STATE OF MINNESOTA
COUNTY OF OLMSTED

DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

Studio Academy,

Plaintiff,

vs.

Volunteers of America - Minnesota, and

Minnesota Department of Education,

Defendants.

Court File No. 55-CV-11-3769

ORDER

This matter came on for hearing before the Honorable Christina K. Stevens, Judge of District Court, on the 17th day of June, 2011, at the Olmsted County Government Center, Rochester, Minnesota. Attorneys Nell Mathews and Amy Mason, Lindquist & Vennum, Minneapolis, MN, appeared on behalf of Plaintiff Studio Academy. Attorney George Serdar, Messerli & Kramer, Minneapolis, MN, appeared on behalf of Defendant Volunteers of America - Minnesota. Attorney Kathryn Woodruff, Assistant Attorney General, Saint Paul, MN, appeared on behalf of Defendant Minnesota Department of Education.

The parties have represented the date of June 30, 2011, to be of great import. As such, the Court issues its decision without further delay. However, given the volume of information submitted and the very short time period to make its decision, the Court's memorandum will be filed subsequent to this Order.

Based on the files, records, and proceedings herein, the Court hereby makes the following:

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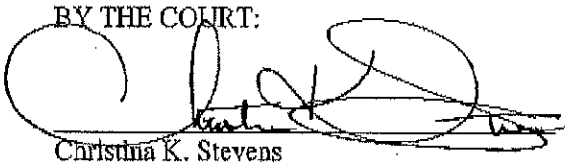
JUN 30 2011
COURT ADMINISTRATOR
Olmsted County, MN

ORDER

1. Plaintiff's motion for temporary injunction is **DENIED**.
2. All other motions not specifically addressed herein are **DENIED.**
3. The Court's forthcoming memorandum shall be incorporated herein upon filing of the same.

Dated: June 30, 2011.

BY THE COURT:



Christina K. Stevens
Judge of District Court

STATE OF MINNESOTA
COUNTY OF OLMSTED

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MEMORANDUM

BACKGROUND

Plaintiff Studio Academy ("Studio") is a Minnesota charter school established in accordance with Minnesota Statute Section 124D.10. Defendant Volunteers of America-Minnesota ("VOA") is the authorizer of Studio. Defendant Minnesota Department of Education ("MDE") provides state funding to charter schools. Studio moves this Court for an order for temporary injunction pursuant to Rule 65.02 of the Minnesota Rules of Civil Procedure. Said rule allows the court to grant temporary injunction if "sufficient grounds exist therefor." While Studio's request for relief has changed multiple times throughout the pendency of this action, what has remained consistent is their request that VOA's decision not to renew their contract for cause be stayed and that MDE be compelled to fund Studio in the interim based on the continuation of that relationship.

ANALYSIS

The purpose of a temporary injunction is to maintain the status quo until the parties try the matter on the merits. *Pickering v. Pasco Marketing, Inc.*, 228 N.W.2d 562, 565 (Minn. 1975). Minnesota case law sets forth the required analysis the court must engage in when

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Olmsted County, MN

deciding whether "sufficient grounds" exist to justify the issuance of an order for temporary injunction. First, the moving party must show that it will suffer irreparable harm if the court declines to issue a temporary injunction and that it has no adequate remedy at law. *Cherne Industries, Inc. v. Grounds Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). Failure to demonstrate irreparable harm is a sufficient basis on which to deny a motion for temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn. App. 1990). Second, if a party has shown irreparable harm, the court must then consider each of the five *Dahlberg* factors, which are as follows:

1. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
2. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;
3. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief;
4. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and,
5. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965).

Studio has demonstrated that it will suffer "real, substantial, and irreparable harm" if the school is forced to close. *See Independent School Dist. No. 35, Marshall County v. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966) (citing *Williams v. Rolfe*, 101 N.W.2d 923 (Minn. 1960). Studio and VOA's contractual relationship expired on June 30, 2011. Without extraordinary judicial relief, the school will be forced to close. If the school closes, Studio's students will be absorbed into the mainstream public school system, Studio's faculty and staff will be required to

find alternate employment, and the school may never reopen. As Studio has met its initial burden, the Court must address the *Dahlberg* factors.

1. Relationship Between Parties

Studio and VOA's relationship is both contractual and statutory in nature. Minnesota Statutes Section 124D.10, the charter school statute, requires charter schools to secure and operate under the supervision of an "authorizer." The authorizer must enter into a contract with the board of directors of the charter school and is required to oversee its operations, finances and administration.[1] Among other things, the charter school statute requires that the contract contain: a description of the school program; specific academic and non-academic outcomes that students must achieve; the criteria, process and procedure that the authorizer will use for ongoing oversight of operational, financial and academic performance; the performance evaluation plan; the process and criteria for monitoring and evaluating fiscal and student performance; and, a plan for orderly closure of the school. MINN. STAT. § 124D.10, subd. 6 (2010). The statute further requires that the school meet the outcomes contained in the contract with the authorizer as to student performance. *Id.* at subd. 10. The authorizer is responsible for monitoring and evaluating the charter school's fiscal, operational and academic performance. *Id.* at subd. 15(b).

Studio and VOA entered into a three-year contract in 2008, which expired on June 30, 2011. The parties' contract sets forth the criteria by which VOA was required to evaluate

[1] Minnesota Statutes Section 124D.10, subdivision 4 describes the process for charter school creation: "An authorizer, after receiving an application from a school developer, may charter a licensed teacher...or a group of individuals that includes one or more licensed teachers..., to operate a school subject to the commissioner's approval of the authorizer's affidavit under paragraph (b)." Paragraph (b) states, in part: "The affidavit must state the terms and conditions under which the authorizer would charter a school and how the authorizer intends to oversee the fiscal and student performance of the charter school and to comply with the terms of the written contract between the authorizer and the charter school board of directors under subdivision 6."

studio.[2] Both the statute and the contract set forth grounds for termination and non-renewal of the contract, and provide specific procedural requirements to which VOA must comply in either event.[3]

Studio argues that VOA, as its authorizer, has a fiduciary duty to Studio. As this position is neither supported by case law nor the statutory framework of the charter school statute, the Court declines to define the parties' relationship as such. Studio also claims that VOA is in a position of power over Studio and must take special care to protect Studio's best interests. VOA casts the authorizer/charter school relationship in a different light. VOA argues that as part of it supervisory duties, an authorizer has a duty to hold charter schools accountable to certain standards. The authorizer is responsible not only to the charter school, but also to the State of Minnesota. Additionally, VOA notes that "[g]enerally, injunctive relief based on a contract must be coextensive with the terms of the contract." *Metropolitan Sports Facility Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214, 221 (Minn. App. 2002).

VOA argues that Studio's requested relief would "legally create a new relationship between the parties to replace the relationship that contractually expired." (VOA's Mem. 14). The purpose of a temporary injunction is to maintain the status quo until the case is tried on the

[2] Section 3.2 of the parties' contract, "Performance Indicators and Evaluation" requires VOA to use the following standards in evaluating Studio's performance: Minnesota Graduation Standards, No Child Left Behind, and agreed upon "goals and performance indicators" listed in Attachment No. 3. This section also required Studio to file an annual report and to disseminate the report to the families of students attending the school.

[3] Minnesota Statutes Section 124D.10, subdivision 23, "Causes for non-renewal or termination of charter school contract," Subsection (b) states: "A contract may be terminated or not renewed upon any of the following grounds: (1) failure to meet the requirements for pupil performance contained in the contract; (2) failure to meet generally accepted standards of fiscal management; (3) violations of law; or (4) other good cause shown." MINN. STAT. § 124D.10, subd. 23 (2010).

Section 8.1 of the parties' contract, "Grounds," states, in part, "[t]he grounds for non-renewal or termination for good cause include: (a) failure to meet the requirements for pupil performance; (b) failure to meet generally accepted standards of fiscal management; (c) substantial deviation from the schools mission and program model; (d) insufficient enrollment to provide the revenue necessary to meet the School's budget; (e) failure for the school board to perform its governance responsibilities; (f) failure to operate the school effectively; (g) violations of law; (h) violations of the parties' contract; (i) other good cause shown."

merits. The granting of an injunction in this case would not preserve the status quo; rather, it would force the creation of a new contractual relationship to replace the contractual relationship that expired on June 30, 2011.

As to MDE, Studio claims that it named MDE as a defendant solely due to MDE's statutory duties triggered by VOA's decision to not renew the contract for cause. None of Studio's underlying claims involve MDE. MDE and Studio have a very limited relationship with one another, restricted to MDE's duty to pay Studio certain amounts of money based upon the charter school statutory scheme.

This factor weighs in favor of denying Studio's request for temporary injunction. It is certainly an extraordinary measure for the Court to force a party into a contractual relationship against its will. Doing so in this case would violate the intended purpose of injunctive relief to maintain the status quo. Moreover, VOA has an equal duty to the State of Minnesota to oversee the operational, administrative and fiscal responsibilities of Studio. It is not apparent from the record before the Court that VOA has such a special relationship with Studio, or that the imbalance of power, if any, is so great that a temporary injunction should be issued. Additionally, the fact that, for purposes of this litigation, MDE has essentially *no* relationship with Studio indicates that a temporary injunction is improper as it relates to MDE.

2. Comparable Harms

The harms to Studio if the Court does not issue the temporary injunction have been addressed herein as "irreparable harm." If the Court were to issue the temporary injunction, VOA and MDE also would suffer substantial harms. As noted above, if the Court were to grant Studio's requested relief, VOA would be forced to enter into a new contractual relationship with Studio against its will and to proceed as if Studio were in good standing. This is in direct

contradiction to Minnesota's long standing public policy favoring parties' freedom to contract without interference from the courts. *See e.g. Perl v. St. Paul Fire and Marine Insurance Co.*, 345 N.W.2d 209, 215 (Minn. 1984); *Rossman v. 740 River Drive*, 241 N.W.2d 91, 92 (Minn. 1976) (noting that the Minnesota Supreme Court "held as early as 1906 . . . that public policy requires that freedom of contract remain inviolate . . . ."). Studio's requested relief, if granted, in essence would force both VOA and MDE to violate their statutory duties. VOA would be prohibited from acting upon its assessment that Studio has failed to comply with statutory and contractual requirements, and MDE would be required to fund Studio for the 2011-2012 school year. MDE persuasively argues that if an injunction were granted and Studio thereafter were unsuccessful in its claims at trial, MDE would most likely be unable to recover these funds, the loss of which would affect the constituents of the State of Minnesota. Considering Studio's alleged lack of fiscal responsibility, including the school's recent eviction from its leased premises, this argument has merit.

Studio has demonstrated harm. However, even though Studio's argument is compelling, it is limited. The students of Studio Academy are not entitled to attend a charter school. Studio's underlying allegations relate primarily to breach of contract, not to fundamental rights. A request for a temporary injunction is an extraordinary measure which requires a comparison of the harms that would be suffered by all. VOA and MDE would face substantial harms if the injunction were issued by the Court. These harms affect not only the named entities, but the State of Minnesota and its constituents as well. This factor weighs in favor of denying Studio's request for temporary injunction.

3. Success on Merits

Based upon the current record before the Court, Studio has a limited likelihood of success on the merits. As a preliminary matter, the parties' contract contains a provision which prohibits Studio from suing VOA for any matter which arises under the contract.[4] Studio argues that the covenant not to sue VOA is unenforceable and claims that VOA breached the parties' contract and violated the charter school statute when it failed to use multiple indicators of progress in measuring Studio's success. In support, Studio points to the purpose, or "spirit," of the charter school statutory scheme and the parties' contract. The statute was created, in part, to "measure learning outcomes and create different and innovative forms of measuring outcomes." *See* MINN. STAT. § 124D.10, subd. 1(4) (2010). Studio argues that the contract was intended to "provide a multi-faceted understanding of student performance at the charter school." (Parties' Contract, Attach. 3) Studio contends that VOA focused unduly on quantitative measures of student success and failed to adopt the Minnesota Growth Model of Evaluation, which it believes more accurately reflects Studio's students' progress. For purposes of this analysis, the Court will address the allegations of breach of contract and violation of statutory duty, and not the enforceability of the covenant not to sue.

Studio and VOA agreed to the goals and measurable performance indications for the charter school as set forth in the School Accountability Plan. (Parties' Contract, Attach. 3). VOA was statutorily required to establish specific goals and outcomes for Studio Academy students, as well as the criteria, process and procedures to be used to oversee and monitor the same. *See* MINN. STAT. § 124D, subd. 15(b) (2010). Pursuant to the contract, VOA was required to evaluate Studio using multiple indicators of success. Studio argues that the Minnesota Growth

[4] Section 10.7 of the parties' contract, "Legal liability," states, in part, "[t]he School agrees not to sue Sponsor or any of its representatives for any matters that arise under this Agreement."

Model for Evaluation should have been adopted as one of the multiple indicators of success and because VOA did not do so, it violated their contractual and statutory obligations. Studio fails to acknowledge that after the 2008 contract was created, VOA revised its School Accountability Plan to include the Minnesota Growth Model for Evaluation. It was reviewed with Studio's then director, and an offer was extended to Studio to adopt this revised plan. Studio rejected the plan. They cannot now complain that the Minnesota Growth Model for Evaluation should have been considered when they rejected it themselves, refusing to include it in the terms of their accountability plan. As such, VOA had no statutory or contractual obligation to consider the Minnesota Growth Model for Evaluation.

VOA was contractually required to use multiple indicators of success and submitted sufficient evidence to the Court supporting that it did. Studio was required to meet standardized testing requirements, including national norm reference tests and state tests, pursuant to statute and the parties' contract. VOA unquestionably used these as indicators of success. VOA also submitted evidence that it considered other aspects of school success such as improvement of students' art skills and community service involvement. As such, it is unlikely that Studio would prevail on its breach of contract claim for VOA's alleged failure to use multiple indicators of success in its evaluation.

Studio also argues that VOA should have provided them with additional notice of deficiencies prior to non-renewal for cause. Section 7.4 of the parties' contract, entitled "Communication of Areas of Concern," requires VOA to address concerns in a professional and non-adversarial manner, to provide feedback at least annually, and to follow the "Range of Possible Interventions" guidelines incorporated into the parties' contract. The "Range of Possible Interventions" identifies five levels of intervention. Studio claims that because VOA

only identified deficiencies up to a level four prior to giving notice of non-renewal, it violated Section 7.4 when it chose not to renew the contract for cause. (Parties' Contract, Attach. 6)

VOA provided the Court with sufficient evidence to support that it complied with Section 7.4 of the contract. VOA sent multiple letters to Studio which identified and addressed Studio's deficiencies in a professional manner as required by subdivision (a), VOA provided Studio with an annual report in addition to other feedback as required by subdivision (b), and VOA submitted many notices of intervention to Studio during the years prior to its decision not to renew. Whether or not VOA found a level five intervention, or failed to send notice of the same, is not dispositive of whether VOA substantially complied with the requirements under this section. Furthermore, level five intervention deals with charter revocation. VOA did not seek revocation; it chose not to renew the contract for cause. These are two entirely different procedures.

Finally, Studio argues that they were deprived of a fair hearing as required by both the statute and the contact with VOA.[5] Studio claims that VOA made a final determination to close the school prior to the hearing, that VOA did not allow sufficient time for the hearing, and that only one of VOA's board members attended the hearing, thereby depriving Studio of a fair hearing. This argument aside, Studio does not allege any violation of statute or contract.

VOA submitted evidence to support that it complied with every statutory and contractual requirement regarding the manner in which the review hearing was conducted. Moreoever, VOA asserts that it honestly considered the materials Studio presented at the hearing before making a final determination not to renew the parties' contract for cause. While Studio argues that the hearing was unfair, it failed to submit any evidence supporting that VOA violated either

[5] Section 8.2 of the parties' contract, "Sponsor processes/ Charter School Board's Response" (sic) required VOA to give Studio at least 60 days' notice prior to non-renewal for cause, allowed Studio's Board to request an informal hearing to be held within 14 days, and required VOA to issue a final decision within 10 days of the hearing.

its statutory or contractual obligations with the manner in which the hearing was conducted. Studio's claims that the hearing was somehow otherwise improper are without merit.

As to MDE, it is not a party to the underlying dispute. The remedy sought by Studio will have little impact on MDE, as their relationship is limited to MDE's obligation to fund the school pursuant to statute.

Taken as a whole, this factor weighs in favor of denying Studio's request for temporary injunction.

4. Statutory Public Policy

The Minnesota Legislature set forth the public policy considerations relating to charter schools in Minnesota Statutes Section 124D.10. VOA and MDE persuasively argue that the statute requires charter schools to operate under an authorizer because public policy demands accountability with school funds and with students' educations. To this end, the statute requires an authorizer to make findings and to act upon them accordingly.[6] Moreoever, the statute acknowledges that some charter schools will fail and enumerates specific actions that the parties must undertake when closing a school.[7] Schools must close in a specific and orderly manner not

[6] Minnesota Statutes Section 124D.10, subdivision 15, "Review and comment," subsection (a) states, in part: "The authorizer *shall* provide a formal written evaluation of the school's performance before the authorizer renews the charter contract." Minn. Stat. § 124D.10, subd. 15(a) (2010) (emphasis added). Subsection (b) states, in part: "An authorizer *shall* monitor and evaluate the fiscal, operational, and student performance of the school." *Id.* at subd. 15(b) (emphasis added).

