

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY
STATE OF FLORIDA**

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs.

Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
DON GAETZ, in his official capacity as the
Florida Senate President;
WILL WEATHERFORD, in his official capacity as
the Florida Speaker of the House of Representatives;
and PAM STEWART, in her official capacity
as Florida Commissioner of Education;

Defendants.

SECOND AMENDED COMPLAINT

1. This is a declaratory action by public school students, parents and citizen organizations in the State of Florida who seek a declaration that the State of Florida is breaching its constitutional paramount duty to provide a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX, section 1(a) of the Florida Constitution.

2. Plaintiffs also seek a declaration that the State has not provided a high quality pre-kindergarten learning opportunity and not delivered an early childhood development

and education program according to professionally accepted standards, as required by Article IX, section 1(b) of the Florida Constitution.

3. Defendants have various responsibilities for educational policymaking, budgeting, operation and supervision of Florida's public schools, and have failed to fulfill their constitutional duties in these regards.

4. Plaintiffs seek declaratory and supplemental relief that requires Defendants to fulfill their constitutional duties under Article IX.

JURISDICTION AND VENUE

5. This suit is to redress the deprivation of rights and privileges secured to Plaintiffs by Article IX of Florida's Constitution.

6. Jurisdiction is conferred on this Court by Art. V, § 5(b), Fla. Const.; § 26.012, Fla. Stat. (2013) (jurisdiction of Circuit Court); § 86.011, Fla. Stat. (2013) (declaratory relief).

7. Venue is properly laid in this Court as Defendants officially reside in Leon County. § 47.011, Fla. Stat. (2013).

PLAINTIFFS

8. CITIZENS FOR STRONG SCHOOLS, INC., is a non-profit 501(c)(4) organization whose mission is to consider, study, and publicize ways to improve education in Alachua County. The members of CITIZENS FOR STRONG SCHOOLS, INC. have students in the public school system of the State of Florida. The members of CITIZENS FOR STRONG SCHOOLS, INC. are also taxpayers of the State of Florida and have suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

9. FUND EDUCATION NOW is a corporation not for profit organized under the laws of the State of Florida. FUND EDUCATION NOW represents and is an association of a group of Florida citizens who are Florida taxpayer parents of students in Florida public schools. The purpose of this non-profit corporation is to promote excellence in education in Florida's K-12 education system and to see that the Defendants comply with their constitutional duty to provide a high quality education to the public school students in Florida. The association of citizens has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution. The directors and officers of FUND EDUCATION NOW are Florida citizens who will likewise be affected by the State's failure to meet its mandate.

10. Plaintiff EUNICE BARNUM is the legal guardian of children who attend school in Duval County, Florida, and is a Florida taxpayer who lives in Jacksonville, Florida, and whose wards do not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

11. Plaintiff JANIYAH WILLIAMS is a black eighth grade student at LaVilla School of the Arts, located in Jacksonville, Duval County, Florida, and does not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

12. Plaintiff JACQUE WILLIAMS is a black fifth grade student at Lake Forest School, located in Jacksonville, Duval County, Florida, and does not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

13. Plaintiff SHEILA ANDREWS is the mother of two children who attended school in Duval County, Florida, at the time the suit was initiated. She is a Florida taxpayer who lives in Jacksonville, Florida, and whose children did not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

14. Plaintiffs ALFREDO NOGUERAS and ROSE NOGUERAS are the parents of a Hispanic student who attended school in Pasco, County, Florida, at the time the suit was initiated. Their son did not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. They are Florida taxpayers who live in Pasco County, Florida. Plaintiffs have suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

DEFENDANTS

15. Defendant FLORIDA STATE BOARD OF EDUCATION is a body corporate and is the chief implementing and coordinating body of public education in Florida. Art. IX, § 2, Fla. Const; §§ 1001.01(1) & 1001.02(1), Fla. Stat. (2013). It oversees the enforcement of all laws and rules related to education, and the timely provision of direction, resources,

assistance, intervention when needed, and strong incentives and disincentives to force accountability for results. § 1000.03(2)(b), Fla. Stat. (2013). It appoints the Commissioner of Education, and exercises general supervision over the divisions of the Department of Education. *Id.* § 20.15(2) & 1001.02(2)(c). It is required to submit to the Governor and Legislature a coordinated K-20 annual legislative budget request, which must clearly define the needs of the school districts. *Id.* §§ 1001.02(2)(e) & 1011.01(1). Its members are appointed by the Governor, subject to confirmation by the Senate. *Id.* § 1001.01(1). It has a paramount duty to provide a high quality education to the students of the State of Florida.

16. Defendant DON GAETZ is the Senate President. The Senate President is the presiding officer of the Florida Senate, and has responsibility for ensuring that adequate provision is made by law for the education of all public school children. Art. III, § 2, Fla. Const.; Art. IX, § 1, Fla. Const. The Florida Senate, along with the Florida House of Representatives, is responsible for establishing education policy, enacting education laws, and appropriating and allocating education resources. § 1000.03(2)(a), Fla. Stat. (2013). He is sued in his official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. He also has a duty to provide a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards.

