

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
FIRST JUDICIAL DISTRICT, WASHINGTON COUNTY**

**SARAH FAGERBURG, and
ACTON ACADEMY JOHNSON CITY**

Plaintiffs,

V.

**ROBERT EBY, DARRELL COBBINS, KRISSI
MCINTURFF, JORDAN MOLLENHOUR,
KELLY G. ROLLINS, INA MAXWELL,
CATHY KOLB, and LARRY JENSEN, in their
official capacities as members of the Tennessee
State Board of Education; TENNESSEE STATE
BOARD OF EDUCATION; LIZZETTE
REYNOLDS, in her official capacity as
Commissioner of the Tennessee Department of
Education; TENNESSEE DEPARTMENT OF
EDUCATION; CARTER LAWRENCE, in his
official capacity as Commissioner of the
Tennessee Department of Commerce and
Insurance and Tennessee State Fire Marshal;
TENNESSEE DEPARTMENT OF
COMMERCE AND INSURANCE**

Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. When Tennessee established the Education Freedom Scholarship (EFS) program last year, it sought to “empower parents with the freedom to choose the right education for their child.” Education Freedom Act of 2025, Pub. Ch. 7, pmbl., 2025 Tenn. Pub. Acts 1st Extraordinary Sess. Yet state agencies continue to enforce rules that stifle innovation in education. These rules stand in the way of education freedom. Parents cannot truly choose the best school for their child’s unique needs if government regulation forces all private schools to look just like public schools.

2. Sarah Fagerburg is a mother and an entrepreneur. Sarah struggled to find the right fit for her children until she heard about Acton Academy: a network of schools known for its innovative learner-driven education. She loved the idea so much she founded an Acton Academy in Johnson City two years ago. At first, she served roughly a dozen children from her garage. Now, she serves roughly 40 in a three-floor church building. Sarah's school thrives by being different. Traditional public schools have teachers and students; Sarah's school has guides and learners.
3. Sarah and her school are suing to dismantle rules that prevent the school from reaching its full potential. *First*, the Tennessee Department of Education and the State Board of Education enforce an instructional time requirement that forces private schools to teach students at least 180 days a year for 6.5 hours per day. The requirement directly clashes with Sarah's education model, which measures success in terms of mastery rather than time. *Second*, the two agencies enforce an age separation mandate, which prevents seven-year-olds from being in the same classroom as four-year-olds. This, too, conflicts with Sarah's model, which encourages her seven-year-olds to learn by teaching their younger peers. *Third*, the State Fire Marshal forces Sarah to pay thousands of dollars for an architect to prepare plans for the Fire Marshal's approval if she wants to serve 50 or more students. And while the church uses all three floors, the Fire Marshal confines Sarah, her guides, and her learners to the first floor of the same building.
4. The requirements violate state and federal constitutional guarantees. The Tennessee Constitution protects the right of Tennesseans to earn an honest living—and there is no exception for those who do so by providing a quality education to the next generation. The Tennessee Constitution also rejects discriminatory treatment, yet the agencies are forcing Sarah

to comply with additional red tape only because she is running a private school. The United States Constitution protects the right of every parent to direct the upbringing of their children. Yet that right is meaningless if parents can only choose among schools that the government has forced to look the same. And the instructional time requirement violates Tennessee’s separation-of-powers principles. The General Assembly never authorized the Board to impose an instructional time requirement on private schools. Instead, the Board imported that requirement from public school regulations—despite the General Assembly’s admonition that “[a] private school that enrolls recipients [of EFS] is autonomous and not an agent of this state.” Tenn. Code Ann. § 49-6-3508(a) (2025).

JURISDICTION AND VENUE

5. This Court has jurisdiction under Tenn. Code Ann. §§ 4-5-225; 20-18-101; 29-14-101 *et seq.*
6. This Court has authority to enter a declaratory judgment and provide injunctive relief pursuant to Tenn. Code Ann. §§ 4-5-225; 16-11-101 *et seq.*; 29-1-101; 29-14-102; 42 U.S.C. § 1983; and Tenn. R. Civ. P. 65.
7. Venue is proper under Tenn. Code Ann. §§ 20-18-102 and 20-4-101 *et seq.*

PARTIES

8. Plaintiff Sarah Fagerburg is the founder and owner of Acton Academy Johnson City in Johnson City, Tennessee. As lead guide, Ms. Fagerburg leads and manages education for the school. Four of Ms. Fagerburg’s children currently attend Acton Academy Johnson City.
9. Plaintiff Acton Academy Johnson City is accredited by the Middle States Association of Colleges and Schools (“MSA”). The school is affiliated with the Acton Academy network of schools. Acton Academy Johnson City emphasizes learner-driven education designed to help

students develop independence and creativity. The school currently serves around 40 students, which the school calls “learners,” ranging from ages three to fourteen.

10. Defendant Tennessee State Board of Education (“the Board”) is a state agency consisting of eleven members and is responsible for promulgating rules and setting policy for Tennessee’s K-12 education system.
11. Defendants Robert Eby, Darrell Cobbins, Krissi McInturff, Jordan Mollenhour, Kelly G. Rollins, Ina Maxwell, Cathy Kolb, and Larry Jensen are board members of the State Board of Education. One board seat is vacant. These defendants are the current voting, non-ex-officio members of the Board and are sued in their official capacities. As members of the Board, they are charged with adopting rules and regulations governing K-12 education and child care in Tennessee. *See* Tenn. Code Ann. § 49-1-302. The Board is empowered to promulgate rules to effectuate the EFS program. Tenn. Code Ann. § 49-6-3512.
12. Defendant Tennessee Department of Education (“TDOE”) is a state agency responsible for enforcing, inspecting, approving, and classifying private schools in accordance with the Board’s rules, Tenn. Code Ann. § 49-1-201(c)(18), and enforcing standards for child care programs under Tenn. Code Ann. § 49-1-302(i). TDOE is empowered to “suspend or terminate a Private School from participating in [EFS] if the Department determines the Private School has failed to comply with the requirements of the Act, these rules, or the procedures set by the Department.” Tenn. Comp. R. & Regs. § 0520-01-24-.10(4).
13. Defendant Lizzette Reynolds is the Commissioner (“the Commissioner”) of the Tennessee Department of Education. She is sued in her official capacity. The Commissioner oversees the TDOE and “is responsible for the implementation of law or policies established by the general assembly or the state board of education.” Tenn. Code Ann. § 49-1-201(a).

14. Defendant Tennessee Department of Commerce and Insurance (“TDCI”) includes the Division of Fire Prevention/State Fire Marshal’s Office (“Fire Marshal’s Office”). The Fire Marshal’s Office administers fire prevention programs such as issuing fire prevention regulations, inspecting schools, administering the certification program for fire and building code inspectors, and issuing permits and licenses.
15. Defendant Carter Lawrence, the Commissioner of the Tennessee Department of Commerce and Insurance and the Tennessee State Fire Marshal (“Fire Marshal”), is sued in his official capacity. The Fire Marshal issues rules establishing statewide building safety standards for both new and existing buildings. *See* Tenn. Code Ann. §§ 68-102-113(a), 68-120-101(a).

FACTUAL ALLEGATIONS

The Instructional Time Requirement

16. Children in Tennessee must attend a public or nonpublic school. Tenn. Code Ann. § 49-6-3001(c)(1)(A).
17. “[N]onpublic school[s]” include “church-related school[s],” “home school[s],” and “private school[s].” *Id.* § 49-6-3001(c)(3)(A)(i)–(iii).
18. A “private school” is defined as a school (1) that is “accredited by, or a member of, an organization or association approved by the state board of education as an organization accrediting or setting academic requirements in schools”; (2) “that has been approved by the state”; or (3) “is in the future approved by the commissioner in accordance with rules promulgated by the state board of education.” *Id.* § 49-6-3001(c)(3)(A)(iii).
19. Public schools in Tennessee are required by statute to provide 180 days of classroom instruction per academic term. *Id.* § 49-6-3004(a)(1). The Board separately requires public

schools to provide 6.5 hours of classroom instruction per day. *See* Tenn. Comp. R. & Regs. § 0520-01-02-.31.

20. “Church-related schools” must “be conducted for the same length of term as public schools.” Tenn. Code Ann. § 49-50-801(d).
21. No Tennessee state statute requires private schools to provide 180 days of classroom instruction per academic term.
22. No Tennessee state statute requires private schools to provide at least 6.5 hours of classroom instruction per school day.
23. The Board applies the instructional time requirement to private schools through its regulation categorizing private schools for approval. *See* Tenn. Comp. R. & Regs. 0520-07-02.
24. The Board separates private schools into four categories and establishes the requirements for a private school to qualify for one of these approved categories. *Id.*
25. The Board requires all four categories of private schools to provide at least 180 days of classroom instruction per academic term, with each day consisting of at least 6.5 hours of instruction. *Id.* §§ 0520-07-02-.02(3)(e)1, 0520-07-02-.03(4)(c)8(v)(I), 0520-07-02-.04(3)(a)8(v)(I), 0520-07-02-.06(3)(n).
26. Home schools, by contrast and with certain exceptions, such as church-related schools, are only required to provide instruction for at least four hours per day and for 180 days of classroom instruction. Tenn. Code Ann. § 49-6-3050(b)(3).
27. Plaintiff Acton Academy Johnson City is a Category III private school.
28. To operate as a private school, Plaintiffs must comply with the Board’s instructional time requirement.

29. The Board cites Tenn. Code Ann. §§ 49-1-201, 49-1-302, 49-6-3001, and 49-50-801 as its authority for issuing the instructional time requirement with respect to private schools under Categories II, III, and V. The Board also cites Tenn. Code Ann. §§ 49-6-101 and 49-6-3004 as the basis to apply the rule to Category I private schools.
30. None of the statutory provisions the Board cites as authority for issuing the instructional time requirement grants the Board the power to impose an instructional time requirement on private schools.

The Age Separation Mandate

31. The Board prohibits three- and four-year-olds from sharing a classroom with seven-year-olds, subject to exceptions that do not apply here.
32. The Board has the authority to promulgate rules establishing standards for child care programs and to enforce those standards. Tenn. Code Ann. § 49-1-302(i)(1)–(2). This includes programs operated by private schools. *Id.* § 49-1-302(i)(1)(F).
33. “Child care,” under the Board’s definition, is “[t]he provision of supervision, protection, and at a minimum, the basic needs of a child or children for more than three (3) hours a day, but less than twenty-four (24) hours a day.” Tenn. Comp. R. & Regs. § 0520-12-01-.02(7).
34. The Board defines “child care program[s]” to include “programs operated by private schools.” *Id.* § 0520-12-01-.02(9).
35. The term “program,” as the Board defines it, includes “private school-administered pre-school, pre-kindergarten or school-age care program[s].” *Id.* § 0520-12-01-.02(27). Such programs may be educational. *See id.* § 0520-12-01-.09(1).

36. The Board limits multi-age grouping for such programs. Children ages three to six may be grouped together, but seven-year-old children are excluded from such groupings. *Id.* § 0520-12-01-.06(4)(b).
37. TDOE informed Plaintiffs that Acton Academy Johnson City could not conduct educational programs that combine seven-year-olds and three- to four-year-olds.
38. The age separation mandate applies to programs that are monitored by the Department of Education but not to home schools. *See* Tenn. Comp. R. & Regs. § 0520-12-01. Ms. Fagerburg did not have to comply with the mandate when she served home school students.

The State Fire Marshal's Office's Authority, Requirements, and Restrictions

39. The Fire Marshal is charged with “promulgat[ing] rules establishing minimum statewide building construction safety standards.” Tenn. Code Ann. § 68-120-101(a). These standards include establishing “appropriate requirements and specifications for both new and existing buildings.” *Id.* § 68-120-101(a)(4).
40. The Fire Marshal is empowered to “make regulations consistent with statutory provisions for safeguarding to a reasonable degree of life and property from the hazards of fire and explosion arising . . . from conditions hazardous to life or property in the use of buildings, structures or premises.” *Id.* § 68-102-113(a).
41. Pursuant to his authority under Tenn. Code Ann. §§ 68-102-113 and 68-120-101, the Fire Marshal set out the minimum state standards for fire prevention and protection in Tenn. Comp. R. & Regs. § 0780-02-02-.01.
42. The Board requires private schools to “observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal’s Office.” Tenn. Comp. R. & Regs. §§ 0520-07-

02-.02(3)(b)2, 0520-07-02-.03(4)(c)8(ii)(II), 0520-07-02-.04(3)(a)8(ii)(II), 0520-07-02-.06(3)(c).

43. Anyone who does not comply with regulations promulgated under Tenn. Code Ann. § 68-102-113 commits a Class C misdemeanor. *See* Tenn. Code Ann. § 68-102-113(g).

The Fire Marshal's Architect Mandate

44. Tennessee rules prohibit a person from using an existing building as an “educational occupancy” and enrolling 50 or more students without having “plans and specifications” approved by the Fire Marshal’s Office. Tenn. Comp. R. & Regs. § 0780-02-03-.02(1). If the school is converting the building for enrollment of 50 to 99 students, “limited plans review applies.” *Id.* § 0780-02-03-.02(1)(c).
45. The Fire Marshal cites Tenn. Code Ann. §§ 68-102-113 and 68-120-101 as its authority for this mandate.
46. An “educational occupancy” includes “the use of a structure or a portion of a structure for educational purposes by six (6) or more persons for more than twelve (12) hours per week, but no more than eight (8) hours in a single day.” Tenn. Comp. R. & Regs. § 0780-02-03-.01(1)(e). Using a building for kindergarten through twelfth grade education or for education programs for younger students that are regulated by the TDOE falls within this definition. *Id.*
47. Accordingly, Plaintiffs are limited to their current enrollment of fewer than 50 students unless they expend time and resources on plans and specifications that: (1) “[c]omply with the regulations in the statutes and rules controlling the profession of architects and engineers in Tennessee”; (2) “[c]omply with the requirements of Submittal Documents of the building code adopted in Chapter 0780-02-02”; and (3) are “accompanied by an estimate, certified by the owner or the authorized representative, of the total construction cost of the project.” *Id.* § 0780-

02-03-.03(1)(a)–(c). The Fire Marshal “may request additional verification of cost prior to the issuance of a certificate of occupancy.” *Id.* § 0780-02-03-.03(1)(c).

48. Complying “with the regulations in the statutes and rules controlling the profession of architects and engineers in Tennessee,” *id.* § 0780-02-03-.03(1)(a), means submitting the plans and specifications through a registered architect or engineer. *See* Tenn. Code Ann. § 62-2-102(b). This is so because, with certain inapplicable exceptions, “[i]t is unlawful for any person other than a registered architect or engineer to prepare plans and specifications for any building or structure.” *Id.* § 62-2-102(b).

49. The Fire Marshal permits “Assembly Group A” structures or portions of such structures to operate with an occupant load of 299 or less without Fire Marshal approval. Tenn. Comp. R. & Regs. § 0780-02-03-.02(2).

50. The Fire Marshal’s Office has adopted, with certain exceptions that are not relevant here, the 2021 edition of the *International Building Code* (“IBC”). *See id.* § 0780-02-02-.01(1)(a).

51. Assembly Group A structures include those used for gathering for religious, social, or civic functions and that have an occupant load of 50 or more people. *International Building Code* § 303.1–303.1.1 (Int’l Code Council 2021).

52. Accordingly, the church in which Plaintiffs educate their students could hold up to 299 people, including children, without having to comply with the architect mandate.

53. However, when Plaintiffs seek to use it for their private school, they cannot even host 50 students under supervision by adult educators without triggering the architect mandate.

54. The architect mandate serves no legitimate purpose while preventing private schools, like Acton Academy Johnson City, from expanding enrollment to educate more children unless they undergo an expensive and burdensome approval process.

The Fire Marshal's Restrictions on Upper Floor Use

55. The church that is the site of Acton Academy Johnson City is a three-story building.
56. Plaintiffs are unable to use the second and third floors of the church building to hold classes because of the Fire Marshal's Office's restrictions.
57. In December 2025, an official with the TDOE informed Ms. Fagerburg that for Acton Academy Johnson City to be approved as a nonpublic school, the State Fire Marshal's Office would have to inspect and approve Plaintiffs' use of the church building as the site of the school. Until then, Plaintiffs' students could continue to be registered for home school.
58. The Board requires private schools to "conduct at least one (1) fire safety inspection annually based on the fire safety inspection checklist developed by the Tennessee Fire Marshal's Office." Tenn. Comp. R. & Regs. §§ 0520-07-02-.02(3)(b)3, 0520-07-02-.03(4)(c)8(ii)(III), 0520-07-02-.04(3)(a)8(ii)(III), 0520-07-02-.06(3)(d).
59. Plaintiffs educate their students in a church. The church building is subject to the fire prevention and protection standards set by Tenn. Comp. R. & Regs. § 0780-02-02-.01. *See* Tenn. Comp. R. & Regs. § 0520-07-02-.04(3)(a)8(ii)(II).
60. The Fire Marshal's Office inspected the church building for Plaintiffs' use of the building as a private school in January 2026.
61. The Fire Marshal's Office denied Plaintiffs permission to use the second and third floors of the church building for educating learners while the building is in its current state.
62. In April 2026, a fire code inspector with the Fire Marshal's Office told Ms. Fagerburg that "the upper floors . . . could not be used due to lack of multiple exits on each floor and the state of the structure on those levels from what we observed, i.e. sagging of ceiling."
63. The Fire Marshal's Office again inspected the church building for Plaintiffs in July 2026.

64. During this inspection, the fire code inspector informed Ms. Fagerburg that the upper floors could not be used because the third floor does not have a one-hour fire-resistant door and the upper floors have open stairwells.
65. The fire code inspector also informed Ms. Fagerburg that the corridor on the second floor of the building is not rated as one-hour fire-resistant.
66. The Fire Marshal has prevented Plaintiffs from using the second and third floors of the church building for their private school. However, Ms. Fagerburg was previously able to use the same building to serve students enrolled in home school programs. The religious organization that occupies the building also uses the second and third floors of the building.

Injury to Plaintiffs

67. Each of the four challenged requirements—the instructional time requirement, the age separation mandate, the architect mandate, and the Fire Marshal’s restrictions on use of the upper floors—injures Plaintiffs.

Injuries Common to All Four Requirements

68. The instructional time requirement and the age separation mandate prevent Plaintiffs from implementing their education model.
69. The Fire Marshal’s architect mandate and upper-floor restrictions limit how many learners Plaintiffs may educate and where.
70. Parents, like Ms. Fagerburg and others, who have enrolled their children in schools like Acton Academy Johnson City are harmed by each requirement because each restricts their ability to send their children to the school of their choosing and to benefit from the education model they chose.

Injuries Common to the Instructional Time Requirement, the Architect Mandate, and the Upper-Floor Restrictions

71. If Plaintiffs violate the instructional time requirement by implementing their educational model, their accrediting agency risks losing approval as a Category III accrediting agency. *See* Tenn. Comp. R. & Regs. § 0520-07-02-.04(3)–(4).
72. Plaintiffs would put their accreditation and Category III status at risk if they ignored the architect mandate or defied the Fire Marshal’s restrictions on the upper floors because the Board requires private schools to comply with all Fire Marshal regulations and procedures as a condition for the accrediting agency maintaining its approved status. *Id.*
73. If Plaintiffs’ accrediting agency loses its approved status, Acton Academy Johnson City would no longer qualify as a Category III private school. If Acton Academy Johnson City loses its status as a Category III private school, its students would no longer be able to use EFS scholarships for tuition at Acton Academy Johnson City.

Injuries Unique to the Instructional Time Requirement

74. The instructional time requirement conflicts with Plaintiffs’ education model.
75. Plaintiffs provide an education model that is designed to teach their learners self-management and emphasizes self-paced mastery of reading, writing, and math, with learners managing their education at a pace that is appropriate for them. Since this model is tailored to each learner, it is incompatible with the Board’s requirement that all students receive at least 6.5 hours of instruction each school day.
76. Plaintiffs would like to permit parents of learners enrolled in the school to take their children on educational trips because Plaintiffs incorporate experiential learning into their model. The

instructional time requirement prevents Plaintiffs from permitting this type of experiential learning.

77. The instructional time requirement imposes administrative burdens on Ms. Fagerburg by forcing her to track hours. If not for the requirement, Ms. Fagerburg would put that time toward pursuits that further her school's mission.

78. The requirement harms parents, like Ms. Fagerburg, who seek a meaningful alternative to public schools for their children. The instructional time requirement prevents Plaintiffs from fully implementing a unique education model focused on self-paced mastery, self-management, and experiential learning.

Injuries Unique to the Age Separation Mandate

79. The age separation mandate conflicts with Plaintiffs' education model.

80. Plaintiffs' model is aimed at cultivating independence and subject matter mastery in older students by empowering them to teach concepts to younger students. The model depends on having seven-year-old learners teach three- and four-year-old learners.

81. The age separation mandate prevents parents from choosing an education model that allows seven-year-olds to learn by teaching and three- and four-year-olds to learn by modeling the behavior of older children.

82. If Plaintiffs implement their model by having seven-year-olds and three- to four-year-olds in class together, they will be subject to monetary penalties, probation, and revocation of their certificate to operate child care programs. *See* Tenn. Code Ann. § 49-1-1107; Tenn. Comp. R. & Regs. § 0520-12-01-.16.

Injuries Common to the Fire Marshal's Architect Mandate and Upper-Floor Restrictions

83. Both Fire Marshal requirements limit Plaintiffs' ability to enroll more learners.

84. The architect mandate limits Plaintiffs to their current enrollment of fewer than 50 students unless they obtain approval of plans and specifications.
85. The upper-floor restrictions confine Plaintiffs to the first floor of the church building.
86. Plaintiffs must either limit their school's enrollment or divert resources from educating students to comply with the requirements. Compliance would take Plaintiffs' time and resources away from educating their learners.
87. Were Plaintiffs to try to use an additional or different building to hold classes for more learners, they would have to spend additional funds on rent and would still have to obtain approval from the Fire Marshal through either limited plans review or a consultation, even if the additional building would hold fewer than 50 learners. *See* Tenn. Comp. R. & Regs. § 0780-02-03-.02(1)(a)–(b).
88. If Plaintiffs ignore the architect mandate and enroll 50 or more students in the church building, or defy the Fire Marshal and use the upper floors to hold classes for their learners, Ms. Fagerburg would be subject to jail time and fines.
89. As a result, parents, like Ms. Fagerburg and others, cannot send their children to the school of their choosing without the school going through an expensive and burdensome process of obtaining the Fire Marshal's approval.

Injuries Unique to the Architect Mandate

90. It costs thousands of dollars to hire a registered architect or engineer to submit the plans and specifications. If Plaintiffs seek the Fire Marshal's approval to enroll 50 or more students, they must endure the delay of waiting for that approval.
91. The enrollment limit imposes a financial restraint that prevents Plaintiffs from hiring an additional guide. As a result, Ms. Fagerburg must take time away from tending to her

responsibilities as owner and leader of Acton Academy Johnson City and instead focus on the hands-on classroom guiding of her learners' education.

Injuries Unique to the Fire Marshal's Upper-Floor Restrictions

92. Plaintiffs currently host classes for their learners on the first floor of the church building, but believe the space is inadequate to host all of Plaintiffs' learners.
93. Now that Acton Academy Johnson City is registered as a private school, Plaintiffs cannot use the second and third floors of the church building unless they expend time and resources changing the building as the Fire Marshal requires.

LEGAL CLAIMS

FIRST CLAIM FOR RELIEF

Tennessee Constitution, Article I, Section 8 – Law of the Land Clause (Right to Earn a Living)

(Applies to instructional time requirement, age separation mandate, architect mandate, and restrictions on upper floor use)

94. Article I, Section 8 of the Tennessee Constitution guarantees "[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."
95. The right to earn an honest living under the Tennessee Constitution is a fundamental right and is protected by this constitutional provision.
96. The instructional time requirement, the age separation mandate, the architect mandate, and the restrictions on the use of the upper floors of the church building bear no real and substantial relationship to the public's health, safety, morals, or general welfare.
97. The instructional time requirement forces Plaintiffs to abandon an education model designed to teach self-management and self-paced mastery of reading, writing, and math. But the rigid

schedule of 180 days and 6.5 hours per day is detrimental to student welfare compared to allowing parents and schools that are familiar with students to select a schedule that is appropriate for those students. Home schools are required to provide only four hours of instruction per day for the same 180 days, demonstrating that the Board's rigid schedule is not necessary to protect children.

98. The age separation mandate prevents Plaintiffs from implementing a core feature of their education model, namely, empowering older students to teach concepts to younger students. Yet home schools are subject to no such requirement, demonstrating that the mandate is not necessary to protect children and is arbitrary and unreasonable.
99. The architect mandate requires Plaintiffs to expend thousands of dollars on plans and specifications from a registered architect or engineer before they may enroll 50 or more students in the church building. But a religious organization could hold up to 299 people for a religious service (with no limit on the number of children that may make up that total) without being required to submit plans and specifications through a registered architect or engineer. This demonstrates that the architect mandate's restriction on schools bears no relationship to safety.
100. The Fire Marshal has restricted Plaintiffs from using the upper floors of the church building even though those floors of the same building are used for religious functions and were previously used for homeschooling. If using the upper floors is safe for those purposes, it is arbitrary and unreasonable for the state to hold those same floors are unsafe for Plaintiffs' purpose of conducting a private school.
101. Even if it were assumed for the sake of argument that the instructional time requirement, the age separation mandate, the architect mandate, or the restrictions on Plaintiffs' use of the upper

floors of the church building have any tendency to further a legitimate state interest, the effect of each requirement is so unreasonably burdensome that it becomes oppressive in relation to the underlying governmental interest.

102. Any benefit the public derives from these requirements is grossly out of proportion to the burdens they place on Plaintiffs.

103. The Board's and the Fire Marshal's regulations deprive Plaintiffs of their liberty and property in contravention of the law of the land.

SECOND CLAIM FOR RELIEF

The Right to Equal Protection Under Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution

(Applies to instructional time requirement, age separation mandate, architect mandate, and restrictions on upper floor use)

104. Article I, Section 8 of the Tennessee Constitution guarantees "[t]hat no man shall be . . . disseized of his freehold, liberties or privileges, or . . . in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."

105. Article XI, Section 8 of the Tennessee Constitution further provides that the government may not "pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law."

106. These two clauses guarantee Plaintiffs the right to equal protection under the law.

107. Under Tennessee law, distinctions between classes must have a reasonable and substantial basis for differential treatment.

108. The instructional time requirement, the age separation mandate, the architect mandate, and the restrictions on the use of the upper floors of the church building arbitrarily treat private schools like Acton Academy Johnson City differently from religious organizations and home schools.

109. Private schools like Acton Academy Johnson City are subject to a 180-day, 6.5-hour-per-day instructional time requirement, while home schools generally need to provide only four hours of instruction per day for the same 180 days. *See* Tenn. Code Ann. § 49-6-3050(b)(3).
110. The instructional time requirement subjects private schools to a more rigorous requirement than home schools, even though both types of schools educate children of the same ages, in the same communities, and are capable of ensuring that children receive an adequate education.
111. Similarly, the age separation mandate subjects private schools to a requirement that does not apply to home schools.
112. The architect mandate draws an arbitrary and irrational distinction between the same building used for the same purpose of gathering large numbers of people. A church could hold religious services for up to 299 people (with no limit on the number of children that may make up that total) without being required to submit plans and specifications through a registered architect or engineer. Yet Plaintiffs cannot enroll even 50 students under adult educator supervision in that same building without satisfying that requirement.
113. The Fire Marshal restricts Plaintiffs from using the upper floors of the church building to hold classes even though the second and third floors of the church building are used for religious functions and were previously used for students in home school programs.
114. Defendants arbitrarily treat Plaintiffs differently from similarly situated home schools and church gatherings, and doing so bears no real and substantial relationship to a legitimate state interest.
115. Defendants cannot demonstrate a reasonable and substantial difference between Plaintiffs' operation of a private school and the operation of home schools and religious organizations,

which are not subject to the instructional time requirement, the age separation mandate, the architect mandate, and the restrictions on the use of the upper floors of the church building.

116. Defendants have therefore denied Plaintiffs their right to equal protection under the law.

THIRD CLAIM FOR RELIEF

Federal Right of Parents to Direct Their Children's Education Under the Fourteenth Amendment to the United States Constitution

(Applies to instructional time requirement, age separation mandate, architect mandate, and restrictions on upper floor use)

117. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983 for the deprivation of their rights secured by the Fourteenth Amendment to the United States Constitution.

118. The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental liberty of parents to direct the upbringing and education of their children. *See Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

119. Defendants, acting under color of state law, deprived Ms. Fagerburg and other parents of children enrolled at Acton Academy Johnson City of the right secured by the Fourteenth Amendment to the United States Constitution to direct the upbringing and education of their children.

120. Ms. Fagerburg has four children currently enrolled at Acton Academy Johnson City. She chose Acton Academy's learner-driven, self-paced education model for her children after finding public schools and homeschooling unsatisfactory for her family.

121. The instructional time requirement, the age separation mandate, the architect mandate, and the restriction on upper floor use each threaten the continued existence of the education model Ms. Fagerburg selected for her children, foreclosing the choice she has already made in the exercise of her constitutionally protected liberty.

122. The instructional time requirement compels Plaintiffs to conform to a rigid, one-size-fits-all schedule that is incompatible with the self-paced, mastery-based model Ms. Fagerburg selected for her children.
123. The age separation mandate prohibits Plaintiffs from implementing the cross-age instructional model that is a component of Ms. Fagerburg's chosen approach to her children's education.
124. The architect mandate and the restriction on using the upper floors of the church building limit Plaintiffs' ability to expand Acton Academy Johnson City and to bring in additional revenue that would accompany additional enrollment.
125. These regulations leave Ms. Fagerburg with a choice between sending her children to a public school or to a private school that, as a practical matter, mirrors much of the public-school model she rejected. The regulations thus interfere with Ms. Fagerburg's right to direct her children's education. They also restrict the ability of parents to enroll their children in the school of their choice.
126. Defendants' regulations violate Ms. Fagerburg's fundamental right, and the corresponding right of other parents of children enrolled at Acton Academy Johnson City, to direct their children's education under the Fourteenth Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF

Excess of Statutory Authority

(Applies to instructional time requirement)

127. The Board possesses no authority except for the authority that is expressly delegated by the General Assembly.
128. If a statute grants an agency authority to promulgate rules, the agency's rules cannot exceed the scope of authority that the General Assembly delegated.

129. The Board cites Tenn. Code Ann. §§ 49-1-201, 49-1-302, 49-6-101, 49-6-3001, 49-6-3004, and 49-50-801 as its authority for imposing the instructional time requirement on private schools. None of these provisions grant the Board authority to do so.
130. Tenn. Code Ann. § 49-1-201 sets forth the powers and duties of the Commissioner of Education. It authorizes the Commissioner to inspect and approve child care centers operated by church-related schools but says nothing about instructional time for private schools.
131. Tenn. Code Ann. § 49-1-302 lays out the Board’s general rulemaking authority. It is directed primarily at public schools, and the only provision addressing private schools concerns child care programs, not general academic instructional time. *See* Tenn. Code Ann. § 49-1-302(i)(1).
132. Tenn. Code Ann. § 49-6-101 deals with preschools and does not refer to any ability of the Board to impose an instructional time requirement on private schools.
133. Tenn. Code Ann. § 49-6-3001(c)(1)(A) mandates that children ages six to seventeen attend either a public or nonpublic school but does not state the Board has the power to set the minimum time a student must attend school or receive instruction. Tenn. Code Ann. § 49-6-3001(c)(3)(A)(iii) relates to the Board’s authority with respect to private schools. It authorizes the Board to approve the accrediting organizations and academic requirements that determine whether a school qualifies as a private school for purposes of compulsory attendance. *See id.* It is a grant of authority to approve accrediting mechanisms, not an express legislative directive to impose a specific 180-day, 6.5-hour-per-day instructional time requirement.
134. Tenn. Code Ann. § 49-6-3004(a)(1) requires only “each public school system” to provide 180 days of classroom instruction; it says nothing about private schools.
135. Tenn. Code Ann. § 49-50-801 governs church-related schools only. It has no application to private schools.

