



SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

April 2, 2008

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APR - 2 2008

S.C. SUPREME COURT

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Abbeville School District, et al. v. The State of South Carolina, et al.
Case No.: 2007-65159
Civil Action Number 93-CP-31-169
SGS&L File Number 2014/1500

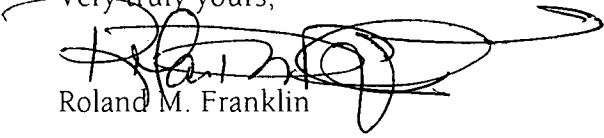
Dear Mr. Shearouse:

Enclosed are the original and nine (9) copies of the Respondents/Appellants' Return to Appellants/Respondents' Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record in the referenced matter. Please file the original in your usual manner and return the clocked copies to me via our courier.

Should you have any questions, please do not hesitate to contact me.

By copy of this correspondence to all parties, I am hereby serving with a copy of same.

Very truly yours,


Roland M. Franklin

Enclosures

cc: J. Emory Smith, Esquire
Carl B. Epps, III, Esquire
Laura C. Hart, Esquire
Stephen G. Morrison, Esquire
Shelby K. Leonardi, Esquire
Michael Hitchcock, Esquire
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APR - 2 2008

APPEAL FROM LEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas W. Cooper, Jr., Circuit Court Judge

Case No.: 2007-65159

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem; Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through

Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad

Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of Whom

Allendale County School District, Dillon County School District 2, Florence County School District 4, Hampton County School District 2, Jasper County School District, Lee County School District, Marion County School District 7 and Orangeburg Consolidated School District 3; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and

Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem, are

Appellants / Respondents,

vs.

The State of South Carolina, Mark C. Sanford, as Governor of The State of South Carolina; Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Defendants,

Of Whom

Glenn F. McConnell, in his representative capacity as President Pro Tempore of the South Carolina Senate and as representative thereof; Robert William Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Respondents / Appellants

and

The State of South Carolina and Mark C. Sanford, as Governor of the State of South Carolina are

Respondents.

**RESPONDENTS/APPELLANTS' RETURN TO APPELLANTS/RESPONDENTS'
MOTION TO STRIKE POST-TRIAL MATTER OUTSIDE OF RECORD FROM
BRIEFING AND
FROM THE RECORD**

Pursuant to Rule 224(e) of the South Carolina Appellate Courts Rules, Respondents/Appellants (hereinafter “Defendants”) hereby file this Return to Appellants/Respondents’ (hereinafter “Plaintiffs”) Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record (“Motion to Strike”).

Argument

I. Because the Information Plaintiffs Request This Court to Strike is Both Relevant and Incontestable, This Court Should Deny Plaintiffs’ Motion to Strike.

Plaintiffs contend that this Court should strike certain information referenced by Defendants in their briefs and designations of matter because, according to Plaintiffs, the information is not part of the record. (Pls.’ Mot. to Strike 8). Specifically, Plaintiffs seek to have this Court strike references to the Plaintiff Districts’ websites, the South Carolina Department of Education (“SDE”) website, PACT score data, and certain legislative provisos pertaining to projected per-pupil funding. (*See* Pls.’ Mot. to Strike 6-7).

All of this information is appropriate for judicial notice, and is presumably uncontroverted given that the information consists of Plaintiffs’ own statements both to the trial court and to the public at large. For example, Plaintiffs seek to have this Court strike references to Plaintiff Districts’ websites that clearly establish that many of the schools in the Plaintiff Districts have been demolished and rebuilt or remodeled since the time of trial. Importantly, the information contained in these websites are not representations made by third parties but the representations of the Plaintiff Districts themselves. In moving to strike these references, Plaintiffs essentially call into question their own credibility. Similarly, the PACT scores and school report card data are taken from information provided by the SDE, a government agency. Plaintiffs have presented

no compelling reason why this Court should question the credibility of this information. Nor have Plaintiffs demonstrated how they would be prejudiced by this Court taking judicial notice of these facts. Thus, Plaintiffs cannot contest the accuracy and reliability of their own public statements. Further, as admissions by the Plaintiff Districts about the quality and conditions of the school facilities, the information is indubitably relevant to this Court's consideration of the trial court's analysis of those same conditions.

The information Plaintiffs seek to prevent this Court from considering is relevant and incontestable. If this current, accurate, and relevant information cannot be considered by this Court, this Court should vacate the orders below and dismiss all appeals as moot.

A. This Court should take judicial notice of the Plaintiff Districts' websites and the South Carolina Department of Education's website.

1. Courts routinely take judicial notice of information found on the world-wide web.

Under South Carolina law, "[f]or a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof." *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984). Judicial notice may be taken at any time during the proceedings, including on appeal. *See id.* However, as the Court of Appeals has observed, "[n]otice of 'facts' for the first time on appeal may deny the adverse party the opportunity to contest the matters noticed; it may also violate the general principle that appellate review should be limited to the record." *Id.* Therefore, South Carolina appellate courts limit judicial notice on appeal to "matters which are indisputable." *Id.*

According to Plaintiffs, this Court should strike reference to the SDE's website and the Plaintiff Districts' websites because they are not a part of the information in the record on appeal. (Pls.' Br. 8). Whereas this Court has not addressed whether courts of this state may take judicial notice of factual information contained in a party's website, jurisdictions which have addressed the issue have universally found that "[i]t is not uncommon for courts to take judicial notice of factual information found on the world wide web." *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (citing cases). This is especially true of governmental agencies, "a source whose accuracy cannot reasonably be questioned." *United States v. Chapel*, 41 F.3d 1338, 1342 (9th Cir. 1994) (finding that the district court properly took judicial notice of FDIC insurance status; the FDIC, "the insuring agency itself, is a source whose accuracy cannot reasonably be questioned"); *Coleman v. Dretke*, 509 F.3d 665, 667 (5th Cir. 2005) (holding that district court could take judicial notice of state agency website); *In re Everglades Island Boat Tours, LLC*, 484 F. Supp. 2d 1259, 1261 (M.D. Fla. 2007) (taking judicial notice of government website); *Mitchell v. Nix*, No. 105-2349, 2007 WL 779067 at *4 (N.D. Ga. Mar. 8, 2007) (taking judicial notice of release dates for former prisoners on state agency website); *In re Katrina Canal Breaches Consol. Litig.*, No. 05-4182, 2008 WL 314396, at *14 (E.D. La. Jan. 30, 2008) (observing that "[t]he Fifth Circuit has determined that courts may take judicial notice of governmental websites"). Such information is deemed indisputable.

Information about the recent rebuilding or renovation of many of the schools in the Plaintiff Districts appears on the Plaintiff Districts' websites, a source whose accuracy one would think could not be questioned. The accuracy of these websites

cannot reasonably be questioned and Plaintiffs in particular should be estopped to deny the information therein.

Plaintiffs seek reversal of that part of the trial court's order finding the facilities in the Plaintiff Districts are safe and adequate, a conclusion based on facts that, even if once true,¹ no longer exist. Under Plaintiffs' theory, this Court should reverse the order of the trial court and find that the facilities in the Plaintiff Districts are neither safe nor adequate even though those facilities have already been replaced. Such reasoning is as stunning as it is creative, but it finds no basis in reason or law. The information Plaintiffs seek to strike is current, factual information that this Court should be cognizant of before it determines whether it should reverse, reverse in part, vacate, or affirm the trial court's orders.

2. Plaintiffs are estopped from moving to strike information from SDE's website.

Additionally, the trial court referenced SDE's website as well as information contained therein in its Order dated July 12, 2007. (Order dated July 12, 2007 ¶ 27, n.5). Plaintiffs did not protest to the trial court's reference to the SDE's website in their motion to alter or amend and should be estopped from doing so now.

B. At any rate, the information Plaintiffs seek to strike appears true from the record.

This Court has held that it "will not consider any fact which does not appear in the transcript of record . . . unless it appears from the record that it is true." *South Carolina State Highway Dep't v. Meredith*, 241 S.C. 306, ___, 128 S.E.2d 179, 182 (1962). Even if this Court chooses not to take judicial notice of the Plaintiffs' own representations, the

¹ Defendants deny that any facilities in the Plaintiff Districts were ever unsafe or inadequate and urge this Court to affirm the result below.

references cited in Defendants' briefs appear true based on testimony contained in the record and the trial court's conclusions:

1. Plaintiffs seek to have this Court strike reference to the fact that Florence School District 4 continues to operate out of one PK-12 facility that was built in 2000 and has had two additions to it since that time. (Pls.' Mot. to Strike 6). The record reflects that the Timmonsville Education Complex was constructed in 2000. (Trial Tr. (02/09/04), p. 127, ll. 11-16) (**Exhibit A**). The record reflects further that since that construction, two elementary classrooms have been added. (Dep. of Alice Johnson, (05/14/03), p. 9, ll. 3-6) (**Exhibit B**). The trial court acknowledged the same. (Order dated Dec. 29, 2005 ¶ 321; Order dated July 12, 2007 ¶ 25).

2. Plaintiffs seek to have this Court strike reference to the fact that Jasper County School District replaced all of its old facilities with new facilities in the Fall of 2007. (Pls.' Mot. to Strike 6, 7). The record reflects that at the time of trial, Jasper County School District was in the process of constructing two new, self-contained, K-12 facilities in Jasper County. (Trial Tr. (04/02/04) (Singleton), p. 190, l. 21—p. 197, l. 9) (**Exhibit C**). The trial court acknowledged the same. (Order dated Dec. 29, 2005 ¶¶ 338, 339; Order dated July 12, 2007 ¶ 25).

3. Plaintiffs seek to have this Court strike reference to the fact that Orangeburg School District Three is now operating in a new high school facility, which includes a state of the art technology center, and that therefore, Orangeburg County no longer has any facilities claims. (Pls.' Br. 6, 7). Dr. David Longshore, Superintendent of Orangeburg Consolidated District 3, testified at trial that upon completion of the construction and consolidation of the schools in Orangeburg 3, all facilities in the district

would be safe and adequate. (Trial Tr. (01/06/04), p. 140, l. 15—p. 143, l. 16) (**Exhibit D**). The trial court acknowledged the same. (Order dated Dec. 29, 2005 ¶ 391; Order dated July 12, 2007 ¶ 25).

Therefore, it is clear that information concerning the facts for which judicial notice is sought already appears in the record and appears to be true given that they are Plaintiffs' own representations. Defendants' references to the Plaintiff Districts' websites only confirm what was assumed true at trial. This Court should therefore deny Plaintiffs' Motion to Strike.

C. Given that the matters Plaintiffs ask this Court to strike are Plaintiffs' own admissions, procedures to ensure the admissibility and reliability are not necessary.

The second reason Plaintiffs advance to strike the referenced matters is that “the post-trial evidence that Defendants are attempting to enter into the record is not subject to ordinary evidentiary procedures that would ensure its admissibility and reliability.” (Pls.' Mot. to Strike 10). This argument is without merit.

First, the SDE and Plaintiff Districts are government agencies, “source[s] whose accuracy cannot reasonably be questioned.” *Chapel*, 41 F.3d at 1342. Second, the fact that certain schools in the Plaintiff Districts have been or will be rebuilt or renovated are matters which simply cannot possibly be disputed. For example, **Exhibit E** consists of photographs from the websites in question depicting schools that have been substantially renovated or rebuilt. The fact that the Plaintiff Districts themselves posted these photographs on their respective websites ensures the reliability, and indeed admissibility, of these photographs. The obvious public nature of these websites reinforces Plaintiffs' beliefs in the accuracy of the information which they chose to publicly display. Plaintiffs

simply cannot contend that their own public, factual statements are inaccurate, unfairly prejudicial, or otherwise inadmissible and unreliable.

Further, all information relating to school renovations was anticipated at trial, and references to the Plaintiff Districts' websites confirm that construction on new facilities or renovations to existing facilities has been or will be completed. Courts routinely take judicial notice of government agency websites such as those of school districts, and Plaintiffs have presented no compelling reason why this Court should not do the same.

D. This Court should take judicial notice of legislative provisos.

Laws created by statute are examples of matters this Court consistently deems indisputable. "This Court may take judicial notice of a statute." *Porter v. South Carolina Pub. Serv. Comm'n*, 327 S.C. 220, 223, 489 S.E.2d 467, 469, n.2 (1997). Indeed, the courts of this state "*are required* to take judicial notice of the public laws or statutes." *Robert Trent Jones, Inc. v. B-F Ltd. P'ship*, 276 S.C. 469, 471, 279 S.E.2d 613, 614 (1981) (emphasis added). "[E]very statute is a public law, unless otherwise declared in the statute itself, and hence is within the knowledge of the court." *State v. Broad River Power Co.*, 177 S.C. 240, ___, 181 S.E. 41, 48 (1935). This fact should come as no surprise to Plaintiffs. (Trial Tr. (06/16/04), p. 148, ll.1-8 (Plaintiffs' counsel) ("The court obviously has the opportunity under Rule 201 of the Rules of Evidence of South Carolina to take judicial notice of statutes . . .").

Plaintiffs seek to have this Court strike reference to the fact that Dillon County passed a bond referendum in 2007, allowing it to replace or remodel facilities that were not previously upgraded, including J.V. Martin Middle School, East Elementary, and Stewart Heights Elementary. (Pls.' Br. 6, 7). This referendum ultimately became Act

137 of 2007, a public law enacted by the South Carolina legislature of which this Court should take judicial notice. The same is true with respect to Act 117 of 2007, which pertains to projected per pupil funding levels. These are both acts presently contained in the legislative journals of the General Assembly that are judicially noticed by the courts of this state. *State v. Broad River Power Co.*, 177 S.C. 240, ___, 181 S.E. 41, 48 (1935).

E. This Court should take judicial notice of post-trial PACT scores.

Plaintiffs seek to strike from the record data contained in the 2004, 2005, and 2006 District report cards, contending that the trial court “did not take judicial notice of the 2004 report cards (or any subsequent report cards).” (Pls.’ Br. 7, n.4). This is simply not true.

After the close of evidence, the trial court took judicial notice of the 2004 and 2005 report cards without reservation in its Order dated July 12, 2007. (*See* Order dated July 12, 2007 ¶ 26, n.3 (taking judicial notice of 2004-2005 report card data and noting that “[b]oth plaintiffs and defendants requested this Court take judicial notice of the yearly report cards issued during the pendency of this litigation”); Order dated Dec. 29, 2005, n.21-25, 27, 29 (same)). Notably, Plaintiffs did not object to this action by the trial court. This Court may continue to take judicial notice of uncontested facts on appeal. *Masters*, 283 S.C. at 255, 321 S.E.2d at 196. Plaintiffs have failed to present any compelling reason why this Court should not do so in this case. Again, if this Court cannot consider current facts, it should vacate the orders entered below and dismiss all appeals as moot.

F. This Court should deny Plaintiffs the opportunity to disagree with themselves.

Finally, Plaintiffs complain that “some of the additional information Defendants seek to add includes information from websites As is true with businesses or institutions, the schools include information on their websites that promotes the school, not information highlighting deficiencies in their facilities or workforce.” (Pls.’ Br. 10). But such a response misses the point. At trial, Plaintiffs did not “demonstrate” any wholesale problems with facilities in the Plaintiff Districts. The trial court correctly concluded that “all the facilities in the Plaintiff Districts were either safe, adequate, and sufficient to provide students the opportunity to acquire a minimally adequate education, or had deficiencies that were being remedied by the district.” (Order dated July 12, 2007 ¶ 24).

To the extent that Plaintiffs complain that the facilities had problems, these problems have been, or are in the process of being, remedied. Indeed, Plaintiffs’ witnesses testified that building the new facilities would eliminate the facility issues in the Plaintiff Districts. (Trial Tr. (04/02/04) (Singleton), p. 190, l. 21—p. 197, l. 9); (Trial Tr. (01/06/04) (Longshore), p. 140, l. 15—p. 143, l. 16). It is inconceivable that Plaintiffs could establish that new facilities in the Plaintiff Districts were not safe and adequate. Therefore, the only “mini-trial on appeal” would be one in which Plaintiffs presented evidence to disagree with themselves, not with Defendants. Plaintiffs’ Motion to Strike should be denied.

Conclusion

As Plaintiffs correctly note, “[m]assive amounts of evidence were introduced” at trial. (Pls.’ Br. 11). But well over two years have elapsed since the trial court entered its

first order in this case and the landscape has changed considerably. The information Plaintiffs seek to strike is information that is universally recognized as appropriate for judicial notice, supported by the testimony contained in the record, and current factual information that will be vital in this Court's decision to affirm, affirm in part, reverse, or vacate the trial court's order as moot. This Court cannot find a present day violation of the education clause based on stale evidence or facts that no longer exist. Therefore, should this Court conclude that judicial notice of the referenced material is not proper, the only option remaining is to dismiss all appeals as moot. Accordingly, Plaintiffs' Motion to Strike should be denied.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

A handwritten signature in black ink, appearing to read "Robert E. Stepp", is written over a horizontal line.

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**Attorneys for Respondents / Appellants Glenn F.
McConnell and Robert William Harrell, Jr.**

Columbia, South Carolina

April 2, 2008

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas
Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2007-65159

Abbeville County School District, *et al.*,.....Appellants / Respondents

vs.

The State of South Carolina, *et al.*,.....Respondents / Appellants.

PROOF OF SERVICE

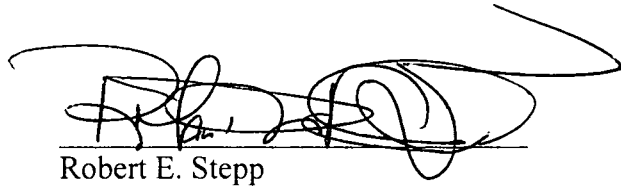
I, the undersigned employee, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for the Respondents/Appellants, do hereby certify that on April 2, 2008 I have served all counsel in this action with a copy of the Respondents'/Appellants' Return to Appellants'/Respondents' Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record by hand delivery to the following addresses:

Counsel Served: NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

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Stephen G. Morrison
Laura Callaway Hart
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1320 Main Street
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A handwritten signature in black ink, appearing to read 'R. E. Stepp', is written over a horizontal line.

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
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Attorneys for Respondents/Appellants Glen F.
McConnell and Robert William Harrell, Jr.

