

New York State United Teachers v State Univ. of N.Y.
2022 NY Slip Op 31701(U)
May 26, 2022
Supreme Court, New York County
Docket Number: Index No. 151905/2022
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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NEW YORK STATE UNITED TEACHERS, UNITED
FEDERATION OF TEACHERS, LOCAL 2, ANGELA
ESPOSITO, MONICA TERON, ANA RIVERA,

Petitioner,

INDEX NO. 151905/2022

MOTION DATE 04/25/2022

MOTION SEQ. NO. 002

- v -

STATE UNIVERSITY OF NEW YORK, DEBORAH
STANLEY, DR. MERRYL TISCH, JOSEPH BELLUCK,
STATE UNIVERSITY OF NEW YORK CHARTER
SCHOOLS INSTITUTE, STATE UNIVERSITY OF NEW
YORK BOARD OF TRUSTEES' CHARTER SCHOOLS
COMMITTEE, BRILLA COLLEGE PREPARATORY
CHARTER SCHOOLS, PUBLIC PREP CHARTER SCHOOL
ACADEMIES

Respondent.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37,
38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for CHANGE VENUE.

Petitioners seeks to vacate and annul the actions taken by respondent State University of
New York ("SUNY") Board of Trustees' Charter Schools Committee ("Committee") to create a
new charter school in New York City which petitioners allege is in violation of the statutory cap.
NYSCEF Doc. 1, Pet. ¶1.

Respondents seek to change venue of the underlying petition on the grounds that the
respondents' principal place of business is Albany County and that the decision-making process
occurred in Albany County, thus rendering venue in New York County improper.

In opposition, petitioners contend that the Charter Schools Committee's principal place of
business is in the City and County of New York and is located at 116 East 55th Street, New
York, New York 10022. Further, petitioners contend that it is the Charter Schools Committee

that “made the determination complained of” in New York County when it twice approved of the proposed charter amendments, thus rendering New York County a proper venue for the underlying petition. Petitioners also argue that in support of its position that New York County is the proper county, that the material events leading to approval of the amendments and those that will occur as a result of the improper approval all center on the New York City school district and that the respondents centrally involved in the challenged action – the Charter Schools Committee and the two charter schools – all have their principal offices within New York City.

Background

Article 56 of the New York Education Law authorizes a system of public charter schools. The SUNY Board of Trustees is one of two state-wide charter school authorizers or “charter entit[ies]” under the New York Charter Schools Act of 1998 (as amended, the “Act”). *See* N.Y. Educ. Law § 2851(3)(b); Rossi Aff., ¶ 2. The other is the Board of Regents. *Id.* at § 2851(3)(c); Rossi Aff., ¶ 2.

Under the Act, charter entities have various duties including the handling of charter revisions. *See* N.Y. Educ. Law § 2852(7). An education corporation wishing to revise its charter, for example, to change its grades served or enrollment, must have such revision approved first by its charter entity and then by the Board of Regents. *See id.* at § 2852(7)(a). Pursuant to Educ. Law § 2852(5-a), the SUNY Board of Trustees must submit the proposed revision to the Board of Regents for review. If the SUNY Board of Trustees does not submit a proposed charter to the Board of Regents, the approval process never moves forward and the charter will not be revised even if the SUNY Board of Trustees has approved the proposed revision because the Board of Regents will have nothing before it upon which to act. The Board of Regents has three options with respect to a proposed charter revision submitted to the Regents: (1) affirmatively approve

and issue it by vote; (2) return the proposed charter revision to the SUNY Board of Trustees for reconsideration with written comments and recommendations within 90 days of receipt; or, (3) take no action on the proposed revision in which case it will be approved by operation of law after the Board of Regents' 90 day review period expires. N.Y. Educ. Law § 2852(5-a). Once the SUNY Board of Trustees resubmits a proposed charter revision, the Board of Regents only has two options: (1) it may vote to affirmatively approve the resubmitted proposed revision; or, (2) it may take no action on the proposed revision in which case the proposed revision is "deemed approved and issued" by operation of law within thirty days of its resubmission. *Id.*

On or around November 2019, respondents, Brilla College Preparatory Charter Schools and Public Prep Charter School Academies ("the applicants."), submitted applications for revision of their charter agreements to the SUNY Charter Schools Institute. Over the course of approximately a year, the Charter Schools Institute reviewed the proposed revisions including requesting modifications from the education corporations and meeting via telephone and videoconference in Albany. Ultimately, however, a vote to advance these applications occurred at a meeting held in person and via videoconference in New York County by the SUNY Charter Schools Committee on November 12, 2021.

Discussion

For Article 78 special proceedings, CPLR § 506(b) provides three bases for venue: (1) "where the respondent made the determination complained of, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated" (2) "where the material events otherwise took place," or (3) "where the principal office of the respondent is located." CPLR § 506(b). By indicating three options, it is apparent that the framers of this

statute allowed that more than one venue could be proper for such an action to be brought.¹ To meet its burden to change venue, the respondents would have to convince this Court that New York County is not a proper venue under any of these provisions.

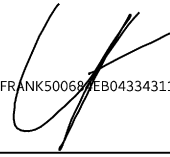
The respondents have failed to meet this burden. The petitioner has argued, and it appears undisputed that the vote to advance the Charter Schools were made at a combination in person and remote meeting where the agenda indicates that such meeting was taking place at the SUNY Global Center at 116 East 55th Street in New York County. There is no indication that any of those voting by teleconference were located in Albany County.

Therefore, while venue may have been proper in Albany County, there is no question that by a vote being held in New York County among people who were likely present in or around New York County, about schools that were to be located in the New York City school district, of which New York County is a part, it is by no means clear that the material events of these applications did not take place in New York County, nor that the action on the application in question did not “originate” in New York County. Therefore, the respondents have failed to meet their burden, and the motion for a change of venue will be denied. It is therefore

ADJUDGED that the motion to change venue is denied.

¹ The Court notes that this provision is in stark contrast to the section 506(b)(2), which mandates that a proceeding against the “regents of the university of the state of new york” be venued in Albany County.

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5/26/2022

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE