

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG

SUGAR CREEK CHARTER SCHOOL, )  
 Inc.; THE COMMUNITY CHARTER )  
 SCHOOL; THE METROLINA REGIONAL )  
 SCHOLARS' ACADEMY, Inc.; ROCKY )  
 MOUNT PREPARATORY SCHOOL, Inc; )  
 SOCRATES ACADEMY, Inc.; THOMAS )  
 JEFFERSON CLASSICAL ACADEMY; and )  
 UNION ACADEMY; DEBORAH HOPKINS, )  
 individually and as guardian ad litem of )  
 SLOANE HOPKINS, KILLIAN )  
 HOPKINS, and SKYLAR HOPKINS; )  
 GILBERT BAILEY, individually and as )  
 guardian ad litem of VIRGINIA L. )  
 BAILEY; CHERYL DRAKE-BOWERS, )  
 individually and as guardian ad litem of )  
 ANNIKA BOWERS; JAMES BARNHILL )  
 and SHARON BARNHILL, individually )  
 and as guardians ad litem of AUSTIN )  
 BARNHILL and JAMES CODY BARNHILL; )  
 ANGELA HALE, individually and as )  
 guardian ad litem of MATHEW PERRY, )  
 ZACHARY PERRY, and DUSTIN LEE; )  
 KAY CRICKMORE and DAVID )  
 CRICKMORE, individually and as )  
 guardians ad litem of EMILY )  
 CRICKMORE, REBECCA CRICKMORE, )  
 RACHEL CRICKMORE, and )  
 KATHERINE CRICKMORE; PANSY )  
 FLANAGAN, individually and as guardian )  
 ad litem of WILLIAM L. OVERTON; )  
 WILLIAM E. DAVIS, III and APHRODITE )  
 DAVIS, individually and as guardians ad litem )  
 Of ELIANA M. DAVIS; SHAWN L. JONES, )  
 individually and as guardian ad litem of )  
 KATHERINE JONES; PATRICIA )  
 SEGUINE and DANIEL SEGUINE, )  
 individually and as guardians ad litem of )  
 COURTNEY SEGUINE, CARTER )  
 SEGUINE, and JONAH SEGUINE; )  
 TAWANDA D. BLOUNT, individually )  
 and as guardian ad litem of BRYSON )  
 BLOUNT; TODD BENNETT and WENDY )

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BENNETT, individually and as guardians ad  
litem of HANNAH BENNETT, VICTORIA)  
BENNETT, and OLIVIA BENNETT; )  
JAMES SMITH and SUSAN )  
SOULE-SMITH, individually and as )  
guardians ad litem of EVAN SMITH and )  
MOLLY SMITH; LYNN KROEGER and )  
KEN KROEGER, individually and as )  
guardians ad litem of PETER KROEGER, )  
CHRISTINA KROEGER, and JOSEPH )  
KROEGER; TODD HAVICAN, )  
individually and as guardian ad litem of )  
KAITLYN HAVICAN and KELSEY )  
HAVICAN; RON L. BROWN, )  
individually and as guardian ad litem of )  
VICTORIA A. BROWN and DANIEL S. )  
BROWN; )

Plaintiffs, )

vs. )

STATE OF NORTH CAROLINA; )  
COUNTY OF MECKLENBURG; )  
CHARLOTTE-MECKLENBURG COUNTY )  
BOARD OF EDUCATION; COUNTY OF )  
UNION; UNION COUNTY BOARD OF )  
EDUCATION; COUNTY OF NASH; )  
NASH-ROCKY MOUNT BOARD OF )  
EDUCATION; COUNTY OF HALIFAX; )  
HALIFAX COUNTY BOARD OF )  
EDUCATION; COUNTY OF )  
EDGEcombe; EDGEcombe COUNTY )  
BOARD OF EDUCATION; )  
COUNTY OF RUTHERFORD; )  
RUTHERFORD COUNTY BOARD OF )  
EDUCATION; COUNTY OF )  
CLEVELAND, CLEVELAND COUNTY )  
BOARD OF EDUCATION, )

Defendants. )

**COMPLAINT AND PETITION  
FOR DECLARATORY JUDGMENT**

Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure, the Plaintiffs hereby file this Complaint for a declaratory judgment. In support of this Complaint, the Plaintiffs now come and allege and say the following:

