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**Nov 15 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

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Appellate Case No.: 2021-000424

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The NEXT School, Inc., a Public, Not-for-Profit Corporation  
Incorporated & Existing under the Laws of the State of South Carolina, . . . . . Appellant,

v.

AT-NET Services-Charlotte, Inc., a Private Corporation  
Incorporated & Existing under the Laws of the State of North Carolina,  
and American Arbitration Association, Inc., a Not-for-Profit Corporation  
Incorporated & Existing under the Laws of the State of New York, . . . . . Respondent.

AND

AT-NET Services-Charlotte, Inc., . . . . . Respondent,

v.

The NEXT School, Inc., . . . . . Appellant.

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**APPELLANT’S NOTICE OF WITHDRAWAL OF APPEAL**

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**PLEASE TAKE NOTICE THAT,** pursuant to the applicable rules of appellate procedure, Appellant is respectfully submitting this Notice of the Withdrawal of its Appeal.

In furtherance of this Motion, Appellant would respectfully show as follows:

1. Appellant was a free public charter school located in Greenville, South Carolina.

2. By a duly authorized resolution enacted on June 27, 2022, Appellant’s board of directors decided to commence dissolution and winding up procedures. (See Resolutions, June 27, 2022, attached hereto as **Attachment A.**)

3. The plan of dissolution attached to the Resolutions identified all of Appellant’s liabilities that were known as of that date. The liabilities identified included the liability to Respondent that forms the basis of this appeal. (Resolutions, Att. A, at 3.)

4. Consistent with the plan of dissolution, after using existing assets to satisfy certain priority liabilities and creditors, Appellant would transfer the entirety of the remainder of its assets to the South Carolina Public Charter School District, who would then be “responsible for determining the amount and extent to which any satisfaction of” remaining liabilities—including that of Respondent—“may be made.” (Resolutions, Att. A, at 3-4.)

5. Appellant has now rendered full performance under the plan of dissolution. Priority liabilities and creditors have been paid; the balance of Appellant’s assets has been transferred to the South Carolina Public Charter School District; and Appellant has duly filed its Articles of Dissolution, (see Art. of Dissolution, attached hereto as **Attachment B.**)

6. The fact of Appellant’s dissolution, and the transfer of its assets to the South Carolina Public Charter School District, would seem to have rendered these appellate proceedings moot.

7. The parties have recently received notice that a hearing on these appellate proceedings is scheduled to take place on Tuesday, December 5, 2023 at 10:40am.

8. Appellant is respectfully submitting this notice of withdrawal (and suggestion of mootness) so that the Court may reclaim a few moments of its time.

9. Prior to filing this notice, the undersigned conferred with opposing counsel about the withdrawal herein requested, who does not contest such relief.

**WHEREFORE**, in light of the foregoing circumstances, Appellant respectfully withdraws these appellate proceedings, and requests the entry of an order that reflects the termination of this appeal.

Respectfully,

*s/Steven Edward Buckingham*

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Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

Greenville, South Carolina  
November 15, 2023

# ATTACHMENT A

**Resolutions of the Board of Directors  
The NEXT School**

**June 27, 2022**

The undersigned, constituting the Board of Directors (the “**Board**”) of The NEXT School, a South Carolina non-profit corporation (the “**School**”), hereby adopt the following resolutions at a duly-convened meeting of the Board effective as of the date above:

WHEREAS, by adoption of these resolutions, the Board intends to memorialize the authorization and ratification of certain acts performed by the Board and officers of the School prior to the date hereof;

WHEREAS, the School was formed as a South Carolina non-profit corporation on April 18, 2012;

WHEREAS, members of the Board have consulted with staff and administrators of the School’s sponsor, the South Carolina Public Charter School District (the “**District**”), who have unanimously recommended the School surrender its charter, terminate its contract with the District, and cease operations after the end of the 2021-2022 school year;

WHEREAS, S.C. Code § 59-40-115 provides that a charter school may terminate its contract with a sponsor so long as all of the parties to the contract agree to such termination;

