

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

NEW YORK STATE UNITED TEACHERS, by its President ANDREW PALLOTTA; UNITED FEDERATION OF TEACHERS, LOCAL 2, by its President MICHAEL MULGREW; ANGELA ESPOSITO, individually and on behalf of her minor grandchildren; MONICA TERON, individually and on behalf of her minor child; and ANA S. RIVERA, individually and on behalf of her child,

Petitioners,

v.

STATE UNIVERSITY OF NEW YORK; DEBORAH F. STANLEY, as Interim Chancellor of the STATE UNIVERSITY OF NEW YORK; DR. MERRYL H. TISCH, as Chairman of the STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES; JOSEPH W. BELLUCK, as Chair of the STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES' CHARTER SCHOOLS COMMITTEE; STATE UNIVERSITY OF NEW YORK CHARTER SCHOOLS INSTITUTE; STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES' CHARTER SCHOOLS COMMITTEE; BRILLA COLLEGE PREPARATORY CHARTER SCHOOLS; and PUBLIC PREP CHARTER SCHOOL ACADEMIES,

Respondents.

**VERIFIED PETITION**

**Index No.**

**Date Filed**

Petitioners NEW YORK STATE UNITED TEACHERS (“NYSUT”), by its President ANDREW PALLOTTA; UNITED FEDERATION OF TEACHERS, LOCAL 2 (“UFT”), by its President MICHAEL MULGREW; ANGELA ESPOSITO, individually and on behalf of her minor grandchildren; MONICA TERON, individually and on behalf of her minor child; and ANA S. RIVERA, individually and on behalf of her child, by their attorneys, Stroock & Stroock

& Lavan LLP, Robert T. Reilly, Esq., and Beth Norton, Esq. for their verified petition respectfully allege:

### **PRELIMINARY STATEMENT**

1. Petitioners commence this Article 78 proceeding to vacate and annul the actions taken by Respondent State University of New York (“SUNY”) Board of Trustees’ Charter Schools Committee (“Committee”)<sup>1</sup> to create a new charter school in New York City in violation of the statutory cap on the number of permissible City charter schools, which has long since been reached. It is the exclusive province of the legislature to set the maximum number of charters that may be issued within the City school district.

2. Unhappy with that legislative cap, and disregarding the written comments and recommendations of the New York State Education Department Board of Regents (“Board of Regents”), SUNY Respondents together with the applicant charter schools have pursued a scheme to exceed the legislative cap.

3. This scheme is unlawful because it violates the clear and unambiguous statutory cap. It also disregards the plain purpose of the cap to limit the drain on district resources and wreaks havoc with the New York City Department of Education’s (“DOE”) budget, leaving the DOE unable to predict how many new charter schools might be created each year. Moreover, the deceptive nature of its scheme shows SUNY Respondents’ lack of transparency and accountability, eroding the public trust in the education system of New York.

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<sup>1</sup> Hereinafter, Respondents SUNY, its Board of Trustees, SUNY Charter Schools Institute, and the Committee will be referred to as “SUNY Respondents.”

**Summary of the Case: SUNY Respondents Willfully Violate the Law  
by Approving a New Charter in Excess of the Cap**

4. Charter schools are entirely creatures of statute, owing their existence to and being governed by the Charter Schools Act of 1998 as amended (“Act”), codified as Article 56, Education Law §§ 2850 – 2857. A “charter school” is a school that operates independently of existing schools and school districts, is run by a private board, overseen by its chartering agency, and financed with public funding. When a charter school is permitted to open and enroll students in a school district, the school district is required to pass through its per student funding for each student that ultimately enrolls in the charter school. Accordingly, the creation of charter seats in a school district also creates a drain on public school district resources available to students remaining in traditional schools.

5. As such, the Legislature imposed a cap on charter schools in New York State and for New York City, explicitly limiting their expansion to 50 “*and no more*” to be issued after July 1, 2015. N.Y. Educ. Law § 2852(9)(a) (emphasis added). Any charter application, approval, and issuance must comply with the provisions set forth by the Legislature in the Act, including the numerical caps.

6. While there are currently hundreds of charter schools in New York City, the Legislature has spoken clearly and unambiguously, specifying a charter cap of only 50 additional charters for New York City. That cap was reached in 2019, and thus, it cannot be exceeded without changes to state law. *See* New York State Education Department, New York Charter School Fact Sheet, updated Sept. 28, 2021, available at <http://www.nysed.gov/common/nysed/files/programs/charter-schools/nyscsfactsheet092821.pdf>, which is attached hereto as Exhibit 1.

7. Seeking to avoid the legislative cap, SUNY Respondents approved a scheme, in the guise of a revision or expansion of an existing charter, to create the first of a planned series of new charter high schools in New York City.

8. Should SUNY Respondents succeed, the cap would be rendered illusory, allowing for many more – perhaps an unlimited number of – charter schools in New York City.

9. Specifically, on November 12, 2021, SUNY Respondents approved the resubmission of charter actions to create Vertex Partnership Academies, a joint high school “program” created through the charter revisions of two education corporations, which would be managed and operated by a newly created charter management organization. The Memorandum to the Members of the Charter School Committee regarding the resolution recommending resubmission approval, dated Nov. 12, 2021, is attached hereto as Exhibit 2.

10. Although SUNY Respondents characterize its approval of Vertex Partnership Academies as a permissible revision to expand current charters, it is not. Rather, such action results in the creation of a new charter high school in violation of the statutory cap.

11. Not only would it create a single new school, but the application, in effect, is a Trojan horse, opening the door to a network of new charter high schools – the so-called Vertex Model – that would fall outside the statutory cap and over which SUNY would have questionable, if any, legal regulatory authority as the new schools would not themselves have a charter.

12. On review of SUNY Respondents’ submission of the proposed charter, the New York State Board of Regents (which technically issues the charter) found that “SUNY has approved these proposed charter actions, which they are representing as revisions, but which would, in effect, *create a new high school...*” and that they “*are not mere revisions* to allow the

operation of a ‘program’ as part of an existing charter school” but, instead, they appear “*to create a new school.*” See Summary of the SED Memorandum with Board of Regents’ Decision and Recommendations, dated July 1, 2021, attached hereto as Exhibit 3 at 3-4 (emphasis added).

13. SUNY Respondents cannot circumvent the cap by characterizing the creation of a new school as an expansion of an existing school, and engaging in a subterfuge to evade the will of the Legislature.

14. Put simply, if it looks like a new charter, is attempted to be held accountable like a new charter, and structured like a separate and new charter, then it is indeed a new charter and not an expansion. SUNY has made clear by its own words, actions, and revisions that it is treating Vertex like a new school despite not requiring Vertex to go through the statutory process for receiving a new charter which would exceed the statutory cap.

15. SUNY Respondents violated the law, burdening the traditional public schools in the affected districts, disenfranchised residents of those districts, disregarded the recommendations of the Board of Regents, and abused the public trust.

16. For all these reasons, the challenged action must be vacated and annulled.

### **JURISDICTION**

17. This court has jurisdiction to issue an order and judgment pursuant to Article 78 of the CPLR.

### **VENUE**

18. Venue is laid in the County of New York where the Committee has its principal place of business.

### **NO PRIOR APPLICATION**

19. No prior application for the relief requested in this petition has been made in any forum.

## PETITIONERS

20. Petitioner Andrew Pallotta is a resident of the State of New York and is the President of the New York State United Teachers (“NYSUT”). NYSUT is an unincorporated association and New York State’s largest labor union, representing approximately 600,000 in-service and retired teachers, school related professionals, academic and professional faculty in higher education, and professionals in health care. NYSUT’s principal place of business is located in Albany County at 800 Troy-Schenectady Road, Latham, New York.

21. Petitioner Michael Mulgrew is a resident of the State and City of New York and is the President of the United Federation of Teachers (“UFT”). The UFT is an unincorporated association with its principal place of business in the City and County of New York at the 14th Floor of 52 Broadway. It is the recognized bargaining agent for all nonsupervisory pedagogical personnel and classroom paraprofessionals employed by the Board of Education of the City School District of the City of New York (the “BOE”) as well as teachers and other pedagogical personnel in certain charter schools, including those authorized by SUNY.

22. Petitioner Angela Esposito is a resident of the State and City of New York and has full custody of four minor grandchildren. Three of those grandchildren attend P.S. 161, a public elementary school located in District 7 in Bronx, New York. The fourth grandchild attends South Bronx Academy for Applied Media, also a public school located in District 7 in Bronx, New York.

23. Petitioner Monica Teron is a resident of the State and City of New York and has a minor child who attends The Urban Assembly Bronx Academy of Letters, a public high school located in District 7 in Bronx, New York.

24. Petitioner Ana Rivera is a resident of the State and City of New York and has a child who attends X374 Knowledge and Power Preparatory Academy International High School

(also known as Kappa High School), a public high school located in District 7 in Bronx, New York.

### **RESPONDENTS**

25. Respondent SUNY is a state university created under Article 8 of the Education Law. SUNY's principal place of business is located in Albany County at 353 Broadway, Albany, New York 12246.

26. Respondent Deborah F. Stanley is the Interim Chancellor of SUNY and is the Chief Executive Officer of SUNY.

27. Respondent SUNY Board of Trustees is authorized, pursuant to Education Law § 2851 to serve as a charter entity for certain charter schools operating in New York. The SUNY Board of Trustees is currently the charter entity or authorizer for 216 charter schools, operating in New York, including Public Prep Charter School Academies, and Brilla College Preparatory Charter Schools.

28. Respondent Dr. Meryll H. Tisch is Chairman of the SUNY Board of Trustees.

29. Respondent Charter Schools Committee was established by and is a committee of the SUNY Board of Trustees. The Committee promulgates policies related to oversight of charter schools authorized by the SUNY Board of Trustees. The Committee has its principal place of business in the City and County of New York and is located at 116 East 55th Street, New York, New York 10022.

