

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20-CVS- 11891

J. NICHOLAS FOY, NATALIE S. FOY,
BRYAN CRUTCHER, SANDY BLAKELY
WHITE and STEPHEN LONNEN,

Plaintiffs,

v.

CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION, EARNEST WINSTON,
Superintendent of Charlotte-Mecklenburg
Schools and Chief Executive Officer of the
Charlotte-Mecklenburg Board of Education in
his official capacities, ELYSE DASHEW,
Chairperson of Charlotte-Mecklenburg Board of
Education in her official capacity, the NORTH
CAROLINA ASSOCIATION OF
EDUCATORS, INC., and the CHARLOTTE-
MECKLENBURG UNIT OF THE NORTH
CAROLINA EDUCATORS ASSOCIATION,
INC.,

Defendants.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

FILED
2020 SEP -3 A 11:09
MECKLENBURG CO., O.S.C.
BY _____

The Plaintiffs complain of the Defendants CHARLOTTE-MECKLENBURG BOARD OF EDUCATION (the "Board"), EARNEST WINSTON ("Mr. Winston"), Superintendent of Charlotte-Mecklenburg Schools ("CMS") and Chief Executive Officer of the Board in his official capacities, ELYSE DASHEW ("Ms. Dashew"), Chairperson of the Board in her official capacity, NORTH CAROLINA ASSOCIATION OF EDUCATORS, INC. ("NCAE") and CHARLOTTE-MECKLENBURG UNIT OF THE NORTH CAROLINA EDUCATORS ASSOCIATION, INC. (together with NORTH CAROLINA ASSOCIATION OF EDUCATORS, INC. "NCAE") as follows:

1. Plaintiff J. Nicholas Foy is a citizen and resident of Mecklenburg County, North Carolina and a parent of two minor children who are citizens and residents of Mecklenburg County, North Carolina.
2. Plaintiff Natalie S. Foy is a citizen and resident of Mecklenburg County, North Carolina and a parent of two minor children who are citizens and residents of Mecklenburg County, North Carolina.

3. Plaintiff Bryan Crutcher is a citizen and resident of Mecklenburg County, North Carolina and a parent of one minor child who is a citizen and resident of Mecklenburg County, North Carolina.
4. Plaintiff Sandy Blakely White is a citizen and resident of Mecklenburg County, North Carolina and a parent of two minor children who are citizens and residents of Mecklenburg County, North Carolina.
5. Plaintiff Stephen Lonnen is a citizen and resident of Mecklenburg County, North Carolina and a parent of two minor children who are citizens and residents of Mecklenburg County, North Carolina.
6. The Board is a governmental entity of the State of North Carolina.
7. The Board is charged with: 1) providing a public school system for Mecklenburg County, North Carolina; 2) establishing general policies in keeping with the needs of the community and the requirements of state law; and 3) performing all specific duties imposed by state and federal statutes.
8. Defendant Mr. Winston is made a party to this action in his official capacity as the Superintendent of CMS and the Chief Executive Officer of the Board.
9. Defendant Ms. Dashew is made a party to this action in her official capacity as the Chairperson of the Board.
10. Upon information and belief, Defendant NCAE is a non-profit corporation formed under the laws of the State of North Carolina with a principal place of business located in Wake County, North Carolina.
11. Upon information and belief, Defendant Charlotte-Mecklenburg Unit of the NCAE is a non-profit corporation formed under the laws of the State of North Carolina with a principal place of business located in Mecklenburg County, North Carolina.

NATURE OF THIS ACTION

12. This action arises from the Board's recent decision to suspend (the "Suspension") active educational instruction ("Active Instruction") of its 147,000 students (collectively, the "Students"), in favor of virtual or remote learning ("Virtual Instruction").
13. The continuing Suspension violates the North Carolina Constitution (the "Constitution") and North Carolina General Statutes.
14. In issuing the Suspension, the Board has failed and refused to faithfully perform its duties pursuant to its policies and bylaws.

15. In issuing the Suspension, the Board has failed and refused to take into proper consideration the education, health, general well-being and interests of the Students.

16. Specifically, the Defendants have failed to:

- a. Sufficiently prepare for Active Instruction for the 2020-2021 school year;
- b. Fully and faithfully consider the best interests of the Students, their parents (collectively, the “Parents”) and CMS teachers (collectively, the “Teachers”);
- c. Fully and faithfully consider the opinions of local, national and international health experts that the risks to Student well-being from Virtual Instruction far outweigh any potential benefits;
- d. Fully and faithfully consider the abundance of reliable local, national and international data in support of the conclusion that the Students can and should immediately return to Active Instruction; and
- e. Place the well-being of the Students above the agenda of the NCAE.

BACKGROUND AND FACTUAL ALLEGATIONS

Defendants’ actions related to COVID-19 response and returning Students to the classroom

17. On or about On May 4, 2020, North Carolina Governor Roy Cooper (the “Governor”) directed the public school systems of the state of North Carolina to resume instruction on August 17, 2020.

18. Under the Governor’s directive, due to the COVID-19 (also referred to as SARS-CoV-2) pandemic (the ‘Pandemic”), the state’s public school systems were provided with three potential options for the resumption of instruction:

- a. “PLAN A”: full Active Instruction;
- b. “PLAN B”: combination of Active Instruction and Virtual Instruction; or
- c. “PLAN C”: full Virtual Instruction.

19. Upon information and belief, on or about May 4, 2020, Mr. Winston directed CMS faculty and staff to prepare a plan (“CMS Plan B”) for the resumption of instruction that was based upon PLAN B.

20. Upon information and belief, Matt Hayes (“Mr. Hayes”), CMS’ Deputy Superintendent of Academic Services, and Carol Stamper (“Ms. Stamper”), CMS’ Deputy

Superintendent of Operations, together with approximately 80 CMS staff and faculty members began work on CMS Plan B in early to the middle of May, 2020.

21. Upon information and belief, in June of 2020, CMS conducted a survey (the "Staff Survey") of CMS staff and faculty asking whether they would return to school in an in-person instruction setting.
22. Upon information and belief, approximately 12,000 of approximately 19,000 CMS staff and faculty responded to the Staff Survey on or before July 8, 2020, with approximately 88% indicating that they would return to school for Active Instruction.
23. Upon information and belief, the Board never contacted any Parents regarding its planning for the 2020-2021 school year.
24. Upon information and belief, the Board never contacted any Students regarding its plans for the 2020-2021 school year.
25. Upon information and belief, the Board never contacted any community leaders regarding its plans for the 2020-2021 school year.
26. Upon information and belief, the only involvement that CMS faculty and staff members had with CMS' plans for the 2020-2021 school year was through their responses to the Staff Survey and the work of the 80 staff members who were asked to work on CMS Plan B.
27. At the July 1, 2020 Board meeting, the Board conducted a work session described on the meeting agenda as *Work Session on the Reopening of Schools for the 2020-2021 School Year*.
28. A copy of the presentation related to that work session is attached hereto as Exhibit "A" and incorporated herein by reference.
29. Upon information and belief, during the first two weeks of July, 2020, Mr. Hayes and Ms. Stamper briefed Mr. Winston and the Board members (individually or in small groups), on CMS Plan B.
30. Upon information and belief, CMS Plan B allowed for Active Instruction with a full virtual option for Students known as the Virtual Academy ("VA").
31. On or about July 14, 2020, and during a press conference (the "Press Conference"), the Governor announced that public school students in North Carolina would return to school on August 17, 2020, under a moderate social distancing plan consistent with PLAN B, with certain monitoring requirements for Students and Teachers.
32. During the Press Conference, the Governor further announced that individual school districts had the authority to restrict themselves to Virtual Instruction (PLAN C), if they

determined that it was in the best interests of the particular district's students, parents and teachers.

33. Also during the Press Conference, Dr. Mandy Cohen ("Dr. Cohen"), Secretary of the North Carolina Department of Health and Human Services, stated that:
 - a. The available scientific evidence indicated that children are less likely than adults to be infected with COVID-19 and were less likely to spread it to others;
 - b. Schools are a lower transmission setting and have not seemed to play a major role in the spread of COVID-19; and
 - c. There is conclusive evidence that school is critical to a child's education, health, emotional and social well-being, and that missing school is actually harmful to children and that she would be sending her children to an Active Instruction environment.
34. Also on July 14, 2020, the Board conducted a scheduled meeting.
35. Upon information and belief, during the July 14, 2020 meeting, Mr. Winston recommended to the Board that it approve CMS Plan B.
36. Upon information and belief, a majority of Board members were in favor of Mr. Winston's recommendation and intended to vote in favor of CMS Plan B.
37. Subsequently and on or around July 15, 2020, the Board called an emergency meeting (the "Emergency Meeting") to decide how CMS would resume instruction for the 2020-2021 school year.
38. At the Emergency Meeting, the Board was provided documents setting out the calendars for CMS Plan B and a CMS Plan C. See Exhibit "B" attached hereto and incorporated herein by reference.
39. Upon information and belief, on or around July 14, 2020, a Board member or an individual at the direction of a Board member(s) created a document entitled *Plan B + Remote*. See Exhibit "C" and incorporated herein by reference.
40. Upon information and belief, the Plan B + Remote document was not presented to the full Board until 4:00 p.m. during the closed session of the Emergency Meeting, resulting in the Board having very little time to review it.
41. During the Emergency Meeting, the Board also reviewed an outline of the VA. See Exhibit "D" attached hereto and incorporated herein by reference.

