

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

LEAGUE OF WOMEN VOTERS OF
WASHINGTON, a Washington non-profit
corporation; EL CENTRO DE LA RAZA,
a Washington non-profit corporation;
WASHINGTON ASSOCIATION OF
SCHOOL ADMINISTRATORS, a
Washington non-profit corporation;
WASHINGTON EDUCATION
ASSOCIATION, a Washington non-profit
corporation; WAYNE AU, PH.D., on his
own behalf; PAT BRAMAN, on her own
behalf; DONNA BOYER, on her own
behalf and on behalf of her minor children;
and SARAH LUCAS, on her own behalf
and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No. 13-2-24977-4 SEA

ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
GRANTING IN PART THE STATE
AND INTERVENORS' CROSS
MOTION FOR SUMMARY
JUDGMENT.

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ORDER

THIS MATTER came before the Court on all parties' cross motions for summary judgment in the above-captioned matter. The Court has reviewed the following materials submitted by the parties:

1. Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief and all exhibits thereto;

2. The State of Washington's ("State's") Answer to Complaint for Declaratory Judgment and Injunctive Relief;

3. Intervenors'¹ Answer in Intervention to Complaint for Declaratory Judgment and Injunctive Relief;

4. Plaintiffs' Motion for Summary Judgment and the accompanying Declaration of Paul J. Lawrence and all exhibits thereto;

5. The State's Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment and the accompanying Declaration of Aileen Miller and all exhibits thereto;

6. Intervenors' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment ("Intervenors' Response") and the accompanying Declaration of Lisa Summers and all exhibits thereto;

7. Plaintiffs' Reply in Support of Motion for Summary Judgment and Opposition to the State's and Intervenors' Cross Motions for Summary Judgment and the accompanying Declarations of Wayne Au, Ph.D. and Estela Ortega and all exhibits thereto;

¹ The Intervenors consist of the Washington State Charter Schools Association, the League of Education Voters, the Ducere Group, Cesar Chavez Charter School, Initiative 1240 Sponsor Tania de Sa Campos, and Matt Elisara.

1 8. The State's Reply in Support of Cross Motion for Summary Judgment and the
2 accompanying Declarations of Aileen Miller and Paula Moore and exhibits thereto;

3 9. Intervenors' Reply in Support of Cross Motion for Summary Judgment and
4 accompanying declarations and exhibits thereto;

5 10. Plaintiffs' Motion to Strike Portions of Intervenors' Opposition to Plaintiffs'
6 Motion for Summary Judgment and Cross Motion for Summary Judgment;

7 11. Intervenors' Opposition to Plaintiffs' Motion to Strike Portions of Intervenors'
8 Response and accompanying Declaration of Joseph P. Hoag and exhibits thereto;

9 12. Plaintiffs' Reply in Support of Motion to Strike Portions of Intervenors'
10 Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary
11 Judgment;
12 Judgment;

13 13. *Amicus Curiae* Brief of Stand for Children-Washington, Washington Roundtable,
14 Technology Alliance, and Teachers United;

15 14. Plaintiffs' Response to *Amicus Curiae* Brief of Stand for Children-Washington,
16 Washington Roundtable, Technology Alliance, and Teachers United and Motion to Strike
17 Portions Thereof and accompanying Supplemental Declaration of Wayne Au, Ph.D. and exhibits
18 thereto;
19 thereto;

20 15. The other pleadings and papers on file in this matter;

21 16. The arguments of counsel; and
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23
24 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that:
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1 The legislature shall provide for a general and uniform system of public schools.
2 The public school system shall include common schools, and such high schools,
3 and technical schools as may hereafter be established. But the entire revenue
4 derived from the common school fund and the state tax for the common schools
5 shall be exclusively applied to the support of the common schools.
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7 The Charter School Act, RCW 28A.710 defines charter schools as common schools. The
8 statute allows for up to 40 schools to be established within five years. The schools are free and
9 open to all students. The schools will receive state and local levy funding. The charter schools
10 will be operated by non-profit organizations. They are subject to some state standards, RCW
11 28A.150.210, goals and essential learning requirements (EALRs) and student assessments, while
12 exempt from others, RCW 28A.150.220, instructional components of basic education and
13 compulsory coursework, and discipline standards. They must hire certified teachers. They are
14 supervised by a state Charter Commission. The State Superintendent retains final supervisory
15 authority unless otherwise provided by the act.
16

