NORTH CAROLINA CARTERET COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24 CVS 278
FRANCES SPENCER, MICKEY MARSH, MARSH'S SURF-'N-SEA, INC. (dba MARSH'S SURF SHOP), JOHN MORROW, CHARLES MORROW, ATLANTIC BEACH SURF SHOP, INC, JEFFREY G. GARNER, and SANITARY FISH MARKET & RESTAURANT, INC. Plaintiffs, v. CARTERET COUNTY BOARD OF EDUCATION, and KATHRYN SMITH CHADWICK, KATIE STATLER, BRITTANY WHEATLY, TRAVIS DAY, DENNIS GOODWIN, CLARK JENKINS, and DANA VINSON MULL, in their official capacities as members of the Carteret County Board of Education Defendants.	**PLAINTIFFS' BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND SUMMARY JUDGMENT**

Plaintiffs in this matter, parents of schoolchildren attending Carteret County Public Schools who are also local business owners, submit this brief in support of their motion for declaratory judgment and summary judgment. Plaintiffs seek a declaration that the school calendar recently adopted by the Carteret County Board of Education (the "School Board" or "Board") for the 2024-25 school year violates N.C. Gen. Stat. § 115C-84.2(d) (the "School Calendar Law") and is therefore invalid.

Under N.C. Gen. Stat. § 115C-84.2(d), for traditional public schools except for year-round schools, "the opening date for students shall be no earlier than the Monday closest to August 26." However, this Board has adopted a school calendar for 2024-25 which starts on August 13, 2024 – nine school days early. The Board adopted this calendar in open violation of the law, after

rejecting a proposed calendar which was legal and after being told by staff: "You have to follow the law." But they did not follow the law.

The law could not be clearer. The Board has already filed an answer and admits they have adopted a calendar which violates N.C. Gen. Stat. § 115C-84.2(d). The Board raises some defenses in a recently filed motion to dismiss, including a spurious claim that the School Calendar Law is unconstitutional. These defenses are wholly without merit and are no impediment to entry of a declaratory judgment that the calendar violates N.C. Gen. Stat. § 115C-84.2(d).

N.C. Gen. Stat. § 115C-84.2 is no different from many other State statutes which govern the State's educational system. Local boards of education are not free to pick and choose which educational laws they want to follow. For example, the calendar statute requires every school district to have a minimum of 1,025 hours or 185 days of calendar instruction every year – a board of education cannot merely decide to only provide 950 hours or 150 days of instruction because they think that would be sufficient and would cost less. They must follow the law.

This case is simply about enforcement of the law. If the School Board wants to the law to be different, they can advocate to the General Assembly for change.

This case is not about whether the School Board thinks a different calendar would be better for students than what state law requires. That is a question for the legislature, who has the authority and power to make these policy decisions.

LEGAL BACKGROUND

Under Article IX of the North Carolina Constitution, the State Board of Education ("State Board") is created to "supervise and administer the free public school system" of the State, and the Superintendent of Public Instruction is the secretary and chief administrative officer of the State Board. N.C. Const., Art. IX, Sec. 4-5. The State Board "shall make all needed rules and

regulations in relation" to supervising and administering the public school system, "subject to laws enacted by the General Assembly." *Id.* at Sec. 5.

Chapter 115C of the General Statutes, titled "Elementary and Secondary Education", which is currently about six hundred pages in length, are the statutes which control and govern the State's school system. School boards have to follow Chapter 115C, they do not have authority to act except as provided in that chapter. Among other things, Chapter 115C delineates the power of the State Board and local boards of education. Among the powers of local boards of education is the power to set local school calendars within the rules set forth in N.C. Gen. Stat. § 115C-84.2. *See* N.C. Gen. Stat. § 115C-47(12) (statute setting limits of authority of local boards).

N.C. Gen. Stat. § 115C-84.2, first adopted in 1997, is a statute which sets forth the statutory requirements within which local boards of education can set their school calendars. It includes a number of requirements, starting with a requirement that a minimum of 185 days or 1025 hours of instruction must be offered. N.C. Gen. Stat. § 115C-84.2(a)(1). A local board cannot decide in their discretion to deviate from that requirement because they personally believe fewer hours of instruction taught with more intense methods should suffice. The local board has to carry out the law as written.

Section 115C-84.2 also includes a number of specific requirements for when school can and cannot be held. For example, local school districts cannot hold school on Sundays, cannot hold school on Veterans' Day, and have specific limits on teacher workdays and when 10-month employee teachers can be required to work. N.C. Gen. Stat. § 115C-84.2(b).

Lastly, since 2004 section 115C-84.2 has also included specific requirements for when school systems can open and close. N.C. Gen. Stat. § 115C-84.2(d). Aside from minor amendments, the law has been substantially the same for 20 years. It now generally requires that

"the opening date for students shall be no earlier than the Monday closest to August 26, and the closing date for students shall be no later than the Friday closest to June 11." There is an exception for schools with a history of extreme weather issues that allows them to request to start a week earlier. There is also an exception for year-round schools. *See id.* at §§ 115C-84.2(d), and (f)(5) (definition of year-round school). The year-round rules would allow Carteret County Public Schools to open as early as July 1 every year, but also requires them to provide year-round instructional activities as set forth in § 115C-84.2(f)(5).

Since 2004, there have been policy debates from advocates for and against the calendar requirements in § 115C-84.2. Some of these debates have led to amendments to the statute. For example, in 2012, the statute was amended to its current incarnation of "Monday closest to August 26" and "Friday closest to June 11" – prior to 2012 it had fixed dates of August 25 and June 10 as the starting and closing dates. N.C. Sess. Law. 2012-145, Section 7A.11.(a). Thus, the 2012 amendment provided a bit more flexibility to local districts than they had before. Similarly, for the 2020-21 school year, the General Assembly allowed a one-year relaxation of the School Calendar Law due to lost learning time for COVID.

None of these policy debates, however, affect the clear directives and language of what the statute requires. The North Carolina Constitution accords the State Board the power to supervise the state's public schools, subject to the enactments of the General Assembly. The General Assembly has adopted a statute which specifically governs how local boards of education must set their calendars in N.C. Gen. Stat. § 115C-84.2.

Over the past two years or so, some local school districts in North Carolina (though a distinct minority of the State's 115 school districts) have started to openly violate § 115C-84.2 by adopting school calendars which open earlier than allowed by law. Before this current lawsuit,

only one legal challenge has been filed to such an illegal calendar: In 2023, a lawsuit was filed against the Union County School Board by two district parents for adopting a calendar which would start three weeks earlier than permitted by law. In the face of that lawsuit, the School Board held a special meeting and rescinded the illegal calendar in favor of a legal calendar.

In voting to reverse their illegal calendar in Union County, Board member Todd Price commented:

> [S]imply put, it's not legal based on current law. And as a steward of the county's money, fighting a lawsuit with a zero percent chance of winning, it's just a waste of money.

Likewise, Board member John Kirkpatrick IV stated, talking about his prior vote to adopt an illegal calendar:

> I would like to apologize for not upholding what I know is the right thing to do, for the sake of not just our young people but just doing what's right. You know, we all don't agree with certain things, but it doesn't give us the right just to break it.

Union County Board Reverses Vote to Defy NC School Calendar Law, WFAE (January 27, 2023) (attached).

CARTERET COUNTY BACKGROUND

The factual allegations of the Complaint, which have been verified by Plaintiffs, are summarized below. The Defendant School Board has filed an answer which admits the legally relevant allegations that the School Board has adopted a 2024-25 school calendar which does not comply with N.C. Gen. Stat. § 115C-84.2.

Under the School Calendar Law, school boards do not simply adopt a calendar without public input. Instead, they are required to "consult with parents and the employed public school personnel in the development of the school calendar." N.C. Gen. Stat. § 115C-84.2(a). This is also what happened in Carteret County. Teachers, parents, principals, and parent advisory groups worked together to make recommendations, and staff developed a calendar from that input. For

the 2024-25 school year, this process was followed, and a *legal* calendar was presented to the Board on December 5, 2023.

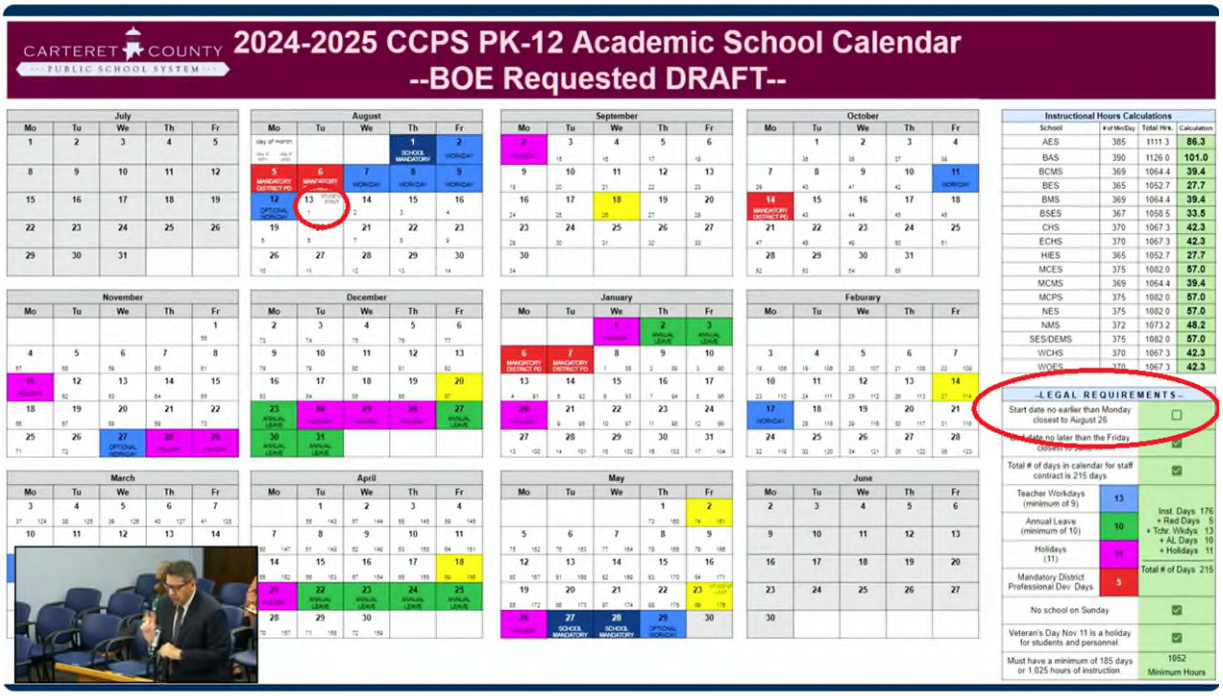
At the School Board's December 5, 2023, meeting, this legal calendar was on the agenda and was presented to the School Board. The presentation of staff plainly set forth the legal requirements of the School Calendar Law, including that the legally required start date of the calendar for 2024 could not be before August 26, 2024 (Screenshot):



Instead of adopting this legal calendar, however, the Board also had apparently directed staff to prepare an illegal calendar which started prior to August 26. The staff presenter told the Board at the meeting "you have the follow the law," even if the illegal calendar might be preferable to some. But by unanimous voice vote, the Board adopted an illegal calendar starting instruction for students on August 13, 2024.

At some point recently, after the turn of the year, this illegal calendar was posted on the school system's website, which is attached to the Complaint as **Exhibit A.** The school system's website makes no reference to the fact the calendar is illegal and unenforceable.

Video of the December 5, 2023, Board discussion is available on YouTube at https://www.youtube.com/watch?v=22aGfIfkJAc24:07. The discussion of the legal calendar starts at 24:07 and lasts for about eight minutes. The illegal calendar is first mentioned at 32:38 and adopted *within four minutes*. The school system's presenter appears to be visibly nervous as he presents the illegal calendar. Indeed, when he puts the illegal calendar up on his PowerPoint, it shows a student start date of August 13 – while stating on the right column of his same slide that the "legal requirement" is that the school start date cannot be prior to the Monday closest to August 26 (screenshot):



Plaintiffs in this matter did not learn about the new calendar, and the fact that it was illegal, until many weeks after it was adopted. Plaintiff Frances Spencer's mother reached out to the school system to ask how they could adopt this illegal calendar after finding out about it. She was provided with some materials about groups who are advocating for the School Calendar Law to be changed. No valid justification for their illegal action was provided.

The plaintiffs in this lawsuit include four parents of children in the school district and one grandparent. All the plaintiffs are also business owners in Carteret County who own businesses related to the tourism industry, which is the main economic driver of the Carteret County economy, and in turn generates the tax revenues necessary to fund public education. The Plaintiffs rely on the School Calendar Law in planning and running their business, and they rely on the school calendar in planning the year for their families as well.

Plaintiffs simply want the Defendant School Board to follow the law. Even if the Board disagrees with the law, and even if the school district advocates for changes in the law, it must follow the law as written while it is effective. Indeed, while this matter is a civil lawsuit, under the criminal laws of this State the willful failure of a school board member to follow the law is a criminal Class 1 misdemeanor under N.C. Gen. Stat. § 14-230, which can be punishable by removal from office.

The few districts like the Carteret County school system that have voted to openly violate the law are acting in an unprecedented fashion. There is no debate about what the statute requires. Defendant's actions are in open defiance of the law.

PROCEDURAL HISTORY

This lawsuit was filed on April 5, 2024. A courtesy copy of the lawsuit was provided to the Board's regular outside counsel Neil B. Whitford on April 4. Defendants filed an acceptance of service on April 11, and Eva B. DuBuisson and Stephen G. Rawson of the Tharrington Smith law firm in Raleigh also appeared as counsel for the school system on that same date.

On April 19, 2024, Plaintiffs' counsel noted to Defendants' counsel that once the case was 30 days old, Plaintiffs would be entitled to file a motion for declaratory judgment and would notice the same for the next available civil motion session in Carteret County on May 20, 2024. This

would allow for a final judgment months before the intended illegal intended start date of August 13 (nine school days earlier than permitted by law). No objections or impediments to proceeding on May 20, 2024, were raised by any party.

On May 6, 2024 (the first business day 30 days after the Complaint was filed), Plaintiffs filed and served their motion for summary judgment/declaratory judgment. On May 10, 2024, Defendants filed their Answer and Motion to Dismiss.

ARGUMENT

I. The Carteret County 2024-25 School Calendar Violates N.C. Gen. Stat. § 115C-84.2 and Should be Declared Invalid.

Under N.C. Gen. Stat. § 1-253 *et seq,* a party may bring an action for declaratory judgment, and "such declarations shall have the force of and effect of a final judgment or decree."

There is no question that the calendar which the School Board has adopted for the 2024-25 school year violates N.C. Gen. Stat. § 115C-84.2(d) by setting a start date of August 13, 2024. That is nine school days earlier than the earliest date on which schools can start this year – August 26. There are no disputed issues of fact or questions on law, and a prompt declaration by this Court is requested.

But for the fact that the School Board has raised meritless defenses to this lawsuit, this brief could end right here. The facts and law are clear, and the Plaintiffs are entitled to a declaratory judgment.

II. Plaintiffs Have Standing To Bring This Suit.

Defendants' motion to dismiss first claims that the Plaintiff parents and business owners in this lawsuit lack standing to bring this action. The motion cites a few cases not on point and somehow overlooks a direct binding precedent on point that holds that parents have standing a bring

a declaratory judgment action to challenge a school calendar adopted by a school district under N.C. Gen. Stat. § 115C-84.2.

In *Wake Cares Inc. v. Wake County Board of Education*, 660 S.E.2d 217 (N.C. App. 2008), *aff'd* 675 S.E.2d. 345 (N.C. 2009) (both attached), a group of parents brought a claim under the Declaratory Judgment Act seeking a declaration that the Wake County School System could not assign students to mandatory year-round calendar despite that being permitted under N.C. Gen. Stat. § 115C-84.2. (Year-round schools are one of the calendar options directly authorized in § 115C-84.2.)

In that case, the Court of Appeals directly held that parents of children in the school district seeking to challenge the school board's mandatory year-round calendar have standing. The Court noted that each of the students in that case was assigned to a school covered by the challenged calendar (just as is the case here) and held that a "declaratory judgment as to the authority of the Board and the rights of the parents and students would terminate and afford relief from the uncertainty, insecurity, and controversy currently existing." *Id.* at 224. "Accordingly, the individual plaintiffs have standing to seek a declaratory judgment" regarding the legality of the school calendar. *Id.*

The standing holding in the Court of Appeals' *Wake Cares* opinion directly applies here. Plaintiffs are parents and business owners who allege they will be adversely affected by a local school board calendar which they assert violates N.C. Gen. Stat. § 115C-84.2. They have children who attend schools in the district and are being told they must comply with this calendar. This is the same situation as in *Wake Cares*. Indeed, the North Carolina Supreme Court proceeded to affirm the Court of Appeals decision in *Wake Cares* without even further questioning the issue of whether the plaintiffs had standing.

Defendant's argument that Plaintiffs do not have a private right of action under N.C. Gen. Stat. § 115C-84.2 is irrelevant. Plaintiffs plainly have a right to seek a declaratory judgment as to whether the calendar complies with the statute, as confirmed in *Wake Cares*. This lawsuit is not a claim for damages against the school district. The Complaint does not ask the Court to recognize a private right of action, as it is not necessary.

III. Any Argument That N.C. Gen. Stat. § 115C-84.2 Is "Unconstitutional" Is Frivolous.

Defendants' motion to dismiss also includes an argument that N.C. Gen. Stat. § 115C-84.2 is "facially unconstitutional," because they claim that not all schools and students are subject to the same calendar requirements.

This argument is without merit and was also rejected by the North Carolina Supreme Court in *Wake Cares*. There, the Court held that the state's constitutional requirement of a "general and uniform system of free public schools" has no application to the school calendar. While "'the general and uniform' system of public schools indicates 'a fundamental right to a second basic education' . . . "[t]he "constitutional guarantee of the opportunity for a sound basic education does not require, however, 'that equal educational opportunities be afforded students in all of the school districts of the state'." *Wake Cares,* 675 S.E.2d at 350 (quoting *Leandro v. State*, 346 S.E.2d 336, 348, 488 S.E.2d 249, 255 (1997)). Thus, the Supreme Court held that "while the educational opportunities to children attending year-round schools may differ from those available to pupils at traditional schools, these differences do not remove year-round schools from the 'uniform system' of public schools." *Id.* In other words, the Supreme Court has already held that the state constitution does not provide a constitutional right to a particular school calendar, and that different school calendars may be provided to different students and districts.

Just as the Supreme Court held in *Wake Cares* that there is no constitutional impediment to a school district requiring its students to follow a year-round school calendar – a calendar which

is very different than for traditional calendar schools – is it without merit for the School Board here to argue that N.C. Gen. Stat. § 115C-84.2 is unconstitutional for putting some simple guardrails on the discretion of local districts to decide when traditional calendar schools can open and close. Surely the School Board is not contending that it has a constitutional right to choose its own calendar – because the State Constitution plainly puts the power to supervise schools with the State Board of Education and laws of the General Assembly – *not* with local school boards. Even in *Wake Cares*, it was *parents* challenging the constitutionality of a calendar allowed by N.C. Gen. Stat. § 115C-84.2, *not a school board*. The idea that a *school board* would assert it has a constitutional right not to follow N.C. Gen. Stat. § 115C-84.2 is truly remarkable.

IV. The School Board's Frivolous Constitutional Defense Does Not Require Transfer.

Furthermore, even if the School Board's constitutional defense had any merit, the School Board's argument, that their constitutional defense is also a "facial challenge" to N.C. Gen. Stat. § 115C-84.2 which requires transfer to a three-judge panel in Wake County, is also without merit.

The very allegations of their motion to dismiss, as to constitutionality, claim that N.C. Gen. Stat. § 115C-84.2 is unconstitutional "in light of the myriad schools and students who are not subject to the calendar law." In other words, the School Board is not arguing that N.C. Gen. Stat. § 115C-84.2 is invalid on its face, but that is invalid *as applied*, because it does not apply to all schools and all students in all circumstances, depending on the application of other state statutes and types of schools. That constitutional challenge requires a court to go beyond the facial language of N.C. Gen. Stat. § 115C-84.2.

As our Supreme Court has held, a facial challenge to the constitutionality of a statute "*must establish that no set of circumstances exists under which the [a]ct would be valid." State v. Thompson*, 349 N.C. 483, 491, 508 S.E.2d 277, 282 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 445 (1987))(emphasis added). "A facial challenge to a legislative [a]ct is, of course, the

most difficult challenge to mount successfully." *Id.* "The presumption is that any act passed by the legislature is constitutional, and the court will not strike it down if [it] can be upheld on any reasonable ground." *Id.* (quoting *Ramsey v. N.C. Veterans Comm'n,* 261 N.C. 645, 647, 135 S.E.2d 659, 661 (1964)). And here, the School Calendar Law has already been upheld as constitutional as applied to Wake County's use of year-round calendars in the *Wake Cares* case.

The School Board here is not truly challenging N.C. Gen. Stat. § 115C-84.2 as being unconstitutional on its face. They are only attacking the opening and closing date requirements of N.C. Gen. Stat. § 115C-84.2(d), because as applied not all districts are subject to it. Some districts have year-round schools, some districts have weather-related exemptions, and charter schools also have different calendar requirements.

For this Court to consider the School Board's constitutional defense to be a facial challenge, the Court would need to construe their defense as being that a statute stating that schools cannot start classes before the Monday closest to August 26 and cannot close after the Friday closed to June 11, is *unconstitutional on its face, i.e.,* that such a statute simply cannot exist under our State Constitution. That is an absurd argument, but that is also not their argument. Their argument (although foreclosed by *Wake Cares*) is that N.C. Gen. Stat. § 115C-84.2(d) is unconstitutional as applied to Carteret County Public Schools. That is a not a facial challenge to constitutionality, and is therefore not subject to transfer to a three-judge panel in Wake County under N.C. Gen. Stat. § 1-267.1.

V. Attorneys' Fees

The School Board also moves to dismiss the Complaint's allegations seeking to assert the right to recover attorneys' fees under N.C. Gen. Stat. § 6-21.7 and N.C. Gen. Stat. § 6-21.5

Plaintiffs contend that they are entitled an award of attorneys' fees, the amount to be set at a further hearing after judgment is entered. The actions of the School Board in openly violating

N.C. Gen. Stat. § 115C-84.2—even in the face of the lawsuit—are simply without precedent. The minority of districts who have chosen to adopt an illegal calendar in the past two years know they can be sued and hope they will not be sued. They also hope the law will be changed, but it has not been changed. When Union County was sued last year, they promptly rescinded the illegal calendar, despite some board members' not wanting to, because they knew it was wrong and did not want to pay attorneys' fees.

In light of the unprecedented actions of the Carteret County School Board, and their refusal to rectify the matter after suit was filed, Plaintiffs urge that they be awarded attorneys' fees.

As the North Carolina Supreme Court and North Carolina Court of Appeals both noted in their respective opinions in *Wake Cares*, if a party does not prefer the calendars required and allowed by the School Calendar Law, their remedy "lies with the electoral process or through communications with the legislative and executive branches of government." 675 S.E.2d at 345 and 660 S.E.2d at 233. The School Board here must follow N.C. Gen. Stat. § 115C-84.2 as written and may not openly defy the law without consequence.

CONCLUSION

In conclusion, Plaintiffs ask this court to enter a declaratory judgment that the Carteret County 2024-25 school calendar violates N.C. Gen. Stat. § 115C-84.2 and is therefore invalid, and for other appropriate relief as requested above.

This the 16th day of May, 2024.

SMITH, ANDERSON, BLOUNT, DORSETT,
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing the above-captioned action upon all parties by depositing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows, and by email.

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This the 16th day of May, 2024

SMITH, ANDERSON, BLOUNT, DORSETT,
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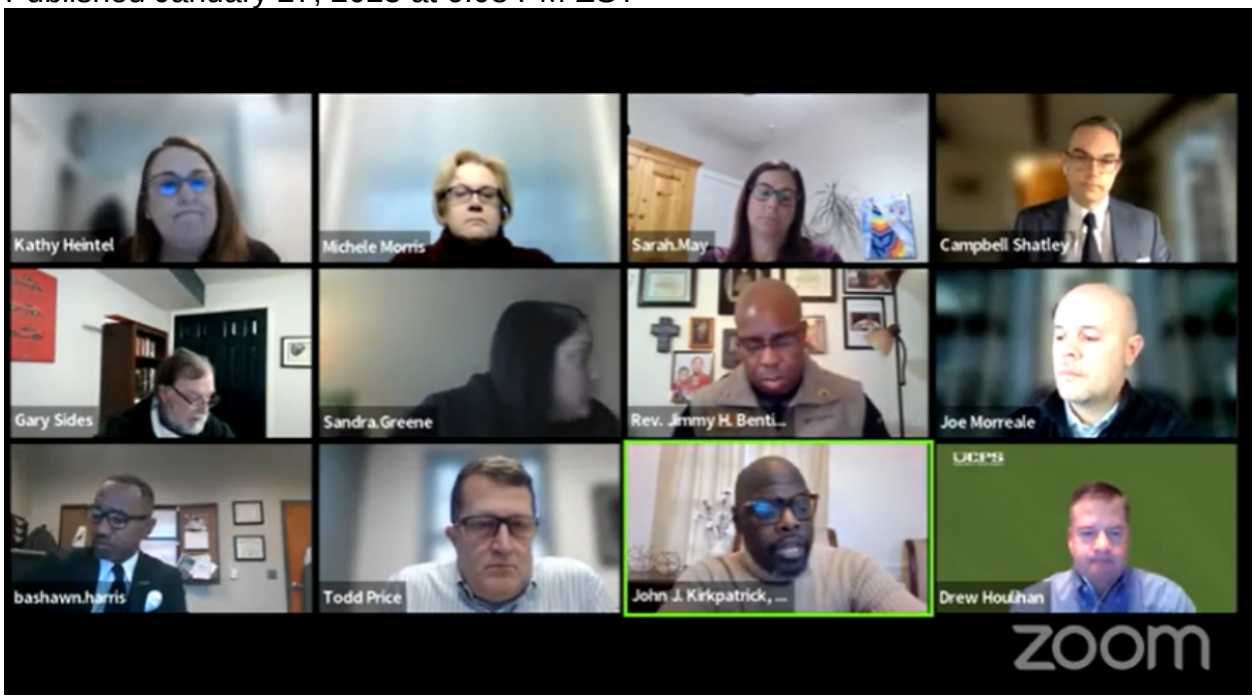


By: _____
J. Mitchell Armbruster

https://www.wfae.org/education/2023-01-27/union-county-board-reverses-vote-to-defy-nc-school-calendar-law

Union County board reverses vote to defy NC school calendar law

WFAE | By Ann Doss Helms
Published January 27, 2023 at 6:08 PM EST



The Union County school board's special online meeting on the school calendar started at 7:30 am. Friday.

The Union County school board backed down Friday from its decision to defy North Carolina's school calendar law, with most members maintaining a defiant tone but saying a lawsuit filed by parents left them no choice.

Todd Price was among six members who voted to rescind the decision to start schools on Aug. 9. State law requires most districts to wait until late August to open. Price said he still believes the early start is best for students, families and staff.

"However, simply put, it's not legal based on current law. And as a steward of the county's money, fighting a lawsuit with a zero percent chance of winning, it's just a waste of money," he said.

The Union County board followed the lead of several other Charlotte-area districts that have voted to defy the law, either this school year or in 2023. The calendar contains no

penalty for noncompliance, and Gaston, Cleveland and Rutherford counties suffered no consequences for opening early this year.

The calendar law, which was passed almost 20 years ago with the support of the tourism industry, is unpopular with school boards across the state. Many say it's better for high school students to synchronize calendars with community colleges and take exams before winter break.

Board member Gary Sides said being forced to comply with the law is "another example of public education getting hosed by the special interests and the politicians in this state." He complained that other districts had gotten by with sidestepping the law, but "unfortunately we are in the position that two Union County citizens have joined the special interests and have taken legal action."

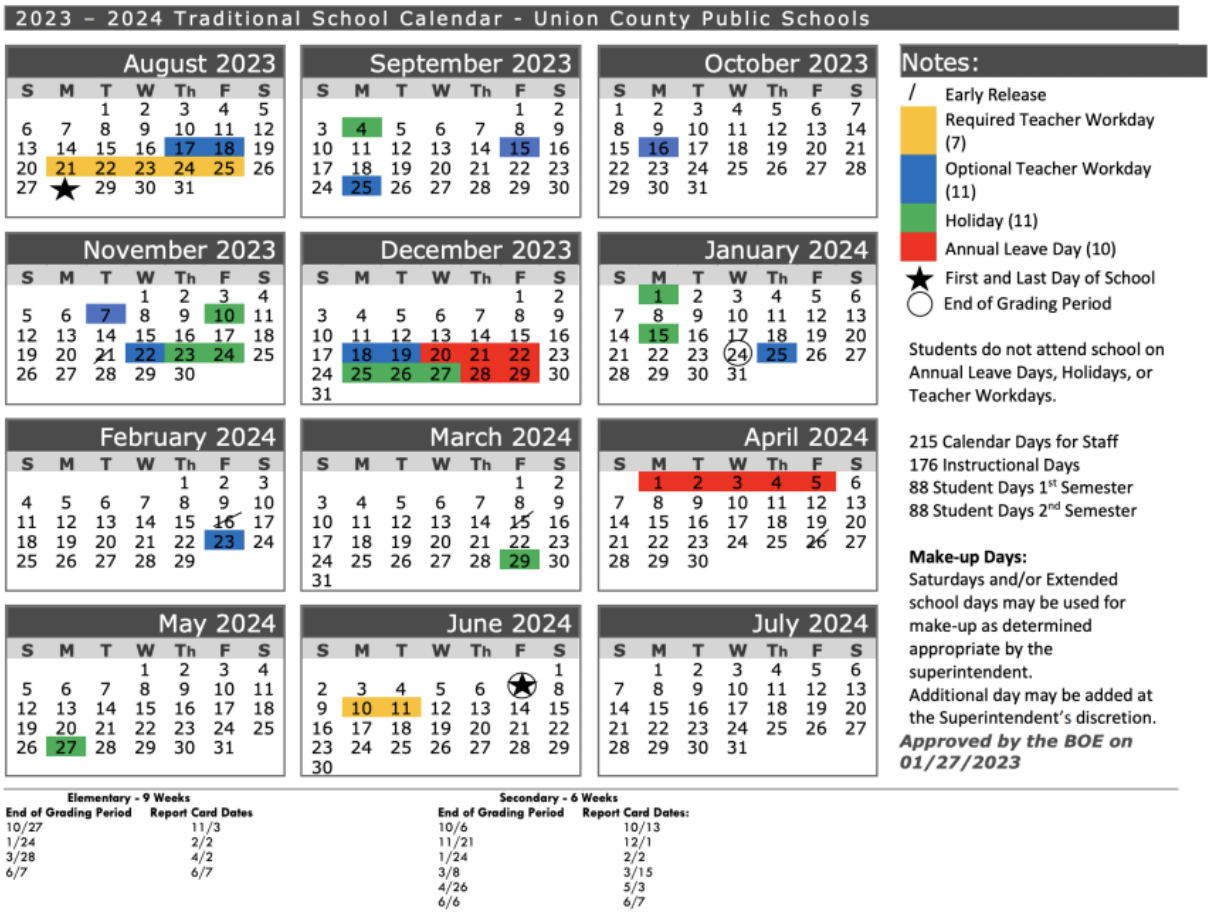
He was referring to two parents who sued the school board earlier this month, asking a judge to rescind the illegal calendar and make the district pay their attorney's fees.

John Kirkpatrick IV, the board's only Democrat, said he regrets his decision to join the unanimous vote last month for an early start, knowing it violated state law.

"I would like to apologize for not upholding what I know is the right thing to do, for the sake of not just our young people but just doing what's right," he said. "You know, we all don't agree with certain things, but it doesn't give us the right to just break it."

"This board has nothing to apologize for," Vice Chair Jimmy Bention Sr. said later in the meeting. "This board knew what we were voting on … and we voted 9-0." He said he would vote against changing the calendar back "as loud as I can, with as much force as I can."

The vote to rescind the early start calendar was 6-3, with Bention, Sides and Sandra Green in opposition. The board then voted 8-1 for a new calendar that starts Aug. 28 and ends June 7, in compliance with the law. Bention was the lone "no" vote.



Calendar approved Friday.

'I'm not Walmart'

Dominique Morrison, one of the parents who sued, watched the special online meeting Friday, which started at 7:30 a.m. She owns a horse stable in Monroe that offers summer camps and riding lessons, and she said in the suit that shortening this year's summer break would cut into her livelihood.

She said she was heartened to hear Kirkpatrick's apology, but dismayed to hear other board members disparage her for challenging them. Board Chair Kathy Heintel, without using Morrison's name, referred to "a plaintiff who sued us because of money," saying "that is not OK."

After remarks about the plaintiffs in the meeting, Morrisons said, a spate of "mean" and "cruel" comments appeared on Facebook, including calls to boycott her business.

"I'm not Walmart. I'm a person. I'm one of them," she said.

“It’s just disappointing that adults can’t own up for doing something wrong,” Morrison said. “If they wanted to do it right, they should have done it right. And instead, they’re throwing me under the bus and making me sound like this money-hungry monster, and I’m not.”

More suits to come?

Morrison and Francis Ward — who did not specify economic damages but, like Morrison, has children in Union County public schools — were represented by Mitch Armbruster, a Raleigh attorney. Armbruster says his firm represents tourism groups, but the Union County parents came to him independently.

He called the vote a victory and said other counties that have decided to defy the law could be next.

“I’ve certainly heard from folks in other counties. There’s been a lot of interest in the lawsuit,” Armbruster said Friday morning.

In the Charlotte area, school boards in Gaston, Cleveland, Rutherford, Cabarrus, Iredell-Statesville and Lincoln counties have also voted to start early without state permission.

Will the state grant flexibility?

Charlotte-Mecklenburg Schools officials talked about starting early in 2023, but ultimately approved a calendar that complies with the law. This year’s legislative agenda, approved Tuesday, requests that the General Assembly allow districts to schedule school days that synchronize with community colleges, which generally start earlier than the current law allows.

During Friday’s meeting, several Union County board members urged constituents to push the state for change.

A broad bipartisan group of educators and elected officials have called for giving districts authority over their own calendars. That includes many school boards dominated by Democrats, such as CMS, and by Republicans, such as Union County. The North Carolina School Boards Association supports flexibility. State Superintendent Catherine Truitt, a Republican, has called for handing the decision back to local school boards, and the state House has approved calendar flexibility bills. But the Senate has refused to budge.

The General Assembly started its 2023 session in earnest this week. WFAE asked Senate Leader Phil Berger’s office Friday whether he plans to reconsider the calendar bill — either to provide more flexibility to districts or to add penalties for violating it.

“Sen. Berger does not plan to revisit the school calendar law,” replied spokeswoman Lauren Horsch.

