

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
PARENT TEACHERS ASSOCIATION OF PUBLIC  
SCHOOL, M 539 a/k/a NEST, EMILY ARMSTRONG,  
LUIS GASCO, MICHELLE BUFFINGTON AND  
ABBY HOROWITZ,

Petitioners,

-against-

Index No.:  
Date Purchased:

**PETITION UNDER  
CPLR ARTICLE 78**

JOEL KLEIN, as Chancellor of the New York City  
Department of Education and in his Capacity as Charter  
Entity under the Charter School Act of the State of  
New York, THE NEW YORK CITY DEPARTMENT  
OF EDUCATION and BOARD OF REGENTS OF  
THE STATE UNIVERSITY OF NEW YORK,

Respondents,

For a Judgment Pursuant to Article 78 of the CPLR.

-----X  
Petitioners herein (collectively, the “Petitioners”), appearing by and through their  
counsel, Hass & Gottlieb, hereby allege as follows:

**THE PARTIES**

1. At all relevant times, petitioner, the Parent Teachers Association (“Nest PTA”) of Public School M539, also known as New Exploration of Technology Science and Math, or NEST + M (hereinafter “NEST” or the “School”), is an association of parents whose children are students enrolled at NEST.
2. At all relevant times, petitioners Emily Armstrong, Luis Gasco, Michelle Buffington and Abby Horowitz (collectively, the “Individual Petitioners”) were all residents and taxpayers of the City of New York and parents of children currently attending NEST.
3. At all relevant times, respondent Joel Klein (“J. Klein” or the “Chancellor”) was and is

the appointed Chancellor of the New York City Department of Education and is in charge of administering the City of New York public schools.

4. J. Klein is also named herein in his capacity as “Charter Entity” pursuant to New York Education Law §2851(3)(a).

5. At all relevant times, The New York City Department of Education (the “DOE”), was and is an administrative body of The City of New York, authorized to administer the New York City public school system.

6. At all relevant times, The Board of Regents of the University of the State of New York (the “Regents”), is named in its capacity under the New York Charter Schools Act of 1998 (L. 1998, ch. 4 §§1 *et seq*, as amended, hereinafter the “Charter School Act”) (hereinafter, J. Klein, the DOE and the Regents may be termed, collectively, the “Respondents”).

### **GENERAL ALLEGATIONS AND BACKGROUND**

7. This Article 78 proceeding seeks review of a determination made by Respondents J. Klein and the DOE to displace students from one of the best public schools in The City of New York, to limit the admission of new students to the School and to cause the unlawful increase in class size in the School to thirty-one per class (from an average of twenty) in order to enable a new, untested charter school to occupy the facility that houses NEST, so the charter school may maintain only seventeen students per class.

8. This Article 78 proceeding also seeks to revoke of the approval of the subject charter school by all Respondents in violation of applicable law.

### The Nest School

9. NEST is a public school that was founded in 2001 pursuant to a resolution duly adopted, on May 16, 2001, by The Board of Education of the City of New York (the “Resolution”) which resolution was duly executed by Chancellor Harold Levy, and by one Judith Rizzo, one David Klasfeld and one Chad Vignola.
10. NEST was established after Chancellor Levy requestd that Celenia Chevere, a long time educator with a stellar track record at establishing and administering schools in New York City, create a new school that would be the only K-12 public school in New York City housed in a single school building with the intention of enabling a seamless K-12 integrated curriculum. NEST, if successful, was designed to serve as a model of a public school with the intention that other schools using the same approach would be established in each borough of New York City.
11. NEST was also established because, at the time of its establishment, Community School District One experienced an exodus of its students in large numbers to other districts. NEST was established to provide an alternative to these fleeing students.
12. The plan that established NEST provided for the following key features: (a) NEST would have an admission process affording equal access to the community to insure that the school’s enrollment would be reflective of the diversity of School District One and of New York City; and (b) the school would occupy an entire school building.
13. NEST commenced its first year as a New York City public school in September of 2001, with a student population of 130. In the present school year 2005-2006, NEST has 739 students. For the school year 2006-2007, NEST intends to have over 1,000 students,

pursuant to a revised estimate submitted by the School.

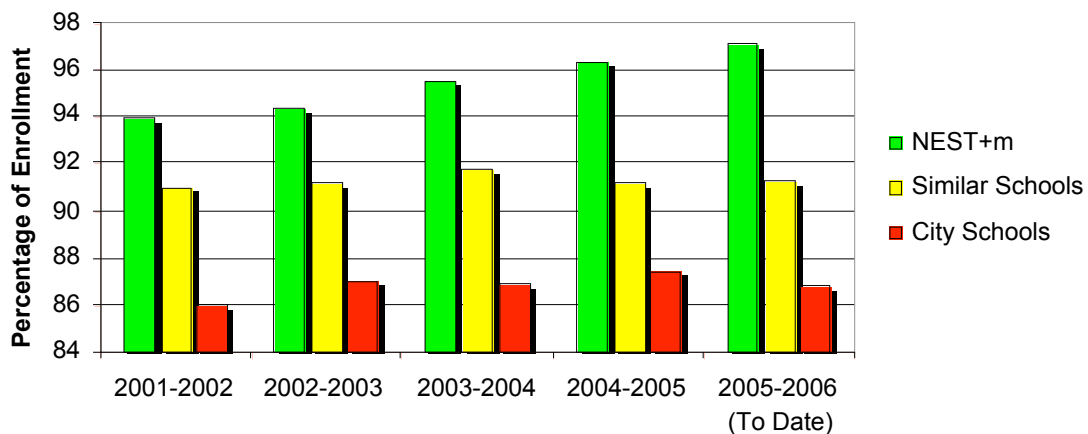
14. NEST has become a model of excellent public school education. This year's scores in a variety of tests administered by New York State and New York City that have yet to be published by the DOE, ranked NEST in the top three schools in New York City.

15. In fact, based on data provided by the DOE and as further testament to NEST's excellence, is the constant improvement in the Standardized Test Scores of its students as follows:

- In 2003, based on the test scores in the English Language Arts (ELA) test administered by New York State and New York City, only 58 percent of NEST'S students achieved the highest performance levels available. By 2005, in the same ELA testing, 99.1 percent of NEST's students achieved the highest performance levels available.
- In 2002, based on the test scores in mathematics tests administered by New York State and New York City, only 41.5 percent of NEST's students achieved the highest performance levels available. By 2005, in the same mathematics' tests, 97.4 percent of NEST's students achieved the highest performance levels available.
- In 2003, based on the test scores in the English Language Arts exam for 8<sup>th</sup> grade administered by New York State (the "State ELA Test"), 37 percent of NEST's students achieved the highest performance levels available. By 2005, in the same New York State ELA Test, 96.8 percent of NEST's students achieved the highest performance levels available on this test.

