

EDUCATION LAW CENTER ON BEHALF OF
ABBOTT V. BURKE PLAINTIFF
SCHOOLCHILDREN,

Appellant,

v.

NEW JERSEY STATE BOARD OF EDUCATION
AND CHRISTOPHER D. CERF,
COMMISSIONER, NEW JERSEY DEPARTMENT
OF EDUCATION,

Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-2816-12T3

CIVIL ACTION

**BRIEF AND APPENDIX OF AMICUS CURIAE
SAVE OUR SCHOOLS NEW JERSEY
IN SUPPORT OF APPELLANT**

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PRELIMINARY STATEMENT

Save Our Schools NJ respectfully submits this brief *amicus curiae* pursuant to *New Jersey Court Rule* 1:13-9. In this case, Education Law Center ("ELC" or "Appellant") urges this Court to invalidate an amendment to *N.J.A.C.* 6A:11-1.2 which creates and defines a "satellite campus" of a charter school and the adoption of *N.J.A.C.* 6A:11-2.6(a)(1)(iv), which authorizes "[o]pening a new satellite campus" as a basis for an amendment to a school's charter. Appellant also argues that the repeal of former *N.J.A.C.* 6A:11-2.6(a)(2), which barred charter amendments that change the mission, goals, and objectives of a school, was arbitrary and capricious and urges this Court to direct the State to readopt the repealed regulation. Save Our Schools NJ here joins in Appellant's requests, explaining in further detail the significance of the challenged regulations and the potential consequences that local communities will suffer should this Court deny Appellant's requests. In the alternative, *amicus curiae* requests that this Court remand the matter to the New Jersey State Board of Education ("State Board") with the direction that the State Board adopt clear standards for satellite campuses.

INTEREST OF AMICUS

Save Our Schools NJ is a nonpartisan, grassroots, volunteer-led and -powered organization of parents and other concerned residents who believe that all New Jersey children should have access to a high quality public education. Founded

in 2010, Save Our Schools NJ has grown to 12,000 members and has participated in public advocacy on issues relating to school reform, including the growth and regulation of charter schools, in New Jersey. Members of *amicus curiae* have written articles in the local media, see, e.g., Julia Sass Rubin, *It's Time to Repair New Jersey's Broken Charter School Law*, NJ Spotlight (Oct. 12, 2011), <http://www.njspotlight.com/stories/11/1012/1519/#> (last visited Nov. 7, 2013), and have testified before the New Jersey Legislature on matters relating to public education, see Testimony of Susan Caldwell on the Governor's FY2014 Budget (Apr. 9, 2013), available at http://www.njleg.state.nj.us/legislativepub/budget_2014/040913/Cauldwell_S.pdf (last visited Nov. 7, 2013).

As an organization of concerned parents and residents, Save Our Schools NJ has a particular interest in ensuring that all potential new charter schools and campuses are subjected to the same careful, selective application and review processes. Since its founding, Save Our Schools NJ has been deeply involved in public education policy — and especially charter school policy — and has advocated for all New Jersey children to have access to a high quality public education. It is with this special interest and involvement that Save Our Schools NJ submits this brief *amicus curiae*.

PROCEDURAL HISTORY AND STATEMENT OF THE FACTS

Amicus curiae Save Our Schools NJ adopts the Procedural History and Statement of the Facts set forth in the parties' briefs.

ARGUMENT

UNDER THE STATE BOARD'S REGULATIONS, SATELLITE SCHOOLS ARE NOT SUBJECTED TO DETAILED REVIEW AND ARE, THUS, AT GREAT RISK OF FAILURE, WHICH WILL DISPROPORTIONATELY AFFECT IMPOVERISHED COMMUNITIES AND COMMUNITIES OF COLOR.

The Charter School Program Act of 1995 ("CSPA" or "the Act"), N.J.S.A. 18A:36A-1 to -18, vests in the Commissioner of the New Jersey Department of Education ("the Department" or "NJDOE") the discretion to grant a charter and, thus, to permit the opening of a charter school after review of an "application submitted by an eligible applicant and the recommendation(s) from the district board(s) of education or State district superintendent(s) of the district of residence of the proposed charter school." N.J.S.A. 18A:36A-1 to -18. See also *In re Grant of Charter School Application of Englewood on Palisades Charter School* [hereinafter, "*Englewood I*"], 320 N.J. Super. 174, 236 (App. Div. 1999) (noting that the Commissioner must ensure that a charter application includes all required information). In enacting the CSPA, the Legislature crafted a careful compromise, allowing charter schools to remain free from some State regulation in exchange for undergoing a rigorous application process and submitting to annual review. See

N.J.S.A. 18A:36A-4 & -5 (setting forth requirements for applying for charter); *N.J.S.A.* 18A:36A-11(a) (“[U]pon the request of the board of trustees of a charter school, the commissioner may exempt the school from State regulations concerning public schools, except those pertaining to assessment, testing, civil rights and student health and safety”); *N.J.S.A.* 18A:36A-16 (providing that Department shall annually review charter schools, and conduct a “comprehensive review” before renewing charter); *see generally In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.* [hereinafter, “*Englewood II*”], 164 *N.J.* 316, 320 (2000) (describing how charter schools are subject to fewer regulations but must submit to greater oversight and holding that “the Commissioner must act to avoid a failure to provide a thorough and efficient education threatened in a district because of the approval of a charter school”).

Effective January 7, 2013, the State Board of Education (1) adopted an amendment to *N.J.A.C.* 6A:11-1.2 that creates and defines a “satellite campus” of a charter school; (2) adopted *N.J.A.C.* 6A:11-2.6(a)(1)(iv), which authorizes “[o]pening a new satellite campus” as a basis for an amendment to a school’s charter; and (3) repealed former *N.J.A.C.* 6A:11-2.6(a)(2), which barred charter amendments that change the mission, goals, and objectives of a school. *See* Pb1-Pb12; Rb3-Rb18. The regulations, as written, upset the balance of the Legislature’s careful compromise by, in effect, allowing new charter schools

to be created under the guise of "satellite campuses" without being subjected to the rigorous application and review process that the Legislature envisioned. In addition to being inconsistent with legislative intent — a point that ELC makes persuasively in its brief, Pb15-Pb25 — the challenged regulations do not require that the Commissioner of the NJDOE ("Commissioner") subject a request to amend a charter to the same searching and careful review to which charter applications are subjected. The absence of such review not only runs afoul of preexisting caselaw, but also risks creating new school campuses that are more likely to fail than are new charter schools. Moreover, because the regulations only allow satellite campuses to be established in districts with a priority school¹ or in former Abbott Districts, see *N.J.A.C.* 6A:11-1.2 ("'Satellite campus' means a school facility, located within a district with a priority school or a former Abbott District"), the increased risk of charter school failure at satellite campuses will be borne disproportionately by impoverished communities and communities of color.

I. CHARTER SCHOOL PROGRAM ACT REQUIREMENTS

In the CSPA, the Legislature defined a charter school as "a public school operated under a charter granted by the

¹ "'Priority School' means a school that demonstrates very low levels of success in either school wide student proficiency rates or overall graduation rates as determined by criteria at *N.J.A.C.* 6A:33-2.1(b)." *N.J.A.C.* 6A:33-1.3.

commissioner, which is operated independently of a local board of education and is managed by a board of trustees." *N.J.S.A.* 18A:36A-3(a). The CSPA, however, specifies the information that is required for any charter school application. *N.J.S.A.* 18A:36A-5; 18A:36A-6. See also *Englewood II*, 164 *N.J.* at 320, 322 (2000) (noting that charter schools "are free from many state and local regulations" and "have more autonomy than other public schools" but that the CSPA sets forth the procedure and information required for charter school approval); *J.D. ex rel. Scipio-Derrick v. Davy*, 415 *N.J. Super.* 375, 380-81 (App. Div. 2010) (noting that all charter schools must go through an "extensive and rigorous" application process). As noted by ELC, no provisions of the Act allow for the opening of any other type of school or campus, other than charter schools, Pb16-Pb17, Pb19-Pb20, and the Act does not provide for any charter school or campus to open or be approved without the submission of a complete application, which includes all information that the Commissioner requires of charter applicants. See Pb19-Pb21. Instead, "[t]he Commissioner's approval process is supposed to guarantee that the application supplies all the required information." *Englewood I*, 320 *N.J. Super.* at 236.

