

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

J. DOE (a pseudonym),  
J. ROE (a pseudonym),  
GEORGIA ASSOCIATION OF EDUCATORS,  
and  
ATLANTA ASSOCIATION OF EDUCATORS,  
*Petitioners/Plaintiffs,*  
v.  
ATLANTA INDEPENDENT SCHOOL  
SYSTEM,  
*Respondent/Defendant.*

CIVIL ACTION  
2016CV279349  
NO. \_\_\_\_\_

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**PETITION FOR A WRIT OF MANDAMUS  
AND VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**I. PRELIMINARY STATEMENT**

1. In this action, Plaintiffs—education employees working for the Atlanta Independent School System, also known as Atlanta Public Schools (“APS”) and membership organizations representing the interests of education employees—seek declaratory, and injunctive, and mandamus relief to compel APS to act within the scope of its lawful authority and to comply with its obligations under the Georgia Constitution.

2. Specifically, Plaintiffs seek relief compelling APS:

(a) to halt the implementation of its *ultra vires* decision to delegate its constitutional duties by contracting out the entire operation and management of five of its schools to private parties, and in so doing terminating the employment of all staff at those five schools; and

(b) to honor the rights that tenured education professionals have previously earned under the Fair Dismissal Act—personal rights that are protected by the anti-retroactivity and anti-impairment-of-contracts clauses of Art. I, Sec. I, Par. X of the Georgia Constitution.

The official duties that Plaintiffs seek to compel are clear, mandatory and non-discretionary duties to act within APS’s lawful statutory authority and to honor its tenured education professionals’ vested rights under the Fair Dismissal Act.

## II. PARTIES

3. Plaintiff J. Doe is a teacher at Slater Elementary who the protections of the Fair Dismissal Act before July 1, 2016. Doe participates as a Plaintiff in this action under a pseudonym because Doe fears job retaliation by APS by reason of Doe’s participation in this lawsuit.

4. Plaintiff J. Roe works for APS as an education support professional at Slater Elementary. Roe participates as a Plaintiff in this action under a pseudonym because Roe fears job retaliation by APS by reason of Roe’s participation in this lawsuit.

5. Plaintiff Georgia Association of Educators (“GAE”) is a non-profit membership organization with more than 28,000 members employed as public school teachers, counselors, and education support personnel by school systems throughout the state. GAE’s mission is to advance the teaching profession and the quality of public education throughout the State and to support, protect, and strengthen the education employees who nurture Georgia’s children. GAE’s

members include many education employees working at the schools that APS intends to turn over to private parties and teachers working at APS schools who earned the protections of the Fair Dismissal Act before July 1, 2016. GAE brings this action on behalf of these members, who would otherwise have standing to sue in their own right as they are directly and adversely affected by APS's decision to contract out the operation and management of five schools and its decision to convert to a charter school system without preserving the rights that tenured APS teachers previously earned under the Fair Dismissal Act. The interests that GAE seeks to protect in this action are germane to GAE's purpose. Because this action seeks only mandamus, declaratory, and injunctive relief, and does not raise any issues of individual damages, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

6. Plaintiff Atlanta Association of Educators ("AAE") is a non-profit membership organization with more than 600 members employed by APS. AAE is a local affiliate of GAE. AAE's mission is to promote public education and the education profession, as well as to safeguard and advance the rights of educational employees. To these ends, AAE, in conjunction with GAE, regularly advocates for the employment rights of its members in proceedings under the Fair Dismissal Act and in the courts. AAE's members include education employees working at the schools that APS intends to turn over to private parties and teachers working at APS schools who earned the protections of the Fair Dismissal Act before July 1, 2016. AAE brings this action on behalf of these members, who would otherwise have standing to sue in their own right as they are directly and adversely affected by APS's decision to contract out the operation and management of five schools and its decision to convert to a charter school system without preserving the rights that tenured APS teachers previously earned under the Fair Dismissal Act. The interests that AAE seeks to protect in this action are germane to AAE's purpose. Because

this action seeks only mandamus, declaratory, and injunctive relief, and does not raise any issues of individual damages, neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

7. Defendant APS is a public school system vested with the constitutional authority “to establish and maintain public schools” within its geographical limits. Ga. Const. art. VIII, § 5 ¶ I. APS is governed by the Atlanta Board of Education, which is charged with the duty to maintain “management and control” of the APS school system. Ga. Const. art. VIII, § 5, ¶ II.