- In 2003, based on the test scores in the mathematics for 8<sup>th</sup> grade test administered by New York State (the “State Math Test”), 76 percent of NEST’s students achieved the highest performance levels available. By 2005, in the same State Math Test NEST, 100.0 percent of NEST’s students achieved the highest performance levels available.
- In 2003, based on the test scores in Science for 8<sup>th</sup> grade test administered by New York State (the “State Science Test”), 82.6 percent of NEST’s students achieved the highest performance levels available. By 2005, in the same State Science Test NEST, 100.0 percent of NEST’s students achieved the highest performance levels available.

16. The achievement of NEST is not only academic. NEST’s attendance rates since its inception are the best in New York City:

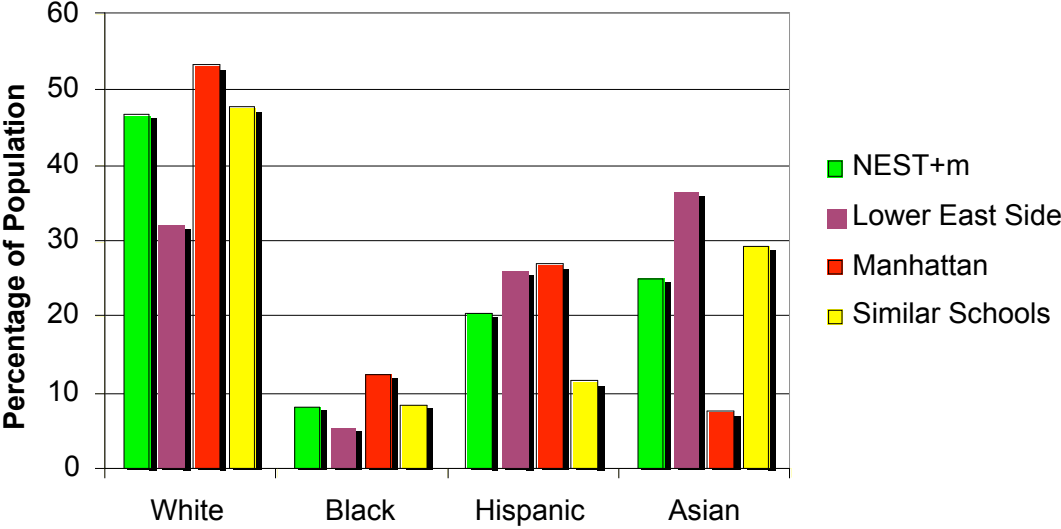


17. Most of NEST’s student population resides in District 1 and in the adjacent District 2 (which in many cases is physically closer to the School).

18. In fact, 40.3% percent of the student population of NEST resides within a 1 mile radius of NEST, and 60.8% percent of the student population of NEST resides within a 2 mile radius of NEST. .

19. As such, NEST is truly a neighborhood school serving both the Lower East Side and lower Manhattan.

20. Based on data provided by the DOE, as indicated in the chart below, NEST is a neighborhood school and the ethnic/racial background of NEST’s student body resembles that of New York City, the Lower East Side and is much more diverse than the profile of schools that are similar to NEST:



21. Best on data available from the DOE, testing scores achieved by NEST’s students exceed scores of schools that are similar to NEST, which accept students based on screening. However, some of these similar schools, such as Hunter and Anderson, for example, admit students primarily based on an IQ-type testing. In fact, to be accepted into any of these

programs, a kindergarten student must test in the top ONE OR TWO PERCENTILE in the Sanford-Binet Test or equivalent.

22. Unlike the Hunter and Anderson programs, NEST admits kindergarten students based on a three-hour play group in which each child's ability is observed and evaluated. Similarly, the admission policy for NEST Middle School and High School is more "holistic" as NEST looks more at the potential and motivation of each applicant rather than at any given I.Q. or other standardized test scores.
23. The miracle of NEST is that it has been able to take "ordinary" students who are disciplined and motivated and to turn these students into "gifted and talented" students.
24. In recognition of NEST's achievement in 2004, the DOE awarded NEST the status of a "Gifted and Talented School."
25. In fact, NEST is an example of public education at its best and should serve as a model for other public schools.

### **The Columbia Street Facility that Houses NEST**

26. Part of the Resolution that founded NEST provided that NEST would occupy a public school building located at 111 Columbia Street, New York, New York 10002 (the "Columbia Street Facility").
27. The Columbia Street Facility at that time housed two schools, the Leadership Secondary School and District 1 Collaborative High School. Both of these schools, at the time, had fewer than 250 students.
28. NEST's plan called for it to occupy the entire building and not to share the space. The

Resolution closed both of the schools and NEST, with its 163 students, became the sole occupant of the Columbia Street Facility.

29. In order to enable NEST to have a K-12 facility, significant work was done on the Columbia Street Facility. This work included breaking some of the walls, separating proposed kindergarten classrooms and building larger kindergarten classrooms, as required by law.
30. Science and biology labs that were necessary for the school to fulfill its mission to focus on, *inter alia*, science and technology, were built.
31. When the Columbia Street Facility was first provided to NEST's staff, it was infested with vermin. Many of the building's windows were sealed and many rooms were not capable of usage. Lights, windows, plumbing and doors were broken.
32. The school grounds were not useable and served as a garbage dump for the adjoining neighborhood and also served local drug users/dealers and prostitutes.
33. In fact, in rehabilitating the Columbia Street Facility, used syringes and other similar items were discovered.
34. Part of the success of NEST is credited to a dedicated parent body. This parent body exerted significant physical labor and raised over \$600,000.00 in private funds, the majority of which was donated by parents, to convert an abandoned rat-infested building into a beautiful and thriving school. The parents, *inter alia*, provided funding to purchase and install the following unique items: dining hall, school kitchen, air conditioners for class rooms, outdoor playgrounds, video camera security system, dance studio, high school basketball courts, library and much of the painting and lighting. With parental assistance, the

Columbia Street Facility was converted from an under-utilized dilapidated facility, into a fully occupied thriving public school.

