

the rights and privileges of employees of public education. To carry out its mission, TSTA has some 400 local affiliates throughout the state which are made up of members in various school districts and counties across the state. The interests of its members which TSTA seeks to protect are germane to its purpose as a non-profit organization of school district employees. Participation of individual members of TSTA is not required with respect to the claims asserted or the relief requested herein. The interests of TSTA members with employment contracts they have entered into with the public school districts of this State will be affected by the regulations on Contracting to Partner to Operate a Campus adopted by defendant.

3. The interests TSTA advances in this litigation are germane to its purpose as a non-profit corporation existing under the laws of the State of Texas. TSTA's principal place of business and registered office is 8716 N. Mopac Expressway, Austin, Travis County, Texas 78759.
4. The Defendant is the Texas Education Agency, Mike Morath, In His Official Capacity as Commissioner of Education for the State of Texas. He can be served with a copy of this Petition at his place of business, 1700 North Congress Avenue, Austin, Texas 78701-1494.

C. Jurisdiction and Venue

5. This is an action to declare rights, status, or other legal relations between the parties arising under Tex. Educ. Code 11.174, Tex. Educ. Code 7.056(e)(3)(J) and 19 TAC 97.1075.
6. This court possesses jurisdiction to hear and determine a question brought under Tex. Gov. Code §2001.038, Declaratory Judgment. There exists a live and actual controversy between the parties regarding the granting of waivers to the Education Code in approving the granting of charters to corporations by school districts. A live and actual controversy exists regarding the scope of defendant's activities and whether they constitute a valid exercise

of administrative rule-making or legitimate applications of legislative grants of authority. The judgment of this case will resolve this actual controversy.

D. Nature of Case

7. Defendant adopted 19 TAC §97.1075(c)(1) which provides that in order to qualify as operating under Tex. Educ. Code §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner. (See Exhibit 1)

(1) Staffing authorities.

(A) The operating partner must have authority to employ and manage the campus chief operating officer, including initial and final non-delegable authority to hire supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

(B) The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

(C) The operating partner must have sole authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus.

8. The provisions of 19 TAC §97.1075(c)(1) violate educator rights and benefits under the following education code provisions:

(1) Subchapter A, 21.002, Teacher Employment Contracts;

- (2) Subchapter 21.003, Certification Required;
 - (3) Subchapter C, Probationary Contracts;
 - (4) Subchapter D, Continuing Contracts;
 - (5) Subchapter E, Term Contracts;
 - (6) Subchapter F, Hearings Before Hearings Examiners, Appeals to Commissioner of Education, and
 - (7) Subchapter I, Duties and Benefits.
9. Pursuant to Tex. Educ. Code §7.056(e)(3)(J), Defendant may not grant a school campus or district an exemption or waiver of educators' rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22. (See Exhibit 2.)
10. Defendant is attempting to do by regulation what is prohibited by statute.

E. Claim for Relief

11. The regulations in question, 19 TAC §97.1075(c) and their application to Plaintiff's members threaten to interfere with and impair the legal rights and benefits of Plaintiff's members regarding their certification, and contractual rights and benefits.
12. Plaintiff contends that the regulations in question are invalid because they seek to amend the law as made and provided by the legislature through administrative process. It is an unreasonable, unwarranted, and excessive exercise of the power vested in the Defendant and permits the hiring of non-certified teachers to teach; and limits the contractual rights and benefits of teachers.
13. Plaintiff requests that this court declare the regulations in question invalid and that all contracts to partner to operate district charters that contain 19 TAC §97.1075(c)(1) waivers be declared null and void.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that defendant be cited to appear and answer, and that on final trial, Plaintiff be granted the following:

1. A declaration that Regulations 19 TAC §97.1075(c)(1) issued by the Defendant, are invalid;
2. That all contracts to partner to operate district charters that contain 19 TAC §97.1075(c) waivers be declared null and void;
3. That all court costs be taxed against Defendant; and
4. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully Submitted,

TEXAS STATE TEACHERS ASSOCIATION

/s/ Russell Ramirez

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