42. During the Emergency Meeting, Gibbie Harris (“Ms. Harris”), Mecklenburg County Public Health Director, advised the Board that “it is imperative that we get children back in the classroom.”
43. During the Emergency Meeting, Dr. Catherine Ohmstede (“Dr. Ohmstede”), Director of Pediatrics for Novant Health, advised the Board that while approximately 2,000 out of the 15,000 children (who were tested) had tested positive for COVID-19 in Mecklenburg County, only 10 were admitted to the hospital. Dr. Ohmstede further explained that most of the hospitalized children were admitted for precautionary measures and discharged quickly, except for one child who had significant pre-existing health issues.
44. Dr. Ohmstede further advised the Board that she and her husband, who is also a pediatrician, would be send their children to a school with Active Instruction and that it was safe to do so.
45. Despite its earlier favorable reception of CMS Plan B and the unanimous advice of Dr. Ohmstede and other local physicians and officials that Active Instruction was both necessary to Student well-being and safe, the Board rejected CMS Plan B in favor of Plan B + Remote.
46. Under Plan B + Remote, Students were to attend school in person for the first two weeks (on a rotating basis) and attend thereafter on a full virtual basis, until further notice.
47. The rejection of CMS Plan B constitutes the Suspension of Active Instruction in favor of Virtual Instruction.
48. Upon information and belief, Board members have repeatedly failed to identify any data or expert opinion suggesting that the risk of detriment to the Students associated with Active Instruction outweighs the risk of Virtual Instruction.
49. On July 15, 2020, the Charlotte Observer reported that between July 14, 2020 and July 15, 2020, “more than a thousand teachers and community members called on the Board to choose Plan C, citing increasing confirmed cases and concerns about the safety of students and teachers in two petitions to CMS.”

CMS and the Board have engaged in political activity in violation of and contrary to the North Carolina Constitution, North Carolina General Statutes and the health and well-being of CMS Students.

50. Upon information and belief, in and around the week(s) preceding the Emergency Meeting, members of the NCAE organized a campaign to improperly influence and intimidate the Board members and Mr. Winston into issuing the Suspension of Active Instruction.
51. Upon information and belief, this organized campaign included emails to the Board advocating for Suspension of Active Instruction.

52. Upon information and belief, the NCAE also sought to improperly influence CMS Teachers and staff into rejecting Active Instruction.
53. Upon information and belief, the focus of the NCAE is upon Teacher rather than Student welfare. To implement that focus, NCAE employs a staff of full-time lobbyists in Raleigh.
54. On its website, the NCAE states that is “has been instrumental in preserving educator salaries and longevity pay, protecting advanced degree pay and maintaining the state’s contribution to employee retirement.”
55. Because it is engaged in lobbying and collective bargaining for its members, the NCAE is the functional equivalent of a union.
56. On its website, the NCAE has organized a petition entitled “*Our Schools, Our Safety, Our Say*” that, upon information and belief, is designed to elevate the well-being of Teachers over that of the Students.
57. Upon information and belief, the NCAE holds the opinions of the Parents in low or non-existent regard.
58. The NCAE website states that “by acting together, we have the power to determine the conditions in which we will return to in person instruction. As front line workers who know how best to meet our children’s educational needs, we have the responsibility to ensure we do so safely.”
59. Upon information and belief, after the Emergency Meeting, Parents asked Ms. Dashew to participate in a town hall so that Parents could ask her direct questions.
60. Upon information and belief, Ms. Dashew has repeatedly declined and refused to engage with Parents and respond to their direct questions.
61. Instead of meeting with Parents, on July 21, 2020, Ms. Dashew participated in an “Education Town Hall” with State Representative Wesley Harris, State Representative Rachel Hunt, State Representative Brandon Lofton, Justin Parmenter (“Mr. Parmenter”), CMS Teacher and NCAE Region 3 Director, and Dr. Meg Sullivan, medical director of the Mecklenburg County Public Health Department.
62. Upon information and belief, the Education Town Hall was a political event disguised as a town hall and the panel participants, with perhaps one exception, were there to advance their political agendas and deny Students the opportunity to engage in Active Instruction.
63. Upon information and belief, at a scheduled Board meeting on July 21, 2020, Mr. Parmenter and other NCAE members spoke in opposition to Active Instruction.

64. On July 30, 2020, the Board amended its initial Suspension by voting to forego the original two-week in-person session, citing “staff shortages” as the reason for the change.
65. Upon information and belief, CMS’ staff shortages on or around July 30, 2020, were typical for CMS at that point in any given year.
66. Upon information and belief, on multiple occasions, Ms. Dashew has deferred to Mr. Parmenter to speak on behalf of Teachers, despite his clear bias against Active Instruction.
67. Upon information and belief, Ms. Dashew and Board member Carol Sawyer have published their support for the NCAE members and their agenda on Facebook and other social media platforms.
68. Upon information and belief, Ms. Dashew and some Board members are actively working in concert with the NCAE to advance the NCAE’s agenda at the expense of the Students, Parents and Teachers who wish to return to Active Instruction.

Physicians, medical experts, studies and current data indicate the risk to student health from returning to Active Instruction is far outweighed by the damage anticipated from Virtual Instruction.

69. According to the North Carolina Department of Health and Human Services (“NCDHHS”), as of August 26, 2020, there have been no COVID-19 deaths of persons under 25 years of age within the state of North Carolina.
70. According to the Mecklenburg County Health Department (“MCHD”), as of August 23, 2020, in Mecklenburg County (which has a population of 1.11 million people):
 - a. Two-hundred and eighty-two deaths have been attributed to COVID-19;
 - b. Of the 3,882 reported cases in individual under the age of 20, there have been no COVID-19 related deaths;
 - c. Approximately 43.7%, or 10,602 of COVID-19 reported cases were among adults ages 20 to 39 years old;
 - d. Approximately 1.4% or 4 of COVID-19 related deaths were among adults ages 20 to 39;
 - e. Approximately 28.2% of COVID-19 reported cases were among adults ages 40 to 59 years old;
 - f. Approximately 13% or 38 of COVID-19 related deaths were among adults ages 40 to 59;

- g. Approximately 12.1% of reported cases of COVID-19 have been in adults over the age of 60;
 - h. Approximately 85% of COVID-19 related deaths were among adults over the age of 60; and
 - i. All deaths in Mecklenburg County, except three, occurred among adults with underlying chronic illnesses.
71. Per the MCHD website, as of August 23, 2020, and since the Emergency Meeting, the Mecklenburg County prevalence of known confirmed COVID-19 cases has changed from 2.4 to 1.0 cases per 1000 and the positivity rate has changed from 10.1% to 6.2%.
72. According to the United States Center for Disease Control and Prevention (“CDC”), the influenza disease burden in 2017-2018 was:
- a. Approximately 45 million cases;
 - b. Approximately 21,000 medical visits;
 - c. Approximately 810,000 hospitalizations;
 - d. Approximately 61,000 deaths; and
 - e. Approximately 643 deaths in individuals ages 0-17.
73. According to the CDC, the influenza disease burden in 2018-2019 was:
- a. Approximately 35 million cases;
 - b. Approximately 16,500 medical visits;
 - c. Approximately 490,000 hospitalizations;
 - d. Approximately 34,000 deaths; and
 - e. Approximately 477 deaths in individuals ages 0-17.
74. According to the CDC website, as of August 1, 2020, A total of 44,865 laboratory-confirmed COVID-19-associated hospitalizations were reported.
75. On May 27, 2020, the American Academy of Pediatrics (“AAP”) published a paper entitled *COVID-19 Planning Considerations: Guidance for School Reentry* (“AAP Paper”), wherein the AAP:

- a. Strongly recommended that the coming school year start with a goal of having students physical present in school;
 - b. Discussed the health benefits that would be lost without in-person instruction such as child development, social and emotional skills, reliable nutrition, physical/speech and mental health therapy and opportunities for physical activity;
 - c. Stated that, “keeping schools closed places children and adolescents at considerable risk of morbidity and, in some cases, mortality”; and
 - d. Advised that “lengthy time away from school and associated interruption of supportive services often results in isolation, making it difficult for schools to identify and address important learning deficits as well as child and adolescent physical or sexual abuse, substance use, depression, and suicidal ideation.”
76. On July 23, 2020, the CDC published a report entitled *The Importance of Reopening America’s Schools this Fall* (“CDC July Report”) which stated that:
- a. Schools play a critical role in supporting the whole child, not just their academic achievement, including the development of social and emotional skills, and that a safe, connected environment such as school reduces students’ depression, anxiety, and thoughts of suicide; and
 - b. The harms attributed to closed schools on the social, emotional, and behavioral health, economic well-being, and academic achievement of children, in both the short- and long-term, are well-known and significant.
77. On August 14, 2020, in its *Morbidity and Mortality Weekly Report*, the CDC stated that 25.5% of Americans age 18 to 24 seriously considered suicide during the 30 days preceding report data collection, which represented a marked increase from the same period of last year.
78. On July 14, 2020, during a COVID webinar series, CDC Director Robert Redfield explained that:
- a. The cost to our nation in continuing to keep these schools closed is substantial;
 - b. School closures, particularly in high schools, have resulted in far more suicides than deaths from COVID-19; and
 - c. School closures have resulted in far more deaths from drug overdose that are above excess than deaths from COVID-19.
79. On July 7, 2020, the Public Health Agency of Sweden published a study entitled *Covid-19 in Schoolchildren*. This study found that:

- a. Closing of schools had no measurable effect on the number of cases of COVID-19 among children;
 - b. Children are not a major risk group of the COVID-19 disease and seem to play a less important role from the transmission point of view; and
 - c. The negative effects of closing schools must be weighed against the possible positive indirect effects it might have on the mitigation of the COVID-19 pandemic.
80. On July 15, 2020, the National Academies of Sciences, Engineering, and Medicine prepared a report entitled *Reopening K-12 Schools During the COVID-19 Pandemic: Prioritizing Health, Equity and Community* in which they weighed the health risks of reopening K-12 schools against the educational risks of providing no in-person instruction and concluded:
- a. That districts should weigh the relative health risks of reopening against the educational risks of providing no in-person instruction in Fall 2020; and
 - b. Given the importance of in-person interaction for learning and development, districts should prioritize reopening with an emphasis on providing full-time, in-person instruction in grades K-5 and for students with special needs who would be best served by in-person instruction.

Students are not spreaders of COVID-19.

81. On March 30, 2020, the Australian Research Council released a study entitled *Children are unlikely to have been the primary source of household SARS-CoV-2 infections* which looked at the early data from China, Singapore, South Korea, Japan, and Iran. The study concluded that while “SARS-CoV-2 can cause mild disease in children”, the data available to date suggests that children have not played a substantive role in the intra-household transmission of SARS-CoV-2.35.
82. On April 26, 2020, the Australia’s National Centre for Immunization Research and Surveillance published a study which found:
- a. no evidence of children infecting teachers;
 - b. the spread of COVID-19 within NSW (New South Wales) schools was very limited; and
 - c. that unlike other respiratory viruses, children are not the primary drivers of the spread of COVID- 19.

83. On May 18, 2020, during a video conference, European Union Education Ministers learned that since the reopening of schools in 22 member states, there had been no increase in infections of COVID-19 among students, teachers and parents.
84. On May 28, 2020, Eurosurveillance, Europe's journal on infectious disease surveillance, epidemiology, prevention and control, published an article entitled *No Evidence of Secondary Transmission of COVID-19 from Children Attending School in Ireland* showing that there was no evidence of secondary transmission of COVID-19 from children attending school in Ireland.
85. On June 23, 2020, the Institute Pasteur, published a study entitled *SARS-CoV-2 infection in Northern France: A retrospective cohort study in an area of high transmission* in which they found that infected children did not spread the virus to other children or to teachers or other school staff.
86. On July 8, 2020, the Prevent Epidemics website published a report entitled *Reopening America's Schools: A Public Health Approach* which showed children likely play a smaller role in transmission of COVID-19 than adults.
87. The British Columbia Centre for Disease Control website states that children are at low risk of catching and spreading COVID-19.
88. On July 15, 2020, the National Center for Biotechnology website published a study of 2,000 German school children and found that young people do not play a significant role in the transmission of the coronavirus, and that schools in Germany did not become hotspots after they were reopened.
89. On July 21, 2020, in an article published in The Times United Kingdom entitled *No known case of teacher catching coronavirus from pupils*, a leading British epidemiologist reported to the media that:
 - a. It may have been a mistake to close schools in March given the limited role children play in spreading the virus; and
 - b. There was no known case of a teacher catching coronavirus from pupils.
90. Upon information and belief, at least 22 countries currently have their schools open without social distancing, mask wearing, and other measures, yet these countries have not experienced an increase in COVID-19 cases or spread of the virus among children.

The digital divide created by remote learning harms students and in particular socioeconomically disadvantaged and minority students.

91. On August 19, 2020, the *Charlotte Agenda* published an article highlighting the digital divide within CMS and included an interview with a CMS teacher who stated that:
- a. “Kids who can afford internet are learning; kids who cannot afford internet are not”; and
 - b. “Every single day that we don’t have these hotspots is a day that (some) kids are not learning and other kids are.”
92. In May of 2020, Brown University published a study entitled *Projecting the potential impacts of COVID-19 school closures on academic achievement* which:
- a. Estimated the negative impacts of remote learning on some children to be a loss of 63-68% of the learning gains in reading relative to a typical school year;
 - b. Estimated the negative impacts of remote learning on some children to be a loss of 37-50% in learning gains in math;
 - c. Predicted that some students may come back close to a full year behind in math;
 - d. Stated that even when teachers are making themselves and their instructional materials available virtually, many students lack the means to consistently access online material from home;
 - e. Explained that there are many reasons to believe the COVID-19 impacts might be larger for children in poverty and children of color;
 - f. Analyzed evidence indicating remote learning leads to decreased teacher interaction with students; and
 - g. Looked at one national survey of teachers that found as of April 8, 2020, only 39% of teachers reported interacting with their students at least once a day, and that most teacher-student communication occurred over email.
93. A McKinsey & Company study entitled *COVID-19 and student learning in the United States: The hurt could last a lifetime* study predicted that:
- a. Even for children receiving average-quality online learning in the fall of 2020, students would lose three to four months of learning by January 2021; and
 - b. Black and Latino students would suffer a 15 to 20% greater loss in educational gains than other students.

