

**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.

FLORIDA STATE BOARD OF EDUCATION;  
JEFF ATWATER, in his official capacity as the  
Florida Senate President;  
LARRY CRETUL, in his official capacity as  
the Florida Speaker of the House of Representatives;  
and DR. ERIC J. SMITH, in his official capacity  
as Florida Commissioner of Education;

Defendants.

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**COMPLAINT FOR DECLARATORY AND SUPPLEMENTAL RELIEF**

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 high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX of the Florida Constitution.

2. 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.

3. Plaintiffs seek declaratory and supplemental relief that requires Defendants to fulfill their constitutional paramount duty by making adequate provision for an efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

### **JURISDICTION AND VENUE**

4. This suit is to redress the deprivation of rights and privileges secured to Plaintiffs by Article IX, Section 1 of Florida's Constitution.

5. Jurisdiction is conferred on this Court by Art. V, §5(b), Fla. Const.; § 26.012, Fla. Stat. (2008) (jurisdiction of Circuit Court); § 86.011, Fla. Stat. (2008) (declaratory relief).

6. Venue is properly laid in this Court as Defendants officially reside in Leon County. § 47.011, Fla. Stat. (2008).

### **PLAINTIFFS**

7. 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.

8. FUND EDUCATION NOW is a non-profit 501(c)(3) organization whose mission is to inspire parents, teachers and concerned citizens to become advocates for education excellence and funding reform in the state of Florida.

9. 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.

10. Plaintiff JANIYAH WILLIAMS is a black second grade student at Rutledge Pearson Elementary, 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.

11. Plaintiff JACQUE WILLIAMS is a black kindergarten student at Rutledge Pearson Elementary, 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.

12. Plaintiff SHEILA ANDREWS is the mother of two children who attend high school in Duval County, Florida, and is a Florida taxpayer who lives in Jacksonville, Florida, and whose children 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.

13. Plaintiffs ALFREDO NOGUERAS and ROSE NOGUERAS are the parents of an Hispanic eleventh grade student in Holiday, Pasco County, Florida, who 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. They are Florida taxpayers who live in Holiday, Florida.

### **DEFENDANTS**

14. 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) & .02(1), Fla. Stat. (2008). 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. (2008). 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, and to provide a high quality pre-kindergarten learning opportunity.

15. Defendant JEFF ATWATER 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. Fla. Const. Art. III, § 2; Art. IX, § 1. 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. (2008). 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, and to provide a high quality pre-kindergarten learning opportunity.

16. Defendant LARRY CRETUL 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. Fla. Const. Art. III, § 2; Art. IX, § 1. 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. (2008). 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, and to provide a high quality pre-kindergarten learning opportunity.

17. Defendant DR. ERIC J. SMITH 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. (2008). The Department of Education administers the accountability requirements of the Voluntary Prekindergarten Education Program. *Id.* § 1002.73. 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, and to provide a high quality pre-kindergarten learning opportunity.

### **FACTUAL ALLEGATIONS**

#### **I. The State Has a Constitutional Duty to Provide High Quality Public Education.**

18. Ten years ago, the people of Florida enacted a constitutional amendment that imposes on the State a paramount duty to provide a high quality public school system that produces high quality results.

19. 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.

20. 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.

21. The Florida Supreme Court characterized this provision as “imposing 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).

22. The State’s “paramount duty” to make 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.

23. The State’s paramount duty is borne by Defendants.

24. 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.”

25. 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 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 results of that system.

**II. The State Has Breached its Paramount Duty to Provide a High Quality Public Education.**

**A. The State Has Failed to “Make Adequate Provision” For Education.**

26. By a variety of measures, Defendants have breached their paramount duty to make adequate provision for a high quality system of free public that allows students to obtain a high quality education.

27. Failing to make adequate provision for either inputs into the system itself (a high quality system of free public schools that meets the enumerated standards) or for educational outcomes (a system that allows students to obtain a high quality education) is a breach of Defendants’ paramount duty.

28. Over the last decade since this constitutional amendment was enacted, the State has reduced overall proportional financial commitment of resources to education and reduced capacity to provide a variety of programs.