**Ross Global, the Displacement of NEST and takeover of the Columbia Street Facility**

35. Upon information and belief, at all relevant times, the Ross Global Academy Charter School (“Ross Global” or the “Charter School”), was formed under the New York Charter Schools Act of 1998 (L. 1998, ch. 4 §§1, *et seq.*) and New York Education Law §§2851, *et seq.* The School was formed by three applicants (the “Applicants”) of two private organizations, the Ross Institute for Advanced Study and Innovation in Education (hereinafter “Ross Institute”) and New York University ("NYU"), which jointly submitted an application (the “Application”) to be granted a Charter (the “Charter”).
36. Two of the employees do not reside in New York State and the third resides on the Upper West Side of Manhattan.
37. The Applicants submitted the Application as part of their employment.
38. Thereafter, the Applicants stated that their employers are the "institutional partners" under the Charter School Act, so that the Ross Institute would earn licensing fees in the sum of \$325,000 per year, to be paid by the Charter School.
39. The Charter School and NYU would have an educational lab to experiment and a school that would serve as a training ground for students.
40. The driving force behind the Charter School and the Ross Institute is Courtney Sale-Ross (“C. Ross”), who decided to open and operate a chain of schools throughout the world that would maintain a "global" curriculum based upon the "Multiple-Intelligences" theory of

educations.

41. The Ross Institute that developed a curriculum in 2004, will sell or license it to these academies.
42. The Charter School is intended to be the first school of such global chain.
43. Upon information and belief, on or prior to October of 2005, the Chancellor and/or personnel from the DOE had communications with the Ross Institute an/or C. Ross and/or representatives of others involved in the formation of the Charter School and/or others working for or on behalf of the New York University's Steinhardt School of Education.
44. Upon information and belief, the foregoing communications lead to an understanding among the parties involved, to overtake part of the Columbia Street Facility housing NEST and turn it over to a new charter school to be backed by the Ross Institute.
45. Capitalizing on the funds spent by NEST parents on capital improvements and years of physical work, the NEST school building and NEST's accomplishments would now serve as a laboratory for the Chancellor's solution for the impoverished New York City Public School System by turning childrens' education over to private organizations, to wit: charter schools.
46. During the summer of 2005, Robert Durkin ("R.Durkin")of New York University's Steinhardt School of Education contacted the principal of NEST and asked to visit Nest to study its successful teaching methods. (EA)
47. Subsequently, R. Durkin arranged a visit and C. Ross and several others toured the NEST and the Columbia Street Facility (the "Tour")
48. The Tour was hosted by the staff of NEST.
49. Unbeknownst to Petitioners prior to April, 2006, R. Durkin was one of the applicants

who signed the Application submitted to form the Charter School. (EA)

50. Prior, during and after the Tour, R. Durkin and C. Ross neither disclosed they were acting on behalf of the Charter School, nor the very existence of the plans to establish a charter school. (EA)
51. Discussions between the DOE, the Ross Institute or people acting on its behalf, also centered around the formation of the Charter School and the submission of an application (the “Ross Application”) to the Chancellor to authorize and approve the charter of Ross Global as a “Charter School” under the New York Charter School Act. (EA)
52. As part of the foregoing discussions and in subsequent discussions, the Columbia Street Facility was identified as the best potential site to house Ross Global, once its charter would be approved.
53. At the time of the foregoing discussion, the parties to such discussion knew that the Columbia Street Facility houses NEST. (EA)
54. The parties to these discussions agreed that the DOE would exercise its authority to lease, for \$1, part of the Columbia Street Facility to Ross Global.
55. Ross Global submitted the Ross Application to the Respondent J. Klein on or before October 1, 2005.
56. Upon information and belief, during the month of October 2005, the Chancellor approved the Ross Application and entered into a Charter with Ross Global (the “Charter”).
57. Upon information and belief, during the month of October 2005, the Chancellor, in his capacity as “Charter Entity” under Education Law §2851(3)(a), approved the Ross Application of Ross Global, entered into the Charter and submitted the same for approval to

Respondent Regents.

58. Upon information and belief, on or about January 10, 2006, the Regents approved the Charter and Ross Application.
59. During the Ross Application process, Respondents failed to provide any notice to NEST relating to Ross Global or to the plan to house Ross Global at the Columbia Street Facility.
60. At every significant part of the application process, the DOE and the Regents failed to provide notice thereof to schools in the Lower East Side and to the local District.
61. In fact, upon information and belief, Respondents J. Klein and DOE intentionally withheld notice from NEST and the Petitioners relating to Ross Global, the Ross Application, the Charter and the intent with respect to the Columbia Street Facility.
62. On or about March 31, 2006, some parents who are actively involved with NEST, were advised by New York State Assembly Speaker Sheldon Silver's office, that Respondent J. Klein intended to wrest a large part of the Columbia Street Facility from NEST, to a newly formed charter school.
63. Representatives from Speaker Silver's office stated that they were surprised that NEST was still growing in light of the Chancellor's intentions to hand over a large portion of the Columbia Street Facility to a newly formed charter school.
64. With respect to school year 2006-2007, NEST, prior to April, 2006, submitted and received approval for an expansion of NEST to over 1,000 students (the "2006-2007 Authorization").
65. Based upon the 2006-2007 Authorization and prior to April 5<sup>th</sup>, 2006, NEST sent acceptance letters to over 300 students and ranked 122 potential applicants for admission into

the NEST high school, premised upon New York City's high school admissions ranking system.

66. By correspondence of April 5, 2006, Peter Heaney, Jr., the Regional Superintendent for Region Nine of the New York City School System, ordered the principal of NEST "not to exceed a total of 899 students at NEST for the school year beginning September 2006."
67. On or about the same time, the representatives of Region Nine contacted other officials at NEST and ordered them to stop the admission process for the next school year scheduled to begin September 2006.
68. At or about the same time, representatives from Region Nine came to the School and obtained lists of students that had either applied or were accepted to NEST for the school year scheduled to begin September 2006.
69. NEST, like most other public schools in the City of New York and consistent with its past practice, employs a rolling application process.
70. Under the rolling application process, a number of candidates are interviewed, assessed and then a determination is made.
71. This process is conducted in order to ensure that the School does not accept more students than it can accommodate at any given time based upon its budget, available space and available resources.
72. Based upon its budget and plans for the school year scheduled to begin during September 2006, the School was scheduled to enroll approximately 1,061 students.