17. Defendant WILL WEATHERFORD is the Speaker of the House of Representatives. The Speaker of the House of Representatives is the presiding officer of the Florida House of Representatives, and has responsibility for ensuring that adequate provision is made by law for the education of all public school children. Art. III, § 2, Fla. Const.; Art. IX, § 1, Fla. Const. The Florida House of Representatives, along with the

Florida Senate, is responsible for establishing education policy, enacting education laws, and appropriating and allocating education resources. § 1000.03(2)(a), Fla. Stat. (2013).

He is sued in his official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. He also has a duty to provide a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards.

18. Defendant PAM STEWART is the Florida Commissioner of Education. The Commissioner is the Executive Director of the Department of Education, which is the chief educational officer of the state. §§ 20.15(2) & 1001.10, Fla. Stat. (2013). She is sued in her official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. The Office of Early Learning (OEL) is housed in the Florida Department of Education, and the OEL's executive director is accountable to the Commissioner. § 20.15(3)(i)1, Fla. Stat. (2013). The Commissioner has powers and duties related to providing a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards. § 1002.73, Fla. Stat. (2013).

FACTUAL ALLEGATIONS

I. The State Has a Constitutional Duty to Provide a Uniform, Efficient, Safe, Secure and High Quality System of Free Public Schools.

19. Article IX, Section 1 of the Florida Constitution was amended in 1998 by 71% of the voters and provides:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall

be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

20. With this constitutional amendment, the people of Florida imposed on their state government more stringent requirements for the educational system than those contained in any other state constitution. Florida's education clause is the only one in the country that mandates all of the following: a high quality education; specific characteristics of the educational system; and the elevation of education above other governmental functions.

21. "Fundamental value" recognizes that "education is absolutely essential to a free society under our governmental structure." See *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J, concurring).

22. "Paramount duty" imposes a "maximum duty on the state to provide for public education that is uniform and of high quality." *Bush v. Holmes*, 919 So.2d 392, 404 (Fla. 2006).

23. "Paramount duty" means that making adequate provision for education is not merely a duty that is important, but rather a duty that is preeminent in rank and above all others.

24. The State's paramount duty is borne by Defendants.

25. The constitutional provision elaborates on and defines the phrase "adequate provision" with a list of judicially discoverable and manageable standards. To meet the constitutional standard, the State is required to provide a "uniform, efficient, safe, secure,

and high quality system of free public schools that allows students to obtain a high quality education.”

26. The State must meet each of these enumerated standards or the system is inadequate by constitutional standards. The phrase “high quality” is used to define both the educational system and the education obtained by Florida’s students. In other words, adequate provision for high quality education in Florida must be measured by both the enumerated characteristics of and inputs into the system itself, as well as the outcome and results of that system.

II. The State Has Breached its Paramount Duty to Make “Adequate Provision” For a System of Free Public Schools.

27. The annual allocation to each school district for operation of schools is determined based on a formula governed by the Florida Education Finance Program (FEFP) as well as additional categorical funding. § 1011.62, Fla. Stat. (2013).

28. Florida has established extensive educational standards for teachers, students and schools, but has not conducted a cost analysis in order to determine the amount of funding required to institute a high quality education system or to provide the districts with the financial resources to provide the programs and services the State has prescribed.

29. The FEFP does not address whether the overall level of funding is sufficient to provide a uniform, efficient, safe, secure and high quality system of public education.

30. The overall level of funding is not sufficient to provide a uniform, efficient, safe, secure and high quality system of public education.

31. The State does not, whether through the FEFP or categorical funding, specifically address funding to meet the needs of students in poverty.

32. Funding for public education is not sufficient to meet the needs of students in poverty.

33. The Florida Legislature annually determines what the required local effort is and how much money each school district will receive from the state and from federal funds. The “required local effort” is how much the State mandates that each school district must raise from local property taxes for education from citizens in that school district. § 1011.62(4), Fla. Stat. (2013).

34. The Florida Legislature has authorized school districts to levy an additional tax of .25 mills (25 cents on every \$1,000 of assessed property value) for up to two years without voter approval. Some districts levy this amount to make up for reduced state funding.

35. Some school districts seek voter approval for additional millage to fund basic education, school repair and maintenance, or increased class size space requirements.

36. The State relies on federal funds, lottery proceeds, and ad valorem taxes to fund education. The sums change from year to year and are not reliable and dependable. The State has failed to provide for a consistent, reliable funding scheme for public education.

37. For fiscal year 2011, Florida ranked 50th among other states in per pupil per capita funding for education (comparing public education finance to \$1,000 in personal income). (US Census Bureau, May 2013.)

38. Using a trend analysis from 2003-04 to 2013-14, per pupil spending has not kept pace with the state budget.

39. According to the 2014 National Report Card, Florida ranks 43rd in per pupil funding and earns an “F” in effort for funding based on the percentage of the state's Gross Domestic Product (GDP) allocated to education.

40. Florida’s per pupil funding of \$6,761.09 for 2013-14 is \$381.70 less than the \$7,142.79 per pupil funding for 2007-08.

41. Florida’s base student allocation for 2013-14 of \$3,752.30 is \$327.44 less than the \$4,079.74 base student allocation for 2007-08.

42. For many years, the State has not provided sufficient funding to meet school districts’ school repair and maintenance needs. Many districts have school facilities that are in need of serious repair, including roofs that have collapsed and moldy, “sick” buildings.

43. For several years, funds for capital outlay projects have been allocated to charter schools and not to schools operated by a school district.

44. The State has mandated various requirements to school districts but has not provided sufficient supplemental funding to offset the cost of implementation, including the evaluation of teachers, testing of students, requirements for graduation, curriculum mandates, professional development, financial auditing and approval of charter schools.

45. The State has not provided sufficient funding to ensure that English Language Learners and students with disabilities have access to a high quality education.

46. The State does not make adequate provision as required by Article IX, section 1 of the Florida Constitution.

III. The State Has Failed to Provide a “Uniform” System of Free Public Schools

47. “Uniform” means, among other things, that there is one public school system guided by a common plan or general framework, where every student in every district has an equal opportunity to reach certain basic educational goals.

48. Florida is failing to provide a uniform system of free public schools by using public funds for private schools that, among other things, are not required to have standardized teacher certification, accreditation, curriculum and testing.

49. Florida is systematically diverting public funds to private schools.

50. Florida has created a parallel system of schools with little or no oversight by the Florida Department of Education (FDOE).

51. The private schools’ curriculum and teachers are not subject to the same standards as those for public schools.

A. Florida Tax Credit Scholarship Program

52. In 1999, the Circuit Court for Leon County declared that the Opportunity Scholarship Program, a statewide private school voucher program that was funded by the State, violated Article IX, Section 1 of the Florida Constitution. *See Bush v. Holmes*, 767 So. 2d 668, 671 (Fla. 1st DCA 2000).

53. The Florida Legislature created the Florida Tax Credit Scholarship Program (FTCSP) in 2001, currently codified at §1002.395, Fla. Stat. (2013). The FTCSP is a public program funded through business tax credits that provides tuition vouchers for eligible K-12 students to attend non-public schools.

54. In 2006, the Florida Supreme Court affirmed the Circuit Court’s decision and held that the uniformity requirement of Article IX, Section 1 of the Florida Constitution

prohibits the Florida Legislature from funding a private alternative to the public school system. *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

55. In the years following this decision, the Florida Legislature repealed the private school option of the Opportunity Scholarship Program and dramatically expanded the FTCSP.

56. The FTCSP requires the Florida Department of Revenue to issue dollar-for-dollar tax credits to businesses that make qualifying contributions to an eligible scholarship-funding organization (SFO). For 2012-13, the tax credit cap was \$229 million. For subsequent years, the cap automatically increases 25% every year that the FTCSP tax credits have at least 90% usage. §1002.395(5)(a), Fla. Stat. (2013).

57. During the 2012-13 school year, scholarships in the amount of \$206.9 million were awarded to a total of 51,075 students enrolled in 1,338 participating Florida private schools, which reflects an enrollment increase of almost 27% from 2011-12.

58. Eligible students are those who qualify for the free and reduced lunch program (185% of federal poverty level) or are in foster care. §1002.395(3), Fla. Stat. (2013). Eligibility will expand to families earning 260% of the federal poverty level in 2016-17 (to be codified at §1002.395(12)(a)3.d, Fla. Stat.).

59. For 2013-14, the Department of Revenue issued approximately \$286 million in FTCSP tax credits.

60. For 2014-15, the Department of Revenue is authorized to approve about \$358 million in tax credits for businesses under the FTCSP.

61. The FTCSP uses public money in the form of tax expenditures and other public resources for non-public schools and diverts public money from the public school system to non-public schools.

62. Taxpaying businesses which make eligible contributions to an SFO receive a 100% tax credit. The FTCSP tax credits constitute a 100% subsidy that completely reimburses businesses that contribute to an SFO. The entire expense of the contribution is borne by the State through a loss in revenue and no expense is borne by private charity.

63. The function of FTCSP tax credits is not related to equitably adjusting taxpayers' gross income or equitably distributing the tax burden, but is to fund private school vouchers.

64. But for the FTCSP, taxpayers' contributions to the FTCSP would be owed to and directly paid to the State.

65. The FTCSP tax credits are narrowly targeted to accomplish a specific legislative funding priority: funding private school vouchers.

66. Tax credits issued by the Department of Revenue pursuant to the FTCSP are functionally the same as collecting the revenue and then making an expenditure of public funds. Tax expenditures accomplished through narrowly targeted tax credits are equivalent to expenditures accomplished through direct budgetary spending.

67. The issuance of FTCSP tax credits reduces the funds available in the state's general treasury.

68. The SFO exists entirely to accomplish ends mandated by the Florida Legislature (the funding of private school vouchers), through means mandated by the Florida Legislature.

69. The SFO has no independent discretion or independent purpose.
70. The SFO is only able to operate with the express pre-approval of FDOE.
71. The SFO receives contributions from taxpayers but has no discretion regarding the issuance of tax credits or the amount of the taxpayers' contribution.
72. An SFO must distribute the contributions it receives to the parents of students that participate in the FTCSP. Parents must endorse the warrant only to the private school.
73. SFOs are permitted a 25% carryover for one year. Any carryover that is not spent in the following year must be returned to the State Treasury for deposit in the General Revenue Fund. §1002.395(6)(i)2, Fla. Stat. (2013).
74. The SFO has no discretion regarding the selection of students who receive scholarships because the FTCSP strictly defines student eligibility and requires the SFO to grant scholarships to previous recipients and then on a first-come-first-served basis.
75. The SFO has no discretion regarding the amount of scholarship funds to grant to students because the FTCSP strictly defines the scholarship's amount.
76. The SFO has no discretion regarding the private schools or types of expenses for which students may receive scholarships because the FTCSP strictly defines the eligible schools and the eligible costs and FDOE determines the eligibility of private schools.
77. The SFO must provide FDOE quarterly reports regarding the SFO's actions and must provide FDOE annual financial and compliance audits of its accounts and records.
78. There is a sufficiently close nexus between the State and the SFO's funding of private school vouchers such that the State may be fairly treated as itself engaging in the funding of private school vouchers.

79. The SFO is fulfilling a public function.

80. The FTCSP imposes duties on public school districts that require the expenditure of public funds and public resources.

81. The FTCSP makes public school districts responsible for implementing and administering standardized testing at any private school that participates in the FTCSP. This obligation includes training for private school staff on test security and assessment administration procedures; distribution of testing materials to a private school; retrieval of testing materials from a private school; provision of the required format for a private school to submit information to the district for test administration and enrollment purposes; and provision of any required assistance, monitoring, or investigation at a private school.

82. The FTCSP requires public school districts, upon request by an SFO, to provide notice of the FTCSP to eligible students in the district.

83. The FTCSP imposes duties on FDOE that require the expenditure of public funds and public resources.

84. FDOE maintains an Office of Independent Education and Parental Choice. This Office conducts site visits to some participating FTCSP private schools to review whether background screening and fire code inspections are maintained.

85. The 2014 Legislature amended the FTCSP to make clear that its purpose “is not to prescribe the standards or curriculum for private schools. A private school retains the authority to determine its own standards and curriculum.” CS/SB 850, Laws of Fla. (2014).

86. The FTCSP does not require private schools to hire certified teachers.

87. The FTCSP does not require students participating in the FTCSP to take courses that are required of public school students.

88. The FTCSP does not require private schools to offer sufficient services to meet the students' unique needs for an appropriate education nor to provide the procedural protections under the Individuals with Disabilities Education Act.

89. The FTCSP does not require private schools to offer services to meet the needs of English Language Learners.

90. The FTCSP does not require private schools to be non-sectarian. Of the participating private schools in 2012-13, 73% were religious and 27% were non-religious institutions. Many teach religious curriculum and are accredited by religious institutions.

91. The FTCSP does not require private schools to administer the same standardized tests required by public schools.

92. The FTCSP does not require private schools to be accredited.

93. The FDOE has no authority over the private institutions or private school students in the FTCSP.

B. McKay Scholarship for Students with Disabilities Program

94. In 1999, the McKay Scholarship for Students with Disabilities Program (McKay Program) was created and is currently codified at §1002.39, Fla. Stat. (2013).

95. Eligible students are those with an Individual Educational Plan (IEP) or a 504 Accommodation Plan.

96. The McKay Program is funded through direct appropriations from the Florida Legislature. The maximum amount is the base student allocation in the FEFP multiplied by the appropriate cost factor and district cost differential. Four times a year, funds are

transferred into a separate scholarship fund from the General Revenue funds for each school districts' total funding entitlement under the FEFP and from their categorical accounts.

97. Four times a year, the Chief Financial Officer sends scholarship payments to private schools made payable in the name of the eligible student's parent. Parents must endorse the warrant to only the private school.

98. Parents are responsible for transportation to the private schools.

99. During the 2012-13 school year, \$168.9 million was paid to scholarship program participants. The maximum scholarship amount for IEP students ranged from \$4,395 to \$19,105, with an average amount of \$7,019. The average amount for students with a 504 Plan was \$3,977.

100. In the 2012-2013 school year, 26,611 students from 1,163 private schools received a McKay Scholarship.

101. The McKay Program does not require eligible private schools to hire certified teachers.

102. The McKay Program does not require students participating in the McKay Program to take courses that are required of public school students.

103. Even though the McKay Program is directed at students with disabilities, it does not require private schools to offer sufficient services to meet the students' unique needs for an appropriate special education nor to provide the procedural protections under the Individuals with Disabilities Education Act.

104. The McKay Program does not require private schools to offer services to meet the needs of English Language Learners.

105. The McKay Program does not require private schools to be non-sectarian. Of the participating private schools in 2012-13, 64% were religious and 36% were non-religious institutions. Many teach religious curriculum and are accredited by religious institutions.

106. The McKay Program does not require private schools to administer any standardized test.

107. The McKay Program does not require private schools to be accredited.

108. The Florida DOE has no authority over the private institutions or private school students in the McKay Program.

109. In passing and repeatedly expanding the FTCSP and the McKay Program, the Florida Legislature intended to cause and did cause K-12 students to exit public schools and transfer to non-public schools. But for these private school voucher programs, the vast majority of students participating in these programs would have attended public schools.

110. In passing and repeatedly expanding the FTCSP and the McKay Program, the Florida Legislature intended to divert public money from the education finance program and use this money instead to fund private school vouchers through these programs. From 2008-09 through 2012-13, the FTCSP diverted over \$678 million from public schools and the McKay Program diverted over \$741 million, for a combined total of almost \$1.5 billion less that was available for public schools.

IV. The State Has Failed to Provide an “Efficient” System of Free Public Schools

111. “Efficient” means productive of desired effects without waste, duplication, mismanagement, unnecessary expense or political influence.

112. Many of the State's reforms and programs, including the accountability system, changes to the graduation requirements, retention and promotion requirements, teacher evaluations, charter schools, and the FTCSP and the McKay Programs, have wasted millions of dollars without producing the desired effect of a high quality public school system, and are thus not efficient.

A. Florida's Accountability Program

113. Florida requires public school students to take a variety of standardized tests in different grades, including the Florida Comprehensive Assessment Test (FCAT) and End-of-Course (EOC) exams. Florida is phasing out the FCAT and transitioning to a different assessment. § 1008.22(3), Fla. Stat. (2013).

114. The current FCAT was designed to (and does) measure only student learning of the Florida Next Generation Sunshine State Standards. The EOC only measures student learning in a particular course. The FCAT and EOC were not designed to evaluate teachers, grade schools or be the basis for determining whether to retain or graduate students.

115. Since 1999, the State has used standardized test results to make high stakes decisions about students and schools.

116. Studies have documented the adverse effects of high stakes testing, finding that its use tends to narrow the curriculum, lead to increased rates of students being retained to repeat grades, and decrease high school graduation rates.

117. The existence of a high school exit examination lowers the graduation rates of high school students and increases the rate at which they take the GED.

118. Florida misuses standardized tests to retain students and to deny students a high school diploma.

119. Florida further misuses standardized tests to evaluate teachers and reward and punish schools and school districts. Seventy per cent of public school teachers in Florida do not teach courses associated with the FCAT Reading or Math, yet the FCAT is part of their evaluation.

120. Florida's accountability system fails to recognize the many other factors that affect student achievement beyond school influences, as well as the school-level variables, such as teacher experience and teacher turnover rates, that affect at-risk students' chances of passing the standardized test graduation requirements.

121. The misuse of standardized tests has an adverse impact on minority and disadvantaged students and diverts scarce resources from providing a high quality public education system. This misuse of standardized tests favors schools and districts with more high-income, non-minority students by rewarding them with extra money.

122. In 2006 and 2007, the Grade 3 FCAT Reading scores were invalid as a result of errors in "anchor" test questions, which allow comparisons from one year to the next.

123. From 2000 to 2008, the FCAT included a norm-referenced component, which allowed comparisons of Florida students to students in other states. In 2008, the Florida Legislature removed the requirement that the FCAT include a norm-referenced component.

124. In 2010, thirty-six Florida public school districts were critical of inconsistencies in the FCAT scores and errors made by Pearson, the company then responsible for FCAT.

125. FDOE warns that the FCAT Writing for 2009 and prior years cannot be compared to 2010 and 2011 due to changes in scoring methods.

126. In early 2012, the Florida State Board of Education (SBOE) and the Florida Legislature rushed reforms into place by arbitrarily setting the bar and tweaking school grades.

127. In May 2012, in “an emergency meeting to consider how to move forward with calculating school grades for this year,” the SBOE voted to lower the passing score on the FCAT Writing from a 4.0 to a 3.0 (on a 6.0 scale) due to “significantly lower student performance.” (FDOE Press Release.) The passing rate for FCAT Writing had plummeted from 81% to 27% for Grade 4 and showed similar drops in Grades 8 and 10. The lowered passing score spared hundreds of schools from earning an F.

128. In July 2012, FDOE reissued grades for 213 schools in 40 school districts and changed overall grades for nine school districts. The error came when FDOE forgot to include in the calculation a new provision that FDOE set in place regarding students struggling with the FCAT.

129. In July 2013, the SBOE voted to not include test scores of students at special education centers in calculating the home school overall grade.

130. The SBOE, at the recommendation of FDOE, voted in 2013 to not allow any school grade to drop more than one letter grade. If this had not been done, the State would have had 262 failing schools. Instead, there were 104 failing schools.

131. Proportionally fewer charter schools are graded under the State’s school accountability system than are schools operated by a school district.

132. The formula and components used to calculate the meaning of school grades have been changed dozens of times including 16 changes in 2010 alone. There have been

additional changes to educational policies, standards and tests, all of which have an impact on grades.

133. After 15 years of high stakes testing, it has failed to produce a high quality public education system. Yet, the State has hired another testing corporation to prepare a new high stakes test scheduled to be available in 2015.

134. The accountability model is over-complicated and changes virtually every year.

135. Florida's accountability system is inefficient and lacks integrity.

136. The State's misuse of standardized tests wastes millions of taxpayer dollars.

B. Charter Schools

137. The Legislature maintains that charter schools are part of the State's program of public education. § 1002.33, Fla. Stat. (2013).

138. In the 2012-13 school year, charter schools had enrollment of 203,240 pre-kindergarten through Grade 12 students in 578 charter schools in 46 Florida school districts. Only 9% were English Language Learners and 9% were students with disabilities.

139. Charter schools are exempt from certain provisions of Florida education law and are not subject to the same oversight as schools operated by a school district.

140. Charter schools shall be organized as, or be operated by, a nonprofit organization. § 1002.33(12)(i), Fla. Stat. (2013). However, charter schools may be operated or managed by private entities, including for-profit education management corporations. § 1002.332, Fla. Stat. (2013).

141. Public funds are expended on high management fees and lease and rental fees to private charter school companies.

142. The Auditor General annually audits charter schools and regularly finds material weaknesses in internal control and instances of non-compliance with applicable laws or rules. There also is an increasing trend of fund balance deficits.

143. For several years, funds for capital outlay projects have been allocated to charter schools and not to schools operated by a school district.

144. The system of charter schools creates an inefficient duplication of expenditures for property and services.

145. Many charter schools suffer financial mismanagement or other financial problems, resulting in inefficiency within the State's system of public schools.

146. Charter schools have some discretion to accept, reject and disenroll students (even based on academic performance).

147. At a considerable number of charter schools, the student population consists of primarily one race, raising issues of segregation.

148. Charter schools can hire "selected non-certified personnel to provide instructional services."

V. The State Has Failed to Provide a "High Quality" System of Free Public Schools.

149. "High quality" means above average.

150. A high quality system of free public schools would offer a comprehensive educational opportunity with sufficient resources that are based on student need and that are efficiently used.

151. A comprehensive educational opportunity includes the availability of special services for students who come from low income families, are English Language Learners, or have other specialized needs to enable them to meaningfully benefit from education.

152. Florida public schools do not provide sufficient transportation and other necessary services to students who are experiencing homelessness.

153. Florida public schools have insufficient electives and other courses.

154. Florida public schools have insufficient educational services for English Language Learners.

155. Florida public schools have insufficient resources, professional development and teacher preparation to ensure high quality instruction for English Language Learners.

156. Florida public schools have insufficient technology available for students.

157. Florida public schools have an insufficient number of highly qualified teachers.

158. The average public school teacher salary in Florida for 2008-09 was \$46,921, which was \$7,353 below the national average of \$54,274. That ranked Florida 34th at that time for average teacher salaries. (NEA Rankings & Estimates, Dec. 2010.)

159. For 2011-12, the average public school teacher salary in Florida was only \$36,183. (OCR Database. Escambia County not included in calculation as it did not submit data.) Using information from the same database for 2008-09 (with six counties not reporting), the average public school teacher salary in Florida was \$43,630, indicating a \$7,447 drop three years later.

160. The issue of teacher qualifications was highlighted in the No Child Left Behind (NCLB) Act of 2001. 20 U.S.C. § 6301 et seq. The NCLB Act required that all states ensure that all schools are staffed by “fully qualified” teachers by the 2006-07 school year.

161. A fully qualified teacher is defined by the NCLB Act to be one who: (1) holds at least a bachelor's degree in the subject the teacher teaches; (2) holds full state certification; and (3) has demonstrated subject matter knowledge and teaching skill in each core academic area in which the teacher is assigned to teach.

162. The NCLB Act requires that states report their progress annually toward meeting the fully qualified teacher goal for 2014.

163. Florida is falling short of the fully qualified teacher goal. Data submitted to the US Department of Education shows that in 2011-12 only 83.7% of Florida's classroom teachers met licensing and certification requirements. (OCR Database)

164. For the 2013-14 school year, the most critical teacher shortage areas are English/Language Arts, Reading, Exceptional Education, Science, Foreign Languages, English for Speakers of Other Languages (ESOL) and Mathematics.

165. Florida school districts lack resources to hire sufficient behavior, speech, physical and occupational therapists. There also is an insufficient number of school nurses and school counselors.

166. In high poverty districts, FDOE has reported high teacher turnover and lower teacher qualifications.

167. Low performing and high poverty urban schools have a higher proportion of courses taught by teachers without the appropriate certification. Schools receiving a grade of "F" experience the largest proportion of out-of-field teachers.

168. The State of Florida received a waiver from the NCLB requirements, which allowed the SBOE and FDOE to craft their own academic improvement plan.

169. FDOE's 2012 Strategic Plan acknowledges that in 2011-12 only 38% of all African American students were reading at grade level. The 2017-18 goal is to increase this to 74%, whereas the goal for Whites is to increase from 69% to 88%. The goal for Economically Disadvantaged students is to increase from 46% to 72%, for English Language Learners from 33% to 72%, and for Students with Disabilities from 29% to 78%. Having different race-based and special population goals is an indication that African American students and other special populations have far less access to a high quality education and that there is no plan to remedy this opportunity gap.

170. Discipline referral rates are disproportionately high for African American and Hispanic students.

171. A disproportionate number of African American and low income students do not have access to highly qualified teachers.

172. A disproportionate number of African American and low income students do not have access to high quality instruction.

173. A disproportionate number of Teach for America and other alternative credentialed teachers are assigned to high poverty schools or to teach students with disabilities.

174. A high quality or comprehensive educational opportunity is not being offered to Florida's public school students, especially African American and Hispanic students, students from low income families, English Language Learners, students with disabilities and other students with specialized needs.

VI. The Public School System Does Not Allow Students to Obtain a High Quality Education.

175. A high quality public school system would be evidenced by high quality outcomes for Florida's public school students.

176. Florida's grade promotion and retention rates do not reflect that students have obtained a high quality education.

177. A disproportionate number of children who are retained in Grade 3 are African American and Hispanic.

178. Achievement test results do not reflect that students have obtained a high quality education, especially minority students.

179. Florida currently uses the Florida Comprehensive Assessment Test 2.0 (FCAT) and end-of-course (EOC) exams to assess individual student achievement in reading, mathematics, science and writing.

180. FCAT results are separated into 5 achievement levels for reading, math and science, and 6 levels for writing. Level 3 and above reflects work on grade level.

181. With exemptions for good cause, students who do not earn a Level 2 or higher on the Grade 3 FCAT 2.0 Reading must be retained. § 1008.25(5)(b), Fla. Stat. (2013).

182. For the 2014 Grade 3 FCAT 2.0 Reading, a total of 19% of students or 39,204 students earned a Level 1 and are subject to being retained. Looking at the sub-groups shows that the following earned a Level 1 and are subject to being retained: 47% of English Language Learners; 30% of African Americans; 21% of Hispanics; and 44% of students with disabilities.

183. As shown in the 2014 Grade 3 FCAT 2.0, just over half of Florida's third-graders are at grade level in reading (57%) and in math (58%).

184. To graduate with a standard high school diploma, students entering Grade 9 in 2011-12 and after must pass the Grade 10 FCAT 2.0 Reading with a Level 3 and the Algebra 1 EOC Assessment with a score of 399 or higher.

185. For the 2013 Grade 10 FCAT 2.0 Reading, only 32% of African American, 49% of Hispanic and 66% of White students passed. Put in the obverse, an alarming 68% of African American tenth grade students are not reading at grade level and are not eligible to graduate.

186. For the 2012-13 Algebra 1 EOC Assessment, 52% of African American, 39% of Hispanic and 28% of White students failed and are not eligible to graduate.

187. The 2013 Grade 8 FCAT 2.0 Math (the highest grade available for 2013) resulted in 68% of African American, 55% of Hispanic and 37% of White students failing.

188. The 2013 Grade 8 FCAT 2.0 Science (the highest grade available for 2013) resulted in 74% of African American, 59% of Hispanic and 40% of White students failing.

189. Achievement of special populations does not reflect that students have obtained a high quality education. For 2013 Grade 10 FCAT 2.0 Reading, an alarming 89% of English Language Learners (ELL), 59% of students on free and reduced lunch and 79% of students with disabilities failed.

190. For 2012-13, a disproportionate number of African American students dropped out of high school. Whites comprised 43% of the high school population with a 1.5% drop out rate. African Americans comprised only 23% of the high school population

yet accounted for more than double the drop out rate at 3.4%. A total of 17,631 high school students dropped out that school year.

191. Based on the 2013 Grade 10 FCAT 2.0 Reading, only 14% of African American, 27% of Hispanic and 43% of White students are ready for college. College readiness is indicated by achieving at Level 4 or 5.

192. Florida started retaining increased numbers of students to repeat grade 3 beginning in the 2003-04 school year.

193. The 2013 National Assessment of Educational Progress (NAEP) scores for Florida show that only 39% of fourth graders are proficient in reading and 40.7% in math. For those on the free and reduced lunch, a poverty indicator, only 23.6% of fourth graders are proficient in reading. The NAEP fourth grade results, while low, also must be considered artificially inflated because low performing third graders are retained and do not take the fourth grade test.

194. In 2011-12, there were 520,260 in-school suspensions in Florida, 354,802 out-of-school suspensions, and 1,418 expulsions. There were 32,928 referrals to law enforcement. (OCR Database.)

195. Suspensions and expulsions correlate strongly with retention and drop out rates, as suspended or expelled students are more likely to be retained or drop out of school.

196. Florida has historically had one of the worst graduation rates in the country as shown by two different methods for calculating graduation rates.

197. Graduation rates calculated from eighth grade to graduation for the class of 2010 show that while the overall graduation rate is 74.9%, there is a large racial disparity:

67.6% for African American students and 73.7% for Whites. (Nat'l Ctr. for Educ. Statistics, 2014.)

198. The most recent graduation rates, calculated using the Cohort Method, for the class of 2013 show that this disparity remains: the White graduate rate in 2012-13 was 80.5% and for African Americans was 64.6% -- a difference of 15.9%. (FDOE, 2013.) In other words, almost four out of every ten African American high school students did not graduate.

199. Calculating graduation using the Cumulative Promotion Index, the class of 2010 graduation rate is 72.9% overall, with 70.1% for African Americans, 77.1% for Hispanics, and 76.4% for Whites. (Diploma Counts 2013).

200. Data from 2011 estimate there are 113,646 youths in Florida aged 16 to 21 years old who are not enrolled in school and have not completed a high school education. (Diplomas Count 2013).

VII. The State Has Not Provided a High Quality Pre-Kindergarten Learning Opportunity or Delivered an Early Childhood Development and Education Program According to Professionally Accepted Standards.

201. Article IX, Section 1(b) of the Florida Constitution provides:

Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards.

202. Florida offers free pre-kindergarten to four-year-old children. § 1002.53(2), Fla. Stat. (2013).

203. Professionally accepted standards for a high quality pre-kindergarten learning opportunity would require: highly qualified teachers and other personnel; competitive salaries and benefits; provision for regular planning, reflection, and expert feedback and strong supervision on teaching; an effective curriculum and adequate training in that curriculum; sufficient classroom hours; appropriate services for at-risk children and children with disabilities; adequate facilities; and regular evaluation of quality and assessment.

204. Florida does not require that instructors for the school-year pre-kindergarten program be highly qualified.

205. Observational data show that Florida is not providing a high quality pre-kindergarten learning opportunity.

206. School readiness rates are much lower for Hispanic and Africa American children than for White Non-Hispanic children, and rates are much lower for free and reduced lunch students than others.

207. State spending per child enrolled in pre-kindergarten for 2012-13 was \$2,242, which ranked Florida 35th among the 41 states that have pre-kindergarten programs. (NIEER State Preschool Yearbook, 2013).

208. Defendants have not provided a high quality pre-kindergarten learning opportunity.

209. Defendants have not delivered an early childhood development and education program according to professionally accepted standards.

FIRST CLAIM FOR RELIEF - Art. IX, §1(a), Fla. Const.

210. Plaintiffs re-allege and incorporate by reference paragraphs 1-200.

211. The Florida Constitution provides that the education of children is a fundamental value and that it is a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Art. IX, §1(a), Fla. Const.

212. The Florida Constitution further provides that adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education. Art. IX, §1(a), Fla. Const.

213. Article IX, §1(a) of the Florida Constitution creates a clearly enforceable mandate for the State to provide an education system of high quality that allows students to obtain a high quality education.

214. Defendants have failed to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools.

215. Defendants have failed to make adequate provision for a system of free public schools that allows students to obtain a high quality education.

SECOND CLAIM FOR RELIEF - Art. IX, §1(b), Fla. Const.

216. Plaintiffs re-allege and incorporate by reference paragraphs 1-209.

217. Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. Art. IX, §1(b), Fla. Const.

218. Defendants have not provided a high quality pre-kindergarten learning opportunity.

219. Defendants have not delivered an early childhood development and education program according to professionally accepted standards.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

a. Declare that Defendants have violated the Florida Constitution by breaching their paramount duty to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

b. Declare that Defendants have violated the Florida Constitution by not providing a high quality pre-kindergarten learning opportunity and not delivering an early childhood development and education program according to professionally accepted standards.

c. Order Defendants to establish a remedial plan that: (1) conforms with the Florida Constitution by providing a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education; and (2) includes necessary studies to determine what resources and standards are necessary to provide a high quality education to Florida students.

d. Order Defendants to establish a remedial plan that conforms with the Florida Constitution by providing a high quality pre-kindergarten learning opportunity and delivering an early childhood development and education program according to professionally accepted standards.

e. Retain jurisdiction to enforce the court's orders.

f. Grant any other relief the court deems proper.

Dated this 30th day of May, 2014.

/s/Jodi Siegel

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I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this 30th day of May, 2014, to:

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