

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF:

ARKANSAS STATE BOARD OF EDUCATION,
PETITIONER

V.

VALERIE TATUM, RESPONDENT

Case No. _____

**PETITION FOR ENFORCEMENT OF AN ADMINISTRATIVE SUBPOENA DUCES
TECUM ISSUED BY THE ARKANSAS STATE BOARD OF EDUCATION**

Petitioner Arkansas State Board of Education ("State Board") hereby petitions this Court to enforce the State Board's subpoena duces tecum in accordance with Rule 45(f) of the Arkansas Rules of Civil Procedure, which subpoena was issued against and served upon Respondent Valerie Tatum ("Tatum"), for the following reasons:

1. The Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 6-17-425(b).
2. Tatum, was the Superintendent of Covenant Keepers Public Charter School ("Covenant Keepers"), an open-enrollment public charter school located in Little Rock, Arkansas, from January 15, 2008, to September 28, 2018.
3. Ark. Code Ann. § 6-17-425 authorizes the State Board to issue subpoenas duces tecum.
4. On January 15, 2008, the State Board authorized City of Fire Community Development, Inc. ("City of Fire"), a nonprofit organization under § 501(c)(3) of the Internal Revenue Code of 1986, to operate Covenant Keepers in accordance with the Arkansas Quality Charter Schools Act of 2013, Ark. Code Ann. § Ark. Code Ann. § 6-23-101 et seq.
5. Tatum was the Superintendent and school leader of Covenant Keepers until September 28, 2018, when she resigned.
6. Tatum is listed as the registered agent for City of Fire, the sponsoring entity of the charter, and has been listed as the registered agent since at least 2016. See Exhibit A.

7. Tatum's husband, Mr. Tyron Tatum, was the Chair of City of Fire during the entire life of the charter contract. See Exhibit A.

8. Tatum's husband, Mr. Tyron Tatum, was also a member of the Covenant Keepers local school board beginning in July of 2017 until the charter was revoked. See Exhibit B.

9. City of Fire contracted with Friendship Aspire to help run the day-to-day operations of the school on July 21, 2018. However, City of Fire remained the sponsoring entity of the charter school. See Exhibit C.

10. On January 15, 2019, Covenant Keepers voluntarily non-renewed its charter in a hearing before the Charter Authorizing Panel and the school was scheduled to close on June 30, 2019.

11. The Arkansas Department of Education Rules Governing Public Charter Schools, Section 7.01.1, requires that no later than fifteen (15) days after the authorizer votes to non-renew a charter, or the charter otherwise dissolves, the charter school or sponsoring entity shall furnish to the Arkansas Department of Education ("the Department"): (1) a complete inventory of all personal property, real property, equipment, and fixtures owned or financed by the charter school, with documentation showing a description of each asset, serial number tag number, location, estimated value, any encumbrance on the asset including recorded security interest or lien, and the source of funds for each purchase; (2) the account number and financial institution contact information for every account in which the charter school or sponsoring entity deposited any state or federal funds at any time, and complete bank statements for the twelve (12) months preceding the effective date of closure; (3) a complete lists of all debts or obligations owed by the charter school and still outstanding as of the effective date of closure, including all outstanding checks or warrants; (4) a complete list of all accounts receivable owed to the charter school and still outstanding as of the effective date of closure; and (5) complete contact information for every member of the charter school's board or governing entity. See Exhibit D.

12. Tatum and City of Fire provided none of the above-listed documents, although, the Department obtained some incomplete information from Friendship Aspire.

13. Subsequent to the non-renewal, Tatum removed documents and furniture from the Covenant Keepers campus, and money from the Covenant Keepers bank account. These withdrawals were not approved by the acting Superintendent and were not approved by the

school board in an open-meeting. Further, Tatum was no longer a paid employee of the school and should not have had access to these bank accounts at all.

14. Tatum has not, despite several attempts, provided any information indicating that the removal of funds from the Covenant Keepers bank account was for an allowable purpose under Arkansas law or the Arkansas Department of Education Rules: Rules Governing the Distribution of Student Special Needs Funding (Exhibit E), Rules Governing Declining Enrollment and Student Growth Funding (Exhibit F), Rules Governing the Arkansas Financial Accounting and Reporting System and Annual Training Requirements (Exhibit G), Rules Governing the Arkansas Fiscal Assessment and Accountability Program (Exhibit H), and Rules Governing Public Charter Schools (Exhibit D).

15. On February 7, 2019, the Department sent a letter to Tatum in response to the removal of items from the school and instructed that all items be immediately returned. See Exhibit I.

16. On February 14, 2019, due to the unapproved removal of funds from the Covenant Keepers bank account, the Charter Authorizing Panel voted to immediately revoke the charter of Covenant Keepers pursuant to its authority under Ark. Code Ann. § 6-23-105.

17. On February 15, 2019, the State Board voted to uphold the decision to immediately revoke the charter of Covenant Keepers pursuant to its authority under Ark. Code Ann. § 6-23-703.

18. Ark. Code Ann. § 6-23-105(e) states that immediately upon revocation of a charter by the authorizer, the public charter school shall provide to the Department a detailed accounting of all accounts payable due from the state funds and any additional information or records requested by the Department concerning the disbursement of state funds.

19. City of Fire never produced the documents required by Ark. Code Ann. § 6-23-105(e).

20. In conjunction with the revocation of the Covenant Keepers' charter on February 15, 2019, the Department inventoried all assets and documents of the school and identified that key financial records were missing from the school.

21. The State Board, through its counsel, made multiple requests by letter and e-mail to Respondent Tatum that all documents removed from Covenant Keepers, including financial records, be returned. See Exhibit J.

22. On March 6, 2019, Tatum notified the Department that she refused to turn over the original copies of the financial records in her possession and sent photos of the furniture she removed from the Covenant Keepers campus. See Exhibit K.

23. In response, the Department requested *copies* of all documents or, alternatively, that a time be set when the Department could make copies of the documents. See Exhibit L.

24. Tatum did not reply to this request, and all subsequent attempts to recover the documents via mail, e-mail, and phone calls were unsuccessful. See Exhibit M.

25. The State Board issued an administrative subpoena duces tecum on March 25, 2019, directing Respondent Tatum to provide all financial records related to or concerning Covenant Keepers, all documents that were in the filing cabinets removed from Covenant Keepers, and all documents referenced in Respondent Tatum's e-mailed dated March 6, 2019. The subpoena is attached as Exhibit N. An affidavit of service is attached as Exhibit O.

26. On April 5, 2019, Tatum produced four boxes of documents.

27. Despite partial compliance with the subpoena, Tatum failed to produce: (1) the financial records related to Covenant Keepers for fiscal years 2017-18 and 2018-19, and (2) the username and password of the IRS login necessary to ensure payment of federal taxes.

28. On April 18, 2019, the Department mailed and e-mailed a letter to Tatum indicating that the State Board would give her an extension until April 24, 2019, to fully comply with the subpoena. See Exhibit P.

29. On April 19, the State Board received written notice that Tatum retained an attorney. See Exhibit Q.

30. Tatum produced no additional documents by the April 24, 2019, extension deadline.

31. The State Board's counsel contacted Tatum's attorney several times by phone and e-mail to request the IRS login information and the financial records for fiscal years 2017-18 and 2018-19. See Exhibit R.

32. Tatum's attorney notified the State Board's counsel via telephone that Tatum had the IRS login and password and would give that information to the Department.

33. Tatum never produced the IRS login and password.

34. Tatum's attorney notified the State Board's counsel that Tatum claimed she did not have the documents. See Exhibit R.

35. The State Board's counsel asked whether Tatum knew where the records were or, alternatively, if she destroyed the records, but received no response. See Exhibit S.

36. Ark. Code Ann. § 6-23-105(e) states that immediately upon revocation of a charter by the authorizer, the public charter school shall transfer to the Department all state funds held by the public charter school, which the Department shall hold in receivership. Section 7.04 of the Rules Governing Public Charter Schools (Exhibit D) states that upon the revocation of an open-enrollment charter school, the Commissioner of Education shall assert control over any funds deemed the property of the state.

