

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Gwinnett County School District,)	
)	
Plaintiff,)	
)	
v.)	
)	
Kathy Cox, State Superintendent of Schools;)	
Georgia Department of Education;)	Civil Action
Georgia Charter Schools Commission;)	
Ben Scafidi, Chairman of the Georgia Charter)	File No.
Schools Commission;)	
Charles Knapp, Jennifer Rippner Buck, Eric)	
Rosen, Tom Lewis, Steven Ballowe, Gerald)	
Robinson, and Andrew Broy, each members of)	
the Georgia Charter Schools Commission; and)	
Ivy Preparatory Academy, Incorporated)	
)	

Defendants.		

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Pursuant to O.C.G.A. §§ 9-4-2, 9-4-3, and 9-5-3, Plaintiff Gwinnett County School District brings this action seeking, *inter alia*, a judicial declaration that certain provisions of the Georgia Code concerning the Georgia Charter Schools Commission and Commission charter schools are unconstitutional. Plaintiff also seeks injunctive relief barring Defendants from directing state funds away from Plaintiff to fund an ultra vires entity, or disproportionately funding such entity.

Parties, Jurisdiction, and Venue

1.

Plaintiff is organized under the laws of the State of Georgia and operates the public school system located within Gwinnett County, Georgia, under the control and management of the Gwinnett County Board of Education.

2.

Defendant Kathy Cox is sued in her official capacity as the State Superintendent of Schools, the statewide-elected constitutional officer responsible for management of the Georgia Department of Education. The State Superintendent of Schools' office is 2066 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Cox can be perfected via personal service at the foregoing address.

3.

Defendant Georgia Department of Education ("Georgia DOE") has an office at 2066 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Georgia DOE can be perfected via personal service on Defendant Kathy Cox at the foregoing address.

4.

Defendant Georgia Charter Schools Commission ("Charter Commission") has an office at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Georgia Charter Schools Commission can be perfected via personal service on Defendant Ben Scafidi at the foregoing address.

5.

Defendant Ben Scafidi is sued in his official capacity as the Chairman of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Scafidi can be perfected via personal service at the foregoing address.

6.

Defendant Charles Knapp is sued in his official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at

2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Knapp can be perfected via personal service at the foregoing address.

7.

Defendant Jennifer Rippner Buck is sued in her official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Buck can be perfected via personal service at the foregoing address.

8.

Defendant Eric Rosen is sued in his official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Rosen can be perfected via personal service at the foregoing address.

9.

Defendant Tom Lewis is sued in his official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Lewis can be perfected via personal service at the foregoing address.

10.

Defendant Steven Ballowe is sued in his official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Ballowe can be perfected via personal service at the foregoing address.

11.

Defendant Gerald Robinson is sued in his official capacity as a member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Robinson can be perfected via personal service at the foregoing address.

12.

Defendant Andrew Broy is sued in his official capacity as an ex-officio member of the Georgia Charter Schools Commission. The Georgia Charter Schools Commission office is located at 2053 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334. Service against Defendant Broy can be perfected via personal service at the foregoing address.

13.

Defendant Ivy Preparatory Academy, Incorporated (“Ivy Preparatory Academy”) is a Georgia non-profit corporation which operates Ivy Preparatory Academy, a Commission charter school in Gwinnett County. Service against Ivy Preparatory Academy can be perfected via personal service on its registered agent, Nina Gilbert, at 3705 Engineering Drive, Norcross GA 30092.

14.

Pursuant to O.C.G.A. § 9-4-7, the Attorney General of Georgia will be provided with a copy of this action via personal service.

15.

This Court has jurisdiction over the Defendants and over the subject matter of this action. This action is for declaratory judgment and other relief. An actual controversy exists within this Court’s jurisdiction.

16.

Venue is proper in this Court.

17.

An active and justiciable controversy exists regarding the constitutionality of O.C.G.A §§ 20-2-2081(2), 20-2-2082(a), and 20-2-2083(a)(1). Specifically, Defendants have caused money to be withheld from Plaintiff to fund Defendant Ivy Preparatory Academy's operations.

FACTS APPLICABLE TO ALL COUNTS

Background

18.

Charter schools are public schools of choice which are essentially self-governed pursuant to the terms of a contract charter. Charter schools are designed to operate independent of federal, state, and local regulation.

19.

City Academy in St. Paul, Minnesota, the first charter school in America, opened in September 1992.

20.

The General Assembly enacted the Georgia Charter Schools Act of 1998, O.C.G.A. §§ 20-2-2060 *et seq.* (the "Charter Act"), whereby local boards of education could elect to create a charter school based upon a petition application submitted to the local board of education for the system in which the proposed charter school would be located.

21.

The first charter schools created pursuant to the Charter Act were approved by local school boards and began operating during the 1999-2000 school year.

22.

The General Assembly is authorized to create and fund “special schools” as permitted by Article VIII, Section V, Paragraph VII of the Georgia Constitution. However, Article VIII, Section V, Paragraph VII of the Georgia Constitution expressly prohibits bonded indebtedness and the levying of school taxes for the purpose of supporting special schools without the approval of a majority of the qualified voters in the systems affected. Further, the power to create special schools does not include the power to create charter schools. “Special schools” are state-funded special needs schools, such as those enumerated in O.C.G.A. § 20-2-152, including the Georgia School for the Deaf, the Georgia Academy for the Blind, and the Atlanta Area School for the Deaf, the operations are provided for by appropriation from the General Assembly. “Charter schools” are not “special schools

23.

In 2008, the General Assembly enacted legislation whereby charter school petitioners could circumvent rejection of a charter petition by a local board of education. In a new O.C.G.A. § 20-2-2080 through 20-2-2092, the General Assembly created the Charter Commission, organized under the State Board of Education (“State BOE”). The members of the State BOE are appointed by the Governor. Pursuant to O.C.G.A. § 20-2-2082(b), the members of the Charter Commission are nominated by the Governor, the President of the Georgia Senate, and the Speaker of the Georgia House of Representatives, and appointed by the State BOE.

24.

O.C.G.A. §§ 20-2-2080 through 20-2-2092 purportedly authorizes the Charter Commission to create, assist, and oversee charter schools.

25.

The Charter Commission operates as a de facto independent school system. Specifically, O.C.G.A. § 20-2-2083 purports to grant the Charter Commission powers identical to those exercised by independent school systems, such as the power: (i) to create commission charter schools, deny charter commission school petitions, and renew, nonrenew, or terminate commission charter school petitions; (ii) to review the curriculum of commission charter schools; (iii) to develop, promote, and disseminate best practices for charter schools; (iv) to monitor and annually review and evaluate the academic and financial performance, including revenues and expenditures, of commission charter schools and hold the schools accountable for their performance pursuant to the charter and to the provisions of this article; (v) to monitor the financial management of each commission charter school; and (vi) to administrate commission charter schools, thereby “removing administrative burdens from the local school systems.” O.C.G.A. § 20-2-2091 states that the various Commission charter schools should be “treated as contained within a single, state-wide local education agency.”

Ivy Preparatory Academy

26.

On or about May 1, 2007, a group of citizens (“Petitioners”) petitioned the Gwinnett County Board of Education (“Gwinnett BOE”) to charter a school to be known as “Ivy Preparatory Academy,” which would operate as a charter school providing single gender education. A true and correct copy of the submitted by Petitioners to Plaintiff is attached hereto as **Exhibit A**. The Gwinnett BOE denied Ivy Preparatory Academy’s charter petition for a variety of reasons, including concerns that chartering a female-only school without providing a male-only charter school would violate the equal protection clause of the Constitution of the

State of Georgia and of the Constitution of the United States. See June 21, 2007 letter to Nina Gilbert from Louise Radloff, a true and correct copy of which is attached hereto as **Exhibit B**.

27.

After the Gwinnett BOE denied Ivy Preparatory Academy's charter petition Ivy Preparatory Academy applied for and was granted a charter as a state chartered special school by the Georgia Board of Education under the provision of O.C.G.A. § 20-2-2064.1 Ivy Preparatory Academy operated as a state chartered special school during the 2008-2009 School Year. On or about May 2009, the Petitioners submitted an identical petition to the Charter Commission.

28.

The Charter Commission approved the Ivy Preparatory Academy's petition at a June 18, 2009 meeting. A true and correct copy of the June 18, 2009 meeting minutes are attached hereto as **Exhibit C**.

29.

Commencing with the 2009-2010 school year, Ivy Preparatory Academy operates as Commission charter school under O.C.G.A § 20-2-2081(2). A true and correct copy of Ivy Preparatory Academy's charter with the Charter Commission is attached hereto as **Exhibit D**. No local referendum has been held in Gwinnett County to permit the levy of a school tax for the purpose of funding Ivy Preparatory Academy or any other commission charter school.

30.

The State of Georgia funds public schools on the basis of a calculation known as Quality Basic Education ("QBE") formula earnings. QBE formula earnings categorize the student population and allocate funds on a per pupil basis as prescribed for each funding category. The QBE formula includes locally levied tax revenues in its calculation to determine how local public school systems should be funded.

31.

During the 2008-2009 school year Ivy Preparatory Academy operated as a state chartered special school and was funded under the QBE formula but did not receive “an amount equal to the proportional share of local revenue from the student’s home district.” Further, no reduction was imposed on the QBE earnings received by Plaintiff under QBE.

32.

The Charter Commission passed a motion that approved for Commission charter schools (including Ivy Preparatory Academy) to “receive an amount equal to the proportional share of local revenue from the student’s home district using only state funds.” See Exhibit C. The Georgia DOE has honored the Charter Commission’s motion by funding Ivy Preparatory Academy with a proportional share of local revenue in addition to QBE earnings. The Georgia DOE has obtained that “local revenue portion” to fund Ivy Preparatory Academy by deducting that same amount from Plaintiff’s QBE earnings.

33.

Because the Charter Commission authorized a reduction in Plaintiff’s QBE earnings proportional to locally levied revenues, such reduction in Plaintiff’s QBE earnings to fund Ivy Preparatory Academy allows the Defendants to do indirectly what they cannot do directly within the parameters of the Georgia Constitution: use locally levied school tax revenue to fund Commission charter schools.

34.

There are approximately 216 students from Gwinnett County enrolled in Ivy Preparatory Academy. Beginning in August 2009, under the Charter Commission’s funding methodology, the Defendants are withholding \$3934.93 for each Gwinnett County student enrolled in Ivy

Preparatory Academy, a total of approximately \$849,944 for the school year. See August 26, 2009 email from Scott Austensen, a true and correct copy of which is attached hereto as **Exhibit E**.

35.

In addition to the fact Defendants are funding an unconstitutional entity and illegally using locally levied school tax revenues to provide the funding,, Defendants have applied a flawed methodology for calculating Ivy Preparatory Academy’s “proportional share of local revenue.” This flawed methodology leads t o the absurd result of a Commission charter school receiving a share of local revenue disproportionate to what the same school would receive if it were a local charter school.

36.

If the Charter Commission had calculated Ivy Preparatory Academy’s funding in the same manner as provided for a local charter school, it would have applied the local revenue earnings calculation set forth in O.C.G.A. § 20-2-2068.1. Such a calculation would have taken into account the actual student population at Ivy Preparatory Academy, and would have resulted in funding the school at an average of approximately \$2534 per student due to the lower per capita enrollment of enhanced funding pupils compared to the overall Gwinnett County School District population.

37.

The Defendants’ flawed funding calculation has resulted in Ivy Preparatory Academy being disproportionately funded by approximately \$1400 per student, or approximately \$302,480 for the school year, when compared to what Ivy Preparatory Academy would receive if it were a local charter school.

38.

The Charter Commission's approval of, and the Georgia DOE's funding of, Ivy Preparatory Academy with the use of locally levied school taxes taken from Plaintiff is unconstitutional and imposes a significant detrimental impact on the mission and operation of the Plaintiff Gwinnett County School District.

COUNT I: O.C.G.A § 20-2-2082(a) IS UNCONSTITUTIONAL

39.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 38 as if each such allegation were fully set forth herein.

40.

O.C.G.A § 20-2-2082(a) is unconstitutional in that it establishes the Georgia Charter Schools Commission, which operates as an independent school system in violation of Georgia Constitution Article VIII, Section V, Paragraph I, which prohibits the creation of independent school systems.

COUNT II: O.C.G.A § 20-2-2083(a)(1) IS UNCONSTITUTIONAL

41.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 40 as if each such allegation were fully set forth herein.

42.

O.C.G.A. § 20-2-2083(a)(1) is unconstitutional in that it purports to authorize the Georgia Charter Schools Commission to grant charters for schools that are not under the management and control of an elected board of education, in violation of Georgia Constitution Article VIII, Section V, Paragraph II.

43.

O.C.G.A § 20-2-2083(a)(1) is unconstitutional in that the General Assembly has purported to delegate its constitutional authority to provide for the creation of special schools to the Charter Commission without prescribing sufficient guidelines for the Charter Commission to use in the creation of such schools. Such delegation violates Georgia Constitution Article III, Section, 1, Paragraph 1.

COUNT III: O.C.G.A § 20-2-2081(2) IS UNCONSTITUTIONAL

44.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 43 as if each such allegation were fully set forth herein.

45.

O.C.G.A § 20-2-2081(2) is unconstitutional in that Commission charter schools are not “special schools” within the meaning of and authorized by Georgia Constitution Article VIII, Section V, Paragraph VII.

COUNT IV: O.C.G.A. § 20-2-2090(c) IS UNCONSTITUTIONAL

46.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 45 as if each such allegation were fully set forth herein.

47.

O.C.G.A. § 20-2-2090(c) is unconstitutional in that it purports to authorize funding Commission charter schools by offsetting funding from local school systems’ QBE formula earnings in an amount equal to proportional local revenue. This statute violates Georgia Constitution Article VIII, Section V, Paragraph VII because it effectively provides for funding of Commission charter schools with local revenue without a referendum in the affected system.

COUNT V: IVY PREPARATORY ACADEMY'S CHARTER IS NULL AND VOID

48.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 47 as if each such allegation were fully set forth herein.

49.

The Commission charter purporting to charter Ivy Preparatory Academy, attached hereto as **Exhibit D**, is null and void and of no effect.

COUNT VI: FUNDING FOR IVY PREPARATORY ACADEMY IS ILLEGAL

50.

Plaintiff incorporates by reference all the allegations of Paragraphs 1 through 49 as if each such allegation were fully set forth herein.

51.

The Defendants have unconstitutionally withheld funds from the Gwinnett County School District in order to fund the operation of Ivy Preparatory Academy as a Commission charter school.

52.

Students enrolled in Gwinnett County public schools rely on QBE funds to preserve the integrity of the educational opportunities provided by the Gwinnett County School District. Absent judicial intervention, there is the risk of irreparable harm to the students in the Gwinnett County School District.

WHEREFORE, Plaintiff seeks the following relief:

- A. Declaratory Judgment declaring O.C.G.A. § 20-2-2082(a) unconstitutional as set forth in Count I;

- B. Declaratory Judgment declaring O.C.G.A. § 20-2-2083(a)(1) unconstitutional as set forth in Count II;
- C. Declaratory Judgment declaring O.C.G.A. § 20-2-2081(2) unconstitutional as set forth in Count III;
- D. Declaratory Judgment declaring O.C.G.A. § 20-2-2090(c) unconstitutional as set forth in Count V;
- E. Declaratory Judgment declaring Ivy Preparatory Academy's charter null and void and of no effect;
- F. To prevent irreparable harm, an injunction preventing Defendants from withholding any funds managed by Defendants which are being directed to Ivy Preparatory Academy but would otherwise have been provided to the Gwinnett County School District and directing the Defendants to restore to Plaintiff all funds withheld to date.;
- G. In the alternative to the injunctive relief described above, an injunction barring Defendants from funding Ivy Preparatory Academy at a disproportionate rate, and directing Defendants to restore to Plaintiff the difference between what Ivy Preparatory Academy currently receives from the state and what Ivy Preparatory Academy should have received under QBE formula earnings; and
- H. Such other and further relief as the Court deems just and proper.

Respectfully submitted this ____ day of September, 2009.

Michael J. Bowers
Georgia Bar No. 071650
T. Joshua R. Archer
Georgia Bar No. 021208
Joshua M. Moore
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ATTORNEYS FOR PLAINTIFF

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)	
)	
Defendants.		

VERIFICATION

I, J. Alvin Wilbanks, am the CEO/Superintendent of the Gwinnett County Public School District, and before the below-named officer duly authorized to administer oaths, hereby declare under oath that the factual allegations contained in the COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF are true and correct and within my personal knowledge.

J. Alvin Wilbanks

Sworn to and subscribed
before me this ____ day
of September, 2009.

Notary Public

My Commission Expires: