

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL  
CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

SCHOOL BOARD OF PALM BEACH  
COUNTY,

Plaintiff,

CASE NO.: 37-2017-CA-002046

v.

FLORIDA STATE BOARD OF EDUCATION;  
FLORIDA DEPARTMENT OF EDUCATION;  
and PAM STEWART, in her official capacity as  
Florida Commissioner of Education and member  
of the State Board of Education,

Defendants.

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**MOTION TO INTERVENE**

Prospective Intervening Defendants, Academy for Positive Learning, Inc. (hereinafter “APL”) and Marleny Olivo, an individual, by and through the undersigned counsel, hereby request that this Court enter an Order permitting the Prospective Intervening Defendants to intervene in the above-styled action as full party defendants pursuant to Florida Rules of Civil Procedure 1.230 and state as follows.

1. This is an action by Plaintiff, School Board of Palm Beach County, challenging the constitutionality of sections 1011.71(2) and 1013.62(1), (3), Florida Statutes, (“Charter School Millage Provisions”) as amended by House Bill 7069. Ch. 2017-116, Laws of Fla. Under these provisions, Florida school districts are required to fund charter schools more equitably in Florida.

2. HB 7069 requires Florida’s school districts to share a proportionate share of revenues collected from the discretionary ad valorem tax authorized by section 1011.71(2), Florida Statutes, with all of Florida’s public schools. Prior to HB 7069, Florida school districts had

discretion on whether to share these funds. Like almost all of Florida's school districts, Plaintiff has historically chosen not to share these funds.

3. Even though charter schools and the Plaintiff's district-run schools are both public schools, serving the same population of students within Palm Beach County, the Plaintiff's district-run schools have substantially more capital monies than the Plaintiff's charter schools.

4. On September 28, 2017, Plaintiff filed the instant action in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida.

5. APL currently operates, and at all relevant times has operated, a charter school within the State of Florida pursuant to section 1002.33, Florida Statutes. APL, like all charter schools in Florida, is a public school. § 1002.33(1), Fla Stat. (2017).

6. Marleny Olivo, an individual, is, and at all relevant times has been, the parent of a student attending APL.

7. Florida Rules of Civil Procedure 1.230 allows for any person with an interest in pending litigation to assert a right by intervention. The "interest which will entitle a person to intervene...must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992) (citing Morgareidge v. Howey, 78 So. 14, 15 (Fla. 1918)).

8. Intervention is a right granted in the trial court's discretion. De Sousa v. JP Morgan Chase, N.A., 170 So. 3d 928, 929 (Fla. 4th DCA 2015); see National Wildlife Fed'n Inc. v. J.T. Glisson, 531 So.2d 996, 998 (Fla. 1st DCA 1988). Absent a resulting delay or disruption to the proceedings, "intervention should be liberally allowed." National Wildlife Fed'n Inc., 531 So.2d at 998; see Miracle House Corp. v. Haige, 96 So. 2d 417, 418 (Fla. 1957) (commenting that the

aim of the Florida Rules of Civil Procedure is to allow liberal joinder of parties and avoid a multiplicity of suits).

9. The Prospective Intervening Defendants have a direct and immediate interest in the matter in litigation and will suffer direct harm if the relief requested by the Plaintiff is granted. As a Florida charter school, APL will stand to lose significant funding should this Court enter a judgment that is unfavorable to its position, as evidenced by the duly sworn and attested affidavit of Renatta Espinoza, attached hereto as “Exhibit A.” This will directly impact the resources available to APL for the education of Marleny Olivo’s child, as evidenced by the duly sworn and attested affidavit of Marleny Olivo, attached hereto as “Exhibit B.”

10. The Prospective Intervening Defendants can best protect their interests in this litigation by joining as full party defendants.

11. The granting of this Motion to Intervene will not unduly delay or disrupt these proceedings as the litigation was only recently commenced. This Court has not held any substantive hearing on this matter. Moreover, allowing the Prospective Intervening Defendants to intervene will aid the Court in gathering and evaluating evidence in this matter to make a lawful ruling.

WHEREFORE, the Prospective Intervening Defendants respectfully request that this Court grant their Motion to Intervene and add the Prospective Intervening Defendants as full party defendants to this action.

Respectfully submitted this 11<sup>th</sup> day of December, 2017.