### **III. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action under the Georgia Constitution and under O.C.G.A. §§ 9-4-2 to 9-4-3, 9-5-1, 9-6-20 to 23, and 9-6-25.

9. Venue is proper in Fulton County as Plaintiffs seek substantial relief against a Defendant residing in Fulton County. *See* O.C.G.A. § 91-10-30.

### **IV. ALLEGATIONS**

#### **A. The Fair Dismissal Act**

10. Pursuant to the Fair Dismissal Act, a teacher who accepts employment with a Georgia school system, successfully completes a probationary period of 3 years’ continuous employment, and is rehired by the school system’s board of directors for a fourth year earns two basic employment protections: (1) protection against discharge for any reason other than those provided in the statute and (2) the right to notice, the opportunity for a hearing, and an appeal in the event that a school board decides to discharge the teacher for one of the statutory reasons. These individually earned rights are valued by educators offsets the low pay that public school educators earn relative to other professions requiring comparable academic credentials and training.

11. The FDA provides that after a teacher “accepts a school year contract for the fourth consecutive school year from the same local board of education,” the teacher may be non-renewed or demoted for eight reasons:

- (1) Incompetency;
- (2) Insubordination;
- (3) Willful neglect of duties;
- (4) Immorality;
- (5) Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;
- (6) To reduce staff due to loss of students or cancellation of programs and due to no fault or performance issue of the teacher, administrator, or other employee. ...;
- (7) Failure to secure and maintain necessary educational training; or
- (8) Any other good and sufficient cause.

O.C.G.A. §§ 20–2–942(b)(1), 20–2–940(a).

12. Before a school board may discharge or demote a teacher who has earned the protections of the FDA, the school board must provide the teacher with written notice stating the reasons for the board’s intended action and listing the witnesses that the board intends to call, along with summaries of the evidence that may be used against the educator. The school board also must provide the teacher with an opportunity for a hearing before the board at which the teacher has the right to counsel and the right to compulsory process for securing the participation of witnesses. O.C.G.A. § 20–2–942(b)-(e). The teacher has the right to appeal any adverse board decision to the State Board of Education. *Id.* § 20–2–940(f).

13. Like other tenured educators, Plaintiff Doe relied on the benefits offered by the Fair Dismissal Act in making important career decisions. One of the reasons why Doe and other similarly situated teachers chose to accept positions with APS, and to remain in those positions to this day, was the fact that they could (and did) earn the protections of Fair Dismissal Act upon satisfying the law’s requirements. The protections under the Fair Dismissal Act—which provide a measure of security against arbitrary or wrongful discharge—constitute a valuable employment

benefit that helps offset the low pay that public school educators in Georgia receive. Plaintiff Doe and other similarly situated teachers bargained for and earned these benefits in accepting employment with APS and remaining employed while they fulfilled the Fair Dismissal Act's requirements.

### **B. The Charter Schools Act of 1998**

14. With the Charter Schools Act of 1998, O.C.G.A. §§ 20-2-2060 *et seq.*, the legislature authorized the creation of charter schools, which are taxpayer-financed schools operated and managed by private parties within the public school system pursuant to contracts, or “charters,” between school board authorizers and the charter school operators.

15. The Charter School Act provides for two distinct types of charter schools: “conversion charter schools” and “startup charter schools” and prescribes detailed requirements that prospective charter school operators must meet in order to be granted the authority to operate such charter schools and receive public education funds.

16. A conversion charter school is a charter school that previously existed as a traditional public school. The conversion process is governed by O.C.G.A. § 20-2-2064(a), which provides that a “charter petitioner”—a private party seeking to operate a charter school—may petition a school board to convert an existing school only if the conversion of the school:

(A) Has been freely agreed to, by secret ballot, by a majority of the faculty and instructional staff members of the petitioning local school at a public meeting called with two weeks' advance notice for the purpose of deciding whether to submit the petition to the local board for its approval; and

(B) Has been freely agreed to, by secret ballot, by a majority of the parents or guardians of students enrolled in the petitioning local school present at a public meeting called with two weeks' advance notice for the purpose of deciding whether to submit the petition to the local board for its approval.

17. A startup charter school is a charter school that opens as a new school within a school system. Under O.C.G.A. § 20-2064(b), a charter petitioner seeking to create a start-up

charter school must submit a petition to the local board of the local school system in which the proposed charter school will be located.

18. Pursuant to O.C.G.A. § 20-2-2063(b), a petition for a startup or conversion charter school must also comply with the state board's rules and regulations. Those rules and regulations require the submission of detailed information regarding, *inter alia*, the proposed conversion school's goals and objectives, intended use of waivers, educational programs, assessment methods, school operations, fiscal feasibility and controls, and governance structure. *See* Ga. Comp. R. & Regs. §160-4-9-.05(2).

19. While the requirements referred to in ¶ 18 above apply equally to petitions for start-up or conversion charter schools, the rules go on to specify further requirements for conversion petitions, which must also include, *inter alia*, the following:

A statement detailing the innovations that shall materially distinguish the conversion charter from the school's pre-conversion model and that require the flexibility offered through the charter model.

... A statement detailing the conversion charter's plan to operate with substantial autonomy. This statement shall include a description of how financial resources will be managed, how human resources will be managed, how personnel will be evaluated; and a description of school governance and the extent to which parents, community members, and other stakeholders will participate in the governance of the school. The petition shall describe all policies, procedures, and practices that will materially distinguish the conversion school from the school's pre-conversion model.

Ga. Comp. R. & Regs. §160-4-9-.05(3).

### **C. The Charter School Systems Act of 2007**

20. In 2007, the legislature enacted the "Charter Systems Act." 2007 Georgia Laws Act 116 (S.B. 39), Section 1.

21. The Charter Systems Act authorized the conversion of public school systems into what the law terms "charter school systems." Despite the terminology, such "charter school

systems” do not involve charter schools proper—i.e., privately managed public schools. Rather, the Charter Systems Act sets up a process by which an entire public school system can apply to the State Board of Education for a “charter”—a contract between the school system and the State Board of Education that governs the school system and waives a significant portion of the laws and regulations that otherwise govern school systems.

22. The law defines a “charter school system” as a local school system that is “operating under the terms of a charter pursuant to Code Section 20-2-2063.2.” O.C.G.A. § 20-2-2062(3.1). That provision, in turn, authorizes the State Board of Education “to enter into a charter with a local board to establish a local school system as a charter system” and sets out the requirements that a local system must follow in order to become a charter school system.

O.C.G.A. § 20-2-2063.2. When a school system successfully petitions the state board to become a charter school system, it enters into a contract with the state board in which the school system agrees to meet specified performance goals and undertake various accountability responsibilities for the duration of the charter.

23. In exchange for these undertakings, the school system is exempted from many of the laws and regulations that otherwise apply to school systems:

Except as provided in this article or in a charter, ... each school within the [charter school] system, shall not be subject to the provisions of this title or any state or local rule, regulation, policy, or procedure relating to schools within an applicable school system regardless of whether such rule, regulation, policy, or procedure is established by the local board, the state board, or the Department of Education.

O.C.G.A. § 20-2-2065(a).

24. According to the decision of the Georgia Court of Appeals in *Day v. Floyd Cty. Bd. of Educ.*, 333 Ga. App. 144, 147-48, 775 S.E.2d 622, 625 (2015), the “plain and unambiguous import of the [Charter Systems Act]” is that the Fair Dismissal Act “is among the

provisions of Title 20 generally waived” when a school system converts to a charter system pursuant to the Charter Systems Act, absent any provision in the charter specifically providing that the Fair Dismissal Act is not waived.

25. When a school system becomes a charter school system, the individual schools within the system are designated as “system charter schools,” but they are distinct from charter schools proper. While duly authorized charter schools are operated independently by private parties pursuant to a charter between the private parties and school systems, system charter schools are simply traditional public schools that remain under the direct control of an elected school board that has become a charter school system. Indeed, if any charter schools exist within a school system that becomes a charter school system, all those existing charter schools are automatically excluded from the charter system unless any the private operators of charter schools within the system elect to surrender their charters with the school systems. *See* O.C.G.A. § 20-2-2063.2(g).

26. A local public school within a charter system can become a charter school proper under O.C.G.A. § 20-2-2064’s provision for “conversion charter schools” if the school’s governing council successfully petitions the school board to become a conversion charter school, in which case “the system charter shall be amended to reflect that such school is no longer bound by the system charter.” O.C.G.A. §§ 20-2-2063.2 (f), 20-2-2063.2(c).

**D. APS Seeks To Delegate The Entire Operation And Management Of Five Public Schools To Private Charter School Operators Entirely Outside Of The Charter Schools Act**

27. Some time before January 2016, APS issued a Request for Quotations (“RFQ”) soliciting bids from private entities to provide what APS Superintendent Meria Carstarphen on her official weblog called “turnaround services.” Meria Carstaphen, “APS Advances Strategy for Transformation” (Jan. 28, 2016), available at <https://perma.cc/RHD7-F82V>. Superintendent

Carstarphen has made it clear that she did not consider the RFQ to satisfy the requirements for creating charter schools set forth in the Charter Schools Act: “This RFQ is not a charter school application process.” Meria Carstaphen, “Resolved to Turn Around APS” (Jan. 7, 2016), available at <https://perma.cc/Z26N-Q3WZ>. And the RFQ did not in fact satisfy the requirements for creating charter schools set forth in the Charter Schools Act.

28. APS announced on its website that in late January 2016, two charter school operators—Kindezi Schools and Purpose Built Schools—had “emerged as finalists from the RFQ.” Atlanta Public Schools, “Turnaround Strategy Development,” available at <https://perma.cc/NTC7-8T4K>.

29. On March 7, 2016, APS adopted a “turnaround plan” for a number of APS schools that, of relevance here, called for contracting out the entire operation and management of five APS schools to the private charter operators Purpose Built Schools and Kindezi Schools. The Atlanta Board of Education authorized Superintendent Carstarphen to enter into a contract with Purpose Built Schools for the operation and management of Thomasville Heights Elementary School, Slater Elementary School, Price Middle School, and Carver Comprehensive High School along with a contract with Kindezi Schools for the operation and management of Gideons Elementary School. A true and correct copy of the minutes of the Atlanta Board of Education’s March 7, 2016 meeting is attached as Exhibit A.

30. The APS “Turnaround Plan” adopted at its March 7 meeting claims that the private operators “will be granted a full flexibility waiver consistent with the district’s charter system contract with the State of Georgia” and that “[a]ll staff of the partner schools,” with the exception of certain special education placement staff “shall be employees of [the private operators] or its partner organizations” but that professionals will still be covered by the state teacher retirement system.

31. The Turnaround Plan states that the private charter operators “shall have sole discretion on all hiring decisions.” The plan included a process by which the private operators will “interview all current APS employees ... who are interested in” working for the private operators.