II. REQUIREMENTS FOR CHARTER APPLICATIONS.

The New Jersey Charter School Application begins by requiring an executive summary, including the name of the proposed charter school, and describing its mission and educational program, and providing applicant and founder

information; enrollment and admission data, making a demonstration of need, and describing a plan for community and parent involvement. *N.J.A.C. 6A:11-2.1(b)*. Phase two requires the provision of more detailed information regarding: "(1) educational program; (2) Goals and objectives; (3) At-risk populations; (4) Staffing information; (5) Financial plan; (6) Governance and organizational plan; (7) Facilities; (8) Daily and annual schedule; (9) Requested waivers; and (10) All required documentation as set forth in the phase two application." *N.J.A.C. 6A:11-2.1(b)*.

Beyond those requirements, which derive from the CSPA, the Commissioner may require "other information," *N.J.S.A. 18A:36A-5*, and the State Board has accordingly adopted rigorous requirements for charter school applicants beyond the information provided in phase one and phase two of the charter school application process. Thus, after the review of phase two applications, the Commissioner must "conduct an in-depth interview with qualified applicants," *N.J.A.C. 6A:11-2.1(e)*, and the Department must conduct "a preparedness visit to prospective charter schools," *N.J.A.C. 6A:11-2.1(h)*. Specifically, the Commissioner's approval of a charter application will not be effective until the Commissioner assesses "the student composition of a charter school and the segregative effect that the loss of the students may have on its district of residence," *N.J.A.C. 6A:11-2.1(j)*; until "satisfactory completion of the preparedness visit as determined by the Commissioner," *N.J.A.C.*

6A:11-2.1(i); and until "all necessary documents and information are received by the Commissioner," *N.J.A.C.* 6A:11-2.1(i).²

² The required documentation includes:

1. A directory of the current members of the board of trustees;
2. The bylaws of the board of trustees;
3. The certificate of incorporation;
4. The Federal Employer Identification Number;
5. The Credit Authorization Agreement for Automatic Deposits;
6. The lease, mortgage or title to its facility;
7. The certificate of occupancy for "E" (education) use issued by the local municipal enforcing official at *N.J.A.C.* 5:23-2;
8. The sanitary inspection report with satisfactory rating;
9. The fire inspection certificate with "Ae" (education) code life hazard use at *N.J.A.C.* 5:70-4;
10. An organizational chart and a list of the lead person, school business administrator, teachers, and professional support staff including required certifications and criminal background check status;
11. A budget summary, budget narrative, and cash flow statement for the following fiscal year, based on the most recent enrollment projections;
12. Evidence of a uniform system of double-entry bookkeeping that is consistent with GAAP;
13. The resolution of the board of trustees naming the affirmative action officer, the Section 504 officer, and the Title IX coordinator;
14. Evidence of enrollment of at least 90 percent of approved maximum enrollment, as verified by student registrations signed by parent/guardian(s); and
15. Documentation that ensures compliance with all applicable Federal and State regulations and statutes.

[*N.J.A.C.* 6A:11-2.1(i).]

This detailed charter application process has two important purposes. First, it separates out charter schools that are likely to fail, approving only those charters for schools that are likely to succeed in the Legislature's stated mission of "providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom." N.J.S.A. 18A:36A-2. And second, it assures that the advent of charter schools will not result in greater segregation in the New Jersey public school system, thus addressing a concern that has been at the root of the debate about charter schools in this State and elsewhere. See *Englewood II*, 164 N.J. at 328 (mandating that NJDOE "consider the [racial] impact that the movement of pupils to a charter school would have on the district of residence," and that this racial impact "must be assessed when the Commissioner initially reviews a charter school for approval to open"); Mary E. Wright, *Single/Majority Race Charter Schools: Charting a New Course in the Aftermath of the Failed Mandates of Brown v. Board of Education*, 9 Rutgers Race & L. Rev. 1, 32-36 (2007) (describing steps State legislatures have taken to "ensure that the establishment of charter schools does not adversely impact upon desegregation efforts").

Thus, during the standard charter application process,³ NJDOE approved only four (4) of the fifty-eight (58) charter

³ For the standard charter application, applications are due in March and the Commissioner will notify applicants regarding approval or denial of applications no later than September.

applications it received in March 2011 and only two (2) of the thirty-one (31) charter applications received in March 2012.⁴ See Aa1. During the expedited charter application process, NJDOE approved twenty-three (23) of the forty-eight (48) charter applications it received in October 2010, but only eight (8) of the forty-two (42) applications received in October 2011 and two (2) of the nine (9) applications received in October 2012. See *id.* But even after this selective approval process, a number of charter schools that are granted final charter approval still fail. Since 1996, eighteen (18) charters have been denied after NJDOE granted approval; fourteen (14) charters have been revoked, and ten (10) charters have not been renewed. See *id.*; NJDOE, *Charter School Accountability*, <http://www.nj.gov/education/chartsch/accountability/closure.htm> (last visited Nov. 7, 2013). Of the eighty-six (86) charter schools that were in operation during the 2012 school year, two

N.J.A.C. 6A:11-2.1(b)(5). Charter applicants can "seek fast track approval" or "expedited action" by applying in October, prior to the standard March deadline; this allows an applicant to receive an early decision, no later than the February after the application is submitted, and permits an approved applicant to "open a charter school on an expedited timeline." *N.J.A.C.* 6A:11-1.2 (defining "[e]xpedited action"); *N.J.A.C.* 6A:11-2.1(b)(5).

⁴ Data regarding charter school applications are publicly available from NJDOE, which provided such data to counsel for *amicus curiae*, see Aa1-2, and makes such data available on the NJDOE website, see NJDOE, *Charter School Accountability*, <http://www.nj.gov/education/chartsch/accountability/closure.htm> (last visited Nov. 7, 2013).

(2) charters were revoked and three (3) were not renewed. Aa1; *Charter School Accountability, supra.*

III. REQUIREMENTS TO OPEN NEW SATELLITE CAMPUSES.

The challenged 2012 repeal and amendments establish a new regulation permitting schools to amend their charters after they have been granted so as to open a "satellite campus," *N.J.A.C. 6A:11-2.6(a)(1)(iv)*. A "satellite campus" is defined as "a school facility, located within a district with a priority school or a former Abbott District as of July 1, 2012, operated by a charter school under the school's charter that is in addition to the facility identified in the charter school application or charter, if subsequently amended." *N.J.A.C. 6A:11-1.2*.

The regulations permit a charter school to open a satellite campus by simply amending its charter; meanwhile, the State has not established any meaningful requirements that a charter school must meet before opening its satellite campus. Indeed, the Board requires only that a charter school's board of trustees "submit in the form of a board resolution the amendment request to the Commissioner and the district board(s) of education or State district superintendent(s) of the district of residence of a charter school" as well as the "applicable revised pages to the approved New Jersey Charter School

Application." *N.J.A.C. 6A:11-2.6(a)(2)(i)*.⁵ The Board has not, however, explained which "applicable revised pages" of a charter must be submitted as part of an amendment request to open a satellite campus or, more importantly, what standards will be utilized to review those pages. Rather, in determining whether a request to open a satellite campus should be granted, the regulations provide only that the Department will "evaluate the amendments based on *N.J.S.A. 18A:36A-1 et seq.* and this chapter" and that the Commissioner will review the charter school's "performance data" from previous years. *N.J.A.C. 6A:11-2.6(b)*.

Thus, unlike the rigorous requirements that are imposed for the final grant of a charter — which still result in the approval of schools that eventually fail — the challenged regulations do not require the same searching review before allowing a charter school to amend its charter to establish a satellite campus. In particular, the regulations do not state whether satellite campuses must meet any of the additional requirements for charter applicants. Thus, it appears that a charter can be amended to establish a satellite campus even if the Commissioner does not "conduct an in-depth interview" regarding a satellite campus, *N.J.A.C. 6A:11-2.1(e)* and does not conduct the "preparedness visit" required by the regulations, *N.J.A.C. 6A:11-2.1(h)-(i)*. Moreover, while a charter applicant

⁵ Such an amendment request must be filed by February 1 of the school year immediately prior to that in which the satellite campus will be opened. *N.J.A.C. 6A:11-2.6(a)(2)(ii)*.

must produce a set of documents, including documents relating to the new building, such as the lease or mortgage, the sanitary inspection report, and a fire inspection report, *N.J.A.C. 6A:11-2.1(i)*, the same documentation is not required by the current regulations for satellite schools. Finally, and critically, the regulations do not require that the Commissioner assess any "segregative effect" that a satellite campus will produce in a school district prior to the campus opening, as he must before approving a final charter. *N.J.A.C. 6A:11-2.1(j)*.

IV. THE FAILURE TO RIGOROUSLY REVIEW SATELLITE CAMPUSES PRIOR TO APPROVING AMENDMENTS TO OPEN SUCH SCHOOLS RUNS COUNTER TO NJDOE'S STATUTORY MISSION, RUNS AFOUL OF COURT PRECEDENT, AND RISKS CREATING NEW SCHOOL CAMPUSES THAT ARE MORE LIKELY TO FAIL THAN ARE NEW CHARTER SCHOOLS.