WHEREAS, the District has agreed to accept the surrender of the School’s charter and the termination of the School’s contract with the District;

WHEREAS, the School’s 2021-2022 school year has ended, and the School’s students and employees are seeking alternate arrangements for the 2022-2023 school year in anticipation of the School’s dissolution and winding up;

WHEREAS, the Board now believes it is in the best interest of the School, its students, and its employees that the Board consent to and approve the dissolution and winding up of the School’s affairs in accordance with S.C. Code § 33-31-1402;

WHEREAS, the Board has reviewed the Plan of Dissolution of the School attached hereto as **Exhibit A** (the “**Plan of Dissolution**”); and

WHEREAS, the Board has reviewed the Articles of Dissolution, Legal Notice of Dissolution, and Notice to the South Carolina Attorney General attached hereto as **Exhibit B** (the “**Dissolution Documents**”);

NOW THEREFORE, the Board resolves as follows:

RESOLVED, that the Board hereby authorizes, approves, and adopts the Plan of Dissolution and the Dissolution Documents and the winding up of the School’s affairs.

RESOLVED, that the School be and hereby is dissolved and the Board hereby appoints Roy Jones and James Mackey each as a Chief Liquidation Officer for the School (each a “**Chief Liquidation Officer**”), each of whom is hereby authorized and directed to wind up the School’s affairs, including and without limitation filing Articles of Dissolution with the South Carolina Secretary of State and taking any and all action that he in good faith deems necessary or desirable to wind up the School’s affairs in connection with the Plan of Dissolution. The Chief Liquidation Officers may act jointly or individually to effect the purposes of these resolutions.

RESOLVED, that each Chief Liquidation Officer is hereby individually authorized and directed to take such actions and execute and deliver such documents, instruments and agreements as he deems necessary or desirable to effect the purposes of these resolutions, the execution and delivery thereof by such Chief Liquidation Officer to be deemed conclusive evidence that the Board and such Chief Liquidation Officer have approved such documents as executed, and that all actions taken in furtherance of the purposes of these resolutions prior to their adoption are hereby affirmed, approved, adopted and ratified in all respects. Each Chief Liquidation Officer, acting individually, may make revisions to the Plan of Dissolution and the Dissolution Documents as deemed necessary in his sole discretion, as requested by the District, or as advised by counsel to the School, provided such revisions are reasonable and in keeping with these resolutions and South Carolina law.

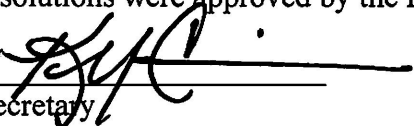
RESOLVED, that all actions taken prior to the date hereof by the School or any of its officers, employees or agents in furtherance of the foregoing resolutions are hereby affirmed, approved, adopted and ratified in all respects.

RESOLVED, that the Board hereby individually authorizes and directs each officer of the School, to take all further action and to do and perform, or cause to be done and performed, all other acts, to execute and deliver, or cause to be executed and delivered, such other notices, requests, demands, consents, approvals, applications, agreements, instruments, certificates, undertakings, amendments, further assurances, and documents of any kind, and to make any and all filings, as such officer deems necessary, advisable, or appropriate to effect the intent of the foregoing resolutions, and the Board hereby authorizes the School to execute, deliver, and perform its obligations under each of such other documents.

**End of Resolutions.**

**SECRETARY’S CERTIFICATE**

The undersigned certifies that he/she is the Secretary of the School and that the foregoing resolutions were approved by the Board at a meeting held on June 27, 2022.

  
Secretary

**Exhibit A**

**THE NEXT SCHOOL  
PLAN OF DISSOLUTION**

**June 27, 2022**

**1. Scope of Plan.** This Plan of Dissolution (the “**Plan**”) provides for the complete dissolution, wind up, and liquidation of The NEXT School, a South Carolina nonprofit corporation (the “**School**”), in accordance with Section 33-31-1406 of the 1976 S.C. Code of Laws, as amended.

**2. Discontinuance of Operations.** The School has discontinued operations, and its sole remaining activities consist of making final payroll and insurance payments, completing its final audits, filing its final Form 990 tax returns, and liquidating and distributing its assets.

**3. Satisfaction of Liabilities.** The School has remaining assets as follows: \$650,000 in cash, an anticipated accounts receivable in the amount of \$96,000 of ESSER reimbursements (awaiting approval by the District), and an anticipated final accounts receivable in the amount of \$55,000 ESSER reimbursement (to be submitted to and approved by the District). The School expects to pay the following liabilities as part of the winding up of the School’s affairs:

- a. Final payroll payments of approximately \$175,000;
- b. PTO payments of approximately \$25,000;
- c. PEBA payments of approximately \$40,000;
- d. Legal and accounting fees of approximately \$10,000;
- e. Audit fees of approximately \$8,500;
- f. Insurance premiums of approximately \$5,000; and
- g. Payment to the Town of Salem of the balance of the NSER Maintenance cash account at BB&T in the amount of \$52,751.

The School has no other known liabilities, whether contingent or non-contingent, except as follows:

- v. Debt owed to Charter Asset Management Fund, L.P. in the amount of \$536,766;
- w. Debt owed to Adeline Capital, LLC in the amount of \$56,047;
- x. Remaining lease payments owed to Two POP LLC in the amount of \$2,023,639;
- y. Maintenance fund payments by the School of \$1,500 per month to the Town of Salem through August 2023; and
- z. A judgment in favor of AT-NET Services – Charlotte, Inc. for damages in the amount of \$45,852.00, prepetition interest in the amount of \$24,980.77, \$15,051.00 in attorneys’ fees, \$2,775.00 in arbitration costs, and \$200.00 in court costs.

After making the payments in clauses (a)-(g) above, the School shall distribute the remaining assets to the School’s sponsor, the South Carolina Public Charter School District (the “**District**”), no sooner than twenty (20) days following the date of delivery of written notice to the South Carolina Attorney General of the School’s intent to dissolve or the date the Attorney General has indicated

in writing that he will take no action with respect to the distribution of such assets, whichever is earlier. The District shall be responsible for determining the amount and extent to which any satisfaction of the aforementioned liabilities in clauses (v)-(z) may be made following the distribution of the remaining assets.

**4. Articles of Dissolution.** As soon as practicable after the School's compliance with Section 3 above, the School shall file articles of dissolution with the South Carolina Secretary of State.

**5. Other Action.** The School shall take all other actions reasonably necessary or appropriate to effect the dissolution of the School and the winding up of its affairs in accordance with the requirements of South Carolina or other applicable law. Each Chief Liquidation Officer of the School, acting individually, may make revisions to this Plan as deemed necessary in his sole discretion, as requested by the District, or as advised by counsel to the School, provided such revisions are reasonable and in keeping with the resolutions of the School's board of directors and South Carolina law.

**6. Completion.** It is the intention of the School to complete this Plan no later than 90 days from June 27, 2022.

**7. Revocation of Dissolution.** The Board of Directors of the School, in its discretion, may revoke the dissolution of the School contemplated herein anytime within the 120 day period following June 27, 2022.

**End of Plan of Dissolution.**

# ATTACHMENT B

**STATE OF SOUTH CAROLINA  
SECRETARY OF STATE**

**ARTICLES OF DISSOLUTION  
FOR A NONPROFIT CORPORATION**

Pursuant to the provisions of Section 33-31-1404 of the 1976 S.C. Code of Laws, as amended, the undersigned nonprofit corporation submits the following Articles of Dissolution:

1. The name of the corporation is:

The NEXT School

Date incorporated: 04/18/2012

2. The dissolution was authorized on: 06/27/2022

3. Choose one of the following by marking the appropriate box.

- The resolution authorizing the dissolution was duly adopted by the members pursuant to Section 33-31-1402 of the 1976 S.C. Code of Laws, as amended.
- The resolution authorizing the dissolution was duly adopted by a majority of the Board of Directors, as approval by the members was not required [Section 33-31-1402(b) of the 1976 S.C. Code of Laws, as amended].
- The resolution authorizing the dissolution was duly adopted by a majority of incorporators pursuant to Section 33-31-1401 of the 1976 S.C. Code of Laws, as amended.

4. If approval by the members was required, please provide the following information pursuant to Section 33-31-1404(a)(5)(i) and (ii) of the 1976 S.C. Code of Laws, as amended.

Complete one of the following as appropriate:

Designation (classes of membership)	Number of Memberships Outstanding	Number of Votes Entitled to be Cast by each Class Entitled to Vote Separately on Dissolution	Number of Votes Entitled to be Cast by Each Class Indisputably Voting on Dissolution	Total Number of Votes Cast* For -AND- Against Dissolution by Each Class Entitled to Vote Separately	Total Number of undisputed votes cast for dissolution by each class which was sufficient for approval for that class

5. If approval by third person(s) other than the members, directors, or incorporators was required, such approval was obtained.

6. Notice to the Attorney General, required by Section 33-31-1403 of the 1976 S.C. Code of Laws, as amended, has been given. Copies of all notice documents provided to the Attorney General, including a copy or summary of the plan of dissolution, are included as an attachment to this filing.

The NEXT School

Name of Corporation

7. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is:

\_\_\_\_\_ (Date) (NOTE: A delayed effective date shall not be later than the 90<sup>th</sup> day after the date this document is filed by the Secretary of State.)

Name of Corporation:

The NEXT School

7/18/22  
(Date)

  
(Signature)

Roy D. Jones  
(Print Name)

Chief Liquidation Officer  
(Position of Officer)

Business Name: The NEXT School

**AFFIDAVIT AFFIRMING AUTHORITY TO EXECUTE ARTICLES OF DISSOLUTION  
FOR A NONPROFIT ORGANIZATION**

Filed pursuant to South Carolina Code of Laws § 33-31-1402 (f)

I do solemnly swear or affirm, under penalty of perjury, that I have the authority, either in my own right or on behalf of the board or other entity or group, to execute articles of dissolution for The NEXT School, a nonprofit organization.  
(Must match entity name on record with Secretary of State's office)

Ray D. Jones  
Officer's Printed Name

[Signature]  
Officer's Signature

Jennifer Cooper  
Notary's Printed Name

Sworn to and subscribed before me  
This 18th day of July, 20 22.

[Signature]  
Notary's Signature

Notary Public of South Carolina

Date July 18, 2022

My Commission Expires: 5/2/27



Business Name: The NEXT School

## Signature Page for a Secretary of State Business Filing

This page must be completed, scanned, and attached to any business filing where one of the following is true.

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

### Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)

Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Roy D. Jones 7/18/22  
Name Date

[Signature] Chief Liquidation Officer  
Signature Title / Position

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature Title / Position

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature Title / Position

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature Title / Position

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature Title / Position

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AND

AT-NET Services-Charlotte, Inc., . . . . . Respondent,

v.

The NEXT School, Inc., . . . . . Appellant.

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**PROOF OF SERVICE**

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The undersigned counsel for Appellant hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

**Document(s):** Appellant’s Notice of Withdrawal of the Appeal

**Counsel Served:** For Respondent AT-NET Services—Charlotte, Inc.  
Adam C. Bach (S.C. Bar No. 0074885)  
Eller Tonnsen Bach, LLC  
1306 S. Church Street  
Greenville, SC 29605  
(o) 864.236.5013  
(e) abach@etblawfirm.com  
egodwin@etblawfirm.com

Means of Delivery: *Via Email Only*

**Courts Served:** Office of the Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Means of Delivery: *Via Email Only to*  
*ctappfilings@sccourts.org*

**Date:** November 15, 2023

Respectfully submitted,

*s/ Steven Edward Buckingham*

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Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

*Attorney for Appellant*