[7] Minnesota Statutes Section 124D.10, subdivision 23, "Causes for nonrenewal or termination of charter school contract," subsection (a), states, in part:

> At least 60 days before not renewing or terminating a contract, the authorizer shall notify the board of directors of the charter school of the proposed action in writing. The notice shall state the grounds for the proposed action in reasonable detail and that the charter school's board of directors may request in writing an informal hearing before the authorizer within 15 business days of receiving notice of nonrenewal or termination of the contract. Failure by the board of directors to make a written request for a hearing within the 15-business-day period shall be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the authorizer shall give ten business days' notice to the charter school's board of directors of the hearing date. The authorizer shall conduct an informal hearing before taking final action. The

only to allow the State to accurately access any remaining funds to which school may be entitled, but to protect students' educational interests as well. Students' records must be accounted for and transported to other schools, while students and their families must be allowed to prepare for their transition to new schools. Students, especially "at risk" students, would be ill-served by the uncertainty involved in lengthy litigation of a contested closure.

Studio points to the intention of the legislature to foster innovative and multi-faceted learning experiences and outcomes with the charter school statute. However, when considering the entirety of the statute and the public policy provided therein, Defendants' position prevails. The statute contemplates that some charter schools will fail. Accordingly, the statute ensures that charter schools are overseen by competent bodies and authorizes these bodies to determine when school closure is appropriate. The statute provides detailed provisions to ensure that all parties affected by the charter school closure will receive finality and guidance upon closure.

Moreover, as argued by both VOA and MDE, the charter school statute does not contemplate judicial review of an authorizer's decision not to renew a contract. The statute provides substantial detail about an authorizer's duties and the processes required for closure; it makes no mention of appeal of an authorizer's decision to the district court. The public policy implications of granting injunctive relief are contrary to the legislative intent of the charter school statute. The authorizer decides whether or not to renew a charter school contract. MINN. STAT. § 124D.10, subd. 23 (2010). The statute is silent as to whether or not authorizer's decision not to renew can be reviewed. By seeking injunctive relief, Studio is in essence requesting that this Court create a judicial process for review not established by statute. If the legislature

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> authorizer shall take final action to renew or not renew a contract no later than 20 business days before the proposed date for terminating the contract or the end date of the contract.

Id. at subd. 23. Additionally, subsection (b) provides, "[I]f a contract is terminated or not renewed under this paragraph, the school must be dissolved according to the applicable provisions of chapter 308A or 317A." *Id.*

intended to create judicial review of an authorizer's non-renewal of a contract, then it would have created such a process within the framework of the statute. *See e.g.* MINN. STAT. § 645.16 (2010); *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 116-17 (Minn. 2001) (explaining that, "The rules of construction forbid adding words or meaning to a statute that were intentionally or inadvertently left out."). VOA persuasively argues that judicial review of an authorizer's decision not to renew a contract would make the court a *de facto* overseer—a result contrary to the stated purpose and intent of the statute, as well as the role of MDE in approving and regulating authorizers.

This factor weighs in favor of denying Studio's request for temporary injunction.

5. Administrative Burden

Considering the tenuous relationship that now exists between Studio and VOA, if the Court were to grant the temporary injunction it would have the additional administrative burden of ensuring party compliance with its order. Studio's requested relief, if granted, would force VOA to enter into a new contractual relationship, and based on the same, force MDE to fund a school that purportedly lacks financial stability. This is extraordinary relief and would most likely require judicial policing of the conduct of the parties as to operational, administrative and academic performance related issues. It also would require continuous and extensive oversight to decide any disputes that might arise as the parties negotiate these tasks. On the other hand, if the Court were to deny the temporary injunction, it would have no continuing administrative burden other than to oversee Studio's lawsuit against VOA on the underlying claims. This factor weighs in favor of denying Studio's request for temporary injunction.

CONCLUSION

Studio has made a prima facie showing of irreparable harm. However, the *Dahlberg* factors, considered as a whole, weigh against issuance of Studio's request for injunctive relief. In particular, VOA and MDE would suffer significant harms if the injunction were issued in that VOA would be required to enter into a contractual relationship against its will and forced to violate its statutory duties, while MDE would be forced to pay out state funds that it likely would never recover. Moreoever, Studio is not likely to prevail on the merits of its underlying claims against VOA. VOA has demonstrated a high likelihood that it complied with the parties' contract and the charter school statute and has provided the Court with sufficient evidence supporting the same. Finally, the statutory public policy embodied within the charter school statute does not contemplate that charter schools, whose contractual relationship with an authorizer is not renewed for cause, may challenge that decision in district court and suspend the futures of students and staff while the matter is litigated. To the contrary, the statute specifically sets forth the authorizer's duties and provides for particular and orderly procedures to be followed when a school is required to close.

Based on the above, Studio's motion for temporary injunction is denied.

C.K.S