A similar query to Sens. Michael Lee and Amy Galey, who chair the Senate’s education committee, got no response.

Without these necessary findings, we cannot determine whether the court properly considered the relevant factors; therefore, upon remand, we direct the trial court to make findings of fact on these factors.

[10] We also agree with wife that the court failed to make the necessary findings under N.C.G.S. § 50–16.3A(c), which requires: "The court shall set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment." The trial court failed to state any reason for the amount of alimony, its duration, or the manner of payment. On remand, we direct the court also to make findings of fact in accordance with § 50–16.3A(c).

Orders for postseparation support and alimony are reversed and remanded for additional findings.

Reversed and Remanded.

Judges CALABRIA and GEER concur.



WAKE CARES, INC., Patrice Lee, individually and as guardian ad litem of her minor children, Ian Lee, Delaney Lee, Margaret Lee and Bailey Lee; Kathleen Brennan, individually and as guardian ad litem of her minor child, Elizabeth Brennan; Scott P. Haviland and Gihan I. El–Habbal, individually and as guardians ad litem of their children, Ahmed Haviland, Ayah Haviland and Iman Haviland; Michael John Stanton and Angela Marie Stanton, individually and as guardians ad litem of their children, Jacob Stanton, Alexis Stanton, Danielle Stanton, Dallas Stanton and Jordan Stanton; and Kimberly Sinnott and John Nadasky, individually and as guardians ad litem of their children, Reid Nadasky, Sean Nadasky, and James Nadasky, on behalf of themselves and others similarly situated, Plaintiffs

v.

WAKE COUNTY BOARD OF EDUCATION and Lori Milberg, Horace J. Tart, Carol Parker, Rosa Gill, Susan Parry, Pattie Head, Eleanor Goettee, Ron Margiotta, and Beverley Clark, in their official capacity as members of the Wake County Board of Education, Defendants.

No. COA07–810.

Court of Appeals of North Carolina.

May 6, 2008.

Background: Non-profit organization and eight parents of public school students, individually and as guardians ad litem for their children, filed a class action lawsuit against local board of education, challenging board's plan to convert traditional calendar schools to year-round schools and then assign students to those schools on a mandatory basis. Plaintiffs sought a declaratory judgment as well as an injunction prohibiting board from implementing its plan. The Superior Court, Wake County, Howard E. Manning, Jr., J., concluded that board lacked the statutory authority to convert traditional calendar schools to mandatory year round schools, but ruled that board was authorized by law to operate, on a voluntary consensual basis, year round calendar schools, so long as it obtained informed parental consent. Board appealed.

Holdings: The Court of Appeals, Geer, J., held that:

(1) non-profit organization did not have "associational" standing to bring action;

(2) students' parents did have standing to bring action;

(3) parents were not required to exhaust administrative remedies prior to bringing action;

(4) action was not rendered moot by fact that all the plaintiffs who were initially assigned to a year-round school under board's assignment plan and subsequently applied for transfer have been reassigned to a traditional calendar or magnet school; and

(5) local board of education was authorized by the General Assembly to establish year-round public schools and to assign students to attend those schools, instead of traditional calendar schools, without obtaining their parents' prior consent.

Reversed.

1. Associations ⇐20(1)

Non-profit organization did not have "associational" standing to bring lawsuit against county board of education, challenging board's plan to convert traditional calendar schools to year-round schools and then assign students to those schools on a mandatory basis; organization had no members and, thus, it could not have been seeking relief "on behalf of its members."

2. Associations ⇐20(1)

An association may have standing to sue in its own right to seek judicial relief from injury to itself, or may assert associational standing to seek relief "on behalf of its members."

3. Declaratory Judgment ⇐300
Infants ⇐72(1)
Schools ⇐162.1

Parents of public school students had standing to bring a declaratory judgment action, individually and as guardians ad litem for their children, against county board of education, challenging board's plan to convert traditional calendar schools to year-round schools and then assign students to those schools on a mandatory basis; each of the students involved in the action was initially assigned to a year-round school, and therefore, the individual plaintiffs were directly affected by the action of the board, and, while some of the students were ultimately re-assigned to attend traditional calendar schools, they might still be assigned to year-round schools in the future. West's N.C.G.S.A. § 1–254.

4. Declaratory Judgment ⇐122.1, 128, 300

The Declaratory Judgment Act permits any person affected by a statute or municipal ordinance to obtain a declaration of his rights thereunder. West's N.C.G.S.A. § 1–254.

5. Declaratory Judgment ⇐122.1, 123, 300

A declaratory judgment may be used to determine the construction and validity of a statute, but the plaintiff must be "directly and adversely affected" by the statute.

6. Declaratory Judgment ⇐44
Schools ⇐162.1

Parents of public school students, who brought a declaratory judgment action, individually and as guardians ad litem for their children, against county board of education, challenging board's plan to convert traditional calendar schools to year-round schools and then assign students to those schools on a mandatory basis, were not required to exhaust administrative remedies prior to bringing action; plaintiffs did not challenge specific assignment decisions, but rather an overall plan and accompanying regulations. West's N.C.G.S.A. § 115C–369(a, c).

7. Administrative Law and Procedure ⇐229
Pretrial Procedure ⇐554

If a plaintiff has failed to exhaust his or her administrative remedies, the court lacks subject matter jurisdiction and the action must be dismissed.

8. Declaratory Judgment ⇐210

Declaratory judgment action brought by parents of public school students, individually and as guardians ad litem for their children, against county board of education, challenging board's plan to convert traditional calendar schools to year-round schools and then assign students to those schools on a mandatory basis, was not rendered moot by fact that all the plaintiffs who were initially as-

signed to a year-round school under board's assignment plan and subsequently applied for transfer have been reassigned to a traditional calendar or magnet school; fact that individual plaintiffs have been reassigned did not address the unsettled controversy concerning the board's authority.

9. Declaratory Judgment ⚿65

Actions filed under the Declaratory Judgment Act are subject to traditional mootness analysis. West's N.C.G.S.A. § 1–253 et seq.

10. Action ⚿6

A case is considered moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy; courts will not entertain such cases because it is not the responsibility of courts to decide abstract propositions of law.

11. Pretrial Procedure ⚿552

When a court's determination can have a practical effect on a controversy, the court may not dismiss the case as moot.

12. Schools ⚿162.1

Local board of education was authorized by the General Assembly to establish year-round public schools and to assign students to attend those schools, instead of traditional calendar schools, without obtaining their parents' prior consent. West's N.C.G.S.A. §§ 115C–1, 115C–47, 115C–84.2, 115C–366(b).

13. Constitutional Law ⚿2439

Schools ⚿171

General Assembly may delegate to local administrative units the power to make such rules and regulations as may be deemed necessary or expedient, and when so delegated it is peculiarly within the province of the administrative officers of the local unit to determine what things are detrimental to the successful management, good order, and discipline of the schools in their charge and the rules required to produce those conditions. West's N.C.G.S.A. §§ 115C–36, 115C–40.

14. Schools ⚿162.1

North Carolina Constitution does not require a uniform 180-day term for public schools. West's N.C.G.S.A. Const. Art. 9, § 2(1).

15. Schools ⚿162.1

North Carolina Constitution requires the State to maintain a free public school system with a minimum quantum of instruction of nine months each year. West's N.C.G.S.A. Const. Art. 9, § 2(1).

16. Statutes ⚿188, 208

When construing a statutory provision, the words in the statute are to be given their natural or ordinary meaning, unless the context of the provision indicates that they should be interpreted differently.

17. Statutes ⚿190

When confronted with a clear and unambiguous statute, courts are without power to interpolate, or superimpose, provisions and limitations not contained therein.

Appeal by defendants from order entered 3 May 2008 by Judge Howard E. Manning, Jr. in Wake County Superior Court. Heard in the Court of Appeals 9 January 2008.

Hunter, Higgins, Miles, Elam & Benjamin, P.L.L.C., by Robert N. Hunter, Jr., Greensboro; and William Peaslee, Raleigh, for plaintiffs-appellees.

Tharrington Smith, L.L.P., by Ann L. Majestic and Curtis H. Allen III, Raleigh, for defendants-appellants.

Kelly & Rowe, P.A., by Robert F. Orr, Raleigh, for amicus curiae North Carolina Association of School Administrators.

Roberts & Stevens, P.A., by Christopher Z. Campbell and K. Dean Shatley, II, Asheville, for amicus curiae North Carolina Council of School Attorneys.

Poyner & Spruill, L.L.P., by Edwin M. Speas, Jr.; and Allison Schafer, Raleigh, for amicus curiae North Carolina School Boards Association.

UNC Center for Civil Rights, by Ashley Osment, Chapel Hill, for amici curiae The

Wake County Voters Education Coalition, Eugene Weeks, Jennifer A. Bowden, Gerald Wright, Calla Wright, Erica Edwards, Quanta Edwards and Denise Winters.

GEER, Judge.

Defendant Wake County Board of Education ("the Board") appeals from the trial court's order concluding that the Board "lacks the statutory authority to convert traditional calendar schools to *mandatory* year round schools," but ruling that the Board "is authorized by law to operate, *on a voluntary consensual basis,* year round calendar schools," so long as it obtains "*informed parental consent.*" [1] (Emphasis original.) Based, however, upon our review of the controlling statutes, we hold that the Board is authorized by the General Assembly to establish year-round schools and to assign students to attend those schools without obtaining their parents' prior consent. We, therefore, reverse the decision below.

Facts

The facts in this case are essentially undisputed.[2] The Wake County Public School System ("WCPSS" or "the school system") is one of the fastest growing public school systems in the nation. In recent years, its student population has increased more than 30 percent from 98,000 students in 2000 to over 128,000 students in school year 2006–2007. The Wake County Planning Department estimated that the school system would add another 8,000 students in the 2007–2008 school year and an additional 65,000 students by 2015. Since July 2000, the Board has opened more than 33 new schools and renovated others to deal with the burgeoning student population.

The Board's building plan has not, however, been able to keep pace with the influx of students. Many schools are overcrowded and use cafeterias, libraries, auditoriums, offices, common areas, teacher lounges, and converted storage rooms as classrooms. In addition, there are more than 1,100 mobile classrooms being used, as compared to 584 mobile units used in the 2002–2003 school year. The 1,100 mobile classrooms seat 25,300 students. Almost one fourth of WCPSS elementary school students are educated in mobile classrooms, a situation that overtaxes facilities such as restrooms, media centers, and cafeterias. At several WCPSS elementary schools, the first lunch period begins as early as 10:30 a.m., while other students end their lunch period just before going home for the day.

Beginning in late 2005, the Board worked with the Wake County Board of County Commissioners and county staff to develop a long-term construction plan that would address the school system's increasing facility needs. The overall plan included five different alternatives, each varying in cost based on the level of construction. All five scenarios contemplated converting some existing schools to a year-round calendar and building new schools that would also operate on a year-round calendar. In developing this plan, the Board considered information from school staff, the results of community surveys, input from county commissioners, and communications from parents, teachers, and community members. It was apparent that a majority of the community would not support a school bond for construction and renovation of schools that exceeded $1 billion.

Presently, the WCPSS has approximately 147 public schools. The schools have three different calendars: a traditional calendar, a multi-track year-round calendar, or a modified calendar (a single-track year-round calendar). All calendars have a total of 180 school days. The traditional calendar begins school in late August and continues until a summer vacation in early June. The modified calendar begins in late July and ends in late May. In the multi-track year-round schools, students are divided into four tracks, each

1. The trial court dismissed plaintiffs' claims against the individual school board members asserted against them only in their official capacity as members of the Board on the ground that those claims were redundant. Plaintiffs have not appealed that dismissal. Therefore, the only remaining defendant is the Board.

2. The facts set forth in this opinion were recited by the trial court. The parties have not contested these facts on appeal.

with its own class schedule. Track schedules are then staggered so that three tracks are in school and one track is on break at all times. With the multi-track year-round calendar, 1,000 students can be assigned to a school that would have a traditional-calendar capacity of only 750 students.

As of the 2006–2007 school year, WCPSS operated 16 year-round elementary schools and four year-round middle schools. In that school year, 91,426 students were enrolled in WCPSS elementary and middle schools with 17,174 attending year-round schools. Although most of the year-round schools were considered "voluntary," and students had to apply to attend them, each year-round school has had a portion of students involuntarily assigned to it since 2003. For the 2006–2007 school year, there were 6,929 students involuntarily assigned to a year-round school. In addition to the multi-track year-round schools, WCPSS operates six magnet schools on the single-track year-round calendar. For the 2006–2007 school year, there were 1,320 students involuntarily assigned to magnet schools.

In September 2006, the Board voted to convert 19 elementary and 3 middle schools to a year-round calendar starting in the 2007–2008 school year, adding approximately 5,000 seats. In making this decision, the Board weighed the risk of a failed bond referendum against a preference for more expensive traditional calendar schools. On 7 November 2006, Wake County voters approved a $970 million bond to fund the Board's capital improvement plan. Beginning on 8 December 2006, the Board began considering proposals for student assignments for the 2007–2008 school year based on its capital improvement plan.

Prior to approving a final assignment plan, the Board notified the parents of potentially affected students that their child could be assigned to a mandatory year-round school and gave them the opportunity to select which "track" they preferred for their child's schedule. On 6 February 2007, after holding three public hearings, the Board approved its final student assignment plan for the 2007–2008 school year. Under that plan, 20,717 students were assigned to newly-converted or newly-built year-round schools. 17,855 of those students had previously been assigned to traditional calendar schools.

On 13 March 2007, plaintiffs filed a class action lawsuit in Wake County Superior Court challenging the Board's plan. The plaintiffs include Wake Cares, Inc., a non-profit organization, and eight parents of WCPSS students, individually and as guardians ad litem for their children. No class was certified prior to the trial court's final order. In their complaint, plaintiffs asserted that the Board lacked the constitutional and statutory authority to convert traditional calendar schools to year-round schools and then assign WCPSS students to those schools on a mandatory basis. Plaintiffs further claimed that the Board's plan to establish mandatory year-round schools for some students while maintaining traditional calendar schools for other students violated plaintiffs' federal due process and equal protection rights; violated plaintiffs' fundamental right to a "uniform and regular education on equal terms" as protected by the North Carolina Constitution and Chapter 115C of the General Statutes; and violated plaintiffs' right to procedural due process. Plaintiffs sought a declaratory judgment as well as an injunction prohibiting the Board from implementing its plan.

On 4 April 2007, the Board moved to dismiss plaintiffs' claims pursuant to Rule 12(b)(1) and (6) of the Rules of Civil Procedure based on a lack of standing, failure to exhaust available administrative remedies, mootness, and failure to state a claim for relief. Because the trial court chose to consider affidavits submitted by the Board in opposition to plaintiffs' motion for a preliminary injunction, the court converted the Board's Rule 12(b)(6) motion to dismiss into a motion for summary judgment under Rule 56.

After rejecting the Board's arguments regarding standing, exhaustion of administrative remedies, and mootness, the trial court concluded that "the Wake County Board of Education is authorized by law to operate, *on a voluntary consensual basis*, year round calendar schools, modified year round calendar schools, and magnet schools operating as modified or year round calendar schools."

According to the trial court, however, the Board "lacks the legal authority from the General Assembly to force children to attend mandatory year round schools." Specifically, the court concluded "[t]hat the Wake County Board of Education *may not require* the attendance of students at year round calendar schools *without informed parental consent.*" (Emphasis original.) Finally, the court asserted: "Having made the legal determination that mandatory year round schools are not authorized under the law, there is no need to go further." The court, therefore, entered summary judgment in favor of plaintiffs, but left for the Board "[t]he nuts and bolts of obtaining informed parental consent, determining how many Wake County students and families are willing *to accept assignment* to the newly converted and formerly mandatory year round *assignments*[,] and the aftermath of such determinations. . . ." (Emphasis added.)

The Board timely appealed to this Court. Plaintiffs did not cross-assign error to any portion of the trial court's order. On 25 July 2007, however, plaintiffs filed with the Supreme Court a petition for by-pass of the Court of Appeals pursuant to N.C. Gen.Stat. § 7A–31 (2007) and N.C.R.App. P. 15. That petition was denied on 8 November 2007.

I

We first address the jurisdictional issues raised by the Board. The Board claims that the trial court should have dismissed plaintiffs' complaint based on (1) lack of standing, (2) a failure to exhaust administrative remedies, and (3) mootness. While we agree that Wake Cares lacks standing, and the motion to dismiss should have been granted as to that organization, we hold that the trial court properly denied the motion as to the Board's remaining arguments.

A. *Standing*

[1] With respect to Wake Cares' standing, the trial court stated: "Wake Cares, Inc., a non-profit organization, has standing to assert the claims which its members and constituents might have asserted." It is undisputed that Wake Cares in fact has no "members." The Board contends that controlling authority, which does not address "constituents," requires dismissal of Wake Cares as a plaintiff.

[2] An association may have standing to sue " 'in its own right to seek judicial relief from injury to itself,' " *River Birch Assoc. v. City of Raleigh*, 326 N.C. 100, 129, 388 S.E.2d 538, 555 (1990) (quoting *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211–12, 45 L.Ed.2d 343, 362 (1975)), or may assert associational standing to seek relief "on behalf of its members." *Id.* at 130, 388 S.E.2d at 555. With respect to associational standing, our Supreme Court has held:

> "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

Id. (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383, 394 (1977)).

In this case, the trial court did not base its conclusion that Wake Cares had standing on any injury to Wake Cares itself, but instead relied solely upon associational standing. Yet, it is undisputed that Wake Cares has no members and, thus, it could not be seeking relief "on behalf of its members." *Id.*

Nevertheless, the United States Supreme Court in *Hunt* recognized a form of associational standing that would permit an organization "to assert the claims of its constituents." 432 U.S. at 345, 97 S.Ct. at 2442, 53 L.Ed.2d at 395. In *Hunt*, the Washington State Apple Advertising Commission, a state agency, did not have "members," but the Court concluded that it still had standing to "assert[ ] the claims of the Washington apple growers and dealers who form its constituency," *id.* at 344, 97 S.Ct. at 2442, 53 L.Ed.2d at 395, because these growers and dealers "possess[ed] all of the indicia of membership in an organization." *Id.*

Neither the parties nor the trial court specifically address *Hunt's* constituency basis for standing, which has also not been previ-

ously addressed by North Carolina's appellate courts. *See Goldston v. State,* 361 N.C. 26, 35, 637 S.E.2d 876, 882 (2006) ("While federal standing doctrine can be instructive as to general principles . . . and for comparative analysis, the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.").

We need not, however, decide whether North Carolina should adopt *Hunt's* constituency basis for standing because even assuming, without deciding, that *Hunt's* test should apply to a private organization like Wake Cares, Wake Cares has made no attempt to show that it meets that test. *See, e.g., In re Holocaust Victim Assets Litig.,* 225 F.3d 191, 196 (2d Cir.2000) ("In evaluating the Commission's claim of standing, the *Hunt* Court listed a number of ways in which the Commission functioned effectively as a membership organization."); *Washington Legal Found. v. Leavitt,* 477 F.Supp.2d 202, 208 (D.D.C.2007) (setting forth test that must be met for organization to be deemed "functional equivalen[t]" of traditional membership organizations). Since Wake Cares has not demonstrated that it would qualify as an organization entitled to represent its constituents, it cannot rely on that theory as a basis for establishing standing, and its claims must be dismissed. *See Holocaust Victim Assets Litig.,* 225 F.3d at 196 (dismissing appeal of organization for lack of standing because organization "ha[d] not provided any information that would indicate whether it meets these requirements" of *Hunt*).

Although plaintiffs propose additional theories of standing for Wake Cares, the trial court did not address any theory other than associational standing, and plaintiffs have not cross-assigned error to the court's failure to find standing on those bases. Consequently, those contentions are not properly before this Court. *See Harllee v. Harllee,* 151 N.C.App. 40, 51, 565 S.E.2d 678, 685 (2002) ("[P]laintiff failed to cross-assign error pursuant to Rule 10(d) to the trial court's failure to render judgment on these alternative grounds. Therefore, plaintiff has not properly preserved for appellate review these alternative grounds."). We, therefore, hold that the trial court erred in not granting the Board's motion to dismiss Wake Cares' claims for lack of standing.

[3] The Board also argues that the individual plaintiffs lack standing to sue, contending that none of the plaintiffs have taxpayer standing and that five of the children and three of the parents cannot establish an injury in fact. The trial court did not specifically analyze whether the individual plaintiffs had standing, stating only: "The Court has considered all other arguments in relation to the [Board]'s motion to dismiss pursuant to Rule 12(b)(1) for lack of jurisdiction and standing and rejects those arguments without further discussion." We hold that the individual plaintiffs have sufficiently established their standing to bring a declaratory judgment action.

[4] In pertinent part, the Declaratory Judgment Act provides:

> Any person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

N.C. Gen.Stat. § 1–254 (2007). Thus, "[t]he Declaratory Judgment Act permits any person affected by a statute or municipal ordinance to obtain a declaration of his rights thereunder." *Bland v. City of Wilmington,* 278 N.C. 657, 659, 180 S.E.2d 813, 815 (1971).

[5] Our Supreme Court has further specified that "[a]n action may not be maintained under the Declaratory Judgment Act to determine rights, status, or other relations unless the action involves a present actual controversy between the parties." *Town of Emerald Isle v. State,* 320 N.C. 640, 645–46, 360 S.E.2d 756, 760 (1987). "A declaratory judgment may be used to determine the construction and validity of a statute," *id.* at 646, 360 S.E.2d at 760, but the plaintiff must be "directly and adversely affected" by the statute, *id.* Most recently, our Supreme Court has explained that a declaratory judgment should issue " '(1) when [it] will serve a useful purpose in clarifying and settling the

legal relations at issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding.' " *Goldston*, 361 N.C. at 33, 637 S.E.2d at 881 (quoting *Augur v. Augur*, 356 N.C. 582, 588, 573 S.E.2d 125, 130 (2002)).

In this case, the individual plaintiffs challenge the Board's authority to require students to attend year-round schools. Each of the students involved in this action was initially assigned to a year-round school. The individual plaintiffs were, therefore, directly affected by the action of the Board. While some of the students were ultimately reassigned to attend traditional calendar schools for the calendar year 2007–2008, they may still be assigned to year-round schools in the future. As a result, an actual controversy still exists, and a declaratory judgment as to the authority of the Board and the rights of the parents and students would terminate and afford relief from the uncertainty, insecurity, and controversy currently existing. *See Charlotte–Mecklenburg Hosp. Auth. v. N.C. Indus. Comm'n*, 336 N.C. 200, 214, 443 S.E.2d 716, 725 (1994) (plaintiffs could seek declaratory judgment that Industrial Commission's rule limiting amounts paid hospital was unlawful even though rule allowed plaintiffs to seek exception from rule because plaintiffs were "not required to sustain actual losses in order to make a test case"). Accordingly, the individual plaintiffs have standing to seek a declaratory judgment.

Because of our disposition of this appeal, we need not address whether plaintiffs have standing to seek injunctive relief. We also are not required to address whether the individual plaintiffs have taxpayer standing as set forth in *Goldston*.

B. *Exhaustion of Administrative Remedies*

[6, 7] The Board next contends that the trial court should have dismissed the complaint based on plaintiffs' failure to exhaust their administrative remedies under N.C. Gen.Stat. § 115C–369 (2007). If a plaintiff has failed to exhaust his or her administrative remedies, the court lacks subject matter jurisdiction and the action must be dismissed. *Shell Island Homeowners Ass'n v. Tomlinson*, 134 N.C.App. 217, 220, 517 S.E.2d 406, 410 (1999).

N.C. Gen.Stat. § 115C–369(a) provides:

> The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a local board of education may, within 10 days after notification of the assignment, or the last publication thereof, apply in writing to the local board of education for the reassignment of the child to a different public school.... If the application for reassignment is disapproved, the local board of education shall give notice to the applicant by registered or certified mail, and the applicant may within five days after receipt of such notice apply to the local board for a hearing. The applicant shall be entitled to a prompt and fair hearing *on the question of reassignment of such child to a different school.*

(Emphasis added.) The local board of education at the hearing "shall consider the best interest of the child, the orderly and efficient administration of the public schools, the proper administration of the school to which reassignment is requested and the instruction, health, and safety of the pupils there enrolled, and shall assign said child in accordance with such factors." N.C. Gen.Stat. § 115C–369(c).

We believe that this case is analogous to *Charlotte–Mecklenburg Hosp. Auth.*, 336 N.C. at 209, 443 S.E.2d at 722, in which the plaintiffs sought a declaration that a rule of the Industrial Commission regarding reimbursement of hospitals was invalid. The defendants contended that because the General Assembly had provided a remedy by which any matter, including charges for hospital services, could be resolved in the Industrial Commission, the plaintiff hospitals had failed to exhaust their administrative remedies by not first pursuing that avenue. *Id.*

The Supreme Court confirmed that even in a declaratory judgment action, " '[w]hen an *effective* administrative remedy exists, that remedy is exclusive.' " *Id.* (quoting *Lloyd v.*

Babb, 296 N.C. 416, 428, 251 S.E.2d 843, 852 (1979)). Nonetheless, it pointed out:

> Plaintiff hospitals, however, do not seek review of an award of any *specific claims* for compensation before defendant Commission; rather, they seek a declaratory ruling that the *per diem* reimbursement rule is invalid, and injunctive relief therefrom. [The statutes] only provide for hearings, awards, and review of awards in disputes between employees and employers with respect to specific claims for compensation, and do not address challenges to rules and regulations promulgated by the Commission pursuant to the [Workers' Compensation] Act.

Id. at 209–10, 443 S.E.2d at 722. Because the General Assembly had not provided any procedures to challenge a rule or regulation of the Commission, it had "not provided, within the Act, an adequate remedy for plaintiffs." *Id.* at 211, 443 S.E.2d at 723. The Court, therefore, concluded that the plaintiff hospitals were not barred from proceeding for failure to exhaust administrative remedies. *Id.*

In this case, plaintiffs' complaint did not simply address the assignment of individual students. The complaint challenges the "2007–2008 Growth Management Plan" adopted by the Board that, according to plaintiffs, shifts from using year-round schools as a "stop-gap measure" on an emergency basis for overcrowding to using it as part of "a long range 'plan for growth.'" Plaintiffs assert in their complaint that this plan "creat[es] a structural defect in the operation of [the local school system] which, once implemented, cannot be readily changed by operation of normal political processes, nor which other branches of government can correct." In their request for declaratory relief, plaintiffs seek a declaration regarding the validity of the Board's plan "and other associated regulations which, if implemented, will assign its members or children of its members to mandatory year-round schools and will expend funds in such a manner so that traditional schools will not be reasonably available now or in the future to its members." Further, plaintiffs contend that they are entitled to injunctive relief prohibiting implementation of the plan.

These claims regarding the validity of the Board's plan to use year-round schools to alleviate overcrowding do not fall within the scope of N.C. Gen.Stat. § 115C–369. Plaintiffs are not challenging specific assignment decisions, but rather an overall plan and accompanying regulations. The question presented by this case is thus not the reassignment of a particular child from one school to another school, as set forth in § 115C–369(a), and none of the factors specified in § 115C–369(c) for consideration by the Board in making a decision under this statute would address the issues regarding the validity of the plan.

The Board, however, asserts that *Cameron v. Wake County Bd. of Educ.,* 36 N.C.App. 547, 244 S.E.2d 497 (1978), dictates the outcome in this case. In *Cameron,* the plaintiffs filed a class action against the Wake County Board of Education, seeking a preliminary injunction against the enforcement of the 1977–1978 student assignment plan and a declaratory judgment that the plan was unconstitutional on the grounds that it is arbitrary and capricious. *Id.* at 547, 244 S.E.2d at 497–98. The named plaintiffs alleged "that the defendant has abdicated its student assignment responsibilities to federal bureaucrats, should have made its assignments on the basis of the welfare of the pupils, and since this was not done, the court should act on behalf of the plaintiffs." *Id.* at 550, 244 S.E.2d at 499.

In concluding that the plaintiffs had improperly failed to exhaust their administrative remedies, this Court held that plaintiffs could not disregard the predecessor statute to N.C. Gen.Stat. § 115C–369 by failing to request reassignment and "tak[e] a route wholly inconsistent with the statutes enacted by the General Assembly." *Id.* at 551, 244 S.E.2d at 500. Significantly, however, the reassignment statute would have provided precisely the relief sought by the plaintiffs: determination by the Board, and not any federal entity, of " 'the best interests of the child' " regarding school assignment. *Id.* at 549, 244 S.E.2d at 499 (quoting N.C. Gen. Stat. § 115–178).

In this case, N.C. Gen.Stat. § 115C–369 provides no means for determining whether a plan for mandatory year-round schools is statutorily or constitutionally permitted.[3] The statute focuses on the individual assignment of a student and would not supply the relief sought in plaintiffs' complaint regarding the Board's plan and regulations. Since the Board has not pointed to any other statute that would provide an administrative remedy encompassing that sought by plaintiffs, *Charlotte–Mecklenburg Hosp. Auth.* controls, and the trial court properly denied the motion to dismiss based on failure to exhaust administrative remedies.

C. *Mootness*

[8–11] Finally, the Board argues that plaintiffs' challenge to its plan to assign WCPSS students to year-round schools on a mandatory basis has been rendered moot due to the fact that all the plaintiffs who were initially assigned to a year-round school under its 2007–2008 assignment plan and subsequently applied for transfer have been reassigned to a traditional calendar or magnet school. "[A]ctions filed under the Declaratory Judgment Act, N.C. Gen.Stat. §§ 1–253 through –267 (2005), are subject to traditional mootness analysis." *Citizens Addressing Reassignment & Educ., Inc. v. Wake County Bd. of Educ.*, 182 N.C.App. 241, 246, 641 S.E.2d 824, 827 (2007), *disc. review denied*, —— N.C. ——, 659 S.E.2d 438, 2008 WL 936260 (2008). "A case is considered moot when 'a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.' " *Lange v. Lange*, 357 N.C. 645, 647, 588 S.E.2d 877, 879 (2003) (quoting *Roberts v. Madison County Realtors Ass'n*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996)). "Courts will not entertain such cases because it is not the responsibility of courts to decide abstract propositions of law." *Id.* (internal quotation marks omitted). "Conversely, when a court's determination can have a practical effect on a controversy, the court may not dismiss the case as moot." *Id.*

In determining whether plaintiffs' claims may be considered moot, we are bound by *Goldston*. Because we hold that plaintiffs have standing to pursue a declaratory judgment regarding the Board's authority to establish year-round schools and to assign students to those schools on a mandatory basis, the fact that individual plaintiffs have been reassigned does not address the unsettled controversy concerning the Board's authority. *See Goldston*, 361 N.C. at 34–35, 637 S.E.2d at 882 (holding "declaratory judgment remains an appropriate remedy" despite plaintiffs' abandoning their claim "to compel return of the challenged assets" because "[i]f plaintiffs ultimately prevail, their point is made"). Stated differently, the plaintiffs' individual reassignments do not "terminate the uncertainty and controversy giving rise to th[is] action" as would a declaration that the Board does, or does not, have the authority to implement its plan. *Id.* at 34, 637 S.E.2d at 881. As a consequence, plaintiffs' claims are not moot.

II

[12] We now turn to the trial court's decision on the merits. We first note that plaintiffs, in arguing that the trial court's order should be affirmed, couch their contentions in the rhetoric of constitutional rights. The trial court, however, based its decision solely on the Board's lack of "statutory authority" and its conclusion "that mandatory year round schools are not authorized under the law." It then concluded that "there is no need to go further." The court did not address plaintiffs' state and federal constitutional claims. Since plaintiffs have not cross-assigned error on the grounds that those arguments present alternative bases for upholding the trial court's decision, they are not properly before us. *Harllee*, 151 N.C.App. at 51, 565 S.E.2d at 685.

The trial court identified the merits issue as "whether or not the Wake County Board of Education, or for that matter, any Board of Education, has the legal authority to establish mandatory year round schools? This

3. We do not address whether plaintiffs' equal protection and due process claims would be barred for failure to exhaust their administrative remedies. Nothing in this decision should be viewed as expressing any opinion on that issue.

is the critical determination in this case." We believe that the trial court's articulation of the issue actually presents two questions: (1) Does the Board have authority to establish year-round schools, and (2) does the Board have authority to assign students to such schools without their parents' consent?

With respect to the authority of the Board to establish year-round schools, the trial court's order ultimately seems to conclude that the Board does have such authority. The court specifically concluded that the Board is "authorized by law to operate, *on a voluntary consensual basis,* year round calendar schools . . . ." Even plaintiffs, in their brief to this Court, assert that the Board "misstate[s] Plaintiffs' position as an argument that school boards do not have authority to operate year-round schools . . . ." The trial court's order, however, appears to base its requirement that attendance at such schools be only on "a voluntary consensual basis" on a lack of express statutory authority to operate such schools except as a program supplemental to traditional calendar schools. We, therefore, first address the Board's authority to create and operate year-round schools.

The North Carolina Constitution specifies that "[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students." N.C. Const. art. IX, § 2(1). The Constitution, however, further provides that "[t]he State Board of Education shall supervise and administer the free public school system . . . and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly." N.C. Const. art. IX, § 5. The General Assembly has codified this constitutional authority of the State Board of Education in N.C. Gen. Stat. § 115C–12 (2007), which states: "The general supervision and administration of the free public school system shall be vested in the State Board of Education. *The State Board of Education shall establish policy for the system of free public schools,* subject to laws enacted by the General Assembly." (Emphasis added.)

[13] Nevertheless, as our Supreme Court has explained, the General Assembly "may delegate to local administrative units the power to make such rules and regulations as may be deemed necessary or expedient, and when so delegated it is peculiarly within the province of the administrative officers of the local unit to determine what things are detrimental to the successful management, good order, and discipline of the schools in their charge and the rules required to produce those conditions." *Coggins v. Bd. of Educ. of Durham,* 223 N.C. 763, 767, 28 S.E.2d 527, 530 (1944). Consistent with *Coggins,* the General Assembly has exercised its right to delegate power to local school boards by providing a broad grant of authority:

> All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. *Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units* and they shall enforce the school law in their respective units.

N.C. Gen.Stat. § 115C–36 (2007) (emphasis added). *See also* N.C. Gen.Stat. § 115C–40 (2007) ("Local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective local school administrative units . . . ."); *Hughey v. Cloninger,* 297 N.C. 86, 94, 253 S.E.2d 898, 903 (1979) ("In the scheme of public education adopted by the General Assembly, the 'general control and supervision of all matters pertaining to the public schools in their respective administrative units' is delegated to the county and city boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency." (quoting N.C. Gen. Stat. § 115–27)).

In addition to this broad grant of authority, the General Assembly has also set out a

list of specific powers and duties vested in local school boards. *See* N.C. Gen.Stat. § 115C–47 (2007). These enumerated powers complement the "general control and supervision" vested in local school boards by §§ 115C–36 and –40, with the result that "[e]ach County Board of Education is vested with authority to fix and determine the method of conducting the public schools in its county so as to furnish the most advantageous method of education available to the children attending its public schools." *Coggins,* 223 N.C. at 767, 28 S.E.2d at 530.

