State Board of Education
State of Connecticut

Commissioner of Education,	:	Hearing Panel:
Agent	:	Erin D. Benham
	:	Erik M. Clemons
Vs.	:	Allan B. Taylor
	:	
Killingly Board of Education,	:	
Respondent	:	January 6, 2023

MOTION OF CONCERNED RESIDENTS/PARENTS OF KILLINGLY STUDENTS TO INTERVENE IN PENDING INQUIRY PURSUANT TO C.G.S. §10-4B

The Concerned Residents/Parents of Killingly Students, the unincorporated group of citizens that filed the original complaint pursuant to C.G.S. §10-4b on April 5, 2022, hereby petition the hearing panel to intervene as a party in the pending inquiry by the State Board of Education conducted in response to such complaint.

History

The history of the dispute is well and accurately set forth in the memo (including an attached memo from Attorney Michael McKeon) from Commissioner Charlene M. Russell-Tucker to the State Board of Education on November 2, 2022 (hereinafter "Commissioner Memo"). Of note for purposes of this motion is the fact that an unincorporated group of 57 parents, teachers, students and other citizen of Killingly, under the name Concerned Residents/Parents of Killingly Students (hereinafter "Concerned Residents"), filed a complaint pursuant section 10-4b of the Connecticut General Statutes, on April 5, 2022, asserting that, in voting down on March 16, 2022, a proposal by the Superintendent of Schools of Killingly to contract with Generations Family Health Centers (hereinafter "Generations") for the

establishment of a school-based health center, the Killingly Board of Education failed to implement the educational interests of the state.

The Commissioner's preliminary review of the complaint led her to determine, on April 11, 2022, that the complaint was substantial and, therefore, she ordered an investigation. The Killingly Board filed a response on May 3, written by its then-attorneys from Shipman and Goodwin, LLP. Complainants filed a reply on May 16, eliciting a further response from the Killingly Board. The legal director of the Department of Education, Attorney Michael McKeon, conducted an exhaustive investigation over the summer, including a meeting with members of the Killingly Board and school administration on August 26 and interviews with some of the complainants. The Commissioner's memo to the State Board of Education of November 2 contained the results of that investigation.

The State Board voted unanimously on November 2 that "there is reasonable cause to believe that the Killingly Board of Education has failed or is unable to make reasonable provisions to implement the educational interests of the state of Connecticut, and in accordance with such finding, and pursuant to Sections 10-4b-8 and 10-4b-9 of the Regulations of Connecticut State Agencies, the SBE orders an inquiry before a duly designated hearing panel serving on behalf of the SBE...." The Board subsequent appointed the hearing panel and secured the services of an Assistant Attorney General to advise the hearing panel.

Interest of Intervenor

The Concerned Residents have a strong interest in having the Killingly Public Schools provide effective social, emotional, behavioral, and mental health services for students in Killingly schools. That interest stems both from a general concern about the future of their community and specific concerns because many of the Concerned Residents have students in

Killingly Public Schools. Killingly is in a region of the State with a paucity of community mental health services. A November 2021 survey of middle and high school students found disturbingly high levels of depression and suicidal ideation. The Concerned Residents seek to participate in the inquiry to ensure that, if the hearing panel finds a violation of C.G.S. §10-4a, it devises a remedy that appropriately and effectively deals with the mental health crisis in Killingly schools.

One area of particular concern is the recent actions of the Killingly Board of Education. Specifically, an Ad Hoc Committee of the Killingly Board met on Wednesday, December 28, to review a proposal by Community Health Centers, Inc. (CHCI) to establish a school-based health center (SBHC) in Killingly. The Concerned Residents reviewed the CHCI contract and compared it to the contract proposed by Generations Family Health Center (Generations) which was rejected by the Killingly Board in early 2022. The Concerned Residents are troubled by the following differences:

1. The level of staffing. From presentations, Generations proposed to have one or more full time staff in the Killingly schools; CHCI is proposing a part-time person and the use of teletherapy.

2. Community resources. Both CHCI and Generations claim in their contracts to refer students to community resources. The difference is that Generations has a medical clinic in Danielson, 9 minutes from the high school, and a behavior health clinic in Putnam, 11 minutes from the high school. CHCI has no such local resources.

3. Psychiatric evaluation; Medication referral. Generations can provide both at their Putnam facility. CHCI can provide neither locally.

4. Startup cost. CHCI is requiring a one-time payment of $25,703.80. Generations is seeking no reimbursement of its startup costs.

5. Duration. The Generations contract is for five years, with provision for early termination. The CHCI contract is for one year.

6. Commencement of services. CHCI told the Board it would take six months to recruit, train and certify staff. A year ago, Generations was ready to move forward promptly.

7. Summer services. Both contracts limit the operations of the SBHC to the school year. Generations, however, has year-round mental health clinicians at their Putnam facility that can ensure the continuation of services. CHCI has no such resources.

8. Interim services. Neither provider offers any services between the date of signing and the date of implementation, although there is reason to believe that the interim period will be far shorter with Generations. The students of Killingly have gone too long with inadequate mental health services. Regardless of which provider is selected, the Killingly Board needs to find a way to supplement the inadequate services now available in Killingly schools.

The Law

C.G.S. §10-4b(a) provides that the inquiry be held "in accordance with the provisions of sections 4-176e to 4-184" of the Connecticut General Statutes. Those sections are the ones dealing with Contested Cases under the Connecticut Administrative Procedures Act. Section 4-177a(b) provides,

> The presiding officer may grant any person status as an intervenor in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

The first day of hearings was initially noticed for January 12, 2023. However, on the motion of Attorney Deborah Stevenson representing the Killingly Board, the initial hearing has

now been postponed. Hence, there can be no doubt that this written petition, which is made to the agency with notice to all parties, is more than five days before the first date of hearing.

The second prong has two parts. The first is that the petitioner's participation is in the interests of justice. The second is that the petitioner's participation will not impair the orderly conduct of the proceedings. The interest of the complainants is in ensuring that students in Killingly schools have the social, emotional, behavioral and mental health support they need to successfully engage in the academic enterprise. The Constitution of Connecticut guarantees the right to public education in the state. The "state constitution places the ultimate responsibility for the education of the children of Connecticut on the state. *Murphy v. Board of Education,* 167 Conn. 368, 372 (1974); *West Hartford Education Assn., Inc. v. DeCourcy,* 162 Conn. 566, 573 (1972)." *New Haven v. State Board of Education,* 228 Conn. 699, 703 (1994). There can, thus, be little doubt that in the State of Connecticut ensuring access to public education is in the interest of justice.

The Legislature has made it plain that social emotional learning and student mental health are part and parcel of that endeavor. As Attorney McKeon pointed out in his memorandum to the Commissioner attached to her November 2 memo to the State Board of Education, "Since 2019, the General Assembly has passed no fewer than seven Public Acts that address aspects of student mental, behavior, and social-emotional health." Memo at page 22. Hence, petitioner's interest in in ensuring that students in Killingly schools have the emotional, behavioral and mental health support they need to successfully engage in the academic enterprise is certainly in the interest of justice.

As to whether complainant's participation will impair the orderly conduct of the proceedings, C.G.S. §4-177a(d) provides a ready answer. This section provides,

> If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

In short, the statute affords the presiding officer with plenary powers to ensure that the participation of the Complainants will not interfere with the orderly conduct of the proceedings.

Connecticut case law adds little to understanding this provision. In *Nizzardo v. State Traffic Commission,* 259 Conn. 131 (2002), the State Supreme Court made it clear that a person could only intervene in an administrative proceeding where the administrative agency had jurisdiction over the issue raised by the would-be intervenor. Similarly, in *Amerson v Norwich Teachers League,* 2011 WL 1734441 (Superior Court, 2011), the trial court ruled that because "only a local or regional board of education or the exclusive representative of a teachers' or administrators' unit may file a unit clarification petition with the Department to clarify the appropriate composition of an existing unit..., individual teachers and administrators do not have a specific, personal and legal interest in a petition for unit clarification." Hence, an individual teacher could not intervene under C.G.S. 4-177a. *Office of Consumer Counsel v. Department of Public Utilities Control,* 234 Conn. 624 (1995), stands for the proposition that a person can only appeal the decision of a regulatory agency if it were a party to the administrative action. In short, the courts have only precluded intervention in an administrative action where the would-be intervenor sought to introduce matters outside the jurisdiction of the administrative body.

