

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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|---|---|------------------------------|
| Tim Allen, Maura Dwyer, | : | |
| Christianne Kapps, | : | |
| Robin Roberts, Christine Plush, | : | |
| Shirley Johnson, Bianca Eberhardt, | : | |
| Parents United for Public Education, | : | |
| Petitioners | : | |
| | : | No. 474 M.D. 2014 |
| v. | : | Submitted: February 27, 2015 |
| | : | |
| Carolyn Dumaresq, in her capacity | : | |
| as Acting Secretary of the Pennsylvania | : | |
| Department of Education, | : | |
| Respondent | : | |

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: June 19, 2015

Before this Court in our original jurisdiction are the preliminary objections of Carolyn Dumaresq, in her capacity as Acting Secretary of the Pennsylvania Department of Education (Secretary), to Petitioners¹ petition for review in the nature of a complaint seeking mandamus and declaratory relief (petition) to require the Secretary to receive and investigate curriculum deficiencies. The Secretary challenges the legal sufficiency of the petition on the grounds that: (1) mandamus cannot be used to attack the manner in which an

¹ Petitioners are Tim Allen, Maura Dwyer, Christianne Kapps, Robin Roberts, Christine Plush, Shirley Johnson, Bianca Eberhardt (individual Petitioners), and Parents United for Public Education (Parents United) (collectively, Petitioners).

official exercises her discretion or judgment, (2) the petition does not state a regulatory violation based on failure to take action on allegations of curriculum deficiencies, (3) the regulations do not bar the Secretary from referring allegations of *non*-curriculum deficiencies to a school district, and (4) the regulations do not require notice to complainants regarding their allegations. For the reasons that follow, we sustain in part and overrule in part the Secretary’s preliminary objections.

I. Petition

Petitioners commenced this action by filing the petition against the Secretary on the basis that she violated her mandatory regulatory duties to “receive and investigate allegations of curriculum deficiencies.” 22 Pa. Code §4.81. In support, Petitioners set forth the following averments.

The individual Petitioners are seven parents of students enrolled in various schools in the School District of Philadelphia (District), and Parents United is an organization that advocates for funding in the District. The Secretary is the acting Secretary of Education and head of the Pennsylvania Department of Education (Department).

In September 2013, the District reduced staff levels and supplies District-wide due to budgetary constraints. The staff cuts largely targeted counselors, librarians, and music, art and foreign language teachers.

In response, Parents United began a campaign, and it encouraged students, parents, teachers and caregivers in the District to submit to the Secretary

allegations of curriculum deficiencies. The campaign generated over 825 allegations, which were sent to the Secretary. The allegations called attention to: problems of overcrowded classrooms; lack of art, music, foreign language, and physical education curriculum; staffing shortages, including teachers, guidance counselors, librarians, administrators, and aides; and, unsafe or unsanitary conditions. Pet. for Review at ¶5. Petitioners claim these conditions impede delivery of the curriculum and interfere with the students' ability to respond to the curriculum. Id.

Petitioners' allegations echoed the general complaints. More particularly, Petitioner Allen alleged his child's school "cut foreign languages to two years" of any language. Id. at ¶23, Ex. H. He also complained of overcrowded classrooms, with desks one foot apart. As a result, the teacher was not able to walk between desks, engage with students, or maintain order in the classroom. Id. at ¶27, Ex. H. Allen received a one-page letter from the Department declining to investigate his allegations, stating his "concerns are entirely local matters that should be addressed by the District" and advising that the Department forwarded his "correspondence to the District for review and response." Id. at ¶29; Ex. G.

Petitioner Dwyer alleged lack of guidance counseling services, teaching staff, and non-teaching staff. She asserted the level of overcrowding made it difficult for teachers to walk between desks and properly supervise the students' work. According to Dwyer, a full-time guidance counselor is essential based on the multicultural nature of the school, the high percentage of students who live in poverty, and the fact that two students died in the 2013-2014 school

year. Pet. for Review at ¶¶30-36, Ex. I. Dwyer received a curt, one-page form letter from the Department, in which the Department advised it declined to investigate her concerns on the basis they were local matters and it referred them to the District for review. Id. at ¶37.

Petitioner Kapps alleged her child's school discontinued physical education classes, and she expressed concern regarding how her child would graduate without this mandatory curriculum. Id. at ¶¶41-42. She also alleged lack of teaching staff and overcrowded classrooms without sufficient chairs for students. Id. at ¶¶43-44. In addition, she complained the coursework in her child's accelerated honors program was "watered down" to accommodate more students, and she alleged a decrease in the writing programs offered. Id. at ¶¶43, 45, Ex. J, K. Kapps received a one-page form letter response declining to investigate her concerns, stating they were local matters and that her allegations would be forwarded to the District. Id. at ¶47.

Petitioner Roberts reported decreased gifted education and lack of guidance counseling services. She also claimed insufficient non-teacher staff and inadequate maintenance of school facilities, such as lavatories. Id. at ¶¶51-52, Ex. L, M. Roberts did not receive a response to her allegations. Id. at ¶56.

Petitioner Plush alleged a lack of a full-time guidance counselor and lack of non-teaching staff. She also complained that only a small number of art classes are available outside of the theater program. Id. at ¶60. She also alleged the school "cut the Latin program," which limited her child's ability to take four

consecutive years in a foreign language. Id. at ¶61, Ex. N. Plush received a one-page form letter response advising her concerns are local matters and that the Department would forward her allegations to the District. Id. at ¶62.

Petitioner Johnson cited lack of guidance counseling services, teaching staff, non-teaching staff and facilities, which she claimed resulted in a loss of instruction. She complained the itinerant guidance counselor is available only one day a week as compared to two full-time counselors the previous year. Id. at ¶65, Ex. O. Johnson is unaware of any individualized response or investigation of her allegations. Id. at ¶68.

Petitioner Eberhardt's allegations likewise concerned lack of guidance counseling services, teaching staff, non-teaching staff and facilities, which she claimed resulted in a loss of instruction. Eberhardt also cited overcrowding, which she claimed prevents teachers from providing additional attention to students. Id. at ¶72, Ex. P. Petitioner Eberhardt is unaware of any individualized response or investigation of her allegations. Id. at ¶73.

Parents United sent an omnibus allegation to the Secretary regarding the lack of guidance counselors at 35 District schools based on parents' complaints. Id. at ¶76. The Department responded it will not conduct any investigation of counseling-related allegations. Id. at ¶89, Ex. F.

Petitioners attached several documents to their petition, including: their allegations of curriculum deficiencies sent to the Secretary; the Public Interest

Law Center of Philadelphia's letter to the Secretary regarding lack of guidance counselors in the District, the Department's letter in response, and the Department's letter forwarding those allegations to the District for response; and, the Department's letter to Allen in response to his allegations. See Pet. for Review, Exs. B-C, E-P.

Based on these averments, Petitioners ask this Court to grant a writ of mandamus directing the Secretary to: immediately receive and investigate their allegations of curriculum deficiencies, refer the allegations to the Superintendent of the District; and, direct the District to take corrective action if the Secretary determines curriculum deficiencies exist. In addition, Petitioners request a declaration that the Secretary violated her nondiscretionary regulatory duties.

II. Preliminary Objections

In response to the petition, the Secretary filed preliminary objections in the nature of a demurrer because the petition does not allege a clear right to relief or a corresponding duty. The Secretary contends she is under no duty to receive or investigate the allegations as they pertain to non-curriculum deficiencies. Moreover, she asserts, mandamus cannot be used to attack the manner in which an official exercises her discretion or judgment. In addition, she objects because the regulations do not preclude her from referring non-curricular deficiencies to a school district or require her to notify the person submitting the allegation of the status or outcome of that allegation.

III. Discussion

At the outset, we note, a demurrer contests the legal sufficiency of a complaint. Barge v. Pa. Bd. of Prob. & Parole, 39 A.3d 530 (Pa. Cmwlth. 2012), aff'd per curiam, 96 A.3d 360 (Pa. 2014). In considering a demurrer, we accept as true all well-pled material allegations in the petition, as well as all inferences reasonably deducible therefrom. Petsinger v. Dep't of Labor & Indus., Office of Vocational Rehab., 988 A.2d 748 (Pa. Cmwlth. 2010). “However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted.” Id. at 753 n.1 (quoting Christ the King Manor v. Dep't of Pub. Welfare, 911 A.2d 624, 633 (Pa. Cmwlth. 2006), aff'd per curiam, 951 A.2d 255 (Pa. 2008)).

In addition, courts reviewing preliminary objections may not only consider the facts pled in the complaint, but also any documents or exhibits attached to it. Allen v. Dep't of Corr., 103 A.3d 365 (Pa. Cmwlth. 2014). It is not necessary to accept as true any averments in the complaint that conflict with attached exhibits. Id.

A preliminary objection in the nature of a demurrer must be sustained where it is clear and free from doubt that the law will not permit recovery under the facts alleged. Petsinger. Any doubt must be resolved in favor of the non-moving party. Id.

Further, a proceeding in mandamus is an extraordinary remedy at common law, designed to compel the performance of a ministerial act or

mandatory duty. Fagan v. Smith, 41 A.3d 816 (Pa. 2012). A court may only issue a writ of mandamus where: (1) the petitioner possesses a clear legal right to enforce the performance of a ministerial act or mandatory duty; (2) the defendant possesses a corresponding duty to perform the act; and, (3) the petitioner possesses no other adequate or appropriate remedy. Id. Mandamus can only be used to compel performance of a ministerial duty and will not be granted in doubtful cases. Petsinger. The purpose of mandamus is not to establish legal rights, but to enforce those rights already clearly established. Id.

With these principles in mind, we examine Secretary's demurrer and the facts alleged in the petition.

A. Curriculum Deficiencies

First, the Secretary demurs on the basis that the allegations do not implicate "curriculum deficiencies," regardless of how they were labeled. The Secretary maintains she is under no duty to receive or investigate non-curricular deficiencies, only curriculum deficiencies. She asserts her interpretation of what constitutes a "curriculum deficiency" is entitled to deference by the courts and is not subject to review via mandamus.

An agency's interpretation of its governing regulations is entitled to strong deference unless it is clearly erroneous. Tire Jockey Serv., Inc. v. Dep't of Env'tl. Prot., 915 A.2d 1165 (Pa. 2007). "If the words of a regulation are clear and free from ambiguity, the letter of the regulation may not be disregarded under the

pretext of pursuing its spirit.” Highway News, Inc. v. Dep’t of Transp., 789 A.2d 802, 808 (Pa. Cmwlth. 2002).

The regulation at issue is Section 4.81 of Title 22 of the Pennsylvania Administrative Code, 22 Pa. Code §4.81. Section 4.81 provides the Secretary “will receive and investigate allegations of curriculum deficiencies.” 22 Pa. Code §4.81(a). Also, “[t]he Secretary will notify the school entity's superintendent or chief executive of allegations.” 22 Pa. Code §4.81(b). The Secretary “may require” the superintendent or chief executive” to provide:

- (1) Relevant descriptions of planned instruction.
- (2) A series of written articulated courses of instructional units.
- (3) Relevant student assessment information.
- (4) Information on staff assignments.
- (5) Other information pertinent to investigating a specific allegation.

Id. “If the Secretary determines that a curriculum deficiency exists, the school entity shall be required to submit to the Secretary for approval a plan to correct the deficiency.” 22 Pa. Code §4.81(c).

The regulations define the term “curriculum” as: “A series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.” 22 Pa. Code §4.3 (emphasis added).

Sections 4.20 to 4.29 of the regulations pertain to “curriculum and instruction.” Section 4.25(a) provides:

Every school district shall provide planned instruction in at least two [world] languages in addition to English, at least one of which shall be a modern language, and at least one of which shall be offered in a minimum 4-year sequence in the secondary program (middle level and high school).

22 Pa. Code §4.25(a). Section 4.23(c) provides:

Planned instruction aligned with academic standards in the following areas shall be provided to every student in the high school program. Planned instruction may be provided as a separate course or as an instructional unit within a course or other interdisciplinary instructional activity:

(1) Language arts, integrating reading, writing, listening, speaking, literature and grammar.

* * *

(6) The arts, including art, music, dance, theatre and humanities.

* * *

(8) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts, motor skill development, safety in physical activity settings, and the prevention of alcohol, chemical and tobacco abuse.

...

22 Pa. Code §4.23(c) (emphasis added).

In addition, Section 4.27(a) provides: “Physical education shall be taught as required under §§ 4.21(e)(6) and (f)(8), 4.22(c)(8) and 4.23(c)(9) (relating to elementary education: primary and intermediate levels; middle level education; and high school education).” Section 4.28(b) provides: “Students who

are gifted ... shall be provided an education that enables them to participate in acceleration or enrichment, or both, as appropriate.”

Notably, the regulations pertaining to curriculum and instruction do not mention guidance counselors or facilities. See 22 Pa. Code §§4.20-4.29. Indeed, guidance counselor services are classified as a type of “student service” addressed in chapter 12 of the regulations. See 22 Pa. Code §§12.16, 12.41(b)(1). Student services, while designed to “promote the instructional program” and help students attain their educational and career goals, are not considered part of the curriculum or planned instruction. 22 Pa. Code §12.16.