73. On or after April 5, 2006, employees of Region Nine began calling parents of students who have been accepted to NEST. (MB)
74. Some parents received numerous calls.
75. In at least one call, a parent was asked if she still planned to send her daughter to NEST next year. When the parent inquired about the reason for the call, she was told by the representative of Region Nine that **“NEST WAS HAVING PROBLEMS AND MAY BE SHUT DOWN.”**
76. Upon information and belief, Respondents J. Klein and the DOE have decided to limit the enrollment of NEST so that space will be available in the Columbia Street Facility to house Ross Global. (EA)
77. On April 26, 2006, Petitioners received an official notice that Ross Global would be housed at the Columbia Street Facility.
78. According to the Ross Application, Ross Global intends to be located in the Lower East Side of Manhattan.
79. Upon information and belief, the Chancellor knew at the time of the grant of the Ross Application and execution of its Charter, that his only quick solution to facilitate the implementation of Ross Global would be to provide a significant amount of the space currently used by NEST at the Columbia Street Facility.
80. Respondent J. Klein knew that in order to be able to provide such floor space to Ross Global, he would have to limit the admission of new students to NEST to fewer than 900 and

cause NEST to significantly increase its class size and otherwise adversely affect the NEST curriculum and the education provided to NEST students.

81. In fact, in a recent meeting with NEST parents at a walk-through of the Columbia Street Facility, Garth Harries from the DOE, advised NEST parents that NEST has room for Ross Global in part because they would need to “double-up” class sizes.
82. The Ross Application provides that it does have funds to lease space and submitted a budget for the school based on an assumption that Ross Global will have to lease space at market rate. (Application, p. 1671, Application P. 1751)
83. However, according to the Ross Application, leasing a facility for the charter school will cause Ross Global to have a class size of 24 students instead of 20 (Ross Application, p. 1672) which will "adversely impact the learning environment" (Ross Application, p. 1750) and will result in teachers providing less personal attention for each student (Ross Application, p. 1773).
84. In addition, according to the Ross Application, leasing a facility will cause Ross Global to have seven specialty teachers in year four instead of ten (Application, p. 1673, note 31), cause the Charter School to offer fewer electives such as wellness and will cause a delay in the hiring of a director until the second year, resulting in the president serving as a director during the first year (Application, p. 1773).

85. The approval of the Ross Application was premised upon the budgets submitted including the budget that contemplated the leasing of a facility by the charter school and if necessary, the raising of additional funding to cover the cost of such leased space.
86. The DOE has demanded that eleven classrooms from NEST's middle and high schools be set aside for the Charter School's exclusive use.
87. This will force the NEST middle and high schools to increase average class size from 20 to 31.
88. At the same time, the average class size of the 160 students of Ross Global will be 17.3 per class.
89. NEST's middle and high schools number approximately 527 students, who will be shoehorned into 50,000 square feet of space (or 28 square feet per student ) while the 160 charter school students will enjoy 10,000 square feet of space (or 61 square feet per student).
90. Ross Global is not entitled to space from the DOE.
91. The Ross Application sets forth that it does not want to lease space because its class size will increase from 20 to 24 and this will have an adverse impact on education.
92. It has been proven that smaller classes yield better performance.
93. The DOE has granted public school space for the benefit of the Charter School and caused a significant increase in class size of NEST.

94. NEST's successful model will not be maintained and the school will have to change its model for teaching science and math and cut back important classes and part of the curriculum in order to accommodate Ross Global.
95. It is impossible to accommodate Ross Global's students in NEST's cafeteria, gym, auditorium, schoolyard and library without significantly adversely impacting NEST students.
96. The DOE is using different formula to calculate the building capacity for NEST and the building capacity for Ross Global. Using the formula applied by the DOE to the Charter School, NEST's capacity is 992 students making the Columbia Street Facility fully utilized and without any room for Ross Global.
97. The Ross Application further provides that it prefers the Lower East Side.
98. The Ross Application provides that it would be able to be housed in a facility outside of the Lower East Side (Application, P. 1768).
99. The DOE failed to adequately explore space outside of the Lower East Side.
100. The DOE failed to adequately consider space other than NEST and to the extent that it did, it was only as a response to NEST PTA's request and to placate the NEST PTA.
101. There are other locations in New York City and in the Lower East Side that have nine classrooms available for the Charter School that would not result in the disruption of the education process at such facilities.
102. Upon information and belief, the DOE selected the NEST facility much earlier than its "official" announcement as evidenced by the limitation of NEST's enrollment and telephone



109. Upon information and belief, at all relevant times, Respondent J. Klein knew that DOE did not have space available in the Lower East Side of Manhattan.

110. Undoubtedly, increasing class sizes in the public school building designated for Ross Global, limiting enrollment of public school students to such public school or displacing such students from their public school in order to accommodate Ross Global would decrease learning and achievement opportunities for almost a thousand public school students.

### **Failure to Provide Adequate Notice**

111. At each significant stage of the chartering process, timely notice was not provided to public and non-public schools in the same geographic area where the proposed charter is to be located.

112. Notice was not provided to NEST which was the principal school targeted by the DOE to house the charter school. N

113. Notice was not provided to the local school district.

114. The Application contains numerous references to the Charter School's intention to be located on the Lower East Side of Manhattan in an area served by School District 1. See, e.g. Application at pp. 53, 57 and 102.

115. When the Application was submitted, the DOE, Chancellor Klein had identified potential feasible locations in the Lower East Side and commenced activities to validate the space.

116. No notice was provided at this critical step of the chartering process to the targeted school, to other schools in the targeted area or to the relevant District.
117. Later in the application process, in response to a letter from the New York State Education Department, the Applicant stated that with respect to the latest efforts to secure a location within the Lower East Side, "the DOE has indicated that potential, feasible locations in the preferred regions (i.e., the Lower East Side) have been identified". Application at p. 1773.
118. At this next critical step in the application process, Chancellor Klein and the DOE did not provide any such notice to NEST, to other public and private school in the area and to the local District.
119. Another critical stage of the application process is the approval process before the Regents.
120. The Regents failed to provide notice to public and private schools that are affected or are in the proposed area and to the local District and did not take appropriate action to ensure that notice was provided.

**The Charter Was Effectively Submitted By Two Institutions, Not Individual Community Members And Therefore Fails To Comply With The Provisions Of Article 16 Of The Education Law**

121. The Charter with Ross Global was executed by Jennifer Chisdey ("J. Chisdey"), as the main applicant.
122. The Application also had two co-applicants, Robert Durkin ("R. Durkin") and Megan Silander ("M. Silander").
123. J. Chisdey is an Education Associate and M. Silander is a Director of Education and

Outreach at the Ross Institute, with the latter providing the Ross Institute as her mailing address in the Application.

