

L.R. v Department of Educ. of the City of N.Y.

2022 NY Slip Op 31635(U)

May 19, 2022

Supreme Court, New York County

Docket Number: Index No. 160594/2021

Judge: Carol Edmead

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

L.R. AND D.R. ON BEHALF OF THEIR MINOR CHILD R.R,

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF
NEW YORK, THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,
MEISHA PORTER AS CHANCELLOR OF THE
DEPARTMENT OF EDUCATION OF THE CITY OF NEW
YORK;

Respondent.

-----X

INDEX NO. 160594/2021
MOTION DATE 02/01/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 14, 15, 16, 17, 19, 20, 22

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

ORDERED AND ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioners L.R. and D.R. on behalf of their minor child R.R. (motion sequence number 001) is denied, and it is further

ORDERED AND ADJUDGED that the application of respondent Department of Education of the City of New York (DOE) to dismiss this proceeding is granted; and it is further

ORDRED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for DOE shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

In this Article 78 proceeding, petitioners L.R. and D.R. (petitioners), on behalf of their minor child R.R., seek a judgment to overturn a school placement decision by the respondent Department of Education of the City of New York (DOE; motion sequence number 001).¹ DOE opposes and requests that this proceeding be dismissed.

For the following reasons, the petition is denied and this proceeding is dismissed.

FACTS

Petitioners are the parents of R.R., a first-grade student at a New York City public elementary school, and of his unnamed older sister, a second-grade student at a different New York City public elementary school. *See* verified petition, ¶¶ 2, 9. The DOE oversees and operates all New York City public schools. *Id.*, ¶ 4. DOE Chancellor Meisha Porter (Chancellor Porter) is named herein as a co-respondent in her official capacity.² *Id.*, ¶ 4.

Petitioners had both of their children undergo the testing that the DOE formerly administered to Kindergarten students whose parents wanted them to be considered for the DOE's "Gifted and Talented (G&T) Program" upon their placement into first grade. *See* verified petition, ¶¶ 9, 11. The DOE avers that R.R.'s older sister attained a score of "97 or above" when she took the G&T examination (evidently in 2019), and that R.R. attained a score of 89 when he took the G&T examination in January 2020. *See* verified answer, ¶¶ 44, 56.

The DOE also avers that the G&T Program consists of two types of programs which it designates as the "Citywide program" and "District programs." *See* verified answer, ¶ 39. It explains that Kindergarteners who achieve a score of 97 or above on the G&T examination are

¹ Plaintiffs explain that the other named co-respondent "Board of Education of the City School District of the City of New York" is actually just the former official name of the DOE. *See* verified petition, ¶ 5.

² The DOE avers that Chancellor Porter was succeeded as DOE chancellor by David C. Banks, its current chancellor. *See* verified answer, ¶ 5.

eligible for placement in its Citywide G&T program, while those who score 90 or above are eligible for placement in one of its District G&T programs. *Id.*, ¶¶ 43, 49. The DOE further explains that the Citywide G&T program operates in schools in which all classes follow the G&T curriculum, while District G&T programs are operated in schools in which some class cohorts follow the G&T curriculum while others follow a different curriculum. *Id.*, ¶¶, 41, 47-48. The DOE finally explains that students accepted into the Citywide G&T program are eligible to attend participating schools anywhere in the City no matter where they personally reside, while students enrolled in a District G&T program are given priority to attend one of the G&T program schools located in whichever of the city’s 32 community school districts they themselves reside in. *Id.*, ¶¶ 40, 43, 47.

The DOE asserts that the rules at issue herein are found in the “2020 NYC Gifted & Talented Admissions Guide” (the 2020 G&T Guide)³ and provide as follows:

“5.3 Sibling Priority for G&T Programs

If your child applies to a G&T program at a school where their sibling is currently enrolled, they have an admissions priority to attend that program, too. In order for your child to get sibling priority, their sibling must be pre-registered or enrolled at the school or a District 75 program in the same building and be entering kindergarten through grade 12 in September 2020. Get sibling priority by providing the sibling’s information in the ‘Siblings’ section of the G&T application. If your first choice is for your child to attend the G&T program at their sibling’s school, add the sibling’s school as your first choice on the G&T application.

“Families with siblings applying at the same time must submit a separate application for each child. Each sibling is treated as an individual applicant. However, twins and other multiples will be placed together in the same G&T program if each child is eligible for that program.

* * * *

“5.4 Admissions Priorities for District G&T Programs

“District G&T programs give first priority to sibling applicants who get an overall G&T score of 90 or above. After all eligible siblings are placed, non-sibling applicants are placed by overall G&T score. Eligible students may apply to any program in any district across the city, but applicants with district priority to a given program will get

³ The court notes that the G&T Guide does not refer to any actual education-related statutes or regulations.

priority. The following figure shows the order in which applicants are considered for district G&T programs. When there are multiple students with the same priority and score, offers are randomly assigned.

“How Students Get Offers To District G&T Programs

“Each eligible applicant has priority for one or more district programs based on the district where they are zoned for elementary school. In general, families have priority for district programs in their zoned district. However, in some cases, such as when a district does not offer a G&T program, applicants may have a priority for one or more program options in neighboring districts. Children who are zoned to or currently attend a school with a G&T program do not have any additional priority to that school over other students in the district.

“5.5 Admissions Priorities for Citywide Programs

“Citywide G&T programs accept students from all boroughs and do not use district admissions priorities. The following figure shows the order in which applicants are placed in citywide G&T programs. When there are multiple students with the same priority and score, offers are randomly assigned.

“How Students Get Offers To Citywide G&T Programs

“Siblings who get an overall G&T score of 97 or above are placed first according to their overall G&T score. After all eligible siblings are placed, non-sibling applicants are placed by overall G&T score

* * *

“6.3 Waitlist G&T Offers

“In some cases, G&T programs may have seats that become available after offers are sent to families in June. Applicants who do not get an offer from their first-choice program will be added to the waitlists of all the programs they listed higher on their application than the program where they got an offer (or of all the programs they applied to if they got no offers). Offers from the waitlist are made based on the same admissions priorities as the initial offers - learn more in Section 5.0. Schools will contact waitlisted families directly if they are able to offer them a seat; no additional action is required of families at this point in the placement process.”

See verified answer, ¶ 37; exhibit 1.

Petitioners note that R.R.’s older sister was placed in the DOE’s Citywide G&T program (evidently as a result of her having achieved a score of “97 or above” on the 2019 G&T examination), and that she is now enrolled in the second grade at the “Talented and Gifted School for Young Scholars” (TAG, a school in which every grade follows the G&T curriculum). See verified petition, ¶¶ 3, 9. They aver that the DOE ceased administering the G&T examination after 2020 (the year in which R.R. achieved a score of 89 on that test). *Id.*, ¶¶ 11, 13. They assert that, despite having discontinued its reliance on G&T test results, the DOE

nevertheless improperly denied R.R. admission into TAG in 2021 (with his sister) as a result of his 2020 test score. *Id.*, ¶ 14. Petitioners argue that DOE should have accorded R.R. a sibling priority instead, especially since TAG had not filled all of its first grade admissions slots for the 2021-2022 school year. *Id.*, ¶¶ 15-18. They also argue that DOE improperly denied their subsequent mid-year application to transfer R.R. to TAG from the school he currently attends in order to relieve stress on the children and hardship on the family. *Id.*, ¶ 20. To support their allegations, petitioners have presented copies of email correspondence with the DOE: 1) dated September 7, 2021, in which a TAG Parent Coordinator declined petitioners' request for permission to enroll R.R. at TAG on the ground that the DOE required TAG to only offer admission to those students whose names were drawn from a 2020 waiting list in the event that the school had unfilled first grade seats; and 2) dated October 22, 2021, in which petitioners submitted a "Social/Emotional Transfer" request to TAG on R.R.'s behalf to a DOE Family Welcome Center official. *Id.*, exhibits A, B. They did not annex DOE's reply to the latter. *Id.*

The DOE responds that it properly applied the applicable regulations in determining that R.R. was not entitled to either admission into TAG or to a sibling priority. *See* verified answer, ¶¶ 36-50. They particularly note that regulations require the DOE to offer open class slots to children whose names have been placed on a waiting list when an applicant does not have a sibling priority. *Id.* DOE finally notes that it has identified a means by which both children could attend the same school; i.e., petitioners could enroll both R.R. and his sister in a District G&T program school next year rather than leaving the sister in TAG. *Id.*, ¶¶ 51-58.

Aggrieved, L.R. and D.R. commenced this proceeding by order to show cause on November 24, 2021. *See* verified petition, aff of service. Their annexed petition asserts one cause of action for relief under CPLR Article 78 and one cause of action alleging violation of the

Equal Protection Clause of the New York State Constitution. *Id.*, ¶¶ 21-35. After seeking and receiving permission for a short extension of time, respondents filed an answer and memorandum of law on January 27, 2022, opposing the petition and seeking that the proceeding be dismissed. *See* verified answer and memorandum of law. The court disallowed the submission of reply papers upon signing petitioners' order to show cause, and reiterated this decision in two subsequent interim orders dated February 1 and February 4, 2022 (which it issued in response to correspondence from counsel). *See* NYSCEF documents 1, 18, 21. As a result, this matter is now fully submitted (motion sequence number 001).