April 2, 2006

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEE)

ABBEVILLE, ET AL,)
) PLAINTIFFS,) TRANSCRIPT OF RECORD
VS.)
STATE OF S.C., ET AL,)
DEFENDANTS)

FEBRUARY 9TH, 2004
MANNING, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS W. COOPER, JR.,
PRESIDING JUDGE.

A P P E A R A N C E S:

CARL EPPS, ESQUIRE
LAURA HART, ESQUIRE
STEVE MORRISON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

ELIZABETH VAN DOREN GRAY, ESQUIRE
ROBERT STEPP, ESQUIRE
JACKSON BARNES, ESQUIRE
EMORY SMITH, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

KATHLEEN RICHARDSON
OFFICIAL COURT REPORTER

1 CARPENTRY, BRICK MASONRY WOULD BE, THOSE TWO AREAS WOULD
2 BE THINGS THAT WOULD BE ADVANTAGEOUS TO OUR STUDENTS.

3 Q OKAY. IS THERE SIGNIFICANT DEMAND IN THE FLORENCE
4 FOUR AREA FOR THE TRADES OF CARPENTRY AND BRICK MASONRY?

5 A YES.

6 Q AND WHY DOES FLORENCE FOUR NOT OFFER THOSE PROGRAMS?

7 A WELL, AT THIS TIME WE DON'T HAVE THE FACILITY IN
8 PLACE TO DO THAT NOR THE RESOURCES, AND, REALLY, THE
9 TEACHING STAFF WE HAVE NOW IS REALLY ALL WE CAN AFFORD TO
10 HAVE.

11 Q ALL RIGHT. WE TALKED ABOUT THE FACILITIES AND I JUST
12 WANT TO GO BACK AND CAPSULIZE THAT VERY BRIEFLY. NOW THE
13 FACILITY THAT YOU HAVE WAS BUILT IN THE YEAR 2000?

14 A YES.

15 Q SO IT'S A NEW FACILITY, A RELATIVELY NEW FACILITY?

16 A YES.

17 Q NOW, IN TERMS OF ISSUES ABOUT THE FACILITIES, AM I
18 CORRECT IN THAT YOUR ONLY REAL ISSUE IS NOT WITH THE
19 STRUCTURE ITSELF BUT THE IDEA OF PUTTING ALL THE GRADES, K
20 THROUGH 12, IN THE SAME FACILITY?

21 A YES.

22 Q OKAY. NOW, IF I GO LOOK AT THE STRUCTURE, TAKE
23 PICTURES OF THE STRUCTURE WHAT I HAVE HERE, I ASSUME, IT'S
24 GOING TO LOOK FINE?

25 A IT WILL LOOK FINE. THE TILE, THAT'S A PROBLEM WITH

00001

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

2 COUNTY OF LEE

3

4 ABBEVILLE COUNTY SCHOOL DISTRICT, ET AL.,

5 Plaintiff(s),

6 vs. Case No: 93-CP-31-169

7 STATE OF SOUTH CAROLINA, ET AL.,

8 Defendant(s).

9

10 DEPOSITION

11 WITNESS: ALICE JOHNSON

12 DATE: Wednesday, May 14, 2003

13 TIME: 2:11 p.m.

14 LOCATION: Sowell, Gray, Stepp & Laffitte

1310 Gadsden Street

15 Columbia, South Carolina

16 TAKEN BY: Attorneys for the Defendant(s)

17 REPORTED BY: LISA D. JETER,
Registered Professional Reporter

18

19 -----

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1 them?

2 A. That's one of them, correct.

3 Q. Now I know from my last visit to y'all's

4 school, that the elementary school actually has a new

5 addition that's under construction; is that correct?

6 A. Yes, they're just beginning.

7 Q. Maybe when I was there last time Mr. Bowser

8 just told me about it, but the construction hadn't

9 actually started.

10 A. No, couldn't have, because it didn't really

11 start yet. They only had the fence up.

12 Q. Do y'all -- is the plan that you will be able

13 to use that space beginning next fall, or it won't be

14 ready at that point?

15 A. That is the plan, and I'm sure praying that

16 that will happen, because I need that space desperately.

17 Q. And what is that new space going to consist

18 of?

19 A. One 4K classroom because the one 4K classroom

20 I have is not adequate according to the state

21 guidelines. It's too small.

22 Q. Okay.

23 A. And the other classroom, I'll put one of my

24 teachers in there because one classroom that she's in is

25 wired to be a computer lab. See, I don't have a

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE) COURT OF COMMON PLEAS

ABBEVILLE, ET AL,)
 PLAINTIFFS,) TRANSCRIPT OF RECORD
VS.)
STATE OF S.C., ET AL,)
 DEFENDANTS)

APRIL 2ND, 2004
MANNING, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS W. COOPER, JR.,
PRESIDING JUDGE.

A P P E A R A N C E S:

CARL EPPS, ESQUIRE
LAURA HART, ESQUIRE
STEVE MORRISON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

ELIZABETH VAN DOREN GRAY, ESQUIRE
ROBERT STEPP, ESQUIRE
JACKSON BARNES, ESQUIRE
ELIZABETH MCMAHON, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

KATHLEEN RICHARDSON
OFFICIAL COURT REPORTER

1 ROUND THAT UP.

2 Q OKAY. SO IN ADDITION TO ALL THE MONEY FOR ALL THE
3 PROGRAMS THAT WE HAVE DISCUSSED OVER HERE PREVIOUSLY, YOU
4 ARE GETTING ANOTHER ALMOST, OR APPROXIMATELY \$2 MILLION
5 THAT'S GOING SPECIFICALLY TO YOUR PROFESSIONAL DEVELOPMENT
6 AND DEVELOPMENT OF YOUR TEACHERS AND FOR ADDITIONAL
7 MATERIALS AND SUPPLIES AND HOMEWORK CENTERS; CORRECT?

8 A THAT'S CORRECT.

9 Q OKAY.

10 MR. BARNES: JUDGE, YOU WANTED TO TAKE AN
11 AFTERNOON BREAK?

12 THE COURT: WE COULD.

13 MR. BARNES: I'M AT A GOOD STOPPING PLACE.

14 THE COURT: LET'S JUST TAKE ABOUT TEN MINUTES IF
15 WE CAN TRY TO SQUEEZE AS MUCH OUT OF THE AFTERNOON AS WE
16 CAN. WE WILL BE IN RECESS FOR TEN MINUTES. THANK YOU.

17 (WITNESS OFF THE STAND.)

18 (WHEREUPON A RECESS WAS TAKEN.)

19 (WITNESS BACK ON STAND.)

20 BY MR. BARNES:

21 Q THANK YOU, YOUR HONOR. DR. SINGLETON, THE LAWSUITS
22 REGARDING YOUR \$45 MILLION SCHOOL FACILITY BOND ARE OVER;
23 RIGHT?

24 A YES. THAT HAS BEEN SETTLED.

25 Q SO Y'ALL ARE PROCEEDING TO CONSTRUCTION; RIGHT?

1 A THAT IS CORRECT.

2 Q AND THE PLAN IS TO HAVE IN 2006 TWO NEW K-12
3 FACILITIES, ONE IN HARDEEVILLE AND ONE IN RIDGELAND;
4 CORRECT?

5 A YES.

6 Q AS I UNDERSTAND IT, THEY ARE BOTH GOING TO BE
7 SELF-CONTAINED FACILITIES WHICH IS TO SAY EACH FACILITY
8 WILL HAVE ITS OWN ATHLETIC FACILITIES, ART, MUSIC, DRAMA,
9 CLASSROOMS, SCIENCE LABS, ALL THOSE KINDS OF THINGS IN
10 EACH PART OF THE COUNTY; CORRECT?

11 A THAT'S CORRECT.

12 Q OKAY. I BELIEVE Y'ALL ARE GOING TO ACTUALLY UTILIZE
13 SOME OF THE ATHLETIC FACILITIES AND THOSE KINDS OF THINGS
14 OR TRIED TO WHEN LAST YOU AND I TALKED UP IN RIDGELAND BUT
15 YOU WERE GOING TO HAVE TO BUILD EVERYTHING NEW IN
16 HARDEEVILLE; CORRECT?

17 A THAT IS CORRECT.

18 Q OKAY. AND THE TOTAL COST FOR THAT CONSTRUCTION,
19 ESTIMATED COST IS \$45 MILLION AND SOME CHANGE; RIGHT?

20 A YES, CLOSE TO 46 MILLION.

21 Q CLOSE TO 46. AND LET ME ASK YOU THIS, DR. SINGLETON:
22 THE ROUGHLY \$3 MILLION THAT Y'ALL GOT FROM THE
23 \$250 MILLION STATE CONSTRUCTION BOND MONEY, ARE YOU GOING
24 TO USE SOME OF THAT MONEY FOR YOUR NEW FACILITIES OR DID
25 YOU ALREADY SPEND THAT \$3 MILLION OVER THE LAST FEW YEARS

1 DOING SOMETHING ELSE?

2 A I HAVE SPENT \$2 MILLION OF THAT AND WE -- WELL, WE
3 SPENT ALL OF IT AT THIS POINT BUT WE TOOK SOME OF THAT TO
4 PAY SOME OF THE PRE CONSTRUCTION COSTS.

5 Q OKAY. SO ABOUT -- WOULD -- SO WOULD YOU SAY ROUGHLY
6 A MILLION OF THAT WAS SPENT ON THE NEW FACILITIES FOR PRE
7 CONSTRUCTION THINGS AND TWO MILLION WAS SPENT ON OTHER
8 THINGS?

9 A YES.

10 Q AND WHAT DID YOU SPEND THAT \$2 MILLION ON?

11 A DOING OUR ROOF. COMPLETING ALL OF OUR ROOFING WORK
12 THAT WE HAD TO DO. DOING SOME PAINTING, SOME ELECTRICAL
13 WORK IN OUR FACILITIES.

14 Q OKAY. LOOKING BACK AT THE IN-SITE DATA, DR.
15 SINGLETON, UP THERE, FOR -- I THINK THAT'S IT, RIGHT THERE
16 IN YOUR HAND?

17 A 2800?

18 Q YES, SIR.

19 A OKAY.

20 Q 2,800. IS THAT WHAT IT IS? 2,800, YES, SIR. IT
21 SHOWS FOR THE 2000, 2001 SCHOOL YEAR THAT JASPER COUNTY
22 SPENT \$1,669,968 ON BUILDING UPKEEP AND MAINTENANCE.

23 A I DON'T SEE THAT NUMBER. UNDER OPERATIONS?

24 Q YES, SIR. ARE YOU LOOKING AT THE JASPER ONE?

25 A NO.

1 Q SORRY. I THINK THAT MIGHT BE IT.

2 A 1,158,142, IS THAT THE NUMBER YOU QUOTED?

3 Q THE NUMBER I SAW WAS \$1,669,968.

4 A RIGHT. I HAVE THAT NUMBER, YES.

5 Q OKAY. NOW, DOES THAT INCLUDE ANY STATE BOND MONEY,
6 ANY OF THE \$2 MILLION YOU SPENT ON BUILDINGS OR IS THAT
7 ALL OTHER MONEY?

8 A NO, THOSE ARE STATE BOND MONEY.

9 Q OKAY.

10 A MAJORITY OF THOSE DOLLARS.

11 Q ALL RIGHT. LOOK IF YOU WOULD, PLEASE, ON 3149 WHICH
12 IS THE IN-SITE DATA FOR THE '99, 2000 YEAR. IT SHOWS THAT
13 IN THAT YEAR Y'ALL SPENT \$1,539,568 ON BUILDING UPKEEP AND
14 MAINTENANCE. DOES THAT ALSO INCLUDE BOND MONEY?

15 A YES, IT DOES.

16 Q OKAY. WELL, THAT TOTAL -- THE TWO OF THOSE TWO
17 NUMBERS TOGETHER TOTALS LIKE \$3.1 MILLION. SO I ASSUME
18 SOME OF THAT MONEY IS -- IS SOMETHING OTHER THAN STATE
19 BOND MONEY?

20 A YES.

21 Q OKAY. AND DR. SINGLETON, IS IT YOUR TESTIMONY THAT
22 THAT MONEY THAT Y'ALL SPENT IN THOSE TWO YEARS WAS NOT
23 SUFFICIENT TO MAKE THE MAINTENANCE REPAIRS THAT WERE SHOWN
24 IN THE PHOTOGRAPHS?

25 A IT'S -- CLEARLY IT WAS NOT ENOUGH MONEY. BUILDINGS

1 HAD REACHED A POINT WHERE THEY NEEDED ALMOST A TOTAL
2 RENOVATION. OUR ROOFS WERE LEAKING. OUR FLOORS -- OUR
3 ELECTRICAL SYSTEMS ARE BAD. SO WE NEED MORE MONEY AND ONE
4 OF THE REASONS WHY WE WENT TO A BOND REFERENDUM.

5 Q OKAY. ARE YOU GOING TO HAVE NEW PLAYGROUND EQUIPMENT
6 AT YOUR SCHOOLS, NEW SCHOOLS?

7 A YES, SIR.

8 Q OKAY. I ASSUME THAT YOUR COUNTERTOPS AT YOUR NEW
9 SCHOOLS AND YOUR TILES, YOU'RE NOT GOING TO GET NEW
10 SCHOOLS WITH NO COUNTERTOPS AND TILES; ARE YOU?

11 A I WOULD HOPE THEY WOULDN'T BUILD A SCHOOL WITHOUT
12 GOOD NEW STUFF IN IT SO AS MUCH AS POSSIBLE.

13 Q I ASSUME YOU ARE GOING TO HAVE A NEW SEWAGE SYSTEM?

14 A YES.

15 Q AND WE CAN ONLY HOPE THAT THE ARCHITECT DIDN'T PUT
16 THE OVERFLOW BESIDE A WATER FOUNTAIN?

17 A WE WILL MAKE SURE THAT DOESN'T HAPPEN.

18 Q OKAY. HAVE YOU SEEN THE DESIGN OF YOUR NEW SCHOOLS?

19 A THEY ARE WORKING ON THE DESIGNS NOW. THEY ARE PRETTY
20 CLOSE TO BEING DONE.

21 Q ARE THEY GOING TO HAVE FLAT ROOFS?

22 A NO, SIR.

23 Q OKAY. SO HOPEFULLY NOT?

24 A JUDGE DIRECTED ME NOT TO...

25 Q SO HOPEFULLY WON'T HAVE ANY OF THESE ROOF, THESE

1 LEAKING ROOF TILES. ALTHOUGH I THINK WE HAVE A FEW IN
2 HERE, WE DON'T HAVE A FLAT ROOF HERE; DO WE? LET ME ASK
3 YOU ABOUT THIS, THE ELECTRICAL HAZARD ON THE FLOOR HERE?

4 A YES, SIR.

5 Q Y'ALL COULDN'T FIND IN THE \$10.4 MILLION A FEW
6 DOLLARS TO REPAIR THIS SITUATION, DR. SINGLETON?

7 A YEAH. WHEN I -- YOU COULDN'T USE THAT -- SEE, OUT
8 OF -- OUT OF WHAT YOU OUTLINE HERE IN THE \$10.4 MILLION,
9 THOSE DOLLARS ARE SO TUNNELED THAT YOU CANNOT USE THEM FOR
10 CERTAIN THINGS. 10.4 MILLION WAS JUST FOR COMPUTER, TO
11 BRING THE COMPUTER SYSTEM OR BRING THE WIRING TO THE
12 SCHOOL, PURCHASE SPECIFIC THINGS SO YOU COULD NOT -- YOU
13 COULD NOT PURCHASE -- YOU COULD NOT DO THAT WITH THOSE
14 DOLLARS.

15 WE HAD TO GO IN OUR BUDGET TO TRY TO UPGRADE SOME OF
16 THE ELECTRICITY TO MAKE THE SYSTEM WORK.

17 Q OKAY. I WILL ASSUME YOU WILL HAVE PAINTED DOORS ON
18 YOUR NEW SCHOOL?

19 A YES, SIR.

20 Q ARE YOU -- ARE THE LOCATIONS OF YOUR NEW FACILITIES
21 IN LOW-LYING AREAS?

22 A THE HARDEEVILLE AREA IS LITTLE MORE -- IT'S A
23 LOW-LYING AREA. RIDGELAND IS PRETTY GOOD HIGHLANDS.

24 Q AND IT'S HARD TO FIND HIGH GROUND IN HARDEEVILLE;
25 ISN'T IT?

1 A YES, IT'S A GOOD PIECE OF PROPERTY WHERE IN FACT WE
2 HAVE LOCATED.

3 Q IS IT GOING TO BE SNAKE-FREE, DR. SINGLETON?

4 A I HOPE SO.

5 Q OKAY. DR. SINGLETON, THE NEW FACILITIES, BECAUSE
6 THEY ARE MORE CENTRALLY LOCATED, IS THAT GOING TO
7 ELIMINATE THE LONG TRAVEL TIME FOR MANY OF YOUR -- FOR
8 MOST OF YOUR STUDENTS THAT IN OTHER WORDS, THE STUDENTS
9 DOWN IN HARDEEVILLE WILL NO LONGER HAVE TO TRAVEL UP TO
10 RIDGELAND; RIGHT?

11 A IT WILL ELIMINATE THAT RIDGELAND -- THE HIGH SCHOOL
12 STUDENTS COMING ALL THE WAY TO RIDGELAND, YES.

13 Q OKAY. SO -- SO YOU ARE NOT GOING TO HAVE THE PROBLEM
14 OF KIDS BEING ON A BUS FOR TWO HOURS ONE WAY?

15 A THE RIDGELAND, THE HIGH SCHOOL STUDENTS COMING TO
16 RIDGELAND, NO, THEY WON'T BE ON THE BUS. SOME OF THE
17 OTHER STUDENTS WILL STILL REMAIN ON THE BUS FOR A LONG
18 PERIOD OF TIME.

19 Q AND WHY IS THAT?

20 A BECAUSE OF WHERE THEY ARE LOCATED IN THE COUNTY.

21 Q SO YOU MEAN EVEN THOUGH THEY ARE NOW GOING TO BE
22 GOING TO A MORE CENTRALLY LOCATED SCHOOL FOR THEM IT'S
23 STILL A LONG WAYS?