94. A NAACP website article entitled *Coronavirus Impact on Students and Education Systems* concluded that:
- a. For students of color at all levels across the country, school closings create problems even more urgent than the interruption of their educations;
 - b. Schools also serve as a community nexus for food and housing;
 - c. Many Black students are eligible for the federal free or reduced-price lunch program (FRLP);
 - d. For high-poverty schools where more than 75% of students are eligible for FRLP, Black students accounted for 44% of those attending;
 - e. At schools where 50-75% percent of students are eligible for FRLP, Black students made up 30% of the student population; and
 - f. For students who rely on their schools as a reliable source of daily meals, school closings leave a critical gap.
95. By way of example of the effects of remote learning, the Los Angeles Times reported on March 30, 2020, that less than two weeks after the California schools shut down on March 16, 2020, Los Angeles School District officials admitted that 15,000 students were completely unaccounted for and more than 40,000 had not been in daily contact with their teachers.
96. A study conducted by the Los Angeles Unified School District regarding the time period of March 16, 2020 and May 22, 2020 and reported on July 1, 2020, found that on an average day:
- a. Only 36% of middle and high school students participated online;
 - b. Approximately 25% of middle and high school students logged on or viewed work only;
 - c. Approximately 40% of middle and high school students were absent;
 - d. Black and Latino students showed participation rates between 10 and 20 percentage points lower than white and Asian peers; and
 - e. English learners, students with disabilities, homeless students and those in the foster-care system had lower rates of online participation.
97. The CDC July Report states that the lack of in-person educational options disproportionately harms low-income and minority children and those living with disabilities in that:

- a. Those students are far less likely to have access to private instruction and care; and
- b. Those students are far more likely to rely on key school-supported resources like food programs, special education services, counseling, and after-school programs to meet basic developmental needs.

Virtual Instruction poses child safety concerns.

98. Upon information and belief, as mandatory reporters, teachers who have daily contact with children are in the best position to notice and report suspected child abuse.
99. In an article published on its website entitled *For the First Time Ever, Minors Make Up Half of Visitors to National Sexual Assault Hotline*, the Rape, Abuse, & Incest National Network (RAINN) stated that:
- a. Many minors are now quarantined at home with their abusers, and are, therefore, kids are cut off from their safety net of teachers, coaches, and friends' parents who are most likely to notice and report suspected abuse; and
 - b. Abuse reports to many state authorities have declined not because there is less abuse taking place, but because children have less contact with adults outside the home who could potentially spot and report abuse.
100. The CDC July Report states that;
- a. Teachers and educational staff report more than one-fifth of all child abuse cases;
 - b. During school closures there has been a sharp decline in reports of suspected maltreatment; and
 - c. Hospitals have seen an increase in hospitalizations of children suffering from abuse.
101. Upon information and belief, while child abuse reports have declined, hospitals across the country are reporting higher numbers of physically abused children which indicates that abuse is not being detected in time.

The Board has failed and refused to properly evaluate Virtual Instruction and to work toward returning to Active Instruction as soon as possible.

102. At the outset of the Pandemic, in March of 2020, CMS (and other North Carolina public schools) implemented a form of Virtual Instruction.

103. Upon information and belief, thousands of Students dropped out (“Drop Outs”) from CMS and had no further engagement with their classes or teachers.
104. Upon information and belief, CMS has not conducted any study of the precise number of Drop Outs, their age or the schools within CMS from which they disengaged.
105. Upon information and belief, CMS has failed and refused to respond to questions from Parents regarding CMS’ plan to address Drop Outs during the 2020-2021 school year.
106. Upon information and belief, CMS has failed and refused to respond to questions from Parents regarding the deleterious effect upon Student development that is likely with Virtual Instruction.
107. Upon information and belief, CMS has failed and refused to respond to questions from Parents regarding the potential disproportionate impact of Virtual Instruction on disadvantaged communities.
108. Upon information and belief, on or around August 19, 2020, CMS believed it would need approximately 18,000 wi-fi hot posts so that Students could participate in Virtual Instruction.
109. Upon information and belief, thousands of Students would be unable to participate in Virtual Instruction without the additional hot spots.
110. Upon information and belief, on August 25, 2020, the Board conducted a regularly scheduled meeting.
111. Upon information and belief and despite the overwhelming data and evidence that Students must return to the classroom, the Board failed and refused to discuss an actual plan to transition to Active Instruction at the August 25, 2020 Board meeting.
112. Upon information and belief, during the August 25, 2020 meeting, the Board passed a proposal which enables CMS to enter into contractual agreements with community-based organizations to establish remote learning facilities for CMS Students.
113. Upon information and belief, during the August 25, 2020, meeting, the Board reviewed a presentation entitled *Opening of Schools Template* which, amongst other things, stated the following:
 - a. Approximately 500 teachers (approximately 5.5% of CMS teachers) have been approved to work from home.
 - b. Four teachers have taken a COVID-19 related leaves of absence;
 - c. There are 41 teacher vacancies (approximately .45% of total teachers at CMS);