N.C. Gen.Stat. § 115C–47(11) specifies that "[l]ocal boards of education shall determine the school calendar under G.S. 115C–84.2." N.C. Gen.Stat. § 115C–84.2(a) (2007), in turn, requires that each local board of education "adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year." In addition, the statute mandates "[a] minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months." *Id.* The local board, however, "shall designate when the 180 instructional days shall occur." *Id.* Significantly, subsection (a) of § 115C–84.2 concludes by stressing: "Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board." *Id.* Thus, local school boards have been granted the flexibility to adopt the school calendars best suited to fulfilling the State's educational mandates.

N.C. Gen.Stat. § 115C–84.2 does, however, place some limitations on the design of a school calendar, including a mandate that the calendar include 42 consecutive days when teacher attendance is not required "unless . . . the school is a year-round school." N.C. Gen.Stat. § 115C–84.2(b)(2). Further, although reiterating that "[l]ocal boards of education shall determine the dates of opening and closing the public schools under subdivision (a)(1) of this section," the statute specifies that "*[e]xcept for year-round schools,* the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10." N.C. Gen.Stat. § 115C–84.2(d) (emphasis added).

Thus, N.C. Gen.Stat. § 115C–47 grants local school boards broad authority to set the school calendar in accordance with N.C. Gen. Stat. § 115C–84.2, which, in turn, encourages local school boards to consider calendar flexibility as a means of achieving educational standards. N.C. Gen.Stat. § 115C–84.2 does require 180 days of instruction over "at least nine calendar months," but exempts "year-round schools" from the requirement of a 42–day break for teachers and from the restrictions on opening and closing dates. The express language exempting year-round schools from the calendar-design restrictions demonstrates that the General Assembly recognized a year-round calendar as a valid alternative to the traditional calendar (which includes a significant summer vacation).

Although the issues in this case have been discussed in terms of "traditional" calendar schools versus "year-round" calendar schools, both of these school calendar options comply with the requirements set out in § 115C–84.2(a) and (b). Indeed, there has been no suggestion that a year-round calendar such as the one adopted by the Board in this case fails to comply with N.C. Gen.Stat. § 115C–84.2. Thus, the Board has authority under these statutes to operate year-round schools.

While the trial court seemed to agree that the Board has this authority, it also concluded that the Board cannot assign students to year-round schools without informed parental consent. This conclusion is precluded by N.C. Gen.Stat. § 115C–366(b) (2007), which provides:

> Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, *the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.*

(Emphasis added.) The only restrictions placed on a Board's assignment authority are set forth in N.C. Gen.Stat. § 115C–367 (2007), which prohibits local school boards from assigning students to a given school "on account of race, creed, color or national origin."

If, as we have held, the Board has authority to operate schools in the WCPSS on a year-round calendar, then N.C. Gen.Stat. § 115C–366(b) grants "full and complete" authority to the Board to assign children to such schools. Indeed, the Board's decision to assign a child to "any school"—which by its plain language must include all lawfully-operated schools—"shall be final." *Id.*

It appears that the trial court and plaintiffs base their requirement that any assignment to a year-round school be voluntary on a strained reading of N.C. Gen.Stat. § 115C–84.2 combined with N.C. Gen.Stat. § 115C–1 (2007). According to the trial court, N.C. Gen.Stat. § 115C–1 provides a right for students to attend a traditional calendar school:

> The text of [§ 115C–1] makes mandatory what the text of the constitution leaves discretionary. Because the constitution references the phrase "uniform school term" as being at least nine months, and the legislature has required that the term be nine months, the school term is a feature of public school uniformity inherent in the constitutional mandate of a general and uniform school system. A nine month term is therefore mandatory upon local school administrative units throughout the state. Equal access to a nine month school term is part of the constitutional privilege of a general and uniform system of free public schools and a part of "the property right" of an education.

The trial court and plaintiffs attempt to reconcile this "right" with N.C. Gen.Stat. § 115C–84.2 by reading that statute as equating "year-round schools" with voluntary "supplemental or additional educational programs or activities," as provided for in § 115C–84.2(e).

According to the trial court, "[t]he permissive use of the term year round schools in G.S. 115C–84.2(d) does not alter the force or effect of the mandatory language in G.S. 115C–1 relating to a uniform nine month term." The trial court's construction of the statutes and plaintiffs' contentions cannot be reconciled with the plain language of the statutes or prior appellate opinions.

N.C. Gen.Stat. § 115C–1 states:

> 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.... 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.

This Court has previously held that "§ 115C–1 simply codifies the 'general and uniform' and 'equal opportunities' clauses of the Constitution...." *Leandro v. State,* 122 N.C.App. 1, 14, 468 S.E.2d 543, 552 (1996), *aff'd in part and rev'd in part,* 346 N.C. 336, 488 S.E.2d 249 (1997).

[14] Initially, we note that there is no dispute regarding whether the Constitution provides the right to a uniform nine-month term asserted by plaintiffs and recognized by the trial court; it does not. Article IX provides for a "uniform system" that "shall be maintained *at least* nine months in every year...." N.C. Const. art. IX, § 2(1) (emphasis added). "[T]he word 'uniform' modifies the word 'system,' not the word 'term.' The Constitution, therefore, does not require a uniform 180 day term." *Morgan v. Polk County Bd. of Educ.,* 74 N.C.App. 169, 174, 328 S.E.2d 320, 324 (1985) (citing *Bd. of Educ. v. Bd. of Comm'rs of Granville County,* 174 N.C. 469, 473, 93 S.E. 1001, 1002 (1917)).

[15] The language of art. IX, § 2(1) does not explicitly require uniformity with respect to the opening and closing dates. It requires the State to maintain a free public school system with a minimum quantum of instruction of nine months each year. *Frazier v. Bd. of Comm'rs of Guilford County,* 194 N.C. 49, 63, 138 S.E. 433, 440 (1927) (prior N.C. Const. art. IX, § 3, now N.C. Const. art. IX, § 2(1), "is not a limitation as to the length of the school term; it is the minimum required by the Constitution").

Our Supreme Court has also specifically considered what the references to a "uniform system" and "equal opportunities" mean:

> [The North Carolina Constitution] places upon the General Assembly the duty of

> providing for "a general and uniform system of free public schools ... wherein equal opportunities shall be provided for all students." N.C. Const. art. IX, § 2(1). *We conclude that at the time this provision was originally written in 1868 providing for a "general and uniform" system but without the equal opportunities clause, the intent of the framers was that every child have a fundamental right to a sound basic education* which would prepare the child to participate fully in society as it existed in his or her lifetime. *The 1970 amendment adding the equal opportunities clause ensured that all the children of this state would enjoy this right.*

Leandro v. State, 346 N.C. 336, 348, 488 S.E.2d 249, 255–56 (1997) (emphasis added) (internal citations omitted). As § 115C–1 is a codification of the constitutional provision, this analysis necessarily also controls as to § 115C–1.

Leandro established that the requirement of "equal opportunities" was added to ensure that all children had equal access to a sound basic education. The Court stressed: "Although we have concluded that the North Carolina Constitution requires that access to a sound basic education be provided equally in every school district, we are convinced that the equal opportunities clause of Article IX, Section 2(1) does not require substantially equal funding *or educational advantages* in all school districts." *Leandro,* 346 N.C. at 349, 488 S.E.2d at 256 (emphasis added). Since there is no contention that plaintiffs are being denied equal access to a sound basic education by being assigned to year-round calendar schools,[4] N.C. Gen.Stat. § 115C–1 does not provide plaintiffs with a right to "equal opportunity" to attend a school with a traditional calendar.

Further, we cannot agree with the trial court's assumption that § 115C–1's reference to a "uniform school term of nine months" necessarily means a term of no more and no less than nine months. The statute, especially as a codification of the Constitution, can equally be read as setting a floor for the quantum of education required. Any other construction of the statute would place § 115C–1 in conflict with § 115C–84.2(a)(1)'s requirement that a school calendar include "[a] minimum of 180 days and 1,000 hours of instruction covering *at least nine calendar months.*" (Emphasis added.)

Our Supreme Court has held that the statutes governing education "are to be construed *in pari materia*" and, "[i]f possible, they are to be reconciled and harmonized." *Bd. of Educ. of Onslow County v. Bd. of County Comm'rs of Onslow County,* 240 N.C. 118, 126, 81 S.E.2d 256, 262 (1954). In order to do so, the Court directed the following "judicial approach":

> "The different sections should be regarded, not as prior and subsequent acts, but as simultaneous expressions of the legislative will; but, where every means of reconciling inconsistencies has been employed in vain, the section last adopted will prevail, regardless of their relative positions in the code or revision. An unnecessary implication arising from one section, inconsistent with the express terms of another on the same subject, yields to the expressed intent, and the two sections are not repugnant."

Id. (quoting 82 C.J.S. *Statutes* § 385(b)). *See also Whittington v. N.C. Dep't of Human Res.,* 100 N.C.App. 603, 606, 398 S.E.2d 40, 42 (1990) ("[W]hen one statute speaks directly and in detail to a particular situation, that direct, detailed statute will be construed as controlling other general statutes regarding that particular situation, absent clear legislative intent to the contrary.... [S]tatutes relating to the same subject should be construed *in pari materia,* in such a way as to give effect, if possible, to all provisions without destroying the meaning of the statutes involved.").

Here, construing § 115C–1, a general statute codifying the constitutional provision, as mandating a term of precisely nine months rather than establishing a minimum term of nine months (as set out in the constitution) would conflict with the later-enacted § 115C–

4. The trial court acknowledged in its order that "there is no contention that the educational opportunity offered by a year round school is better or worse than the educational opportunity offered by a traditional elementary or middle school...."

84.2. That more recent statute, however, specifically addresses the requirements for school calendars and requires "at least nine months." The construction of § 115C–1 adopted by the trial court is unnecessary and should, therefore, "yield[ ]" to the express intent in § 115C–84.2. *Bd. of Educ. of Onslow County,* 240 N.C. at 126, 81 S.E.2d at 262.

We hold, therefore, that § 115C–1, consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. How that minimum quantum of instruction is translated into an annual school calendar is then prescribed by § 115C–84.2, which sets out certain requirements, but otherwise mandates that "[t]he local board shall designate when the 180 instructional days shall occur" and specifically recognizes "year-round school[s]" as a permissible calendaring scheme. N.C. Gen.Stat. § 115C–84.2(a)(1), (b)(2), (d).

The trial court and plaintiffs, however, construe § 115C–84.2 as denying local school boards the authority to operate schools on a year-round calendar except, according to the trial court, as part of "supplemental or additional programs which supplement or add to the uniform school calendar," referencing § 115C–84.2(e). N.C. Gen.Stat. § 115C–84.2(e) states: "Nothing in this section prohibits a local board of education from offering supplemental or additional educational programs or activities outside the calendar adopted under this section." The trial court apparently believed that this subsection of § 115C–84.2 permitted year-round schools as "supplemental" to the nine-month calendar, but because such schools were merely supplemental programs, students could not be assigned to them without parental consent. We cannot accept this reading of the statute.

[16] It is, of course, fundamental "that when construing a statutory provision, the words in the statute are to be given their natural or ordinary meaning, unless the context of the provision indicates that they should be interpreted differently." *Whittington,* 100 N.C.App. at 606, 398 S.E.2d at 42. In this case, § 115C–84.2(d) expressly exempts "year-round schools" from the statute's requirement regarding opening and closing dates of school calendars: "*Except for year-round schools,* the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10." (Emphasis added.) N.C. Gen. Stat. § 115C–84.2(e) relates only to "supplemental or additional educational programs or activities *outside the calendar adopted under this section.*" (Emphasis added.) Since the provision in § 115C–84.2(d) referencing "year-round schools" governs calendars permitted under the statute, "year-round schools" necessarily do not constitute programs "outside the calendar" permitted by the statute.

Nonetheless, the trial court ruled that "it is clear the way to reconcile this exception in the opening and closing of schools [in N.C. Gen.Stat. § 115C–84.2(d)] with N.C. Gen. Stat. § 115C–1 is to define year round schools or modified calendar schools as schools which are 'additional' or 'supplemental' and having a voluntary aspect to participation by students." The court then added: "[T]he only way the Legislature would allow school[ ] boards to operate schools which did not adhere to its protection of summer vacation provisions was to allow a school board to have 'supplemental' or 'additional' school programs."

Contrary to this assumption by the trial court, N.C. Gen.Stat. § 115C–84.2(b)(2), in fact, does specifically exempt year-round schools from the statute's apparent protection of a teacher's summer vacation: "The calendar shall include at least 42 consecutive days when teacher attendance is not required unless: (i) the school is a year-round school. . . ." This provision—within the portions of the statute setting out standards for school calendars and unrelated to "supplemental" programs—runs counter to the trial court's construction of the statute. Indeed, the General Assembly could not have intended in this reference to "year-round schools" to equate such schools with "supplemental" or "additional" programs as set forth in N.C. Gen.Stat. § 115C–84.2(e). Subsection (b)(2) was added in 1997, 1997 N.C. Sess. Laws 443,

s. 838, while subsection (e), addressing supplemental programs, did not come into existence until 2004, 2004 N.C. Sess. Laws 180, s. 1.

As support for its construction of § 115C–84.2, the trial court relied upon legislative history regarding the General Assembly's amendments to § 115C–84.2 in 2004. That legislation added the limitation on opening and closing dates (with the exception for year-round schools) and added subsection (e) discussing supplemental educational programs. 2004 N.C. Sess. Laws 180, s. 1. According to plaintiffs, the fact that the House and Senate Conference Committee that produced 2004 N.C. Sess. Law 180 chose to remove proposed definitions of "year-round schools" from the Act while adding the authorization in subsection (e) of supplemental programs necessarily means that year-round schools are supplemental or additional programs under § 115C–84.2(e).

The Supreme Court has, however, stressed that "where the language of a statute expresses the legislative intent in clear and unambiguous terms, the words employed must be taken as the final expression of the meaning intended unaffected by its legislative history." *Piedmont Canteen Serv., Inc. v. Johnson,* 256 N.C. 155, 161, 123 S.E.2d 582, 586 (1962). We believe that the language of N.C. Gen.Stat. § 115C–84.2(a)(1) and (d) is clear and unambiguous. Legislative history cannot, therefore, be relied upon to force a construction on that statute inconsistent with the plain language.

In any event, the inference drawn by the trial court and plaintiffs from the events in 2004 is at best tenuous. One can just as readily infer that the General Assembly felt that it was unnecessary to define "year-round schools" and that any such definition would inappropriately constrain local school boards from "us[ing] the calendar flexibility in order to meet the annual performance standards set by the State Board," as encouraged by N.C. Gen.Stat. § 115C–84.2(a).

Moreover, the trial court's and plaintiffs' legislative history analysis overlooks the General Assembly's adoption in 1997 of the exemption for "year-round school[s]" in the calendar limitation regarding teacher vacation days. This prior amendment adding an exception for year-round schools, long before a subsection relating to supplemental programs existed, undercuts the inference drawn by the trial court from the—at best—ambiguous legislative history.

[17] Neither the trial court nor plaintiffs have presented any other statutory basis for a requirement of informed parental consent prior to assignment of a child to a year-round school. We note further that the trial court's approach is inconsistent with N.C. Gen.Stat. § 115C–84.2(a)'s requirement that "[l]ocal boards of education shall consult with parents and the employed public school personnel in the development of the school calendar." While this provision requires only consultation, the trial court's order requires agreement by parents in their children's calendar. "[W]hen confronted with a clear and unambiguous statute, courts 'are without power to interpolate, or superimpose, provisions and limitations not contained therein.' " *In re R.L.C.,* 361 N.C. 287, 292, 643 S.E.2d 920, 923 (quoting *In re Banks,* 295 N.C. 236, 239, 244 S.E.2d 386, 388–89 (1978)), *cert. denied,* —— U.S. ——, 128 S.Ct. 615, 169 L.Ed.2d 396 (2007). Thus, we cannot impose a duty to obtain consent when the statute provides only a duty to consult.

We, therefore, hold that the Board has the authority under N.C. Gen.Stat. § 115C–84.2 to create and operate year-round schools. Further, no authority exists to support the trial court's requirement of informed parental consent prior to assignment to such schools. To the contrary, under N.C. Gen. Stat. § 115C–366(b), when a local school board exercises its "full and complete" authority to assign a student to a year-round school, that decision is "final" subject only to an application by the student under N.C. Gen.Stat. § 115C–369 for reassignment.

Conclusion

We note that much of the trial court's decision as well as the materials submitted by the parties to the trial court addressed the advantages and disadvantages of a year-round calendar. Such questions are for the local boards of education, the State Board of

Education, and the General Assembly to decide. As our Supreme Court stressed in its landmark education decision:

> The legislature, unlike the courts, is not limited to addressing only cases and controversies brought before it by litigants. The legislature can properly conduct public hearings and committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view as to what curricula will best ensure that every child of the state has the opportunity to receive a sound basic education.

Leandro, 346 N.C. at 355, 488 S.E.2d at 259. The Court "reemphasize[d][its] recognition of the fact that the administration of the public schools of the state is best left to the legislative and executive branches of government." *Id.* at 357, 488 S.E.2d at 261.