The lack of specific requirements for a charter amendment to open a satellite campus is profoundly troubling. By failing to require satisfactory completion of a preparedness visit, submission of all requested documentation, and an assessment of the segregative impact of a satellite campus prior to allowing an amendment to open a satellite campus, the challenged regulations risk creating new school campuses that are both likely to fail and may have a segregative impact, in violation of the law. For example, the Commissioner's determination that the preparedness visit has been satisfactorily completed and the Commissioner's receipt of "all necessary documents and information," *N.J.A.C. 6A:11-2.1(i)*, serve as a final quality control review, without which the Commissioner's approval of a

charter school is not effective. A preparedness visit is "the on-site inspection by Department personnel that gauges readiness for school opening," including "a review of program, facility and fiscal documentation and interviews with board of trustee members and staff members" to assess leadership and capacity. *N.J.A.C. 6A:11-1.1*. The notion that such a visit need not be conducted for a new location, that will house a new student body, even if nominally a part of another charter school, is alarming indeed, and certainly risks even greater failure rates than are already seen with charter schools; likewise with regard to the requirement that the Commissioner obtain and review fiscal and facility documentation prior to allowing new campuses to open. Indeed, without that check, there is no assurance that the satellite facility is a safe one, that complies with local certificate of occupancy, fire, and sanitation code requirements, and in which teachers are appropriately screened for, as just one example, criminal records. See *supra* at 8 fn.3. Nor, of course, would the educational facility, so critical to accomplishing the educational mission of the school, see *Abbott v. Burke*, 149 N.J. 145, 186 (1997) ("[W]e continually have noted that adequate physical facilities are an essential component of [the thorough and efficient education] constitutional mandate."), have been evaluated, though this is concededly required before an original charter is granted. In sum, satisfactory completion of a preparedness visit, along with the submission of all phase one, phase two, and further

requested documentation, should be required prior to allowing any new school or campus to open; without it, *amicus curiae* fears, students will be placed in educational and perhaps even physical jeopardy, and more failed charter schools will become a reality in New Jersey.

Perhaps even more critically, the failure to assess the potential segregative impact of opening a satellite campus risks undermining "our State's policy against discrimination and segregation in the public schools," which "is of such vigor and import as to match its policy in favor of a thorough and efficient education." *Board of Educ. of the Borough of Englewood Cliffs v. Board of Educ. of City of Englewood*, 170 N.J. 323, 343-44 (2002) (quoting *Englewood Cliffs Bd. of Educ. v. Englewood Bd. of Educ.*, 12 N.J.A.R. 566, 689-92). With regard to charter schools in particular, this Court has held that assessing segregative effect only during a school's "annual review is insufficient to protect this State's important anti-segregation policies" because "African-American and Hispanic students in New Jersey attend schools that are among the most segregated in the nation." *In re Red Bank Charter School*, 367 N.J. Super. 462, 480-81 (App. Div. 2004) (citing E. Frankenberg, C. Lee, & G. Orfield, *A Multiracial Society with Segregated Schools: Are we Losing the Dream?*, [15](http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-multiracial-society-with-segregated-schools-are-we-losing-the-dream/frankenberg-</p></div><div data-bbox=)

multiracial-society-losing-the-dream.pdf (Jan. 2003) (last visited Nov. 7, 2013)).⁶

To address this problem, the Supreme Court has clearly instructed the Commissioner with respect to his obligations in reviewing an application for a charter. The Commissioner "must consider the impact that the movement of pupils to a charter school would have on the district of residence" both at the time of the grant of a charter, "and on an annual basis thereafter." *Englewood II*, 164 N.J. at 328. The Court has also made clear that the Commissioner "must be prepared to act if the *de facto* effect of a charter school were to affect a racial balance precariously maintained in a charter school's district of residence." *Id.* Nonetheless, the challenged regulations do not require that the Commissioner assess the segregative effect of a satellite campus before allowing a charter school to open the new campus, or even require the charter school to provide information from which the Commissioner could assess the potential segregative effect of a proposed satellite campus, though clearly that affect could be equal to or greater than the segregative effect of opening the original charter school in the first place. The absence of such requirements prior to the opening of a satellite campus flies in the face of New Jersey