- d. There are 29 custodial vacancies; and
- e. There are 14 bus driver vacancies.

FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS
Declaratory Judgment for
Violation of the North Carolina Constitution

- 114. The preceding allegations are incorporated herein by reference.
- 115. This is an action for declaratory judgment pursuant to North Carolina General Statutes Article 26 §1-253 *et. seq.* for the purpose of determining the rights, status and legal relations of the parties.
- 116. An actual controversy of a justiciable issue between the parties exists.
- 117. Article I, Declaration of Rights, Section 15, Education of the North Carolina Constitution states 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.”
- 118. The Plaintiffs, their children and the Students are guaranteed the right to a sound basic education under the North Carolina Constitution.
- 119. In North Carolina, a sound basic education provides sufficient ability to read, write, speak English and sufficient knowledge of fundamental math and physical science to enable students to function in a complex and rapidly changing society.
- 120. In North Carolina, a sound basic education provides sufficient fundamental knowledge of geography, history, basic economic and political systems to enable students to make informed choices about issues that affect the student (personally, or in the student’s community, state, and nation).
- 121. In North Carolina, a sound basic education provides sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training and to compete with others in further formal education or gainful employment.
- 122. Upon information and belief, Defendants have deprived the children of the Plaintiffs of their Constitutional rights by precluding them from receiving a sound basic education, because: 1) Virtual Instruction significantly impairs their education; 2) Students’ mental health is actively compromised; (3) many Students have no, limited or inconsistent access to the internet; (4) Students are in danger; and (5) many Students will fail to engage and drop out.
- 123. Upon information and belief, Defendants lack any compelling, or even rational, interest for burdening Plaintiffs’ children of their fundamental right to a sound basic

education. The weight of the evidence shows that children's transmission and infection rates of COVID-19 cannot justify the denial of Active Instruction.

124. Upon information and belief, Defendants have ignored the virtual absence of risk to Student health from COVID-19.
125. Upon information and belief, Defendants have ignored that any risk to Teachers may be mitigated through protection of those who have pre-existing conditions.
126. Upon information and belief, the challenges posed by managing risk to Teachers is significantly less than the harm being inflicted on Students and Parents through the deprivation of their Constitutional rights.
127. Upon information and belief, Defendants have acted arbitrarily and with deliberate indifference toward the unduly harsh effects their school restrictions have on minorities and socioeconomically disadvantaged Students and Parents who have less access to technology, are provided less effective distance-learning, and are more heavily impacted by the lack of Active Instruction.
128. Upon information and belief, Defendants have acted knowingly, recklessly, and with deliberate indifference to the rights of special needs Students in Mecklenburg County by preventing CMS from providing special needs Students with specialized instruction and related services commensurate with the schools' obligations under the North Carolina Constitution.
129. Pursuant to the Constitution, Plaintiffs are entitled to declaratory relief by way of rescinding the Suspension and reestablishing Active Instruction to the fullest extent allowed in North Carolina.

SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS
Declaratory Relief for Violation of North Carolina General Statutes § 115C-1

130. The preceding allegations are incorporated herein by reference.
131. This is an action for declaratory judgment pursuant to North Carolina General Statutes Article 26 §1-253 *et. seq.* for the purpose of determining the rights, status and legal relations of the parties.
132. An actual controversy of a justiciable issue between the parties exists.
133. N.C.G.S. §115C mandates 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. Tuition shall be free of charge to all children of the State, and to every person of the State less than 21 years old, who has not completed a standard high school course of study. There shall be operated in every local school administrative

unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor.”

