

STATE OF NEW YORK  
NEW YORK STATE EDUCATION DEPARTMENT

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In the Matter of the Appeal of Petitioner, : NOTICE OF  
Oscar Cohen, : PETITION  
from official action of Respondent, :  
East Ramapo Central School District :  
Board of Education :  
Regarding the Removal of Sabrina Charles-Pierre :  
from her Board Seat :  
-----X

Notice:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available at [www.counsel.nysed.gov](http://www.counsel.nysed.gov) or from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if he be represented by counsel, upon his counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

STATE OF NEW YORK  
NEW YORK STATE EDUCATION DEPARTMENT

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In the Matter of the Appeal of Petitioner, : VERIFIED  
Oscar Cohen, : PETITION  
from official action of Respondent, :  
East Ramapo Central School District :  
Board of Education : **ORAL ARGUMENT**  
Regarding the Removal of Sabrina Charles-Pierre : **REQUESTED**  
from her Board Seat :  
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To the Commissioner of Education:

1. Petitioner Oscar Cohen brings this appeal to vindicate his rights as a voter and taxpayer in the East Ramapo Central School District (“the District”), challenging the conduct of the election of Sabrina Charles-Pierre (“Ms. Charles-Pierre”) to the East Ramapo Central School District Board of Education (the “Board”), and that Board’s subsequent removal of Ms. Charles-Pierre from the Board.

**STATEMENT OF FACTS**

2. Over the last decade, the District has persistently failed to act in the best interests of its public school students. Approximately 9,000 students attend the public schools; 91% of the public school students are African-American, Haitian, or Latino. The District also includes approximately 24,000 private school students who are primarily white. In recent years the Board has been predominantly made up of white men who do not have children in the public school system.
3. The District has drastically cut budgets and resources in the public schools while dramatically increasing transportation spending (including busing for private schools)

and special education resources for private school children. They have also drastically increased spending on legal fees.

4. Between 2006 and 2014, funding for private schools increased by 76.6% in the District, compared with a 24.1% statewide average (*see* Henry Greenberg, *Report of Investigation: East Ramapo: A School District in Crisis* (2014), at 15, available at <http://www.p12.nysed.gov/docs/east-ramapo-fiscal-monitor-presentation.pdf>). Transportation costs increased by 48.1% (*id.*). Between 2008 and 2014 the District's legal fees rose over 668% (*id.* at 27).
5. The crisis has become so acute that the State Education Department has appointed a series of monitors to oversee the District's finances and governance.
6. A nine-member Board governs the District. Elections for the nine seats are divided into three cycles. Thus, every year, the Board holds an election for three of the nine seats. Each member<sup>1</sup> of the Board runs for a particular seat and serves a three year term.
7. On May 17, 2016, the District held an election for four seats on the Board. Three of the seats were part of a regular election cycle, with three-year terms expiring in 2019.
8. The fourth seat was for a term that began in 2015 and expires in 2018. The person originally elected to that seat resigned from the Board in July 2015. In October 2015, the Board appointed Ms. Charles-Pierre to fill the seat until the next District election.
9. Ms. Charles-Pierre ran unopposed for the fourth seat in the May 2016 election and was elected by the District's voters to fill that seat until 2018.

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<sup>1</sup> For purposes of this appeal, Petitioner uses the term "member" of the Board to indicate a person who serves in one of the nine seats of the Board. Some authorities use the terms "trustee" or "officer," which are interchangeable with "member" for purposes of this appeal.

10. Ms. Charles-Pierre ran on a slate called "East Ramapo Coming Together." Also on the slate were Kim Foskew, Jean Fields, and Natashia Morales, who ran for the other three open seats on the Board.
11. The "East Ramapo Coming Together" campaign slate ran on a platform of changing the District's policies so that they would treat public school children fairly and restore resources to the public school system.
12. Petitioner Oscar Cohen resides at 4 Hillary Court in Chestnut Ridge, NY, located within the District.
13. Mr. Cohen has resided in Chestnut Ridge since 1999 and has paid taxes that, in part, fund the District.
14. Mr. Cohen, a 75 year old U.S. citizen, has voted in nearly all of the District's Board elections since 1999. Mr. Cohen has repeatedly communicated with the District about its policies and regularly attends the Board's meetings.
15. On May 17, 2016, Mr. Cohen voted for Ms. Charles-Pierre and the other members of her slate because he supports their efforts to change the governance of the Board so that it is more favorable to public school children.
16. Ms. Charles-Pierre won the election to a seat on the Board with 5,014 votes (Official Results of May 17 2016 election attached as Ex. A).
17. None of the other candidates on Ms. Charles-Pierre's slate won a sufficient number of votes to be elected. Thus, Ms. Charles-Pierre is the only woman on the Board and the only member of the Board who represents the interests of public-school children.
18. On information and belief, Ms. Charles-Pierre did not receive written notice from the District Clerk of her successful election.

