

I. INTRODUCTION

Plaintiff files this petition for declaratory judgment and injunctive relief pursuant to the provisions of the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Section 37.001 *et seq.* as well as Tex. Civ. Prac. & Rem. Code Section 65.001 *et seq.*, relating to injunctions and the equitable powers of this court. This case involves the *ultra vires* actions of the superintendent of San Antonio Independent School District, ratified by the board of trustees, to violate the provisions of the Texas Education Code that govern certain contracts between a public school district and a charter school operator. These defendants violated Texas Education Code Section 11.174(c) by entering into a contract with a charter school operator, Democracy Prep Public Schools Inc., to take over operations at P.F. Stewart Elementary School without consulting with the campus staff about the provisions of the contract.

II. DISCOVERY PLAN

1. Plaintiff expects this suit to be conducted under Discovery Level 2, pursuant to TEX. R. CIV. P. 190.3.

III. PARTIES

2. Alliance is a voluntary labor organization that represents employees of SAISD in matters related to their wages, hours, and terms and conditions of employment. It has approximately 2700 members. It is affiliated with the Texas State Teachers Association and the Texas American Federation of Teachers on the state level, and the National Education Association and the American Federation of Teachers at the national level, as well as the AFL-CIO. Its office is at 120 Adams Street, San Antonio, Texas 78210.

3. Defendant Pedro Martinez is the superintendent of San Antonio Independent School District (“SAISD” or the “District”). He is sued in his official capacity only. SAISD is a political subdivision and independent school district within the State of Texas, organized pursuant to law, and charged with the responsibilities of operating and maintaining a public school system within its geographical boundaries. As superintendent, Martinez is “the educational leader and the chief executive officer of the school district.” Tex. Educ. Code § 11.201. Defendant Martinez may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

4. Defendant Patti Radle is the president of the board of trustees for SAISD. She is sued in her official capacity only. Defendant Radle may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

5. Defendant Arthur A. Valdez is the vice-president of the board of trustees for SAISD. He is sued in his official capacity only. Defendant Valdez may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

6. Defendant Debra Guerrero is the secretary of the board of trustees for SAISD. She is sued in her official capacity only. Defendant Guerrero may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

7. Defendant Steve Lecholop is a member of the board of trustees for SAISD. He is sued in his official capacity only. Defendant Lecholop may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

8. Defendant James Howard is a member of the board of trustees for SAISD. He is sued in his official capacity only. Defendant Howard may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

9. Defendant Christina Martinez is a member of the board of trustees for SAISD. She is sued in her official capacity only. Defendant Martinez may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

10. Defendant Ed Garza is a member of the board of trustees for SAISD. He is sued in his official capacity only. Defendant Garza may be served with process at the offices of the school district, San Antonio ISD, 141 Lavaca Street, San Antonio, Texas, 78210.

IV. ASSOCIATIONAL STANDING

11. Alliance has approximately 2700 members in SAISD. It has 33 members at P.F. Stewart Elementary School, representing close to 50% of all employees and over 60% of teachers. Alliance is interested in enforcing and protecting the employment rights and benefits of its members, including their right to consult with SAISD before the District entered into a contract with Democracy Prep to operate the Stewart campus. Alliance's members are aggrieved by the actions of the defendants and Alliance brings this declaratory judgment action on their behalf.

12. Alliance has as one of its central purposes the protection of employment rights and benefits of its members. This declaratory action is germane to that purpose.

13. Alliance's members who are aggrieved by the actions of the defendants have standing to file this action on their own behalf.

14. Neither the claims asserted nor the relief requested herein requires the filing of individual petitions for declaratory judgment nor the participation of individual members as parties to this action.

V. JURISDICTION and VENUE

15. The subject matter in controversy is within the jurisdiction of the district court. Tex. Const. art.5, § 8.

16. Venue is proper in Bexar County, Texas because SAISD is located in Bexar County and all or a substantial part of the events or omissions giving rise to the claim occurred in this county. Tex. Civ. Prac. & Rem. Code § 15.002(a).

17. The amount in controversy exceeds the minimum jurisdictional limits of this Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, plaintiff in good faith pleads that at this juncture, it seeks non-monetary relief and attorney's fees and costs less than \$100,000.

VI. FACTS

18. P.F. Stewart Elementary School is a public school located on the Southeast side of downtown San Antonio. The campus serves a primarily low-income and high-needs community. Although it is in an economically-disadvantaged community, Stewart is fortunate to have a core of dedicated parents, faculty and staff.

19. Under the Texas Education Code, the state provides annual academic accountability ratings to its public school districts, charters and schools. The ratings are largely based on student performance on state standardized tests, such as the State of Texas Assessments of Academic Readiness (STAAR) test, and graduation rates. When a school district or individual campus demonstrates problems achieving the required performance results, the Education Code provides

the commissioner of education with the authority to order various levels of interventions and sanctions.

20. The Texas Education Agency rates the performance of a district or campus based on four indexes: student achievement, student progress, closing performance gaps and postsecondary readiness. If a district or campus is rated “Improvement Required” (“IR”) due to low performance on one or more of the indexes, the commissioner intervenes. If a campus has been identified as unacceptable for two consecutive school years, the campus is required to submit a “campus turnaround plan.” If a campus has an unacceptable performance rating for three consecutive school years after the campus is ordered to submit a campus turnaround plan, the commissioner “shall order: 1) appointment of a board of managers to govern the school district as provided by Section 39A.202; or 2) closure of the campus.” Tex. Educ. Code § 39A.111. For example, if a campus receives a fifth consecutive IR rating for the 2017–2018 school year (2018 Accountability Rating), the commissioner is required to order one of these two sanctions effective in 2018-2019. The 2018 accountability ratings, based on the performance indexes in the 2017-2018 school year, will be released by the agency in August 2018.

21. In 2017, the Texas Legislature passed Senate Bill 1882 and HB 1842. The legislation created a mechanism by which school districts with such campuses could potentially secure a reprieve from the two sanction options described in Paragraph 20, as well as obtain financial benefits. *See* Tex. Educ. Code § 11.174 and 42.2511. School districts seeking such benefits must comply with specified procedural and substantive provisions. School districts must first grant a charter for the IR campus to an eligible entity, such as an existing Texas open-enrollment charter school, an institute of higher learning, or a non-profit organization, as provided by Subchapter C,

Chapter 12 of the Education Code, to take over the campus' operation. The school district and the charter operator enter into a performance contract regarding the operation of the campus. The district then applies to the Texas Education Agency for the commissioner's determination whether the proposed partnership is such that the district is eligible for the benefits provided by the law. Two benefits are potentially available: 1) the commissioner may not impose a sanction or take action against the campus for failure to satisfy academic performance standards during the first two school years of operation of the campus by the charter partner and 2) the district is eligible to receive increased funding from the state for each student attending the campus.

22. The legislature placed a number of specific conditions upon school districts attempting to qualify for benefits under Senate Bill 1882. One of the requirements of the law is in Section 11.174(c), which states that “[b]efore entering into a contract [with the charter operator] as provided by this section, a school district must consult with campus personnel regarding the provisions to be included in the contract between the school district and the open-enrollment charter school.” This provision is reinforced by the administrative rules promulgated by the Texas Education Agency for administering the law. The administrative rules provide that in order for the district to be eligible for benefits, the performance contract entered into by a school district and a charter operator must include “an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract...” 19 Tex. Admin. Code Section 97.1075(d)(6).

23. For the past four school years, Stewart Elementary has been designated as an IR campus under Tex. Educ. Code Section 39.054(a)(4). That means that if Stewart receives an unacceptable performance rating for the 2017-2018 school year, it will have been in IR status for

five consecutive years, triggering the sanctions prescribed by Tex. Educ. Code Section 39A.111 and described in Paragraph 20.

24. Early in the 2017–2018 school year, if not before, Superintendent Martinez and his administration began negotiating with Democracy Prep Public Schools, Inc., a New York corporation, to takeover of Stewart Elementary. For example, on October 20, 2017, referencing Stewart Elementary, the administration informed Democracy Prep that the “board is ready to pursue developing and executing a formal partnership agreement with DPPS that leads to you guys operating 2 phased in feeder patterns...Partnership would kickoff in SY 2018-19 with DPPS operating two elementary schools in the east side of San Antonio...Stewart ES (IR – 4) and Miller ES (IR-4)...” On information and belief, the school board had not voted, at least not in a public vote as required by the Texas Open Meetings Act, Tex. Gov’t Code Section 551.001 *et seq.*, to authorize the commencement of negotiations for a partnership agreement. SAISD and Democracy Prep conducted extensive negotiations in secret, without consulting the staff, the parents or the community, all of whom are vitally interested in the success of Stewart.

25. On January 18, 2018, Superintendent Martinez met with Stewart Elementary faculty and staff from 4:00 – 5:30 at the campus cafeteria. By the time that the superintendent met with the staff, the contract with Democracy Prep had been drafted. During the meeting, he presented information about the potential sanctions facing Stewart and the possibility of a sanctions exemption and additional funding through using a charter operator. He provided the staff with information about why the District was partnering with Democracy Prep to try to secure the benefits in SB 1882 and HB 1842. Superintendent Martinez never provided the staff with a copy of the drafted contract, consulted with the staff regarding the provisions to be included in the

contract with Democracy Prep, asked for their input, or sought their ideas about the contractual provisions.

26. At a school board meeting on January 22, 2018, the administration presented the Democracy Prep charter application to the school board for approval. In a closed session the same evening, the administration discussed the Democracy Prep performance contract with the board. When it came back into open session, the board approved the charter application subject to the execution of a Management and Performance Agreement between Democracy Prep and SAISD.¹

27. While the contract underwent some revisions after January 22, 2018, the staff was not consulted or informed. When Alliance tried to get a copy of the contract under the Public Information Act, SAISD refused to provide the contract.

28. On March 19, 2018, the board voted to approve a Management and Performance Agreement between Democracy Prep and SAISD. The first time that the Stewart staff was able to see the contract.

29. Among its other provisions, the Democracy Prep contract approved on March 19, 2018, includes a provision that teachers at Stewart will no longer be District employees with employment contracts but will instead be employees “at-will,” employed and supervised by Democracy Prep. If a teacher wishes to continue teaching at Stewart, she will have to resign her position at Stewart and apply for a position at Democracy Prep.

30. At no time before March 19, 2018, when the contract was approved for execution, did the administration or the board consult with the Stewart campus personnel regarding the

¹ Alliance filed a grievance following the January 22, 2018 board meeting, complaining about, among other things, the Section 11.074 violation. The Texas Supreme Court has held that a party need not exhaust administrative remedies before seeking a temporary injunction if 1) the administrative agency lacks the power to issue immediate injunctive relief and 2) the party will suffer irreparable harm during the pendency of the administrative process if not afforded immediate injunctive relief. *Houston Federation of Teacher, Local 2415 v. Houston Independent School District*, 730 S.W.2d 644, 646 (Tex. 1987). Both of these conditions apply here.

provisions to be included in the contract.

VI. CLAIMS

31. In entering into this contract with Democracy Prep, Superintendent Martinez and the members of the board failed to comply with the Texas Education Code Section 11.174(c)'s requirement that it consult with campus personnel regarding the provisions to be included in the contract. In failing to comply with this provision, defendants acted in an *ultra vires* fashion, without legal authority and in violation of the non-discretionary duty imposed by law.

VII. SUIT FOR DECLARATORY RELIEF

32. Plaintiff requests that this Court declare and determine the duties and obligations afforded by Tex. Educ. Code Section 11.174(c), as well as whether the defendants' actions, described herein, violate those duties and obligations.

VIII. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

33. Pursuant to Rule 58 of the Texas Rules of Civil Procedure, plaintiff realleges and incorporates all allegations set forth herein.

34. Plaintiff's application for a temporary injunction is authorized by Texas Civil Practice & Remedies Code Section 65.011(1), (2) and (3). Plaintiff is entitled to the relief demanded in this petition, and part of the relief requires the restraint of the prejudicial acts of the defendants as they relate to members of the Alliance employed at Stewart. Defendants are about to perform or allow performance of an act relating to the subject of this litigation, namely, actions taken in conjunction with an illegal contract for Democracy Prep to operate Stewart, in violation of the rights of Alliance members. If allowed to continue performance under the contract approved on March 19, 2018, defendants' actions would tend to render the judgment in this action ineffectual.

Further, Alliance is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions.

35. It is probable that plaintiff will prevail over defendants after a trial on the merits. The statute is plain and unambiguous that “[b]efore entering into a contract as provided by this section, a school district **must** consult with campus personnel regarding the provisions to be included in the contract between the school district and the open-enrollment charter school.” Tex. Educ. Code § 11.174(c)(emphasis added). The Texas Education Agency has issued rules that apply this requirement to any of the types of eligible charter partners with which a district may contract in order to receive benefits under Texas Education Code Sections 11.174 and 42.2511, including a non-profit like Democracy Prep. *See* 19 Texas Admin. Code §§ 97.1075-1079. In construing statutes, courts are required to ascertain and give effect to the legislature's intent as expressed by the language of the statute. *See State Texas Parks and Wildlife Dept. v. Shumake*, 199 S.W.3d 279, 284 (Tex.2006). Courts use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired. Tex. Gov't Code § 311.011(b). Otherwise, courts construe the statute's words according to their plain and common meaning, *Texas Department of Transportation v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex.2004), unless a contrary intention is apparent from the context, *Taylor v. Firemen's and Policemen's Civil Service Commission of City of Lubbock*, 616 S.W.2d 187, 189 (Tex.1981), or unless such a construction leads to absurd results. *Univ. of Tex. S.W. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 356 (Tex.2004). “Consult” is not defined in the statute. The common meaning of consult is “to ask the advice or opinion of” the persons with whom one is consulting. *See* www.merriam.webster.com/definition/dictionary. The District failed to consult with the staff

regarding contractual provisions with Democracy Prep.

36. If plaintiff's application is not granted, plaintiff's members will suffer a probable, if not certain, injury. Harm is imminent because the District has already approved this illegal contract and is moving to implement its provisions and have Democracy Prep begin the take-over of Stewart Elementary. The contract is set to begin on July 1, 2018. Teachers have been informed that they must resign their contracts if they want to apply for a position with Democracy Prep, and on information and belief, Democracy Prep is advertising and hiring for positions. If plaintiff's application is not granted, the harm that will occur is irreparable and plaintiff has no adequate remedy at law. Probable injury requires a showing that the harm is imminent, the injury would be irreparable, and the applicant has no other adequate legal remedy. *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App. – Houston [1st Dist.] 1992, no writ). Plaintiff has satisfied these requirements.

37. Plaintiff asks the Court to set its application for temporary injunction for a hearing, and after the hearing, issue a temporary injunction against defendants.

38. Plaintiff is willing to post bond.

IX. SOVEREIGN IMMUNITY DOES NOT BAR PLAINTIFF'S CLAIMS

39. Plaintiff is entitled to all these forms of relief. Defendants are not protected from any of plaintiff's causes of action, or forms of relief, by governmental immunity. Specifically, a government official in his official capacity is liable for declaratory and injunctive relief if they have violated a state statute or failed to perform a non-discretionary duty, as such actions are illegal and *ultra vires*. Under the *ultra vires* exception, lawsuits such as the one at bar are not against a political subdivision of the state and thus are not barred by sovereign immunity. *Tex.*

Dept. of Transportation v. Sefzik, 355 S.W.3d 618, 622 (Tex. 2011). Similarly, defendants are not protected by any form of immunity, and are liable to plaintiff for an award of attorney's fees and costs (as determined to be equitable and just), pursuant to, *inter alia*, TEX. CIV. PRAC. & REM. CODE §37.009.

X. CONDITIONS PRECEDENT

40. Pursuant to Tex. R. Civ. P. 54, all conditions precedent have been performed or have occurred.

XI. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that:

1. The defendants be cited to appear and answer;
2. The Court declare and determine that Texas Education Code Section 11.174(c) requires that before a school district enters into a contract with a charter operator to operate a district campus and seek the benefits afforded by Texas Education Code Sections 11.174 and 42.2511, it must ask the advice or opinion of campus personnel regarding the provisions to be included in the contract;
3. The Court declare and determine that the defendants' actions with regard to the contract approved by the SAISD board on March 19, 2018, violated the Texas Education Code Section 11.174(c) and were illegal *ultra vires* actions;
4. The Court, after hearing, issue a temporary injunction barring the defendants from taking actions pursuant to the illegal contract approved by the SAISD board on March 19, 2018, until such matter can be finally adjudicated;
5. That upon final hearing, the Court issue the declaratory relief requested, declare that

the contract between SAISD and Democracy Prep executed pursuant to the board's approval on March 19, 2018, is null and void, and permanently enjoin defendants from taking actions pursuant to said contract;

6. That plaintiff be awarded reasonable attorneys fees and expenses, as provided for under Tex. Civ. Prac. & Rem. Code Section 37.009;

7. That plaintiff be awarded all other relief to which the Court may find it entitled.

Respectfully submitted,

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