24 A STILL A LONG WAY FOR SOME OF THE ELEMENTARY -- WELL,
25 ELEMENTARY AND HIGH SCHOOL STUDENTS. YOU ARE CUTTING THE

1 HIGH SCHOOL STUDENTS' TRAVEL TIME BUT YOU STILL HAVE THE
2 DISTANCE FOR MANY OF THE ELEMENTARY STUDENTS.

3 Q OKAY. ARE YOUR NEW SCHOOLS GOING TO ELIMINATE YOUR
4 SPACE PROBLEMS?

5 A YES.

6 Q OKAY. AND YOU ARE GOING TO HAVE WORKING SCIENCE LABS
7 IN YOUR NEW SCHOOLS?

8 A WE WILL HAVE SCIENCE LABS IN THE NEW SCHOOL, WORKING
9 SCIENCE LABS, YES, SIR.

10 Q DR. SINGLETON, YOU SPOKE ABOUT THE -- YOUR BELIEF
11 THAT EVERYBODY IN THE SYSTEM NEEDED TO BE HELD ACCOUNTABLE
12 INCLUDING PARENTS AND STUDENTS, THE STATE. DO YOU THINK
13 YOUR PARENTS IN JASPER COUNTY ARE -- ARE BEING HELD
14 ACCOUNTABLE FOR THEIR RESPONSIBILITIES?

15 A I HAVE NO CONTROL OVER THEIR ACCOUNTABILITY WITH THE
16 PARENTS. I DO BELIEVE THAT THEY SHOULD MAKE SURE THAT THE
17 CHILD COMES TO SCHOOL, THE CHILD HEALTHCARE AND NEEDS ARE
18 MET, THAT THEIR ATTENDANCE ARE GOOD, THAT THEY COME AND
19 CHECK ON THEIR CHILDREN. I DO BELIEVE THAT PART BUT I
20 HAVE NO CONTROL OVER THAT.

21 Q OKAY. AND WHAT ABOUT YOUR STUDENTS, DO YOU THINK
22 YOUR STUDENTS ARE BEING HELD ACCOUNTABLE?

23 A THEY ARE HELD ACCOUNTABLE, YES.

24 Q AND YOU THINK THEY ARE LIVING UP TO THEIR END OF THE
25 BARGAIN?

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEE)

ABBEVILLE, ET AL,)
) PLAINTIFFS,) TRANSCRIPT OF RECORD
VS.)
STATE OF S.C., ET AL,)
DEFENDANTS)

JANUARY 6TH, 2004
MANNING, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS W. COOPER, JR.,
PRESIDING JUDGE.

A P P E A R A N C E S:

CARL EPPS, ESQUIRE
LAURA HART, ESQUIRE
STEVE MORRISON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

ELIZABETH VAN DOREN GRAY, ESQUIRE
ROBERT STEPP, ESQUIRE
JACKSON BARNES, ESQUIRE
C.H. JONES, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

KATHLEEN RICHARDSON
OFFICIAL COURT REPORTER

1 A ORANGEBURG THREE.

2 Q YOUR DISTRICT?

3 A THAT'S CORRECT.

4 Q NOW, WHEN THE COUNTY DECIDED TO LOOK AT FACILITIES'
5 NEEDS, WHAT DID THE COUNTY DO?

6 A THE COUNTY, THE COUNTY DIDN'T DO -- WELL, THEY HAD
7 VERY LITTLE FACILITIES. I'LL PUT IT THAT WAY. THEY --
8 THEY HAVE A, A FIVE MILL ALLOCATION TO SPLIT BETWEEN THE
9 THREE DISTRICTS.

10 Q ALL RIGHT.

11 A AND IT'S PROBABLY ABOUT ENOUGH FOR US TO DO THE
12 MAINTENANCE ON OUR FACILITIES DURING THE COURSE OF A YEAR.
13 NOT -- WHAT IT TAKES CARE OF BUT NOTHING FOR BUILDING
14 SCHOOLS.

15 Q ALL RIGHT. HOW IS IT THEN THAT ORANGEBURG THREE HAS
16 SOME NEW SCHOOLS AND IT'S GETTING READY TO BUILD TWO MORE?

17 A WELL, WE HAVE THOSE SCHOOLS BECAUSE THE TAXPAYERS --
18 AS YOU SAID THE MAJORITY OF THE TAXPAYERS IN OUR DISTRICT
19 MADE THE DECISION THAT THEY WERE GOING TO GET OUR KIDS
20 INTO SOME ADEQUATE FACILITIES. AND THAT'S WHAT, THAT'S
21 WHAT WE ARE TRYING TO DO AND THAT'S WHAT WE ARE ABOUT TO
22 ACCOMPLISH.

23 BEFORE THE DISTRICT CONSOLIDATED, ORANGEBURG SEVEN
24 PASSED A BOND REFERENDUM TO BUILD A NEW HIGH SCHOOL, AND
25 THIS WAS IN '87. IN '91 IN ORANGEBURG THREE WE

1 SUBSTANTIALLY RENOVATED THE HIGH SCHOOL, OUR HIGH SCHOOL
2 THERE. IN 1995 WE PASSED A BOND REFERENDUM TO RENOVATE,
3 SUBSTANTIALLY RENOVATE THREE ELEMENTARY SCHOOLS.

4 AND A LITTLE OVER TWO YEARS AGO THE DISTRICT PASSED
5 ANOTHER BOND REFERENDUM IN THE AMOUNT OF ABOUT 40 MILLION
6 DOLLARS, A HIGHLY CONTENTIOUS REFERENDUM. AND THIS MONEY
7 IS GOING TO BE USED TO BUILD A NEW HIGH SCHOOL WHERE WE
8 WILL CONSOLIDATE THE TWO HIGH SCHOOLS THAT WE HAVE,
9 ELLOREE AND HOLLY HILL, AND WE ARE BUILDING A TECHNOLOGY
10 CENTER WHICH WE DON'T HAVE AT THIS POINT FOR THE TWO HIGH
11 SCHOOLS.

12 AND WE ARE BUILDING, WE ARE TAKING THE FORMER ELLOREE
13 HIGH SCHOOL BUILDING AND ELEMENTARY WING UP THERE AND
14 GOING TO TURN THAT INTO AN ELEMENTARY AND MIDDLE SCHOOL.

15 Q MIDDLE SCHOOL?

16 A AND ONCE WE COMPLETE THAT, THOSE PROJECTS, WE WILL
17 HAVE COME FROM HAVING PROBABLY 80 PERCENT OF THE CHILDREN
18 IN THOSE TWO DISTRICTS GOING TO SCHOOL IN PORTABLE
19 CLASSROOMS -- AND IN MY JUDGMENT IN FACILITIES THAT YOU
20 WON'T FIND IN ANY PRISON IN THE STATE OF SOUTH CAROLINA --
21 TO HAVING AN ADEQUATE FACILITY WITHIN THE, WITHIN THE NEXT
22 YEAR.

23 HOWEVER, IT'S BEEN AT THE EXPENSE OF THE TAXPAYERS IN
24 ORANGEBURG THREE. IT HASN'T BEEN WHAT WE HAVE GOTTEN OR
25 WHAT THE STATE HAS DONE. OUR STATE SUPPORT, MY GUESS IS,

1 IS THAT WITH NEW ELLOREE HIGH SCHOOL '87, WE DID HOLLY
2 HILL ROBERTS HIGH SCHOOL IN '92, WE DID ST. JAMES, VANCE,
3 HOLLY HILL ELEMENTARY IN '95, AND NOW WE ARE CURRENTLY
4 BUILDING A NEW HIGH SCHOOL TECHNOLOGY CENTER AND
5 REPLACEMENT FOR ELLOREE ELEMENTARY SCHOOL, WE ARE PROBABLY
6 TALKING IN THE NEIGHBORHOOD OF 60 MILLION PLUS DOLLARS
7 THAT'S COMING OUT OF THE DISTRICTS TILL, TAXPAYERS ARE
8 HAVING TO PAY FOR.

9 AND WE HAVE GOT ABOUT SOMEWHERE BETWEEN FIVE AND
10 SIX MILLION DOLLARS FROM THE STATE, 750 MILLION BOND BILL.
11 SO WE ARE TALKING ABOUT THE DISTRICT SPENDING ABOUT
12 60 MILLION, THE STATE SPENDING SOMEWHERE AROUND SIX
13 MILLION.

14 BUT WHEN YOU LOOK AT OUR STATE SUPPORT THAT WE ARE
15 SUPPOSED TO BE GETTING, COMPUTED BY THE STATE, SAYS THAT
16 WE SHOULD BE GETTING 84 PERCENT FROM THE STATE. THEY ARE
17 PAYING SIX PERCENT. THAT'S KIND OF HOW THAT E.F.A.
18 FORMULA WORKS.

19 NOW IF THAT WERE REVERSED, IT WOULD BE NICE FOR
20 TAXPAYERS BECAUSE THEN THE TAXPAYERS WILL PROBABLY BE
21 PAYING SOMEWHERE AROUND SIX MILLION AND THE STATE WOULD BE
22 PAYING THE OTHER 60 MILLION. BUT THAT IS NOT THE CASE.