29. The formula for appropriations funding for K-12 public education in Florida is primarily governed by the Florida Education Finance Program (FEFP). § 1011.62, Fla. Stat. (2008).

30. The total allocation of state funds to each school district for current operation is calculated by the following formula:

The basic amount for current operation, multiplied by the district cost differential factor, plus the amounts for categorical components, the discretionary millage compression supplement, the sparsity supplement, the decline in full-time equivalent students, the research-based reading instruction allocation, the allocation for juvenile justice education programs, and the quality assurance guarantee, less the required local effort.

*Id.* § 1011.62(12)(a). All of these terms are statutorily defined. *Id.* § 1011.62.

31. The FEFP formula annually distributes funds among school districts but does not address whether the overall level of funding establishes a high quality system of public education and does not address funding for identified high quality needs such as students in poverty.

***i.* The State Has Shifted Responsibility for Education Funding to Local Government in Violation of Its Constitutional Duty.**

32. Using the FEFP formula, the Florida Legislature annually makes a determination of how much money each school district will receive from the state, from federal funds, and what is the “required local effort.” 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. *Id.* § 1011.62(4).

33. Since 2000, the Florida Legislature has reduced the state’s share of the annual K-12 education appropriations and increased the required local effort, which thereby requires higher local property taxes.

34. In 2000-2001, the State’s share of funding for public education was 62 percent. The 2009-2010 education appropriations provides only 44 percent from state funds.

35. Local property tax funding for K-12 education has grown at an average of over 6 percent more a year than the State support since 2000.

36. The 2009 Florida Legislature 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 will levy this amount to make up for reduced state

funding that will further increase the proportion of K-12 funding coming from local property taxes.

**ii. The State Has Failed to Provide Sufficient Funding for Education.**

37. The Constitution specifically mandates that it is the duty of the **State** to provide high quality public education. As stated above, the State has actually reduced its funding effort relative to local property taxes. Further, it has failed to fund a high quality system for education since the passage of Article IX that mandates high quality public education.

38. In 2009, the influential education journal, *Quality Counts*, ranked Florida 41st in the nation in terms of adjusted per pupil expenditures.

39. In 2005-06, Florida ranked 39th in the nation in per pupil spending at \$7,759 (compared to the national average of \$9,138). [U.S. Census Annual Survey of Local Govt. Fin. 2008.]

40. In recent years, the amount of per pupil expenditure has been reduced despite inflation. In 2006-07, Florida spent an average of \$8,567; in 2007-08 this dropped to \$7,126; in 2008-09 it was \$6,997; and in 2009-2010 it will be \$6,873.

41. Florida ranks 50th in the nation in total public spending compared to in-state wealth out of the 50 states and the District of Columbia. [U.S. Census Annual Survey of Local Govt. Fin. 2008.]

42. Florida's 2009-2010 state education budget relies on about \$3.5 billion in federal education stimulus money. [Fla. Dept. of Educ., ARRA: Saving & Creating Jobs and Reforming Education, April 2009, at 7-8.] Because Florida had reduced the amount of state education spending in the last three years, Florida was not automatically eligible

for the federal stimulus money and had to seek a waiver from the federal government. [Fla. Application for Initial Funding under State Fiscal Stabilization Fund Pgm, 2009, at 5] Only Florida, California and Nevada did not automatically qualify for federal stimulus funding due to previous education budget cuts.

43. The state education budget in recent years has eliminated state funding for a seventh period, summer school, and limiting teachers of writing to 100 students per day.

44. The State's failure to make adequate provision has resulted in an educational system that is not high quality.

45. The 2009 Appropriations Act for K-12 education violates the Education Clause of the Florida Constitution.

**B. The State Has Failed to Provide a “Uniform, Efficient, Safe, Secure, and High Quality System of Free Public Schools That Allows Students to Obtain a High Quality Education.”**

***i. Inadequate Resources for Teacher's Salaries Has Resulted in the Inability to Hire and Retain Qualified Teachers.***

46. Partially because of poor financing and lower than average teacher salaries, Florida has not sustained a “qualified” teacher work force based on nationally established standards.