30. Respondent Joseph W. Belluck is the Chair of the SUNY Charter Schools Committee.

31. Respondent SUNY Charter Schools Institute was created by the SUNY Board of Trustees to assist the SUNY Board of Trustees in carrying out its responsibilities as a charter entity pursuant to the Charter Schools Act. The SUNY Charter Schools Institute's principal

place of business is located in Albany County at H. Carl McCall SUNY Building, 353 Broadway, Albany, New York 12246.

32. Brilla College Preparatory Charter Schools (“Brilla”) is an authorized New York not-for-profit charter school education corporation. Brilla Charter Schools’ principal place of business is located at 441 East 148th Street, Bronx, New York 10454.

33. Public Prep Charter School Academies (“Public Prep”) is an authorized New York not-for-profit charter school education corporation. Public Prep’s principal place of business is located at 192 East 151st Street, Bronx, New York 10451.

### **STATEMENT OF THE CASE**

#### **The State’s charter law provides an explicit numerical cap for New York City charters that has been exhausted.**

34. The State Legislature has clarified that with respect to charter school organization, “an education corporation operating a charter school shall be authorized to operate more than one school or house any grade at more than one site, *provided that a charter must be issued for each such additional school or site in accordance with the requirements for the issuance of a charter pursuant to this article and that each such additional school or site shall count as a charter issued pursuant to subdivision nine of section twenty-eight hundred fifty-two of this article,*” such that each additional school or site is subject to the numerical caps. N.Y. Educ. Law § 2853 (emphasis added).

35. Specifically, in terms of the number of charter schools, the Legislature determined that “[t]he total number of charters issued pursuant to this article statewide shall not exceed four hundred sixty” and “[f]ifty of such charters issued on or after July first, two thousand fifteen, *and no more, shall be granted to a charter for a school to be located in a city having a*

*population of one million or more* [New York City].” N.Y. Educ. Law § 2852(9)(a) (emphasis added). That cap was reached in 2019.

36. Here, SUNY willfully approved a charter in excess of that clear and unambiguous cap.

**SUNY Respondents’ Approval of The Sham  
Brilla and Public Prep Modifications Is Arbitrary, Capricious and Contrary  
To Law And Fact**

37. The instant matter involves the application of two education corporations, Brilla and Public Prep, to “modify” their respective charters to create a new high school to be operated by a third, new education corporation – Vertex, which itself has not applied for and does not hold a charter.

38. Vertex’s own agreements make clear that it has been designed specifically to evade the exhausted cap. The Academic and Business Services Agreement between Vertex and Brilla, dated May 2021 and attached hereto as Exhibit 4 (“Business Agreement”), describes what it calls “the Vertex Model”:

In New York State, due to a charter “cap,” no new charters are being granted to open new schools. However, charter revisions to *expand* grades are being granted. In the case of each Vertex Partnership Academy, each partnering K-8 school will request that the SUNY Charter Schools Institute revise its charter to extend to serve Grades 9-12. The schools would then bind its high school grades through a shared services agreement and a common academic program.

Ex. 4, Business Agreement, Ex. A (Vertex Model) at 3.<sup>2</sup> Moreover, the Business Agreement between Brilla and Vertex makes it clear that the intention of Vertex is to continue to undermine

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<sup>2</sup> This document was since revised as of November 2021 and the revised version is attached hereto as Exhibit 5. The November 2021 document clarifies that Brilla alone, and not Brilla and Public Prep together, would be contracting with Vertex. The November 2021 revised document was received via FOIL and did not include the previously submitted Exhibit.

and avoid the charter cap by creating more “public charter high schools” in a similar fashion. *Id.* at 1.

### **Brilla and Public Prep**

39. Brilla is a SUNY-authorized non-for-profit charter school education corporation.

Brilla’s participating schools are located in the Bronx.

40. For all relevant times, Brilla schools were authorized to serve kindergarten through grade eight.

41. Brilla operates four elementary schools and one middle school, each with its own charter.

42. Brilla uses Seton Education Partners, Inc., a Wyoming charter management organization, as its charter management organization.

43. Brilla seeks to allegedly modify its charter with respect to its middle school: Brilla College Preparatory Charter School (NYC CSD 7) – The Bronx, currently authorized to serve kindergarten through grade 8. The modification purports to allow Brilla to expand the grades served by its middle school to include grades 9-12 and authorize Brilla to contract for that school’s students to attend a separate “joint” high school “program” operated by Ventoux Partnership Network, Inc., to be called “Vertex Partnership Academies.”

44. Public Prep is a SUNY-authorized non-for-profit charter school education corporation. Public Prep’s participating schools are located in the Bronx and Manhattan.

45. For all relevant times, Public Prep was authorized to serve kindergarten through grade eight.

46. Public Prep operates four elementary schools and two middle schools, although some of its elementary schools serve middle school (7-8) grades as well. Each Public Prep school has its own charter.

47. Public Prep uses the Public Prep Network Board (“Public Prep Network”), a New York charter management entity, as its charter management organization.

48. Public Prep seeks to allegedly revise the charters of three of its schools: 1) Boys Preparatory Charter School of New York (NYC CSD 7 – The Bronx, 192 E. 151st Street, currently authorized to serve kindergarten through grade 8); 2) Girls Preparatory Charter School of New York (NYC CSD 1 – Manhattan, 420 E. 12th Street, currently authorized to serve kindergarten through grade 8); 3) Girls Preparatory Charter School of the Bronx (NYC CSD 8 – The Bronx, 890 Cauldwell Avenue, currently authorized to serve kindergarten through grade 8).

49. Unlike Brilla, the application for modification for Public Prep seeks to expand the grades served by one of its middle schools to include grades 9-12 and authorize Public Prep to contract for its students at any of its schools to attend a separate “joint” high school “program” operated by Vertex Partnership Academies.

50. As described in SUNY’s Summary of Findings on the Brilla and Public Prep “Joint High School Program Revision,” dated December 9, 2020 and attached hereto as Exhibit 6, Public Prep has also “lent” Vertex Partnership Academies approximately \$400,000 to assist in its start-up, with “Vertex to repay those funds out of philanthropy Vertex raises for the program.” Ex. 6 at 2.

### **The Scheme to Create a New Network of Charter High Schools – Vertex Partnership Academies**

51. In or about 2020, in an explicit effort to bypass the statutory cap on charter schools, Ventoux Partnership Network, Inc., a new entity created by Ian Rowe (“Mr. Rowe”), partnered with Brilla and Public Prep to create the first of a new network of “joint” high school programs to be known as Vertex Partnership Academies (“Vertex”).

52. Vertex is the brainchild of Mr. Rowe. Mr. Rowe is a former chief executive officer of Public Prep but is not currently connected to or associated with Public Prep or Brilla, except as CEO of Vertex. Rowe will serve as the Founder and Chief Executive Officer (“CEO”) of this new charter high school.

53. According to his biographical note at the Thomas B. Fordham Institute, Mr. Rowe is an “Entrepreneur-In-Residence at the Charter School Growth Fund, and is founding Vertex Partnership Academies, a new network of character-based, International Baccalaureate public charter high schools to open in the Bronx in 2022.” *See* <https://fordhaminstitute.org/about/fordham-staff/ian-rowe>, last accessed on [Feb. 23, 2022].

54. Based on his own public statements, Mr. Rowe’s vision is not limited to one high school, but an entire network of high schools formed outside the cap.

55. For instance, Mr. Rowe has made numerous public comments describing Vertex Partnership Academies as “a new network of character-based, International Baccalaureate high schools” and/or a “new high school,” which will be located in the heart of the South Bronx. *See, e.g.,* The Daily Signal, *Ian Rowe on Why Children Need School Choice and Not Critical Race Theory*, YOUTUBE at 3:40, <https://youtu.be/hql7tSD5FBE?t=214> (posted on June 17, 2021); The Joint Economic Committee, Republicans, *Ian Rowe Testimony Before the Joint Economic Committee*, May 12, 2021, YOUTUBE at 0:22, <https://youtu.be/PUvpTRUUjFs?t=16> (posted on May 13, 2021); American Enterprise Institute, *Ian Rowe – Ohio State Board of Education testimony [sic] plus Q&A | EVENT HIGHLIGHT*, YOUTUBE at 22:30, <https://youtu.be/3IwQbLpjiI0?t=1347> (posted on Feb. 5, 2021); Bloggingheads.tv, *Get Educated | Glenn Loury & Ian Rowe [The Glenn Show]*, YOUTUBE at 2:40, <https://youtu.be/teLs4FL--hA?t=211> (posted on Sept. 29, 2020); New Hampshire Dep’t of Educ., *Ian Rowe talks with New*

*Hampshire State Board of Education 3/11/2021*, YOUTUBE at 4:30, [https://youtu.be/B\\_HWquoJENo](https://youtu.be/B_HWquoJENo) (posted on Mar. 15, 2021); The 1020 Podcast, *The Global Wire Conversation - Education, Class, Race, and Politics with Ian Rowe*, YOUTUBE at 31:20, <https://www.youtube.com/watch?v=28uf36jxCQ0&t=3s> (posted on Mar. 8, 2021); Pepperdine School of Public Policy, *Ian Rowe-How the Constitution Connects Us All: A Constitution Day Conversation*, YOUTUBE at 45:40, <https://youtu.be/20i6B6zxn7c?t=2265> (posted on Sept. 14, 2021); and CTHouseRepublicans, *1776 Unites Curriculum Town Hall*, YOUTUBE at 36:42, <https://youtu.be/4bbVrmM0I6E?t=2196> (posted on June 30, 2021). See also Ian Rowe (@IanVRowe), TWITTER (Jan. 10, 2022, 8:17 a.m.), <https://publish.twitter.com/?query=https%3A%2F%2Ftwitter.com%2FIanVRowe%2Fstatus%2F1480529212071194632&widget=Tweet>, last accessed on [Feb. 23, 2022].

56. Though he has repeatedly confirmed his plan to open a new school, Mr. Rowe has also publicly acknowledged that “[i]f you had a great idea, if you had the idea to launch a great school today, you could not do it because there is a cap on the number of charter schools.” See *Examining the Racial Wealth Gap in the United States*, 117th Cong. 117-77 (2021-2022) (Statement of Ian Rowe, Founder & CEO of Vertex P’ship Acads.; Senior Visiting Fellow, Woodson Ctr.; Resident Fellow, Am. Enter. Inst., New York, NY), <https://www.congress.gov/event/117th-congress/senate-event/LC67434/text?s=1&r=46>, last accessed on [Feb. 23, 2022].

57. Vertex Partnership Academies is not the name of either a Brilla or Public Prep charter.

58. Neither Brilla nor Public Prep is changing its name to Vertex Partnership Academies.

59. According to a SUNY Charter Schools Institute report, dated December 9, 2020, the Vertex co-educational joint high school program was created through a three-step procedure: First, Brilla contracts with Vertex. Second, Public Prep contracts with Brilla to permit Public Prep students to participate in the high school program. Third, revisions are made to the charter agreements applicable to both Brilla and Public Prep. Ex. 6 at 1.

60. By resolution dated December 16, 2020, SUNY requested authorization to revise the charters of Brilla Charter Schools and Public Prep, pursuant to Education Law § 2852(7) to add a joint high school program to each of said school's charter to operate at a single site for the 2022-2023 school year that would be known as Vertex Partnership Academies. That resolution is attached hereto as Exhibit 7.

61. Brilla's proposed revision permitted it to contract with Vertex, granted one of its four schools the authority to expand to a high school program servicing grades 9 through 12, and allowed the schools' participation in the newly created joint high school.

62. Neither Brilla's management organization, Seton Education Partners, Inc., nor Public Prep's management organization, Public Prep Network, will be directly involved in the joint high school program. Ex. 6 at 2.

63. Instead, Vertex would be managed by the newly formed charter management organization Ventoux Partnership Network, Inc. *Id.* at 2-3.

64. All 8<sup>th</sup> grade graduates from the participating or sending schools "will have returning students preference at Vertex Academies..." *Id.* at 3.

65. This will allow contracting schools to offer guaranteed seats in the new high school to the exclusion of other students applying to high school. Had a new charter been issued for a new high school, the admission criteria would allow other applicants equal footing for

admission. By creating this model, charter middle schools can pay to provide guaranteed spots for their students in the new schools.

66. The Academic and Business Services Agreement between Vertex and Brilla reveals and makes clear that the purpose of the joint high school program is to evade the cap. Ex. 4, Business Agreement, Ex. A. (Vertex Model) at 3.

67. In an effort to justify the contrived structure, the Governance section of the Business Agreement provides an inapt analogy where the charter network KIPP was permitted to merge the charters of their individual schools allowing KIPP: College Prep High School to legally enroll students from KIPP's four independent charter schools so that:

... On paper the students attended four different schools, each of which had a charter that included grades 9-12. In practice, however, students went to school in the same building, were subject to the same policies, and took the same classes with the same teachers and peers... [however] all students simply attended and graduated from the unified KIPP: College Prep High School.

*Id.*

68. However, KIPP: College Prep High School provided an example of a pooling of resources and physical space by a single, previously approved network that already held the necessary charters. There, KIPP, the approved charter holder, continued to be solely responsible for the management of the school and the education of the students from each of its separately chartered schools. KIPP had gone through a full charter approval process. There was no increase in the number of charter schools, nor was there a new entity, not previously approved through a charter-granting process overseeing the education of the charter students. It is one thing to say that high school students from several KIPP schools would all attend high school in a single KIPP high school facility and quite another to seek an expansion of grades for one Brilla school with the intention to funnel all Brilla middle school students into a separate school with

students from another network run independently by a newly created and unvetted or approved education corporation. That amounts to a new school requiring a new charter.

69. Here, there is no merger: Vertex Partnership Academies would be creating an entirely new entity, managed and operated by Vertex, serving new grade levels that neither Brilla Charter Schools nor Public Prep previously served, at a site to be determined by Vertex. In other words, Vertex Partnership Academies would not be a merger, it would be the creation of an entirely new charter school.

**SUNY Respondents acted contrary to law,  
arbitrarily and capriciously and abused their discretion in approving a charter in excess of  
the cap**

70. As a new charter school, Vertex – and SUNY as its would-be charter entity – should have followed the processes set forth in Education Law §§ 2851, 2852. Vertex would need its own unique charter, one subject to the application and issuance procedures in Article 56 generally and Education Law §§ 2851, 2852 specifically, but that could not be issued in violation of the cap.

71. But Vertex has not made an application pursuant to Education Law § 2851 nor has a proposed charter been submitted for it pursuant to Education Law § 2852. Neither Vertex nor SUNY followed the prescribed process.

72. The charter issuance process is set forth in Education Law § 2852. The term of a charter is five years but can be renewed. Typically, it is upon renewal that a school may wish to revise or expand its charter to increase enrollment or grades, usually holding the other factors equal. *See* 8 NYCRR § 3.16(c). A revision or expansion allows an existing charter school to change its enrollment or the grades it will serve as its students age up, not to create a new school.

73. A charter application for a new school must include, among other things, the name of the school, the governance and organizational structure of the school, the facilities to be

used, including the location of the school, the number of students to be served (enrollment), and the ages and grade levels to be served (grades). N.Y. Educ. Law § 2851(2)(c), (i), (k), (j) and (l).

74. The application must also include “[a] proposed budget and fiscal plan for the school, including supporting evidence that the fiscal plan is sound and that sufficient start-up funds will be available to the charter school.” Education Law § 2851(2)(e). Further, the application must include the procedures to be followed in the case of the charter school’s closure or dissolution. N.Y. Educ. Law § 2851(t).

75. The Legislature has also specified that the application must include “[e]vidence of adequate community support for and interest in the charter school sufficient to allow the school to reach its anticipated enrollment, and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area.” N.Y. Educ. Law § 2851(2)(q).

76. SUNY’s behavior throughout the submission process demonstrates that, whatever label it gives the applications, it viewed and treated the Vertex “expansion” as a new school – and not a new Brilla or Public Prep program – by placing statutory requirements on Vertex that are otherwise required for a new school, with the exception that no analysis was done regarding community support or impact on other schools and the statutory cap was utterly disregarded. *See* accompanying affidavits of Individual Petitioners Angela Esposito, Monica Teron, and Ana S. Rivera, attached hereto as Exhibits 8, 9 and 10.

77. For instance, SUNY, in its Summary of Findings, made “extensive requests for amendments” to the proposed high school program in an effort to ensure its fiscal soundness. Notably, the “complexity of the money flows and the various entities with fiscal roles involved in the [high school] program” compelled the Institute to demand an “unprecedented level of

fiscal transparency in terms of financial reporting on the joint high school program . . .” Ex. 6 at 6.

78. Additionally, “the education corporations, through Vertex, will have to report on the high school program as if it were a chartered school” in terms of financial, budgetary and “other reporting normally done by schools.” Ex. 6 at 6.

79. On December 23, 2020, SUNY approved the proposed charter actions to add a joint high school program and presented the proposed actions to the Board of Regents. *See* SUNY, Summary of Actions, Charter Schools Committee, Application for Charter Renewal, December 23, 2020 Meeting, available at <https://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/Summary%20of%20Actions%20-%20Charter%20Schools%20-%20Dec%2023%202020.pdf>, last accessed on [Feb. 23, 2022].

80. On or about May 21, 2021, SUNY Board of Trustees and Brilla entered into an agreement to revise the Second Amended and Restated Original Charter Agreement between them entered into on or about October 29, 2018. This agreement, attached hereto as Exhibit 11, relates to the new joint high school program, including its operation and dissolution.

81. Specifically, the agreement describes the joint high school program as one “to be shared between certain schools” of Brilla and Public Prep and notes that Vertex will manage and operate the new program. Ex. 11 at 2. It also states that while the joint high school program (“JHSP”) “is a program within the meaning of the Charter Agreement, as set forth herein, ***it is the intent of the Parties and Public Prep to generally subject the JHSP to the same academic, operational, fiscal, and accountability terms and conditions to which a school is subject under each education corporation’s charter.***” Ex. 11 at 2 (emphasis added).

82. In accordance with Education Law § 2852, SUNY submitted the proposed charter actions to the Board of Regents for consideration on or about May 21, 2021. Ex. 3 at 2.

83. The Board of Regents reviewed the proposed charter action and recommended that the proposed charter be returned to SUNY for reconsideration.

84. In making the recommendation to return the proposed charter to SUNY Board of Trustees, the Board of Regents determined that the “proposed charter actions d[id] not meet the required finding enumerated under Article 56” and determined that it could not make the required findings that the proposed charter actions described met “the requirements set out in Article 56 of the Education Law... that the applicants can demonstrate the ability to operate the schools in an educationally and fiscally sound manner.” Ex. 3 at 4.

85. The Board of Regents further found that the proposed charter actions did not constitute mere revisions to allow the operation of a program as a part of an existing charter school, “but instead appear[ed] to be an attempt to create a new school in potential violation of the NYC charter limits under the Education Law.” *Id.*

86. The Board of Regents explained that the website for the entity proposed to run the high school, Ventoux Partnership Network, stated that this “will allow more high-quality, high schools to open despite a cap on charters.” *Id.*

87. In addition, the Board of Regents indicated that there were “numerous instances within the record – along with the ‘Summary of Findings’ document presented to the SUNY Trustees – that further indicate[d] th[e] action may have been taken to avoid the cap.” *Id.*

88. Specifically, the Board of Regents pointed out that SUNY had required a separate dissolution reserve fund for the high school. *Id.* Such funds are generally required for all new schools. *Id.*

89. The Board of Regents also acknowledged that the proposed new high school program would be held accountable for academic performance separately from the existing elementary charter school program “as if it was a cohesive school.” *Id.*

90. The Board of Regents highlighted that the proposed high school would be subject to renewal separately, independently, and on a different timeline than the schools operated by Brilla and Public Prep and suggested that this renewal procedure was at odds with procedures set forth in Education Law § 2851. *Id.*

91. The Board of Regents further emphasized that the high school rather than the education corporations would be held responsible for all high school outcomes, which conflicts with the lawful procedure which provides that the Board of Trustees of a charter school is responsible for outcomes of all students enrolled in their charter. *Id.*

92. Additionally, the Board of Regents concluded that provisions in the proposed charter revisions which allowed SUNY Board of Trustees to close the new high school program under the same circumstances that permit SUNY Board of Trustees to revoke a charter evidenced “the separation and independence of the high school from the governance of the pre-existing K-8 charter schools.” *Id.* at 5.

93. Moreover, the Board of Regents found that the proposed revisions which provided for Brilla and Public Prep turning over funding (including students with disabilities funds and other federal funds) received for students who attend the joint high school program to Vertex “support[s] the inference that Vertex and the ‘program’ it operates will constitute a separate, new school” and may violate certain grant requirements set by the United States Department of Education. *Id.*

94. Indeed, the Vertex-Brilla Academic and Business Services Agreement noted that:

*One key element of startup* is the federal Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools. David Frank, Executive Director of the NYSED Charter School Office has shared the documentation that New York State was approved, by the USDOE for the CSP grant. Page 1413 of this document (<https://innovation.ed.gov/files/2018/10/New-York-State-Education-Departmentapp.pdf>)<sup>3</sup> highlights that New York State will provide **“Three-year planning and implementation subgrants of \$1,250,000 to 54 newly-authorized charter schools totaling \$67,500,000. Three-year expansion subgrants to 15 eligible highly-qualified charter schools totaling \$18,500,000.”** *Mr. Frank has advised that each K-8 charter school network in the Partnership HS will each have the opportunity to receive a \$1.25 million CSP grant.*

Ex. 4, Business Agreement, Ex. A (Vertex Model) at 4 (emphasis added).

95. This language suggests that the funding offered by the State – and that Mr. Frank was offering – was for newly-authorized charter schools, which Vertex is not.

96. Upon making these findings, the Board of Regents issued the recommendation that the proposed charter actions be returned to the SUNY Board of Trustees for reconsideration with comments and recommendations that the “proposed charter actions must be abandoned.”

Ex. 3. at 6.

97. At its July 12, 2021 meeting, the State Education Department Board of Regents voted to return the proposed charter action to the SUNY Trustees with its findings and the recommendation that the proposed charter actions be abandoned. The State Education Department Letter to SUNY dated July 12, 2021 is attached hereto as Exhibit 12.

98. By resolution, dated October 7, 2021, and attached hereto as Exhibit 13, SUNY authorized the resubmission without modification to the Board of Regents of the proposed

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<sup>3</sup> Note that the correct link to this document is <https://oese.ed.gov/files/2018/10/New-York-State-Education-Departmentapp.pdf>.

charter revisions related to the creation of a new joint high school program between Brilla and Public Prep pursuant to Education Law § 2852(5-b).

99. Thus, despite certain changes, at bottom, the application still seeks to have a new school, operated by a new entity, open its doors and serve New York City students in the capacity of a charter school under the apparent supervision of SUNY as its chartering entity, without actually issuing the school a charter.

100. On October 12, 2021, Mr. Rowe wrote to SUNY Respondent Chairman Belluck seeking a vote on the Vertex joint high school program. Mr. Rowe was concerned that the “delay” was being caused “in part to an inartfully written statement on our website” regarding getting around the cap. The October 12, 2021 letter is attached hereto as Exhibit 14 at 2. Acknowledging that the cap evasion language was not “careful,” Mr. Rowe nevertheless argued that the Vertex proposal was “identical to the K-8 to K-12 extensions that SUNY already approved ten months ago in December 2020.” Ex. 14 at 1.

101. On November 12, 2021, SUNY proposed a new resolution authorizing the resubmission without modifications of the proposed revision to the charters of Brilla Charter Schools and Public Prep. However, the proposed resolution “reflect[ed] a change in the management and governance structure of the joint high school program to help address the Board of Regents’ concerns . . . .” Ex. 2 at 1.

102. SUNY Respondents recommended that the proposed charter revisions be modified to include a not-for-profit management contract for each educational corporation with the same charter management organization which will assist in operating the new high school program (i.e., Vertex), in addition to an amended agreement between the education corporations

in a claimed effort to achieve the dual purpose of increasing oversight of the joint high school program and changing the previously approved revision structure. Ex. 2 at 2.

103. SUNY indicated that in holding Vertex accountable for its performance by two education corporation boards instead of one, the proposed modifications would embrace a “structure familiar to the Board of Regents.” In making this reference, SUNY Respondents pointed to “a prior structure over a decade old used by charters working with KIPP NYC, LLC and Uncommon Schools, Inc.” Ex. 2 at 4.

104. SUNY resubmitted its proposed revised charter action to the Board of Regents on December 21, 2021, as detailed in SUNY’s January 4, 2022 response to a Freedom of Information Law Request, attached hereto as Exhibit 15.

105. Pursuant to Education Law § 2852(5-b), although charters are as a technical matter, ultimately issued by the Board of Regents, the application process allows a charter entity – here SUNY – to push through a charter or a modification in the absence of actual Board of Regents’ approval. Once resubmitted, a proposed charter can be immediately approved by the Board of Regents, or, if not, such proposed charter shall be deemed approved and issued at the time of expiration of 30 days.

106. Accordingly, the proposed charter action was deemed approved by operation of law and issued on or about January 20, 2022.

107. The new high school is scheduled to open in time for the 2022-2023 school year.

108. The high school application/selection period for New York City students who will be attending high school in the 2022-2023 school year is currently ongoing.

**AS AND FOR A FIRST CAUSE OF ACTION**

**BY AUTHORIZING A NEW CHARTER SCHOOL IN EXCESS OF THE CAP ON CHARTER SCHOOLS IN NEW YORK CITY, SUNY HAS ABUSED ITS DISCRETION AND ACTED ARBITRARILY, CAPRICIOUSLY, AND CONTRARY TO LAW**

109. The Legislature capped the additional number of charter schools in New York City at 50.

110. That cap has been reached, and no new charter schools may be created within New York City.

111. Nonetheless, Respondents created a new charter school in New York City, thereby illegally exceeding the cap imposed by the Legislature.

112. Respondents acted in error and violation of law.

113. Petitioners are entitled to a declaration, order and judgment nullifying the challenged charter modifications and preventing Vertex from operating as a charter high school in New York City.

**AS AND FOR A SECOND CAUSE OF ACTION**

**BY AUTHORIZING A CHARTER SCHOOL THAT DOES NOT SATISFY THE ELEMENTS SET FORTH IN ARTICLE 56 OF THE EDUCATION LAW, RESPONDENTS HAVE ABUSED THEIR DISCRETION AND ACTED ARBITRARILY, CAPRICIOUSLY, AND CONTRARY TO LAW**

114. Article 56 of the Education Law sets forth the procedures and requirements for an application for a new charter school.

115. Neither Brilla, Public Prep, nor Vertex follow the procedure or meet the requirements set out in Article 56 and all other applicable laws, rules, and regulations.

116. The applicants, which do not include the education entity that will actually operate the school and thus should have itself applied for the charter, did not demonstrate the ability to operate the schools in an educationally and fiscally sound manner.

117. Respondents did not provide the Regents with a sufficient submission to enable the Regents to make the required findings in accordance with Education Law § 2852(2).

118. Nonetheless, SUNY Respondents approved the charter application.

119. Respondents acted in error and violation of law.

120. Petitioners are entitled to a declaration, order and judgment granting relief pursuant to Article 78 of the CPLR.

### **AS AND FOR A THIRD CAUSE OF ACTION**

#### **BY ENTIRELY DISREGARDING THE RECOMMENDATIONS AND WRITTEN COMMENTS OF THE REGENTS, RESPONDENTS HAVE ABUSED THEIR DISCRETION AND ACTED ARBITRARILY AND CAPRICIOUSLY**

121. In accordance with law, after receiving the submission for the new charter high school from SUNY, the Regents returned the application to SUNY Board of Trustees for reconsideration and provided SUNY with recommendations and written comments.

122. SUNY Respondents resubmitted the application without substantively addressing the illegality of their action identified by the Board of Regents' recommendations and comments.

123. Respondents' actions were an abuse of discretion and arbitrary and capricious.

124. Petitioners are entitled to an order and judgment granting relief pursuant to Article 78 of the CPLR.

**WHEREFORE**, Petitioners respectfully request that an order and judgment be entered:

- 1) declaring that Respondents' proposed charter actions to create the joint high school program, Vertex Partnership Academies, violates Article 56 of the Education Law;
- 2) declaring the approval of Respondents' proposed charter actions as they relate to the creation of the joint high school, Vertex Partnership Academies, null and void;
- 3) enjoining and/or nullifying the approval of the proposed Vertex Partnership Academies as a charter school;

- 4) ordering Respondents to withdraw its proposed charter action as it relates to the creation of Vertex Partnership Academies;
- 5) ordering that Respondents cease operations of Vertex Partnership Academies as a charter school;
- 6) awarding attorney's fees to Petitioners; and
- 7) granting Petitioners such other, further, and different relief as this Court may deem just and proper, together with costs and disbursements of this proceeding.

Dated: New York, New York  
February 28, 2022

Respectfully submitted,

/s/ Dina Kolker

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