32. APS’s contract with Purpose Built Schools calls for the charter operator to take over the operation and management of Thomasville Heights in the 2016-17 school year, of Slater and Price in the 2017-18 school year, and of Carver Comprehensive in the 2018-19 school year. The contract provides that Purpose Built Schools will receive essentially the full per-pupil allotment of taxpayer funds that APS schools ordinarily receive, less the cost of certain special services provided directly by APS and an administrative fee of less than 1 percent. The contract purports to be for a one-year term—so as to comply with procurement rules—but provides for automatic annual renewals and states that the parties intend for it to remain in place until June 2030. A true and correct copy of the APS contract with Purpose Built Schools is attached as Exhibit B.

33. APS stated that it will contract with Kindezi to take over the operation and management of Gideons Elementary in the 2017-18 school year.

34. In seeking to turn over the entire operation and management of Thomasville Heights Elementary School, Slater Elementary School, Price Middle School, Carver Comprehensive High School, and Gideons Elementary School to private charter school operators, APS failed to follow any of the processes and safeguards of the charter school conversion process set forth in the Charter Schools Act. Specifically,

- No petition to convert the five schools into schools managed by charter operators was ever submitted to APS by Kindezi Schools or Purpose Built Schools.

- Neither a majority of the faculty and instructional staff at these five schools nor a majority of the parents or guardians of students enrolled in the five schools ever freely agreed to the conversion by secret ballot at a public meeting.

Instead, APS has sought to accomplish the same result as a charter school conversion by the simple expedient of issuing a RFQ and contracting out the entire operation and management of the five schools, in the same manner as it would enter into an ordinary procurement contract.

35. At its May 2 meeting, APS approved the purported “abolishment” of all positions at Thomasville Heights Elementary by reason of APS’s contracting out scheme— notwithstanding that APS is not closing Thomasville Heights Elementary but instead is purporting to delegate all responsibility for operating and managing the school to Purpose Built Schools. A true and correct copy of the minutes of the Atlanta Board of Education’s May 2, 2016 meeting is attached as Exhibit C.

36. Upon learning that APS was abolishing all positions at Thomasville Heights Elementary, dismissing all staff at the school, and turning over all future employment decisions at the school to Purpose Built Schools, many teachers and education support professionals at the school resigned or retired earlier than they otherwise would have. Some who resigned managed to secure jobs other APS schools.

37. Those employees at Thomasville Heights Elementary who did not resign or retire received termination notices from APS stating that that its decision to contract out the operation and management of Thomasville Heights Elementary, and to purportedly “abolish” all positions at the school, amounts to the “cancellation of a program” justifying their dismissal under the Fair Dismissal Act.

38. Educators that who received such a notice were informed by APS’s that the decision was expressly not based on non-performance of job duties, incompetence,

insubordination, willful neglect of job duties, or based on any fault of the educator. APS's notices rested solely on the decision to contract out the operation and management of Thomasville Heights Elementary and to purportedly "abolish" all positions at the school.

39. On information and belief, APS intends to abolish all positions, and terminate the employment of all staff, at Slater Elementary School, Price Middle School, Carver Comprehensive High School, and Gideons Elementary School in the next two years.

#### **E. APS's Conversion to a Charter System**

40. On September 25, 2015, the State Board of Education approved APS's petition to become a charter school system pursuant to the Charter System Act.

41. On December 15, 2015, APS and the state board executed a charter agreement for a five-year period beginning on July 1, 2016. *See* Charter for Atlanta Public Schools ("Charter"), attached as Exhibit D. The charter grants APS "the maximum flexibility allowed by state law from the provisions of Title 20 of the [Georgia Code] and from any state or local rule, regulation, policy, or procedure established by the Local Board or the Georgia Department of Education."

42. As originally entered into between APS and the State Board of Education, the Charter—like every other system charter granted to school systems by the State Board of Education—provided that the Atlanta Board of Education "shall be the employer of all employees of the Charter System and each Charter System School." In the Spring of 2016, APS realized that its plan to contract out the entire operation and management of five APS schools was inconsistent with this provision and lobbied the State Board of Education to amend the Charter to eliminate this provision. The State Board of Education approved APS's proposed amendment at its May 5, 2016 meeting. A true and correct copy of the Charter, as amended, is attached as Exhibit E.