Although the federal Administrative Procedures Act, 5 U.S.C. §551 *et. seq.* differs, in significant ways, from Connecticut's Administrative Procedures Act, there exists some important

case law on the issue of intervention. In *Animal Legal Defense Fund, Inc. v. Vilsack*, 237 F. Supp.3d 15 (D.D.C. 2017), the court sets out the basic factors to consider in determining whether a person can intervene in an administrative proceeding. The court said there was a lower threshold than Article III standing for intervention in an administrative proceeding because of "the important role played by citizens['] groups in ensuring compliance with the statutory mandate that [agency proceedings] serve the public interest," quoting *Bilingual Bicultural Coal835 F.2d 881ition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 624 n.4 (D.C. Cir. 1978). 237 F.Supp.3d at 21-22. The court said, "intervenors representing the public interest 'must not be treated as interlopers,'" quoting *Office of Communication of the United Church of Christ v. F.C.C.*, 425 F.2d 543, 546 (D.C. Cir. 1969). 237 F.Supp.3d at 22. Still, "agencies have broad discretion to limit the participation of interested individuals and organizations in agency proceedings. Even if [petitioner] qualifies as an 'interested person,' it 'had a right to intervene only if [its] participation in the administrative process dovetailed with the "orderly conduct of public business."' *Nichols [v. Bd. Of Trustees of Asbestos Workers Local 24 Pension Plan]*, 835 F.2d 881, 897 (D.C. Cir. 1987). *Id.*

Federal courts have permitted denials of intervention when other parties would adequately represent the would-be intervenors position or when intervention "would broaden unduly the issues considered, obstruct or overburden the proceedings, or fail to assist the agency's decisionmaking." *Nichols*, 835 F.2d at 897. Summarizing, the *Animal LDF* court said, "courts and commentators have identified a range of factors that agencies typically consider in making that determination, including: the nature of the contested issues; the prospective intervenor's precise interest; the adequacy of representation provided by the existing parties to the proceeding; the ability of the prospective intervenor to present relevant evidence and

argument; the burden that intervention would place on the proceedings; and the effect of intervention on the agency's mandate." 237 F.Supp.3d at 23. The court noted, "It bears repeating that participation in agency proceedings ... does not necessarily entail full-fledged party intervention. Rather, agencies have ample 'authority to shape the manner in which intervenors will participate,'" quoting *Nichols*, 835 F.2d at 897 n.115. 237 F.Supp.3d at 24.

In this case, the Concerned Residents have a direct and personal interest in the mental health of students in Killingly public schools. They seek to participate in the inquiry to ensure that the resolution of the matter, whether by ruling of the panel or by negotiation, fully protects the interest of the students. Their position overlaps with, but is not identical to, the interests of the Commissioner of Education. The Commissioner seeks to ensure that the educational interest of the State is implemented by the Killingly Board of Education. Concerned Residents seek to ensure that the social, emotional, behavioral and mental health of the students of Killingly are adequately addressed.

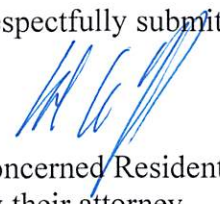
While the panel has plenary authority to regulate the participation of the Concerned Residents, there is no reason to believe that their participation will delay or interfere with the proceeding. The Concerned Residents have the ability to produce evidence and witnesses that will demonstrate that the actions to date of the Killingly Board of Education have failed to address the needs of students.

Conclusion

The Concerned Residents/Parents of Killingly Students seeks to intervene in the 10-4b inquiry into the Killingly Board of Education. This group meets the statutory and court-created requirements to qualify as an intervenor in an action under the Connecticut Administrative

Procedure Act. For that reason, the Concerned Residents seek an order from the panel providing it with the status of intervenor in the pending proceeding.

Respectfully submitted,



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CERTIFICATION

On this 6th day of January 2023, a copy of this pleading was transmitted, both by electronic mail, and by first class mail, to the following:

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