STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

G.L., by C.L., his mother, on his behalf,
and by G.L., on his own behalf,

Petitioners,

-against-

ORDER and JUDGMENT
INDEX NO. 695-12

JOHN KING, NEW YORK STATE EDUCATION COMMISSIONER and THE RENAISSANCE CHARTER SCHOOL,

Respondents.

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules.

(Supreme Court, Albany County, Special Term, June 29, 2012)
(Hon. Eugene P. Devine, J.S.C., presiding)

APPEARANCES:

Nixon Peabody, LLP
(Edward D. Altabet, Esq., Robert Sentner, Esq.,
and Annica Sunner, Esq., of Counsel)
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New York, New York 10022

and

Advocates for Children of New York, Inc.
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and Rebecca C. Shore, Esq., of Counsel)
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Attorneys for Petitioner

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Attorneys for Respondent

DEVINE, J.:

During the 2010-2011 school year, petitioner G.L. was a senior enrolled at respondent The Renaissance Charter School (hereinafter the school) located in Jackson Heights, Queens. By letter, dated February 9, 2011, the school notified G.L.'s mother, C.L., that it was considering expelling him for violating the terms of a previously executed behavior contract and an agreement in lieu of formal disciplinary hearing, as well as for conduct in violation of the school's Student Support and Discipline Code.

A disciplinary hearing was held on February 16, 2011. Following the hearing, the Hearing Officer found that G.L. was guilty of the charged conduct and recommended that G.L. be suspended for the remainder of the 2010-2011 school year. On February 28, 2011, the school adopted the Hearing Officer's decision. In response to an appeal filed by petitioners, the school's principal upheld the Hearing Officer's determination on April 1, 2011. Petitioners subsequently filed an appeal with the school's Board of Trustees, which also affirmed the Hearing Officer's determination in a decision dated May 4, 2011.

Thereafter, petitioners filed an appeal with respondent Commissioner of Education of the State of New York (hereinafter Commissioner). In a determination, dated October 4, 2011, the Commissioner dismissed the appeal after finding that he did not have jurisdiction to address the allegations raised therein. Petitioners then commenced the instant CPLR Article 78 proceeding seeking review of the Commissioner's determination. Significantly, petitioners limited their challenge to whether "the Commissioner relied upon inapplicable law to erroneously dismiss Petitioners' appeal for lack of jurisdiction."[1]

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[1] Verified Petition, ¶3.

The Commissioner answered and opposes the relief sought.

Preliminarily, petitioners move to proceed by pseudonym and further seek an order sealing Exhibit 2 of the verified petition pursuant to 22 NYCRR 216.1. Respondents have not opposed petitioners' request. 22 NYCRR 261.1(a) provides, in pertinent part:

> Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.

Here, the Court finds that petitioners have demonstrated good cause for their use of pseudonyms and for entry of an order sealing Exhibit 2 of the verified petition. More particularly, the disclosure of petitioners' identities and of sensitive educational records risks compounding the harm complained of and may unnecessarily result in social stigma. The Court further finds that the documents introduced at the hearing and the recording of the hearing itself have no significant public value. Moreover, as noted above, respondents did not submit any papers in opposition to petitioners' motion.

Accordingly, it is hereby ordered that petitioners shall be permitted to proceed by pseudonym, with the caption to bear the initials G.L. and C.L., and Exhibit 2 to their verified petition shall be held under seal by this Court and shall not be open to examination by the public.

The standard of review of an administrative decision issued by the Commissioner is limited. Specifically, the Court may not substitute its judgment for that of the Commissioner unless the decision under review is arbitrary and capricious, lacks a rational basis, or is affected by an error of

law.[2] Further, "[d]eference is generally accorded to an administrative agency's interpretation of statutes it enforces when the interpretation involves some type of specialized knowledge."[3] Likewise, courts are required to defer to "the interpretation given to a regulation by the agency which promulgated it and is responsible for its administration . . . if that interpretation is not irrational or unreasonable."[4]

Here, the Commissioner decided, in pertinent part:

> Given that the Legislature specifically provided a process for resolving disputes against a charter school, I find that I do not have jurisdiction pursuant to Education Law § 310 to address the allegations raised in this appeal. I note that the School's discipline code, which was submitted with respondent's answer, indicates that decisions of the board of trustees may be appealed to the Commissioner. This provision of the School's discipline code conflicts with Education Law § 2855 (4) by not providing for review of the charter school complaint by the charter entity prior to seeking review by the Commissioner on behalf of the Board of Regents and cannot confer jurisdiction over this appeal.
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> Accordingly, petitioner must follow the process set forth in Education Law § 2855 (4) and present her complaint to the Chancellor. If dissatisfied with the Chancellor's response, petitioner may then bring the complaint to the Commissioner through the New York State Education Department's Charter School Office in accordance with 8 NYCRR § 3.16(a).[5]