23 Q ALL RIGHT. A FEW YEARS AGO AS I UNDERSTAND WHAT YOU
24 SAID INITIALLY IN THAT ANSWER WAS THAT YOU HAD 80 PERCENT
25 OF YOUR CHILDREN IN PORTABLES OR BUILDINGS THAT YOU WOULD

1 NOT PUT PRISONERS IN?

2 A THAT'S CORRECT.

3 Q AND WHEN YOUR CONSTRUCTION IS COMPLETED, WILL YOU --
4 WILL YOU HAVE ADEQUATE AND SAFE FACILITIES?

5 A WE WILL.

6 Q OKAY.

7 A AND MAYBE ONE OF THE FEW DISTRICTS IN THE STATE THAT
8 WON'T HAVE KIDS IN PORTABLE CLASSROOMS.

9 Q AS YOU STAND HERE TODAY AND AS YOU'RE TESTIFYING
10 TODAY, DO YOU HAVE ADEQUATE AND SAFE FACILITIES FOR YOUR
11 CHILDREN?

12 A NO, WE DON'T. PRIMARILY IN TWO FACILITIES, THAT'S
13 HOLLY HILL MIDDLE SCHOOL AND ELLOREE ELEMENTARY SCHOOL.
14 AND THESE ARE TWO SCHOOLS, ELLOREE ELEMENTARY WILL BE
15 CLOSED AT THE END OF THIS YEAR AND HOLLY HILL MIDDLE
16 SCHOOL WILL BE CLOSED AT THE END OF NEXT YEAR.

17 Q OKAY. SO WE HAVE GOT A YEAR, HALF A YEAR FROM ONE
18 CLASS REMAINING AND A YEAR AND A HALF FOR THE NEXT CLASS?

19 A THAT'S CORRECT.

20 Q ALL RIGHT. NOW I WANT TO SWITCH GEARS AND I'M COME
21 BACK, YOUR HONOR, AT THE END OF THIS AND GO THROUGH SOME
22 PICTURES VERY QUICKLY OF THE SCHOOL THEN HAND UP A FULL
23 NOTEBOOK. I THINK EVERYBODY HAS THE PHOTOGRAPHS THAT, WE
24 HAVE GOT AN EXTRA SET. CORRECT? (CONFERRING WITH STAFF.)

25 I WANT TO TALK TO YOU ABOUT YOUR EARLY CHILDHOOD

Dillon Middle School

Brief Scope:

Dillon Middle School will be located on the campus of the existing high school in Dillon. This will be a traditional middle school Concept with a main core, gymnasium, three classroom wings and a auditorium.

Site Conditions:

The existing possible location for the school is south east of the existing high school. This will cover existing playing fields, the running track/ practice field, tennis courts and residential area to the south that is owned by the School District.

Program Requirements:

The building will be a typical 850 student 6th to 8th grade facility. This will have typical core functions consisting of administration areas, guidance, cafeteria, media center, gymnasium, music, art and special needs as well as the three classroom wings.

Total Square Footage Requirements:

Base square footage for building: 110,000. sf total gross.

Schedule of Alternates:

- Adding air conditioning and heating to the existing high school gymnasium
- Auditorium
- New track
- New practice field for football.
- New tennis courts.
- New softball field.
- Additional staff parking.

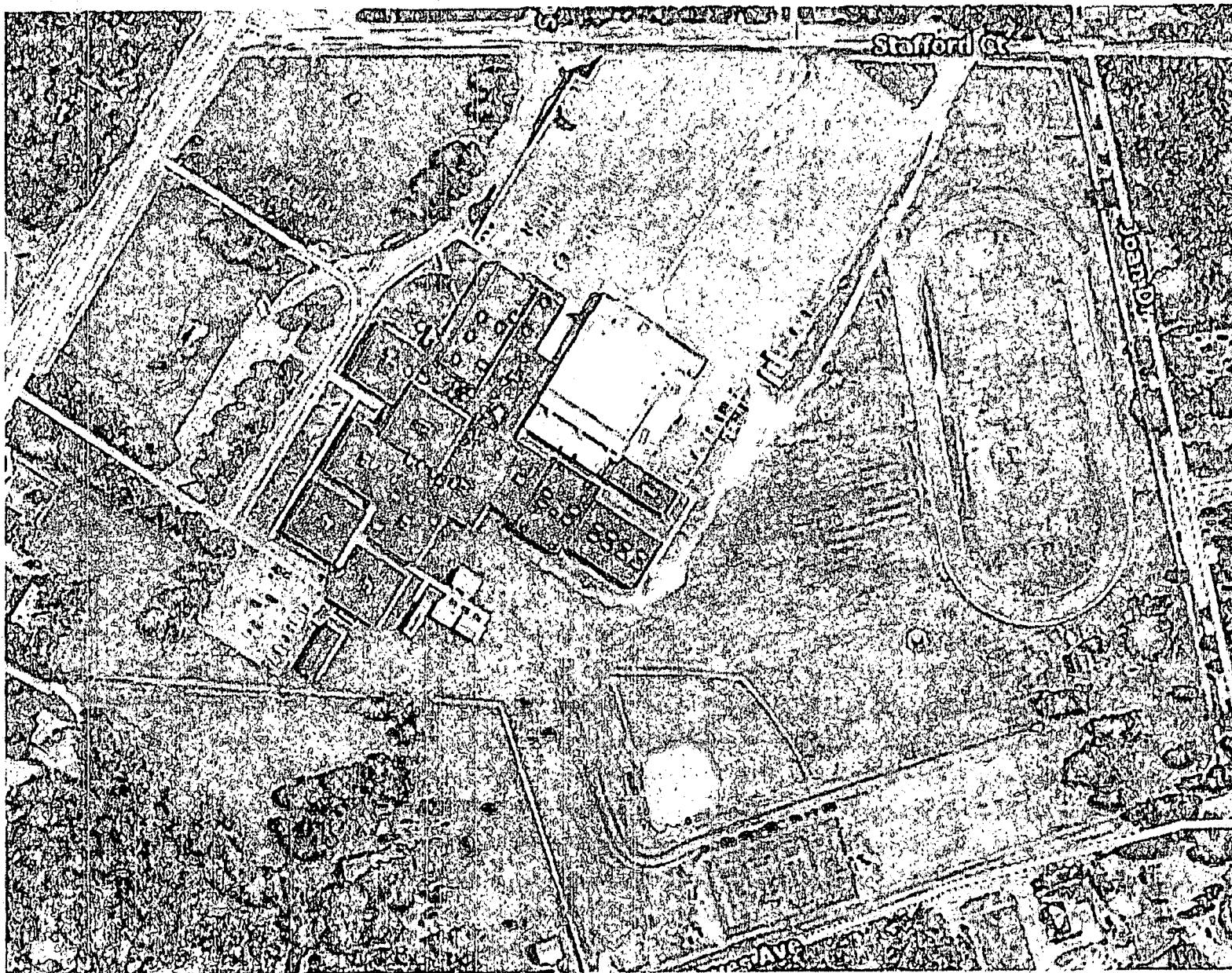
Additional Infrastructure Requirements:

All new site utilities.

New parent drop off to serve middle school parents.

Additional Site Related Line Items:

The purchase of additional land to the East to accommodate the new school.

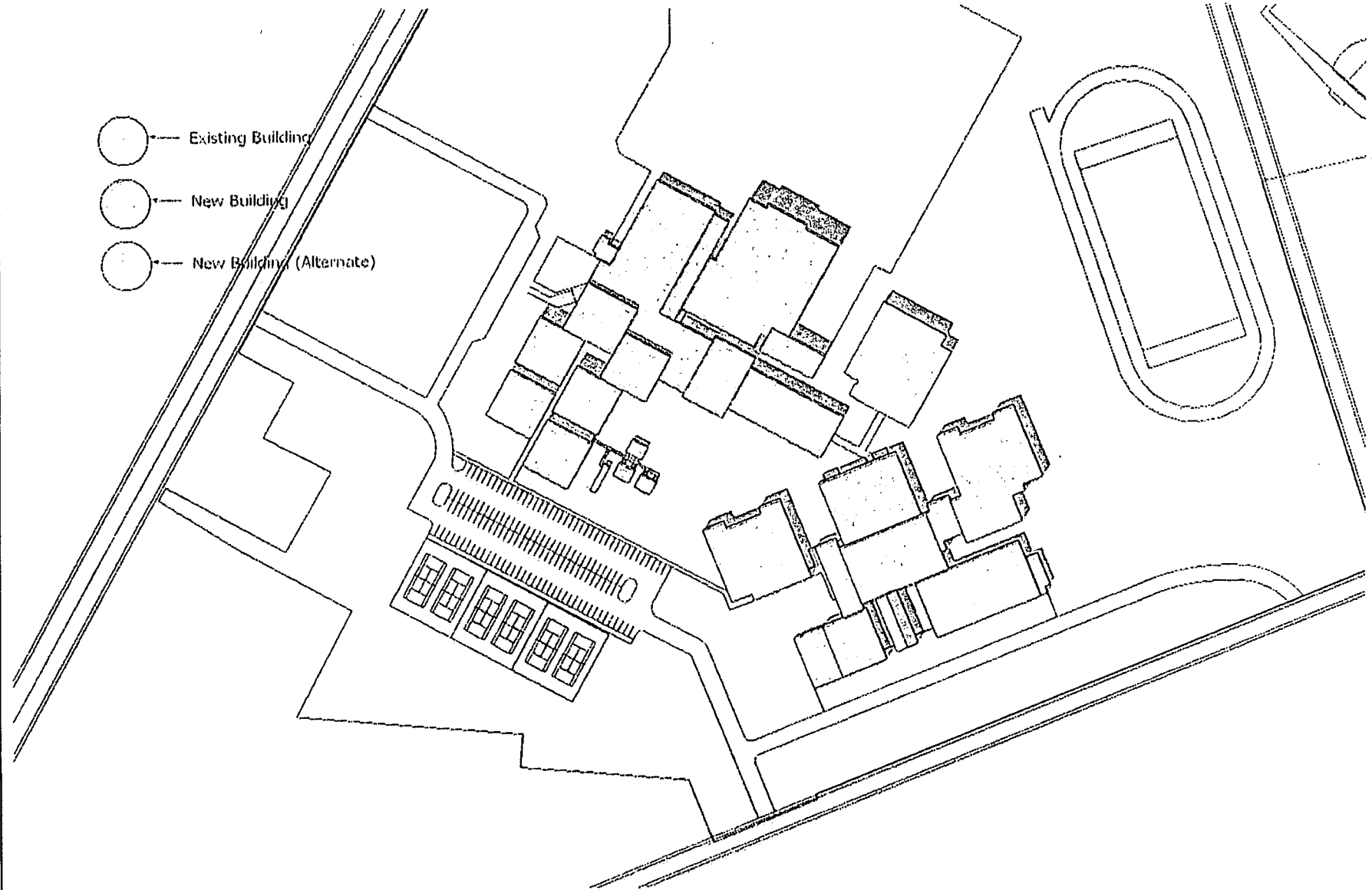


Dillon High School
Additions & Renovations
Dillon County School System

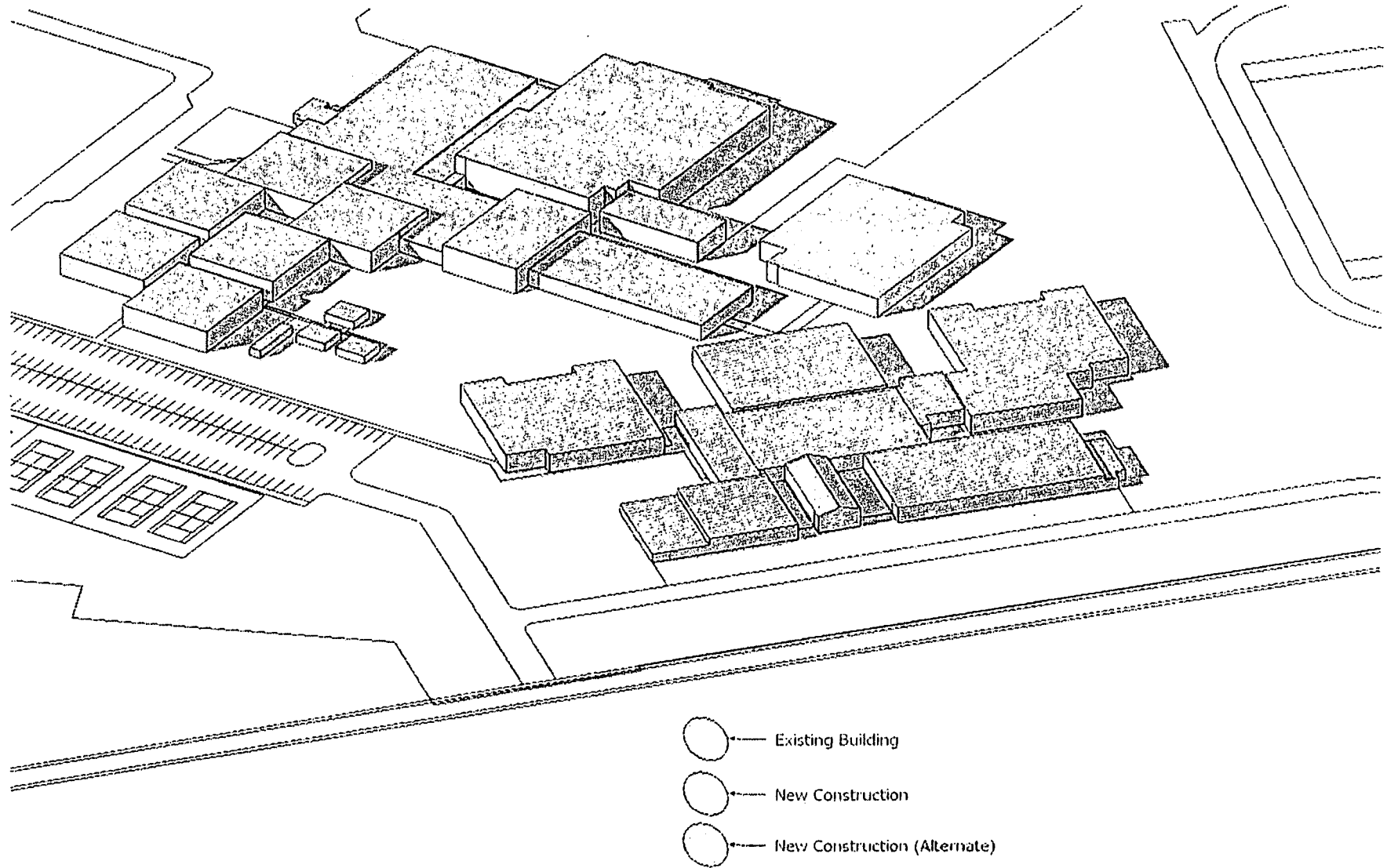
Dillon High School Additions & Renovations – Site Plan

Sep 2007

- Existing Building
- New Building
- New Building (Alternate)



Dillon High School
Additions & Renovations
Dillon County School System



East Elementary School

Brief Scope:

East Elementary School is on an existing urban city block. The existing elementary school core building is to be demolished to provide room for a new core and twelve additional classrooms. There will be the need for swing space while the additions are under construction.

Site Conditions:

The existing site is very small. The existing buildings are inadequate for an early childhood center yet the location is in an older established neighborhood. The demolition of the existing building will sever the two remaining buildings during construction.

Program Requirements:

The building will be a typical 450 student Pre-K to ^K2nd grade facility. This addition will have typical core functions consisting of administration areas, guidance, cafeteria/ multi-purpose, music, art and special needs and 10 new classrooms. There will be the need for minor updating and remodeling of the existing classrooms.

Total Square Footage Requirements:

Base square footage for new building: 45,000. sf total gross.

Existing spaces to have minor remodeling: 24,000. sf net.

Add alternate for expanding multi purpose room square footage: 2,000. s.f. gross.

Demolition of a 200,000 cubic foot building with no asbestos.

Schedule of Alternates:

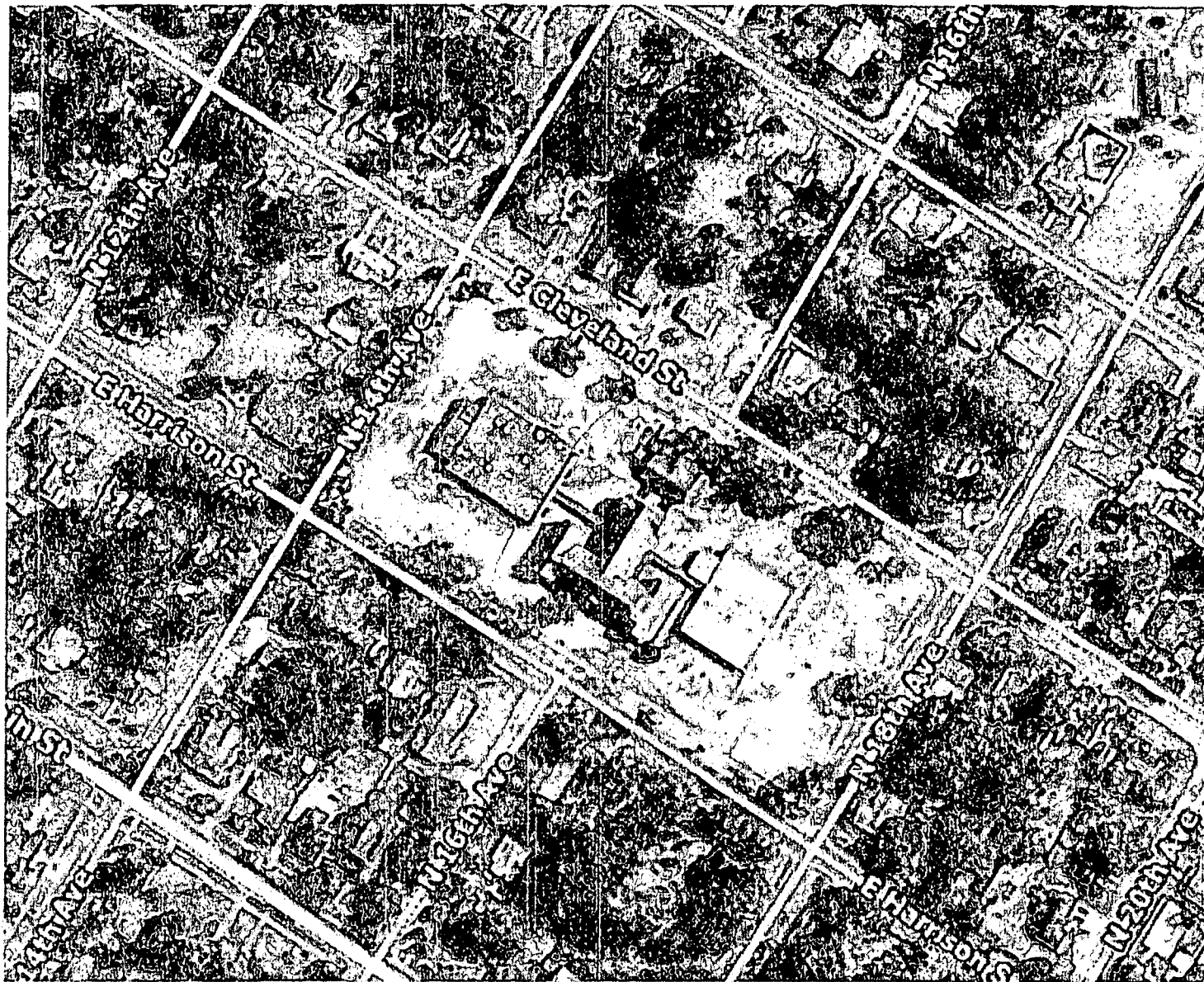
- An add alternate for expanding the multi-purpose room 2,000 s.f.

