

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

**OKLAHOMA PUBLIC CHARTER SCHOOL
ASSOCIATION, an Oklahoma not-for-profit
corporation,**)
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)
)
)
Plaintiff,)
)
-vs-)
)
)
**THE STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE BOARD
OF EDUCATION**)
)
)
Defendant,)
)
)
**INDEPENDENT SCHOOL DISTRICT NO. 89 OF
OKLAHOMA COUNTY, and INDEPENDENT
SCHOOL DISTRICT NO. 1 OF TULSA COUNTY,
OKLAHOMA,**)
)
)
)
Intervening Defendants.)

Case No. CV-2017-1330

**FILED IN DISTRICT COURT
OKLAHOMA COUNTY**

MAR 31 2021

**RICK WARREN
COURT CLERK**

111 _____

**OKLAHOMA CITY PUBLIC SCHOOLS'
PETITION FOR CROSS CLAIMS AGAINST
STATE BOARD OF EDUCATION**

Independent School District No. 89 of Oklahoma County a/k/a Oklahoma City Public Schools (“OKCPS”), Intervening Defendant, pursuant to 12 O.S. §2013(G), asserts the following cross-claims against Defendant, Oklahoma State Board of Education (“SBE”):

1. On July 7, 2017, Plaintiff, Oklahoma Public Charter School Association (“OPCSA”), filed its Emergency Petition for Declaratory Judgment and Writ of Mandamus. Plaintiff brought this action against SBE, seeking a declaratory judgment that charter schools have not been properly funded in accordance with the requirements of Oklahoma law and requesting a writ of mandamus directing SBE to equalize funding between charter schools and public school districts.

2. Plaintiff and SBE agreed to an Expedited Scheduling Order with no time for discovery, which this Court entered on July 13, 2017. SBE filed its Answer on July 25, 2017, and Plaintiff filed its motion for summary judgment on August 11, 2017. On September 14, 2017, the Court granted a joint motion to amend the scheduling order and set November 3, 2017, as the date for the hearing on Plaintiff's motion for summary judgment.

3. SBE filed its response to the motion for summary judgment on September 21, 2017, and Plaintiff filed its reply brief on October 23, 2017.

4. On October 24, 2017, OKCPS moved to intervene in this action and filed a motion seeking an emergency hearing, a stay of proceedings, or a temporary restraining order to prevent the litigation from going forward until the Court had the opportunity to rule on the motion to intervene filed by OKCPS.

5. On October 25, 2017, Tulsa Public Schools ("TPS") moved to intervene in this action and filed a motion requesting an emergency stay until the Court had the opportunity to rule on the motion to intervene filed by TPS. On November 1, 2017, Plaintiff filed a response in opposition to the motions to intervene by OKCPS and TPS. SBE filed a response on the same day declining to take a position on whether the motions to intervene should be granted.

6. At the hearing held on November 3, 2017, the Court heard argument on the motions to intervene. Counsel for Plaintiff argued that OKCPS and TPS should not be allowed to intervene because they had no interest at stake in the dispute between Plaintiff and SBE. Counsel for Plaintiff also argued that if OKCPS and TPS were allowed to intervene, other school districts would also be entitled to intervene because any potential ruling would impact them because there are charter school students in all counties of the state based on enrollment in statewide virtual charter schools.

7. The Court granted Intervening Defendants' Motion to Intervene and stated that the school districts should be allowed to defend the interpretation of the law as they think it should be interpreted.

8. OKCPS filed its answer on November 9, 2017, and TPS filed its answer on November 13, 2017. The written Order granting the motions to intervene was filed on December 11, 2017. There was no further activity in the case until April of 2019.

9. On April 12, 2019, the Court mailed a 15 Day Letter to all counsel in which the Court stated that the case appeared to be inactive and would be put on a disposition docket unless the parties submitted a report within 15 days regarding the status of the case and the parties' intent for a speedy and effective resolution. Plaintiff filed a motion for a status and scheduling conference on May 1, 2019. An agreed scheduling order was submitted and filed on May 17, 2019.

10. Although the Court's 15 Day Letter resulted in the submission of an agreed scheduling order, counsel for OKCPS and TPS continued to believe, based on the statements made by counsel for Plaintiff at the November 3, 2017 hearing, that (a) this litigation would not go forward until all school districts in the state were given notice of this action and the Court established a date certain for any school districts desiring to intervene in this litigation to do so, and (b) no material discovery would be necessary to resolve the issues raised by Plaintiff's Emergency Petition for Declaratory Judgment and Writ of Mandamus.

11. On September 12, 2019, Intervening Defendants filed a motion for a status and scheduling conference, a stay of discovery, and an amended scheduling order. Plaintiff responded to the motion. On October 18, 2019, the Court conducted a hearing and struck the Scheduling Order, granted Plaintiff leave to file a motion to amend its Petition, and stayed discovery until the Court

ruled on Plaintiff's motion for leave to file an Amended Petition.

12. Subsequently, on October 28, 2019, Plaintiff filed a motion seeking leave to amend its Petition to add claims for recoupment against OKCPS and TPS. On November 12, 2019, OKCPS and TPS filed a response objecting to Plaintiff's motion for leave to amend.

13. On November 5, 2019, SBE filed a motion for summary judgment. On January 28, 2020, Plaintiff filed its response and objection to SBE's motion for summary judgment and submitted its counter motion for summary judgment. The Court granted Intervening Defendants' motion for extension of time to respond to Plaintiff's counter-motion for summary judgment and provided that a response was due on March 16, 2020.

14. On March 13, 2020, a hearing was held on Plaintiff's motion for leave to amend. The Court granted the motion to amend to add the State Department of Education ("SDE") as a defendant. The Court expressly denied any additional claims for recoupment against Intervening Defendants or any other school. The Court stated that Plaintiff would not be allowed to recover monetary damages or seek a writ of mandamus directing SDE to pay money to Plaintiff or any charter schools.

15. No responses to SBE's Motion for Summary Judgment or Plaintiff's Counter-Motion for Summary Judgment were filed because it was anticipated that Plaintiff would file an Amended Petition as allowed by the Court. No hearing was ever scheduled on the pending motions for summary judgment, and Plaintiff did not ever file its Amended Petition. Thus, there has been no activity in the case since March of 2020.

16. On Thursday, March 25, 2021, SBE met in a special meeting and conducted an executive session to discuss this pending litigation. Exhibit 1, Agenda, SBE 3/25/21 Meeting. Upon

returning to the open session portion of the meeting, SBE Board member Trent Smith made a motion to adopt a board resolution to equalize funding between all public schools and charter schools and settle the lawsuit filed by the Oklahoma Public Charter School Association. Exhibit 2, Tulsa World Article, 3/26/21.

17. State Superintendent of Instruction, Joy Hofmeister, voted against the motion and advised the other members of SBE that she believed, based on legal advice, that such action violated the Oklahoma Statutes, the Oklahoma Constitution, and her oath of office. Exhibit 2, Tulsa World Article, 3/26/21. Superintendent Hofmeister stated that the action of SBE circumvents the will of the people and the state legislature by unilaterally determining how public education is to be funded.

18. A draft of a proposed resolution reflects that SBE's action will result in local sources of revenue, such as ad valorem taxes levied for the benefit of a school district's General Fund and Building Fund, being provided to charter schools, despite the fact that the Oklahoma Constitution provides that such levies are only for the benefit of "school districts" as opposed to charter schools. The Resolution requires that a "District Sponsored Charter School" will received General Fund, Building Fund, Local Revenue, and State Dedicated Revenue based on the proportion of the charter school's average daily attendance. Non-District Sponsored Charter Schools are to receive the same sources of funds based on the proportion of the charter's schools separate student membership in relation to the total student membership within the same tax base. The Resolution is to be effective July 1, 2021. Exhibit 3, Oklahoma SBE Resolution.

19. SBE's current position as to the interpretation of the funding laws and the proposed Resolution is directly contrary to SBE's interpretation of the law in its Motion for Summary Judgment filed on November 5, 2019 and its response to Plaintiff's motion for summary judgment

filed on September 21, 2017.

20. OKCPS is a political subdivision of the State of Oklahoma which is funded by taxpayer dollars appropriated by the State of Oklahoma and funds raised through local tax levies, including but not limited to, General Fund and Building Fund levies provided in the Oklahoma Constitution for school districts.

21. OKCPS will be substantially impacted if this matter is allowed to be settled as set forth in the proposed Resolution without a declaratory ruling as to the interpretation of the applicable funding provisions in the law.

22. OKCPS is the sponsor of a number of the charter schools who are members of Plaintiff and also has other charter schools sponsored by other entities that are located within the boundaries of OKCPS.

Count 1: Writ of Prohibition

23. The SBE is granted certain powers by the Legislature. Those powers do not include making changes to Oklahoma statutes or the Oklahoma Constitution, particularly to the public school funding mechanism. 70 O.S. §3-104.

24. The Oklahoma statutes clearly provide a mechanism for charter school funding and expressly prohibit a charter school from being able to levy taxes and issue bonds. 70 O.S. §3-142.

25. Unlike the system of public schools established under the Oklahoma Constitution, Oklahoma charter schools are creatures of legislative establishment. The Legislature established the Oklahoma Charter Schools Act (“Act”), which established a new system of education by allowing for the establishment of Oklahoma charter schools by a contract:

For purposes of the Oklahoma Charter Schools Act, “charter school” means a public school established by **contract** with a board of education of a school district, an area vocational-technical school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the Oklahoma Charter Schools Act to provide learning that will improve student achievement and as defined in the Elementary and Secondary Education Act of 1965, 20 U.S.C. 8065.

70 O.S. § 3-132(D). (emphasis added).

26. A charter school applicant contracts with a statutorily approved sponsor (see 70 O.S. § 3-132(A)(1-9)). The charter school applicant submits a written application to the proposed sponsor outlining statutory criteria. 70 O.S. § 3-134(B)(1-35). It is discretionary for a sponsor to contract with an applicant: “A board of education of a public school district, public body, public or private college or university, private person, or private organization **may** contract with a sponsor to establish a charter school....” 70 O.S. § 3-134(C). (emphasis added).

27. As a statutorily-created entity, a charter school has specific statutory funding established at 70 O.S. § 3-142. “For purposes of funding, a charter school sponsored by a board of education of a school district shall be considered a site within the school district in which the charter school is located....” 70 O.S. § 3-142(A). Contrary to the assertion of Plaintiff that a charter school be labeled as a “school district”, the plain reading of Oklahoma law provides otherwise. A charter school is a site within the sponsoring school district, not a separate school district. This statute sets forth the funding mechanism:

A charter school shall receive from the sponsoring school district, the State Aid allocation and any other state-appropriated revenue generated by its students for the applicable year, less up to three percent (3%) of the State Aid allocation, which may be retained by the school district as a fee for administrative services rendered.

70 O.S. § 3-142(A) (as amended by HB 3369, c. 122, § 1, effective November 1, 2020). Charter schools are statutorily prohibited from “...levy[ing] taxes or issue[ing] bonds....” 70 O.S. § 3-

142(D).

28. The authority to determine how charter schools are funded is clearly within the powers granted to the Legislature. During the 2020 Legislative Session, the Oklahoma Legislature considered a bill to amend the way in which charter schools were funded. Senator Stanislawski filed Senate Bill 1203 in the Oklahoma Legislature. Senate Bill 1203 has been considered by the Senate Education Committee and the Appropriations Committee and received “do pass” recommendations from both committees. On March 9, 2020, the Oklahoma Senate approved Senate Bill 1203 by a vote of 44 to 2. Senate Bill 1203 then moved to the Oklahoma House of Representatives where it received its first reading on March 10, 2020. Exhibit 4, Engrossed Senate Bill 1203 and Bill Information for SB 1203. Unfortunately, due to the COVID-19 Pandemic, the Legislature did not take any further action on SB 1203.

29. SBE’s action of adopting a Resolution to resolve the pending litigation by allowing for charter schools to benefit from taxes that are levied by public school districts as provided for in the Oklahoma Constitution violates the separation of powers. The SBE’s action invades the authority of the Oklahoma Legislature to make the laws of the State of Oklahoma and exceeds SBE’s authority. Furthermore, SBE has no authority or control over the allocation of local and state-dedicated revenues which are controlled solely by statute.

Count II: Temporary Restraining Order and Temporary Injunction.

30. The purpose of a temporary restraining order is to maintain the *status quo* between the parties. *Morse v. Earnest, Inc.*, 547 P.2d 955, 1976 OK 31. A temporary restraining order may issue without oral or written notice to the adverse party when immediate and irreparable injury, loss, or damage will be suffered by the party seeking the temporary restraining order. 12 O.S.

§1384.1(B)(1). The temporary restraining order will only remain in effect until the court decides, after a hearing with notice to the adverse party, whether or not a temporary injunction will be issued.

Id.

31. In order to be entitled to injunctive relief, the applicant must show a likelihood of success on the merits, irreparable harm or detriment if relief is denied, effect on other interested parties, and address public policy concerns. 12 O.S. §§ 1382, 1383; see generally, *Roy Realty & Developing, Inc. v. Watson*, 1990 OK CIV APP 21, 791 P.2d 821. The granting or refusing of injunctive relief rests within the sound discretion of the trial court. *Johnson v. Ward*, 1975 OK 129, 541 P.2d 182, 188. The discretion of the court must be exercised within sound equitable principles, taking into account all the facts and circumstances in the case. *Amoco Production Co. v. Lindley*, 1980 OK 6, 609 P.2d 733, 745. A temporary injunction should be issued to maintain the *status quo* and prevent harm during the pendency of the litigation until the substantial issues are determined. *Weis v. Renbarger*, 1983 OK CIV APP 50, 670 P.2d 609, 610–611; 12 O.S. § 1382.

32. The law is well-settled that an injunction may

prevent the members of the board of education from doing unauthorized acts; from improperly expending the public funds for unauthorized purposes; to prevent them from entering into an unauthorized contract. It is a well-settled doctrine that courts of equity have power to enjoin ministerial acts of public officers which are ultra vires and beyond the scope of their authority.

Bd. of Educ. of Territory v. Territory, 1902 OK 78, 12 Okla. 286, 70 P. 792, 795–96.

33. In this case, OKCPS will suffer irreparable harm if Plaintiff and Defendant are not restrained from settling this case as provided for in the proposed Resolution. This case involves the potential reallocation of millions of dollars in local tax revenues from school districts to charter schools in contradiction of Oklahoma Statutes and the Oklahoma Constitution. This case potentially

involves the interests of every Oklahoma school district since Plaintiff has members who are state-wide virtual charter schools (Oklahoma Connections Academy, EPIC One on One Charter School, Insight School of Oklahoma, and Oklahoma Virtual Charter Academy). These statewide virtual charter schools enroll students from school districts across the state. Due to the significant issues raised in this case, it is imperative that the Court maintain the status quo and issue a temporary restraining order and temporary injunction prohibiting Plaintiff and SBE from implementing the proposed resolution of the case.

34. Plaintiff and Defendant will not suffer any prejudice as a result of the Court restraining any possible settlement at this time. Plaintiff's members already have been allocated and budgeted those funds to which the law clearly entitles them for their operations during the current fiscal year which does not end until June 30, 2021. If Plaintiff and Defendant are allowed to settle the lawsuit without consideration of the impact upon the individual school districts, there is a strong possibility that further litigation will ensue challenging any settlement. Such litigation could occur in the different counties where the impacted school districts are located. In that situation, it would be an inefficient use of the courts' limited resources to have multiple suits challenging a possible settlement. It is a more efficient use of judicial resources to have the matter decided by this Court with the proper parties before the Court.

35. In this case, the law regarding the funding of charter schools and school districts is clear. The Legislature has provided for differing mechanisms by which each legal entity is funded as well as operated. For SBE to agree to a settlement which would authorize charter schools to receive funds generated by local tax levies would be an action beyond the scope of SBE's authority. The fact that the money in question in this case is public money levied by public school districts

makes it all the more important to take steps to protect those funds from an improper reallocation. OKCPS has a fiduciary duty to protect the taxpayer's money and is exercising its legal rights in order to protect the funds levied by OKCPS for operation of its school sites from being expended for the support of charter schools.

36. OKCPS requests that the Court enter a temporary restraining order and/or temporary injunction which prohibits SBE from enforcing and implementing the approved Resolution.

Count III: Declaratory Judgment

37. OKCPS seeks a declaratory judgment as to the interpretation of the statutes and the provisions of the Oklahoma Constitution regarding school funding as well as a declaratory judgment regarding the SBE's authority to implement the proposed settlement and to direct that charter school sponsors are to provide a portion of taxes levied on real property as well as Local Revenue and State Dedicated Revenue to charter schools based on student membership or average daily attendance.

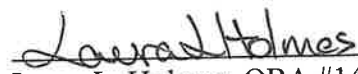
38. A justiciable controversy exists between OKCPS and SBE based on SBE's approval of the Resolution. There is no other adequate remedy available to OKCPS for declaratory relief.

39. Declaratory judgment is necessary and will determine the rights, obligations, and liabilities of the parties to the controversy.

40. OKCPS requests that the Court make a determination as to the interpretation and application of the statutes and Constitutional provisions at issue regarding the funding of public school districts as opposed to public charter schools.

Wherefore, OKCPS respectfully requests that this Court enter a Temporary Restraining Order prohibiting SBE from approving and implementing the proposed Resolution; that the Court enter a temporary injunction prohibiting SBE from approving and implementing the proposed Resolution; and that the Court enter a writ of prohibition against SBE prohibiting it from approving and implementing the proposed Resolution.

The Center for Education Law, P.C.



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CERTIFICATE OF MAILING

This is to certify that on March 31, 2021, a true and correct copy of the above and foregoing pleading was mailed to the below individuals via:

- U.S. Mail, Postage Prepaid
- Certified U.S. Mail, Postage Prepaid
- Certified U.S. Mail, Postage Prepaid, Return Receipt Requested
- E-Mail

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SPECIAL MEETING
STATE BOARD OF EDUCATION
Public view and access: <https://www.facebook.com/OklaSDE/>

AGENDA

Thursday, March 25, 2021 – 1:00 p.m.

As authorized by 25 O.S. §§ 307.1 and 311, this meeting will be conducted entirely via teleconferencing or videoconferencing.

Board members present via teleconference and videoconference at remote locations will be:

Joy Hofmeister, State Superintendent and Chair, via Zoom videoconference
Estela Hernandez, via Zoom videoconference
Carlisha Williams Bradley, via Zoom videoconference
William Flanagan, via Zoom videoconference
Brian Bobek, via Zoom videoconference
Trent Smith, via Zoom videoconference
Jennifer Monies, via Zoom videoconference

1. Call to order and roll call – 1:00 p.m.

2. **STATE SUPERINTENDENT**

Information from the State Superintendent

(a) Recognition of Department Employee for the month of March: **Alyssa Griggs**

(Action) (b) Discussion and possible action on the minutes of the February 25, 2021, special State Board of Education meeting

3. **PUBLIC COMMENT**

Patrons may speak to the Board on any matter set forth on the current board agenda, excluding any matter which may be identified as including and/or pertaining to a proposed executive session. Comments will be limited to the **first ten (10) individuals** who email Terrie.Cheadle@sde.ok.gov by 5:00 p.m. on March 24, 2021, advising of their intent to provide public comment to the Board. In the email requesting to provide public comment, the individual or representative must provide their name, email and phone number, along with the agenda item to be commented on. A time limit of three (3) minutes will be allowed for each speaker. In its sole discretion, the time limit may be extended by consent of the Board. The Board Chairperson may interrupt and/or terminate any presentation during public comment, which does not conform to the procedures outlined under this Section. The Board Chairperson reserves and retains the right to interrupt, terminate, or postpone public comment as necessary to effectuate the management of the public meeting.

4. **CONSENT DOCKET** (Action)

Discussion and possible action on the following deregulation applications, statutory waivers, and exemptions for the 2020-2021 school year - 70 O.S. § 3-104; **OAC 210:35-1-4**:

- (Action) (a) **Abbreviated School Day – OAC 210:35-29-2 and 210:35-3-46
3 Years**
Bethel Public Schools, Pottawatomie County
- (Action) (b) **Cooperative Agreements for Alternative Education Programs – 70 O.S. § 1210.568**
Balko Public Schools, Beaver County
Goodwell Public Schools, Texas County
- (Action) (c) **Library Media Services – OAC 210:35-5-71 and 210:35-9-71**
Fox Public Schools, Carter County
Arapaho-Butler Public Schools, Custer County
Central Public Schools, Sequoyah County
- (Action) (d) **Library Media Specialist Certificate Exemption - 70 O.S. § 3-126**
Enid Public Schools, Garfield County
- (Action) (e) Request approval on exceptions to State Board of Education teacher certification regulations to permit issuance of emergency (provisional) certificates - 70 O.S. § 6-187
- (Action) (f) Request approval for **Keystone Adventure School & Farm** to participate in the Lindsey Nicole Henry Scholarships for Students with Disabilities program – 70 O.S. § 13-101.2

All of the items of routine nature normally approved at board meetings will be approved by one vote unless any board member desires to have a separate vote on any or all of these items.

5. **LEGAL SERVICES/STATE BOARD OF EDUCATION OFFICE – Brad Clark,
General Counsel**

- (Action) (a) Discussion and possible action on the adoption of the following **proposed rule changes** pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. § 253 – **Lori Murphy, Assistant General Counsel**
 - (1) Title 210. State Department of Education
Chapter 15. Curriculum and Instruction
Subchapter 3. Oklahoma Academic Standards
Part 21. Information Literacy
210:15-3-172. Overview [REVOKED]
210:15-3-172.1 Definitions [REVOKED]
210:15-3-173. Information Literacy [AMENDED]

- (2) Title 210. State Department of Education
Chapter 15. Curriculum and Instruction
Subchapter 3. Oklahoma Academic Standards
Part 23. Instructional Technology
210:15-3-183. Overview [REVOKED]
210:15-3-183.1 Definitions [REVOKED]
210:15-3-184. Standards [AMENDED]
210:15-3-185. Intermediate level prior to completion of grade 8 [REVOKED]
210:15-3-186. Advanced level prior to completion of grade 12 [REVOKED]

- (3) Title 210. State Department of Education
Chapter 20. Staff
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-110. Alternative placement teaching certificates [AMENDED]

(Action) (b) Presentation, discussion and possible action on **Oologah-Talala Public Schools**, including operations, governance, accreditation and quarterly report as required at the June 25, 2020, meeting of the State Board of Education - **70 O.S. § 3-104, 3-104.3, 3-104.4** and OAC 210:35-3-201

(Action) (c) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) (7) and (8)** for the purpose of discussing possible action to issue an emergency order summarily suspending the teacher certificate and certificate number of **1) Lester Young** and **2) Roland Butler** pending an individual proceeding for revocation or other action - **70 O.S. § 3-104; 75 O.S. § 314; OAC 210-1-5-6**

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

(Action) (d) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Oologah-Talala Public Schools**, when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - **25 O.S. §§ 307 (B) (4) and (7)**

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

(Action) (e) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Epic Charter Schools (Epic One-on-One and Epic-Blended)**, when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - 25 O.S. §§ 307 (B) (4) and (7)

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

(Action) (f) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. §§ 307 (B) (4) and (7)** to discuss confidential communications with legal counsel concerning a pending investigation, claim, or action, concerning **Western Heights Public Schools** when advised by legal counsel that disclosure of any additional information could seriously impair the ability to process or conduct the pending investigation and/or claim in the public interest - 25 O.S. §§ 307 (B) (4) and (7)

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

(Action) (g) Discussion and possible action to resolve into Executive Session pursuant to **25 O.S. § 307 (B) (4)** to discuss pending litigation, **Oklahoma Public Charter School Association v. Oklahoma State Board of Education**, in the **District Court of Oklahoma County, CV-2017-1330**

1. Vote to Convene in Executive Session
2. Vote to Acknowledge Return to Open Session
3. Discussion and possible action regarding the matters discussed in Executive Session

6. **ADJOURNMENT (Action)**

https://tulsaworld.com/news/local/education/majority-of-state-ed-board-votes-to-settle-years-old-charter-schools-lawsuit-seeking-millions/article_a897b4ae-8dc3-11eb-8cbf-0fd5f3b34356.html

TOPICAL

Majority of state ed board votes to settle years-old charter schools lawsuit seeking millions more dollars

Andrea Eger
Mar 26, 2021



Oklahoma State Superintendent Joy Hofmeister, seen here in a frame grab from Thursday's virtual meeting, opposed the settlement of a funding lawsuit by charter schools, saying she believes the state school board's action in approving it violates state law and the constitution, as well as her oath of office.

Andrea Eger

Andrea Eger

Majority of state ed board votes to settle years-old charter school...

Exhibit No. 2

The Oklahoma State Board of Education split 4-3 Thursday in voting to settle a years-old lawsuit seeking tens of millions more in the share of state taxpayer dollars that all charter schools receive.

The move came against the strong objections of State Superintendent Joy Hofmeister and apparently the legal advice of the board's own attorney.

In her public comments during the remote meeting, Hofmeister made a point of revealing that the settlement offer had been received only one day earlier.

“Based on legal advice, this violates Oklahoma statute, Oklahoma Constitution and the oath that I swore to uphold when I took office — and I do not support this nor do I think the board should vote to approve this settlement which came in yesterday,” she said ahead of the vote.

All other state board members are appointees of Gov. Kevin Stitt. Trent Smith, the newest member, whom Stitt put in place after abruptly giving the boot to former board member Kurt Bollenbach in December, made the motion to settle the suit.

Smith appeared to be reading the wording of his motion from his computer screen during the virtual meeting, saying, “My motion is to adopt a board resolution to equalize funding between all public schools and charter schools, thereby settling the

lawsuit by the Oklahoma Public Charter School Association.”

Smith, along with fellow members Estela Hernandez, Brian Bobek and Jennifer Monies, voted “yes.”

On numerous occasions in the board’s public meetings, Monies has mentioned her service on the board of her son’s school, John Rex Charter Elementary in Oklahoma City, which would stand to benefit from the settlement and which is listed as a member of the Oklahoma Public Charter School Association on the organizations’ **website**.

Carlisha Williams Bradley and Bill Flanagan cast “no” votes along with Hofmeister.

In July 2017, the Oklahoma Public Charter School Association sued the state Board of Education to try to make a legal case that existing Oklahoma laws are being misinterpreted.

The charter schools group claims the schools are due an equal share of revenues from Oklahoma’s gross production, motor vehicle and rural electrification association tax collections, state school land earnings and county tax collections, which currently flow only to traditional public schools.

An Oklahoma County District Court judge ruled in fall 2017 that attorneys for the Tulsa and Oklahoma City school districts would be allowed to intervene in the statewide charter school association’s legal battle against the state for access to more public funding.

The two inner-city school districts willingly sponsor most of the state’s charter school districts, but the legal battle puts them in direct competition with charter schools for existing dollars.

If the charter schools’ **legal effort** is ultimately successful, all traditional public schools stand to lose revenue, with the Oklahoma City and Tulsa districts positioned to lose the most.

The National Alliance for Public Charter Schools, a national nonprofit advocacy organization that worked with the Oklahoma charter school group for several years, told the Tulsa World in 2017 that legislative remedies were also considered. But ultimately the decision was made to try to make a legal case that existing Oklahoma laws governing charter schools and school finance in general are being misinterpreted, it said.

Hofmeister issued a statement Thursday evening, saying: "Today's board action circumvents the will of the people of Oklahoma and the state legislature by unilaterally determining how public education is to be funded. I fear this action knowingly violated Oklahoma statute and the Oklahoma Constitution.

"There are serious consequences to this unexpected vote, the most obvious of which is Epic and all statewide virtual charter schools will now receive millions of local dollars from ad valorem funds that are assessed to construct and maintain public school buildings. Local tax revenue will be redistributed.

"This change is likely to have a seismic effect on school funding across the state," she said, and "the ramifications on schoolchildren are yet to be fully understood.

Staff Writer Andrea Eger's most memorable stories of 2020

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I'm a projects reporter, examining key education topics and other local issues. Since joining the Tulsa World in 1999, I have been a three-time winner of Oklahoma's top award for investigative reporting by an individual. Phone: 918-581-8470

OKLAHOMA STATE BOARD OF EDUCATION

RESOLUTION

WHEREAS, the Oklahoma State Board of Education (“SBE”) deems it in the best interest of the Board and the schoolchildren of the State of Oklahoma that the following actions be taken pursuant to this Resolution;

WHEREAS, the State Board of Education desires to resolve and settle its disputes with the Oklahoma Public Charter School Association (“OPCSA”) in the litigation styled, OPCSA v. State of Oklahoma ex. rel. Oklahoma State Board of Education, CV-2017-1330, in the District Court of Oklahoma County, Oklahoma (the “Litigation”);

WHEREAS, the Oklahoma Constitution grants the Legislature with the authority to establish and maintain a system of free public schools wherein all children of the State of Oklahoma may be educated and provides the Legislature with the authority to raise and distribute funds to public school districts in the manner and by the distributing agency designated by the Legislature;

WHEREAS, based on its constitutional powers, the Legislature adopted statutes to address the funding of public schools to include 70 O.S. §18-101, for the general improvement of public schools, to provide the best possible educational opportunities for every child in Oklahoma and to have a more beneficial use of public funds expended for education;

WHEREAS, the Legislature expressed its intent that the state support of public schools through the funding formula should assure equal educational opportunities and provide for as large a measure of equalization as possible for Oklahoma schoolchildren;

WHEREAS, the Legislature, at 70 O.S. §3-132, also expressed its intent that charter schools are public schools;

WHEREAS, the Legislature in the Oklahoma Charter Schools Act (the “Act”) provides, in part, that charter schools shall be eligible to receive any other aid, grants or revenues allowed to other schools. The Act also provides that a charter school, in addition to money received from the State of Oklahoma, may receive money from any other source. *See* 70 O.S. §3-142;

WHEREAS, presently, charter schools in Oklahoma only receive State-Appropriated Revenue, but do not receive Local Revenue or State-Dedicated Revenue as defined herein;

WHEREAS, local sources of revenue at issue in the Litigation are: (1) General Fund levies of 35 mills (the “General Fund”), as provided in Article X, §9 of the Oklahoma Constitution; (2) Building Fund levies of 5 mills (the “Building Fund”), as provided in Article X, §10 of the Oklahoma Constitution; (3) County 4-mill, as provided in Article X, §9 of the Oklahoma Constitution; (4) County apportionment; and (5) other local miscellaneous revenues (collectively, “Local Revenue”);

WHEREAS, State-dedicated sources of revenue at issue in the Litigation are: (1) Gross Production Tax (“GPT”), as provided in 68 O.S. §1004; (2) Motor Vehicle Collections (“MVC”), as provided in 47 O.S. §1104; (3) Rural Electrification Association (R.E.A.) tax (“REA Tax”); and (4) State School Land Earnings (“Land Earnings”), as provided in Article XI, §3 of the Oklahoma Constitution, (collectively “State-Dedicated Revenue”);

WHEREAS, State-Appropriated Revenue may generally include: (1) Foundation and Salary incentive aid (i.e., State Aid) distributed through the state funding formula; (2) flexible benefit allowance (collectively “State-Appropriated Revenue”); (3) Advanced Placement; (4) Textbooks; (5) School Consolidation Assistance; (6) National Board Certified Bonus; (7) Driver Education, Vehicle Tax Stamp; (8) Alternative and At-Risk Education; (9) Instructional,

Cooperative and Technology Education; (10) Arts-in-Education; (11) Child Nutrition State-Match Programs; and, (12) Staff Development;

WHEREAS, the Act provides that charter schools sponsored by a local school district board of education shall be considered a site within the school district in which the charter school is located for the purposes of funding except for federal funds (“District Sponsored Charter Schools”) and the student membership of District Sponsored Charter Schools are to be separate from the student membership of the districts in which the charter school is located.

WHEREAS, the Act provides that charter schools may also be sponsored by a technology center board of education, a higher education institution, the State Board of Education, a federally recognized Indian Tribe, or the statewide virtual charter school board (“Non-District Sponsored Charter Schools”) and these Non-District Sponsored Charter Schools are considered a local education agency, or, in other words, a school district, for purposes of funding;

NOW THEREFORE, in furtherance of the intent of the Legislature to provide for the largest measure of equalization as possible between public schools, to include charter schools, the SBE stipulates that the interpretation and implementation of laws regarding funding for charter schools shall be as set forth herein:

BE IT RESOLVED that charter schools shall be funded as a public-school district and in furtherance of the Legislative intent to provide the greatest measure of equalization of funding between public schools;

BE IT FURTHER RESOLVED that as a site within the school district in which the charter school is located, a District Sponsored Charter School shall receive from its sponsoring local school district board of education its proportionate share of the General Fund, the Building Fund, all other Local Revenue and all State Dedicated Revenue;

BE IT FURTHER RESOLVED that a District Sponsored Charter School shall receive from its sponsoring local school district board of education its proportionate share of the General Fund and the Building Fund revenues based on the proportion of the charter school's separate student membership in relation to the total student membership within the same tax base;

BE IT FURTHER RESOLVED that a District Sponsored Charter School shall receive from its sponsoring local school district board of education its proportionate share of the Local Revenue based on the proportion of the charter school's average daily attendance to the total student average daily attendance within the same tax base;

BE IT FURTHER RESOLVED that a District Sponsored Charter School shall receive from its sponsoring local school district board of education its proportionate share of the State Dedicated Revenue based on the proportion of the charter school's average daily attendance so long as any years of instruction requirements in the laws are satisfied for gross production tax and motor vehicle collections revenues;

BE IT FURTHER RESOLVED that a Non-District Sponsored Charter School, as a local education agency, or school district, shall receive its proportionate share of the General Fund, Building Fund, all other Local Revenue and all State Dedicated Revenue;

BE IT FURTHER RESOLVED that a Non-District Sponsored Charter School shall receive its proportionate share of the General Fund and the Building Fund revenues based on the proportion of the charter school's separate student membership in relation to the total student membership within the same tax base;

BE IT FURTHER RESOLVED that a Non-District Sponsored Charter School shall receive its proportionate share of the remaining Local Revenue based on the proportion of the charter school's average daily attendance to the total student average daily attendance within the same tax base;

BE IT FURTHER RESOLVED that a Non-District Sponsored Charter School shall receive its proportionate share of the State Dedicated Revenue based on the proportion of the charter school's average daily attendance so long as any years of instruction requirements in the laws are satisfied for gross production tax and motor vehicle collections revenues;

BE IT FURTHER RESOLVED that the Oklahoma State Board of Education directs the Oklahoma State Department of Education to include charter schools on any school district list as required to fulfill the intent of this Resolution, to provide notice to any county and / or state official to further effectuate the intent of this Resolution, and to take any other actions necessary to implement the terms of this Resolution;

BE IT FURTHER RESOLVED that to provide the administrative time necessary to fully and properly implement this Resolution, this Resolution shall be effective July 1, 2021; and

BE IT FURTHER RESOLVED that the Oklahoma Public Charter School Association by and through its members, have agreed to waive, release and forever forego any claims, causes of action, or demands upon the Oklahoma State Board of Education, the Oklahoma State Department of Education, and any school districts for any funding that charter schools may have been entitled to for the period of time prior to July 1, 2021 so long as this Resolution is fully implemented and charter schools receive the additional sources of revenues provided for herein.

Approved and Authorized this ____ day of March 2021.

Joy Hofmeister
State Superintendent of Public Instruction
Board Chair