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April 26, 2000

BARBARA PATTERSON, et al,
Plaintiffs,

versus

DISTRICT OF COLUMBIA PUBLIC
CHARTER SCHOOL BOARD,
Defendant.

Civil Action Number CA-2688-00

Excerpt of transcript of preliminary injunction hearing
held April 25th, 2000, before the Honorable JUDITH BARTNCFE,
Associate Judge, in courtroom number 220.

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

-----x	:	
BARBARA PATTERSON, et al,	:	EXCERPT
Plaintiffs,	:	
	:	
versus	:	Civil Action Number
	:	
DISTRICT OF COLUMBIA PUBLIC	:	CA-2688-00
CHARTER SCHOOL BOARD	:	
Defendant.	:	
-----x	:	

Washington, D.C.
Tuesday, April 25, 2000

The above-entitled action came on for a preliminary injunction before the Honorable JUDITH BARTNOFF, Associate Judge, in courtroom number 220.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiffs:

ALAN GREGORY, Esquire
Washington, D.C.

On behalf of the Defendant:

JONATHAN D. HACKER, Esquire
KIMBERLY A. JACKSON, Esquire
KELLY J. RIORDAN, Esquire
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1 was -- it was an out-of-boundary application and Mr.
2 Lewis's son said that Paul was his third choice and they
3 only admitted the first choice which was a way of handling
4 out-of-boundary applications that was approved by the
5 school superintendent. All of which happened, it appears
6 to me prior, to the circulation of third -- of the current
7 application anyway. But I don't see how Mr. Lewis is
8 irreparable injured by the fact that his son didn't get
9 into Paul which is not before me. But I don't see how
10 he's injured by his son not getting into Paul when his son
11 got into this first choice and that's what his son wanted.

12 I don't see any irreparable injury to Miss
13 Patterson, who also signed the petition, says she approves
14 the charter conversion. Her child isn't going to be in
15 the school anyway next year and she seems to have some
16 generalized concerns that don't seem to me really to have
17 much to do with what the issues are here.

18 I don't see any irreparable injury to Miss
19 Pringle given that her concerns were about special
20 education and she didn't even ask any questions prior to
21 filing -- she asked a question of the special ed teacher,
22 didn't get a complete answer, and then filed a lawsuit
23 which seems to me -- I understand her concern but it seems
24 to me before filing a lawsuit it's appropriate at least to
25 determine what the facts are and my -- I think the record

1 is very clear that the -- there is no -- that it does not
2 appear there would be any difference in the special ed
3 services offered next year as a charter school and now as
4 a -- at least there won't be any less. And the remedy if
5 special education isn't what she thinks it ought to be is
6 the same remedy that he would have -- that her child would
7 have whether -- that she would have as the parent of that
8 child whether or not the child was in a charter -- was at
9 Paul charter school or in DC public school.

10 I don't see any irreparable injury to Miss
11 Franco who has indicated that she is determined -- I may
12 have gotten them confused. One of them determined that
13 they were going to leave-

14 MR. GREGORY: Miss Franco.

15 THE COURT: -- because they were moving.

16 MR. GREGORY: Miss Franco.

17 THE COURT: And Miss Bax determined -- said that
18 she was intending to leave and did ask for a transfer.
19 But both of them -- but I credit Miss Middleton's
20 testimony that no teacher would lose their job as a result
21 of their position with regard to the charter conversion.

22 And to the extent that the teachers are saying
23 we disagree with the principal about a significant issue
24 in the school and therefore we're uncomfortable, that does
25 not seem to me to be the kind of irreparable injury that

1 would be addressed by a preliminary injunction or ought to
2 be.

3 And it appears to me, frankly, that even if a
4 preliminary injunction were granted, that discomfort of
5 teachers who disagreed with the powers that be at the
6 school, if I can call it that, would still be there.

7 But I also think that -- I do have a great deal
8 of trouble with the notion that -- that teachers could
9 say, well, we felt intimidated so we signed it anyway. So
10 we signed it even though we didn't agree in a situation
11 where they were approached by other teachers, they were
12 not approached by the principal.

13 I credit Miss Middleton's testimony that she
14 wasn't keeping score, that when a teacher wanted to -- I
15 credit the testimony that when the teacher wanted to take
16 back an approval that was done without question. The ---
17 and, in fact, there was a discussion with a colleague
18 after that and then she determined not to reconsider her
19 decision.

20 The -- notably, it seems to me that when -- when
21 Miss Bax said come back, he came back. And she
22 acknowledged that she got a pamphlet. And it just appears
23 to me generally that the teachers did receive the
24 pamphlets, that the teachers did have the full application
25 available to them in the teachers' library, that they knew

1 that, that this was a subject where they certainly were
2 given access to the information that they were required to
3 get under the statute. And that I just don't see any
4 evidence of anything that would even get us close to a
5 level of coercion, let alone fraud.

6 Now, there may be teachers who disagree and
7 there may be teachers who felt they should go along with
8 it because this is the way the school was working and they
9 didn't want to buck the tide. But it's hard for me to
10 find that somehow such a signatures should be illegal when
11 somebody comes into court and says now, well, I'm sorry --
12 essentially, I'm sorry I signed it, when I didn't tell
13 anybody about it before, didn't tell the board, didn't do
14 any of things that I could have done.

15 And -- and the other thing is that the statute
16 does not say you need to have hundred percent of the
17 teachers approve. It says you need to have two-thirds of
18 the teachers approve. And the fact that the third who
19 don't approve might decide that they want to do something
20 else or be elsewhere does not seem to me to be at all a
21 reason for them to be able claim irreparable injury if the
22 conversion goes through just because they happen to be in
23 the minority. I just don't see any irreparable injury to
24 any of the Plaintiffs here.

25 It also appears that anybody who is currently at

1 a student at Paul will be able to continue to be a student
2 at Paul unless they're in the ninth grade graduating. And
3 that some of the claims that were being made about who
4 would be able to get in are belied by the statute itself.
5 But I don't see that anybody has shown any irreparable
6 injury.

7 In contrast, to appears to me that the harm to
8 the -- the harm in the granting of the injunction would be
9 extreme, that it would interfere with plans for the
10 education of, I don't know, over five hundred students.
11 It may be up to seven hundred. I'm not quite sure what
12 the size would be.

13 But that -- but that two-thirds of the parents
14 and two-thirds -- of the current parents and two-thirds
15 of the current teachers have agreed that this is what they
16 want to do. They're in the process of planning for it.

17 And this is a critical planning time and it --
18 and I credit the testimony that -- of Miss Middleton who
19 finally said we couldn't do it if we were enjoined from
20 proceeding. And I see -- I think that is a significant
21 harm. And balanced against the harm to the Plaintiffs,
22 frankly, I don't think that there's even -- it's not even
23 a close question.

24 So, I think that if there is any irreparable
25 injury here it would be irreparable injury to the

1 Defendant were the -- or to the school, not to the board
2 itself, but to the school if the school were to be
3 precluded from going forward.

4 Now, in terms of the merits, it seems to me,
5 that the issue for me, as I've said before and I want to
6 be very clear, it's not whether charters are a good idea.
7 Charters are permissible under the law. It's not whether
8 this charter application is a good application. That's
9 the board's decision, it's not mine.

10 But I would note that there has been no claim by
11 anyone here. If you look at this statute, and I have, and
12 the statutes a little confusing in some ways. But if you
13 look at the requirements for what a petition should
14 include, there has not been a challenge -- there has not
15 been claim that this petition was missing -- I'm not
16 talking -- as I read the statute there has to be a
17 petition that meets the requirement of the statute, and
18 then it has to be signed by two-thirds of the parents of
19 the minor students and be endorsed by two-thirds of the
20 full time teachers.

21 So, when we start with -- I think what's notable
22 is I haven't heard one word about any -- there's been no
23 claim that the board acted improperly in approving the
24 petition on the merits of the petition. It's fine with me
25 not to be asked to review that.

1 But I think it's notable that no one has even
2 suggested that this petition in any way failed to comply
3 with all of the requirements that the statute sets out for
4 what substantially has been to be included in the
5 petition. And the -- and it appears just from reviewing
6 the statute as well as just glancing through the
7 application that those requirements are not insignificant.

8 So, the real issue, it seems to me, is the --
9 and there also does not appear to me to be any serious
10 question on the merits that it was signed by two-thirds of
11 the parents and that it was endorsed by two-thirds of the
12 teachers. The only claim I have is it seems to -- it
13 appears the only claim is the Plaintiff saying, and Mr.
14 Gregory said it just now, he said that given that there's
15 an inspector general investigation there's a cloud and
16 there's quotes, and I'm quoting him I think, some
17 possibility that the law was violated.

18 Well, I don't know exactly what that means but
19 the standard for a preliminary injunction is that the
20 Plaintiff show a substantial likelihood of success on the
21 merits but not some speculative possibility that there may
22 have been a question about one or two signatures.

