

Matter of Advocates for Children of N.Y., Inc. v New York City Dept. of Educ.

2012 NY Slip Op 08422 [101 AD3d 445]

December 6, 2012

Appellate Division, First Department

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**In the Matter of Advocates for Children of New York, Inc., et al.,
Appellants,
v
New York City Department of Education et al., Respondents.**

—[*1] Milbank, Tweed, Hadley & McCloy LLP, New York (Jed M. Schwartz of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York (Scott Shorr of counsel), for respondents.

Judgment, Supreme Court, New York County (Alexander W. Hunter, J.), entered June 14, 2012, denying the petition seeking, inter alia, to compel respondents to disclose documents requested by petitioners pursuant to the Freedom of Information Law (FOIL), and to enjoin respondents from further extending their time to respond to petitioners' FOIL requests, and dismissing the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

Petitioners failed to exhaust their administrative remedies with respect to FOIL request No. 6762. Petitioners' administrative appeal was filed more than 30 days after respondents' letter denying the request (*see Matter of McGriff v Bratton*, 293 AD2d 401 [1st Dept 2002]). Petitioners' argument that this letter

did not constitute a denial of their request because it lacked a notice of the right to appeal, is unavailing since the letter clearly stated that it was the "final response" to the request.

Although respondents failed to meet their burden to show that petitioners' claims pertaining to FOIL request No. 6890 were barred by the statute of limitations, given that a postmarked envelope showed that the denial of the administrative appeal was mailed on February 24, 2011, and the proceeding was commenced less than four months later, on June 22, 2011 (*see Matter of LaSonde v Seabrook*, 89 AD3d 132, 139-140 [1st Dept 2011], *lv denied* 18 NY3d 911 [2012]; CPLR 217), petitioners failed to exhaust their administrative remedies. Petitioners' administrative appeal was premature, given that respondents' efforts to respond to the request within the applicable time limitations were ongoing (*see Matter of Braxton v Commissioner of N.Y. City Police Dept.*, 283 AD2d 253 [1st Dept 2001]).

The court also properly denied petitioners' request for a permanent injunction enjoining respondent from extending its time to respond to any future FOIL requests. Such relief is [*2]unavailable under the circumstances (*see* CPLR 7806; *see e.g. Matter of Harvey v Hynes*, 174 Misc 2d 174, 177 [Sup Ct, Kings County 1997]). Concur—Mazzarelli, J.P., Moskowitz, Abdus-Salaam and Feinman, JJ.