43. The Charter does not specifically exempt the Fair Dismissal Act from the “maximum flexibility” waiver to be granted to APS.

44. Absent a legal remedy, Plaintiff Doe and all other tenured APS teachers will by operation of the Charter and of the Charter Systems Act lose the protections that they previously earned under the Fair Dismissal Act.

**COUNT ONE: ULTRA VIRES ACTS**  
**(Asserted by Plaintiffs Doe, Roe, GAE, and AAE against Defendant APS)**

45. The allegations stated in ¶¶ 1-44 above are restated and incorporated herein by reference.

46. The Georgia Constitution grants APS the authority “to establish and maintain public schools” within their geographical limits, Ga. Const. art. VIII, § 5, and vests Atlanta Board of Education with the duty to maintain “management and control” over the school system. Ga. Const. art. VIII, § 5, ¶ II.

47. “Without specific legislative authorization, a school board has no authority, by contract or otherwise, to delegate to others the duties placed on the board by the Constitution and laws of Georgia.” *Chatham Ass'n of Educators, Teacher Unit v. Bd. of Pub. Ed. for City of Savannah & Chatham Cty.*, 231 Ga. 806, 807, 204 S.E.2d 138, 139-40 (1974).

48. Nothing in the Georgia Code grants school systems or school boards the authority to delegate to private parties the school systems’ constitutional responsibilities to establish, maintain, control, and manage public schools by simply contracting out the entire operation and management of schools to private charter school operators.

49. The only lawful means by which school systems and boards of education can cede to private charter operators all management and control of public schools is through the charter school conversion process specified in the Charter Schools Act.

50. APS followed none of the processes and safeguards of the Charter Schools Act when it decided to hand over the entire operation and management of Thomasville Heights Elementary School, Slater Elementary School, Price Middle School, Carver Comprehensive High School, and Gideons Elementary School to private charter school operators. Instead, APS has sought to accomplish the same result as a charter school conversion by the simple expedient of issuing a RFQ and contracting out the entire operation and management of those five schools in the same manner as it would enter into an ordinary procurement contract for office supplies or textbooks.

51. APS's actions in delegating to private charter school operators the entire operation and management of Thomasville Heights Elementary School, Slater Elementary School, Price Middle School, Carver Comprehensive High School, and Gideons Elementary School are therefore *ultra vires* and void.

**COUNT TWO: VIOLATION OF THE ANTI-RETROACTIVITY CLAUSE OF ART. I, SECTION I, PARAGRAPH X OF THE GEORGIA CONSTITUTION  
(Asserted by Plaintiffs Doe, GAE, and AAE against Defendant APS)**

52. The allegations stated in ¶¶ 1-44 above are restated and incorporated herein by reference.

53. Article I, Section I, Paragraph X of the Georgia Constitution prohibits the application of laws that have injurious retroactive effects on vested, private rights. *See, e.g., Deal v. Coleman*, 294 Ga. 170, 176, 751 S.E.2d 337, 343 (2013)

54. Teachers, including Plaintiff Doe, who have earned the protections of the Fair Dismissal Act, have vested private rights in those protections. A teacher who has earned the personal protections of the Fair Dismissal Act has a constitutionally protected property interest in continued employment, *Hatcher v. Bd. of Pub. Educ. & Orphanage for Bibb County*, 809 F.2d 1546, 1550 (11th Cir. 1987), and “[a] property interest protected by the due process clauses of

the federal and state constitutions meets [the Georgia Supreme Court's] definition of 'vested rights,'" *Goldrush II v. City of Marietta*, 267 Ga. 683, 694, 482 S.E.2d 347, 358 (1997).

55. The Charter between APS and the State Board of Education grants APS "the maximum flexibility allowed by state law from the provisions of Title 20 of the [Georgia Code] and from any state or local rule, regulation, policy, or procedure established by the Local Board or the Georgia Department of Education."

56. The Charter does not specifically exempt the Fair Dismissal Act from the "maximum flexibility" waiver to be granted to APS.

57. Absent a remedy, all tenured APS teachers, including Plaintiff Doe, will lose the protections that they previously earned under the Fair Dismissal Act.

58. APS's conversion to a charter system without preserving tenured teachers' rights under the Fair Dismissal Act applies the Charter Systems Act in such a way as to have injurious retroactive effects on private rights in violation of Article I, Section I, Paragraph X of the Georgia Constitution.

**COUNT THREE: VIOLATION OF THE ANTI-IMPAIRMENT-OF-CONTRACTS  
CLAUSE OF ARTICLE I, SECTION I, PARAGRAPH X OF THE GEORGIA  
CONSTITUTION  
(Asserted by Plaintiffs Doe, GAE and AAE against APS)**

59. The allegations stated in ¶¶ 1-44 above are restated and incorporated herein by reference.

60. Article I, Section I, Paragraph X of the Georgia Constitution prohibits the application of laws that impair contractual rights.

61. The State of Georgia has offered teacher the following bargain under the Fair Dismissal Act: if a teacher comes to work for a Georgia school system, successfully completes a probationary period of three years' continuous employment for the school system, and is rehired

by the board of education for a fourth year, that teacher earns the Fair Dismissal Act's protection against dismissal for reasons other than those specified in the statute and hearing and appeal rights.

62. Educators that earned such protections, such as Plaintiff Doe, relied on the availability of Fair Dismissal Act benefits in making important career decisions. Among the reasons why Doe chose to accept a teaching position with APS, and to remain in that position to this day, was the chance to earn the protections of Fair Dismissal Act. The protections of the Fair Dismissal Act—which provide a measure of security against arbitrary or wrongful discharge—constitute valuable employment benefits that help offset the low pay public school educators in Georgia earn. Plaintiff Doe bargained for and earned those benefits in accepting employment with APS and remaining employed while fulfilling the Fair Dismissal Act's requirements.

63. Teachers who earned the protections of the Fair Dismissal Act, such as Plaintiff Doe, thus have contractual rights to those protections.

64. The Charter between APS and the State Board of Education, which becomes effective on July 1, 2016, grants APS “the maximum flexibility allowed by state law from the provisions of Title 20 of the [Georgia Code] and from any state or local rule, regulation, policy, or procedure established by the Local Board or the Georgia Department of Education.”

65. The Charter does not specifically exempt the Fair Dismissal Act from the “maximum flexibility” waiver to be granted to APS.

66. Absent a remedy, all tenured APS educators, including Plaintiff Doe, will, pursuant to the Charter and the Charter Systems Act, lose the protections that they bargained for and earned under the Fair Dismissal Act. This constitutes a wholesale impairment of tenured educators' contractual rights.

67. APS's conversion to a charter system without preserving tenured teachers' rights under the Fair Dismissal Act impairs those teachers' vested contractual rights in violation of Article I, Section I, Paragraph X of the Georgia Constitution.

**PRAYER FOR RELIEF**

On Count One, Plaintiffs Doe, Roe, GAE, and AAE pray for the following relief:

- (a) A declaration pursuant to O.C.G.A. § 9-4-1 that APS's scheme of contracting out the entire operation and management of public schools is *ultra vires* and void;
- (b) Preliminary and permanent injunctive relief pursuant to O.C.G.A. §§ 9-5-1 and 9-5-8 prohibiting APS from implementing its contracts with Kindezi Schools and Purpose Built Schools and ordering APS to rescind its termination notices to staff at Thomasville Heights Elementary;
- (c) Mandamus nisi and, after hearing, mandamus absolute pursuant to O.C.G.A. § 9-6-20 requiring APS to perform its official duty to maintain management and control over Thomasville Heights Elementary School, Slater Elementary School, Price Middle School, Carver Comprehensive High School, and Gideons Elementary School.
- (d) An award of fees and costs to Plaintiffs;
- (e) Any and all further relief that this Court deems just and proper.

