

New York State United Teachers v State Univ. of N.Y.
2022 NY Slip Op 32755(U)
August 16, 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 03/24/2022

MOTION SEQ. NO. 001

- 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 001) 17, 29, 47, 63, 64,
65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92,
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were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

This special proceeding arises out of petitioners' allegations that respondents created a
new charter school in New York City which petitioners allege is in violation of the statutory cap.
Respondents, Brilla College Preparatory Charter Schools, Public Prep Charter School
Academies, the State University of New York; Deborah F. Stanley, as Interim Chancellor of the
State University of New York; Dr. Merryl H. Tisch, as Chairman of the State University of New
York Board of Trustees, Joseph W. Belluck, as Chair of the State University of New York Board
of Trustees' Charter Schools Committee, the State University of New York Charter Schools

Institute the State University of New York Board of Trustees' Charter Schools Committee (collectively hereinafter "SUNY") oppose the instant petition on various grounds and the SUNY respondents cross-move to dismiss the petition. For the reasons set forth below, the petition is denied and the cross-motion to dismiss is granted.

Facts

As discussed by this Court in the respondents' prior motion to change venue, on or around November 2019, respondents, Brilla College Preparatory Charter Schools and Public Prep Charter School Academies ("the Charter respondents"), submitted applications for revision of their charter agreements to the SUNY Charter Schools Institute.

It is undisputed that each charter granted under the New York Charter Schools Act permits the education of students from Kindergarten through Grade 12. The Charter respondents hold four such charters, under which they operate four charter schools for students from Kindergarten through Grade 8. In 2019, the Charter respondents applied for revisions to their four charters so that each charter school could educate students in Grades 9 to 12 as well. It is undisputed that the Charter's respondents' application for revision was lawful.

The Charter respondents proposed that the Grade 9 to 12 education of students from the four charter schools take place under a joint high school program at a single site, and that a separate entity would be brought in to operate this new school. The State University of New York Board of Trustees, the charter entity responsible for approving charter applications, has previously approved similar applications combining charter schools into one location, though petitioners contend not with a different entity operating the combined school. SUNY respondents ultimately reviewed and approved the Charter respondents' applications.

Discussion

During oral argument petitioners conceded, that if the Court deems the underlying conduct of respondents a revision of the respondents existing charters rather than the creation of a new charter, that they lack standing to bring the instant petition.

Respondents admit, that pursuant to state law the existing charters cannot combine to create the high school while at the same time expanding their grades to high school individually, thereby 'double dipping' and exceeding the allowed attendance rate. Therefore, by virtue of the Charter respondents combining to create a joint high school program they are in essence waiving their rights under each individual charter to create a separate high school program. Thus, the capacity of students available to these schools under their existing charters remains unchanged with their combining of their charters. Finally, both sides agree that there is nothing in existing law that would bar charter schools from having an outside entity operate their school.

The Court finds that based on the facts of the instant petition, and contrary to the petitioners' contentions, it is clear that the at issue here is the revision of existing charter schools and not the creation of a new charter school. The Charter respondents contend, and the petitioners do not dispute, that Charter respondents are well within the statutory guidelines to each expand its academic programming to include grades 9-12, thus potentially and lawfully creating four new high school programs under the existing charters as opposed to the one joint high school program that the SUNY respondents have approved and that the petitioners oppose.

Therefore, as this change would not in any way change the capacity of what is available to the four combined charter programs in terms of seats, any injuries alleged is speculative at this point, thus depriving standing of the petitioners to show actual injury from this action of SUNY. As the Court finds that the petitioners lack standing to challenge the revisions of the subject charters currently, and while it is undisputed that there is an entity with standing to challenge the

SUNY respondents' approval, namely the New York City Department of Education, who is not a party to this action, the Court does not reach petitioners' remaining arguments. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and dismissed; and it is further

ORDERED that the Clerk of the Court enter judgment accordingly.

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8/16/2022

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