17 **ARE CHARTER SCHOOLS COMMON SCHOOLS? CAN CHARTER**
18 **SCHOOLS BE PART OF A GENERAL AND UNIFORM SYSTEM OF**
19 **EDUCATION?**
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21 The first questions the court must consider are whether the legislature can define a charter
22 school as a common school and whether a charter school can be part of a uniform system of
23 education. In interpreting our state's constitutional provisions, the court looks at the previous
24 decisions of the Washington Supreme Court. The Plaintiffs' rely on the case of School Dist. No.
25 20 v. Bryan, 51 Wash 498, 502, 99 P. 28 (1909). The Court held in this case that a normal

1 school, i.e. a school established to educate teachers was not a common school. The court
2 reasoned,

3 The system must be uniform in that every child shall have the same advantages
4 and be subject to the same discipline as every other child. To summarize, a
5 common school, within the meaning of the Constitution, is one that is common to
6 all children of proper age and capacity, free, and subject to, and under the control
7 of the qualified voters of the school district. The complete control of the schools
8 is the most important feature, for it carries with it the right of the voters, through
9 their chosen agents to select qualified teachers, with power to discharge if they are
10 incompetent.
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12 Later cases have held that every child has the fundamental right to be provided with an
13 amply funded education. Seattle School District v. State 90 Wn 2d 476, 585 P2d 71 (1978). It is
14 not required, however, that the education offered be identical. Tunstall v. Bergeson 141 Wn 2d
15 201 5 P 3d 691 (2000). A general and uniform system has been defined as one in which a child
16 has access to a certain minimum standardized education with enough uniformity which enables a
17 student to transfer from one district to another without loss of credit. Fed. Way Sch. Dist. No.
18 210 v. State 167 Wn 2d 514, 219 P2d 941 (2009).
19

20 The most recent education case, McCleary v. State, 173 wn 2d 477, 299 P 3d 227 (2012)
21 while it primarily dealt with school funding, also contains the principles that are relevant to this
22 case namely, that the provision of education remains the paramount duty of the state, that the
23 substantive content of the education is currently based on educational concepts, learning goals
24 and the EALR's, and that the program of basic education is not etched in constitutional stone.
25

1 The Court holds that the Bryan case is controlling. Under Bryan, the legislature cannot
2 “by any designation or definition” establish a common school that does not meet the minimum
3 constitutional criteria. Bryan has not been overruled. It has been cited in many of the more
4 recent education cases. A charter school cannot be defined as a common school because it is
5 not under the control of the voters of the school district. The statute places control under a
6 private non-profit organization, a local charter board and/or the Charter Commission.
7

8 The legislature may provide for a minimally standardized education. The charter schools
9 do not have to comply with requirements for discipline or the instructional components.
10 Considering the requirements the charter schools must comply with, namely educational goals,
11 student assessments, and EALR’s, the court holds that the charter school act meets the definition
12 of a general and uniform school system. The Plaintiffs’ have not made a sufficient showing for
13 facial invalidity on this ground.
14

15 **WAS THERE AN UNLAWFUL DELEGATION OF THE LEGISLATURE’S**
16 **DUTY?**

17 Plaintiff also challenges the act as an unlawful delegation of the legislature’s duty to
18 define basic education. Plaintiffs’ cite Seattle Sch. Dist. and McCleary for the proposition that it
19 is the legislature’s duty to define the components of a basic education. Plaintiffs argue that this
20 paramount affirmative duty cannot be delegated to a private organization.
21

22 Plaintiffs further argue that if the Legislature may delegate, the act must provide
23 standards and procedural safeguards. The state concurs in this analysis and argues that sufficient
24 standards are set forth for a basic education. The state argues that the procedural safeguards are
25 met in the statues provisions for a charter contract, a charter board, and a requirement of a
petition by a majority of parents or teachers in support of the charter school for conversion, the

1 option for enrollment in another school for those who don't wish to attend. There are standards
2 and procedures for renewal and revocation of contracts for charter schools.

3 The Court has not found any authority for the proposition that the legislature may not
4 delegate their paramount duty regarding education. There may be a higher burden when
5 analyzing delegation of a paramount duty. That higher burden could be a requirement for stricter
6 standards or a higher standard of proof. But examining the delegation under either of these
7 burdens, there are sufficient standards and procedural safeguards provided in the act to survive a
8 facial challenge. The statute sets out with particularity standards and a process to apply, to renew
9 and to revoke a charter school, as well as the educational standards previously discussed.

11 **DOES THE ACT REMOVE THE SUPERINTENDENT'S SUPERVISORY**
12 **AUTHORITY?**

13 The Plaintiffs' also challenge the act as a violation of Article III § 22,

14 The superintendent of public instruction shall have supervision over all
15 matters pertaining to public schools, and shall perform such specific duties
16 as may be prescribed by law.

17 There is a dearth of authority interpreting this provision of our State Constitution,
18 however, a few general principles can be applied. The legislature can prescribe the specific
19 duties of the Superintendent but cannot make the Superintendent subordinate to another in
20 matters of education. Supervision means generally the ability to oversee and direct.

21 The statute provides that charter schools are subject to the supervision of the
22 Superintendent except as otherwise provided. The statute sets up an independent Commission
23 which is responsible for the management, supervision and enforcement of the charter school
24 contracts. The Commission is not supervised by the Superintendent. The Superintendent retains
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1 the duties and powers enumerated under RCW 28A.300.040, except possibly as to physical
2 education requirements. The Superintendent retains the duties as to teacher certification, the
3 school funding system and review of student assessments.

4 Plaintiffs' argue that without the power to correct or directly control the charter school
5 the supervision provided is an empty promise, undermined by the independence of the
6 Commission. The argument may have validity to the statute as applied but fails as a facial
7 challenge.
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9 **ARE THERE CONSTITUTIONAL VIOLATIONS CONCERNING THE**
10 **FUNDING PROVISIONS?**

11 Plaintiffs' next challenge the act regarding funding issues. First as to state matching
12 funds for construction, these funds are restricted to common schools. Given that the court has
13 held that charter schools are not common schools, the court grants the motion on this ground.
14

15 Plaintiffs' argue that charter schools will impede the state's ability to satisfy it's duty to
16 make ample provision for basic education. Plaintiffs' argue that the state has not adequately
17 funded education and that charter schools will further shift needed funds from public schools.
18 This argument is not one that can be considered as part of a facial challenge.

19 The final funding issue concerns the provisions regarding school levies. RCW
20 28A.710.220 provides that charter schools are eligible for local levy moneys that are approved
21 by the voters before the school's start date and that school districts must allocate levy moneys to
22 the school. Generally, a levy cannot be used for a purpose for which it was not approved. The
23 statute says, however, that the schools are merely eligible. The court holds that Plaintiffs' claim
24 under this section is not justiciable. The levy provision has not been implemented. There has
25 been no actual injury.

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2 **DOES THE ACT AMEND THE COLLECTIVE BARGAINING ACT?**

3 The last issue raised is that the act concealed changes to the collective bargaining rights
4 of teachers by providing that the bargaining units at charter schools are limited to employees
5 working at those schools and must be separate from other bargaining units in school districts.
6 While certainly a significant change to bargaining rights, the scope of the act is sufficiently
7 complete that the rights can be determined without referring to any other statute. Nor have
8 Plaintiffs' demonstrated that any other statute is rendered erroneous by the adoption of the
9 Initiative.
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11 Finally, the court finds that the provisions it has held unconstitutional, namely the
12 common school designation and the common school funds are severable.
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16 IT IS SO ORDERED this 12 day of Dec, 2013.

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20 Honorable Jean A. Rietschel
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