



## Lawton et al v. Success Academy of Fort Greene et al

2018 | Cited 0 times | E.D. New York | August 10, 2018

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

-----x SHAWN LAWTON and GINA JOHNSON-LAWTON,  
on their own behalf and on behalf of their minor son, I.L.; FOLAKE WIMBUSH, on her own behalf  
and on behalf of her minor son, S.S.; FOLAKE OGUNDIRAN, on her own behalf and on behalf of her  
minor daughter, M.C.; MONIQUE JEFFREY, on her own behalf and on behalf of her minor son, B.S.;  
and SHANICE GIVENS, on her own behalf and on behalf of her minor son, C.S.;

Plaintiffs, -against- SUCCESS ACADEMY CHARTER SCHOOLS, INC.; SUCCESS ACADEMY  
FORT GREENE; CANDIDO BROWN; and JANE DOES 1-3 and JOHN DOES 1- 3,

Defendants. -----x

MEMORANDUM AND ORDER 1:15-cv-07058(FB)(SMG)

Appearances: For the Plaintiffs KATIE ROSENFELD RUTH LOWENKRON IRENE MENDEZ New  
York Lawyers for the Public Interest 151 West 30th Street, 11th Floor New York, NY 10001

For the Defendants VANESSA M. BIONDO AARON M. SAFANE CHRISTOPHER N. LAVIGNE  
Success Academy Charter Schools 95 Pine Street, Floor 6 New York, NY 10005 For the Plaintiffs,  
cont. ALAN M. KLINGER BETH A. NORTON KAYLEY R. MCGRATH Stroock & Stroock & Lavan  
LLP 180 Maiden Lane New York, NY 10038 ARTHUR SCHWARTZ LAURA BARBIERI Advocates  
for Justice, Chartered Attorneys 225 Broadway, Suite 1902 New York, NY 10007

For the Defendants, cont. LINDA H. MARTIN ROBERT J. MCCALLUM ERIC BRANDON  
STEPHEN PEARSON III Freshfields Bruckhaus Deringer US LLP 601 Lexington Avenue New York,  
NY 10022

BLOCK, Senior District Judge:

Defendants' letter motion requesting the Court to certify interlocutory appeal of its August 1, 2018  
order is denied.

" [A] district court may certify an immediate appeal of an interlocutory order if the court finds that  
the ' order involves a controlling question of law as to which there is substantial ground for  
difference of opinion and that an immediate appeal from the order may materially advance the



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ultimate termination of the litigation.” *Century Pacific, Inc. v. Hilton Hotels Corp.*, 574 F. Supp. 2d 369, 370 (S.D.N.Y. 2008) (citing 28 U.S.C. § 1292(b)). However, interlocutory review is inappropriate “for securing early resolution of disputes concerning whether the trial court properly applied the law to the facts.” *Abortion Rights Mobilization, Inc. v. Regan*, 552 F. Supp. 364, 366 (S.D.N.Y. 1982) (citing *Link v. Mercedes-Benz of N. Am., Inc.*, 550 F.2d 860, 863 (3d

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/S/ Frederic Block

Cir.), cert. denied, 431 U.S. 933 (1977)). Instead, “the ‘question of law’ must refer to a ‘pure’ question of law that the reviewing court ‘could decide quickly and cleanly without having to study the record.’” *In re Worldcom, Inc.*, 2003 WL 21498904, at \*10 (S.D.N.Y. June 30, 2003) (quoting *Ahrenholz v. Bd. of Trs. of Univ. of Ill.*, 219 F.3d 674, 676-77 (7th Cir. 2000)).

Here, the parties do not dispute that *Fry v. Napoleon Comm. Schs.*, 137 S. Ct. 743, 748-49 (2017), provides the controlling legal standard; the dispute is entirely in its application to the alleged facts in plaintiffs’ second amended complaint. Because defendants do not challenge a pure question of law, interlocutory review is unavailable.

SO ORDERED

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FREDERIC BLOCK Senior United States District Judge Brooklyn,  
New York August 10, 2018

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