

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

ERIC THOMAS,

Plaintiff,

v.

GEORGIA DEPARTMENT OF EDUCATION,

Defendant.

CIVIL ACTION NO.:

2020CV333206

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiff, Eric Thomas ("Plaintiff") and files this Complaint for Injunctive Relief showing the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Eric Thomas (hereinafter Dr. Thomas) is a citizen of the State of Georgia hereby submits himself to the jurisdiction of this Court.

2. Defendant Georgia Department of Education ("GaDOE") is an agency of the State of Georgia and is subject to this Court's jurisdiction. The GaDOE may be served by delivering a copy of the Complaint and summons to Richard Woods, Chief Executive Officer of the Georgia Department of Education at 205 Jesse Hill Jr. Drive SE, Atlanta, Georgia 30334.

3. This Court has subject matter jurisdiction over this action pursuant to O.C.G.A. § 45-1-4 (Georgia Whistleblower Act, "GWA") and O.C.G.A. § 50-18-73 (Open Records Act, "ORA").

4. Venue is proper in the Superior Court of Fulton County.

FACTS

5. Dr. Thomas is a widely-respected, experienced educational executive who serves as the Georgia Department of Education's ("GaDOE") Chief Turnaround Officer ("CTO").

6. Dr. Thomas was selected from among 57 candidates from a national search to serve as the CTO. Dr. Thomas met and exceeded all the qualifications established in the language of O.C.G.A. § 20-14-43 (effective 2017), a Georgia statute that created and defined the qualifications for the position of CTO, to which he was hired by the Board of Education for the state of Georgia ("State Board").

7. Dr. Thomas' background includes school-level administration, district-level administration, and immediately prior to the CTO role, he was Chief Support Officer for the nationally acclaimed Turnaround Program attached to the University of Virginia. His skills are highly marketable in the education field and he has carefully cultivated an excellent national reputation over his many years of service in the field.

8. The CTO is employed by the GaDOE and reports to the State Board. The CTO does not report to the State Schools Superintendent of the GaDOE.

9. Nevertheless, since Dr. Thomas' employment as CTO, the State Schools Superintendent Dr. Richard Woods, and his executive staff, have attempted to eliminate the CTO's separation from Dr. Woods' chain of command in favor of bringing the CTO position under the State Superintendent, contrary to statute.

10. O.C.G.A. § 20-14-43(c) provides that the CTO's duties include, but are not limited to:

- a. managing and overseeing the system of supports for the state's low-performing schools in greatest need of assistance;
- b. identifying resources and consulting with regional educational agencies relating to school turnaround;
- c. annually establishing a list of third-party specialists;

- d. coordinating with the school improvement division of the GaDOE, and coordinating and working with the State School Superintendent and Georgia Office of Student Achievement to assist low-performing schools;
- e. building school level leadership capabilities among principals and local leaders in turnaround schools; and
- f. identifying best practices for school turnaround.

11. O.C.G.A. § 20-14-43(d) also requires that “The CTO, State School Superintendent, and the staff and all divisions of the [GaDOE] shall work collaboratively and shall coordinate as necessary to facilitate the implementation of this part....”

12. The State Superintendent and his deputies have blatantly refused to collaborate and, in fact, subverted Dr. Thomas’ ability to fulfill his obligations as CTO, by declining to provide necessary federal funds to schools and districts partnering with the CTO office and refusing to meet with, and keep Dr. Thomas informed, of information necessary for the execution of the statutory mandate regarding the CTO office.

13. The actions of the State Superintendent and his deputies also violated the statutory requirement to collaborate with the CTO’s office in the fulfillment of the statutory obligations described above.

14. On several occasions from July 2018 and after, Dr. Thomas notified the State Board regarding the refusal of the State Superintendent’s office to collaborate with the CTO’s office in violation of O.C.G.A. § 20-14-43(d).

15. Dr. Thomas began complaining almost monthly, both in board meetings, and through regular workplace interactions with the Superintendent’s office and Board members that the

Superintendent's office was violating the law by failing to collaborate with the CTO's office in the fulfillment of the School Turnaround office's duties.

16. In response to his complaints, Dr. Thomas was repeatedly told by the Board that "conditions would improve." In fact, the opposite happened. The CTO's office works with low-performing schools statewide, that are "in greatest need of assistance" of support and resources in order to improve outcomes for children. O.C.G.A. § 20-14-43(c).

17. In September 2019, Dr. Woods refused to meet with Dr. Thomas to discuss how to improve collaboration between the Chief Turnaround Office and the School Improvement Division, despite Dr. Thomas' repeated requests.

18. In the fall of 2019, GaDOE's School Improvement Division launched a \$3 million federal grant opportunity, but purposely chose not to notify the CTO's office, with which it was statutorily obligated to collaborate.

19. The grant money was distributed among ten schools, but no school or district that partners with the CTO received any such funding. The GaDOE declined to prioritize local schools and districts "in greatest need of assistance," despite the express statutory requirement to do so, in furtherance of its political agenda to wrest greater control of the CTO's office and position with the Superintendent.

20. Dr. Thomas complained to his supervisors and to the head of the GaDOE and his deputies about their noncompliance with O.C.G.A. § 20-14-43 on numerous occasions starting in July 2018.

21. Dr. Thomas only belatedly learned of the Superintendent's office's refusal and failure to communicate with his office regarding this substantial grant because the Superintendent's office actively concealed this grant process from the CTO's office.

22. In August 2019, subsequent to Dr. Thomas' complaints of violating the collaboration requirement, the Superintendent's Chief of Staff, Matt Jones, requested that the CTO's office be investigated for spurious reasons.

23. An audit was launched three weeks later, in which Dr. Thomas was not even interviewed, nor permitted to share all of his information with the auditors.

24. The investigator was a direct report to Mr. Jones, the individual who requested the investigation. Rather than maintaining any semblance of confidentiality or impartiality, Mr. Jones released a letter to the press, mid-investigation, detailing the issues that were the subject of the audit into Dr. Thomas' actions.

25. On at least two occasions, Deputy Superintendent Stephanie Johnson informed Dr. Thomas that she had been directed by Mr. Jones not to be seen with or to talk with him, again in violation of the statutory requirement of collaboration under O.C.G.A. § 20-14-23(d).

26. Despite the General Assembly's clear mandate regarding the reporting structure and collaborative nature of the CTO's relationship with the GaDOE and State Board, GaDOE has exceeded its authority and attempted to restructure the CTO's position and office in order to eliminate the independence contemplated by the statute and subvert Dr. Thomas' ability to perform the duties set forth by statute.

27. As of January 17, 2020, the State Superintendent appointed a Deputy Superintendent, Stephanie Johnson, to serve as the "Interim" Chief Turnaround Officer, which contravenes statutory language separating the CTO from the Superintendent's reporting structure.

28. On January 15, 2020, the GaDOE prepared an investigative report, and on January 21, 2020, the GaDOE placed Dr. Thomas on administrative leave with pay. Dr. Thomas remains on administrative leave at this time.

29. On February 5, 2020, the GaDOE disseminated the audit report to Dr. Thomas and requested that Dr. Thomas respond to the allegations in the investigative report.

30. The State Board has final decision-making authority with respect to Dr. Thomas' employment as CTO.

31. The State Board has final decision-making authority with respect to taking any action regarding Dr. Thomas' employment, up to and including finding cause for termination based on the contents of the audit report.

32. On February 12, 2020, GaDOE represented to Dr. Thomas that it would use its discretion to release the investigative report upon receipt of Open Records Act requests even though the State Board is not scheduled to review Dr. Thomas' response to the audit report until February 19, 2020, and may still reject the findings.

33. The GaDOE's investigative report contains extremely serious allegations against Dr. Thomas, which have yet to be reviewed and examined by the State Board in its entirety, including Dr. Thomas' response thereto. These purported findings were the result of a sham investigation designed to retaliate against Dr. Thomas for engaging in protected activity.

34. The investigation was a retaliatory sham because the agency did not question critical witnesses, principally Dr. Thomas, in order to reach its conclusions. As a result, publication of the investigative report would result in publication of irreparably damaging information about Dr. Thomas based on an investigation that was not undertaken in good faith, and which would invade his privacy by defaming him.

35. Dr. Thomas has an opportunity to appear before the State Board at their regularly scheduled meeting on February 19, 2020, to explain why the investigative findings are

questionable. At that time, the State Board has the opportunity and discretion to reject the audit findings and reinstate him to his position as CTO.

COUNT I: VIOLATION OF THE GEORGIA WHISTLEBLOWER ACT

36. Plaintiff hereby incorporates by reference paragraphs 1- 35 above as though fully set forth herein.

37. Dr. Thomas is and was, at all relevant times, a public employee as that term is defined by O.C.G.A. § 45-1-4(a)(3).

38. Defendant GaDOE is a public employer as that term is defined by O.C.G.A. § 45-1-4(a)(4).

39. From July 2018 through November 2019, Dr. Thomas repeatedly complained to his supervisors (the State Board) and to a governmental entity (the GaDOE Superintendent's office) that the office of the Superintendent of Schools was not complying with the requirement of O.C.G.A. § 20-14-43(d) to collaborate with his office, for the purpose of implementing the statutory objectives of the CTO under O.C.G.A. § 20-14-43(c).

40. Defendant GaDOE has retaliated against Dr. Thomas for disclosing violations of the requirements in O.C.G.A. § 20-14-43 by initiating a sham internal investigation, placing him on administrative leave with the possibility of termination for cause, and threatening public release of a damaging audit report based on an incomplete investigation that could still be rejected by the State Board upon presentment, which is not set to occur until February 19, 2020.

