

2011 WL 3216617 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Essex County

Peter DOLAN, Erika Andrews, Diane Bevins, Hugo Burnham, Kevin Clancy, Jane Cunningham, Josephine Curtis, Martin Delvecchio, Friederike Grotjahn, Jason Grow, Jonathan Hardy, Shelley Morgan, Denise San Paolo, Leora Ulrich and Maria Zervos, Plaintiffs,

v.

Mitchell D. CHESTER, in his capacity as Commissioner of Elementary and Secondary Education, the Massachusetts Board of Elementary and Secondary Education, the Massachusetts Board of Elementary and Secondary Education and the Gloucester Community Arts Charter School, Defendants.

No. ESCV 2010-1378-B.
July 21, 2011.

Findings, Rulings and Order

Hon. Robert A. Cornetta, Justice.

I.

This is the second consecutive school year in which the plaintiffs have sought preliminary injunctive relief to enjoin the opening of the defendant Gloucester Community Arts Charter School. Hearing upon the plaintiffs' renewed motion seeking such relief was held by this Court on July 7, 2011. Findings, rulings and an order of court are now entered in this matter as follows, *viz*:

The plaintiffs commenced their action in this matter on June 28, 2010. Those actions by the state defendants taken in 2008 and 2009 and giving rise to the initiation of this action by the plaintiffs have been well briefed by the parties and will not be repeated here.

Suffice it to say that upon claims of procedural deficiencies leading up to the approval of the Gloucester Community Arts Charter School by the defendant Board of Elementary and Secondary Education and culminating with substantive issues of funding and public education impact, the plaintiffs now seek injunctive and declaratory relief and to terminate the operation of the charter school within the City of Gloucester.

On July 28, 2010 the plaintiffs sought their first preliminary injunction to prevent the charter school's opening. On August 24, 2010 after hearing, that motion was denied without prejudice by the Court (Welch, III, J.). At the time of that motion's denial, the Court entered judgment dismissing the City of Gloucester from the case as a party plaintiff and instructed the parties that if they were unable to resolve their differences by the conclusion of calendar 2010 that they should appear before the court "*in early January 2011*" (emphasis added) in the event the plaintiffs were again to seek preliminary injunctive relief for the 2012 school year.

The case has been pending since that time and on June 17, 2011 the plaintiffs' renewed motion for preliminary injunctive relief was docketed.

In terms of providing students, parents and school administrators with sufficient opportunity to prepare for the upcoming school year, the timing of this motion could not have been worse.

In its August 24, 2010 ruling, the Court specifically referred to the “inherent uncertainty” associated with the next school year (2012) when it called for an early January, 2011 hearing.

Thus, we are now confronted with exactly the same issue of “uncertainty” which the Court sought to avoid in August of 2010. And, while it may be argued that the bringing of this renewed motion by the plaintiffs was delayed by the need to have the city approve its FY 2011-2012 budget, nevertheless an early hearing and decision in this matter could have had a beneficial impact upon students, parents, school administrators and budget planners alike as the city worked through its 2012 municipal budget process.

The reoccurring question now to be resolved is whether or not in again seeking preliminary injunctive relief, the plaintiffs have met their burden at this time.

Upon review of the numerous documents submitted by the parties in this matter, consideration of the parties' presentations at hearing on July 7, 2011 and the record now before this Court, ruling is entered (as in August of 2010) that they have not met that burden. Thus, the renewed motion seeking preliminary injunctive relief is DENIED.

II.

In order for the plaintiffs to prevail upon their renewed motion seeking a preliminary injunction, they must make a showing that they will suffer immediate and irreparable harm; that in seeking to balance the measure of harm to both parties, any injury to the plaintiffs will be greater than that to the defendants; that there is a likelihood of success on the merits and that there will be no severe and adverse affect upon the public's interest. (*See: Mass. R. Civ. P. 65(a), Wing v. Inhabitants of Fairhaven*, 8 Cush. 363, 1851, *Economy Grocery Stores Corp. V McMenamy*, 290 Mass. 549 at 553, 1935 and, *Yakus v. United States*, 321 US 418, 1944).

In this case, finding is made that the City of Gloucester at this late date has already embarked upon its fiscal year 2012 budget taking into consideration the existence of the Gloucester Community Arts Charter School. Thus, the standard of *immediacy* cannot satisfied by the plaintiffs. In addition, the charter school having provided an educational program for students in the 2010-2011 school year is now ready and geared up to continue its education program for the 2011-2012 school year.

Were this Court to now prohibit the charter school from proceeding onto year two of its educational program, the disruption to students and parents would indeed be acute, the Commonwealth would suffer a significant waste of resources now committed to the charter school while the Gloucester Public Schools would incur the impact of having to provide additional class room space and teachers for charter school children at a time when its municipal budget and state aid for the year have already been established.

The potential for disruption just as the new school year is getting off the ground is simply too great. In balancing the equities, the loss to the defendants is both significant and severe. The public's interest would not be well served by the imposition of such last minute chaos upon a system that is already seen by the plaintiffs' own admission as fragile in its fiscal balance.

The record establishes that any perceived infirmities associated with the on going operation of the Gloucester Community Arts Charter School are being closely monitored by the defendant Commissioner of Elementary and Secondary Education and that he has committed to and is in a position to correct and resolve any issues arising regarding the charter school's curriculum, administration and operations.

Considering the totality of the circumstances, the plaintiffs have simply failed to meet their burden at this time in seeking to be granted preliminary injunctive relief.

III.

The plaintiffs' motion for further preliminary equitable relief having now been denied by the Court after hearing and full consideration, we now turn to the issue of future time frames to be imposed upon this litigation to insure that this type of last minute and potentially disruptive request for relief does not create “inherent uncertainty” for a *third* time in 2012. Accordingly, and to establish clear and firm time frames for the final resolution of this case, the following shall now be ORDERED regarding future events in this case:

1. DISCOVERY: All further discovery in this matter shall close on September 30, 2011

2. Rule 56: Serve by: October 14, 2011

File by: November 14, 2011

Heard on: December 8, 2011 at 2:00 pm

3. Final Pre Trial Conference: January 12, 2012 at 2:00 pm

4. Trial: January 24, 2012 at 9:00 am

In order to avoid any slippage in this case schedule, this Court shall retain jurisdiction of this matter.

There shall be no continuances granted as to any of these dates except as ordered by the Court upon written motion made with notice and for good cause demonstrated.

The parties may at any time prior to trial participate in court sanctioned mediation of this matter upon proper application made to the Court and pursuant to Supreme Judicial Court Rule 1:18.

All Until Further Order of the Court:

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Hon. Robert A. Cornetta,

Justice

July 21, 2011.

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