

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

GORDON PARKS ELEMENTARY SCHOOL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 13AC-CC00308
	)	
THE MISSOURI STATE BOARD	)	
OF EDUCATION,	)	
	)	
and	)	
	)	
MISSOURI DEPARTMENT OF ELEMENTARY	)	
AND SECONDARY EDUCATION,	)	
	)	
Defendants.	)	

**FINAL JUDGMENT FOR PLAINTIFF**

This matter came before the Court for trial on the merits on July 25, 2013. The parties announced ready for trial and proceed to present evidence. Plaintiff presented two witnesses, Doug Curry and Dr. Victoria Hughes. Plaintiff also presented documents and depositions without objection. Plaintiff rested. Defendants presented two witnesses, Margaret Vandeven and Dr. Curt Fuchs. Defendants also presented documents which were admitted over some objections from plaintiffs. Plaintiff presented no rebuttal and the case was submitted for decision. There was no objection that any of the evidence was outside of the pleadings. Thus, all issues were tried by consent and the pleadings are amended to conform to the evidence.

Neither party requested findings of facts and conclusions of law. Given the lengthy testimony presented and the need for a quick decision, the Court will not provide a lengthy explanation of the facts and the law. As to the witnesses, the Court finds the testimony of Doug Curry and Dr. Victoria Hughes to be credible in all respects. The remainder of the evidence will be briefly summarized here.

## **SUMMARY OF THE EVIDENCE**

The following is intended to briefly summarize some of the evidence in the case in order to explain the Court's decision.

### **Gordon Parks Elementary School**

Gordon Parks Elementary is a high risk charter school located within the Kansas City Missouri School District. High risk means that children at Gordon Parks are at particular risk of not progressing through the educational system. Gordon Parks focuses on and basically recruits these types of children as part of its mission. Section 160.405.2(5), RSMo, requires charter school sponsors give priority to charter schools oriented to high risk students and requires that at least one-third of the charters be granted to schools that actively recruit drop outs and high risk students through their mission, curriculum, teaching methods, and services. Gordon Parks was created for the express purposes of actively recruiting, teaching and serving high risk students. During the period in question, Gordon Parks operated kindergarten through fifth grade classes focused and serving primarily high risk students.

### **University of Central Missouri**

The University of Central Missouri is the sponsor of Gordon Parks. Gordon Parks and UCM have a contract that governs their relationship. The University takes an active part in managing this contract including frequent on site inspections and meetings with Gordon Parks. In 2012, the University performed a required evaluation of Gordon Parks to confirm that it was in compliance with federal and state law as provided in §§ 160.400 to 160.425, RSMo, and Gordon Park's performance contract. The University found Gordon Parks to be in compliance.

Upon the completion of the review, the University and Gordon Parks entered into a new Charter School Contract in March 2013 and submitted the revised charter application to the State

Board of Education and its administrative arm, the Department of Elementary and Secondary Education ("DESE") for renewal.

The request for renewal included the completed application form that DESE regularly utilized and required for charter renewal. This application form is not promulgated as a regulation nor is there a mandated process for renewals other than what is found in the statutes. The University submitted other documentation in support of renewal including an analysis of state "MAP" scores for the grade levels where MAP had been administered and STAR data for all grade levels including those who were not required to take the MAP. The MAP and STAR data were data discussed in the contract between the University and Gordon Parks. The University's submission to DESE demonstrated that Gordon Parks was in compliance with state and federal law and that Gordon Parks was in full compliance with the performance contract between the University and Gordon Parks. The University also submitted a revised charter application. The University's submission demonstrated all of the objectives identified in § 160.405.9(3), RSMo.

#### **The Department of Elementary and Secondary Education**

Unbeknownst to the University or Gordon Parks, DESE made the decision to deny the charter application well before it was even submitted. DESE based this decision solely on partial MAP data. The MAP data did not measure all of the grade levels at Gordon Parks. DESE compared the MAP scores of Gordon Parks, which was an elementary school only offering K-5, to the MAP scores of the entire Kansas City Missouri School District, which included K-12, and also compared the data to the entire state, which included K-12. Because the MAP is only administered from the third grade up, the comparison DESE did was to compare grades 3-5 of Gordon Parks to grades 3-12 of the Kansas City Missouri School District and grades 3-12 of the

entire state. DESE had no data, and therefore could not have considered, the scores for the other half of Gordon Parks, grades K-2.

Because DESE decided to deny the application before it was ever even submitted, DESE did not consider the information provided by the University. For example, DESE refused to consider the STAR data, which was the only data available for grades K-2 and was data the University and Gordon Parks had agreed to use in measuring performance in those grades. DESE also refused to consider grade by grade MAP analysis prepared by the University. This analysis used the state's own data and compared Gordon Parks to elementary schools in the Kansas City Missouri School District, among other comparisons. Without elaborating on all of the facts, DESE essentially disregarded any information that did not support its premature decision to deny the application prior to its submission. On or about May 7, 2013, in a meeting with the University, DESE admitted that the University's application for Gordon Parks was compliant and met all of DESE's criteria, but DESE also informed the University that DESE was still not yet recommending approval because of concerns about the MAP data. DESE never advised the University that it would not be recommending approval.

### **The State Board of Education**

The State Board met on May 13 and 14, 2013. Gordon Parks' renewal was on the published agenda for the 14<sup>th</sup>. On the 13<sup>th</sup>, the State Board discussed Gordon Parks with the Commissioner of Education. This discussion included a discussion of the criteria that should be used to evaluate the renewal application. Although this discussion was held outside of the public meeting, the State Board did not close the meeting pursuant to § 610.022.1, RSMo, Neither Gordon Parks nor the University were informed of or aware that this discussion occurred and neither were allowed to hear the discussion or to present during the discussion. There is some

confusion among state witnesses as to whether it was intended that this discussion occur in a formally closed meeting or whether it was an informal discussion. But the facts are clear, and the Court finds, that this meeting included the entire State Board and its administrative head and there was no evidence that the meeting was formally closed as required by § 610.022.1, RSMo.

Although the state's position is that the University had the burden to demonstrate compliance with the charter contract and state law to the Board, inexplicably DESE and the Board specifically prevented the University the opportunity to present its case. DESE presented state MAP data it had analyzed. DESE knew that the University had data that supported the University's request for renewal, but DESE refused to present that data to the board or to allow the University to do so. The State Board engaged in no analysis of whether Gordon Parks was in compliance with state law or its contract with the University. The Board heard a one-sided presentation from DESE which used wrong, misleading and incomplete data. DESE also presented, and the State Board relied upon, an analysis of Gordon Parks based on something called MSIP 5, which is a regulation of DESE that was not in effect at the time of the presentation. MSIP 4 was in effect but no analysis or presentation of that data was presented to the board. The State Board did not consider whether Gordon Parks was in compliance with state or federal law or its contract with the University.

There was no evidence presented to the State Board by DESE or otherwise, regarding the detailed and extensive evaluation of Gordon Parks performed by the University, nor was the State Board informed by DESE that DESE previously informed the University that Gordon Parks' application was compliant. Neither the State Board nor DESE made any independent or extensive evaluation of Gordon Parks or of the University's means or methods of evaluating Gordon Parks. There were no rules or regulations which guided the University regarding the

standards to be used by it in its evaluation of Gordon Parks other than the state statutes affecting charter schools.

The minutes of the SBE meeting reflect the following action:

"It was moved by Mr. Still, seconded by Ms. Demien, to disapprove the renewal of the Gordon Parks charter based upon the record of low academic performance and the failure of the sponsor to meet the statutory duty to conduct a rigorous evaluation of the charter school as required by law. . . "

### **Judgment for the Plaintiff is Required**

This action was brought under § 536.150, RSMo. The Court is to

"hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such further action as it may be proper to require"

After considering all of the evidence, including but not limited to that described herein, the court finds that the actions of DESE and the State Board in denying the charter application of Gordon Parks were unlawful, unreasonable, arbitrary and involved an abuse of discretion. The State Board and DESE did not follow state law in reaching their conclusions.

In addition, their decisions were unreasonable and abused their discretion. Many actions lead to this conclusion, but the Court was particularly troubled by 1) the outright refusal of DESE and the State Board to allow the applicant and the University to present their case 2) DESE's refusal to present to the State Board data and analysis in their possession that supported the University's request and 3) DESE's decision to deny an application they had not even seen.

As to the arbitrariness of the decision, DESE witnesses testified that another charter school application suffered from the same defects DESE complained of in the Gordon Parks application, yet DESE and the State Board approved the other application while denying Gordon

Parks. In addition, DESE and the State Board used incomplete MAP data, inapposite MSIP 5 data, and MAP comparisons in their review, without adjusting or recognizing the incomplete data, or that data used for comparisons were not comparative in scope.

### **Relief**

As a result, the Court decrees and orders as follows:

Defendants' denial of the renewal of Gordon Parks' charter application violated state law. Therefore, it is void and unenforceable.

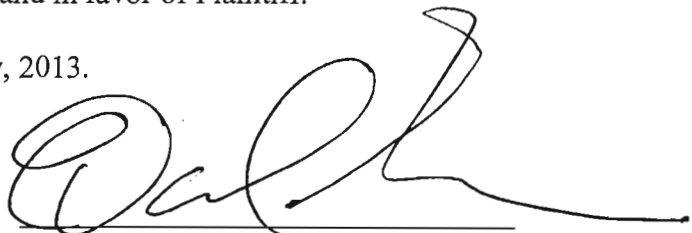
Defendants' decision to deny the renewal of Gordon Parks' charter application was unlawful, unreasonable, arbitrary and involved an abuse of discretion.

Gordon Parks' revised application for renewal (submitted on or about April 29, 2013) complied with all requirements of the law and the State Board was legally required to approve the charter renewal.

Defendants shall treat the renewal application as approved in all respects and shall take no actions in any way inconsistent with approval of the charter renewal application.

Costs are taxed against Defendants and in favor of Plaintiff.

SO ORDERED this 29<sup>th</sup> day of July, 2013.

A handwritten signature in black ink, appearing to read 'D. Green', written over a horizontal line.

Daniel R. Green, Circuit Judge