124. R. Durkin is employed by New York University and lists NYU's Metropolitan Center for Urban Education, which also serves as his mailing address for the Application.
125. According to the Application, the Charter School will have the Ross Institute as an institutional partner organization.
126. NYU took part in the design and planning of the Charter School through R. Durkin (one of the co-applicants) and another NYU graduate student.
127. The Board of the Charter School is not comprised of any members of the community who reside in the Lower East Side.
128. The Board of the Charter School is controlled by the Ross Institute and NYU.
129. One of the institutional partners, the Ross Institute, has contracted with the Charter School to provide certain "professional development" and "curriculum resources."
130. The Charter School, will pay an escalating fee to the Ross Institute (the "institutional partner") reaching \$320,000 per year as of year four.
131. The institutional partners did not provide any funding to the newly formed Charter School and only provided some services as well as a loan in the amount of \$632,000 made by the Ross Institute (the "Loan").
132. The Loan will accrue interest at a rate of five (5%) per year.
133. The Application also notes that the other institutional investor in the chartering process, NYU, enjoys a relationship with the Charter School that will serve New York University's own "self-interest" in that it will provide opportunities for research efforts and internship

opportunities for NYU students.

134. As further noted in the Application, Ross Global will serve as a "lab" for NYU and the Ross Institute.

135. Primary applicant M. Silander's principal assignment working for the Ross Institute was the formation of the Charter School.

136. Two private organizations, Ross Institute and NYU, operating through their employees, formed a charter school that will provide the Ross Institute \$320,000 in fees derived from the State of New York and provide NYU's professors a "lab" to conduct research, publish articles.

137. NYU will also have a school that can serve as a training ground for NYU students.

138. The main applicant and co-applicants submitted the Application in their capacity as employees of the institutional partners.

139. The institutional partners not only paid these employees for their work on the charter application, but also funded expenses incurred in the formation process.

**The Charter Should Be Revoked Because It Was Not Submitted By Community Members And Therefore Fails To Comply With The Provisions Of Article 16 Of The Education Law**

140. The Application was submitted by lead applicant M. Silander, who is not a resident of the State of New York.

141. Co-applicant, R. Durkin, is likewise not a resident of the State of New York.
142. None of the Applicants involved in the instant case is currently a teacher or school administrator.
143. Two of the Applicants live outside of the State of New York and the other lives in an affluent neighborhood on the West Side of Manhattan.
144. None of the applicants is a member of the Lower East Side community where the charter school insists on being located.
145. The Application does not indicate if any of the Applicants is a parent.

**The Charter Should Be Revoked Because The Applicant Failed To Show That It Can Operate A School In An Educationally Sound Manner**

146. The Applicants did not demonstrate that they have the ability to operate a school in an educationally sound manner.
147. Principal applicant M. Silander has been an employee of the Ross Institute since 2005.
148. Based on M. Silander's resume attached to the Application, since graduating from college in 1998, she has not maintained any job for much longer than two years.
149. M. Silander has written an administrative survey, analyzed data and conducted visits as a research associate at the Evaluating and Training Institute in Los Angeles, California.
150. She has worked on education policy and legislation relating to education.
151. She has volunteered on behalf of the Peace Corps and has worked for the Ross Institute

for the primary purpose of co-authoring the Application that serves as the basis for the dispute in this proceeding.

152. Co-applicant J. Chisdey does not have the experience to operate the Charter School in an educationally sound manner.

153. Her employment history reveals that she has fewer than four years' of teaching experience.

154. Her other positions in schools and education amount to approximately two years of experience at the Ross private school in the Hamptons which positions did not involve school administration or teaching.

155. J. Chisdey has not demonstrated the ability to operate a school in an educationally sound manner.

156. Co-Applicant R. Durkin, is not a teacher or school administrator.

157. According to information in *The New York Times*, R. Durkin was removed from his position as school principal for Washington Irving High School in Manhattan after an investigation found that he allowed nineteen students to graduate although they had failed required courses and had pressured teachers into giving students passing grades or had changed the grades himself without consulting them.

158. According to *The Times*, R. Durkin, was later reinstated after then-Chancellor Cortines expressed his, "profound concerns about the professional judgment he exercised in certifying nineteen students for graduation despite their failure of required courses."

159. R. Durkin had been close to Mayor Giuliani, who according to *The New York Times*, lobbied Chancellor Cortines for his reinstatement.
160. R. Durkin retired from active education administration and is now an employee of NYU at the Equity Assistance Center.
161. The Application fails to disclose information about R. Durkin's past suspension.
162. The Application fails to demonstrate that R. Durkin has the ability to operate a school in an "educationally sound manner."
163. The principal "official" institutional partner of the proposed Charter School is the Ross Institute.
164. The Ross Institute does not have and did not demonstrate the ability, to operate a school in an educationally sound manner.
165. According to the Application, the Ross Institute has never actually operated a school.
166. Exhibit C of the Application captioned "Ross Institute Track Record," purports to present to the Chancellor and the Regents the experience of the institute in providing "instructional and professional development programs, school curriculum development and student support programs" ("Exhibit "C").
167. Exhibit C deceptively provides the track record of the Ross Private School in the Hamptons.
168. The Ross Private School however, was founded years before the Ross Institute was

founded.

169. Exhibit C sets forth all of the accomplishments of the Ross Private School in the Hamptons.

170. Exhibit C does not provide any detail of the Ross Institute's contribution to the success of that school and in any event, does not even allege that the Ross Institute has operated the Ross Private School.

171. Exhibit C to the Application describes the "Tensa Gymnasium in Stockholm" (the "Gymnasium"), but does not provide any meaningful tangible information about the role of the Ross Institute at the Gymnasium and does not assert that the Ross Institute had operated, managed or run that school.

172. The Ross Private School and the Ross Institute do not have any meaningful experience with K-3 classes. Application, p. 1761.

173. The Ross Institute has only in the past provided limited assistance to two existing schools, the Ross Private School in the Hamptons and the Gymnasium.

174. According to the Application, the Ross Institute has never, operated or managed a school and has never started a school.

175. The Applicant and Ross Global do not have the ability to operate a school in an educationally sound manner. The curriculum of the Charter School is premised upon the "Multiple Intelligences" theory of learning.

176. The creator of the theory, one Howard Gardner, himself has cast doubt on the efficacy of

the system, noting: “I don’t remember when it happened but at a certain moment, I decided to call these faculties ‘multiple intelligences’ rather than abilities or gifts. This seemingly minor lexical substitution proved very important; I am quite confident that if I had written a book called “Seven Talents’ it would not have received the attention that *Frames of Mind* received.”

