STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

CAMBRIDGE CENTERAL SCHOL DISTRICT and BOARD OF EDUCATION OF THE CAMBRIDGE CENTERAL SCHOOL DISTRICT,

Petitioners,

-against-

NEW YORK STATE EDUCATION DEPARTMENT, BETTY A. ROSA, Commissioner of Education, CORY McMILLAN and SARAH McMILLAN, on behalf of their child P.M., ALEX DERY SNIDER and DAVID SNIDER on behalf of their children, H.S. and A. S., SARA DIANE NOLAN and JASON NOLAN on behalf of their children R.N. and W.N., and DEBORAH JAFFE and EDWIN SCHIELE on behalf of their child A.S.,

Respondents.

DECISION/ORDER/JUDGMENT
Index No. 902161-22

(Supreme Court, Albany County, Special Term)

APPEARANCES:

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McGinty, J.:

Petitioners Cambridge Central School District (the "District") and Board of Education of the Cambridge Central School District (the "Board") commenced this Article 78 proceeding (1)

seeking a judgment annulling Decision No. 18,058 (the "Decision") of respondents New York State Education Department and Commissioner of Education Betty A. Rosa (the "Commissioner"), (2) granting a temporary restraining order with respect to orders of the Commissioner set forth in her Decision, and (3) finding that the District had a rational basis for its July 8,201 resolution reinstating the use of a race-based mascot in the District.

Background: Actions of the Cambridge CSD School Board

Since the 1950's, the District has used the name "Indians" as its scholastic nickname. A logo consisting of the silhouette of a male Native American in traditional Plains Indians headgear has appeared on District letterhead, signage, newsletters, team uniforms and the like since then. In April 2001, after extensive statewide discussion with education professionals and representatives of Native American communities, then-Commissioner of Education Richard P. Mills issued a memorandum entitled "Public Schools Use of Native American Names, Symbols, and Mascots." In the memorandum, Commissioner Mills confirmed that the use of Native American mascots can create a barrier to providing "a safe and supportive learning environment" for every child. He encouraged school districts to end the use of Native American symbols as mascots "as soon as practical." In response to Commissioner Mills memorandum, the District modified the imagery used for its "Indians" logo, replacing the image of a Native American in a Plains Indians-style headdress with one of a Native American in a headdress characteristic of local Eastern Woodland tribes.

The Board was petitioned in October 2020 to consider ending the use of the school mascot name "Indians" and related imagery. A few months later, a competing petition seeking the retention of the name and imagery was filed.

In December 2020, the Board voted to reconsider the use of the term "Indians" and related imagery and embarked on an eight-month review of the issue, a process which the Board terms "comprehensive" and which included soliciting public comments at several Board meetings, interviewing stakeholders, and review of "hundreds of pages" of academic studies and reports examining the use of Native American imagery and articles about the use of such imagery by other US school districts and professional and collegiate sports teams. Also reviewed were e-mails and other statements or reports by local and national Native American organizations, and educational and professional associations. The District also took into consideration its own formal equity, inclusion and diversity policy (hereinafter, the "Diversity Policy"), adopted in February 2021, which directed the District Superintendent to create practices to implement the stated policy of "creating a learning environment where all students, especially those currently and historically marginalized, feel safe, included, welcome and accepted." Trained mediators were also engaged to facilitate community-based discussions.

In the early days of summer 2021, following completion of the Board's eight-month review, the Board met repeatedly to discuss the use of the "Indians" name and imagery as a District mascot. At a meeting on June 10, 2021, a resolution was introduced to retire the "Indians" name and imagery entirely effective July 1, 2021. The resolution was tabled for further consideration. A special meeting for this purpose was scheduled for June 17, 2021. Legal counsel to the District prepared and circulated a revised resolution reflecting the discussions at the June 10, 2021 meeting.

On June 17, 2021 the Board put aside the revised resolution prepared by counsel and voted instead to adopt the June 10 resolution (hereinafter, the "June resolution") ending the use of the "Indians" name and imagery. The resolution referred to its 8-month review and the resources and perspectives considered in the process.

