SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

PARENTS AGAINST STEALTH TAXES, YISROEL EISENBACH, ASHER GROSSMAN, and KENNETH WEBER,

Petitioners-Plaintiffs,

v.

THE BOARD OF EDUCATION FOR THE EAST RAMAPO CENTRAL SCHOOL DISTRICT, and THE COMMISSIONER OF EDUCATION,

Defendants-Respondents

and

ANA MAEDA,

Proposed Intervenor-Respondent.

For judgment pursuant to article 78 of the Civil Practice Law and Rules and other Relief as Requested in this Action.

Index No. 034974/2024

Hon. Sherri L. Eisenpress

MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENOR-RESPONDENT'S MOTION TO INTERVENE

Dated: October 2, 2024
New York, N.Y.

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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PRELIMINARY STATEMENT

Proposed intervenor-respondent Ana Maeda ("proposed intervenor") respectfully moves this Court to grant her motion to intervene in this hybrid CPLR article 78 proceeding and declaratory judgment action. Proposed intervenor seeks to intervene as an "interested person" under CPLR 7802 (d), as of right under CPLR 1012 (a) (2), or alternatively, seeks permissive intervention under CPLR 1013. As relief, proposed intervenor requests to be joined as a defendant-respondent in this matter to defend the Commissioner of Education's (the "Commissioner") Interim Decision and Order ("Interim Order") and to ensure that the East Ramapo Central School District ("ERCSD" or the "District") is funded to a level that can support safe school facilities and academic opportunities for both her children and the rest of the ERCSD community.

Petitioners-Plaintiffs initiated this litigation in response to the Interim Order from the Commissioner directing the District's Board of Education (the "Board") to levy an additional 4.38 percent tax to address critical underfunding of the schools in the District. This Interim Order was issued in an appeal filed by proposed intervenor Ana Maeda, a parent of two children in the District's public schools, challenging the Board's decision to put forth a "revote budget" that failed to remedy violations of health and safety regulations and the provision of required educational services. Through this proceeding, petitioners-plaintiffs challenge the District's compliance with that Interim Order by voting to levy the tax mandated by the Commissioner. Proposed intervenor is thus uniquely interested and affected by the outcome of this proceeding.

Intervention is warranted under CPLR 7802 (d) because proposed intervenor is an "interested person" with a direct and substantial stake and a "legally cognizable interest" in the proceeding's outcome. The liberal standard for intervention under this provision supports proposed intervenor's inclusion, as her participation is necessary to defend the interests of public-school parents across the District who are frustrated with budgets which fail to provide safe drinking

water, adequate ventilation, and state mandated English Language Learner programs. If petitioners-plaintiffs succeed in this matter, proposed intervenor would be denied the very remedy sought in her Commissioner's Appeal and that is necessary to protect the health, safety, and academic success of her children.

Furthermore, proposed intervenor satisfies the requirements for intervention as of right under CPLR 1012 (a) (2) because her interests may not be adequately represented by the parties, and she will be bound by the judgment. While the Commissioner has interests in defending the Interim Order, her interests are constrained by political and resource factors that may diverge from that of proposed intervenor. And, while the Board is a defendant-respondent, it has already demonstrated its interest in defending the 2024 budget process and overturning the Commissioner's Interim Order. Alternatively, permissive intervention under CPLR 1013 is appropriate as proposed intervenor brings a unique perspective as a parent directly affected by the District's budgetary decisions, whose children are currently benefitting from the increased tax levy, and whose proposed defenses will be determined by the Court's resolution of the claims.

Importantly, proposed intervenor's participation would not unduly delay the proceedings or prejudice the rights of any party. This motion is timely, filed before the deadline for responsive pleadings, and before the conclusion of the briefing schedule for the Motion to Change Venue. For these reasons, proposed intervenor respectfully requests that the Court grant this motion to intervene.

