8 NY3d 611 [2007]) the Court of Appeals held that, when the Department of Motor Vehicles ("DMV") specified the documentary proof required to obtain a driver's license where the applicant was not eligible for a social security number, the DMV's action was consistent with a duty imposed by a pre-existing State regulation and, therefore, not subject to SAPA. In so holding, the court reasoned that the requirement for certain documents did not impose any new obligation on applicants or create or deny substantive rights. While Cubas v. Martinez, *supra*, discusses a limited exception to the otherwise broad definition of a rule, it still must be read with due regard for the fundamental principle of administrative law, that agencies can only exercise those powers expressly delegated to it by the legislature, together with those required by necessary implication. Matter of Beer Garden v. New York State Liquor Authority, 79 NY2d 266 (1992). In every circumstance where a rule is adopted by a City agency, there must necessarily be some prior enabling laws, statutes and/or

regulations concerning the same matter. Exceptions cannot be read so broadly as to eviscerate the requirements of CAPA, and the existence of enabling law, in itself, is not sufficient to justify a legal conclusion that the ensuing statement or policy has no legal effect. The exception must be strictly limited to a statement or policy that strictly interprets an existing statute or just fills in of the interstices. Cubas v. Martinez, *supra*, (Ciparick J. Dissenting opinion).

Applying these standards to the SAEP, the court finds that it is not simply a strict interpretation of the existing State Regulation or the State Administrative Directives, with a filling in of the interstices. The court holds that the SAEP does not fit within the CAPA exception for statements or policies having no legal effect.

Implicit in the City's argument, that because the SAEP duplicates the requirements of the State Regulation and State Administrative Directives, the SAEP has no legal effect, is an acknowledgment that in the absence of such State requirements, the SAEP does have legal effect. Even without any implicit acknowledgment, however, such conclusion is easily drawn. The application of the new eligibility process has the effect of determining who gets THA pursuant to the consent decree and existing law. Public Statements by DHS Commissioner Seth Diamond confirm that the SAEP is expected to reduce the number of people who were previously being accommodated by the shelter system by about 10% (and possibly more), at a projected cost reduction of \$4,000,000 per year.

The court acknowledges that there are many consistencies between the State Regulation and the State Administrative Directives and the SAEP. Consistency, however, is not the same as constituting a "strict interpretation" and the SAEP imposes

many new obligations on applicants, with a concomitant creation and denial of substantive rights.

In addressing the City's argument, the State Regulation and the State Administrative Directives, need to be looked at separately. The State Regulation contains a general requirement that an applicant cooperate and complete an assessment, and that the failure to do so mandates a denial of the application for THA, unless that failure is due to mental or physical impairment. 18 NYCRR §352.35(c)(1). The State Regulation is far too broad a pronouncement to exempt the highly detailed requirements of the SAEP from CAPA.

The State Administrative Directives are more detailed than the State Regulations, but they are still not as detailed as the requirements and procedures set forth in the SAEP. The State Administrative Directives provide that THA is only available to persons who can establish that they are without housing at the time of application. They place the burden on applicants to establish their need for THA by clear and convincing evidence. The State Administrative Directives further provide that persons who resided in their own or shared housing immediately prior to the time of application will be presumed to not be in need of THA and that a statement by a primary tenant, that the family can no longer reside in shared housing, is not by itself, sufficient proof that housing is no longer available. The State Administrative Directives also indicate that the failure to cooperate warrants a denial of temporary housing.

Although the State Administrative Directives refer to an assessment of eligibility, neither the State Regulation nor the State Administrative Directives set out a specific initial vetting process for determining eligibility. They do not mandate any



particular application, nor do they mandate the signing of releases for private information that may have no bearing on any assessment of eligibility. (e.g.: medical releases). They do not provide the same level of detail as the SAEP regarding what is considered a viable housing option that would make an applicant ineligible for THA. Unlike the SAEP, they contain no express provisions that supportive housing and/or residential treatment programs, under certain circumstances, constitute available housing options that make an applicant ineligible for THA. Unlike the SAEP, they contain no rule that "tenancy rights" at any housing option will be "deemed" a viable housing option, requiring a finding of ineligibility in the absence of an "imminent threat to health or safety."