On July 8, 2021, the Board voted to reverse itself, rescinding the June resolution and renewing their commitment to the "Indians" name and logo as a mascot for the time being (hereinafter, the "July resolution"). The Board committed to considering potential changes to the current imagery and directed the Superintendent of Schools to include in the District's curriculum "enhanced instruction" in the history of Native American culture, with an emphasis on regional culture.

Acknowledging the opposition of the National Council of American Indians and "numerous other professional organizations" to the use of Native American images and names as mascots, the Board chose instead to rely on input from the "Native American Guardian Association" and the majority of the Cambridge community, including a handful of local Native Americans", who support the continued use of the "Indians" nickname and imagery. The Board also bemoaned the "deep divide and harm this issue and its differing standpoints have caused the community." In this respect, the Board placed found that the "harm" caused by discussing this issue was more significant than the proven harm to children caused by the use of race-based imagery.

There is no evidence the Board undertook formal efforts to reach out again to the community or to consult anew with other stakeholders, resources or education professionals in connection with the July resolution.

Respondents filed an appeal with the Commissioner seeking to annul the July resolution on the grounds that the Board's actions were arbitrary and capricious. A stay of the reinstatement of the "Indians" mascot and imagery during the pendency of the appeal was also sought.

The Commissioner's order dated August 23, 2021 granted the stay and the District was directed to adhere to the terms of the June resolution committing the District to removal of the "Indians" name and imagery by July 1, 2021[1].

The Commissioner granted the appeal by her Decision dated November 29, 2021 (Decision No. 18,058). The Commissioner found that the July 2021 "unexplained reversal" of the June resolution was arbitrary and capricious. Even if the Petitioners' singular course of action eliminating and then three (3) weeks later restoring the use of "Indians" name and imagery had had a basis in reason, she added, the retention of the "Indians" mascot, name and imagery was in itself an abuse of discretion on the part of the Board.

This proceeding under CPLR 7803(3) followed. The District and the Board argue that the Commissioner's Decision was arbitrary and capricious, without sound basis in reason or regard for the facts and affected by errors of law. The Decision is also said to have exceeded the Commissioner's authority and jurisdiction. A temporary restraining order and preliminary injunction is sought to enjoin the portion of the Decision requiring the removal of "Indians"-related imagery and nomenclature in District signage, uniforms, publications and letterhead.

[1] By her letter dated September 15, 2021, Commissioner Rosa extended the deadline to September 22, 2021. The Decision under review further extended the deadline to July 1, 2022.

Article 78 Standard of Review: Decisions of Administrative Agencies. Administrative agencies have broad discretion in decision-making (*see Matter of Ifrah v Utschig*, 98 NY2d 304, 308 [2002]). Because agency determination at issue here was not made following a quasi-judicial evidentiary hearing, the Court's inquiry is limited under CPLR 7803(3) to a single question: was the Commissioner's determination made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion (*Matter of Pine v. Westchester County Health Care Corp.*, 127 AD3d 868, 869 [3d Dept 2015], *citations omitted.*)

A presumption of regularity attaches to the actions of an administrative agency (*Georgian Motel Corp. v. New York State Liquor Authority*, 206 AD2d 761, 762 [3d Dept 1994]). The Court is required to defer to Commissioner's "rational interpretation of [her] agency's own regulations in its area of expertise" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Aponte v Olatoye*, 30 NY3d 693, 697-698 [2018]).

If the Commissioner's Decision is found to be supported by a rational basis, the Court must sustain it, even if it concludes that it would have reached a different result (*Matter of Peckham*, 12 NY3d at 431), or even if it finds that an entirely different, reasonable result might have been reached (*Matter of Ward v City of Long Beach*, 20 NY3d 1042 [2013]). Simply put, it is not the province of the Court to second-guess or substitute its own judgment for that of the Commissioner, provided that her Decision is not arbitrary, capricious or unsupported by substantial evidence (*Jackson v. New York State Urban Dev. Corp.*, 67 NY2d 400, 417 [1986]); *Matter of Johnson Elec. Constr. Corp. v New York State Dept. of Transp.*, 124 AD3d 1199, 1200 [3d Dept 2015]). Nor is it this Court's task to undertake a de novo review of the Board's actions

(*Matter of Romine v New York Pub. Serv. Commn.*, 2020 NY Misc LEXIS 1454* [Sup Ct Albany Cty]).