Here, the Secretary contends Petitioners did not advance curriculum deficiencies. According to the Secretary’s interpretation, “curriculum refers to topics covered in a particular academic subject area and not to things such as proximity of desks, counselor staffing or cleanliness of bathrooms.” Resp’t’s Br. at 19.

Petitioners argue that anything that affects the implementation of planned instruction is curriculum. More particularly, Petitioners assert that classroom and building conditions, such as overcrowding, lack of staff and unsanitary restrooms, interfere with the implementation or delivery of instruction. They also claim guidance counselors are essential to ensure that instruction is implemented in such a manner designed to achieve proficiency by all students.

Although we recognize Petitioners’ concerns may have some effect on a student’s educational experience and the proficiency level achieved, many of the

concerns relate to facilities and staff, not to the curriculum itself. To conclude otherwise would expand the term curriculum beyond its plain meaning under the pretext of pursuing its spirit.

Upon review, the Secretary's interpretation of curriculum -- that it does not extend to matters beyond a particular academic subject area -- is not erroneous or inconsistent with the regulations. Rather, it is in accordance with the plain, unambiguous language of the regulations and common usage. Because the allegations relating to the facilities and staff are not curricular deficiencies, the Secretary was under no duty to receive or investigate such allegations under Section 4.81.

However, Petitioners also alleged deficiencies relating to the planned instruction aligned with the academic standards. Specifically, they alleged the schools eliminated physical education, reduced the foreign language curriculum to two years, diluted the accelerated nature of the honors program, and decreased the number of writing and art courses offered. Pet. for Review at ¶¶ 23, 41, 43, 45, 50, 61. Unlike facility or staffing concerns, these allegations directly pertain to curriculum as that term is defined.

Thus, we sustain the Secretary's objection only insofar as Petitioners' allegations pertain to non-curricular deficiencies. We overrule the Secretary's objection to the extent the allegations reported curriculum deficiencies.

B. Mandamus

Next, the Secretary contends the petition fails to state a cause of action because mandamus is not available to compel discretionary acts. The Secretary, upon receiving the allegations, reviewed them and referred them to the District for review and response. She asserts her exercise of discretion in handling the allegations is not subject to mandamus relief.

Mandamus is an appropriate remedy to compel a public official to fulfill her duties. Fagan. “A mandatory duty is ‘one which a public officer is required to perform upon a given state of facts and in a prescribed manner in obedience to the mandate of legal authority.’” Chester Comm. Charter Sch. v. Dep’t of Ed., 996 A.2d 68, 75 (Pa. Cmwlth. 2010) (quoting Filippi v. Kwitowski, 880 A.2d 711, 713 (Pa. Cmwlth. 2005)). Mandamus is appropriate when an agency’s decision not to act is based on an “interpretation of its own regulations [that] is inconsistent with its plain language.” Seeton v. Pa. Game Comm’n, 937 A.2d 1028, 1030 (Pa. 2007).

Generally, mandamus is not available to compel discretionary acts. Allegheny Cnty. v. Commonwealth, 490 A.2d 402 (Pa. 1985). However, it can be used to compel a public official to exercise discretion where she refuses to do so. Chadwick v. Dauphin Cnty. Office of Coroner, 905 A.2d 600 (Pa. Cmwlth. 2006). “[W]here by a mistaken view of the law or by an arbitrary exercise of authority there has been in fact no actual exercise of discretion, the writ will lie.” Id. (quoting Tanenbaum v. D’Ascenzo, 51 A.2d 757, 758 (Pa. 1947)). In other words, “[w]here the public official has discretion in *how* to perform the act, mandamus

may compel the exercise of discretion, but it may not interfere with the manner in which the discretion is exercised.” Chester Comm., 996 A.2d at 75 (underlined emphasis added).

Here, Petitioners allege the Secretary did not “receive and investigate” their allegations of curriculum deficiencies. With regard to receipt, Petitioners allege they sent the Secretary their allegations of curriculum deficiencies. However, they do not allege the Secretary refused receipt of their allegations. In fact, Petitioners allege the Secretary failed or refused to “investigate allegations of curriculum deficiencies that she received” Pet. for Review at ¶91 (emphasis added). Moreover, some Petitioners alleged they received a written response acknowledging the Secretary’s receipt of their allegations. See Pet. for Review at ¶¶29, 37, 47, 62. Thus, Petitioners do not sufficiently allege the Secretary did not “receive” their allegations of curriculum deficiencies.