On Counts Two and Three, Plaintiffs Doe, GAE, and AAE pray for the following relief:

- (a) A declaration pursuant to O.C.G.A. § 9-4-1 that APS's conversion to a charter system without preserving tenured teachers' rights under the Fair Dismissal Act retroactively affects tenured teachers vested private rights and impairs tenured teachers' contractual rights in violation Article I, Section I, Paragraph X of the Georgia Constitution.

- (b) Preliminary and permanent injunctive relief pursuant to O.C.G.A. §§ 9-5-1 and 9-5-8 prohibiting APS from denying tenured teachers' rights under the Fair Dismissal Act;
- (c) Mandamus nisi and, after hearing, mandamus absolute pursuant to O.C.G.A. § 9-6-20 requiring APS to honor its mandatory and non-discretionary contractual duty to abide by the Fair Dismissal Act;
- (d) An award of fees and costs to Plaintiffs;
- (e) Any and all further relief that this Court deems just and proper.

Respectfully submitted this 26<sup>th</sup> day of August, 2016 by:

/s/ Gerry Weber  
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Georgia Bar No. 744878

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

J. DOE (a pseudonym),

J. ROE (a pseudonym),

GEORGIA ASSOCIATION OF EDUCATORS,

and

ATLANTA ASSOCIATION OF EDUCATORS,

*Petitioners/Plaintiffs,*

v.

ATLANTA INDEPENDENT SCHOOL  
SYSTEM,

*Respondent/Defendant.*

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**VERIFICATION**

Personally appeared before the undersigned officer duly authorized to administer oaths, as representatives for the GEORGIA ASSOCIATION OF EDUCATORS who, being first duly sworn, deposes and states that the facts contained in the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF are true and correct, and that the facts alleged on information and belief are true and correct to the best of my knowledge, information, and belief.

[signature on next page]

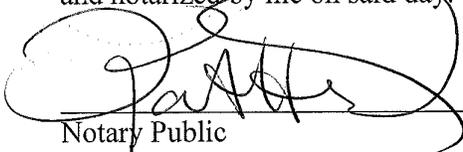
This 17th day of August, 2016.

By:



Michael T. McGonigle, General Counsel  
Georgia Association of Educators

Sworn to and subscribed before  
me this 17th day of August 2016  
and notarized by me on said day.



Notary Public

**Karen A Henderson**  
**Notary Public, Walton County, GA**  
**My Commission Expires September 27, 2019**

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

J. DOE (a pseudonym),

J. ROE (a pseudonym),

GEORGIA ASSOCIATION OF EDUCATORS,

and

ATLANTA ASSOCIATION OF EDUCATORS,

*Petitioners/Plaintiffs,*

v.

ATLANTA INDEPENDENT SCHOOL  
SYSTEM,

*Respondent/Defendant.*

CIVIL ACTION

NO. 2016CV279349

**VERIFICATION**

Personally appeared before the undersigned officer duly authorized to administer oaths, Vanira Millines, as representative for the ATLANTA ASSOCIATION OF EDUCATORS who, being first duly sworn, deposes and states that the facts contained in the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF are true and correct, and that the facts alleged are on information and belief true and correct to the best of my knowledge, information, and belief.

This 19<sup>th</sup> day of August, 2016.

*Vanira Millines*

BY: Vanira Millines  
AS REPRESENTATIVE FOR ATLANTA  
ASSOCIATION OF EDUCATORS

Sworn to and subscribed before  
me this 19<sup>th</sup> day of August, 2016  
and notarized by me on said day.

*Karen A. Hesterman*

Notary Public

