

NORTH CAROLINA
CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS _____

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.)

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

The Carteret County Board of Education (“Board”) recently voted at a public meeting of the Board to adopt an illegally and facially invalid school calendar for the 2024-25 School Year which will open schools for student instruction on Tuesday August 13, 2024 — almost two weeks earlier than allowed by state law under N.C. Gen. Stat. § 115C-84.2(d) – under which the earliest start date this year can be Monday August 26, 2024.

The Board adopted this invalid calendar in intentional violation of the law and in violation of their oath of office to uphold the laws of this State. They did so immediately after being presented with a legal calendar, and during which meeting the school system’s presenter told them: “You have to follow the law.” But they did not follow the law. In fact, the action of the Board’s

members to adopt this illegal calendar could even constitute a criminal misdemeanor which may subject them to removal from office.

N.C. Gen. Stat. § 115C-84.2(d) is no different than 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.

Plaintiffs in this action include parents and a grandparent in Carteret County with children in the Carteret County public school system, who are also business owners in Carteret County which will be significantly harmed by the illegal calendar. Plaintiffs hereby seek a declaratory judgment that the Board's calendar adopted on or about December 5, 2023, violates state law, and preliminary and permanent injunctive relief enjoining the Board from using this illegal calendar.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Frances Spencer is a citizen and resident of Carteret County, North Carolina. She is a parent of students attending Carteret County public school system.
2. Plaintiff Mickey Marsh is a citizen and resident of Carteret County, North Carolina, and a grandparent of students attending Carteret County public school system
3. Plaintiff John Morrow is a citizen and resident of Carteret County, North Carolina. He is a parent of a student attending Carteret County public school system.
4. Plaintiff Charles Morrow is a citizen and resident of Carteret County, North Carolina. He is a parent of a student attending Carteret County public school system.

5. Plaintiff Jeffrey G. Garner a citizen and resident of Carteret County, North Carolina. He is a parent of a student attending Carteret County public school system.

6. Plaintiff Marsh's Surf-'N-Sea, Inc. (dba Marsh's Surf Shop) is a family-owned business located in Carteret County. Plaintiff Mickey Marsh is an owner of Marsh's Surf Shop, and Mr. Marsh's daughter is Plaintiff Frances Spencer, who also works at the business.

7. John Morrow and Charles Morrow are owners of Plaintiff Atlantic Beach Surf Shop, Inc., a business located in Carteret County.

8. Jeffrey G. Garner is an owner of Sanitary Fish Market & Restaurant, Inc. a business located in Carteret County.

9. Marsh's Surf Shop, Atlantic Beach Surf Shop, and Sanitary Fish Market and Restaurant (the "Businesses") are all long-time business in Carteret County. These businesses rely on the School Calendar Law in planning, staffing, and running their businesses. The loss of revenue that would occur to the Businesses from a shortening of the summer season would be significant.

10. Indeed, the first paragraph of Carteret County's own Strategic Economic Development Plan (2017) emphasizes that "pristine beaches, attractive waterfronts, a variety of shopping options, and historical sites all attract visitors to flock to the County each season."

11. Violating the School Calendar Law harms Plaintiffs and the citizens and residents of Carteret County, depressing the very tax revenues needed to help support public education.

12. Defendant Carteret Board of Education ("Board") is a government entity which governs the Carteret County public school system.

13. Defendants Kathryn Smith Chadwick, Katie Statler, Brittany Wheatly, Travis Day, Dennis Goodwin, Clark Jenkins, and Dana Vinson Mull constitute the members of the Carteret

County Board of Education, as currently listed on the Board’s website available at: [\(https://www.carteretcountyschools.org/about_us/board_of_education/board_of_education_member_profiles/\)](https://www.carteretcountyschools.org/about_us/board_of_education/board_of_education_member_profiles/) The Board members are sued in their official capacities.

14. Venue is proper in Carteret County because Defendants are located in Carteret County, and the acts challenged in this action took place in Carteret County.

FACTUAL BACKGROUND

15. Under state law, N.C. Gen. Stat. § 115C-84.2(d) (“School Calendar Law”) mandates that the school year for North Carolina public schools must begin no earlier than the Monday closest to August 26. In 2024, that date will be Monday, August 26, 2024.