The Court also recognized more than 60 years ago that "[i]f the opinion of court or jury is to be substituted for the judgment and discretion of the board at the will of a disaffected pupil, the government of our schools will be seriously impaired, and the position of school boards in dealing with such cases will be most precarious." *Coggins,* 223 N.C. at 769, 28 S.E.2d at 531. As the Court stated then, "complaints of disaffected pupils of the public schools against rules and regulations promulgated by school boards for the government of the schools raise questions essentially political in nature, and the remedy, if any, is at the ballot box." *Id.*

Thus, if plaintiffs disagree with mandatory assignment to year-round schools, their remedy lies with the electoral process or through communications with the legislative and executive branches of government. We cannot improve upon the incisive statement contained in the amicus brief filed on behalf of the North Carolina Association of School Administrators:

> To the extent that the General Assembly wanted to limit or even eliminate "year round" calendar schools, it has the power to do so. It has not done so, obviously recognizing the importance of giving school boards the necessary flexibility to deal with diverse student populations and the particular challenges faced during a school year by different districts from the mountains to the coast, from small rural districts to large urban districts. To allow the trial court's order and reasoning to stand would significantly impair the ability of boards and school administrators to tailor school calendars and assignment policies of each district so as to provide each student an opportunity for a sound basic education and to prudently utilize the tax resources which fund that opportunity.

Accordingly, we reverse the decision below and remand for entry of judgment in favor of the Board.

Reversed.

Judges McCULLOUGH and STEELMAN concur.



Bennie Leon CORBETT, Petitioner,

v.

NORTH CAROLINA DIVISION OF MOTOR VEHICLES, Respondent.

No. COA07–791.

Court of Appeals of North Carolina.

May 6, 2008.

Background: Former employee of Division of Motor Vehicles sought review of State Personnel Commission's determination that Division did not discriminate against employee. The Superior Court, Wake County, A. Leon Stanback, J., reversed. Division appealed.

Holdings: The Court of Appeals, Calabria, J., held that:

(1) allegations were sufficient to allow employee to file a contested case in the Office of Administrative Hearings;

jury, was not required to make findings of fact and conclusions of law as to the voluntariness of the statement. *See State v. Keith,* 266 N.C. 263, 266–67, 145 S.E.2d 841, 843–44 (1966) (holding that when on *voir dire* the evidence is not in conflict as to the voluntariness of a confession, the trial judge is not required to make findings of fact before ruling on defendant's objection to introduction of the confession). Under these circumstances, the trial court did not err in admitting, without objection, respondent's statement admitting that he possessed the knife on school property.

For the foregoing reasons, the decision of the Court of Appeals is reversed.

REVERSED.



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363 N.C. 250

Janell Wylma McMickle BRYANT, Employee

v.

TAYLOR KING FURNITURE, Employer,

Wausau Insurance Companies, Carrier.

No. 167PA08.

Supreme Court of North Carolina.

May 1, 2009.

On discretionary review pursuant to N.C.G.S. § 7A–31 of a unanimous, unpublished decision of the Court of Appeals, 189 N.C.App. 530, 659 S.E.2d 489 (2008), affirming an opinion and award filed on 27 April 2007 by the North Carolina Industrial Commission. Heard in the Supreme Court 30 March 2009.

Randy D. Duncan, Hickory, for plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Allen C. Smith and Jennifer L. Gauger, Charlotte, for defendant-appellees.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.



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WAKE CARES, INC.; Patrice Lee, individually and as guardian ad litem of her minor children, Ian Lee, Delaney Lee, Margaret Lee, and Bailey Lee; Kathleen Brennan, individually and as guardian ad litem of her minor child, ELIZABETH Brennan; Scott P. Haviland and Gihan I. El–Habbal, individually and as guardians ad litem of their children, Ahmed Haviland, Ayah Haviland, and Iman Haviland; Michael John Stanton and Angela Marie Stanton, individually and as guardians ad litem of their children, Jacob Stanton, Alexis Stanton, Danielle Stanton, Dallas Stanton, and Jordan Stanton; and Kimberly Sinnott and John Nadasky, individually and as guardians ad litem of their children, Reid Nadasky, Sean Nadasky, and James Nadasky, on behalf of themselves and others similarly situated

v.

WAKE COUNTY BOARD OF EDUCATION and Lori Milberg, Horace J. Tart, Carol Parker, Rosa Gill, Susan Parry, Pattie Head, Eleanor Goettee, Ron Margiotta, and Beverley Clark, in their official capacities as members of the Wake County Board of Education.

No. 230PA08.

Supreme Court of North Carolina.

May 1, 2009.

Background: Parents of public school students filed action against county board of education (BOE) for declaratory and injunctive relief, challenging BOE's plan to convert traditional calendar schools to year-round schools and assign students to

those schools on a mandatory basis. The Superior Court, Wake County, Howard E. Manning, Jr., J., entered order prohibiting BOE from requiring attendance at year-round calendar schools without informed parental consent. BOE appealed. The Court of Appeals, 660 S.E.2d 217, Geer, J., reversed.

Holding: Dismissing parents' appeal but allowing discretionary review, the Supreme Court, Timmons–Goodson, J., held that under plain language of relevant statutes, a BOE may assign students to year-round schools without parental consent.

Judgment of Court of Appeals affirmed.

Edmunds, J., filed a concurring opinion.

Martin, J., filed a dissenting opinion in which Brady and Newby, JJ., joined. Brady, J., filed a dissenting opinion.

1. Schools ⇐154(1)

Under plain language of relevant statutes, county board of education may assign students to year-round schools without parental consent. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1; West's N.C.G.S.A. §§ 115C–1, 115C–36, 115C–47(11), 115C–84.2(a), 115C–366(b).

2. Schools ⇐162.1

Nine months per year during which State Constitution requires that public school system be maintained represent only the minimum amount of time required for instruction; the legislature may provide for a longer term if desired. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1.

3. Schools ⇐162.1

Statute providing that local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar does not require parental consent in developing school calendars, nor does it implicate school assignment in any manner. West's N.C.G.S.A. § 115C–84.2(a).

4. Schools ⇐162.1

Constitutional requirement that the public school system be "uniform" in no way implicates the school calendar. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1.

5. Schools ⇐148(1)

The "general and uniform" system of public schools, as required by State Constitution, indicates a fundamental right to a sound basic education. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1.

6. Schools ⇐148(1)

Constitutional guarantee of the opportunity for a sound basic education does not require that equal educational opportunities be afforded students in all of the school districts of the state. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1.

7. Schools ⇐162.1

Differences between educational opportunities available to children attending year-round calendar schools and those available to pupils at traditional schools do not remove year-round schools from the "uniform system" of public schools required under State Constitution. West's N.C.G.S.A. Const. Art. 9, § 2, cl. 1.

8. Schools ⇐162.1

Statute requiring the operation of a uniform school term of nine months in every local school administrative unit does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required. West's N.C.G.S.A. § 115C–1.

9. Schools ⇐162.1

Supreme Court cannot substitute its own judgment for that of a county board of education in implementing mandatory year-round schools.

10. Schools ⇐162.1

Remedy for parents who disagree with mandatory assignment of public school students to year-round schools lies with the electoral process or through communications with the legislative and executive branches of government.

On discretionary review pursuant to N.C.G.S. § 7A–31 of a unanimous decision of the Court of Appeals, 190 N.C.App. 1, 660 S.E.2d 217 (2008), reversing and remanding an order granting summary judgment for plaintiffs entered on 3 May 2007 by Judge Howard E. Manning, Jr. in Superior Court, Wake County. Heard in the Supreme Court 16 December 2008.

Hunter, Higgins, Miles, Elam & Benjamin, PLLC, by Robert N. Hunter, Jr., Greensboro; and William Peaslee, Raleigh, for plaintiff-appellants.

Tharrington Smith, L.L.P., by Ann L. Majestic and Curtis H. Allen III, for defendant-appellee Wake County Board of Education.

Roberts & Stevens, P.A., by Christopher Z. Campbell and K. Dean Shatley, II, Asheville, for North Carolina Council of School Attorneys, amicus curiae.

North Carolina School Boards Association, by Allison Schafer, Legal Counsel; and Poyner Spruill LLP, by Edwin M. Speas, Jr., Raleigh, for North Carolina School Boards Association, amicus curiae.

TIMMONS–GOODSON, Justice.

[1] The question presented by this appeal is whether the North Carolina General Statutes require the Wake County Board of Education to obtain parental consent before assigning students to year-round calendar schools. Because the plain language of the statutes authorizes the creation and assignment to year-round calendar schools, we conclude the Board may assign students to year-round schools without parental consent, and we therefore affirm the decision of the Court of Appeals.

I. Background

The underlying facts of this appeal, as found by the trial court and recited by the Court of Appeals, are undisputed. The Wake County public school system (WCPSS) is the second-largest school system in the state and one of the fastest-growing school systems in the country, having grown more than thirty percent since 2000. Over 128,000 students were enrolled during the 2006–2007 school year, and the school population is expected to gain an additional 65,000 students by 2015. The most dramatic growth and overcrowding are in schools along the N.C. 55 corridor, which includes Cary, Apex, and Holly Springs.

To accommodate the tremendous student population growth, the Wake County Board of Education (the Board) has opened thirty-three additional schools since July 2000, renovated many other schools, and plans to build thirty-one new schools by 2012. Despite the extensive construction, many Wake County schools remain extremely overcrowded and are forced to use cafeterias, libraries, auditoriums, offices, common areas, teacher lounges, and even converted storage rooms as classrooms. School campuses are also increasingly resorting to using mobile classrooms, a situation that overtaxes facilities such as restrooms, media centers, and cafeterias.

In addition to building new schools and using more mobile classrooms, the Board has attempted to alleviate overcrowding by operating a limited number of elementary and middle schools on a multi-track year-round calendar. The WCPSS operates on three different calendars: a traditional calendar, in which school begins in late August and continues until early June; a modified calendar (a single-track year-round calendar), in which the school year begins in late July and ends in late May; and a multi-track year-round calendar. In the multi-track year-round schools, students are divided into four "tracks," each with its own schedule. Track schedules are staggered so that three tracks are in school and one track is on break at all times. Because the multi-track system allows year-round schools to use their buildings twelve months a year, rather than nine, a year-round school can accommodate up to one-third more students than a traditional calendar school. Regardless of which calendar students follow, all students attend school for 180 days. Year-round students receive the same amount of vacation time as those at traditional calendar schools; the vacation time is simply spread throughout the year, rather than limited to the summer months. Year-round students also have the

same holidays as students on the traditional calendar.

In September 2006 the Board voted to convert nineteen elementary and three middle schools to a year-round calendar starting in the 2007–2008 school year. On 6 February 2007, after holding three public hearings, the Board approved its final student assignment plan for the 2007–2008 school year. Under that plan, 20,717 students were assigned to newly-converted or newly-built year-round schools. Previously 17,855 of those students had been assigned to traditional calendar schools.[1]

On 13 March 2007, plaintiffs filed a complaint for declaratory judgment and injunctive relief from the Board's assignment plan, asserting that the Board lacked the authority to convert traditional calendar schools to year-round schools and then assign WCPSS students to those schools on a mandatory basis. Upon hearing the matter, the trial court concluded the Board was authorized to operate and assign students to year-round calendar schools, but only with "informed parental consent." Accordingly, the trial court entered an order prohibiting the Board from requiring "the attendance of students at year round calendar schools without informed parental consent."

The Board appealed to the Court of Appeals, which unanimously reversed the trial court, holding that "the Board is authorized by the General Assembly to establish year-round schools and to assign students to attend those schools without obtaining their parents' prior consent." *Wake Cares, Inc. v. Wake Cty. Bd. of Educ.,* 190 N.C.App. 1, 5, 660 S.E.2d 217, 220 (2008). We dismissed plaintiffs' appeal based on a substantial constitutional question, but allowed their petition for discretionary review. We now affirm the decision of the Court of Appeals.

II. Analysis

The trial court and plaintiffs agree that the Board has the authority to create and to assign students to year-round calendar schools. Plaintiffs argue, however, that the Board must obtain parental consent before assigning students to year-round schools. We must therefore determine whether parental consent is a prerequisite condition to year-round school assignment by the Board under the North Carolina General Statutes.

We begin by recognizing that local boards of education have broad general statutory power to control and supervise public schools:

> All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

N.C.G.S. § 115C–36 (2007); *see also id.* § 115C–40 (2007) ("Local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective local school administrative units . . . ."). Thus, unless such power is expressly delegated elsewhere, local school boards possess the inherent authority to control and supervise "all matters pertaining to the public schools." *Id.*

In addition to the broad grant of authority reserved under N.C.G.S. § 115C–36, section 115C–47 sets forth a list of fifty-four specific powers and duties vested in local boards of education. N.C.G.S. § 115C–47 (2007). Such powers and duties include the duty to provide "adequate school systems," *id.* § 115C–47(1), to "assure appropriate class size," *id.* § 115C–47(10), and, notably, to "determine the school calendar," *id.* § 115C–47(11). Indeed, N.C.G.S. § 115C–47(11) instructs that "[l]ocal boards of edu-

1. Contrary to Justice Martin's assertion that this case arises from the Board's decision to "change its year-round school program from *voluntary* to *mandatory,*" each year-round school has had a portion of students involuntarily assigned to it since 2003. Thus, the Board has not "changed" its program, merely expanded it to encompass more students, including plaintiffs' children. It is this expansion of mandatory year-round school assignment that has prompted the instant case.

cation shall determine the school calendar under G.S. 115C–84.2." Clearly, local boards of education are not only authorized, but statutorily required to set school calendars, subject to N.C.G.S. § 115C–84.2. With these broad powers and duties in mind, we therefore turn to the specific school calendar guidelines of N.C.G.S. § 115C–84.2.

[2] Subsection 115C–84.2(a) states that "[e]ach local board of education shall adopt a school calendar consisting of 215 days all of which shall fall within the fiscal year." *Id.* § 115C–84.2(a) (2007). School calendars must include a "minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months." *Id.* § 115C–84.2(a)(1). The statutory requirement of school calendars covering at least nine calendar months comports with Article IX of the North Carolina Constitution, which states that a "general and uniform system of free public schools ... shall be maintained at least nine months in every year." N.C. Const. art. IX, § 2, cl. 1. These nine months represent only the minimum amount of time required for instruction; the legislature may provide for a longer term if desired. *Harris v. Bd. of Comm'rs,* 274 N.C. 343, 353, 163 S.E.2d 387, 394 (1968); *Frazier v. Bd. of Comm'rs,* 194 N.C. 49, 63, 138 S.E. 433, 440 (1927). The local board "shall designate when the 180 instructional days shall occur." N.C.G.S. § 115C–84.2(a)(1); *see also id.* § 115C–84.2(d) (2007) ("Local boards of education shall determine the dates of opening and closing the public schools....").

Section 115C–84.2 does not classify school calendars as "traditional," "modified," or "year-round," nor does it express any preference as to the school calendars local boards should adopt. N.C.G.S. § 115C–84.2 indicates, however, that local school boards may devise different types of school calendars to achieve educational goals: "Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board." *Id.* § 115C–84.2(a). Notably, N.C.G.S. § 115C–84.2 specifically recognizes year-round schools as a legitimate calendar option. While N.C.G.S. § 115C–84.2 places some limitations on school calendars, *see id.* § 115C–84.2(b) (2007), year-round schools are expressly exempted from several of these limitations. For example, a school calendar "shall include at least 42 consecutive days when teacher attendance is not required *unless* ... the school is a year-round school." *Id.* § 115C–84.2(b)(2) (emphasis added). Further, "*[e]xcept for year-round schools,* the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10." *Id.* § 115C–84.2(d) (emphasis added). Thus, N.C.G.S. § 115C–84.2 explicitly acknowledges year-round calendars as a valid school calendar option. We find no statutory restrictions or legislative disapproval of the use of year-round school calendars in N.C.G.S. § 115C–84.2. To the contrary, subsection 115C–84.2(a) encourages local school boards to utilize calendar flexibility.

Having determined that utilization of a year-round calendar is authorized and, indeed, even to some extent encouraged, there remains only the question of whether parental consent plays any role in the year-round school assignment process. The plain language of our General Statutes expressly rejects any such implication. School assignment is solely within the power of the local school board, and "[e]xcept as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final." *Id.* § 115C–366(b) (2007).

[3] Although N.C.G.S. § 115C–84.2(a) states that "[l]ocal boards of education shall *consult* with parents and the employed public school personnel in the development of the school calendar," *id.* § 84.2(a) (emphasis added), it does not require parental *consent* in developing school calendars, nor does it implicate school *assignment* in any manner. Parents who are dissatisfied with their child's school assignment may apply to the local school board for reassignment and receive a hearing on the matter. *See id.* § 115C–369 (2007). At such hearing, the local board must consider "the best interest of the child, the orderly and efficient administration of the public schools, the proper administration

of the school to which reassignment is requested and the instruction, health, and safety of the pupils there enrolled, and shall assign said child in accordance with such factors." *Id.* § 115C–369(c). Any final determination by the local board as to reassignment is then subject to judicial review. *Id.* § 115C–370 (2007).

In sum, the General Assembly has conferred broad, specific, and sole authority upon local school boards to determine school calendars. Moreover, N.C.G.S. § 115C–84.2 explicitly recognizes year-round calendars as acceptable school calendars. As such, parental consent is no more a factor in assignment to year-round schools than it is to traditional schools. When assignment to a particular school places too great a burden on individual children, as is alleged by plaintiffs in the instant case, parents may seek reassignment and judicial review of any assignment decision.

Plaintiffs argue, however, that N.C.G.S. § 115C–1 requires the Board to operate and provide equal access for all students to traditional calendar schools. N.C.G.S. § 115C–1 states:

> 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. . . . 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.

