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| Legal Issues Surrounding Charter Schools |
| Senior Seminar Law 4900H Section 1894 |
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| **Belinda Lovelace** |
| **5/14/2012** |

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To: Professor Donsky

From: Belinda Lovelace

Date: March 26, 2012

Re: Culmination Project

**THE LEGAL ISSUES SURROUNDING CHARTER SCHOOLS**

In recent years, charter schools have become increasingly popular in New York State. These schools are privately owned and have been met with great opposition. We will explore the issues surrounding the impact of charter schools versus public schools. We look to resolve the questions: Who can bring an action against charter schools and the channels that must first be followed? What are the reasons for the opposition and in what ways do charter schools differ from public schools?

Charter schools are formed in accordance to Education Law article 56 better known as the NY Charter School Act of 1998. The purpose of this Act is to authorize a system of charter schools to provide opportunities for teachers, parents, and community members to establish and maintain schools that operate independently of existing schools and school districts in order to accomplish objectives.

Charter school supporters view these new schools as public school reform citing the numerous studies on the current failures of American public schools. Advocates claim the implementation of charter schools brings together school choice, entrepreneurial opportunities for teachers and parents, accountability for results and competition with other schools. They believe typical public schools stagnates the growth of public education and limit school choice as most public school students simply attend their zoned school. They insist that if schools have to compete for students, it will raise the achievement gap because schools will either have to improve or lose their student body. (73 N.Y.U. L. Rev. 1290)

In Board of Education of Roosevelt Union Free School District v. Board of Tr. of State Univ. of New York 282 A.D.2d 166, 723 N.Y.S.2d 262 (3rd Dept. 2001) the plaintiffs were, the Board of Education for the district of Roosevelt, certain taxpayers, students within the district and residents who sought a preliminary injunction enjoining the Charter school. This case helped establish who the cast of characters can be, when challenging a charter School. The plaintiffs alleged the Board of Trustees acted “arbitrarily and capriciously” when it approved the Academy Charter School to operate. They further alleged that the New York Charter School Act of 1998 was itself unconstitutional. The defendants were the Board of Trustees for the State University of New York and the Board of Regents. They moved to dismiss the school board as a party citing CPLR § 3211(a) (3) Motion to dismiss cause of action, the party asserting the cause of action has not legal capacity to sue. Respondents moved to dismiss the Board of Regents for not being a proper Party to the action as well. The action is a combined CPLR article 78 and action for declaratory judgment. The Supreme Court, Albany County denied petitioners application for injunction relief and granted both motions of the respondents and Petitioners appealed.

Under Education Law § 2851[3], a charter school application may be submitted to one of three entities: The school board district in which it wishes to operate (or Chancellor), the SUNY Trustees, or the Board of Regents. However, Education Law § 2851[3] [c], says the Board of Regents are the only ones who may issue a charter. This case stood to attack the current statutory scheme with assertions that the district will “exacerbate its financial problems and will have a devastating impact upon the District's ability to provide educational programs and services to those students who continue to be enrolled in its public schools”. Id at 169

The Supreme Court, Appellate Division, Third Dept. modified its decision that the Roosevelt school Board of Education was a proper party to the action and affirmed all other motions. The allegations of unconstitutionality toward the statutory scheme were unfounded.

Another case, which targeted the Board of Regents in a charter School dispute, was Board of Educ. of Riverhead Cent. Sch. Dist. v. Board of Regents of Univ. of State of New York, 301 A.D.2d 919, 754 N.Y.S.2d 437, (N.Y.A.D. 3 Dept. 2003). In this case the Board of education commenced a CPLR article 78 proceeding to annul the granting of a charter school application and later extended it to include a revised application, and sought a preliminary injunction to enjoin the Comptroller from appropriating funds to the charter school that may be due or owing to the existing public school. The Supreme Court, Albany County denied the request for a preliminary injunction and dismissed the petition due to the failure to demonstrate the Board of Regents approval was “arbitrary and capricious”.

The petitioners appealed and the Supreme Court, Appellate Division, third department, found that the Board of Regents satisfied the requirement under N.Y. Educ. Law § 2852(2)(c) which states that an application for a charter school shall not be approved unless the charter entity finds that: granting the application is likely to improve student learning and achievement and that the charter school was likely to improve students learning and achievement. A review of the records contained sufficient information to show the Board of Regents made an intelligent evaluation taking into account the fiscal and programmatic impact on all public and private schools in the area. The judgment was affirmed.

The next two cases are Mulgrew v. Board of Educ. of City Sch. Dist. of City of New York , 33 Misc.3d 350, 927 N.Y.S.2d 855, (2011) and Steglich v. Board of Educ. of City Sch. Dist. of City of New York,33 Misc.3d 304, 929 N.Y.S.2d 686 (2011). These cases were extremely similar in their methods and approach as well as their outcomes.

In Mulgrew v. Board of Education, organizations consisting of but not limited to the United Federation of Teachers, New York State Conference of the NAACP, and the American Federation of Teachers along with individuals brought a suit against the Board of Education and the Chancellor of the City School Districts. The action was in response to a decision by the Panel for Education policy to close or co- locate 19 of 20 schools who were underperforming. The Supreme Court found that the Board of Ed. failed to properly file an Education Impact Statement (EIS) required under Educ. Law § 2590-h (2\_a) (b) which lays out the powers and duties of the chancellor and requires the preparation of a School impact statement regarding school closings or significant change and what they must contain. This law was violated when the Board of Ed. did not specifically state how the closures would impact and affect the students. The court ruled that the decision to close the schools be enjoined until the EIS were in compliance with the law. The motion was affirmed by the Appellate Division, First Department.

The parties then entered into a Letter agreement and the matter before this court was whether the Board of Education was in breach of that agreement. The reasons the plaintiffs requested a preliminary injunction was 1) had they have followed the agreement and received promised funds they would have improved themselves, no longer needing the closures, 2) Failure to comply with Commissioner’s Regulations by not filing an application with the State Education Department (SED) and 3) that the proposed action to close or co-locate the 19 schools would cause overcrowding, harm to already existing programs and inequality of Education due to the funds the charter schools receive that the public school does not.

The court ordered that the preliminary injunction be denied based on 1) the unlikelihood of success and failure to show proof that the school could improve on their own 2) The Board of Ed later submitted the SED applications in question and 3) the disputed factual information.

In Steglich v. Board of Educ. of City Sch. Dist. of City of New York, 33 Misc.3d 304, 929 N.Y.S.2d 686 (2011) a group of parents brought the action against the Board of Education and the school chancellor with the Charter School and its affiliates as interveners for injunction relief but all parties abandoned the initial action. The plaintiff now seek a summary judgment on the grounds that they 1) lacked the authority to hold a revises vote and 2) They violated the Education Law with untimely filings 3)the revised plan includes a school not originally listed and 4)proper notice was not given in both English and Spanish.

The defendants argued that 1) the Commissioner of the state has exclusive original jurisdiction over the issue 2) they are in compliant and plaintiffs failed to exhaust their administrative remedies, 3) there was no new introduction of a school and 4) proper notice was originally given in English in a timely fashion and the Spanish notice appeared after. The court denied the plaintiffs motion, not on any factual grounds but because the Commissioner of Education should be the first to review the dispute.

The last case shows how charter schools have a different set of rules and guidelines than public schools. In New York Charter Sch. Ass'n, v. Smith, as Commissioner of Labor and Foundation for a Greater Opportunity, v Smith, as Commissioner of Labor, 61 A.D.3d 1091, 875 N.Y.S.2d 643, (2009), involves two proceedings heard jointly. The Charter School Association, who serves as a charter school advocacy group and Brighter Choice Foundation, a non-for-profit corporation that provides financial and other support to eight schools in Albany county along with the Foundation for a Greater Opportunity that supports charter school creation in economic disadvantaged neighborhoods and provided educational resources to the charter schools, plans to open six charter schools between 2008 and 2010.They brought a CPLR article 78 proceeding against the commissioner of labor challenging the prevailing wage law determination by the New York State Department of Labor.

The Supreme Court, Albany County found that the prevailing wage law was applicable to construction, renovation, repair and maintenance of charter schools. The matter was appealed on both judgments to the Supreme Court, Appellate Division, Third department who reversed the decision. They found that Labor Law § 220 which concerns hours, wages and supplements was not applicable to charter schools. Charter Schools function as a private entity and the contracts entered into by the Charter school did not involve a public party or public works project, nor did a third party operate on behalf of a public entity. Under the Charter Schools Act, Education Law article 56, charter schools had unique characteristics that distinguished them from the public entities enumerated in the prevailing wage law.

As you can see by the cases discussed, it is nearly impossible to stop a charter school from forming. The similarities seem to be that all the communities that charter school targets are usually low income with a history of underscoring or not meeting academic standards. We have seen that parents, tax payers, residents of the community and students of the existing public schools may be petitioners. The overwhelming reason for the opposition is the fact that once a charter school is voted for and approved by the Board of Regents, the funds which will go to the public schools for that student are now redirected to the charter schools. This raises issues of inequality in the degree of education between public and charter in regards to funding and how they are allowed to operate.

We have also seen that the respondents in these cases are usually the charter school corporations, and often the Board of Regents who approves the charter school applications and the Board of Trustees of the State University of New York who receives them. In these instances the issues are ones of technicalities and procedure with the filing of necessary documents, meeting deadlines and being fully compliant with the statutes.

Although the charter schools set out to educate the same group of students that are attendants of the public schools, they are a private entity and are not subject to the same laws the public school districts are to follow. The charter schools have used this key point to fight back the opposition. They lack the limitations the public schools must adhere to and may have different rates of pay for employees, as well as alternative ways of operating, like longer school days and curricula freedom.

With all of these factors, it is no wonder why most charter schools are able to successfully educate children where public schools have failed. Many parents and communities are advocates of charter schools because the thought is that their children will now receive an adequate education, surpassing the level of education through the public schools system.