23 I am frankly quite impressed that in this case
24 with regard to the signatures the board had no reason to
25 question the signatures of the teachers and there wasn't a

1 single teacher who raised that with them. And more -- and
2 I credit -- and the board found -- and there hasn't been
3 anything presented to me even to suggest that the board
4 didn't -- that they didn't have two-thirds of the teachers
5 sign it.

6 And with regard to the parents' signatures the
7 board took the extra step of verifying the signatures
8 against the roster of the school records in case they had
9 any question, which seems to me to show that -- that the
10 board took an extra step. And I certainly can't find on
11 the record before me that it was arbitrary and capricious
12 for the board to find that it had two-thirds of the
13 parents' signatures after it went through the process it
14 did go through.

15 Furthermore, there is -- so then we have the
16 final two questions which is -- which is notice and
17 whether people understood what they were signing.

18 Now, based on the testimony before me there has
19 not been anybody, there is no Spanish speaking person who
20 has come before this Court and said I didn't understand
21 what this was and nobody would explain it to me. The only
22 evidence I have is evidence that Miss Byrd did the
23 translation and so did some other people and Miss Franco
24 didn't. But the fact that Miss Franco wasn't involved in
25 providing interpretive services in connection with this

1 application doesn't mean it didn't happen and I credit the
2 testimony that it did. And there's no -- there's
3 nothing -- there isn't any -- there isn't anything other
4 than total speculation to suggest otherwise.

5 In terms of the business about the report cards,
6 it seems to me that on its face the notion that somehow
7 somebody would think that they were signing for a report
8 card when they were signing the -- the papers relating to
9 the charter conversion when they're at a table regarding
10 the charter conversion and they're walking into the school
11 knowing that they've got to go to some other room to get
12 the report card and sign for the report card, I just find
13 that incredible.

14 It's totally speculative. And it seems to me
15 based on all of the consistent descriptions that I've
16 received today with regard to what the process is for
17 getting the report card, I just don't credit that as a
18 matter of fact. And the only testimony I had even
19 suggesting that somebody could have been confused is total
20 speculation and there's nobody who's come in to say they
21 were confused. And, frankly, even if there is somebody
22 who would come in and say that, I will tell you that I
23 would find it, given everything else I've heard, fairly
24 hard to believe.

25 And I would note that the practice of coming in

1 to get report cards is not something that happened only
2 because this charter school application was pending. The
3 process of coming in to get report cards is something they
4 did on a regular basis year after year after year and the
5 parents know how to do it. And application -- so I just
6 think it's apples and oranges and I don't credit those
7 allegations at all.

8 What I do find notable is Miss Pringle said that
9 she didn't know a lot about this but Miss Pringle wasn't
10 there in '98 and '99 during the time -- Miss Pringle's
11 child didn't get -- didn't start in the school until this
12 past fall, and so that -- so that the application had
13 already been submitted to the board prior to the time that
14 Miss Pringle's child entered the school.

15 Miss Patterson, whose child had been in the
16 school and who did sign the paper, and who frankly strikes
17 me as somebody who doesn't sign things she doesn't believe
18 in, Miss Patterson gave -- not only did she sign this but
19 she gave a rationale on the document itself for why she
20 signed it where she basically said I don't like charter
21 schools very much but I like the District of Columbia
22 public school system worse and that's why I'm signing
23 this.

24 But -- but she testified that she went to a
25 meeting, she called it a dog and pony show, and said it

1 was a spaghetti dinner which is completely consistent with
2 the other testimony we've received about how parents were
3 invited to the meetings and one of the ways the PTA did it
4 was to have food attached, which is not to cast aspersions
5 on Miss Patterson but only to say that she -- the meeting
6 that she said she attended and her testimony with regard
7 to that appeared to me very consistent with the testimony
8 of Dr. Copeland with regard to how they attempted to reach
9 out to parents and educate them about what was going on
10 and what the charter meant. Now, she said that she
11 didn't ask questions. And she admitted that she could
12 have.

13 It -- it also appears to me that when you take
14 this as a whole there -- in terms of the notice the -- and
15 let's talk about the teachers, I think I may have said
16 this, but the requirements to provide a copy of the
17 petition to the parents and to the employees, it seems to
18 me and I -- and I understand the issue before me to be did
19 the board act arbitrarily and capriciously and not in
20 accordance with the law in permitting the kind of
21 information that was provided.

22 Now, I take it that the board found that provide
23 a copy doesn't mean you have to give a copy to everybody
24 or send a copy to everybody, it means you make a copy
25 available to everybody. And I find as a matter of fact on

1 the record that's currently before me that copies of the
2 petition certainly were available -- that information
3 about the petition was available -- that the application
4 was available to parents, information about the
5 application was available to teachers; that the board
6 found that the school did a reasonable job in trying to
7 address the issues that the board understood would be of
8 major concern to those two different groups; and that
9 copies of the application were available and that -- to
10 anybody who wanted them in a very easy way.

11 To the teachers they were all available in the
12 library. To the parents they were basically available on
13 request. It seems to me perfectly reasonable that a
14 parent who requested it would get a copy, which is how I
15 understand the testimony of Mr. Womack.

16 And I also think that there is nothing in this
17 record to suggest to me that there wasn't substantial
18 compliance with the requirement to provide a copy by
19 having copies made available to everybody and by having
20 everybody know that those copies -- or making it known to
21 people that copies were available.

22 Now, I appreciate that there are difficulties in
23 communicating with the population in this school. And
24 that sometimes things are sent home by the children and
25 they don't always get to where they're supposed to be.

1 And I would note that in this case extra efforts were made
2 to reach parents that didn't involve necessarily going
3 through the children by phone trees, by post cards and by
4 follow-up letters and that it seems to me that the
5 outreach effort was quite substantial, frankly.

6 And that -- and I certainly do not find that the
7 board acted arbitrarily and capriciously when it approved
8 an application based on the kind of outreach that was done
9 and the kind of notice and provision and copies -- and
10 availability of the application to those population.

11 Finally is the issue of notice of the hearing,
12 and that the statute requires that the notice of the
13 hearing has to be published in the DC Register and that a
14 written notice has been to be sent no later -- to the
15 applicant no later than ten days before the hearing.
16 People may argue, and maybe with good reason, about
17 whether more notice ought to be required by the statute
18 but that's what the statute requires and I think that it's
19 uncontroverted that that's what the board did.

20 And it also appears to me to be uncontroverted
21 that the board did a lot more. Based on the testimony
22 which I credit from the chair of the board, Miss Baker,
23 that not only did that they do it in the Register which
24 many people -- some people read, some people don't, but
25 they also did it in the Post, they also did it the Times.

1 They also did it through press releases. They attempted
2 to get news articles. They attempted to make it known to
3 have flyers that would go to a number of community
4 organizations in order to get the word out to people.

5 Now, people may have gotten the word, people may
6 not have gotten the word. I understand that the hearing
7 was in August when lots of people don't pay attention --
8 when lots of people aren't here and other things happen
9 but there's nothing in the statute that precludes that and
10 my understanding is that timetable is something that
11 everybody was aware of from the very beginning of the
12 application process.

13 In any event, it seems to me that there was
14 compliance with the statute and I'm not going to rewrite
15 the statute in that regard, nor do I -- and so the issue
16 is not did a particular teacher know about the hearing,
17 the issue was was a hearing held in compliance with the
18 statute and the answer to that clearly is yes.

19 It also does appear to me, and this is the last
20 thing I'll say, that in a situation like this it is some
21 -- it is somewhat disturbing that issues would be raised
22 to the Court that had not been raised in the first
23 instance before the board. And I agree with the
24 Defendants that these issues properly should have been
25 raised before the board.

1 I think that -- that if they raise issues that
2 get to a question of -- you know, the Court obviously can
3 review the board's actions for arbitrary and
4 capriciousness -- arbitrariness and capriciousness. In
5 any event I don't think there's any evidence of that here.
6 I think it appears to me the board was -- the board was
7 careful based on what it did with the signatures and the
8 applicants were quite care.

9 But it also does appear to me that the reason
10 for this kind of a process is so that concerns about the
11 application would be raised in the first instance before
12 the board and not here.

13 But I would note that -- I assume that most of
14 what that would involve would typically be substantive
15 concerns about the -- about what the actual educational
16 plan for the school was and -- and it appears that none of
17 that was raised, no concerns in that regard and concerns,
18 for example, about special ed or about other things would
19 certainly be encompassed in that. None of that was raised
20 before the board. And if people do have do have concerns
21 I find it unfortunate that they didn't take advantage of
22 that process.

23 I also understand that this is an issue that
24 is highly charged in the community, that there are people
25 who have strong feelings about it one way or the other,

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that many there may be a fair amount of misunderstanding as well as misinformation. And I certainly hope that as the school proceeds some of people's concerns can be alleviated and that -- that people judge the school based on what's really going on and not based on rumor speculation and the kind of misinformation that unfortunately I've heard a fair amount about in the past two days.

So, the motion for preliminary injunction is denied.

(Excerpt of proceedings was concluded.)

* * * * *