47. The average teacher salary in Florida is approximately \$46,930, which is about \$5,400 below the national average of \$52,308. That results in Florida being in 29th place for average teacher salaries. (NEA Rankings and Estimates, Dec. 2008.)

48. Florida's low salary ranking, especially compared with its neighbors, is even more at a competitive disadvantage because Florida has a relatively higher cost of living. [Tough Choices Update 2009, at 4.] In 2009, the Missouri Economic Research and

Information Center (MERIC) found that Florida's cost of living placed Florida 19th in terms of most expensive states in which to live.

49. The issue of teacher qualifications was highlighted in the No Child Left Behind (NCLB) Act of 2001. The NCLB Act required that all states ensure that all schools are staffed by "fully qualified" teachers by the 2006-07 school year.

50. 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 they teach; (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.

51. The NCLB Act requires that states report their progress annually toward meeting the high quality teacher goal for 2014.

52. Florida is falling short of the fully qualified teacher goal.

53. In high poverty districts, the Florida Department of Education has found lower teacher qualifications in terms of both educational background and high teacher turnover.

54. Florida Department of Education has also found that a moderate to high percentage of hires statewide were not certified to teach in the appropriate subject. In the case of reading teachers, the percentage of uncertified teachers hired for the fall of 2006 was more than 60%.

***ii.* Florida's Current Accountability Policy Is an Obstacle to High Quality.**

55. Although accountability is an appropriate component of a high quality system, Florida's current accountability policy is an obstacle to high quality.

56. Florida is misusing standardized test results in isolation to make high stakes decisions about students and schools.

57. Professional standards for education and a report from the National Research Council advise that standardized test results should not be used in isolation to make important decisions about students (such as grade promotion, graduation, and special education placement decisions). Florida, however, does use these standardized test results for purposes of determining promotion, graduation and making school assessments.

58. 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. Case studies from three states (Alabama, Texas and New York) have shown that schools, under pressure to raise test score averages, actually encourage low-achieving students to drop out of school.

59. 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.

60. The primary purposes of the student assessment program are to provide information needed to improve the public schools by enhancing the learning gains of all students and to inform parents of the educational progress of their public school children. § 1008.22(1), Fla. Stat. (2008).

61. The Florida Comprehensive Assessment Test (FCAT) measures a student's content knowledge and skills in reading, writing, science, and mathematics. *Id.* § 1008.22(3)©).

62. Using the FCAT for its intended purpose of assessing student achievement is beneficial for individual students and teachers.

63. However, using the FCAT beyond its intended purpose has negative consequences.

64. Florida misuses the FCAT to mandatorily retain students and to deny students a high school diploma.

65. Florida further misuses the FCAT to grade, and reward and punish, schools and school districts.

66. 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 Grade 10 FCAT graduation requirements.

67. The misuse of the FCAT is having an adverse impact on minority and disadvantaged students and diverts scarce resources. This misuse of the FCAT favors schools and districts with more high income, non-minority students by rewarding them with extra money.

68. Overemphasis on high stakes testing for multiple purposes has not improved overall performance generally and some aspects are worse despite substantial expenditures.

***iii. Schools Are Not Safe and Secure.***

69. The Florida Constitution mandates that the State provide a system of public schools that is safe and secure.

70. Florida is the only state with an explicit safety and security requirement for public schools included in the text of its Constitution.

71. Notwithstanding this mandate, after ten years, statistics and surveys reveal a continued lack of security within many Florida public schools.

72. Students are at risk of physical violence from other students. According to the U.S. Department of Justice, 8.6% of Florida high school students reported being threatened or injured with a weapon on school property in 2007. In this indicator, Florida is the 13th worst in the nation, and is significantly above the national average of 7.8% of students threatened or injured with a weapon on school property in 2007.

73. Likewise, 12.5% of high school students reported being in fights on school grounds in 2007. Only 5 states (Arkansas, Georgia, New Mexico, Texas and West Virginia) and the District of Columbia, had a higher percentage of reported fights between high school students on school grounds in 2007.

74. Some 5.6% of high school students reported that they carried a weapon on school property in 2007.

75. Drug and alcohol usage remains a problem on school grounds. Some 5.3% of students reported using alcohol and 4.7% reported using marijuana on school property in 2007.

76. Teachers and staff are subject to physical threats that create a negative environment for learning in Florida's educational system. In 2003-04, according to the U.S. Department of Justice, 11.2% of Florida teachers reported being threatened and 5.4% of teachers were actually physically attacked on school property. In both of these cases, Florida teachers report significantly more threats and attacks than is the national average (7.5% average for threats and 3.7% for attacks).

77. Florida is the 2nd highest state in the percentage of teachers who report being threatened by students (after Maryland).

78. Florida's own statistics also support the fact that an undercurrent of violent and criminal activity which endangers the welfare of public school students and teachers. For example, during the 2007-08 school year, there were some 8,600 reported incidents of battery involving students, 5,730 incidents of bullying, and another 30,412 incidents of fighting on school grounds. [Fla. DOE Incidents of Crime & Violence, 2007-08]

79. During the 2007-08 school year, there were 2,819 reported incidents of weapons possession on school grounds.

80. Likewise, during the 2007-08 school year, there were 1,287 reported sexual offenses involving students and 126 sexual batteries committed, in addition to an additional 2,150 separate incidents of sexual harassment.

81. In 2007-08, Florida schools reported 766 incidents of selling drugs on campus.

82. Nor has there been overall improvement of these indicators of school safety over time. Indeed, the numbers of acts against persons and property crimes has remained consistent in Florida schools since 2001-02, as reported by the Florida Department of State. Even where there have been recent improvements, as in the cases of weapons possession on campus, these remain high and continue to pose a significant threat to students and teachers.

83. The State is not meeting its obligation to make adequate provision for public schools through the creation of a system that is safe and secure.

**iv. Florida's Graduation Rates are Inadequate.**

84. A high quality system of public education would allow for and result in a high percentage of graduating students.

85. Florida ranks 47th in the nation in high school graduation rates. Only 57.5% of the class of 2006 earned a regular diploma, with the national average being 69.2%. Significantly, there has been no improvement in over 10 years: in 1996 and 2006, the same percentage (57.5%) of students graduated, while the national average increased 2.8%. (*Diplomas Count 2009*).

86. For the class of 2009, it is projected (as current data is unavailable) that 103,990 Florida students out of 244,395 will not earn a diploma. Florida is losing 578 students a day. (*Diplomas Count 2009*).

87. There are different ways to calculate graduation rates. By looking at the rates from grade 8 to graduation four-and-a-half years later and from grade 9 to graduation three-and-a-half years later, Florida has had one of the worst graduation rates in the country dating back to the late 1980s.

88. The graduation rate was 63% for the class of 1988 and has declined steadily. For the graduating classes of 2005 and 2006, the grade 9 to graduation rate fell to 54%, with the average for most other states ranging from 60-85%.

89. Over the seventeen graduating classes from 1989 to 2007, the grade 8 to graduation rate for Florida has varied between 65% and 75%.

90. For more than a decade and a half, Florida has failed to provide roughly one-third of its students with a minimally adequate education.

**v. Grade Promotion and Retention Policies are Ineffective.**

91. Considerable research has shown that the trend of retaining children to repeat grades in school is not only ineffective in boosting their achievement, but also dramatically increases the probability that they will leave school before high school graduation.

92. Research also shows that, among children who are over-age for grade 9 (regardless of whether they were retained in grade 9 or earlier grades), 65-90% will not stay in high school through graduation.

93. Over the 1993-94 through 2006-07 school years, between 10-30% of students in Florida were being retained to repeat grade 9.

94. Beginning in 2002-03 to 2003-04, there were only 92% as many students in grade 4 in 2003-04 as there had been in grade 3 the previous year.

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

96. The National Assessment of Educational Progress (NAEP) grade 4 results for 2005, while indicating some progress, actually reflected no dramatic improvements in elementary education, but were an indirect reflection of Florida policy that resulted in two to three times larger percentages of minority children than White children being retained to repeat grade 3.

**vi. Results of Achievement Tests Show Inadequate Performance.**

97. Florida uses the Florida Comprehensive Assessment Test (FCAT) to assess individual student achievement in reading, mathematics, science, and writing.

