

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CV-240-BO

SPARC ACADEMY, a North Carolina Non-Profit)
Corporation, R.L., a student enrolled in January)
of 2008, by his mother, CHANTE ELLIOT, and)
D.D., a student enrolled in January of 2008, by)
his next friend, CAROLYN DAVIS,)

Plaintiffs,)

v.)

NORTH CAROLINA STATE BOARD OF)
EDUCATION,)

Defendant.)

ORDER

This matter is before the court on Plaintiffs' Motion for a Preliminary Injunction and Defendant's Motion to Dismiss. Plaintiff seeks a Preliminary Injunction requiring the state to reissue the charter for Plaintiff, SPARC Academy. Defendant argues that the court does not have subject matter jurisdiction over the dispute and the matter should therefore be dismissed. For the following reasons, Defendants' Motion to Dismiss is GRANTED and Plaintiff's Motion for a Preliminary Injunction is DENIED as MOOT.


Plaintiff, SPARC Academy (SPARC), was a charter school in Wake County, North Carolina. The charter was issued by Defendant, the North Carolina State Board of Education. In January 2008, Defendant voted not to renew SPARC's charter. Defendant asserts that this decision was based on consistently poor test scores and a downward trend in academic performance at SPARC. Plaintiffs have brought a § 1983 claim alleging a denial of due process

and equal protection; state claims for money damages; and declaratory and injunctive relief seeking the reissuance of the charter and technical assistance pursuant to the No Child Left Behind Act, 20 U.S.C. § 6303(c)(1).

Defendant challenges the court's subject matter jurisdiction over Plaintiffs' claims pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The Eleventh Amendment provides immunity to states and their entities from certain suits. Defendant is an entity of the state and thus is protected by Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332, 342 (1979). North Carolina has not waived this immunity. *Ji Da Dai v. Univ. of N.C.*, 2003 U.S. Dist. LEXIS 15580, at *18 (M.D.N.C. 2003). And although "[t]he Supreme Court held in *Ex parte Young*, 209 U.S. 123 (1908), that the Eleventh Amendment does not bar a suit against a State Official for prospective injunctive relief," the only party Plaintiffs sued was the North Carolina State Board of Education. Thus, *Ex parte Young* does not apply and the Eleventh Amendment bars Plaintiffs' suit.

Left unanswered are questions of whether a federal court should be involving itself in internal state board of education concerns such as the validation of testing and the funding of charter schools, however, the Eleventh Amendment commands dismissal. Accordingly, Defendant's Motion to Dismiss is GRANTED and Plaintiffs' Motion for a Preliminary Injunction is DENIED as MOOT.

SO ORDERED, this 7 day of August 2008.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE