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Resolution 5 (SY21-22)

Resolution Demanding That Proposed Chancellor's Regulation D-210 Is Immediately Withdrawn From Consideration by the Panel for Educational Policy

Resolution passed 12/20/21 (8 Yes, 0 No, 3 Absent)

Co-sponsors: Stephen Stowe, Vito LaBella

Whereas, at the December 21st meeting of the Panel for Educational Policy (PEP), a new Chancellor's regulation is scheduled to be voted on. The regulation in question is Regulation D-210 and is titled "CITYWIDE AND COMMUNITY EDUCATION COUNCIL CODE OF CONDUCT AND COMPLAINT PROCEDURES: ANTI-DISCRIMINATION AND ANTI-HARASSMENT POLICY" ("The Regulation").

Whereas, The Regulation "sets forth the New York City Department of Education's Anti-Discrimination and Anti-Harassment policy governing the conduct of the elected and appointed members of the Community and Citywide Education Councils and establishes a procedure for the filing and resolution of complaints of violation of this regulation".

Whereas, the Regulation attempts to establish a regulatory domain in areas which inherently involve speculative, subjective and circumstantial evidence. The following underlined terms from the text of the Regulation are especially ambiguous and reduce the burden of proof to a very low level. To ensure democratic application, such regulatory authority requires a strong judicial review process and governance framework, both of which are lacking in this Regulation. In the absence of such institutional safeguards, the Regulation could be applied in an arbitrary and abusive manner.

As stated in the Regulation: "Council Members shall not engage in conduct that serves to harass, intimidate, or threaten, including but not limited to frequent verbal abuse and unnecessary aggressive speech that serves to intimidate and causes others to have concern for their personal safety".

Furthermore: "It is the policy of the DOE to prohibit retaliation against any individual who objects to discriminatory practices or who complains of discrimination or harassment pursuant to this regulation, or who

files or participates in the investigation of an alleged violation of this regulation. Any adverse act against individuals due to said participation is considered retaliatory”.

Whereas, The Regulation applies to an extremely broad range of instances and carries an extremely low threshold for violation. The underlined language is especially egregious as these terms lower the burden of proof to an almost meaninglessly low level.

As stated in the Regulation: "Conduct refers to verbal and physical acts and behavior, including a Council Member's use of oral and written language, when it occurs during or at (a) CCEC meetings, (b) events hosted by the CCEC, (c) CCEC elections and campaigns, (d) public appearances and events a Council Member attends in their official capacity, and (e) other activities when such conduct creates or would foreseeably create a risk of disruption within the district or school community the Council Member serves and/or interferes with the functioning of the CCEC or the performance of the Council Member's CCEC duties." The Regulation also states that: "Council Members shall not cause, request, or encourage any person, entity or organization with which they are affiliated to promote or engage in conduct that would violate this regulation if engaged in by the Council Member." Regulation (e) broadly construed could well prohibit constitutionally protected behavior such as but not limited to the rights of Free Speech, the right to protest and the right of free association.

Whereas, The Regulation concentrates a considerable amount of power in the hands of one unelected individual (the ECO) and the unelected FACE Equity Council, neither of which are subject to independent oversight or accountability. The Regulation creates a position called the Equity Compliance Officer (ECO) who is responsible for determining violations of this Regulation. This position is hired by the Family And Community Empowerment (FACE) Division of the Department of Education (DOE) with input from a newly created body called the FACE Equity Council, a group of parents from Community Education Council's (CEC's) and the Chancellor's Parent Advisory Council (CPAC).

As stated in the Regulation, the ECO essentially has unchecked power over determining violations of the Regulation: "Following the investigation, the ECO shall submit a written report of findings and a recommendation as to whether there has been a violation of this regulation and recommended corrective or disciplinary action to the Equity Council. The Equity Council shall review the findings and recommendations and, within 10 calendar days, provide its recommendation to the ECO. In the event of a disagreement between the ECO and the Equity Council, the recommendation of the ECO shall govern”.

There is very limited judicial accountability for the ECO who answers solely to the DOE. In addition, there is no information on the selection and makeup of the FACE Equity Council. This appears to be an unelected body and likely will be selected by the DOE, offering no independent governance over the process.

Whereas, violation of the Regulation allows the DOE to remove members from the CEC and prohibit them from running again. The Regulation states: “Any corrective or disciplinary action shall be taken consistent with Education Law Section 2590-1 and may include, but is not limited to, issuance of an order to cease improper conduct or take required action, or suspension or removal of a member... Council Members who have been removed from office for their conduct may be prohibited from subsequently serving on any Council, or school or district Title I Parent Advisory Council”.

Whereas, CEC Members are elected by parents and are accountable to parents through a public election process. Council members do not serve at the pleasure of the Mayor and / or appointees of the Mayor.

Whereas, there is no real appeal process, only a "conciliation" process which can easily be subverted. The Regulation states: “The Chancellor may suspend or remove a Council Member without an opportunity for conciliation if the conduct:

1. is criminal in nature,
2. poses an immediate danger to the safety or welfare of students or any DOE employee, or
3. in the judgment of the Chancellor, is contrary to the best interest of the New York City school district.”

Therefore be it resolved that:

The DOE immediately withdraws this highly flawed and undemocratic regulation from consideration for approval or Panel for Education Policy vote to reject this regulation for the above reasons.