98. FCAT results are separated into 5 achievement levels. The Florida Department of Education has determined that Level 3 and above reflects work on grade level.

99. With limited exceptions, students must earn a passing score on the FCAT in reading, writing, and mathematics on the Grade 10 FCAT in order to qualify for a standard high school diploma. § 1008.22(3)(c)(5), Fla. Stat (2008). A passing score on the Grade

10 FCAT Reading and Mathematics is a Scale Score of 300 (out of 500) or higher on each test. Fla. Admin. Code R. 6A-1.09422(7).

100. A student who passes the Grade 10 FCAT Reading and Mathematics at a Scale Score of 300 means that the student is achieving at a Level 2 or has had limited success in achievement, and is not at grade level. Fla. Admin. Code R. 6A-1.09422(5).

101. With exemptions for good cause, students who do not earn a Level 2 or higher on the FCAT Reading in Grade 3 must be retained. § 1008.25(5)(b), Fla. Stat. (2008).

102. Third grade students who earn a Level 2 in Reading may be promoted to the next grade, but are not reading on grade level.

103. Literacy, the ability to read and write, is clearly a vital educational goal.

104. In *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 (Fla. 1996), the Court dismissed a case under the prior education clause on separation of powers grounds for failing to demonstrate an appropriate standard of adequacy. However, Justice Overton's concurring opinion reasoned that even the previous lower standard of the education clause required:

the establishment of an educational system that fulfills the basic educational needs of the citizens of this state to provide *a literate, knowledgeable population*. When a significant segment of our population is illiterate, our freedom can be easily threatened. ... While "adequate" may be difficult to quantify, certainly a minimum threshold exists below which the funding provided by the legislature would be considered "inadequate." For example, *were a complaint to assert that a county in this state has a thirty percent illiteracy rate, I would suggest that such a complaint has at least stated a cause of action under our education provision*.

*Id.* at 409 (emphasis added).

105. Results of the 2009 FCAT for Reading demonstrate that Florida has extremely low reading competency rates.

106. Results of the 2009 FCAT for Reading show that the statewide mean score for the Grade 10 FCAT is 305, with only 37% of all students reading at grade level. 34% of tenth graders are only achieving at Level 1 in reading.

107. There has been no improvement in the Grade 10 FCAT for Reading since 2001 when the mean score was 307 with 37% reading at grade level.

108. Statewide, there is an alarming number of students who are not reading at grade level: 63% of Tenth Graders, 53% of Ninth Graders, and 46% of Eighth Graders. In Grade 4, which has the highest percentage of students reading at grade level, there are still 26%, or more than 1 in 4 students, who are not reading at grade level.

109. Moreover, the Grade 10 FCAT obviously only measures results of students who took the test, and does not account for Florida's high drop-out rate in the Ninth Grade.

110. Florida also scores in the lowest quartile of states in ACT-SAT Math and Bioscience scores. *Taking the pulse of bioscience education in America: A State-by-State Analysis* (Batelle Memorial Inst., May 2009).

111. The Grade 11 FCAT for Science shows that only 37% are on grade level in science.

**vii. Suspension and Expulsion Rates are High.**

112. The state's failure to make adequate provision for education has produced insufficient resources for special education and related services, including positive behavioral supports.

113. Under-resourced teachers have increased their reliance on suspensions, expulsions, and referral to law enforcement to help manage classrooms.

114. Out-of-school suspensions rose from 385,365 during the 1999-00 school year to 441,694 in 2004-05, a 14 percent increase, even though the student population increased by only 8.4 percent.

115. Statewide, there were 26,990 school-related referrals to the Florida Department of Juvenile Justice (DJJ) during the 2004-05 school year. Over three-quarters of school-based referrals (76 percent) were for misdemeanor offenses such as disorderly conduct, trespassing, or assault and/or battery, which is usually nothing more than a schoolyard fight.

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

117. Suspensions and expulsions also correlate strongly with retention rates, as suspended or expelled students are more likely to be retained.

118. These failures place the student at great risk of involvement with the juvenile court and the correctional system.

**viii. The Failure to Provide a High Quality Education Disproportionately Impacts Minority, Low Income and Students with Disabilities.**

119. When Florida graduation rates are examined by race, there are huge disparities in the rates at which Black and White students in Florida graduate from high school.

120. According to the averaged freshman graduation rate (adopted by the National Center for Education Statistics in 2005), from 1997 to 2006 between 64% and 71% of

White students in Florida were graduating from high school. In other words, over this interval approximately two out of three White students were graduating from high school.

121. The averaged freshman graduation rate for Black students in Florida over the nine graduating classes between the years 1997–2006 sank from 55% to 51%. This means that Florida was failing to graduate virtually half of its Black students.

122. Between the graduating classes of 1997 and 1998 and those of 2004 and 2006, the White-Black gap in averaged freshman graduation rate grew from 11% to 18%.

123. In 2006, in Florida, 43% of African Americans and 53% of Hispanic high school students received a regular diploma, compared with a US average of 51.2% and 55% respectively. Analyzing by race and gender shows that only 37.8% of African American males and 48.9% of Hispanic males graduated. (*Diplomas Count 2009.*)

124. Analysis of grade enrollments in 2003-04 in Florida by race show that a disproportionate number of children who were retained in Grade 3 were Black and Hispanic (15-20% of whom were retained), while about 4-6% of those retained were White students.

125. The standardized test results for reading for minorities are low. A staggering 83% of Black students and 70% of Hispanic students did not achieve at grade level on the 2008 Grade 10 FCAT for Reading, with 57% of blacks and 42% of Hispanics achieving at the lowest Level 1. Only 34% of black students and 49% of Hispanic students qualify for a standard diploma on the 2008 Grade 10 FCAT for Reading. (2009 demographic data is not yet available.)

126. Other demographic categories of various at risk indicators demonstrate similar results on the 2008 Grade 10 FCAT for Reading: 95% of Limited English Proficient students; 85% of migrant students; 77% of students receiving free/reduced lunch; 88% of

exceptional students other than gifted; and 65% of student with a Section 504 Plan are not reading at grade level.

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

127. Plaintiffs re-allege and incorporate by reference paragraphs 1-xx.

128. 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.

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

130. The education clause 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.

131. Defendants have failed to make adequate provision for education.

132. Defendants have failed to provide a high quality system of free public schools that allows students to obtain a high quality education.

## 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 high quality system of free public schools that allows students to obtain a high quality education.
- b. Order defendants to establish a remedial plan that conforms with the Florida Constitution by providing a high quality system of free public schools that allows students to obtain a high quality education.
- d. Retain jurisdiction to enforce the court's orders.
- e. Grant any other relief the court deems proper.

Dated: \_\_\_\_\_

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NEIL CHONIN, Fla. Bar. No. 13428  
[neil.chonin@southernlegal.org](mailto:neil.chonin@southernlegal.org)  
JODI SIEGEL, Fla. Bar No. 511617  
[jodi.siegel@southernlegal.org](mailto:jodi.siegel@southernlegal.org)  
NATALIE N. MAXWELL, Fla. Bar No. 0016746  
[natalie.maxwell@southernlegal.org](mailto:natalie.maxwell@southernlegal.org)  
Southern Legal Counsel, Inc.  
1229 NW 12th Avenue  
Gainesville, Florida 32601  
(352) 271-8890  
(352) 271-8347 (facsimile)

JON L. MILLS, Fla. Bar No. 148286  
[jonmills@sprynet.com](mailto:jonmills@sprynet.com)  
Boies Schiller & Flexner  
100 SE Second Street  
Miami, FL 33131  
(352) 538-0380

TIMOTHY MCLENDON, Fla. Bar No. 0038067

[tedmcl@msn.com](mailto:tedmcl@msn.com)

P.O. Box 2099

Gainesville, FL 32602

(352) 378-4154

(352) 336-0270 (Facsimile)

E. THOM RUMBERGER, Fla. Bar No. 0069480

[trumberger@rumberger.com](mailto:trumberger@rumberger.com)

Rumberger, Kirk & Caldwell

215 S. Monroe Street, Suite 130

Tallahassee, FL 32301

(850) 222-6550

(850) 222-8783 (Facsimile)