16. N.C. Gen. Stat. § 115C-84.2 is one of many statutes in Chapter 115C which prescribe rules for local boards of education to follow. These statutes are not discretionary. For example:

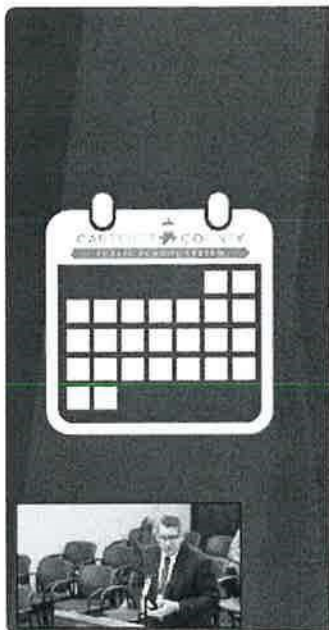
- N.C. Gen. Stat. § 115C-107.6 requires districts to provide for the education of children with disabilities.
- N.C. Gen. Stat. § 115C-47(10) requires local boards to meet class size requirements for kindergarten to third class set forth in N.C. Gen. Stat. § 115C-301.
- N.C. Gen. Stat. § 115C-157 requires districts to offer career and technical education instruction to students.
- N.C. Gen. Stat. § 115C-84.2(a) requires every school district to have a minimum of 1,025 hours or 185 days of calendar instruction every year.

17. The School Calendar Law requires boards of education to consult with parents and school personnel in the development of the school calendar. N.C. Gen. Stat. § 115C-84.2(a).

18. In Carteret County, to comply with this consultation requirement, teacher, parents, principals, and parent advisory groups work together to make recommendations, and staff develop

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.

19. When staff presented the legal calendar to the Board on December 5, 2023, it set forth plainly the legal requirements of the School Calendar Law to the Board, including that the start date of the calendar for 2024 could not be before August 26, 2024 (Screenshot):



School Calendar Building 24-25

Basic Requirements

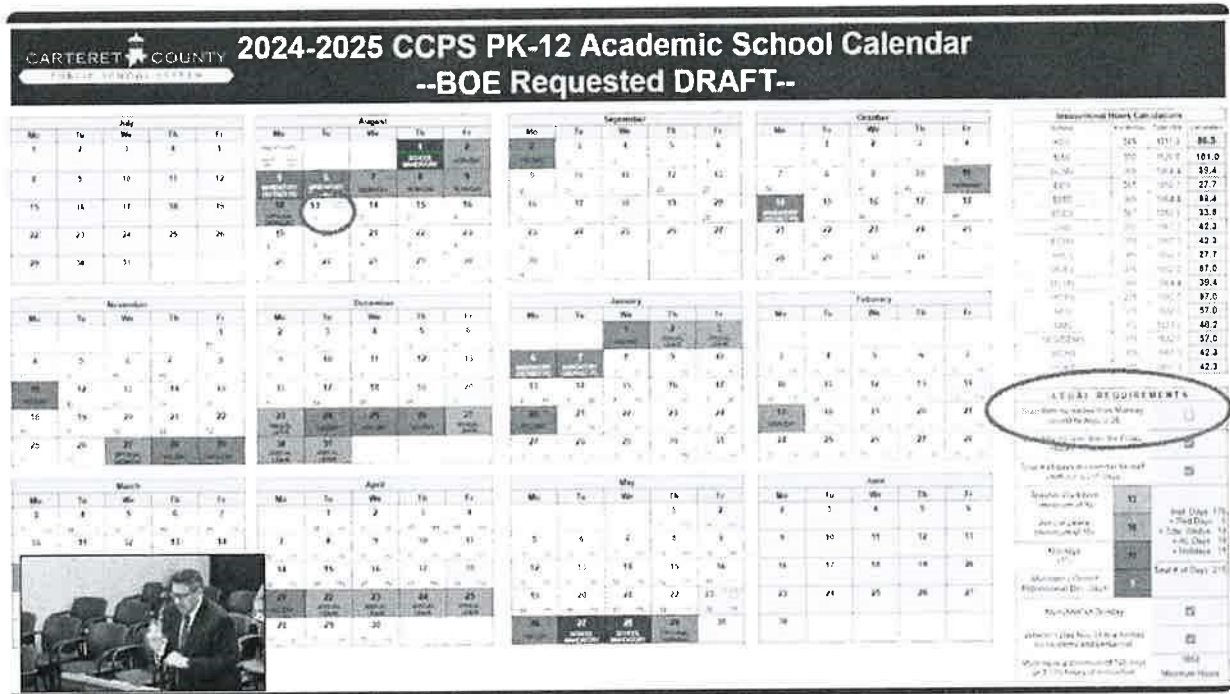
- Start date no earlier than the Monday closest to August 26 (*August 26, 2024*)
- End date no later than the Friday closest to June 11 (*June 13, 2025*)
- Covers at least nine calendar months
- Must have a minimum of 185 days **or** 1,025 hours of instruction
- Total of 215 days in calendar (*staff start to end*)
- School shall not be held on Sunday
- Veterans Day shall be a holiday for all public-school students and personnel

20. 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, however, told the Board “you have to follow the law,” even if the illegal calendar might be preferable to some.

21. By unanimous voice vote the Board voted to adopt an illegal calendar starting instruction for students on August 13, 2024.

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

23. 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 slide that the “legal requirement” is that the school start date cannot be prior to the Monday closest to August 26 (screenshot):



24. Plaintiffs did not learn about the illegal calendar until many weeks later, since it was not even posted on the school system’s website.

25. 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.

26. Plaintiffs and their Businesses have relied on the School Calendar Law in developing successful businesses, and the violation of the law will cause them and the County harm.

27. The individual Plaintiffs will also be harmed because they have children or grandchildren who are students in the Carteret County school district. Despite being illegal, the Board is now telling students and parents that they must report for school on August 13, 2024, earlier than allowed by State law. The new calendar is now posted on the school system's website with no notation that the calendar is unenforceable and invalid.

28. The parents of Carteret County students including all the individual Plaintiffs rely on the Board following state law in planning their summers, both for work and other family activities, and for the running of their Businesses.

29. The Board has asserted that it believes this calendar is "better" for students. However, the Board does not have the ability or power to violate state law at its own choosing – it is required to follow the educational laws of this state.

30. The Board might also believe that the school year would be better if it was only six months long and far shorter than the 1,025 hours required by law. Yet they cannot adopt a calendar which violates those provisions of the Calendar Law either.

31. Even if the Board disagrees with the law, and even if the Board advocates for changes in the law, it must follow the law as written while it is effective. Indeed, 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 by order of the Court.

COUNT I – CLAIM FOR DECLARATORY JUDGMENT

32. The allegations contained in the prior and subsequent paragraphs of this Complaint are hereby re-alleged and incorporated by reference as if set forth verbatim herein.

33. Plaintiffs seek a declaration under N.C. Gen. Stat. § 1-253 *et seq.* that the School Calendar adopted by the Board on or about December 5, 2023 violates N.C. Gen. Stat. § 115C-84.2(d) and is therefore invalid.

34. The school system’s own presentation on December 5, 2023, already admitted in a public meeting that this calendar violates the law.

35. The Board is required to follow N.C. Gen. Stat. § 115C-84.2(d) by law. The Board cannot pick and choose which mandatory duties under Chapter 115C it will decide to follow.

36. There are no disputed issues of fact or questions on law, and a prompt declaration by this Court is requested.

COUNT II – PRELIMINARY AND PERMANENT INJUNCTION

37. The allegations contained in the prior and subsequent paragraphs of this Complaint are hereby re-alleged and incorporated by reference as if set forth verbatim herein.

38. Plaintiffs also seek a preliminary and permanent injunction that enjoins the Board from enforcing the illegal school calendar adopted on December 5, 2023, or adopting any other calendar which violates the school calendar law.

39. Immediate action is required to prevent further disruption and damage to Plaintiffs.

40. There is a high likelihood of success on the merits of this claim, and Plaintiffs will be irreparably harmed if Defendants are not enjoined.

41. Without a preliminary injunction the parents and businesses of Carteret County will be adversely affected trying to plan to accommodate a calendar in planning their summer which violates the law.

42. In addition, and in the alternative, Plaintiffs ask that a permanent injunction be immediately entered in this matter, since there are no genuine issues of fact or law in dispute.