Certain additional considerations support the court's decision that the State Regulation and the State Administrative Directives do not warrant a conclusion that CAPA should be dispensed with. The State Regulation and State Administrative Directives have been in place for no less than 15 years. The procedures set out in the SAEP, however, are new. If the SAEP is merely a strict interpretation of the State Regulation and State Administrative Directives, the procedures would have been in place for at least the last 15 years.

The State does not join in the City's arguments. Notwithstanding that the City sought State approval for the SAEP, the State would only represent that the SAEP is not inconsistent with state law. By letter dated November 2, 2001, Maria T. Vidal, General Counsel to the Office of Temporary and Disability Assistance ("OTDA") stated:

"I am writing in response to your request for approval of the Department of Homeless Services' (DHS) Single Adults Eligibility Procedure (the "Procedure").....The [OTDA] has

reviewed the Procedure and determined that it is not inconsistent with State law or regulations.”

In a subsequent letter, dated November 9, 2011, from Executive Deputy Commissioner Elizabeth R. Berlin of OTDA, to DHS Commissioner Seth Diamond, she states:

“Any suggestion that the [OTDA] approved [DHS] shelter eligibility procedure for single homeless adults is inaccurate. OTDA has not commented on the substantive merits of the proposed change, but instead determined that the proposal was not inconsistent with State law.”

The State's position that the SAEP is “not inconsistent” with State Law and regulations does not support the City's argument that the SAEP is a strict interpretation of State law, filling in interstices, as is required for the SAEP to qualify as an exemption from public vetting under CAPA.

For these reasons, the court finds that the SAEP should have been promulgated as a rule, consistent with the requirements of CAPA. The City's failure to do so renders the SAEP a nullity. Singh v. Taxi & Limousine Comm. of the City of New York, 282 AD2d 368 (1<sup>st</sup> dept. 2001).

#### Remaining Procedural Matters

Since the court has determined the SAEP is a nullity, the plaintiffs in Callahan v. Carey, (Index # 42582/79) do not require any further relief on their motion. Their additional arguments, regarding whether the SAEP violates the substance of the consent decree, are academic until such time as the SAEP is properly vetted under CAPA.

The parties in Callahan v. Carey agreed to one further court appearance in

connection with plaintiffs' motion. The next court date is, therefore, set for March 16, 2012 at 9:30 a.m.

In connection with the Article 78 Proceeding, the motion to dismiss is denied. Procedurally, the City has the right to interpose an answer, notwithstanding that the denial of the motion to dismiss would appear to finally resolve all the issues. The City is, therefore, directed to interpose its answer on or before March 9, 2012. A new return date on the Article 78 Proceeding is set for March 16, 2012 at 9:30 a.m. At that time the parties should be prepared to address the issue of whether the service of the answer leaves any further issues to be resolved by the court.

#### **CONCLUSION**

In accordance herewith It is hereby:

**ORDERED** that the motion in Callahan v. Carey (index # 42582/79) is granted to the extent of declaring Procedure No.12-400 of the New York City Department of Homeless Services, entitled "Single Adults Eligibility Procedure," a nullity, and It is further

**ORDERED** that the City's cross -motion to dismiss the Article 78 Proceeding is denied and It is further

**ORDERED** that the City is directed to interpose an answer to the petition in the Article 78 Proceeding on or before March 9, 2012, and It is further

**ORDERED** that a court conference in Callahan v. Carey (index # 42582/79) is set for March 16, 2012 at 9:30 a.m. and It is further

**ORDERED** that a new return date on the Article 78 Proceeding is set for March 16, 2012 at 9:30 a.m. and it is further

**ORDERED** that any requested relief not otherwise expressly granted herein is denied, and It is further

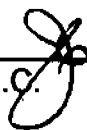
**ORDERED** that this constitutes the decision and order of the court.

Dated: New York, New York  
February 21, 2012

**FILED**

SO ORDERED:

FEB 22 2012

J.G. J.S.C.  \_\_\_\_\_ NEW YORK  
COUNTY CLERK'S OFFICE