⁶ Indeed, a 2003 report of the Harvard University Civil Rights Project established that half of all African-American public school students in New Jersey attend schools with greater than 90% minority students. *A Multiracial Society with Segregated Schools*, Table 16 at 50.

law mandating that the Commissioner evaluate a school's impact on a district's racial balance during the application process. See, e.g., *Englewood II*, 164 N.J. at 323 (holding that "the Commissioner must assess the racial impact that a charter school applicant will have on the district of residence in which the charter school will operate" and noting that the Commissioner must ensure "that no student is discriminated against or subjected to segregation in our public schools"); *In re Red Bank Charter School*, 367 N.J. Super. at 471-72 ("[T]he Commissioner must ensure that the operation of a charter school does not result in district segregation. The Commissioner must vigilantly seek to protect a district's racial/ethnic balance during the charter school's initial application, continued operation, and charter renewal application."). By not requiring that the Commissioner assess the potential segregative effect of a proposed satellite campus, the challenged regulations, then, risk fostering the *de facto* segregation against which the Supreme Court has so strenuously and consistently warned.

V. THE INCREASED RISK OF FAILING SATELLITE CAMPUSES WILL BE BORNE DISPROPORTIONATELY BY IMPOVERISHED COMMUNITIES AND COMMUNITIES OF COLOR.

Because the challenged regulations do not require satellite campuses to meet the same rigorous requirements to which the Commissioner subjects charter school applications, satellite campuses are likely to fail at even higher rates than do charter schools. These school closures can leave parents scrambling to enroll students in schools on very little notice and with a risk

that the students will not be ready to enroll at the beginning of the school year. See, e.g., Barry Carter, *With Adelaide L. Sanford Charter School closing, Newark families must move on*, NJ.com (June 25, 2013), http://blog.nj.com/njv_barry_carter/2013/06/newark_charter_school_closes_a.html (last visited Nov. 7, 2013) (noting that some parents only had five days' notice of the closure of the Adelaide L. Sanford Charter School in Newark when the State revoked the school's charter due to "poor academic record and the school's repeated failure to comply with school regulations"). For example, when the NJDOE revoked the charter of the Mercer Arts High School because the school was "not operating in compliance with its charter and not providing a safe and orderly education environment for its students," the school only had three weeks to transfer its students to their home districts. Ralph Curcio, *State pulls plug on charter school*, NJ.com (Dec. 17, 2007), http://www.nj.com/mercer/index.ssf/2007/12/state_pulls_plug_on_charter_sc.html (last visited Nov. 7, 2013). When the NJDOE announced that it would not renew the charter of Trenton Community Charter School due to "the school's failure to boost student achievement levels," the school refused to transfer student records to the regular school district. Carmen Cusido, http://www.nj.com/mercer/index.ssf/2007/12/state_pulls_plug_on_charter_sc.html, NJ.com (Aug. 16, 2011), http://www.nj.com/mercer/index.ssf/2011/08/state_orders_tccc_to_

[release_r.html](#) (last visited Nov. 7, 2013). NJDOE spokesperson Justin Barra said that, as a result, the "district cannot ensure that all students will be ready to enroll on day 1 of the school year." *Id.* The harm is obvious.

And, because satellite campuses, unlike charter schools, can only be opened within districts with a priority school or in former Abbott Districts, see *N.J.A.C. 6A:11-1.2* (restricting satellite campuses to districts with a priority school or former Abbott Districts), these satellite campuses, which have not been thoroughly reviewed and are, therefore, at even greater risk of failure, will be primarily located in communities that are impoverished and communities of color. Indeed, as a definitional matter, former Abbott, or "special needs," districts represent New Jersey's poorest communities, see *Abbott v. Burke*, 196 *N.J.* 544, 546, 560 (2008) (providing overview of *Abbott* litigation and designation of Abbott districts); as the New Jersey Supreme Court has recognized, these districts are "racially isolated" and predominantly populated by African American and Latino residents, see *Abbott v. Burke*, 149 *N.J.* at 178 & n.23. Similarly, as a recent study reveals, 97% of students in priority schools are African American or Latino, and 81% of students are poor. See ELC, *NJDOE Intent on Closing Schools Serving Students of Color*, <http://www.edlawcenter.org/news/news-featured-headline/njdoe-intent-on-closing-schools-serving-students-of-color.html> (last visited Nov. 7, 2013). Thus, the increased risk of satellite

school failure will be borne by precisely those school districts whose thorough and efficient education the New Jersey Supreme Court has sought to protect through its *Abbott* remedial orders.