By: */s/ Shawn A. Arnold*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of December 2017, I electronically served a copy of the foregoing instrument to: Jon L. Mills, Esq. and Stephen Zack, Esq., Attorneys for Plaintiff, 100 SE 2nd St., Suite 2800, Miami, Florida 33131, [jmills@bsfllp.com](mailto:jmills@bsfllp.com), [szack@bsfllp.com](mailto:szack@bsfllp.com); Stuart H. Singer, Esq. and Sabria A. McElroy, Esq., Attorneys for Plaintiff, 401 East Las Olas Blvd., Suite 1200, Fort Lauderdale, Florida 33301, [ssinger@bsfllp.com](mailto:ssinger@bsfllp.com), [smcelroy@bsfllp.com](mailto:smcelroy@bsfllp.com), [ftleserve@bsfllp.com](mailto:ftleserve@bsfllp.com); Matthew J. Mears, Esq., Jamie M. Braun, Esq., and Jason D. Borntreger, Esq., Attorneys for Defendants, 325 West Gaines Street, Suite 1244, Tallahassee, Florida 32399, [matthew.mears@fldoe.org](mailto:matthew.mears@fldoe.org), [jamie.braun@fldoe.org](mailto:jamie.braun@fldoe.org), [jason.borntreger@fldoe.org](mailto:jason.borntreger@fldoe.org); Amit Agarwal, Esq. and Rachel Nordby, Esq., Attorneys for Defendants, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399, [amit.agarwal@myfloridalegal.com](mailto:amit.agarwal@myfloridalegal.com), [rachel.nordby@myfloridalegal.com](mailto:rachel.nordby@myfloridalegal.com).

By: */s/ Shawn A. Arnold*  
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**EXHIBIT A**  
**Affidavit of Renatta Espinoza**

**[Follows]**

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**AFFIDAVIT OF RENATTA ESPINOZA**  
**IN SUPPORT OF MOTION TO INTERVENE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

On this day personally appeared before me, Renatta Espinoza, who being first duly sworn  
deposes and says:

1. I am over the age of eighteen and make this Affidavit on my own personal knowledge.
2. I am the Principal of Academy for Positive Learning, Inc. (“APL”) a Prospective Intervening Defendant in the above-styled action. I have served as Principal of APL since 2004.
3. APL is a not for profit corporation that operates a public charter school located in Lake Worth, Palm Beach County, Florida that serves students from kindergarten through eighth grade.
4. APL has no management company, and operates a school that currently has

approximately 135 students.

5. APL is a Title I charter school, meaning that it serves among the highest level of low-income families in Florida. Currently, approximately 87 percent of students at APL are eligible for free or reduced lunch.

6. APL serves a high non-English speaking population. English is not the primary language of approximately 25 percent of our students.

7. APL also serves a diverse student population. Approximately 76 percent of the students at APL belong to a minority group.

8. Despite facing challenges, APL has consistently performed well on Florida's state standardized assessments. APL qualifies as a high performing charter school pursuant to section 1002.331, Florida Statutes, which is granted to a limited number of Florida's charter schools for excellence in academic performance and financial management.

9. I was also recently awarded the 2017-18 Principal Leadership Award from Florida TaxWatch for high academic achievement in schools that have high poverty levels, are in high crime areas, and demonstrate distinction in fiscal management. There are more than 650 charter schools in Florida. This award was given to only nine schools.

10. Plaintiff, School Board of Palm Beach County (the "School Board"), is the sponsor of APL pursuant to section 1002.33, Florida Statutes. As the sponsor, the School Board is responsible for distributing to APL the state and local funds to which the school is entitled.

11. The School Board levies the maximum allowable discretionary capital outlay millage of 1.5 mills. However, the School Board does not share any of these revenues with APL or other charter schools in the District.

12. APL, like all schools, needs money for capital projects. Yet the public charter



schools of Palm Beach County, including APL, are not funded at the same level as traditional district-run public schools.

13. Through the adoption of House Bill 7069, the Florida Legislature has attempted to remedy the inequitable funding of charter schools, like APL, by requiring school districts to share discretionary capital millage dollars with charter schools. Ch. 2017-116, Laws of Fla.

14. With this lawsuit, the School Board has undermined the reality of the role it plays in monitoring the use of charter school funds. The laws pertaining to charter schools specifically require that school districts monitor the expenditures of charter school funds. § 1002.33(5)(b), Fla. Stat. (2017). In accordance with the charter statute, APL provides the School Board with a monthly financial statement containing information on the school's revenue, expenditures, and changes in fund balance. § 1002.33(9)(g), Fla. Stat. (2017). APL is also required by law to provide the School Board with an annual financial report and program cost report. § 1002.33(9)(g), Fla. Stat. (2017).

15. APL must also undergo an annual fiscal audit conducted by an independent auditor, which is made available to the School Board and the public at large. §§ 218.39(1), 1002.33(9)(p), Fla. Stat. (2017).

16. Furthermore, contrary to points raised by the School Board, it will have oversight over the use of funds the school obtains from the disputed capital millage. APL submits an application each year to receive capital outlay dollars. On the application, APL designates the purposes for which it will use capital outlay funds. See Fla. Admin. Code R. 6A-2.0020 (2017). The School Board is required to certify APL's capital outlay application and can recommend whether or not the school should receive capital outlay funds.

17. Without a doubt, the School Board has always retained the ability to withhold from

APL's future distributions those funds which the School Board believed it overpaid or that the School Board believed our school was not entitled thereto.

18. In my time as Principal, there have been frequent times that the School Board withheld funds that APL believed it was entitled to receive. The School Board and APL have always been able to work collaboratively through the process. In fact, we are currently in the middle of a separate dispute over funding where the School District withheld funds. This has never been a hurdle to our continuing relationship.

19. Our school has proven year after year to be successful in educating under-privileged students in Palm Beach County.

20. The students at APL, a Florida public school, deserve to be funded at the same level as other public-school students in Palm Beach County.

21. If the School Board is granted relief under this lawsuit, APL will stand to lose a significant amount of funding. In fact, APL will receive less funding this year than it did last year if the Court rules in favor of the School Board.

22. I believe that it's important that APL be allowed to intervene in this case so that we can defend the interests of our students.

FURTHER AFFIANT SAYETH NOT.

ACADEMY FOR POSITIVE LEARNING,  
INC., a Florida not for profit corporation.

By: Renatta Espinoza

**STATE OF FLORIDA  
COUNTY OF PALM BEACH**

The foregoing instrument was sworn and subscribed before me on this 11<sup>th</sup> day of December,  
2017, by Renatta Espinoza, individually and as Principal of Academy for Positive Learning, Inc.,  
a Florida not for profit corporation, who is personally known to me.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT B**  
**Affidavit of Marleny Olivo**

**[Follows]**

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Defendants.

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**AFFIDAVIT OF MARLENY OLIVO**  
**IN SUPPORT OF MOTION TO INTERVENE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

On this day personally appeared before me, Marleny Olivo, who being first duly sworn  
deposes and says:

1. I am a resident of West Palm Beach, Florida.
2. My husband and I have two children, A.O. and G.O., who attend Palm Beach  
County public schools.
3. A.O. attends Conniston Middle School, a district-run public school in the Palm  
Beach County School District. A.O. has been very successful at Conniston Middle School and we  
are happy with A.O.'s placement there.
4. G.O. previously attended a district-run public school in Palm Beach County,  
Florida as well. G.O. was struggling at the district-run public school, so my husband and I decided

to place him at Academy for Positive Learning (“APL”), a public charter school located in Lake Worth, Florida. APL is another Prospective Intervening Defendant in this case. APL turned out to be the perfect fit for G.O. Since entering APL, we have watched G.O. grow and succeed in ways that we never could have imagined.

5. APL has an excellent program in place that stands as not only a model for other charter schools, but as a model for all public schools.

6. As a student attending a public charter school, G.O. deserves to be funded at the same level as other public-school students in Palm Beach County, including A.O.

7. Presently, APL is not funded at the same level as other public schools. The Plaintiff, the School Board of Palm Beach County (“School Board”), refuses to share discretionary capital millage revenue with APL.

8. Through House Bill 7069, the Florida Legislature attempted to make funding more equitable for students like my child. Ch. 2017-116, Laws of Fla.

9. If the School Board succeeds in this lawsuit, it would hurt G.O. and the other children attending APL. The money that the School Board would be required to share with APL is miniscule to the School Board, but would be transformative to APL.

10. Allowing me to intervene, along with APL, will enable me to ensure that the rights of my child are protected.

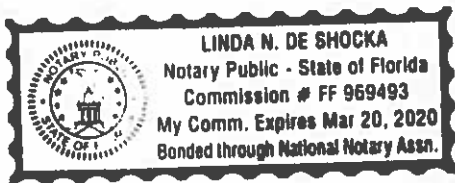
FURTHER AFFIANT SAYETH NOT.

Marleny Olivo, an individual.

By: *Marleny Olivo*

**STATE OF FLORIDA  
COUNTY OF PALM BEACH**

The foregoing instrument was sworn and subscribed before me on this 11 day of December, 2017, by Marleny Olivo, an individual, who is personally known to me.



*Linda N. De Shocka*  
Notary Public