177. The website monitoring education in the State of Illinois (which subscribes to the Multiple Intelligences theory), notes: “The response to "MI" [Multiple Intelligences theory] has been that since kids learn differently, teachers need to spend lots and lots of time with a variety of *loony projects* so that all bases are covered.”

178. Ross Global, which subscribes to the Multiple Intelligences theory, does not have the ability to operate a school in an educationally sound manner.

179. The curriculum of the Charter School is premised upon the “Multiple Intelligences” theory of learning.

180. The creator of the theory, one Howard Gardner, himself has cast doubt on the efficacy of the system, noting: “I don’t remember when it happened but at a certain moment, I decided to call these faculties ‘multiple intelligences’ rather than abilities or gifts. This seemingly minor lexical substitution proved very important; I am quite confident that if I had written a book called “Seven Talents’ it would not have received the attention that *Frames of Mind* received.”

181. The website monitoring education in the State of Illinois (which subscribes to the Multiple Intelligences theory), notes: “The response to "MI" [Multiple Intelligences theory]

has been that since kids learn differently, teachers need to spend lots and lots of time with a variety of *loony projects* so that all bases are covered.”

182. Ross Global, which subscribes to the Multiple Intelligences theory, does not have the ability to operate a school in an educationally sound manner.

**The Charter School Will Discriminate Against Jewish Students And Employees**

183. The Application, as well as materials distributed by the Charter School in informational sessions, provide that the Charter School will offer a mandatory Saturday program that will be part of the regular schedule.

184. A "Memorandum of Understanding between the Charter School and Student families and school" prepared for execution by parents and students who desire to attend the Charter School, states that "the child will participate in all aspects of the required school programming including...Saturday morning programs."

185. The Charter School intends to serve the Lower East Side of Manhattan and demands that the DOE provide space in that part of New York City.

186. The Lower East Side is an ethnically diverse neighborhood with a has a large Jewish population.

187. The Charter School has discriminated against Jews who comprise a large part of the population of New York City and the Lower East Side, in that any Jewish school-age child who observes the Sabbath, will not be able to attend the Charter School.

188. The Charter School will use public funding to operate a school on Saturday.

**The Department Of Education Decision To Place The Charter School At The Columbia Street Facility That Houses Nest Should Be Revoked**

189. NEST is one of the best schools in New York City, with a diverse student body that mirrors both the diversity of New York City as well as the diversity of the Lower East Side of Manhattan.
190. The terms of the Resolution of the Board of Education, adopted by the prior administration and approved by former Chancellor Levy, provides that NEST will be a K-12 school.
191. The explanation of the Resolution (as annexed to it and as presented by Chancellor Levy), states that the "school will provide students with quality education programs through a lower, middle and upper school model housed at the same site. An essential element of the school will be a seamless K-12 approach."
192. The Resolution provides, although NEST is "an academy" housed in one building which offers a seamless K-12 curriculum, the school is actually comprised of a lower school, a middle school and a high school with each school being allocated its own separate space.
193. At the same time, due to shortage of rooms in the building, the three schools share a part of the facility, such as the gym, the library, the kitchen, the dining room, the nurse's facility as well as some of the science and computer labs.
194. NEST is required to have separation between the lower school students and middle and upper school students so that, for example, a high school student does not share the same bathrooms with a kindergarten student.
195. The Facility has two floors with classroom space.
196. The lower floor, commencing in the 2006-2007 school year, will serve five kindergarten

classes, four first grade classes, three second grade classes, three third grade classes, three fourth grade classes and three fifth grade classes.

197. The lower floor also houses the school's library (which is shared by the three schools), a small room that serves as a special language arts and library for the younger lower school students, a music room, a lower school science lab as well as a nurse's office and other offices that serve all three schools.

198. The lower school's enrollment for the 2006/2007 school year will be 465 students.

199. In the lower school, each class, as is typical in all lower schools in New York City, has an organic classroom.

200. Typically, the students have all of their classes in the organic classroom and are in a specialty period outside of the classroom for one period of the day.

201. Applying the DOE's own current formula for school building usage, the lower floor of the school that houses the Lower School is at full capacity.

202. If the DOE decides to take any rooms from the lower school, or if as a result of the DOE's action any of the classes will have to be used by the upper schools, the class size of the remaining classes will increase.

203. The DOE, in a letter to the school, has not demanded any classrooms for the charter school from the lower floor.

204. To the extent that such a demand will be made, or if the DOE will move any of the upper school classes to the lower floor, the arguments set forth herein with respect to the upper floor of the school will apply.

205. The "official" DOE determination with respect to the facility that will house the Charter

School at NEST's Columbia Street Facility, was made on April 26, 2006 (the "DOE Determination").

206. In the DOE Determination, the DOE concludes that it will appropriate the entire east side of the upper floor of the building that houses the NEST Middle School and High School.
207. This east section of the building that will be provided to the Charter School, amounts to 11 classrooms and two offices.
208. This section of the building will now house the Charter School's 160 students.
209. In addition, the Charter School will have to share some of the building's facilities such as the gym, the cafeteria, the playgrounds and perhaps the library and school nurse.
210. This foregoing leaves NEST with 23 classrooms for its 527 Middle School and High School Students.

#### **The Department Of Education Determination Was At The Expense Of Public Education**

211. The Charter School Applicants submitted three separate budgets for the Charter School.
212. As noted in the Application, "the first budget assumes that the school would be housed in a DOE facility... The second budget assumes that the school would lease, at a subsidized rate, a non-DOE facility."
213. The third budget assumed a market rate lease.
214. Exhibit Q to the Application captioned "Budget Narrative – Market Rate Leased Facility," provides information respecting DOE's decision.
215. Exhibit Q provides that "as a result of funds being redirected to cover lease costs" class size would increase to 24 students per class instead of the 20 per class desired by the Charter

School. Application, p. 1672.

216. The number of specialty teacher will grow only to seven in year four instead of ten because there will be less in funds available for teachers as a result of the lease payments.

Application, p. 1673 note 31.

217. By letter dated November 14, 2005, the Applicants wrote to the New York State Department of Education to describe how the lease payments would "materially detract from the vision and mission of the charter school" (the November 14 Correspondence”).