43. The injunctive relief requested is in the public interest.

COUNT III – ATTORNEYS’ FEES

44. The allegations contained in the prior and subsequent paragraphs of this Complaint are hereby re-alleged and incorporated by reference as if set forth verbatim herein.

45. There is no valid legal defense to the school calendar adopted in Carteret County.

46. N.C. Gen. Stat. § 115C-84.2(d) sets forth an unambiguous limit on the authority of Defendants to adopt a school calendar, which was willfully violated.

47. There is a complete absence of a justiciable issue of either law or fact to be raised by the Defendants in this case.

48. Pursuant to N.C. Gen. Stat. § 6-21.7 and/or § 6-21.5, Plaintiffs are entitled to a full award of all reasonable attorneys’ fees and costs incurred in bringing this matter.

49. An award of attorneys’ fees is also required in the interest of justice to discourage continued violations of N.C. Gen. Stat. § 115C-84.2(d).

50. To the extent any additional monetary relief is available in addition to attorneys’ fees and costs, Plaintiffs so request such relief to the extent permitted by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray unto the Court that they receive the following relief:

1. That a declaratory judgment be entered in favor of Plaintiffs declaring that the Board's school calendar adopted on December 5, 2023, is illegal and invalid and violates N.C. Gen. Stat. § 115C-84.2(d).

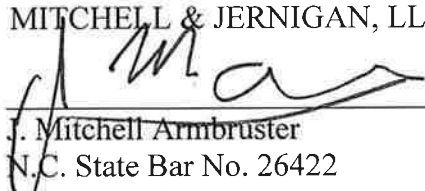
2. That a preliminary and permanent and injunction be entered in favor of Plaintiffs enjoining the Board from enforcing the school calendar adopted on December 5, 2023, or adopting any calendar which violates § 115C-84.2(d).

3. Award Plaintiffs their costs, including without limitation reasonable and necessary attorneys' fees as allowed by law pursuant to N.C. Gen. Stat. § 6-21.7 and/or § 6-21.5 or other applicable law; and

4. Such other and further relief as provided by law or as the Court deems just and proper.

This the 3rd day of April, 2024.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, LLP



J. Mitchell Armbruster

N.C. State Bar No. 26422

P.O. Box 2611

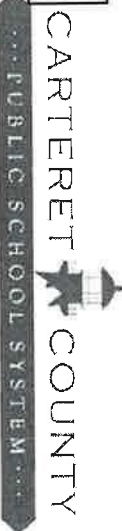
Raleigh, NC 27602-2611

Telephone: (919) 821-1220

Fax: (919) 821-6800

Email: marmbruster@smithlaw.com

EXHIBIT A



**Carteret County Public Schools
2024-2025 Academic School Calendar**

Reporting Term Ending Dates:

Term	PK-8	Term	9-12
Q1	10/10	T1	9/23
Q2	12/20	T2	11/5
Q3	3/13	T3	12/20
Q4	5/22	T4	2/20
		T5	4/4
		T6	5/22

Report Cards:

Issued on the fifth school day after the end of the reporting period

High School Graduations:

CHS, ECHS, & WCHS—May 23, 2025

Student Makeup Days:

Remote Learning Days may be implemented for any missed school days due to weather or emergency closures. BOE may opt to use a Saturday during the week of a canceled school day, extend the school year, or use accumulated instructional hours.

Calendar Legend:

School Days	
Regular school for students/staff	
First/Last Day	•
Start/End Day for students	
Holiday	
No School for staff/students	
Annual Vacation Leave	
No school for staff/students	
Workday	
No school for students	
Mandatory NC-Pre-K Workday	
No school for Pre-K students only	
Mandatory Workdays (School)	
No school for students	
Mandatory Workdays (District)	
No school for students	
Early Release	
Students dismissed 3 hours early	
Non-School Day	
No School for Students/Staff	