DISCUSSION

As mentioned, petitioners' first cause of action seeks review under CPLR Article 78 of DOE's decision not to admit R.R. to the G&T program. *See* verified petition, ¶¶ 21-32. CPLR 7803 (3) provides that:

“The only questions that may be raised in a proceeding under this article are:

* * *

“3. *whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; . . .*”

CPLR 7803 (3) (emphasis added); *see e.g., Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 (1st Dept 1996). A determination will only be found “arbitrary and capricious” if it is “without sound basis in reason, and in disregard of the . . . facts . . .” *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a “rational basis” in the administrative for a challenged

agency determination, there can be no judicial interference with it. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. Further, it is well settled that “[t]he interpretations of [a] respondent agency of [the] statutes which it administers are entitled to deference if not unreasonable or irrational.” *Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251, 252 (1st Dept 1994), citing *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 (1988). Here, it appears that the DOE’s actions did not violate the foregoing standards.

The 2020 G&T Guide provided that public elementary schools in the DOE’s Citywide G&T program such as TAG were required to accord priority to (1) the admission applications of incoming younger siblings of admitted students who achieved a score of “97 or above” on the 2020 G&T examination, and then to (2) the admission applications of incoming non-sibling students who achieved a score of “97 or above” on the 2020 G&T examination. *See* verified answer, exhibit 1. The September 7, 2021 email from the TAG Parent Coordinator explained that Citywide G&T program schools were required to use a DOE-generated waiting list to fill any remaining open class slots after all of the eligible sibling and non-sibling students had been accommodated. *See* verified petition, exhibit A. The evidence demonstrates that R.R. was neither eligible to admission to TAG nor entitled to sibling priority since his score on the 2020 G&T examination was 89, not “97 or above.” *Id.*, ¶ 44. As a result, it was reasonable for the TAG Parent Coordinator to determine that R.R.’s application for admission to TAG was subject to his place on the DOE’s waiting list.

It was likewise reasonable for the DOE Family Welcome Center to deny petitioners’ October 22, 2021 request that R.R. be granted a “Social/Emotional Transfer” to TAG. The 2020

G&T guide did not provide for admission to Citywide G&T program schools through such a process. As noted, the guide simply explained that the condition for admission to such schools was a score of “97 or above” on the 2020 G&T examination, that 1) priority in admissions would first be given to younger siblings who achieved that score, and 2) then to non-siblings who achieved that score, and 3) finally to children on a waiting list who had not achieved that score. Petitioners have not identified any authority to support their position that a “social/emotional transfer” request takes precedence over those rules. Petitioners’ argument that the DOE no longer utilizes the G&T examination is also unavailing. The 2020 G&T guide makes it clear that the DOE still used the scores generated on the 2020 G&T examination as the basis for its school admission determinations in the 2021-22 school year. The court is mindful of petitioners’ perception that the DOE’s adherence to these regulations in R.R.’s case is unfair, arbitrary and lacking in personal consideration. Nevertheless, the court is constrained to resolve this dispute from a legal perspective. From that vantage point, it cannot find that the DOE applied the rules set forth in the 2020 G&T Guide in an arbitrary and capricious manner when it denied R.R.’s admission and transfer requests to TAG. Accordingly, the court must deny so much of the instant petition as seeks relief pursuant to CPLR Article 78.

The court must also deny petitioners’ second cause of action. The Appellate Division, First Department, has squarely held that “[t]he [DOE’s] sibling priority policy does *not* violate the Equal Protection Clause of the New York State Constitution.” *Matter of R.B. v Department of Educ. of the City of N.Y.*, 115 AD3d 440, 441 (1st Dept 2014). Accordingly, the court denies so much of the instant petition as seeks relief on constitutional grounds.

DECISION

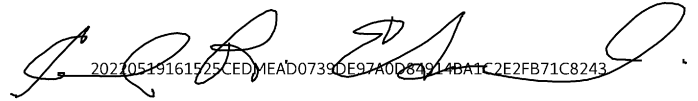
ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED AND ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioners L.R. and D.R. on behalf of their minor child R.R. (motion sequence number 001) is denied, and it is further

ORDERED AND ADJUDGED that the application of respondent Department of Education of the City of New York (DOE) to dismiss this proceeding is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for DOE shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.


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5/19/2022
DATE

CAROL EDMEAD, 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