136. The Board does not have statutory authority to impose a 180-day, 6.5-hour-per-day instructional time requirement on private schools.
137. The Board has exceeded its statutory authority by imposing an instructional time requirement on private schools, and the requirement should be held unlawful and vacated. *See* Tenn. Comp. R. & Regs. §§ 0520-07-02-.02(3)(e)1, 0520-07-02-.03(4)(c)8(v)(I), 0520-07-02-.04(3)(a)8(v)(I), and 0520-07-02-.06(3)(n).

FIFTH CLAIM FOR RELIEF

Violation of the Tennessee Constitution, Nondelegation Doctrine, and Separation of Powers

(Applies to instructional time requirement)

138. Article II, Section 1 of the Tennessee Constitution provides, “The powers of the government shall be divided into three distinct departments: legislative, executive, and judicial.”
139. Article II, Section 3 of the Tennessee Constitution vests the legislative power in the General Assembly.
140. The General Assembly may not delegate power that is purely legislative. Any grant of authority to an administrative agency to promulgate rules must be limited and defined in a manner that administrative officials can discern and implement the General Assembly’s will.
141. A statute delegating power to an agency must contain sufficient safeguards to prevent arbitrary agency action.
142. The General Assembly made it mandatory for children in Tennessee to attend a public or nonpublic school, Tenn. Code Ann. § 49-6-3001(c)(1)(A), and then included private schools in its definition of nonpublic schools. *Id.* § 49-6-3001(c)(3)(A)(iii).
143. The General Assembly defined “private school” as a school (1) that is “accredited by, or a member of, an organization or association approved by the state board of education as an

organization accrediting or setting academic requirements in schools”; (2) “that has been approved by the state”; or (3) “is in the future approved by the commissioner in accordance with rules promulgated by the state board of education.” Tenn. Code Ann. § 49-6-3001(c)(3)(A)(iii).

144. This definition left it to the Board to determine the contours of the definition of private school.

The Board determines: (1) what organizations or associations are approved to accredit or set academic requirements for schools; (2) whether to approve a private school outright; and (3) whether and what rules to promulgate to set the standards for private school approval. Tenn. Code Ann. § 49-6-3001(c)(3)(A)(iii).

145. The Board imposed the 180-day, 6.5-hour-per-day instructional time requirement as part of the criteria that private schools must adhere to in order to be in an approved category of private school.

146. To the extent these statutory provisions delegate to the Board the power to set the instructional time requirement as to private schools, this authority is granted without sufficient standards or guidelines to prevent arbitrary agency action and to enable the agency and the courts to determine if the agency is carrying out the General Assembly’s intent.

147. Statutory provisions that make it mandatory for children to attend school and delegate to the Board the authority to determine what constitutes a private school do not provide a basic standard or sufficient safeguards to prevent arbitrary agency action.

148. The Board used this authority unlawfully delegated by these provisions to impose an instructional time requirement.

149. The instructional time requirement therefore violates the nondelegation doctrine and must be vacated.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

1. Declare that the instructional time requirement, the age separation mandate, the architect mandate, and the restrictions on Plaintiffs' use of the upper floors of the church building are unconstitutional under the Law of the Land Clause of Article I, Section 8 of the Tennessee Constitution, the equal protection guarantees of Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution, and the right of parents to direct their children's education under the Fourteenth Amendment to the United States Constitution;
2. Declare that the Board's instructional time requirement, as applied to private schools, exceeds the Board's statutory authority and is therefore invalid and ultra vires, *see* Tenn. Comp. R. & Regs. §§ 0520-07-02-.02(3)(e)1, 0520-07-02-.03(4)(c)8(v)(I), 0520-07-02-.04(3)(a)8(v)(I), and 0520-07-02-.06(3)(n);
3. Declare that, to the extent Tenn. Code Ann. § 49-6-3001 is construed to authorize the Board to impose the instructional time requirement on private schools, the applicable provisions violate the nondelegation doctrine and Article II, Sections 1 and 3 of the Tennessee Constitution;
4. Enjoin Defendants, their employees, agents, successors, assigns, and all persons acting in concert with them from enforcing the instructional time requirement, the age separation mandate, the architect mandate, and the upper-floor restrictions;
5. Award costs, expenses, and attorneys' fees in this action pursuant to 42 U.S.C. § 1988 and Tenn. Code Ann. § 29-14-111; and
6. Grant any other relief as the Court deems just and proper.

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Respectfully submitted,



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