STATEMENT OF FACTS

I. APPEAL OF A.M.

On July 17, 2024, proposed intervenor filed an appeal to the Commissioner of Education pursuant to Education Law § 310 (the "Commissioner's Appeal"). The Commissioner's Appeal challenged the Board's decision to put forth a "revote budget" that only increased the tax levy by

1 percent, thus forcing the drainage of reserves and District-wide budget cuts that would result in the violation of laws and regulations intended to protect the health and safety of students and the provision of bilingual education in a District where the majority of the public-school students are English Language Learners (affirmation of Camara Stokes Hudson ["Hudson affirmation"], exhibit A, verified petition, *Appeal of A.M.*, Appeal No. 22,189, ¶¶ 49–66). Proposed intervenor specifically requested that, as relief, the Commissioner use her authority under Education Law § 311 (4) to direct the imposition of a tax levy to fund the programs that have been eliminated due to the District's cuts to the public-school budget (Hudson affirmation, exhibit A ¶ 5).

The Commissioner of Education issued an Interim Order on July 31, 2024, which found the "revote budget" adopted by the District was "arbitrary, capricious, and violative of educational policy due to the ways in which it inequitably favors nonpublic school students at the expense of public school students" (NY St Cts Elec Filing [NYSCEF] Doc. No. 23 at 1 ["Interim Order"]). To remedy the violation, the Commissioner exercised her power under Education Law § 311 (4) and ordered the District to support its public schools by adopting an additional tax levy of 4.38 percent (*id*. at 15).

To effectuate the Commissioner's Interim Order, the Board scheduled a vote for August 14, 2024, to consider the ordered increase to the tax levy. The day before the Board's scheduled vote, petitioners-plaintiffs filed suit in this Court. The complaint sought to enjoin the Board from levying the ordered tax, alleging six causes of action and claims for relief. Supreme Court, Hon. Sherri L. Eisenpress, held a hearing on August 14, 2024, to consider petitioners-plaintiffs' motion for a preliminary injunction. The Court denied the motion and granted the Commissioner of Education's request to intervene (*see* NY St Cts Elec Filing [NYSCEF] Doc. No. 14, order amending caption).

At its scheduled meeting the same evening, the Board voted to authorize the tax levy "as mandated by the Commissioner in the Interim Decision and Order" (Hudson affirmation, exhibit B, ERCSD Board of Education Minutes 08-14-24 at 9493–4). It does not appear that petitioners-plaintiffs have appealed the Board's August 14, 2024 vote to the Commissioner through an appeal pursuant to Education Law § 310 (Affidavit of Ana Maeda ["Maeda aff"] ¶ 22).

II. PROPOSED INTERVENOR

In addition to filing the Commissioner's Appeal at issue in this case, proposed intervenor is a parent and resident of the East Ramapo Central School District. Proposed intervenor has a strong interest in the outcome of this litigation. The remedy that proposed intervenor sought in her appeal before the Commissioner is directly threatened by the petitioners-plaintiffs' complaint. Proposed intervenor would be the only parent of an ERCSD public school student participating in these proceedings (NY St Cts Elec Filing [NYSCEF] Doc. No. 1, summons and complaint ["complaint"] ¶¶ 18-20).

Proposed intervenor is the mother of two children in the District, one who attends Chestnut Ridge Middle School and another who attends Margetts Elementary School (Maeda aff ¶¶ 1-2). Her children have attended school in the District for most of their lives (*id.*). Her children's access to proper ventilation and consistent access to safe, clean water in their schools is of paramount concern to proposed intervenor as both of her children have allergies and one has asthma (*id.* ¶¶ 12-13). Proposed intervenor is an engaged and active parent within the District. She served as the Elmwood Parent Teacher Association President last school year, is the interim Parent Teacher Association President at Chestnut Ridge Middle School (*id.* ¶¶ 3-4), and presented public

testimony throughout the 2024 budget process (*id.* ¶ 21).[1] Because of the District's failures to provide adequate water and ventilation, proposed intervenor has had to supplement her children's classrooms by sending additional water bottles and purchasing three fans for their classrooms (*id.* ¶¶ 7, 11).

Proposed intervenor resides in Spring Valley within the District and is a qualified voter (*id.* ¶¶ 5-6). Proposed intervenor voted yes to pass the two proposed tax levies on May 21 and June 18, 2024, even though she believed that the District should be spending even more to support public school students (*id.* ¶ 6).

III. IMPACT OF THE COMMISSIONER'S INTERIM ORDER

Following the issuance of the Commissioner's Interim Order, the petitioners-plaintiffs initiated this proceeding against the Board seeking, among other things, a determination that the imposition of the 4.38 percent tax levy is arbitrary, capricious, an abuse of discretion, and a violation of lawful procedure and to enjoin the Board and "all others acting in concert" with the Board from taking actions in violation of New York state law (complaint ¶¶ a-f).

At the August 14, 2024, Board meeting, the Board voted to levy the 4.38 percent tax levy ordered by the Commissioner (Hudson affirmation, exhibit B at 9493). Proposed intervenor was present at this meeting and presented her public comments in support of the tax increase (Maeda aff ¶ 22).[2] At the meeting, she spoke passionately about the possibility of new extracurricular opportunities and water fountains demanding that the board "please pass that [tax levy] …until the fire is put down in this district, we can't fight for everyone else" (August 14, 2024 Meeting at

[1] *ERCSD – Regular Board Meeting 05-07-2024* at 1:09:18 ["May 7, 2024 Meeting"], available at https://www.youtube.com/live/O0IIK7ivN2E?feature=shared&t=1545 [last accessed Oct. 01, 2024]; *ERCSD – Regular Board Meeting 06-04-2024* at 1:04:35 ["June 4 Meeting"], available at https://www.youtube.com/live/NEjv9PKhXQE?si=3rOWBt0NlID1HmRC&t=3778 [last accessed Oct. 01, 2024].
[2] *ERCSD – Regular Board Meeting 08-14-2024* at 25:54 ["August 14, 2024 Meeting"] available at https://www.youtube.com/live/uMKKMwv4phQ?si=q-EkSousm827dRZm&t=1554 [last accessed Sept. 27, 2024].

27:58). Before the Board vote, this Court permitted the Commissioner of Education to intervene in the case as a Defendant-Respondent pursuant to CPLR 1001, 1012, 1013, and 7802 (d) (*see* NY St Cts Elec Filing [NYSCEF] Doc. No. 14, order amending caption). Tax warrants for this levy have already been issued.[3]

The additional approximately $6.5 million that was levied because of the Commissioner's Interim Order are critical funds dedicated to the public schools in the District. The District's public-school students, including proposed intervenor's children, have been suffering from significantly inadequate funding that has left the District unable to protect basic health and safety and to provide statutorily mandated services and instruction.

ARGUMENT

I. PROPOSED INTERVENOR IS ENTITLED TO INTERVENE AS OF RIGHT AS AN "INTERESTED PARTY" UNDER CPLR 7802 (D).

Proposed intervenor Maeda should be permitted to intervene as of right under CPLR 7802 (d) as she is an "interested person" in this proceeding. CPLR 7802 (d) permits intervention of "interested persons" in CPLR article 78 proceedings. The standard for intervention under CPLR 7802 (d) is liberal and "grants the court broader power to allow intervention in an article 78 proceeding" (*Elinor Homes Co. v St. Lawrence*, 113 AD2d 25, 28 [2d Dept 1985]). Intervenors are "interested persons" where they have "'a real and substantial interest in the outcome of the proceedings'" (*Bernstein v Feiner*, 43 AD3d 1161, 1162 [2d Dept 2007]), quoting *County of Westchester v Department of Health of State of N.Y.*, 229 AD2d 460, 461 [2d Dept 1996]). Intervention in CPLR article 78 proceedings is even more lenient than intervention under the permissive standard in CPLR 1013 (*Helms v Diamond*, 76 Misc 2d 253, 255 [Sup Ct 1973]; *see*

[3] ERCSD Regular Board Meeting 09-24-24 at 1:08:47 ["September 24, 2024 Meeting"] available at https://www.youtube.com/live/C0lxzvF6Ri0?t=4126s [last accessed Sept. 28, 2024].

also People by James v. Schofield, 199 AD3d 5, 9 [3d Dept 2021] ["The 'interested persons' standard of CPLR 7802 (d) is 'more liberal than that provided in CPLR 1013' for intervention in other civil actions"], quoting *Tennessee Gas Pipeline Co. v Town of Chatham Bd. of Assessors*, 239 AD2d 831, 832 [3d Dept 1997]). Thus, the general rule is that "'intervention *should be permitted* where the intervenor has a real and substantial interest in the outcome of the proceedings'" (*Bernstein*, 842 N.Y.S. 2d at 556 [emphasis added], quoting *County of Westchester,* 229 AD2d at 461).

To be an "interested party" under CPLR 7802, the proposed intervenor must have a "legally cognizable" interest in the outcome of the CPLR article 78 proceeding (*New York State Senator Kruger v Bloomberg*, 1 Misc 3d 192, 195 [Sup Ct, NY County 2003]). Courts have held that where parents are seeking to intervene in a CPLR article 78 proceeding regarding a policy or practice which has a direct effect on their children, their claim is legally cognizable, justifying intervention under CPLR 7802 (d) (*Steglich v Bd. of Educ. of City School Dist. of City of New York*, 33 Misc 3d 304 [Sup Ct, NY County 2011]; *Norris v Walcott*, 36 Misc 3d 711 [Sup Ct, NY County 2012] [granting intervention to parents wishing to enter their children in the lottery for admission into a proposed charter school in a CPLR article 78 proceeding brought by parents seeking to stop the award of the charter contract]; *Zorach v Clauson*, 195 Misc 531 [Sup Ct, Kings County 1949], *affd* 343 US 306 [1952] [unincorporated association of religious leaders were "interested parties" in proceeding against Commissioner of Education seeking to discontinue state program which permitted public school students to be released early to attend religious observance and instruction]; *Spring v Broadnax*, 158 AD2d 240 [3d Dept 1990]).

Even where the court's decision is not certain to impact the proposed intervenor, if they are representative of a broader class of people who are likely to be affected, they have been

permitted to intervene under CPLR 7803 (d). The court in *Norris v Walcott* found that even though the proposed intervenor's interest in the outcome of the charter school contract award was "contingent before the results of the [school] lottery are known," intervention was still permissible because they "[sought] to give voice to the desires of parents" and "put a human face on the bureaucratic decision making that is at issue in this case" (36 Misc 3d at 718).

Here, there is no question that proposed intervenor has a "real and substantial interest" in the outcome of this proceeding as it challenges the very remedy – an increased tax levy – she sought in her Commissioner's Appeal. Despite petitioners-plaintiffs' claims to the contrary, this complaint is an attempt to challenge the Commissioner's Interim Order. If the petitioners-plaintiffs are successful, the approximately $6.5 million in taxes levied would be lost, requiring cuts to student services and further delay on necessary repairs to provide safe drinking water and adequate ventilation. Proposed intervenor would face another school year of concerns about her children's health every time they enter the school building and buying bottled water and fans for her children to supplement the Board's failures. Her children and their schools would be stripped of the critical infusion of funding to remedy the Board's inadequate "revote budget." This proceeding directly affects proposed intervenor and her children, and thus she has a "legally cognizable" interest sufficient to support her intervention. Lastly, proposed intervenor Maeda puts a "human face" on the "bureaucratic" budget decisions being made in this case as the only parent of ERCSD public school students in this proceeding.

Due to both her individual interest as the petitioner in the Commissioner's Appeal, and her interest as a parent and resident of the District, proposed intervenor is an "interested person" under CPLR 7802 (d) and, given the liberal standard, should be permitted to intervene.

II. PROPOSED INTERVENOR IS ENTITLED TO INTERVENE AS OF RIGHT UNDER CPLR 1012 (A) (2).

Intervention under CPLR 1012 (a) (2) is allowed "upon timely motion…when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgement." Like intervention under CPLR 7802, intervention is "liberally allowed by courts" and should be permitted where persons have "a bona fide interest in an issue involved in that action" (*Yuppie Puppy Pet Products, Inc. v St. Smart Realty, LLC,* 77 AD3d 197, 201 [1st Dept 2010]). Proposed intervenor meets the standard for intervention as of right under CPLR 1012 (a) (2) as this motion is timely, she has independent interests that may not be adequately represented by the current parties, and she will be bound by the judgment in this case.

First, this motion is plainly timely. In considering the timeliness of a motion, courts are to "consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party" (*id.*). While the final venue of these proceedings is undetermined, intervention at this point in the case would not prejudice the rights of any party. (*Charles Rutenberg LLC v Wallace*, 60 Misc 3d 1218(A) [Sup Ct, New York County 2018] [finding intervention timely where there had been no preliminary conference or discovery orders submitted in the action]). Presently, none of the defendants-respondents have submitted their responsive papers which are not due until October 15, 2024. If proposed intervenor is permitted to intervene in this proceeding, the parties would have an opportunity to respond to the arguments brought by proposed intervenor. Therefore, this motion is timely.

Second, proposed intervenor will be bound by a judgment in this matter. Whether the person seeking intervention is bound is "determined by its res judicata effect" (*Vantage Petroleum v Bd. of Assessment Review of Town of Babylon*, 61 NY2d 695, 698 [1984]). Here, if a final judgment were to be issued assessing the legality of the Commissioner's Interim Order, it would

have a preclusive effect on proposed intervenor as well (CPLR 3211 (a) (5)). And, if the Commissioner's Interim Order were to be annulled or modified as part of this proceeding, it would annul the requested remedy in proposed intervenor's Commissioner's Appeal which provided approximately $6.5 million to the District's public schools (*see County of Westchester*, 229 AD2d 460 at 461 [intervention permitted where proposed intervenors stood to lose a "substantial amount" in allocated funds]; *Doe v New York Univ.,* 6 Misc 3d 866, 871-874 [Sup Ct, NY County 2004]).

Third, proposed intervenor's interests are not adequately represented by the parties. Joseph M. McLaughlin, Practice Commentaries (McKinney's Cons Laws of NY, Book 7B, CPLR C1012:1-1012.3), explains "Inadequacy of representation is generally assumed when the intervenor's interest is divergent from that of the parties to the suit." Where individuals seek to intervene in proceedings alongside state agencies or other governmental bodies, courts have found that their interests may not be adequately represented by that of the governmental body (*Vil. of Spring Val. v Vil. of Spring Val. Hous. Auth.*, 33 AD2d 1037 [2d Dept 1970]). Resource constraints, political considerations, and the necessity of a long-term calculus motivate a governmental body in ways that it does not for an individual (*Martin v Ronan*, 47 NY2d 486, 491 [1979]).

In *Village of Spring Valley* (33 AD2d at 1037), the court reversed the denial of a motion for leave to intervene by residents in a low-income neighborhood under CPLR 1012. The proceeding was initiated by the Village of Spring Valley to dissolve the village's housing authority (*id.*). The court found that the motion to intervene should have been granted because the housing authority would not adequately represent the residents' interests (*id.*). The potential divergence in interests does not have to be certain or present, but rather under CPLR 1012, intervention is proper where the person's interests *may* not be adequately represented (*see Romeo v New York State Dept. of Educ.*, 39 AD3d 916 [3d Dept 2007]).

