

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

CRATON LIDDELL, et al., individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

V.

BOARD OF EDUCATION OF THE CITY  
OF ST. LOUIS, MISSOURI, et al.,

Defendants.

CASE NO.: 4:72-CV-100 HEA

**MOTION TO INTERVENE ON BEHALF OF CHARTER PUBLIC SCHOOL PARENTS  
AND CHILDREN**

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Ken Ross, Jr., and LeDiva Pierce, on behalf of themselves and all others similarly situated (the “Charter Public School Parents and Children”), seek to intervene as Plaintiffs in this case. The present Motion to Enforce Settlement seeks only one thing from this Court: a decrease in funding for education of students at charter public schools in the City of St. Louis. Given the clear interest of Charter Public School Parents and Children in the educational funding and educational opportunities that charter public schools provide in the City of St. Louis, this Court should permit the Charter Public School Parents and Children to intervene as of right under Rule 24(a)(2). In the alternative, the

Court should exercise its discretion to grant them permissive intervention under Rule 24(b).<sup>1</sup> In support of this motion, they state and allege as follows:

1. Mr. Ross and Ms. Pierce are African-American residents and taxpayers in the City of St. Louis. Affidavit of Ken Ross, Jr., attached hereto as Ex. B at ¶ 1-2; Affidavit of LeDiva Pierce, attached hereto as Ex. C at ¶ 1-2.

2. Mr. Ross and Ms. Pierce are parents of African-American children who are presently enrolled in the charter public schools in the City of St. Louis. Ex. B at ¶ 2-3; Ex. C at ¶ 2-3.

3. The creation of charter public schools in Senate Bill 781 was part of the legislative compromise that led directly to the March 1999 settlement agreement.

4. A charter school is an “independent public school.” § 160.400.1, RSMo. Just as with traditional public schools, a public charter school is required to enroll all resident pupils who apply from the district in which it operates and eligible nonresident pupils, to the extent space is available. § 160.410.1, RSMo. A charter school may not charge tuition or impose fees that a school district is prohibited from imposing, § 160.415.10, RSMo, and it may not accept any grant, gift, or donation “if it is subject to any condition contrary to law applicable to the charter school or other public schools,” § 160.415.13, RSMo.

5. Charter public schools were intended to and do provide a meaningful educational alternative to public schools under the control of the Special Administrative Board. Ex. C ¶ 6, 12.

6. Mr. Ross has two children who will attend charter public schools in the City of St. Louis. Mr. Ross’s son, Kaebrin, was born in 2005. He enrolled in kindergarten at Hickey Elementary School in the St. Louis Public School District. Kaebrin has autism, is high functioning, and has special educational needs. When the school was unable to meet Kaebrin’s

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<sup>1</sup> Permissive intervention is wholly discretionary. *See Bush v. Viterna*, 740 F.2d 350, 359 (8<sup>th</sup> Cir. 1984).

educational needs, Mr. Ross chose to enroll Kaebrin at Confluence Academy-Old North Campus in second grade. Kaebrin's educational experience has been much better at Confluence Academy, and he will be a sixth grade student in fall 2016. Mr. Ross's younger son, Ken Ross III, was born in 2010. Mr. Ross has enrolled him in Confluence Academy-Old North Campus to begin kindergarten in fall 2016. Ex. B ¶¶ 4-7.

7. Ms. LeDiva Pierce has three children who currently attend charter public schools in the City of St. Louis. Of the three currently enrolled in charter public schools, Ms. Pierce's oldest child, Unique, was born in 2003 and is enrolled in KIPP Inspire Academy. Ms. Pierce's son Albert was born in 2005 and her daughter Alfreida was born in 2007. Both Albert and Alfreida have been enrolled in Northside Community Charter School since kindergarten. Ex. C ¶¶ 3-5.

8. The ability to choose to enroll their children at charter public schools instead of non-charter public schools is important to Mr. Ross and Ms. Pierce. The educational opportunities available at charter public schools in the City of St. Louis are important to all Charter Public School Parents and Children.

9. The opportunities and funding for their children's education, whether at charter or non-charter public schools in the City of St. Louis or at an adjacent district through the voluntary interdistrict transfer program, are among the key provisions in the March 1999 settlement agreement.

10. The relief sought by the Special Administrative Board and the class representatives is to decrease the funding for education of children in the charter public schools in the City of St. Louis.

11. This relief is not contemplated or required by the March 1999 settlement agreement. The March 1999 settlement agreement sought to make certain that educational funding, on a per-pupil basis, was equivalent for children eligible to be educated in the City of St. Louis, regardless of which public school they attended.

12. Mr. Ross and Ms. Pierce, and their children, have an interest in continued education at the charter public schools. Ex. B; Ex. C.

13. Mr. Ross and Ms. Pierce, and their children, have an interest that the charter public schools receive funding that state law has provided since the passage of Senate Bill 287. Ex. B; Ex. C.

14. The Motion to Enforce the Settlement Agreement may impair or impede these interests. If the Special Administrative Board prevails in its motion, Mr. Ross and Ms. Pierce, and their children, would suffer a loss in educational funding for teachers, facilities, and equipment necessary for their children's education. This would erode the quality and reputation of the charter public schools that Mr. Ross's and Ms. Pierce's children attend. As the Special Administrative Board also seeks repayment of money paid to charter public schools since 2006, this could also result in the bankruptcy and closure of charter public schools. It may also require Mr. Ross, Ms. Pierce, and their children to seek alternative educational settings to continue their education, which could disrupt the children's social and academic achievement potential. See Ex. B; Ex. C.

15. Senate Bill 287 was passed in 2005, and the funding changes the present motion complains of went into effect in 2006.

16. The St. Louis Public School District notified the state of Missouri in December 2008 that they objected to the funding of charter public schools required by Senate Bill 287.

17. At no time until April 11, 2016, did the St. Louis Public School District or class counsel take any action to enforce their present interpretation of the settlement agreement.

18. After the 2008 objection and before the present proceeding, however, the parties did return to this Court for other relief related to the March 1999 settlement agreement. The failure to present the present arguments to the Court at that time results in waiver and gives rise to a defense of *res judicata*.

19. The delay between the 2008 objection and the present motion is unexplained and unreasonable.

20. During this unexplained, unreasonable delay, Mr. Ross and Ms. Pierce, and their children, and others similarly situated, have relied upon the funding and related educational opportunities at charter public schools in St. Louis. Ex. B; Ex. C.

21. Mr. Ross and Ms. Pierce, and their children, and others similarly situated, would suffer prejudice from a change in charter public school funding formula after such an unreasonable delay. Ex. B; Ex. C.

22. In the 2014-2015 school year, there were 9,587 school children enrolled in the charter public schools. Of those students, 6,259 were African-American.

23. No present party adequately represents the interests of Charter Public School Parents and Children in this dispute.

24. The interests of Mr. Ross and Ms. Pierce, and their children, are typical of the interests of Charter Public School Parents and Children.

25. Mr. Ross and Ms. Pierce, and their children, will fairly and adequately protect the interests of the Charter Public School Parents and Children, and have retained counsel competent and experienced in these matters.

26. The number of Charter Public Schools Parents and Children are so numerous that joinder of all of them in this action would be impracticable.

27. Common questions of law and fact relating to the Charter Public School Parents and Children predominate over individual questions.

## CONCLUSION

For the reasons set forth above and in the suggestions in support filed contemporaneously with this motion, this Court should permit the Charter Public School Parents and Children to intervene as of right under Rule 24(a)(2). In the alternative, the Court should exercise its discretion to grant them permissive intervention under Rule 24(b). A copy of the Charter Public School Parents and Children's Suggestions in Opposition to the Motion to Enforce Settlement is attached hereto as Exhibit A.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by the court's ECF filing service on the 31st day of May, 2016, which will notify all parties of record.

/s/ Jeremy A. Root