Decision. Turning to the central question of whether the Decision was rational, with a sound basis in reason or regard to the facts (*Matter of Peckham*, 12 NY3d at 431), the Court finds first that the Commissioner reviewed relevant precedent in the form of prior decisions by NYSED, acknowledging first that a school board is vested with the discretion to determine the propriety of a sports team name. The scope of this discretion, however, is not unlimited: a school board will be found to have abused its discretion if its choice of a nickname, mascot or logo interferes with the creation of "a safe and supportive environment that promotes the achievement of learning standards for all children." Similarly, a board will be determined to have abused its discretion if it changes its position from a prior approved course of action without explanation.

The Decision includes a detailed review of input received by the Board from community members, local and national Native American tribal councils and organizations, the NAACP, NYSED itself, and national professional and educational associations, all which were expressly relied upon in the June resolution. The June resolution, the Commissioner noted, also incorporated a review of the District's Diversity Policy and its finding that the use of the race-based "Indians" name and imagery was inconsistent with that policy.

In contrast, the Commissioner finds that the July resolution was entirely lacking in the evidence-based findings which impelled its June resolution. The July resolution acknowledges that the National Council of American Indians and other professional organizations urge the elimination of "Native 'themed' mascots", but there is no meaningful explanation as to why the

evidence which was so compelling in June was given short shrift only three weeks later. Instead of objective evidence, the July resolution relied on the urgings of David Honyoust, a District resident, a member of the Haudenosaunee Nation and the grandfather of a Board member. Honyoust, however, spoke only for himself. He was not an elected or appointed representative of the Haudenosaunee Nation, whose ancestors occupied the lands now used by the District. To the contrary, a 2021 statement of the Haudenosaunee Nation terms the use of Natives as mascots as offensive and defamatory. Also unaddressed, the Commissioner noted, was why the District opted to depart from its own Diversity Policy --- which the Board had earlier found to be violated by the use of the "Indians" name and imagery --- in perpetuating the use of a race-based nickname and imagery. The Court finds that the Commissioner Decision correctly determined that the summary reversal of the June resolution without further inquiry or explanation was arbitrary and capricious. Her further determination that the continued use of the "Indians" nickname and imagery, given the 20 years that have passed since Commissioner Mills' directive, and given the imperatives of the District's Diversity Policy, was itself an abuse of discretion.

The Commissioner's determination was consistent with agency rules and NYSED decisional precedent (*Matter of Peckham,* 12 NY3d at 431). It was evidence-based and rational.

The Court finds that the decision of the Commissioner was reasonable and rational, not in violation of lawful procedure, and was not arbitrary, capricious or an abuse of discretion, nor was it affected by an error of law (*Shurgin v Ambach*, 56 NY2d 700 [1982]). The Court has reviewed the parties' remaining arguments and finds them either unpersuasive or unnecessary to consider given the Court's determination.

Accordingly, it is hereby

ORDERED AND ADJUDGED, that the petition is dismissed, and the relief therein is in all respects denied.

This constitutes the Decision/Order/Judgment of the Court which is being electronically filed by the Court via NYSCEF for entry by the Albany County Clerk. Upon such entry, counsel for respondent shall promptly serve notice of entry on all other parties to this action (*see* Uniform Rules for Trial Courts 22 NYCRR § 202.5-b [h][1], [2]).

SO ORDERED AND ADJUDGED
ENTER.

Dated: June 22, 2022
Kingston, New York

Sara W. McGinty
Acting Supreme Court Justice

Papers Considered:

1. Verified Petition of Paul M. Aloy, Esq. filed March 25, 2022.
2. Affidavit of Anthony Cammarata filed March 25, 2022, with Exhibit 1-5.
3. Affirmation in Support of Petition by Paul M. Aloy, Esq. filed March 25, 2022, with Exhibits 1-8.
4. Answer in Special Proceeding by Melissa A. Latino, Esq., AAG filed April 19, 2022, with Exhibits A1- F5).
5. Memorandum of Law by Melissa A. Latino, Esq., AAG filed April 19, 2022.
6. Attorney Reply Affirmation by Paul M. Aloy, Esq. filed April 21, 2022, with Exhibit A-B.