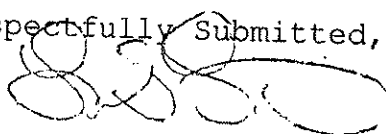
Because satellite schools are not subjected to rigorous review, despite the NJDOE's statutory mission and controlling precedent requiring such review, and because impoverished communities and communities of color will disproportionately suffer due to satellite campuses' resulting greater risk of failure, this Court should invalidate the adoption of *N.J.A.C. 6A:11-1.2* and *N.J.A.C. 6A:11-2.6(a)(1)(iv)*, and direct the State Board to readopt the former *N.J.A.C. 6A:11-2.6(a)(2)*. At a minimum, however, if this Court finds, contrary to Appellant's argument, that the State Board has legislative authority to establish satellite campuses, *amicus curiae* urges this Court to remand the matter to the State Board with the direction that the Board should adopt clear standards for the application and review processes for satellite campuses. *See, e.g., Abbott v. Burke*, 163 *N.J.* 95, 112 (1998) (remanding to NJDOE so agency could adopt clearer standards regarding for when local school districts can waive preschool teacher certification); *In re Adoption of N.J.A.C. 7:26b*, 250 *N.J. Super.* 189, 225-26 (App. Div. 1991) (remanding to Department of Environment Protection with instructions that the agency adopt standards "so that the regulated community has some guidance for conduct and the regulator has some structure for the fair administration of its

sound exercise of discretion"), *aff'd in part and rev'd on other grounds*, 128 N.J. 442 (2012).

CONCLUSION

For the reasons stated above, *amicus curiae* respectfully requests that this Court invalidate the amendment to N.J.A.C. 6A:11-1.2 that creates and defines a "satellite campus" of a charter school, as well as N.J.A.C. 6A:11-2.6(a)(1)(iv), which authorizes "[o]pening a new satellite campus" as a basis for an amendment to a school's charter. In the alternative, *amicus* requests that this Court remand this matter to the State Board with the direction that it adopt appropriate standards for the application and review processes for satellite campuses that will assure that those campuses are ready for school opening, will provide a thorough and efficient education, and that they do not have an adverse segregative effect.

Respectfully Submitted,



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Dated: November 7, 2013

Yaster, Benjamin

From: Lee, Harold [harold.lee@doe.state.nj.us]
Sent: Tuesday, August 27, 2013 9:50 AM
To: Yaster, Benjamin
Subject: RE: Confirming charter school data

Please see below.

From: Yaster, Benjamin [mailto:BYaster@gibbonslaw.com]
Sent: Saturday, August 24, 2013 12:27 AM
To: Lee, Harold
Subject: Confirming charter school data

Dear Harold,

Thank you very much for returning my message and speaking with me on August 20, 2013. I wanted to write to confirm the data that you provided, and to follow-up on a couple of points that you said you might need to update. My notes are as follows:

- There were 86 charter schools in operation in the 2012 school year, 5 of which are no longer in operation as of June 2013. Can you confirm whether those five charters were revoked or not renewed? 2 were revoked, 3 non-renewed.
- Since 1996:
 - 5 charters were denied after DOE granted applications, although you indicated that you might need to update that number. - 18
 - 14 charters were revoked - YES
 - 10 charters were not renewed- YES
 - And how many were surrendered? You indicated that you needed to update that figure, although perhaps I missed that datapoint when taking notes. I will have to get back to you on this.
 - Do the above numbers include the 5 charters that were revoked/not renewed in June 2013? YES
- For charter school applications: ALL BELOW ARE CORRECT.
 - For the standard application process:
 - DOE received 58 applications in March 2011, and approved 4.
 - DOE received 31 applications in March 2012, and approved 2.
 - For the expedited application process:
 - DOE received 48 applications in October 2010, and approved 23.
 - DOE received 42 applications in October 2011, and approved 8.
 - DOE received 9 applications in October 2012, and approved 2.

If you could confirm that these numbers are correct and update them as necessary, I would greatly appreciate it.

Many thanks again for taking the time to answer my queries. If you have any questions or concerns, please don't hesitate to get in touch. (FYI, I will be on vacation starting tomorrow and through the end of Labor Day weekend. I will have email access during that time, although I might be a bit slow in responding. In any case, I will get back to you.)

All the best,
Ben

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Message

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