

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 )

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 Metrolina 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).

72. This statute omits authority for counties or local school administrative units to provide to charter schools monies from the capital outlay fund, in contrast to the allocations made available to traditional public schools for students residing in the same local school administrative unit.
73. The Attorney General of North Carolina has opined that N.C. Gen. Stat. § 115C-238.29H and other relevant statutory and case law prohibit counties from appropriating funds to charter schools for capital outlay projects. See N.C. Att’y Gen. Op. (April 15, 1998) (T. Ziko and L. Crumpler).
74. Public charter schools are permitted to use State funds to enter into operation and financing leases for real property or mobile classroom units for use as school facilities or to make payments on loans for facilities or equipment. Charter schools, however, are not permitted to use State funds to obtain any other interest in real property or mobile classroom units.
75. Public charter schools exist under a funding scheme which, compared with the funding scheme applicable to traditional public schools, is disparate, discriminatory, unequal, and non-uniform.
76. The disparate, discriminatory, unequal, and non-uniform funding scheme under which the Charter School Plaintiffs and the Charter School Student Plaintiffs are forced by the Defendants to exist and operate is administered by the County Defendants and the County School Board Defendants.
77. The disparate, unequal, and non-uniform funding scheme enacted and enforced by the State prohibits the County Defendants and the County School Board Defendants from giving the Plaintiffs the opportunity to be uniformly considered for expenditures from the capital outlay

fund as required by articles I and IX of the North Carolina Constitution, by the statutes of North Carolina, and by Amendment XIV of the United States Constitution.

78. Article I, section 15 of the North Carolina Constitution provides, among other things, that “[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”
79. Article I, section 19 of the North Carolina Constitution provides, among other things, that “[n]o person shall be denied the equal protection of the laws . . . .”
80. Article IX, section 2(1) of the North Carolina Constitution provides, among other things, that “[t]he General Assembly shall provide . . . for a general and uniform system of free public schools, . . . wherein equal opportunities shall be provided for all students.” (Emphasis added.)
81. Article IX, section 6 of the North Carolina Constitution provides, among other things, that the State School Fund “shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.” (Emphasis added.)
82. Article IX, section 7 of the North Carolina Constitution provides, among other things, that an additional State School Fund “shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.” (Emphasis added.)
83. N.C. Gen. Stat. § 115C-1 provides that “[a] general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina.” (Emphasis added.)

84. N.C. Gen. Stat. § 115C-66 provides that “[a]ll local school administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way.” (Emphasis added.)
85. N.C. Gen. Stat. § 115C-424 requires the creation of a “uniform system of budgeting and fiscal control” for all public schools. (Emphasis Added.)
86. Amendment XIV of the United States Constitution provides, among other things, that “[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”
87. Indeed, it has been a long-settled and uncontradicted matter of constitutional law in North Carolina that the State is not permitted to craft public school funding statutes that prevent citizens from the opportunity to receive uniform funding as compared to any other public schools within the same localities that control and administer the funding of those public schools.

While the Legislature has power to devise and establish a general and uniform system of public schools, and to amend or modify the existing system, consistently with the Constitution, it certainly cannot provide for and establish particular kinds of schools in particular cities, towns and localities, that offered greater or less advantages than the public schools, to the disadvantage or detriment of the latter in any respect. . . . the Legislature can provide by statute that the portion of the public school funds, county and State, going to such school districts respectively, shall be devoted to the support of such “Graded Schools” in the school district where they respectively exist. But such “Graded Schools” must be made subject to the public school authorities, certainly to the extent of enabling them freely and at all times to see that proper school advantages in every respect are extended to every child entitled to attend the public school in the school district where the “Graded School” is located. The latter must fully supply the place of the public school, whatever additional and larger advantages it may afford.” Greensboro v. Hodgin, 106 N.C. 182, 190-91 (1890) (Emphasis added).

88. Furthermore, our Supreme Court has specifically stated, in light of the uniformity requirement of article IX, that statutes which purport to give to one group of public schools funding that is disparate as compared to another group of public schools within the same county or other local school administrative unit must be construed to provide an opportunity for equitable and uniform funding to all public schools within the jurisdiction, specifically with respect to capital funding, and even if they operate under a special charter:

in the apportionment of the building fund, just as in the apportionment of the other part of the school fund, they are entitled to be treated exactly like any other public school district of the county. The fact that these districts are operated under a special charter does not prevent them from being public school districts entitled to all the rights and privileges of other school districts in the distribution of the common public school fund, including the building fund. Board of Graded School Commissioners of Winston v. Board of Education of Forsyth County, 163 N.C. 404, 408, 79 S.E. 886, 888 (1913) (internal citations omitted).

89. The presently applicable statutory scheme violates the uniformity and equity requirements imposed by the Constitution of North Carolina, the General Statutes of North Carolina, and the Constitution of the United States, in that the statutory scheme prohibits the Plaintiffs from exercising their rights to the opportunity to be uniformly considered for expenditures from the capital outlay fund by the counties or local administrative units which supply public charter school funding as compared to the traditional public schools within the same county or local school administrative units.

90. The present statutory scheme, which deprives charter schools and charter school students of the opportunity to be uniformly considered for expenditures from the capital outlay fund by the counties or local administrative units, detrimentally and unconstitutionally affects the rights of the Plaintiffs to the equal opportunity for a sound basic education in that the discriminatory funding scheme deprives, depletes, or redirects the funding resources of

charter schools that are necessary to provide students with the capital facilities sufficient to offer an equal opportunity for a sound basic education.

91. An actual, genuine, and real controversy exists between the Plaintiffs and the Defendants as to the Plaintiffs' rights to have the opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants because the Plaintiffs have not and, upon information and belief, will not be uniformly considered for such funding as compared to their friends and colleagues in the traditional public schools located within the same local school administrative unit.
92. The Defendants have, upon information and belief, unlawfully and unconstitutionally adopted, permitted to exist, enforced, or supported a funding scheme which denies the Plaintiffs their constitutional and statutory rights.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

(Declaratory Judgment: N.C. Const. article I, section 15 and article IX, section 2(1))

93. The Plaintiffs incorporate by reference and reallege as if fully set forth herein the allegations of paragraphs 1 – 92.
94. As set forth above, an actual controversy exists between the parties as to the Plaintiffs' rights to an opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants and the entitlement of Plaintiffs to a funding scheme that does not unconstitutionally and unlawfully deny their legal and constitutional rights under article I, section 15 and article IX, section 2(1) of North Carolina Constitution.
95. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Plaintiffs request that the Court enter a declaratory judgment declaring that the charter school funding statutes are facially

unconstitutional or unconstitutional to the extent they are applied to prohibit County Defendants or County School Board Defendants from extending to the Plaintiffs the opportunity to be uniformly considered for expenditures from the capital outlay fund as compared to their friends and colleagues in the traditional public schools within the same county or local school administrative unit.

#### SECOND CLAIM FOR RELIEF

(Alternative Declaratory Judgment: N.C. Const. article I, section 15 and IX, section 2(1))

96. The Plaintiffs incorporate by reference and reallege as if fully set forth herein the allegations of paragraphs 1 – 95.
97. As set forth above, an actual controversy exists between the parties as to the Plaintiffs’ rights to an opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants and the entitlement of Plaintiffs’ to a funding scheme that does not unconstitutionally and unlawfully deny their legal and constitutional rights under article I, section 15 and article IX, section 2(1) of North Carolina Constitution.
98. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Plaintiffs request that, in the alternative to the relief sought in the First Claim for Relief, the Court enter a declaratory judgment declaring that either facially or as applied to the Plaintiffs, the charter school funding statutes, consistent with the North Carolina Constitution and other statutory provisions, permit the Plaintiffs to receive an opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants as compared to their friends and colleagues in the traditional public schools within the same county or local school administrative unit, and to the extent those statutes abridge the rights of the Plaintiffs, they are unenforceable.

### THIRD CLAIM FOR RELIEF

(Declaratory Judgment: N.C. Const. article 1, section 19 and U.S. Const. amend. XIV)

99. The Plaintiffs incorporate by reference and reallege as if fully set forth herein the allegations of paragraphs 1 – 98.
100. As set forth above, an actual controversy exists between the parties as to the Plaintiffs' rights to an opportunity to be equally considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants and the Plaintiffs' entitlement to a funding scheme that does not discriminate against the constitutional rights of Plaintiffs on an arbitrary, capricious, and irrational basis, as compared to their friends and colleagues in the traditional public schools, in violation article I, section 19 of the North Carolina Constitution and Amendment XIV of the United States Constitution.
101. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Plaintiffs request that the Court enter a declaratory judgment declaring that either facially or as applied to the Plaintiffs, the charter school funding statutes, consistent with the Constitutions of North Carolina and the United States of America, must permit the Plaintiffs to receive an opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants as compared to their friends and colleagues in the traditional public schools within the same county or local school administrative unit, and to the extent those statutes abridge the rights of the Plaintiffs, they are unenforceable.

### FOURTH CLAIM FOR RELIEF

(Declaratory Judgment: N.C. Const. article I, section 15 and IX, section 2(1))

102. The Plaintiffs incorporate by reference and reallege as if fully set forth herein the allegations of paragraphs 1 – 101.

103. As set forth above, an actual controversy exists between the parties as to the Plaintiffs' rights to an opportunity to be equally considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants and the entitlement of Plaintiffs to a funding scheme that does not unconstitutionally and unlawfully deny their legal and constitutional rights to receive an equal opportunity for a sound basic education under article I, section 15 and article IX, section 2(1) of North Carolina Constitution.
104. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Plaintiffs request that the Court enter a declaratory judgment declaring that either facially or as applied to the Plaintiffs the charter school funding statutes, consistent with the Constitution of North Carolina, must permit the Plaintiffs to receive an opportunity to be uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants as compared to their friends and colleagues in the traditional public schools within the same county or local school administrative unit and to the extent those statutes abridge the rights of the Plaintiffs, they are unenforceable.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs request that the Court:

1. Enter declaratory judgment that the Plaintiffs have the right to an opportunity to be equally or uniformly considered for expenditures from the capital outlay fund by the County Defendants and County School Board Defendants consistent with the requirements of the laws and Constitutions of North Carolina and the United States of America and that any statutes or enforcement policies or practices inconsistent therewith by the State, County Defendants, or County School Board Defendants, are unenforceable to the extent that they violate the Plaintiffs' rights;

2. Award the Plaintiffs their reasonable attorney's fees as allowed by law;
3. Tax the costs of this action against the Defendants; and
4. Provide such additional and further relief to the Plaintiffs as the Court deems appropriate.

This the \_\_\_\_ day of September, 2009.

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Robert F. Orr (State Bar No. 6798)  
333 Six Forks Road, Suite 180  
Raleigh, North Carolina 27609  
Phone: (919) 838-5313  
Facsimile: (919) 838-5316

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Jason B. Kay (State Bar No. 31628)  
333 Six Forks Road, Suite 180  
Raleigh, North Carolina 27609  
Phone: (919) 838-5313  
Facsimile: (919) 838-5316

*Attorneys for the Plaintiffs*