

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

588

CA 09-02367

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

IN THE MATTER OF KEVIN FAGER, THOMAS GILLETT,
AND OTHER PETITIONERS UNITED IN INTEREST,
PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

BOARD OF EDUCATION, ROCHESTER CITY SCHOOL
DISTRICT, RESPONDENT-RESPONDENT.

JAMES R. SANDNER, LATHAM (JAMES D. BILIK OF COUNSEL), FOR
PETITIONERS-APPELLANTS.

CHARLES G. JOHNSON, ROCHESTER (MICHAEL E. DAVIS OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Monroe County (David Michael Barry, J.), entered January 26, 2009 in a proceeding pursuant to CPLR article 78. The judgment granted respondent's motion to dismiss the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the motion is denied, the petition is reinstated and respondent is granted 20 days after service of the order of this Court with notice of entry to serve and file an answer.

Memorandum: Supreme Court erred in granting respondent's motion to dismiss the petition in this CPLR article 78 proceeding as time-barred, and we therefore reverse. "A CPLR article 78 proceeding must be commenced within four months after the determination sought to be reviewed becomes final and binding . . .[, i.e.,] when it definitively impacts and aggrieves the party seeking judicial review" (*Matter of Scott v City of Albany*, 1 AD3d 738, 739; see CPLR 217 [1]; *Matter of Novillo v Board of Educ. of Madison Cent. School Dist.*, 17 AD3d 907, 909, *lv denied* 5 NY3d 714). Here, petitioners commenced the proceeding less than four months after respondent's determination became final and binding.

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court