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FOR IMMEDIATE RELEASE

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Center for Law and Education and Choate, Hall & Stewart Successfully Challenge “Zero Tolerance” School Weapons Policy

Boston, MA, December 15, 2009 – Attorneys from Choate, Hall & Stewart LLP and the Center for Law and Education recently became among the first lawyers in the country, if not the first, to successfully challenge a school district's "zero tolerance" weapons policy as constitutionally invalid. The case, *LB, a Minor by his Mother and Next Friend, VG v. Brian A. O'Connell et al*, involved a 14-year old honors student at a Worcester, MA middle school with a spotless disciplinary record who confiscated a pocket knife from a classmate who was threatening his friend. Because the student did not immediately go to the office to turn the knife in (he planned to do so later), he was suspended from school for an entire year.

“This case sets an important precedent and sends a signal to school districts across the country that students’ educations cannot be sacrificed in the name of administrative expediency,” said Harvard Law School Professor Charles Ogletree, a prominent constitutional scholar and equal education advocate. “As a result of this case decision, school officials now must consider the individual facts of each case and give students a fair hearing before issuing long term suspensions or expulsions. Students who, under a zero-tolerance policy, would be deprived of their constitutional right to a public education will now have the opportunity to remain in school.”

The student, “LB,” was represented pro bono by Choate attorneys John Baraniak and Sarah Champion and Jenny Chou and Joanne Karger from the Center for Law and Education, who challenged the suspension in federal district court in Massachusetts. The team argued that the suspension was a violation of substantive due process under the U.S. and Massachusetts constitutions because it was grossly disproportionate to any violation of the school's rules and therefore not rationally related to any legitimate state interest – a very difficult standard to meet. They also argued that LB had not been afforded

procedural due process in the suspension hearings before the principal and superintendent because school officials refused to turn over copies of witness statements and refused to permit LB to present his own witnesses and to cross examine the school's witnesses. Judge Dennis Saylor agreed with both points and granted the student a preliminary injunction immediately reinstating him in the Worcester public schools, expunging his record, and ordering Worcester to provide whatever remedial tutoring necessary to make up for the three months of school he had already missed.

After Judge Saylor's ruling, Worcester agreed to entry of a permanent injunction, making the preliminary relief final, and agreed to change its policies to make explicit that principals and the superintendent should exercise discretion in disciplining students found to be in possession of weapons on school grounds so that such students are not automatically suspended for a year. Worcester also agreed to change its policy and will now provide students with copies of witness statements in disciplinary hearings where long-term suspension is a possible outcome.

“The case is significant because many school districts across the country have similar ‘zero tolerance’ weapons policies. These policies have been challenged in court on several occasions, but, to our knowledge, have never before been found to be constitutionally infirm as applied to students in possession of weapons,” said John Baraniak of Choate. “Not only is the student and his family ecstatic over the result, but everyone involved with this precedent-setting case is pleased with the positive policy implications it has for students in Worcester and potentially across the country.”

This case is part of Choate's ongoing pro bono collaboration with the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School (CHHIRJ) and the Center for Law and Education (CLE) to ensure students stay in school and receive a high quality education, thus cutting off the "school to prison pipeline." Choate began working with CHHIRJ in October 2007, and created the Pro Bono Education Law Project in conjunction with the CLE and CHHIRJ in December 2008. The goal of the Pro Bono Education Law Project is to represent students – including those with disabilities, who are facing school disciplinary exclusions, or who are otherwise being deprived of meaningful education, including specialized instruction and related services – from low-income families on a pro bono basis in educational law matters before state administrative bodies and in court.

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