218. The November 14 Correspondence provides that: "*[T]he lease payments would [cause] the following impact: reduction in classroom instruction teachers from 17 to 13 in year 1... This would require a change to the programs we could offer either through a reduction in electives or by eliminating, for example, daily wellness. Delay in hiring a Director until the second year. The President would need to serve as a Director in the interim and would not be able to focus as much on development needs... higher class size and less personal attention for each student*". Application, p. 1773.

219. According to the Application, the class size in the charter school will be twenty (20) students per class.

220. Because of the adverse impact resulting from the lease payments, as noted above, the Applicants opined that they would "prefer to be located in Department of Education space on the historic Lower East Side of Manhattan."

221. In order to appease the desires of the Charter Schools (or those of C. Ross), the

Chancellor and the DOE met the demands of the Charter School, all to the detriment of

NEST:

222. To locate a school on the "historic Lower East Side of Manhattan";
223. To preserve the Charter School's class size of 20;
224. To enable the Charter School to hire a director in the first year so that the president will not have to serve in a dual role;
225. To retain the "daily wellness" program;
226. To maintain all the electives desired by the Charter School;
227. To enable the Charter School to pay licensing and curriculum fees to the Ross Institute;
228. To hire a director and president at an annual salary of \$225,000.
229. In order to satisfy each and every one of the foregoing demands, the Department of Education left NEST's middle school and high school students with 17 classrooms for 527 students as opposed to the Charter School's 11 classrooms for 160 Students.
230. The foregoing cutbacks will cause NEST to increase average class size for the upper floor that houses the high school and middle school to 31 students per class (from 20 students per class), reduce its curriculum and offer fewer classes and electives.
231. The DOE has significantly compromised one of the best performing public schools in order to preserve funds for the Charter School so that it may:
  - pay the Ross Institute licensing fees;
  - hire a Director and President at a salary of \$225,000 per year;
  - maintain class size at 20 instead of 24;
  - preserve its wellness program;

- pay unusually high salaries to administrators; and
- serve as a training ground for its institutional sponsors.

### **The Department Of Education Has Discriminated Against Public Schools**

232. The decision by the DOE to locate the Charter School at the Columbia Street Facility discriminates against public school children and public school education.
233. The DOE has used one set of calculations to calculate the capacity of NEST to be 1,407 students.
234. The DOE formula used by the DOE to calculate the capacity of NEST assumes a class size of 30 students per class.
235. Once the 11 rooms set aside for the Charter School are taken away, NEST's students will average, based on the DOE's own formula, 31 students per class.
236. The Department has allocated 11 classrooms to the Charter School in order to enable an average class size of twenty students per class.
237. This class average was demanded by the Charter School in the Application, which is replete with assertions and commitments that it would have a class size of twenty students per class.
238. Contrary to the Application, the Charter School will only have 160 students in the first year leading to a class size of 17 students per class (based on 11 rooms allocated to the school).
239. The Charter School has asserted in the Application that it *prefers* not to PAY for space because, "as a result of funds being redirected to cover lease costs," class size would increase

to 24 students per class instead of the 20 per class desired..

240. The Applicants have asserted that an increase in class size from twenty to twenty-four would hurt the Charter School's education and stated in the Application that the funds needed to support a lease "will result in increased class size, which will adversely impact the learning environment").
241. In calculating the total enrollment of the Charter School, the DOE has used a formula of twenty students per class (the "Charter School Formula"), while using a formula of thirty students per class for NEST.
242. If one were to apply the Charter School Formula to NEST, NEST's capacity is only 992 students.
243. By application of the Charter School Formula, NEST has a full capacity.

**The Department Of Education Determination Will Adversely Affect Nest Students' Overcrowded Classes And Decrease Educational Opportunities For Nest Students**

244. NEST's administration has concluded that if NEST will lose eleven classrooms, it will adversely affect NEST by increasing class size, cause cutbacks of the curriculum and will decrease the number of college preparatory elective classes that the high school students take.
245. NEST's common spaces such as the gym, library and dining room are overcrowded, in part due to the complexity of scheduling dining room time for the lower, middle and high schools, resulting in lunch for some high school students at 9:30 a.m.
246. The foregoing conclusions have been reached by NEST's administration that in five years

has built the best performing school in New York City.

247. The NEST administration, lead by NEST's principal and parent representatives, has attempted to explain its conclusions to the DOE.
248. In a meeting among G. Harries, Chancellor Klein, Speaker Silver, and NEST's principal and parent representatives, held on Friday, April 21, 2006, NEST's administration explained the complexity and the adverse effect that the Charter School would have NEST.
249. G. Harries and Chancellor Klein responded that the placement of the Charter School will not increase class size and will not alter NEST's curriculum.
250. G. Harries and Chancellor Klein stated that by the following Monday morning (April 24<sup>th</sup>, 2006), G. Harries would return with a detailed plan showing how this result could be achieved.
251. That following Monday morning, contrary to the promise made before Speaker Silver, G. Harries did not return with a plan.
252. By contrast, G. Harries made blanket statements that NEST could give up eleven rooms and would not be adversely affected because it could facilitate a system of "rotating" students and teachers.

**The Charter School Act Prohibits Allocation Of Space To A Charter School In A Building That Is Completely Used By A Public School When The Charter School Can Pay For A Facility Out Of Money That It Receives From The State Of New York**

253. The DOE's determination will adversely impact NEST student and student learning.
254. Regardless of the "capacity" formula that the DOE decides to use for NEST this year, the entire Columbia Street Facility is used by NEST.

255. The ground floor of the school has a cafeteria, a gym, a lower school science lab and an exercise room for the younger students (K and first grade.)
256. The lower floor of the Facility is completely used as it houses K-5 grades, plus NEST's library.
257. The upper floor of the school is also completely used as it houses grades six through twelve.
258. Every classroom is used almost every period of the school day for education purposes.
259. Providing eleven rooms from NEST adversely impacts NEST's proven curriculum and will increase NEST's class size.
260. NEST uses every part of the Columbia Street Facility.

**Decision Made By The Doe Was Made Without Considering Alternatives Within The Lower East Side And Other Parts Of New York City**

261. The DOE's decision was made without considering alternatives, including enabling the Charter School to use its funds to lease facilities.
262. In the Application, the Applicants stated that the Charter School prefers "to be located in Department of Education space on the historic Lower East Side of Manhattan."
263. Because of the DOE's early commitments, private lease options were not pursued by the Applicants.
264. At that time, NEST had received certain budget approvals to have the school increase in size to over 1,000 students during school year 2006/2007.
265. The DOE which had previously insisted that NEST's capacity was 1,300, had increased

the capacity of the Columbia Street Facility to approximately 1,400.