**COUNT II: INJUNCTIVE RELIEF- Temporary, Interlocutory, and Permanent
Injunctive Relief under the Georgia Whistleblower Act**

41. Plaintiff hereby incorporates by reference paragraphs 1- 40 above as though fully set forth herein.

42. O.C.G.A. § 45-1-4(e)(2) provides for the availability of injunctive relief to restrain continued violations of the Georgia Whistleblower Act.

43. If GaDOE is permitted to produce or make available the audit, then Plaintiff will be immediately and irreparably harmed as a result of GaDOE's disclosure of the audit because the investigation is still ongoing, Dr. Thomas has been asked to provide a response to the investigation, and as of February 12, 2020 has provided a 35-page response, which will require consideration by the GaDOE at its February 19, 2020 meeting. Any such release of the audit will be an invasion of privacy because the investigation is ongoing, does not include Dr. Thomas' response, and the audit in its entirety has not yet been reviewed and determined by the State Board.

44. The public disclosure of the audit will also be in violation of Dr. Thomas' protected activity under the Georgia Whistleblower Act. Any such discretionary release of the audit will be in retaliation of Plaintiff's protected reporting of violations of O.C.G.A. § 20-14-43, by publically accusing him of claims the GaDOE knows are baseless, by publically damaging Dr. Thomas' reputation, and effectively preventing his future employment within the educational community. Without such publication, Dr. Thomas' skills are extremely marketable in the education field.

45. Plaintiff has no adequate legal remedy for the threatened disclosure of the audit by the GaDOE.

46. Plaintiff is entitled to injunctive relief to restrain the GaDOE from releasing the audit documents, pursuant to the Georgia Whistleblower Act.

**COUNT III: INJUNCTIVE RELIEF- Temporary, Interlocutory, and Permanent
Injunctive Relief under the Open Records Act**

47. Plaintiff hereby incorporates by reference paragraphs 1- 35 above as though fully set forth herein.

48. O.C.G.A. § 50-18-73(a) provides for the availability of injunctive relief to enforce the provisions of the ORA, including the exclusions of the ORA.

49. O.C.G.A. § 50-18-72(a)(8) provides an exemption from public disclosure of records of an investigation until “ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated.”

50. The audit report in this case has not yet been presented in its final form with Dr. Thomas’ response to the State Board for action. The meeting at which that is to occur is scheduled for February 19, 2020.

51. The investigation is not “otherwise concluded or terminated” because only the State Board is a final decision-maker with regard to Dr. Thomas’ employment, and until the State Board has reviewed the audit on February 19, 2020, or thereafter, the outcome of the investigation is subject to change. Thus, the report is not subject to disclosure under the Open Records Act, as it falls within a statutory exemption from disclosure pursuant to O.C.G.A. § 50-18-72(a)(8).

52. If GaDOE is permitted to produce or make available the audit, then Plaintiff will be immediately and irreparably harmed as a result of GaDOE’s disclosure of the audit because the investigation is still ongoing, and the State Board has discretion to reject the findings of the report. The report contains damaging information about Dr. Thomas, and was the result of a sham investigation. To the extent the report contains untruths, Dr. Thomas’ reputation could be irreparably damaged if this report is published before the necessary process occurs for the State

Board to review and determine. Thus, any premature release of the audit, when the State Board could still reject it, will be an invasion of privacy because it does not include Dr. Thomas' response, is part of an ongoing investigation, and contains damaging information that would be published before being discredited.

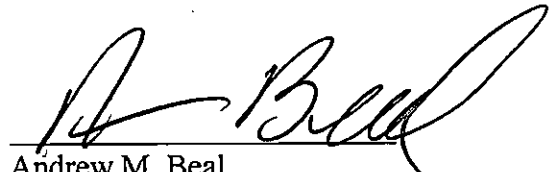
53. Plaintiff has no adequate legal remedy for the threatened disclosure of the audit by the GaDOE.

54. Plaintiff is entitled to injunctive relief to restrain the GaDOE from releasing the audit documents, pursuant to the ORA.

WHEREFORE, Plaintiff prays as follows:

- (a) That summons be issued to Defendant;
- (b) That all issues appropriately resolved by a jury be tried to a jury;
- (c) That the Court enter judgment in favor of Plaintiff and against Defendant as set forth in each count of the Complaint;
- (d) That Plaintiff be granted immediate affirmative injunctive relief enjoining Defendant from publicly disclosing the audit, pending a final resolution of the issues;
- (e) That the Court award Plaintiff's actual and compensatory damages in an amount to be proven at trial; and
- (f) That the Court grant such other relief as it deems just and proper.

This 14th day of February, 2020


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