134. The framework for reopening CMS arbitrarily treats Plaintiffs’ children (and all CMS Students) differently from those in nearby school districts; from those in private schools; and from those in childcare, even though all such children and their families are similarly situated.
135. The risk of exposure or transmission of COVID-19 within in any particular North Carolina county is substantially the same whether children are at school or daycare. Children at daycare and in school will be in the presence of other children, in an enclosed or semi-enclosed space, overseen by an older person(s) not comprised of the child’s family unit, for an extended period, and industry guidance issued for schools and daycare contain the same or essentially the same protocols.
136. Upon information and belief, Defendants’ actions arbitrarily restrict access to schools based on the location of the school.
137. Upon information and belief, Defendants have acted arbitrarily and with deliberate indifference toward the unduly harsh effects their school restrictions have on all CMS Students.
138. Upon information and belief, Defendants have acted arbitrarily and with deliberate indifference toward the unduly harsh effects their school restrictions have on minorities and socioeconomically disadvantaged Students who have less access to technology, are provided less effective distance-learning, and are more heavily impacted by the lack of Active Instruction.
139. Upon information and belief, Defendants have acted knowingly, recklessly, and with deliberate indifference to the rights of special needs children in Mecklenburg County by forcibly preventing CMS from providing special needs Students with specialized instruction and related services commensurate with the schools’ obligations under the North Carolina General Statutes, as well as from providing special needs Students equal access to education as required by same.
140. Pursuant to the North Carolina General Statutes, Plaintiffs are entitled to declaratory relief by way of rescinding the Suspension and reestablishing Active Instruction to the fullest extent allowed in North Carolina.

THIRD CLAIM FOR RELIEF AGAINST THE BOARD, MS. DASHEW AND NCAE
Declaratory Judgment for Violation of
North Carolina General Statutes § 95-98

141. The preceding allegations are incorporated herein by reference.

142. This is an action for declaratory judgment pursuant to North Carolina General Statutes Article 26 §1-253 *et. seq.* for the purpose of determining the rights, status and legal relations of the parties.
143. An actual controversy of a justiciable issue between the parties exists.
144. N.C.G.S. § 95-98 states that “[a]ny agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.”
145. N.C.G.S. 98.98.1 states that “[s]trikes by public employees are hereby declared illegal and against the public policy of this State. No person holding a position either full- or part-time by appointment or employment with the State of North Carolina or in any county, city, town or other political subdivision of the State of North Carolina, or in any agency of any of them, shall willfully participate in a strike by public employees.”
146. N.C.G.S. 95-98.2 states that “[t]he word ‘strike’ as used herein shall mean a cessation or deliberate slowing down of work by a combination of persons as a means of enforcing compliance with a demand upon the employer, but shall not include protected activity under Article 16 of this Chapter: Provided, however, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.”
147. Upon information and belief, some members of the Board are promoting the NCAE agenda.
148. Upon information and belief, the Board and NCAE have entered into an implicit agreement under which NCAE purports to represent CMS Teachers in the manner of a labor union.
149. Upon information and belief, NCAE has coordinated a deliberate slowing down of work of CMS by way of denying and/or delaying Active Instruction to CMS Students in order advance and enforce compliance with NCAE’s agenda.
150. The actions of the Board, Ms. Dashew and NCAE actions are in violation of N.C.G.S. § 95-98.
151. Pursuant to the North Carolina General Statutes, Plaintiffs are entitled to declaratory relief by way of prohibiting the Board, Ms. Dashew and NCAE from

implicitly or explicitly engaging in any negotiations, bargaining, strikes, slow down or any other activities prohibited by N.C.G.S. § 95-98.

FOURTH CLAIM FOR RELIEF
Preliminary Injunction

152. The preceding allegations are incorporated herein by reference
153. Plaintiffs have properly brought the issue of the legality of Defendants' actions before the Court.
154. Plaintiffs have a substantial likelihood of success on the merits on their claims for declaratory relief.
155. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their Constitutional under Article I, Declaration of Rights, Section 15, Education of the North Carolina Constitution unless Defendants are enjoined from continuing the ban on Active Instruction and are compelled to reestablish Active Instruction to the fullest extent allowed in North Carolina.
156. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm from Defendants' violation of North Carolina General Statutes N.C.G.S. §115C unless Defendants are enjoined from continuing the ban on Active Instruction and are compelled to reestablish Active Instruction to the fullest extent allowed in North Carolina.
157. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm for violation of North Carolina General Statutes unless Defendants are enjoined from their continuing violations of N.C.G.S. § 95-98.

WHEREFORE, Plaintiffs respectfully request that the Court:

- 1) Enter a preliminary injunction enjoining the Defendants' ban on Active Instruction, compelling Defendants to reestablish Active Instruction to the fullest extent permitted by the Governor of the State of North Carolina;
- 2) Grant a declaratory judgment in favor of Plaintiffs arising from the Defendants' violations of the North Carolina Constitution and North Carolina General Statutes;
- 3) That the matter be tried to a jury to the extent permissible;
- 4) That the costs of this action be taxed to Defendants; and
- 5) For such other and further and relief as the Court shall deem just and proper.

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