### **INTRODUCTION & OVERVIEW**

1. Charter schools are public schools. Yet, they receive disparate and discriminatory treatment in North Carolina by and through a discriminatory funding policy permitted and enforced by the Defendants. Charter schools and charter school students are being denied the opportunity to receive from counties or local school administrative units a funding source freely granted to traditional public schools, the capital outlay fund. Thus, the General Assembly has not only established two non-uniform systems of public schools, but it has deprived students in the disfavored system of the opportunity to be uniformly considered for capital outlay fund expenditures by their county or local school administrative unit, as compared to their friends and colleagues in the traditional public schools located within the same county or local school administrative unit.
2. In this case, the Plaintiffs (several charter schools and charter school students) seek a declaratory judgment establishing their right under the Constitutions of North Carolina and the United States to have the opportunity to be uniformly considered for capital outlay fund expenditures by their county and local school administrative unit for their public school education. Toward that end, the Plaintiffs have filed this action so that the Court may, consistent with article I, sections 15 and 19 and article IX of the North Carolina Constitution and Amendment XIV of the United States Constitution, establish the right of all public school students, charter and traditional, to have the opportunity to be uniformly considered for capital outlay fund expenditures by their county or local school administrative unit.

## PARTIES

### **The Charter School Plaintiffs**

3. Plaintiff Sugar Creek Charter School, Inc. is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws and other applicable laws. Sugar Creek Charter School, Inc. has its principal office and place of business in Mecklenburg County, North Carolina.
4. Plaintiff The Community Charter School is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws and other applicable laws. The Community Charter School has its principal office and place of business in Mecklenburg County, North Carolina.
5. Plaintiff The Metrolina Regional Scholars' Academy, Inc. is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws. The Metrolina Regional Scholars' Academy, Inc. has its principal office and place of business in Mecklenburg County, North Carolina.
6. Plaintiff Rocky Mount Preparatory School, Inc. is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws. Rocky Mount Preparatory School, Inc. has its principal office and place of business in Nash County, North Carolina.
7. Plaintiff Socrates Academy, Inc. is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws. Socrates Academy, Inc. has its principal office and place of business in Mecklenburg County, North Carolina.

8. Plaintiff Thomas Jefferson Classical Academy is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws. Thomas Jefferson Classical Academy has its principal office and place of business in Rutherford County, North Carolina.
9. Plaintiff Union Academy is an entity established as a North Carolina public charter school in accordance with N.C. Gen. Stat. § 115C-238.29D and other applicable laws. Union Academy has its principal office and place of business in Union County, North Carolina.

**The Charter School Parent and Student Plaintiffs**

10. Plaintiff Deborah Hopkins is a resident of Mecklenburg County, North Carolina, North Carolina. Plaintiff Sloane Hopkins is a resident of Mecklenburg County, North Carolina, North Carolina and a student at Community Charter School. She is a minor and is represented in this case by her mother, Deborah Hopkins.
11. Plaintiff Killian Hopkins is a resident of Mecklenburg County, North Carolina and a student at Community Charter School. He is a minor and is represented in this case by his mother, Deborah Hopkins.
12. Plaintiff Skylar Hopkins is a resident of Mecklenburg County, North Carolina and a student at Community Charter School. He is a minor and is represented in this case by his mother, Deborah Hopkins.
13. Plaintiff Gilbert Bailey is a resident of Mecklenburg County, North Carolina, North Carolina. Plaintiff Virginia L. Bailey is a resident of Mecklenburg County, North Carolina and a student at Community Charter School. She is a minor and is represented in this case by her father, Gilbert Bailey.

14. Plaintiff Cheryl Drake-Bowers is a resident of Union County, North Carolina. Plaintiff Annika Bowers is a resident of Union County, North Carolina and a student at Metropolina Regional Scholars' Academy. She is a minor and is represented in this case by her mother, Cheryl Drake-Bowers.
15. Plaintiffs James and Sharon Barnhill are residents of Nash County, North Carolina. Plaintiff Austin H. Barnhill is a resident of Nash County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his parents, James and Sharon Barnhill.
16. Plaintiff James Cody Barnhill is a resident of Nash County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his parents, James and Sharon Barnhill.
17. Plaintiff Angela Hale is a resident of Halifax County, North Carolina. Plaintiff Mathew Perry is a resident of Halifax County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his mother, Angela Hale.
18. Plaintiff Zachary Perry is a resident of Halifax County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his mother, Angela Hale.
19. Plaintiff Dustin Lee is a resident of Halifax County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his mother, Angela Hale.
20. Plaintiffs Kay and David Crickmore are residents of Nash County, North Carolina. Plaintiff Emily Crickmore is a resident of Nash County, North Carolina and a student at Rocky Mount

Preparatory School. She is a minor and is represented in this case by her parents, Kay and David Crickmore.