Id. § 115C–1 (2007). Plaintiffs contend there are fundamental differences in the educational experiences and opportunities available to children attending year-round schools and those attending traditional calendar schools. According to plaintiffs, year-round schools are therefore not part of a "uniform system" of public schools under N.C.G.S § 115C–1. Thus, plaintiffs reason, while the Board may offer year-round schools as an alternative to traditional schools, it must give all students the option of attending a traditional calendar school, and the Board cannot compel students to attend a non-traditional calendar school. Further, contend plaintiffs, N.C.G.S. § 115C–1 requires "a uniform school term of nine months," and that the word "term" indicates that such nine months must be consecutive, rather than spread throughout the calendar year. We are not persuaded.

[4–7] Section 115C–1 merely codifies our state's constitutional requirement of "a general and uniform system of free public schools, which shall be maintained at least nine months in every year." N.C. Const. art. IX, § 2, cl. 1. This constitutional requirement that the public school system be "uniform" in no way implicates the school calendar. *See Bd. of Educ. v. Bd. of Cty. Comm'rs,* 174 N.C. 469, 473, 93 S.E. 1001, 1002 (1917) (noting that the term "uniform" qualifies the word "system" and requires only that provision be made "for establishment of schools of like kind throughout all sections of the State and available to all of the school population of the territories contributing to their support" (citations omitted)). The "general and uniform" system of public schools indicates "a fundamental right to a sound basic education." *Leandro v. State,* 346 N.C. 336, 348, 488 S.E.2d 249, 255 (1997). The constitutional guarantee of the opportunity for a sound basic education does not require, however, "that equal educational opportunities be afforded students in all of the school districts of the state." *Id.* at 351, 488 S.E.2d at 257. Plaintiffs do not argue that year-round schools fail to provide a sound basic education. In fact, the trial court found that "there is no contention that the educational opportunity offered by a year round school is better or worse than the educational opportunity offered by a traditional elementary or middle school." Thus, while the educational opportunities available to children attending year-round schools may differ from those available to pupils at traditional schools, these differences do not remove year-round calendar schools from the "uniform system" of public schools.

[8] Further, on its face, N.C.G.S. § 115C–1 does not require that the school term consist of nine consecutive months or otherwise dictate the manner in which the school term should be calendared. Plaintiffs' reading of the word "term" to mandate nine consecutive months places the very general

language of section 115C–1 in conflict with the specific guidelines of section 115C–84.2, a position repugnant to our canons of statutory interpretation. *See Bd. of Educ. v. Bd. of Cty. Comm'rs,* 240 N.C. 118, 126, 81 S.E.2d 256, 262 (1954) (stating that " '[a]n unnecessary implication arising from one [statutory] section, inconsistent with the express terms of another on the same subject, yields to the expressed intent' " (citations omitted)). We agree with the Court of Appeals that N.C.G.S. § 115C–1, "consistent with the purpose of the constitutional provision it was designed to implement, does not mandate equal access to a school term of nine consecutive months, but rather refers to the minimum quantum of educational instruction required." *Wake Cares,* 190 N.C.App. at 23, 660 S.E.2d at 231. Plaintiffs offer no other statutory support for their position, and we have found none. We conclude N.C.G.S. § 115C–1 does not limit the Board's authority to assign students to year-round schools.

III. Conclusion

We hold that the Board is statutorily authorized to compel attendance at year-round calendar schools. The Board's action in converting traditional calendar schools to year-round calendar schools comports with its statutory duty to provide a school system adequate to the needs of increasing student enrollment while assuring appropriate class sizes in its schools. *See* N.C.G.S. § 115C–47(1), (10). Moreover, the more efficient use by year-round calendar schools of existing school facilities complies with the public policy of the state to create a public school system "in the most cost-effective manner" while ensuring a sound basic education for all North Carolina children. *Id.* § 115C–408(a) (2007).

[9, 10] We recognize the emotional nature of this case, but we must emphasize that our duty goes no further than to determine the legal authority for implementing mandatory year-round schools, not the wisdom of such a decision. This Court cannot substitute its own judgment for that of the Board. *See Leandro,* 346 N.C. at 357, 488 S.E.2d at 261 ("[T]he administration of the public schools of the state is best left to the legislative and executive branches of government."); *see also Coggins ex rel. Coggins v. Bd. of Educ.,* 223 N.C. 763, 769, 28 S.E.2d 527, 531 (1944). As noted by the Court of Appeals, "if plaintiffs disagree with mandatory assignment to year-round schools, their remedy lies with the electoral process or through communications with the legislative and executive branches of government." *Wake Cares,* 190 N.C.App. at 27, 660 S.E.2d at 233. We agree, and we affirm the decision of the Court of Appeals.

AFFIRMED.

Justice EDMUNDS concurring.

I concur with the majority holding affirming the Court of Appeals reversal of the trial court's order. However, while I acknowledge the grave difficulties faced by defendant Wake County Board of Education and detailed in the majority opinion, I write separately to emphasize that this Court's decision is compelled by the applicable constitutional provisions and statutes.

Nevertheless, plaintiffs are not without recourse. The record includes affidavits from individual plaintiffs establishing that mandatory year-round schools will be inordinately disruptive in their family lives. Under section 115C–369, parents or guardians of any student assigned to a year-round school may seek reassignment and apply for a mandatory hearing if the request is denied. N.C.G.S. § 115C–369(a) (2007). At such a hearing, one of the factors that "shall" be considered is "the best interest of the child." *Id.* § 115C–369(c) (2007). I cannot believe that "best interest" does not include at least some of the factors raised by plaintiffs, such as sibling placement, family schedules, and the like.

Moreover, plaintiffs have the ultimate remedy of the ballot box. *Id.* § 115C–37 (2007) (mandating election of county boards of education). While boards of education must make difficult choices as to how to allocate scarce resources, those boards are responsible to the voters, who have the power both to elect candidates of their choice and to unseat incumbents.

For the reasons given above, I concur in the majority opinion.

Justice MARTIN dissenting.

This case arises from the decision of the Wake County Public School System (WCPSS) to change its year-round school program from *voluntary* to *mandatory*. Despite a tradition of using year-round schools as a voluntary supplemental program, and in the absence of specific legislative authorization, WCPSS mandatorily placed approximately 20,000 students at schools operating on year-round calendars.[2] These students were not offered placements at schools operating on the traditional school schedule, as had previously been the expectation of students and families within WCPSS. The actions of WCPSS violate the North Carolina school calendar law. They are also inconsistent with long-standing education practice in this State. Because WCPSS exceeded its authority when it materially and substantially changed the school calendar for some of its students, I respectfully dissent.

As Judge Manning observed, mandatory placement on a year-round calendar "is a systemic, material change for the students and families" so affected. Since the advent of public education in North Carolina over 160 years ago, the overwhelming majority of our schools have operated on a traditional calendar. Although breaks from educational tradition may prove valuable and effective, the process used to implement such fundamental policy changes must necessarily comply with the law.

The legislature has not authorized any local school board to mandate year-round schooling for public school students. It is unreasonable to suggest that the legislature's 2004 amendment to the school calendar statute, which was enacted to preserve summer vacation, was actually intended to grant local school boards the authority to impose on public school students a schedule that requires them to attend school throughout the summer months. A careful reading of the applicable statutes reveals that they prohibit a local school board from mandating that students attend a year-round calendar.

The trial court properly preserved our students' legal right to attend a traditional calendar school. This Court should require the local board to direct its policy arguments to the General Assembly. The consequences of the majority's decision are starkly different from those of the trial court's order. Instead of maintaining the status quo and allowing the General Assembly to consider and clearly resolve this important policy question, the majority's holding opens the door for any local school board in North Carolina to impose mandatory year-round schools.

Despite the long history of public education in North Carolina, year-round schooling is a relatively recent innovation. The practice began in our State as an experimental program in which student and family participation was purely voluntary. WCPSS opened North Carolina's first year-round school in 1989, and interested parents sought admission for their children via an application process. In 1991 the State Board of Education (State Board) issued a policy statement supporting local boards' study and exploration of year-round "models." *See* N.C. State Bd. of Educ., Policy Manual, Policy No. EEO–G–000 (titled "Policy supporting local efforts to implement year-round education models") (Dec. 5, 1991), *available at* http://sbepolicy.dpi.state.nc.us. The local board implemented the State Board's policy throughout the 1990s, opening a handful of voluntary year-round schools each year.

According to the local board's own account, for most of their short history, year-round schools in WCPSS have operated only with the support of local communities and the consent of individual attendees. For example, in 1992 the local board discarded its original proposal for the first year-round middle school due to "negative community response," whereas the first conversion of a traditional elementary school to a year-round calendar was spawned by "[a] high level of staff and parent support." During the 1995–

2. This new policy was initiated in 2003 with a small number of students but has now been expanded to approximately 20,000 students. The instant case is the first legal challenge to the new policy.

1996 school year, the local board approved a plan for "expanding the voluntary year-round calendar" in the upcoming years. In 1999 a citizens' advisory committee recommended that WCPSS "provide more optional year-round schools, especially in areas where the year-round option does not currently exist." In sum, WCPSS and children and families functioned under the premise that students necessarily retained the right to attend traditional calendar schools.

In 2003 the local board removed the traditional calendar option for a small number of students by mandatorily placing them at year-round schools that were otherwise populated by willing applicants. In 2006 the local board substantially expanded the new policy by developing a comprehensive plan to impose year-round schooling on a significant percentage of students. During the 2006–2007 school year, the board opened five new multi-track year-round schools populated almost entirely by mandatory placements. That year, nearly 7,000 students were involuntarily placed at year-round schools. Furthermore, the local board voted to convert nineteen additional elementary schools and three additional middle schools to a multi-track year-round schedule beginning in the 2007–2008 term. The board's plan for the 2007–2008 term more than doubled both the number of schools designated as year-round and the number of students mandatorily slotted for year-round schools. Nearly 18,000 students who attended traditional calendar schools during the 2006–2007 school year faced involuntary placement at year-round schools in 2007–2008, bringing the total number of mandatory year-round placements to over 20,000. The local board stated that a mandatory year-round schedule for these students was necessary to address existing and anticipated overcrowding.

The year-round school schedule is fundamentally different from the traditional schedule. Specifically, the multi-track year-round schedule replaces the traditional nine and a half month instructional period followed by a two and a half month summer vacation with four rotating intervals of nine instructional weeks followed by three vacation or "track out" weeks.

Although families who elected to participate in year-round schooling presumably felt there were benefits to that schedule, the resistance of other families to a mandatory year-round program is not surprising. At least some children and families have benefitted from, and indeed have come to rely upon, summer vacation. The long summer break gives children the opportunity to learn about subjects school does not teach through methods school cannot use. During the summer students may pursue a passion for an instrument or sport, gain and hone skills like computer programming for future employment, spend time with family near and far, expand their perspectives by making friends from outside their neighborhoods while at camp, or simply learn self-direction as they plot their own course each day. The year-round schedule seriously hinders these opportunities, enjoyed by virtually every generation of North Carolina's children, and upsets families' reliance on the traditional summer vacation.

In this case, plaintiffs allege the following hardships arising from mandatory placement of public school students at year-round schools:

(1) Children within the same family unit are placed at both traditional and year-round calendar schools. Different vacation periods for children within the same family unit deprive siblings of bonding time and significantly reduce the periods available for family travel.

(2) Lack of a traditional summer vacation prevents extended trips to visit out-of-state relatives and potentially interferes with shared custody arrangements in which one divorced parent lives outside of North Carolina.

(3) Children enrolled in year-round schools cannot participate in some valuable summer programs that are scheduled to accommodate the much larger number of children who attend traditional calendar schools. Such activities include day camp; music, art, and dance programs; sports leagues; educational and university enrichment programs; and religious education and activities. For example, year-round students are precluded from

participating in, among other things, the Duke University Talent Identification Program for academically gifted students and the North Carolina State University Summer Reading Skills Program (http://continuing education.ncsu.edu/reading/).

(4) Some parents, including many teachers, have chosen jobs with schedules matching the traditional school calendar, enabling them to stay at home with their children during the summer. When children of these parents are placed at year-round schools, the parents must choose between finding and paying for child care during the periodic three-week breaks, or quitting their jobs.

(5) Year-round schooling imposes financial hardships on many families. Particularly, year-round families often face increased difficulty and expense in securing child care arrangements because the frequent three-week track out periods preclude utilization of more traditional and less expensive child care options such as older students, summer nannies, or day care. For instance, the YMCA's track out program, recommended to parents by WCPSS, costs $1,885 per year per child.

In sum, plaintiffs contend that the periodic rotation in and out of school and the loss of summer vacation alter the personal development of students and interfere with many important facets of family life. Weighing the detrimental impact on individual families against the challenges facing WCPSS requires thorough examination and resolution of the mandatory year-round question by the appropriate policy-setting bodies for public education. The local board is not one of those bodies.

The General Assembly, State Board, and local school boards have different institutional roles with respect to education administration. Consideration of these roles indicates that absent legislative authorization, local boards may not fundamentally alter the customary public school calendar.

Under the North Carolina Constitution and Chapter 115C of our General Statutes, the General Assembly and State Board are responsible for setting major educational policy. Our State Constitution states that "[t]he General Assembly shall provide ... for a general and uniform system of free public schools," and "[t]he State Board of Education shall supervise and administer the free public school system ... and shall make all needed rules and regulations in relation thereto." N.C. Const. art. IX, §§ 2(1), 5. No such constitutional authority is vested in local boards of education.

Section 115C–12 of the General Statutes builds upon the constitutional provisions and specifically charges the State Board with establishing educational policy: "The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly." N.C.G.S. § 115C–12 (2007). Local boards, on the other hand, are charged with "enforc[ing] the school law in their respective units." N.C.G.S. § 115C–36 (2007).

Local boards are not well suited to consider implementation of mandatory year-round schooling without guidance from the General Assembly. There are statewide ramifications to such a substantial policy shift. Although the local board asserts cost-savings from its use of year-round schools, the long-term implications-financial, educational, or otherwise-of imposing year-round schedules on children and families are simply not clear from the present record. The General Assembly is far better situated than any one local school board to balance the benefits of maintaining the traditional calendar for students, families, industries such as tourism, or other parties against any benefits of year-round schooling to facility use, academic achievement, or other interests.

Moreover, the majority's proposed recourse for affected families, assignment appeals procedures and local school board elections, ignores the factual record. The trial court's findings specifically refute any assertion that application by year-round students for reassignment to traditional calendar schools constitutes a practical solution. *See* N.C.G.S. § 115C–369 (2007) (permitting application to the local board for reassignment to a different school). Indeed, the trial court found that "the assignment appeals process

under G.S. 115C–366, et seq. is futile and inadequate." In this regard, the trial court observed that the traditional calendar seats available for reassignment "are materially fewer in number than [the] . . . seats mandatorily assigned to four (4) track year round schools under the [board's] conversion plan." Additionally, the board's policy requires at least some of the families who are granted reassignment to provide their own transportation to the traditional calendar schools, which the trial court found "imposes an undue burden and expense on the parents."

With respect to the political process: The vast majority of Wake County students are not affected by the compulsory year-round policy, and the students who are affected all reside in a particular area within the county. Together, these factors mean that year-round students and their families are unlikely to muster the political strength necessary to avoid selective imposition of mandatory year-round schooling. In sum, the inevitable difficulties associated with unilateral imposition of mandatory year-round placements at the local level emphasize the importance of the General Assembly's statewide consideration of this issue.

Although the role local boards play in the operation of our public schools is important and multi-faceted, *see, e.g.,* N.C.G.S. § 115C–47 (2007) (listing approximately fifty of the powers and duties vested in local boards by the legislature), this Court has previously stated that it is the General Assembly that "has the power to provide for a longer term for the public schools of the State." *Frazier v. Bd. of Comm'rs,* 194 N.C. 49, 63, 138 S.E. 433, 440 (1927). We have also observed, "Whether the term shall exceed the minimum fixed by the Constitution must be determined from time to time by the General Assembly, in accordance with its judgment, and in response to the wishes of the people of the State." *Id.* Only after our General Assembly decides that mandatory year-round calendars are appropriate in this State may a local school board impose such calendars within its district.

A careful and reasoned analysis of the calendar statute reveals that the General Assembly has not granted local boards the power to impose mandatory year-round schooling. *See* N.C.G.S. § 115C–84.2 (2007). First, the statute prohibits a local board from adopting a school calendar that violates the opening and closing dates set by section 115C–84.2(d). Second, as explained below, the statute precludes local boards from mandating that different children attend different school calendars. For these reasons, the local board lacked authority to place students at year-round schools on an involuntary basis.

The local board's placement of students on a year-round calendar violates the calendar statute's limitations on opening and closing dates. Section 115C–84.2(d) states that school shall not begin before August 25 nor end after June 10. § 115C–84.2(d). A year-round calendar, which includes instructional days outside the allowed period, does not comply with this provision. The majority holds that statutory exemptions of year-round schools from the opening and closing date requirements permit local boards to adopt mandatory year-round calendars. *See id.* ("Except for year-round schools, the opening date for students shall not be before August 25, and the closing date for students shall not be after June 10."); *see also* § 115C–84.2(b)(2) (exempting year-round schools from the mandatory teacher vacation requirement).

The majority's holding does not comport with our canons of statutory interpretation. In reading a statute, this Court routinely seeks the intent of the legislature. *See Lithium Corp. of Am. v. Town of Bessemer City,* 261 N.C. 532, 536, 135 S.E.2d 574, 577 (1964) (stating that, when the meaning of a statute is unclear, "[t]he spirit and intent of an act controls its interpretation"). Further, provisions "should be construed in a manner which tends to prevent them from being circumvented." *Meads v. N.C. Dep't of Agric.,* 349 N.C. 656, 666, 509 S.E.2d 165, 172 (1998).