37. Section 7.04.2 of the Rules Governing Public Charter Schools (Exhibit D) states that the Commissioner of Education shall use remaining funds from a revoked charter school to satisfy obligations of the school, including federal tax liens imposed by the IRS for taxes or payroll tax withholding owed.

38. The IRS login information is necessary so that the Department can ensure proper payment of all federal taxes in accordance with the above cited law and rules.

39. Ark. Code Ann. § 6-23-403 and § 6-23-505 require an annual audit of every open-enrollment public charter school prior to June 30 of each year.

40. No audit has been completed for Covenant Keepers for the 2018-19 school year and the private auditor employed by City of Fire resigned on February 26, 2019, due to allegations of material fraud and a conflict of interest between a board members and perpetrator of said fraud. See Exhibit T.

41. Due to City of Fire's failure to satisfy generally accepted accounting standards of fiscal management, as required by Ark. Code Ann. § 6-23-105(a), and following the revocation of the charter, it is necessary for Legislative Audit to conduct a full audit of Covenant Keepers. It is common practice for the Department to request an audit by Legislative Audit upon the revocation of a charter school for financial mismanagement.

42. The financial records for fiscal years 2017-18 and 2018-19 are necessary so that Legislative Audit can conduct the required annual audit and the audit requested by the Department.

43. The Rules Governing Public Charter Schools, Section 4.06.6, (Exhibit D) states that every public charter school shall furnish any information, record, or report requested by the

Department of Education unless disclosure of the information, record, or report is explicitly prohibited by court order or by federal or state law.

44. The Rules Governing Public Charter Schools, Section 7.05.5 (Exhibit D) require the sponsoring entity to maintain all corporate or governance records for at least five (5) years after the effective date of closure, specifically including, but not limited to: (1) all board minutes, policies, and bylaws, (2) bonds, mortgages, loan agreements, and all other financing instruments, (3) lease agreements, (4) accounting and bank records, (5) payroll and tax records as required by federal law, (6) grant records as specified by 34 CFR § 80.42 or other relevant federal or state law, and (7) any other document required by law to be maintained.

45. Ark. Code Ann. § 6-23-401(a) states that an open-enrollment public charter school shall be governed by an eligible entity, or sponsoring entity, that is fiscally accountable and under the governing structure as described by the charter.

46. Ark. Code Ann. § 6-20-2202(d) et seq. and the Rules Governing the Arkansas Educational Financial Accounting and Reporting System and Annual Training Requirements, Section 4, (Exhibit G) require that each school submit an annual financial report to the Department including the following information: (1) the daily expenditures and receipts of the school; (2) information on fund balances maintained by the school.

47. Ark. Code Ann. § 6-20-2202(d) requires the ex officio financial secretary, typically the superintendent, of each open-enrollment public charter school to keep records of the following information in the format required by the Department: (1) the daily expenditures and receipts of the school; and (2) information on fund balances maintained by the school.

48. According to Ark. Code Ann. § 6-20-2201 et seq. and the Rules Governing the Arkansas Educational Financial Accounting and Reporting System and Annual Training Requirements (Exhibit G), the sponsoring entity (City of Fire) and the superintendent (Tatum) are responsible for the maintenance of all financial records related to the operation of an open-enrollment charter school.

49. To date, Tatum has failed to produce the following documents: (1) the financial records related to Covenant Keepers for fiscal years 2017-18 and 2018-19 and (2) the username and password of the IRS login necessary to ensure payment of federal taxes.

WHEREFORE, the Petitioner State Board respectfully requests that this Court:

1. Enter an Order enforcing the State Board's subpoena duces tecum, requiring Tatum to fully comply with the terms of the subpoena, and if she fails to comply, issue a warrant to bring her before the court to answer for contempt, and
2. Render such other further relief as is just and proper.

Respectfully submitted,



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