19. On information and belief, on July 14, 2016, Ms. Charles-Pierre filed the oath of office along with the three other candidates who had also won seats on the Board at the May 2016 election.
20. At a Board meeting held on July 26, 2016, the Board removed Ms. Charles-Pierre from the seat that she had won in the May 2016 election. Apparently, the Board reasoned that Ms. Charles-Pierre failed to file her oath of office within 30 days of her term's commencement.
21. The Board has not publicly provided any basis for its determination that Ms. Charles-Pierre's term commenced at a different time than the terms of the remaining three members-elect.
22. In a letter to the State Education Department (Letter from Yehuda Weismandl to the Hon. Mary Ellen Elia, dated Aug. 1, 2016, attached as Ex. B), the President of the Board stated that the Board deemed that Ms. Charles-Pierre's term commenced 33 days before she took the oath of office, or June 11. However, the letter does not identify any statute, regulation, or policy that supports this conclusion. The Board called its "failure to administer the oath" an "administrative oversight."
23. Also at the July 26, 2016 meeting, the Board appointed Ms. Charles-Pierre to serve as a temporary Board member until the next annual election, which will be held in May 2017. As a result of the Board's actions, Ms. Charles-Pierre's term expires a year earlier than it would have if the Board had not removed her from her seat (*see* Minutes of School Board Meeting, July 26, 2016, attached as Ex. C).

#### **STATEMENT OF LEGAL AUTHORITIES**

24. In New York, school boards hold annual elections to replace members whose terms of office expire (Education Law § 1702 [1]).
25. School boards must hold these annual elections on the second or third Tuesday of May in each year (Education Law § 2002 [1]).
26. To vote in an election, a person must be a citizen, eighteen years or older, and a district resident for thirty or more days before the election (Education Law §§ 2012 [1-3]).
27. Following an election, the district clerk must notify each person elected to office of his election and date thereof in writing (Education Law §§ 2108; 2034 [9]).
28. A school board member must file an oath of office with the clerk of the school district (Public Officers Law § 10).
29. If an elected board member fails to file her oath of office “before or within thirty days after the commencement of the term of office for which he is chosen,” his office is deemed vacant (*see* Public Officers Law § 30 [1] [h]).
30. There is no clear statutory, regulatory, or other written authority that delineates when the terms of school board members commence, and thus no clear authority that states when the thirty days to file the oath of office should commence.
31. New York Education Law empowers every central school district<sup>2</sup> “[t]o adopt such by-laws and rules for its government as shall seem proper to discharge of the duties required under the provisions of this chapter” (Education Law § 1709[1]).
32. In 2003, the District adopted a policy that states “Board of Education members-elect take the oath of office at the annual reorganization meeting of the Board” (East Ramapo Central School District, “Board Member Oath of Office,” Policy No. 2122 [Sept 2,

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<sup>2</sup> Education Law § 1709 [1] establishes this power for Union Free School Districts and Education Law § 1804 grants this and other powers to central school districts.

2003]; East Ramapo Central School District, “Board Reorganizational Meeting,” Policy No. 2210 [Sept 2, 2003], attached as Exs. D and E).

33. The Education Law requires that the annual organizational meeting be held in the first fifteen days of July (Education Law § 1707[2]) (*see also* East Ramapo Central School District, Board Reorganizational Meeting, Policy No. 2210 [Sept 2, 2003], attached as Ex. E).
34. In *In Re Cosgrove*, 54 NE2d 3 [1944], the New York Court of Appeals held that an elected officer’s term of office and obligation to take the oath does not begin until the elected official has received the certificate of election. In *Appeal of Horne*, 12 Ed Dept Rep 595, Decision No 9.985 [1979], (attached as Ex. F), the Commissioner of the New York State Department of Education applied *Cosgrove* to school boards. In *Horne*, the Commissioner found that a board member filed the oath of office within thirty days of his term’s commencement because he had filed his oath on the day that he had received the official written notice of the election results.
35. Section 310 of the Education Law provides that “[a]ny party conceiving himself aggrieved may appeal by petition to the commissioner of education who is hereby authorized,” and specifies the subjects to which an appeal might relate, including “any official act....”
36. The Third Department has interpreted section 310 to give standing to any district resident and voter aggrieved by an official act (*Nicol v Comm’r of Educ. of New York*, 207 NYS 666, 668 [3d Dept 1925]; *see also Horne*, 12 Ed Dept Rep 595).