21. Plaintiff Rebecca Crickmore is a resident of Nash County, North Carolina and a student at Rocky Mount Preparatory School. She is a minor and is represented in this case by her parents, Kay and David Crickmore.
22. Plaintiff Rachel Crickmore is a resident of Nash County, North Carolina and a student at Rocky Mount Preparatory School. She is a minor and is represented in this case by her parents, Kay and David Crickmore.
23. Plaintiff Katherine Crickmore is a resident of Nash County, North Carolina and a student at Rocky Mount Preparatory School. She is a minor and is represented in this case by her parents, Kay and David Crickmore.
24. Plaintiff Pansy Flanagan is a resident of Edgecombe County, North Carolina. Plaintiff William L. Overton is a resident of Edgecombe County, North Carolina and a student at Rocky Mount Preparatory School. He is a minor and is represented in this case by his mother, Pansy Flanagan.
25. Plaintiffs William E. Davis, III, and Aphrodite Davis are residents of Mecklenburg County, North Carolina. Eliana M. Davis is a resident of Mecklenburg County, North Carolina and a student at Socrates Academy. She is a minor and is represented in this case by her parents, William E. Davis, III, and Aphrodite Davis.
26. Plaintiff Shawn L. Jones is a resident of Union County, North Carolina. Plaintiff Katherine Jones is a resident of Union County, North Carolina and a student at Socrates Academy. She is a minor and is represented in this case by her mother, Shawn L. Jones.

27. Plaintiffs Patricia and Daniel Seguire are residents of Union County, North Carolina. Plaintiff Courtney Seguire is a resident of Union County, North Carolina and a student at Socrates Academy in the Charlotte-Mecklenburg County School System. She is a minor and is represented in this case by her parents, Patricia and Daniel Seguire.
28. Plaintiff Carter Seguire is a resident of Union County, North Carolina and a student at Socrates Academy. He is a minor and is represented in this case by his parents, Patricia and Daniel Seguire.
29. Plaintiff Jonah Seguire is a resident of Union County, North Carolina and a student at Socrates Academy. He is a minor and is represented in this case by his parents, Patricia and Daniel Seguire.
30. Plaintiff Tawanda D. Blount is a resident of Mecklenburg County, North Carolina, North Carolina. Plaintiff Bryson Blount is a resident of Mecklenburg County, North Carolina and a student at Sugar Creek Charter School. He is a minor and is represented in this case by his mother, Tawanda D. Blount.
31. Plaintiffs Todd and Wendy Bennett are residents of Rutherford County, North Carolina. Plaintiff Hannah Bennett is a resident of Rutherford County, North Carolina and a student at Thomas Jefferson Classical Academy. She is a minor and is represented in this case by her parents, Todd and Wendy Bennett.
32. Plaintiff Victoria Bennett is a resident of Rutherford County, North Carolina and a student at Thomas Jefferson Classical Academy. She is a minor and is represented in this case by her parents, Todd and Wendy Bennett.

33. Plaintiff Olivia Bennett is a resident of Rutherford County, North Carolina and a student at Thomas Jefferson Classical Academy. She is a minor and is represented in this case by her parents, Todd and Wendy Bennett.
34. Plaintiffs James Smith and Susan Soule-Smith are residents of Cleveland County, North Carolina. Plaintiff Evan Smith is a resident of Cleveland County, North Carolina and a student at Thomas Jefferson Classical Academy. He is a minor and is represented in this case by his parents, James Smith and Susan Soule-Smith.
35. Plaintiff Molly Smith is a resident of Cleveland County, North Carolina and a student at Thomas Jefferson Classical Academy. She is a minor and is represented in this case by her parents, James Smith and Susan Soule-Smith.
36. Plaintiffs Lynn and Ken Kroeger are residents of Union County, North Carolina. Plaintiff Peter Kroeger is a resident of Union County, North Carolina and a student at Union Academy. He is a minor and is represented in this case by his parents, Lynn and Ken Kroeger.
37. Plaintiff Christina Kroeger is a resident of Union County, North Carolina and a student at Union Academy. She is a minor and is represented in this case by her parents, Lynn and Ken Kroeger.
38. Plaintiff Joseph Kroeger is a resident of Union County, North Carolina and a student at Union Academy. He is a minor and is represented in this case by his parents, Lynn and Ken Kroeger.
39. Plaintiff Todd Havican is a resident of Union County, North Carolina. Plaintiff Kaitlyn Havican is a resident of Union County, North Carolina and a student at Union Academy. She is a minor and is represented in this case by her father, Todd Havican.

40. Plaintiff Kelsey Havican is a resident of Union County, North Carolina and a student at Union Academy. She is a minor and is represented in this case by her father, Todd Havican.
41. Plaintiff Ron L. Brown is a resident of Union County, North Carolina. Plaintiff Victoria A. Brown is a resident of Union County, North Carolina and a student at Union Academy. She is a minor and is represented in this case by her father, Ron L. Brown.
42. Plaintiff Daniel S. Brown is a resident of Union County, North Carolina and a student at Union Academy. He is a minor and is represented in this case by his father, Ron L. Brown.
43. The above plaintiffs are herein referred to at various points as the Charter School Student Plaintiffs, Charter School Parent Plaintiffs, Charter School Plaintiffs, or collectively as the Plaintiffs.

#### **The Defendants**

Pursuant to N.C. Gen. Stat. § 1-260, the following defendants are included as parties who have an interest which would be affected by the declaration sought and are, therefore, denominated as “defendants” for the purpose of this action:

44. Defendant State of North Carolina (“State”) is a sovereign state of the United States of America, with its capital and seat of government in Raleigh, Wake County, North Carolina, is capable of suing and being sued, and is subject to the laws and Constitution of North Carolina and is charged with the duty, under the Constitution of North Carolina, of guarding and maintaining the public education system. See N.C. Const. art. I, § 15.

#### **The County Defendants**

45. Defendant Mecklenburg County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Mecklenburg County, North Carolina.

46. Defendant Union County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Union County, North Carolina.
47. Defendant Nash County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Nash County, North Carolina.
48. Defendant Halifax County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Halifax County, North Carolina.
49. Defendant Edgecombe County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Edgecombe County, North Carolina.
50. Defendant Rutherford County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Rutherford County, North Carolina.
51. Defendant Cleveland County is a body politic and corporate, capable of suing and being sued whose purpose is, among other things, to provide capital outlay funds to the public schools operating in or to students residing in Cleveland County, North Carolina.
52. The above defendants are herein collectively referred to as the County Defendants.

**The County School Board Defendants**

53. Defendant the Charlotte-Mecklenburg County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate

public schools for the benefit of children residing in Mecklenburg County and has its principal office and place of business in Mecklenburg County, North Carolina.

54. Defendant the Union County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Union County and has its principal office and place of business in Union County, North Carolina.
55. Defendant The Nash-Rocky Mount Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Nash and Edgecombe Counties and has its principal office and place of business in Nash County, North Carolina.
56. Defendant The Halifax County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Halifax County and has its principal office and place of business in Halifax County, North Carolina.
57. Defendant The Edgecombe County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Edgecombe County and has its principal office and place of business in Edgecombe County, North Carolina.
58. Defendant The Rutherford County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Rutherford County and has its principal office and place of business in Rutherford County, North Carolina.

59. Defendant The Cleveland County Board of Education is a body politic and corporate capable of suing and being sued whose purpose is, among other things, to operate public schools for the benefit of children residing in Cleveland County and has its principal office and place of business in Cleveland County, North Carolina.
60. The above defendants are herein collectively referred to as the County School Board Defendants.

### **JURISDICTION & VENUE**

61. As explained more fully below, an actual, justiciable controversy exists between the Plaintiffs and Defendants. Plaintiffs are, therefore, entitled to bring this action under the Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.*, to obtain a determination of their rights under the Constitutions of North Carolina and the United States.
62. Plaintiffs have no administrative remedy that they must exhaust before bringing this action.
63. The defense of sovereign immunity is not applicable to this action because it is brought pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, by which the State of North Carolina has waived any defense of sovereign immunity in connection with an action by “[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . [to] determine[] any question of . . . validity arising under the . . . statute . . . and [to] obtain a declaration of rights, status, or other legal relations thereunder.” N.C. Gen. Stat. § 1-254.
64. Plaintiffs further have a direct cause of action under the Constitutions of North Carolina and the United States and, as a result, the Defendants are not entitled to any defense based on sovereign immunity.
65. Jurisdiction is proper in this Court pursuant to N.C. Gen. Stat. §§ 1-75.4, 1-253, and 7A-245.
66. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-77.

## FACTS

67. The Charter Schools Plaintiffs are by law public schools within the local school administrative unit in which they are located. N.C. Gen. Stat. § 115C-238.29E.
68. The Charter School Student Plaintiffs currently enrolled at their public charter schools are public school students. See, e.g., N.C. Gen. Stat. § 115C-238.29F.
69. Public charter schools were created to foster, among other things, improved student learning, different and innovative teaching methods, and expanded choices in the types of educational opportunities that are available within the public school system. N.C. Gen. Stat. § 115C-238.29A.
70. Local school administrative units are permitted to provide allocations to traditional public schools from (1) the State Public School Fund, which shall include funds from the State for operating expenses; (2) the local current expense fund, which shall include additional appropriations by the county for operating expenses; and (3) the capital outlay fund, which shall include appropriations by various sources, including the county, for real property and capital construction, among other things. See N.C. Gen. Stat. § 115C-426.
71. Under N.C. Gen. Stat. § 115C-238.29H, however, the local school administrative unit in which a charter school student resides shall transfer to a charter school only two of the three funding sources provided to traditional public schools: (1) an amount from the State equal to the average per-pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school (with certain exceptions) and (2) an amount from the local school administrative unit equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year (subject to certain conditions).