With regard to investigation, Petitioners allege the Secretary failed or refused to investigate their allegations of curriculum deficiencies. Pet. for Review at ¶¶85, 87, 90. Petitioners reported curriculum deficiencies relating to foreign language, physical education, art and writing curriculum, and the gifted and honors programs. Pet. for Review at ¶¶ 23, 41, 43, 45, 50, 61. They alleged they received “a curt one-page form letter” from the Department “declining to investigate” allegations stating they were “local matters” and advising that the Department would forward the allegations to the District for review. See Pet. for Review at ¶¶29, 37, 47, 62. More particularly, the Department advised Allen, who alleged a deficiency with the foreign language curriculum: “In reviewing your

correspondence, we have determined that the concerns are entirely local matters that should be addressed by the District. Therefore, the Department is forwarding your correspondence to the District for review and response.” Id., Ex. G.

Although Petitioners alleged both curricular and non-curricular deficiencies, according to the averments and exhibits, the Secretary did not distinguish between the allegations. Instead, the Department treated all allegations as “local matters” and referred them to the District for review and response. See Pet. for Review at ¶¶29, 37, 47, 62, Ex. G.

Although mandamus cannot compel the manner in which discretion is exercised, it can compel the exercise of that discretion. Chester Comm. At this juncture, it is unclear whether the Secretary actually “investigated” the allegations of curriculum deficiencies or simply referred them to the District, without investigation, upon determining they did not constitute allegations of curriculum deficiencies. As any doubts are to be resolved against sustaining the demurrer, we must overrule the Secretary’s objection in this regard.

C. Referral to the District

Next, the Secretary asserts Petitioners fail to state a claim for relief because the regulations do not preclude the Secretary’s referral of non-curricular deficiencies to the District.

As discussed above, Section 4.81 only pertains to allegations of curriculum deficiencies, not non-curricular deficiencies. To the extent Petitioners’

allegations pertain to non-curricular matters, the Secretary's referral of the allegations to the District for handling is not a violation of Section 4.81. As a result, Petitioners do not state a claim for relief on this basis.

D. Notification

Finally, the Secretary asserts Petitioners did not aver a clear right to relief because the Secretary was not required to notify persons making allegations of her actions.

Petitioners complain that the Secretary did not directly respond to all of their allegations. Petitioners alleged only some of them received a response from the Secretary, while others did not. Pet. for Review at ¶13. The response received was not an "individualized response," but rather a "curt, one-page form letter." Id. at ¶¶29, 68.

Contrary to Petitioners' assertions, the Secretary is not required to acknowledge receipt or provide notice to the persons making the allegation. See 22 Pa. Code §4.81. Furthermore, the Secretary is not required to notify them of the status or outcome of the allegations received. See id. Thus, Petitioners do not state a claim for relief on this basis.

IV. Conclusion

Based on the foregoing, we sustain in part, and overrule in part, the Secretary's preliminary objections.²

ROBERT SIMPSON, Judge

² Although Petitioners also requested declaratory relief, such relief would not provide them with an adequate remedy and, if it did, it would negate their right to relief in mandamus. See Fagan v. Smith, 41 A.3d 816 (Pa. 2012) (mandamus relief available only where the petitioner possesses no other adequate or appropriate remedy); Parents Against Abuse in Schs. v. Williamsport Area Sch. Dist., 594 A.2d 796 (Pa. Cmwlth. 1991) (merely declaring the rights of the parties would not afford complete relief); see also Pittsburgh Palisades Park, LLC v. Pa. State Horse Racing Comm'n, 844 A.2d 62 (Pa. Cmwlth. 2004) (holding where another remedy has already been sought in a pending proceeding, a declaratory judgment action should not ordinarily be entertained).

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BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

CONCURRING AND DISSENTING OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: June 19, 2015

Because I would conclude that Petitioners failed to state a claim for which relief can be granted because they did not allege any curriculum *deficiencies*, I would sustain the Secretary’s preliminary objections. Accordingly, I concur in part and dissent in part.

In accordance with 22 Pa. Code §4.81(a), the Secretary is required to “receive and investigate allegations of curriculum deficiencies from professional employees, commissioned officers, parents of students or other residents of a school

entity.” If the Secretary determines that a curriculum deficiency exists, the school entity is required to submit to the Secretary a plan to correct the deficiency. 22 Pa. Code §4.81(c). Thereafter, the Secretary is required to review any action taken by the school entity, and if appropriate action is not taken, the Secretary must take action under state law. 22 Pa. Code §4.81(d) and (e). This case concerns some of the more than 825 “allegations of curriculum deficiencies” that were sent to the Secretary after the District reduced staff levels and supplies due to budgetary constraints.

Curriculum is defined as “[a] series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.” 22 Pa. Code §4.3. Here, the Secretary determined that Petitioners’ allegations did not amount to curriculum deficiencies and, therefore, no further action was required. An agency’s interpretation of its regulations is entitled to great deference. *Peoples Natural Gas Company v. Pennsylvania Public Utility Commission*, 567 A.2d 642, 643-44 (Pa. 1989).

Here, the majority concludes that the Secretary properly determined that Petitioners’ alleged deficiencies relating to facilities and staff were not curriculum deficiencies. (*See* Maj. Op. at 12.) On this point, I agree. However, unlike the majority, I would further conclude that the Secretary properly determined that Petitioners failed to allege any curriculum deficiencies concerning physical education, foreign language, honors programs, and art and writing courses.

Petitioner Kapps alleged that her child is not taking a physical education class and that as she understands the curriculum, some physical education classes are required for her child to graduate from high school. (Pet. for Review, Ex. J.)

In accordance with 22 Pa. Code §4.24(a), each high school's governing board is charged with adopting and implementing the high school's physical education graduation requirements. Petitioner Kapps does not set forth the physical education requirements of her child's high school nor does she allege that her child cannot obtain the physical education credits required to graduate. Petitioner Kapps' allegation that her child is not presently enrolled in a physical education class is not a curriculum deficiency because nothing in the regulations requires her present enrollment.

Petitioner Allen alleged that his child's high school "cut foreign languages to just two years of Spanish." (Pet. for Review, Ex. H.) Petitioner Plush alleged that her child took Latin in ninth grade, but the school subsequently cut the Latin program, which limited her child's ability to take four consecutive years of a foreign language. (*Id.*, ¶ 61.)

In accordance with 22 Pa. Code §4.25(a) (emphasis added), a district is required to offer at least two world languages, "*one* of which shall be offered in a minimum 4-year sequence in the secondary program (middle level and high school)." Here, at best, Petitioners alleged that the high schools their children attend offer some world languages for only one or two years. However, there is no allegation that the

District, via its middle¹ and high schools, fails to offer one world language that complies with the 4-year sequence requirement. Thus, Petitioners have failed to allege a foreign language curriculum deficiency.

Petitioner Kapps alleged that her child's honors classes have been "watered down" due to an increased number of students in the classes. (Pet. for Review, Ex. K.) In accordance with 22 Pa. Code §4.28(b), gifted students shall be provided an opportunity to participate in accelerated or enriched programs. By offering participation in an honors program, the high school is in compliance with the regulations. A general allegation of "watered down" instruction does not amount to a curriculum deficiency.

Petitioner Kapps also alleged that her child's high school decreased the number of writing programs offered. (Pet. for Review, ¶ 45.) In accordance with 22 Pa. Code §4.23(c)(1), a high school shall offer writing instruction as a separate course or as an instruction unit in another course or other interdisciplinary instructional activity. The regulations do not require a specific number of writing programs. By offering a writing program, the high school is in compliance with the regulation. Thus, Petitioners have failed to allege a curriculum deficiency here as well.

Petitioner Plush similarly alleged that her child's high school only offered a small number of art classes outside of the theater program. (Pet. for Review, ¶ 61.) In accordance with 22 Pa. Code §4.23(c)(6), a high school shall offer instruction in the arts. Again, however, the regulations do not require a specific

¹ Middle level instruction serves children 11 to 14 years of age. 22 Pa. Code §4.22(a).

number of art classes. By offering art classes, the high school is in compliance with the regulations. As such, Petitioners failed to allege a curriculum deficiency.

Petitioners are, understandably, dissatisfied that the District's budgetary cuts have resulted in fewer paid teachers and class offerings. Although I agree with the majority that Petitioners' "allegations directly pertain to curriculum" (Maj. Op. at 12), I disagree that Petitioners have alleged any curriculum *deficiencies*. Because Petitioners' petition for review fails to state a claim for which relief can be granted, I would sustain the Secretary's preliminary objections.

ROCHELLE S. FRIEDMAN, Senior Judge