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[2] see Matter of Board of Educ. of Monticello Cent. School Dist. v Commissioner of Educ., 91 NY2d 133, 139 [1997]; Matter of Viglietta v Mills, 39 AD3d 1119, 1120 [2007]; Matter of Board of Educ. of Millbrook Cent. School Dist. v Ambach, 96 AD2d 637, 638 [1983], lv denied 61 NY2d 603 [1984].

[3] Matter of Belmonte v Snashall, 2 NY3d 560, 565 [2004].

[4] Matter of Gaines v New York State Div. of Hous. & Community Renewal, 90 NY2d 545, 548-549 [1997].

[5] Altabet Aff., Ex. 1, at 2.

To this end, Education Law § 2855 (4) provides:

> Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this article, the charter, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the board of trustees of a charter school, the individual or group determines that such board has not adequately addressed the complaint, they may present that complaint to the charter entity, which shall investigation and respond. If, **after presentation of the complaint to the charter entity**, the individual or group determines that the charter entity has not adequately addressed the complaint, **they may present that complaint to the board of regents, which shall investigate and respond**.[6]

After carefully reviewing the applicable statutory and administrative decisional law, this Court cannot say that the Commissioner's determination was improper, arbitrary and capricious, affected by an error of law, or an abuse of discretion.[7] Indeed, the procedure outlined in Education Law § 2855 (4) clearly requires a petitioner to present his or her complaint to the charter entity before seeking review by the Board of Regents. Here, petitioner bypassed the charter entity in contravention of Education Law § 2855 (4) and, instead, proceeded directly to the Board of Regents' level. To the extent petitioner relies on the complaint procedure set forth in the school's discipline code, which conflicts with that outlined in Education Law § 2855 (4), the Court notes that the Commissioner is bound by the statutory mandate. The petition must, therefore, be dismissed. The remainder of petitioners' arguments are rendered academic by such dismissal.

Accordingly, it is now

ORDERED that petitioners shall proceed by pseudonym, with the caption to bear the initials

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[6] Education Law § 2855(4) (emphasis supplied).

[7] see Education Law §§ 310; 2855(4); Chuang Aff., Ex. 3.

G.L. and C.L., and Exhibit 2 to the petition shall be held under Seal by this Court and shall not be open to public examination unless and until further order of this Court; it is further

ORDERED and ADJUDGED that the petition is hereby dismissed in its entirety.

Those arguments not specifically addressed herein are found to be unpersuasive or were otherwise rendered academic.

This memorandum shall constitute the Order and Judgment of the Court. This Original Order and Judgment is being sent to the Attorney General. The signing of this Order and Judgment shall not constitute entry or filing under CPLR 2220. The Attorney General is not relieved from the applicable provisions of that section with respect to filing, entry, and notice of entry.

SO ORDERED
ENTER

Dated: 9/18, 2012
Albany, New York

EUGENE P. DEVINE, J.S.C.

cc: Edward D. Altabet, Esq.
Avni Bhatia, Esq.

PAPERS CONSIDERED:

1. Notice of Petition, dated February 3, 2012; Verified Petition, dated February 2, 2012; Affirmation of Edward D. Altabet, Esq. in Support of Article 78 Petition, dated February 2, 2012, with annexed exhibits; Memorandum of Law in Support of Petitioners' Article 78 Petition, dated February 2, 2012;

2. Notice of Motion to Proceed by Pseudonym and File Certain Exhibits Under Seal, dated February 2, 2012; Affirmation of Edward D. Altabet, Esq. in Support of Motion to Proceed by Pseudonym and File Certain Exhibits Under Seal, dated February 3, 2012; Petitioners' Exhibit 2; Memorandum of Law in Support of Petitioners' Motion to Proceed by Pseudonym and File Certain Exhibits Under Seal, dated February 2, 2012;

3. Verified Answer, dated May 25, 2012; Affidavit of Cliff W. Chuang, sworn to May 25, 2012, with annexed exhibits; Memorandum of Law, dated May 22, 2012; Certification of Record, dated March 29, 2012, with annexed exhibits; and

4. Memorandum of Law in Further Support of Petitioners' Article 78 Petition, dated June 15, 2012.