Here, proposed intervenor's interests diverge from those of the Board and the Commissioner such that she should be permitted to intervene to represent her own interests. With respect to the Board, the Commissioner's Appeal at issue was brought by proposed intervenor against the Board. (Hudson affirmation, exhibit A). Despite the current posture of this proceeding, the Board has an interest in defending its actions throughout the budget process and upholding the "revote budget" that it put forward. In its answer to the Commissioner's Appeal, the Board vehemently defended its actions and questioned the Commissioner's authority to issue the tax levy as a remedy (Hudson affirmation, exhibit C, verified answer, *Appeal of A.M.*, Appeal No. 22,189). This is in direct opposition to the interests of proposed intervenor who sought to have the June 18, 2024 "revote budget" annulled and an additional tax levied through her Commissioner's Appeal. While both the Commissioner and proposed intervenor have an interest in upholding the Interim Order and reinforcing the Commissioner's authority to mandate the issuance of a tax levy, the extent of their interests in this outcome varies. The Commissioner, like any state actor, is likely motivated by "resource constraints and even political considerations [that] govern the decision whether to litigate and how far" (*Martin,* 47 NY2d at 491). In contrast, proposed intervenor is interested in the upholding of the Interim Order to ensure that her children, who are currently enrolled in the District and will be for many years to come, have access to schools free of health hazards and adequate state mandated services and instruction as soon as possible. The outcome of this litigation is personal to proposed intervenor and her children.

Because proposed intervenor would be bound by a final judgement on the Commissioner's Interim Order, and proposed intervenor is not adequately represented by the parties, proposed intervenor should be permitted to intervene as of right under CPLR 1012 (a).

III. PROPOSED INTERVENOR MEETS THE STANDARD UNDER CPLR 1013 FOR PERMISSIVE INTERVENTION.

Alternatively, proposed intervenor should be permitted to intervene under the permissive intervention standard of CPLR 1013, as she raises common questions of law and fact to the main action. CPLR 1013 permits intervention in any action when "… the person's claim or defense and the main action have a common question of law or fact" and the intervention would not "unduly delay the determination of the action or prejudice the substantial rights of any party."

Here it is undisputed that the proposed intervenor and the parties raise common questions of law and fact—specifically, the lawfulness of the tax levy remedy under Education Law § 311 (4) and the rational basis for the Board's compliance with the Commissioner's Interim Order. In *Village of Spring Valley* (33 AD2d 1037), the court found that proposed intervenor residents, who sought to represent the interests of all "persons residing in substandard housing" and might stand to benefit from the existing housing authority, had common questions relating to defendant housing authority's right to continue and improve housing facilities, and therefore permitted intervention pursuant to CPLR 1013 (*see also Ronen v Cohen*, 126 AD3d 487 [1st Dept 2015] [Intervenor asserting a claim under escrow agreement was permitted to intervene in action under CPLR 1013 to enforce a settlement where both disputes involved the ownership of the same algorithm]). Here, proposed intervenor raises common questions of law and fact to the parties that are critical to resolving the matter.

Further, as discussed above, permitting intervention would not unduly delay or prejudice the substantial rights of any party – this motion is filed before the October 15, 2024, deadline for the Commissioner to respond to the complaint. For the same reason, the participation of intervenors at this stage would not prejudice the substantial rights of the parties as it will not hinder the proceedings in any way.

Therefore, proposed intervenor meets the standards for permissive intervention pursuant to CPLR 1013 and this Court should use its discretion to grant the motion to intervene.

CONCLUSION

Proposed intervenor respectfully requests that the Court permit her intervention pursuant to CPLR 7802, 1012 or, in the alternative, 1013.

Dated: October 2, 2024
New York, N.Y.

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

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CERTIFICATION PURSUANT TO 22 NYCR 202.8-B

I, Camara Stokes Hudson, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth in 22 NYCRR § 202.8-b because it contains 3,867 words, excluding the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affidavit.

Dated: October 2, 2024
New York, N.Y.

Camara Stokes Hudson