The legislature added the opening and closing date requirements and accompanying exception for year-round schools in a 2004 amendment. *See* Act of July 18, 2004, ch. 180, sec. 1, 2004 N.C. Sess. Laws 701, 704 (codified at N.C.G.S. § 115C–84.2(d)).

It is illogical to reason that, in an amendment expressly bounding the school year and thereby preserving the traditional summer break, the legislature meant to allow all local boards to eliminate that break by imposing mandatory year-round calendars. That interpretation, adopted by the majority, permits the exception to swallow the overarching intent of the amendment: to curtail calendar expansion and protect summer vacation. The more reasonable interpretation of the statute is that the legislature, aware of year-round schools operating on a small-scale, *voluntary* basis throughout the State, included the statutory exception to allow for their continued existence. Had the legislature intended to allow *mandatory* year-round schooling for every North Carolina student—a startling break from over 160 years of educational practice—it could have, and would have, done so in a straightforward fashion.

Furthermore, other provisions of the calendar statute prohibit a local board from placing some children on a customary school schedule but placing other children on a year-round schedule. These provisions require that, for purposes of the mandatory calendar, all students in a single administrative unit attend school on the same days. Section 115C–84.2(a) states that "[e]ach local board of education shall adopt a school calendar" and "shall designate when the 180 instructional days shall occur." § 115C–84.2(a). "A school calendar" means one school calendar, which the local board must adopt for all students in its administrative unit. *Id.* The statute then instructs the board to choose "the 180 instructional days." *Id.* The plain language indicates that the board must adopt a single set of 180 instructional days in setting its mandatory calendar.

The calendar statute does not permit variation within the local unit with respect to the 180 instructional days of the mandatory calendar. When the General Assembly did intend to grant flexibility within the unit, it did so explicitly. For example, the legislature expressly allowed for variation among schools with respect to instructional hours. *See* § 115C–84.2(a)(1) ("The number of instructional hours in an instructional day may vary ... and does not have to be uniform among the schools in the administrative unit."). Additionally, the legislature permitted local boards to schedule certain calendar days beyond the 180 instructional days "in consultation with each school's principal for use as teacher workdays, additional instructional days, or other lawful purposes." § 115C–84.2(a)(5). The language used in these provisions is markedly different from that discussing the basic 180 days, *see* § 115C–84.2(a)(1) ("The local board shall designate when the 180 instructional days shall occur."), which leaves no room for flexibility within the local unit. Moreover, in a recent amendment, the legislature deleted a sentence found in prior versions of the statute providing that "[d]ifferent opening and closing dates may be fixed for schools in the same administrative unit." *See* ch. 180, sec. 1, 2004 N.C. Sess. Laws at 704. Because the legislature capably expressed its intent to allow for flexibility within the local unit in certain instances, but declined to allow for variation regarding the 180 instructional days, those days must be the same for every school in the unit.

Local boards may not mandate multiple, wholly different sets of 180 instructional days for different schools or students in the same administrative unit. *See* § 115C–84.2. Students on a year-round calendar attend school on different days than do students on a traditional calendar. Therefore, the local board's imposition of mandatory year-round schooling on certain students in its unit, while other students remain at traditional schools, violates the calendar statute.[3]

The local board may, however, continue to offer year-round schooling as a *voluntary* program. This authority is found in section 115C–84.2(d)'s exemption of year-round schools from the opening and closing date requirements and in section 115C–84.2(e), which provides: "Nothing in this section prohibits a local board of education from offer-

3. A multi-track schedule on its own violates the calendar statute, because the different tracks operate to assign students in the same administrative unit to different sets of 180 instructional days.

ing supplemental or additional educational programs or activities outside the calendar adopted under this section." § 115C–84.2(d), (e). The reference in section 115C–84.2(e) to "additional programs" encompasses year-round schooling.[4]

These additional programs, however, must be voluntary. This conclusion derives from the plain language of section 115C–84.2(e): "Nothing ... prohibits a local board of education from *offering*" the additional programs. § 115C–84.2(e) (emphasis added). The definition of an offer is to "present[ ] something for acceptance." *Black's Law Dictionary* 1113 (8th ed.2004). Therefore, the board is authorized to offer programs with alternative calendars, including year-round, but it is not authorized to compel their acceptance. Rather, the local board must make available, to all students who wish, a spot in a school operating on the traditional calendar. *See* § 115C–84.2(d) (setting allowable school starting and ending dates). Though students may opt for a year-round school, they retain the right to attend a school operating on the traditional calendar.

The majority points to section 115C–36 in concluding that a local school board may place students at year-round schools. *See* § 115C–36 (conferring on local boards of education "[a]ll powers and duties conferred and imposed by law respecting public schools[ ] which are not expressly conferred and imposed upon some other official" and providing that local boards "shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units"). The majority further points to section 115C–47(11), which provides that local boards "shall determine the school calendar under G.S. 115C–84.2." § 115C–47(11).

Both the residual power to supervise the public schools and the general authority to determine the local school calendar, however, must yield to the more specific limitations imposed by the legislature in section 115C–84.2. "Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized ...; but, to the extent of any necessary repugnancy between them, the special statute ... will prevail over the general statute...." *Krauss v. Wayne Cty. Dep't of Soc. Servs.,* 347 N.C. 371, 378, 493 S.E.2d 428, 433 (1997) (internal quotation marks omitted) (quoting *McIntyre v. McIntyre,* 341 N.C. 629, 631, 461 S.E.2d 745, 747 (1995) (alterations in original)). Section 115C–36 is a general statute, in that it grants to local boards "general control and supervision of all matters pertaining to the public schools," but addresses no specific area of control. § 115C–36. Section 115C–47(11) is more specific, in that it directs local boards to determine the school calendar, but it expressly states that such a determination must be in accord with section 115C–84.2. § 115C–47(11). Section 115C–84.2 sets out "minute and definite" requirements and the limited circumstances under which those requirements may be waived. *Krauss,* 347 N.C. at 378, 493 S.E.2d at 433 (quoting *McIntyre,* 341 N.C. at 631, 461 S.E.2d at 747). As discussed, mandatory year-round schools violate the provisions of section 115C–84.2. Accordingly, the argument that Chapter 115C's general grant of residual authority permits this violation is inconsistent with well established canons this Court uses to discern legislative intent.

Additionally, the majority's reliance on section 115C–366(b), which gives local boards authority to assign students to the public schools, is misplaced. As stated by the trial court, this is not a case about the assignment of students to a particular school. Rather,

4. Year-round schooling is described elsewhere in the education statutes as an optional program. *See* N.C.G.S. § 115C–238.31(a) (2007) (listing "[c]alendar alternatives," including year-round school, in Article 16, titled "Optional Programs"). Like year-round schooling, the other optional programs discussed in Article 16, including adult education programs, summer schools, and charter schools, are far more extensive than mere after school activities. *See* N.C.G.S. §§ 115C–230 to –238.55 (2007). For instance, a large portion of the Article is devoted to charter schools, which constitute a full replacement for the customary public education program. *See* §§ 115C–238.29A to –238.29K.

this case is about the local board's decision to "materially and decisively change the schedule and manner in which students and their families are required to attend school during the calendar year." Section 115C–366 itself states that the local board's assignment authority is complete and final "[e]xcept as otherwise provided by law." N.C.G.S. § 115C–366(b) (2007). Because section 115C–84.2 requires operation of a calendar beginning no sooner than August 25 and ending no later than June 10, and because it requires that local boards make that calendar available to all students, the local board is prohibited from mandatorily placing students at year-round schools.

Perhaps because year-round schooling is a fairly recent development in North Carolina and has thus far been implemented on an experimental, overwhelmingly voluntary basis, our General Assembly has not yet taken the opportunity to address the propriety of mandatory year-round calendars. In this situation, when the current statutes do not permit mandatory year-round calendars, the local board must argue the benefits of its new education policy to the legislature rather than to this Court.

The legislature is best equipped to craft a solution that balances the legitimate needs of local school systems with the interests of students and their families. *See Leandro v. State,* 346 N.C. 336, 357, 488 S.E.2d 249, 261 (1997) ("[T]he administration of the public schools of the state is best left to the legislative and executive branches of government.").

> The members of the General Assembly are popularly elected to represent the public for the purpose of making just such decisions. The legislature, unlike the courts, is not limited to addressing only cases and controversies brought before it by litigants. The legislature can properly conduct public hearings and committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view. . . .

Id. at 355, 488 S.E.2d at 259; *see also Hoke Cty. Bd. of Educ. v. State,* 358 N.C. 605, 645, 599 S.E.2d 365, 395 (2004) (observing that the legislative and executive branches "have developed a shared history and expertise in the field that dwarfs that of this and any other Court"). There is no doubt that the legislative and executive branches enjoy a myriad of institutional advantages over this Court in setting education policy.

Although this Court has not hesitated to defend our citizens' right to a sound basic education, *see Leandro,* 346 N.C. at 347, 488 S.E.2d at 255; *Hoke County,* 358 N.C. at 609, 599 S.E.2d at 373, we have repeatedly emphasized the primacy of the General Assembly in enacting new policy. We have consistently refused to allow courts to intrude "into an area so clearly the province, initially at least, of the legislative and executive branches." *Leandro,* 346 N.C. at 357, 488 S.E.2d at 261. For example, we reversed a trial court when it mandated that the State begin educating four-year-olds to rectify a failure to provide a sound basic education. *See Hoke County,* 358 N.C. at 645, 599 S.E.2d at 395. We overturned the trial court's choice of a specific policy both in recognition of courts' institutional limitations and because failing to give our coordinate branches the initial chance to craft a solution would have "effectively undermine[d] the authority and autonomy of the government's other branches." *Id.* at 643, 645, 599 S.E.2d at 393, 395.

The circumstances here cry out for the legislature to speak first, before this Court or any local board of education, on the question of *mandatory* year-round schooling. This case concerns a policy question of great importance to our State's educational institutions and its public school students and their families. In support of its position, the local board advocates for a statutory interpretation counter to the vast weight of traditional education practice. Nothing in the current education statutes indicates, however, that the General Assembly intended to permit local school boards to mandatorily place students at year-round schools. Accordingly, this Court should uphold the trial court's order and preserve students' legal right to attend a traditional calendar school.

I respectfully dissent.

Justices BRADY and NEWBY join in this dissenting opinion.

Justice BRADY dissenting.

The majority opinion evinces a dramatic shift from the traditional maxim that "mother knows best" to the "progressive" idea that "bureaucrat and elected official knows best." I cannot sit silently and watch as this Court removes the ultimate responsibility of education from the hands of parents to the hands of the education establishment. While I concur fully in Justice MARTIN's well-reasoned dissenting opinion, I write separately to emphasize both the importance that family plays in the education of our young citizenry and how the majority opinion fails to consider the harmful effect of its decision on the family.

Initially, I note that the majority has failed to properly construe the statutes at issue. "When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and judicial construction of legislative intent is not required." *Diaz v. Div. of Soc. Servs.,* 360 N.C. 384, 387, 628 S.E.2d 1, 3 (2006) (citing *Burgess v. Your House of Raleigh, Inc.,* 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990)). The majority's construction of N.C.G.S. § 115C–1, which mandates "[t]here shall be operated in every local school administrative unit a uniform school term of nine months," is strained. To interpret that statute to mean anything other than a consecutive nine month calendar is farcical. Yet, the majority allows local school boards the authority to stretch these nine months of instruction over twelve months and then strips parents of the right to choose whether their child should be subjected to this schedule in contravention of our Constitution and the intent of the General Assembly.

The absence of reason presented by this construction is easily demonstrated through hypothetical situations involving interpretations of the word "term." Members of this Court serve an eight year term. N.C. Const. art. IV, § 16. Certainly no one would interpret that provision to mean that a member of the Court may sporadically spread his or her eight year term over the course of his or her lifetime as long as the sum total of service is only eight years. Were this a matter of an employment contract in which an employee was contractually obligated to work a nine month term, this Court certainly would not interpret that contract to allow the employee to work for three months and then take a one month vacation before resuming work without being in breach of contract. However, when the question involves placing more control of traditional family matters in the hands of government officials, such a construction suddenly becomes plausible. In effect, the majority has assumed the role of the General Assembly and rewritten the statute to say whatever it wants. I refuse to join in this blatant violation of the separation of powers.

After having contorted principles of statutory construction, the majority has now taken yet another decision relating to the education of our children out of the hands of parents, placing it into the hands of the education establishment. For years, families have been able to rely upon the traditional school calendar to plan family vacations and other family-oriented activities, which are important not only to individual families, but to the health of our culture, economy, and society in general. Now, however, the distinct probability exists that multichildren families will be presented with mandatory year-round schedules that place each of their children in a different calendar track, leaving little to no time when all the children in the family unit are free from school responsibilities. Parents may have also wished to opt for a traditional school calendar in order to give their teenagers opportunities to gain valuable employment experience during the extended summer vacations found in a nine month calendar, thereby increasing their career skills and learning the personal responsibility required of adults at an early age. For some unfortunate families in Wake County, that choice is no longer an option.[5] The majority

5. The school calendar act passed in 2004 and now codified in N.C.G.S. § 115C–84.2(d) was intended to preserve the traditional lengthy summer vacation enjoyed by families across North Carolina. Incredibly, this act, sought by an organization called "Save our Summers North Carolina," provided the death knell for the traditional summer for many Wake County students because of a passing mention of year-round

additionally fails to recognize the severe economic impact defendants' action would have on seasonal employment, especially in the service industry, where many students experience the transition from teenagers to young adults during the summer months.

Furthermore, the uneven geographical distribution of Wake County schools subject to a mandatory year-round calendar is problematic. The mandatory year-round schedule has been implemented by the board for schools located outside of the Interstate 440 Beltline. Many families choose to live in the suburban areas outside the Beltline for reasons including school choice, economic feasibility, and familial concerns. Yet, between forced year-round schedules and the ever-raging reassignment debate, which has been chronicled in the local media, families no longer receive what they bargained for in their choice of the neighborhood in which they raise our most valuable assets.

While constitutional issues of liberty are not before the Court, the language used by this Court and the Supreme Court of the United States in dealing with such issues demonstrates the long-standing deference our judiciary and society has given to traditional family decisions on education. The liberty "interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court of the United States. *Troxel v. Granville,* 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality). No other right has been so glowingly discussed and vigorously protected by our nation's highest court. *See, e.g., Parham v. J.R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course. . . ."); *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected." (citations omitted)); *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); *Pierce v. Soc'y of Sisters,* 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925) ("The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.").

This Court has likewise held the right of parents to direct the upbringing of their children in high regard. *See, e.g., Owenby v. Young,* 357 N.C. 142, 145, 579 S.E.2d 264, 266 (2003) ("The protected liberty interest complements the responsibilities the parent has assumed and is based on a presumption that he or she will act in the best interest of the child." (citations omitted)); *Petersen v. Rogers,* 337 N.C. 397, 403–04, 445 S.E.2d 901, 905 (1994) (holding that "absent a finding that parents (i) are unfit or (ii) have neglected the welfare of their children, the constitutionally-protected paramount right of parents to custody, care, and control of their children must prevail"); *Delconte v. State,* 313 N.C. 384 *passim,* 329 S.E.2d 636 *passim* (1985) (discussing home schools in relation to compulsory school attendance statutes). Yet, today the majority decision gives no deference to the traditional notion of family control of educational decisions. While it could be argued that parents have the right to remove their children from public schools and provide alternative forms of education, such an opportunity is simply not practical for many families. Considering today's decision, one cannot help but wonder about the majority's dedication to this Court's prior pronouncements on the importance of the family in educational decisions.

In the end, the majority decision is simply another chapter in the ongoing saga in which more and more traditional decisions made by the family are handed over to the government. While I certainly sympathize with the plight of the Wake County School System

schools relied upon by the majority in fashioning its argument.

and the explosive population growth in the county, ease of administration should never take precedence over the preservation of the oldest institution—the family. I respectfully dissent.



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363 N.C. 253

STATE of North Carolina

v.

Amy Rebecca McARTHUR.

No. 363PA08.

Supreme Court of North Carolina.

May 1, 2009.

On discretionary review pursuant to N.C.G.S. § 7A–31 of a unanimous, unpublished decision of the Court of Appeals, —— N.C.App. ——, 662 S.E.2d 579 (2008), finding no prejudicial error at a trial resulting in a judgment entered 6 February 2007 by Judge Lindsay R. Davis, Jr. in Superior Court, Randolph County, following a jury verdict finding defendant guilty of voluntary manslaughter. Heard in the Supreme Court 1 April 2009.

Roy Cooper, Attorney General, by Thomas J. Ziko, Senior Deputy Attorney General, for the State.

Mark Montgomery, Durham, for defendant-appellant.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.



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363 N.C. 254

In the Matter of A.S.

No. 310A08.

Supreme Court of North Carolina.

May 1, 2009.

Appeal pursuant to N.C.G.S. § 7A–30(2) from the decision of a divided panel of the Court of Appeals, —— N.C.App. ——, 661 S.E.2d 313 (2008), affirming in part and vacating and remanding in part an order entered 24 August 2007 by Judge J. Stanley Carmical in District Court, Robeson County. Heard in the Supreme Court 30 March 2009.

No brief filed for petitioner Robeson County Department of Social Services.

Pamela Newell Williams, GAL Appellate Counsel, Raleigh, for appellee Guardian ad Litem.

Annick Lenoir–Peek, Assistant Appellate Defender, for respondent-appellant mother.

PER CURIAM.

AFFIRMED.