July						
Mo	Tu	We	Th	Fr	Sa	Su

August						
Mo	Tu	We	Th	Fr	Sa	Su

September						
Mo	Tu	We	Th	Fr	Sa	Su

October						
Mo	Tu	We	Th	Fr	Sa	Su

November						
Mo	Tu	We	Th	Fr	Sa	Su

December						
Mo	Tu	We	Th	Fr	Sa	Su

January						
Mo	Tu	We	Th	Fr	Sa	Su

February						
Mo	Tu	We	Th	Fr	Sa	Su

March						
Mo	Tu	We	Th	Fr	Sa	Su

April						
Mo	Tu	We	Th	Fr	Sa	Su

May						
Mo	Tu	We	Th	Fr	Sa	Su

June						
Mo	Tu	We	Th	Fr	Sa	Su

Approval Date by the CCPS BOE:
December 5, 2023

@CarteretK12


@carteretk12



www.carteretcountyschools.org

VERIFICATION

Jeffrey G. Garner being first duly sworn, deposes and says that he has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations in it are true of his own knowledge and belief, except as to those matters and things stated therein upon information and belief, and as to those such matters and things, he believes them to be true. He signs this verification on behalf of herself and on behalf of Sanitary Fish Market & Restaurant, Inc.


Jeffrey G. Garner

Subscribed and sworn to before me,
this the 29 day of March, 2024.



Notary Public

My Commission expires: 07.19.2025




VERIFICATION

Frances Spencer being first duly sworn, deposes and says that she has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations in it are true of her own knowledge and belief, except as to those matters and things stated therein upon information and belief, and as to those such matters and things, she believes them to be true.



Frances Spencer

Subscribed and sworn to before me,
this the 20 day of March, 2024.



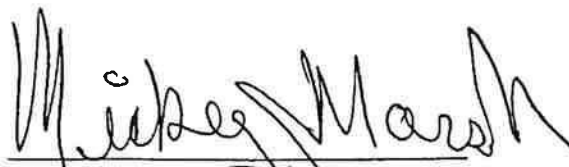
Notary Public

JESSICA S MILLIGROCK
Notary Public
Craven Co., North Carolina
My Commission Expires May 2, 2028

My Commission expires: may 2, 2028

VERIFICATION

Mickey Marsh being first duly sworn, deposes and says that he has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations in it are true of his own knowledge and belief, except as to those matters and things stated therein upon information and belief, and as to those such matters and things, he believes them to be true. He signs this verification on behalf of himself and on behalf of Marsh's Surf-'N-Sea, Inc. (dba Marsh's Surf Shop)


Mickey Marsh

Subscribed and sworn to before me,
this the 24 day of March, 2024.


Notary Public

JESSICA S MILLIGROCK
Notary Public
Craven Co., North Carolina
My Commission Expires May 2, 2028

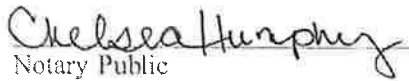
My Commission expires: May 2, 2028

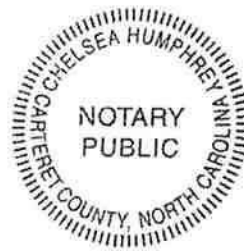
VERIFICATION

John Morrow being first duly sworn, deposes and says that he has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations in it are true of his own knowledge and belief, except as to those matters and things stated therein upon information and belief, and as to those such matters and things, he believes them to be true. He signs this verification on behalf of herself and on behalf of Atlantic Beach Surf Shop, Inc.


John Morrow

Subscribed and sworn to before me,
this the 25 day of March, 2024.

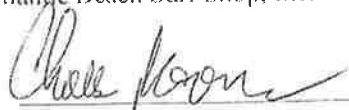

Notary Public



My Commission expires: 7.9.25

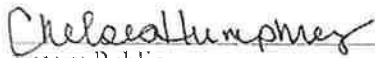
VERIFICATION

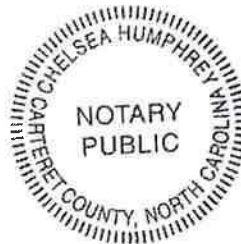
Charles Morrow being first duly sworn, deposes and says that he has read the foregoing Verified Complaint and knows the contents thereof, and that the allegations in it are true of his own knowledge and belief, except as to those matters and things stated therein upon information and belief, and as to those such matters and things, he believes them to be true. He signs this verification on behalf of herself and on behalf of Atlantic Beach Surf Shop, Inc.



Charles Morrow

Subscribed and sworn to before me,
this the 25 day of March, 2024.


Notary Public



My Commission expires: 7.9.2025