266. On or about March 31, 2006, representatives of Speaker Sheldon Silver's office told NEST parent leadership that the DOE had decided to place a charter school in the building.
267. The school leadership contacted the DOE about this determination.
268. On April 5<sup>th</sup>, 2006, the DOE sent a letter to the school principal stating that she should limit enrollment of NEST to 899 students for school year 2006/2007.
269. On April 5<sup>th</sup>, 2006, the DOE, and took lists of all students that had been accepted by NEST for school year 2006/2007.
270. On April 5<sup>th</sup>, 2006, the DOE notified the principal of NEST that she should limit her enrollment despite the plan to grow the school to approximately 1,060 students in school year 2006/2007.
271. On April 6<sup>th</sup>, 2006, the DOE started to call parents of students who had been accepted to NEST to ask if they intended to enroll their children. At least in one instance the parent was told that NEST was having problems and may close down.
272. In or about April, 2006, the DOE changed the "official" capacity of the school from 1,300 students to 1,407 students.
273. Prior to announcing its decision to house the Charter School at the expense of NEST's students, the DOE took steps to limit the enrollment of NEST.
274. Only after the NEST community discovered the DOE's intent, did G. Harries visit the Columbia Street Facility in an attempt to establish that NEST did have room to house the Charter School.
275. Thereafter, in a letter to the NEST parents, G. Harries wrote that NEST can house 1,407

students.

276. G. Harries also stated that the DOE has not yet made a specific proposal to NEST about how the space would be used. "We have never suggested that transportable classrooms would be necessary and our goal [is]... not an increase class size...NEST has space to share."
277. G. Harries does not deny that the Columbia Street Facility has been selected, he only indicates that his "goal" is not to increase NEST's class size.
278. A subsequent meeting was held with G. Harries, Chancellor Klein, Speaker Silver (NEST resides in the Speaker's district), the principal of NEST and parent representatives.
279. In that meeting, when other alternative locations for the charter school were raised by the parent representatives, locations that are, in their opinions are available, it was clear that the DOE had not conducted research to find a more appropriate location for the Charter School.
280. G. Harries agreed to look into those locations over the weekend.
281. The DOE never considered other areas of New York City and simply decided to grant the Charter School's desire to locate in the "historic Lower East Side of Manhattan.
282. It is clear from the Application that the Applicants, from the time that the Application was submitted, had discussions with the DOE and understood that space would be provided to them within Region 9.
283. No attempt was made by Applicants to lease space or to explore possibilities outside of their preferred area or even other schools in the Lower East Side..
284. From the outset of the application process, the DOE had located NEST and never made any attempt to locate another school and never followed any proper process or attempted to truly find a location for the Charter School that would not adversely affect public education.

285. The DOE's precipitous determination also prevented the Charter School from any meaningful attempt to find facilities that it could rent.
286. Based upon the Application and budget calculation contained therein, at least thirty percent (30%) of the Charter School's prospective students will come from the Bronx.
287. Based on information obtained from the Charter School's information sessions, more than fifty percent (50%) of the Charter School's enrolled students do not reside in District 1 because the Charter School was open for enrollment to all New York City residents.
288. The DOE and the Charter School should have explored other alternative locations throughout New York City.
289. In order to appease the desires of the Ross Institute, C. Ross and NYU, no meaningful effort was made to look at schools throughout the City.

**The Decision To House The Charter School At The Nest Facility Enables The Charter School To Double-Dip Into Public Funds And Obtain More Than Its Share Of Public Funds Than Provided Under The Charter School Act**

290. According to the Application, the charter school assumed that it would be housed at a DOE facility. The Charter School, in the Application and attached documents assumed that it would be housed in a public school building.
291. The Charter School was so assured that it would be housed in a public school building, that its budget does not include payment for utilities, maintenance, security and other services typically provided in a public school building.
292. Under the Charter School Act, all charter schools get a set amount per student pursuant to a formula prescribed by under the Charter School Act.

293. The formula under the Charter Act provides a certain amount per month per student enrolled at the school.
294. The funds obtained by the Charter School are meant to enable the Charter School to pay for all operating expenses.
295. The Charter School did not budget for the services outlined herein because it expected to be housed in a public school building and expected the DOE to pay for utilities, food, maintenance and other support.
296. The Charter School is getting in-kind the foregoing services from the State of New York.
297. Ross Global will double-dip into the financing pot provided by the State of New York.
298. First it would get funding from the City of New York under the Charter School Act (the “Charter School Act Payments”).
299. Second, Ross Global would receive security services, custodial services, maintenance services, electricity and utilities from the Department of Education.
300. The Charter School Act Payments are payments that are intended to cover any and all expenses associated with the education and facilities provided to each Charter School Students.
301. The Charter School Act Payments also cover utilities, security, maintenance and custodial services.

302. Ross Global, based on the Ross Application, would receive the entire Charter School payment and in addition would receive from the DOE these same services (causing the DOE to pay for services that Ross Global should pay for out of the Charter School Act Payments).

303. Since Ross Global intends to operate school on Saturdays and during most of the summer vacation, the number of free services to be provided by the DOE and paid for by the State is significant.

304. Under these circumstances, such double-dipping and obtaining payment twice for the same items at the expense of the public education system does not meet the requirements set forth in the Charter School Act and other applicable laws.

**WHEREFORE**, it is respectfully requested that:

- a) The approval of the Ross Application and execution of the Charter by the Respondent Chancellor be declared: (a) an abuse of discretion; (b) arbitrary and capricious, (c) effected by an error of law; and (d) made in violation of applicable law and null and void;
- b) The actions taken upon the Ross Application by the DOE be declared: (a) an abuse of discretion; (b) arbitrary and capricious, (c) effected by an error of law; and (d) made in violation of applicable law and null and void;
- c) The Charter granted to Ross Global should be revoked;
- d) Ross Global be declared as not qualified, at this time, to operate a charter under the New York Charter School Act;

- e) The Respondent Chancellor be prohibited from granting Ross Global a lease to, or possession of, any space in a public school or other building owned or controlled by the Department of Education or the City of New York; and
- f) This Court grant such other and further relief as the Court deems just and proper.

Dated: Scarsdale, New York

May , 2006

HASS & GOTTLIEB  
Attorneys for Petitioners

---

by: David Goren, Esq.,  
of counsel  
670 White Plains Road, Suite 121  
Scarsdale, New York 10583  
(914) 725-2600