#### **APPLICATION OF LAW TO FACTS**

37. Mr. Cohen meets the qualifications of a voter as provided in Education Law §§ 2012 [1-3]. He is a 75 year old U.S. citizen who has resided at 4 Hillary Court in Chestnut Ridge, NY since 1999.
38. Mr. Cohen voted for Ms. Charles-Pierre in the May 2016 election to serve the last two years of a three-year term, until 2018.
39. Like the petitioner in *Horne*, 12 Ed Dept Rep 595, Mr. Cohen has standing to challenge the Board's conduct in this election because of his status as a resident voter. By removing Ms. Charles-Pierre from her duly elected seat, the Board thwarted the will of the electorate and effectively nullified Mr. Cohen's vote.
40. The fact that the Board appointed Ms. Charles-Pierre to a temporary term that ends at the next annual election does not mitigate the problem. Ms. Charles-Pierre has been denied the full two years in office that she rightfully won in the May 2016 election, and the voters have been denied the full effect of their vote. To finish the term of office to which she was elected by more than 4,000 voters, including Petitioner, Ms. Charles-Pierre will be forced to run for the seat again in May 2017.
41. Pursuant to Board Policy Nos. 2122 and 2210, Ms. Charles-Pierre and three other members-elect filed their oaths of office on July 14 at the annual reorganization meeting.
42. Board Policy No. 2122, which states that members-elect must file their oaths of office at the annual reorganization meeting, must be read in conjunction with Public Officers Law § 30 [1] [h] to require that the terms for board members must commence no more than thirty days before the annual reorganization meeting.
43. Upon information and belief, on July 26, 2016, the Board removed Ms. Charles-Pierre from her duly-elected seat because she allegedly failed to file an oath of office within



thirty days of her term's commencement. However, the Board has never specified what statute, regulation, or policy establishes that Ms. Charles-Pierre's term should have commenced earlier than the terms of the other members-elect.

44. Because the Board has not adopted a policy that establishes that the terms for the board members elected to fill a vacancy must commence on a date other than the terms for board members elected to fill full terms, Board Policy 2122 applies to all Board members-elect.

45. The Board did not remove the other individuals elected during the May 17, 2016 election who also submitted the oath of office on July 14, 2016. The act of removing Ms. Charles-Pierre was unsupported by the law and was an abuse of discretion.

46. Alternately, upon information and belief, Ms. Charles-Pierre did not receive the written notice of her election required under Sections 2108 and 2034 of the Education law. As a result, under the Commissioner's decision in *Horne*, 12 Ed Dept Rep 595, and the Court of Appeals' decision in *In Re Cosgrove*, 54 NE2d 3 [1944], her term commenced when she filed her oath of office on July 14, 2016.

#### **CAUSES OF ACTION**

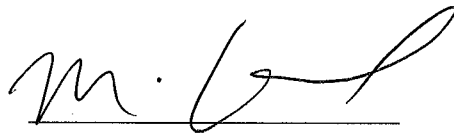
1. The Board's removal of Ms. Charles-Pierre from her duly-elected seat violated Board Policy 2122, was arbitrary and capricious and an abuse of discretion;
2. The Board treated Ms. Charles-Pierre unequally compared to the other members-elect without a rational basis;
3. Alternately, the thirty day period to file the oath cannot begin to run until Ms. Charles-Pierre receives formal notice of the election results. In this case, the thirty day period would therefore not have run before the date that she took the oath of office because,

upon information and belief, Ms. Charles-Pierre never received the certified election results.

WHEREFORE, Petitioner Oscar Cohen respectfully requests:

1. An order directing the Board to reinstate Ms. Charles-Pierre to her full two year term; and
2. Such other relief as the Commissioner deems just and proper.

Respectfully submitted,



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*Counsel for Petitioner*

Dated: August 25, 2016

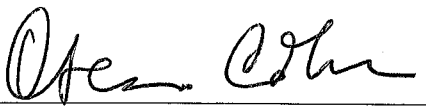
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<sup>‡</sup>This petition does not purport to present the views of Rutgers Law School, if any.

**VERIFICATION**

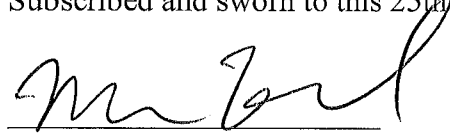
STATE OF NEW YORK            )  
  )  
COUNTY OF ROCKLAND        )        ss:

Oscar Cohen, being duly sworn, deposes and says that he is the petitioner in this proceeding; that he has been read the annexed petition and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

  
\_\_\_\_\_  
Oscar Cohen

Dated: August 25, 2016  
Spring Valley, NY

Subscribed and sworn to this 25<sup>th</sup> day of August 2016

  
\_\_\_\_\_

MARIANA KOVEL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02JO6205629  
Qualified in New York County  
My Commission Expires October 22, 2017