

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIM ALLEN, <u>et al.</u> ,	:	
	:	
Petitioners,	:	
	:	
v.	:	No. 474 M.D. 2014
	:	
CAROLYN DUMARESQ,	:	
	:	
Respondent.	:	

ORDER

AND NOW, this day of , 2014, upon consideration of Respondent’s Preliminary Objections to Petition for Review, it is ORDERED and DECREED that the Preliminary Objections are SUSTAINED. The Petition for Review is hereby DISMISSED.

BY THE COURT:

_____ J.

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	:	
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**RESPONDENT’S PRELIMINARY OBJECTIONS
TO PETITION FOR REVIEW**

Respondent Carolyn Dumaresq, in her capacity as the Acting Secretary of Education (“Secretary”), preliminarily objects to Petitioners’ Petition for Review in the Nature of Mandamus and for a Declaratory Judgment and avers as follows:

1. On or about September 9, 2014, eight Petitioners filed a Petition for Review seeking equitable relief against the Secretary, attached hereto as Exhibit 1.

2. This Court’s original jurisdiction is premised upon 42 Pa.C.S. § 761. Id. ¶ 19.

3. The seven individual Petitioners allege that they are parents of students enrolled in the School District of Philadelphia (“District”), which is controlled and operated by the Philadelphia School Reform Commission, a local agency. *See* 24 P.S. § 6-696(a).

4. The eighth Petitioner is Parents United for Public Education, an organization that advocates for funding for the District.

5. Petitioners’ sole claim is that the Secretary is neglecting her duties set forth in 22 Pa. Code § 4.81.

6. Petitioners request that the Court issue an order declaring that the Secretary has neglected her duties under set forth 22 Pa. Code § 4.81 and directing her to follow her duties under 22 Pa. Code § 4.81 in accordance with Petitioners’ interpretation of the regulation. Id.

I. Preliminary Objection – Demurrer

7. Rule 1516(b) of the Pennsylvania Rules of Appellate Procedure and Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure permit the Secretary to raise preliminary objections, in the nature of a demurrer, to test the legal insufficiency of a pleading.

8. Whereas mandamus cannot be used to attack the manner in which an official exercises her discretion or judgment, the Petition fails to state a claim.

WHEREFORE, the Secretary respectfully requests that this Honorable Court sustain her preliminary objection in the nature of a demurrer and dismiss the Petition.

II. Preliminary Objection – Demurrer

9. Rule 1516(b) of the Pennsylvania Rules of Appellate Procedure and Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure permit the Secretary to raise preliminary objections, in the nature of a demurrer, to test the legal insufficiency of a pleading.

10. Whereas 22 Pa. Code § 4.81 applies to “allegations of curriculum deficiencies,” the Petition fails to state a claim of violation of that regulation based upon the failure to take action on allegations of non-curriculum deficiencies under that regulation.

WHEREFORE, the Secretary respectfully requests that this Honorable Court sustain her preliminary objection in the nature of a demurrer and dismiss the Petition.

III. Preliminary Objection – Demurrer

11. Rule 1516(b) of the Pennsylvania Rules of Appellate Procedure and Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure permit the Secretary to

raise preliminary objections, in the nature of a demurrer, to test the legal insufficiency of a pleading.

12. Whereas 22 Pa. Code § 4.81 does not preclude the Secretary from referring “allegations of curriculum deficiencies” to a school district, the Petition fails to state a claim of violation of that regulation based upon such a referral.

WHEREFORE, the Secretary respectfully requests that this Honorable Court sustain her preliminary objection in the nature of a demurrer and dismiss the Petition.

IV. Preliminary Objection – Demurrer

13. Rule 1516(b) of the Pennsylvania Rules of Appellate Procedure and Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure permit the Secretary to raise preliminary objections, in the nature of a demurrer, to test the legal insufficiency of a pleading.

14. Whereas 22 Pa. Code § 4.81 does not include any requirement that persons making “allegations of curriculum deficiencies” receive any later notification regarding their allegation, the Petition fails to state a claim of violation of that regulation based upon the Petitioners’ lack of notification or notification via a form letter.

WHEREFORE, the Secretary respectfully requests that this Honorable Court sustain her preliminary objection in the nature of a demurrer and dismiss the Petition.

For the foregoing reasons, Respondent, Acting Secretary of Education Carolyn Dumaresq, respectfully requests that this Honorable Court sustain her preliminary objections in the nature of a demurrer and dismiss the Petition for Review.

Respectfully submitted,

KATHLEEN G. KANE
Attorney General

By: /s/ Kevin Bradford

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Gregory R. Neuhauser
Chief, Litigation Section

Date: October 10, 2014

CERTIFICATE OF SERVICE

I, Kevin Bradford, hereby certify that on October 10, 2014 I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service electronically via PACfile (listed as accepting eService):

- Benjamin David Geffen, Esquire [bgeffen@pilcop.org]

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