Additional Infrastructure Requirements:

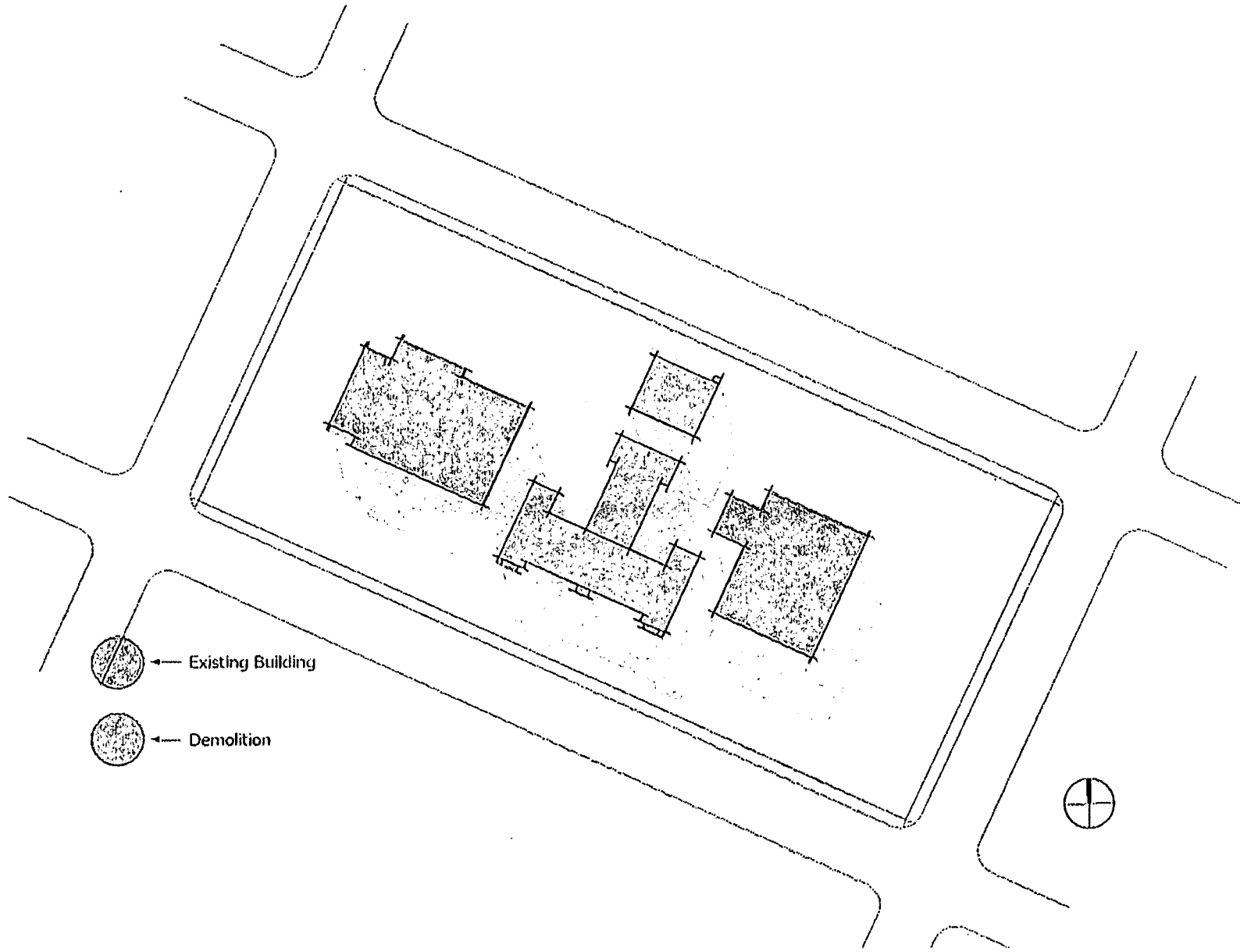
All new site utilities, service entrance, swing space during construction, temporary hallway around new building during construction and limited layout space during construction.

Additional Site Related Line Items:

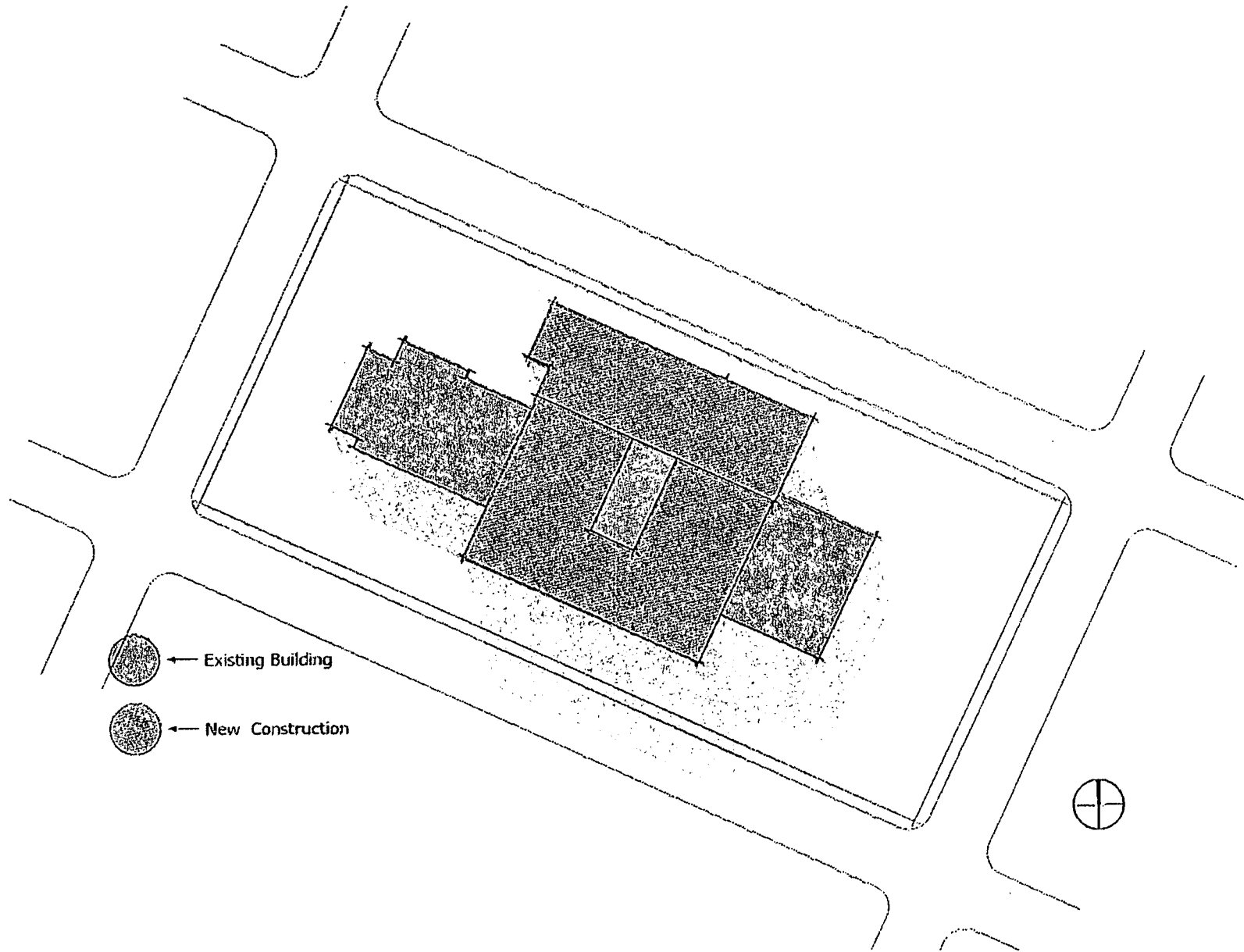
None at this time.



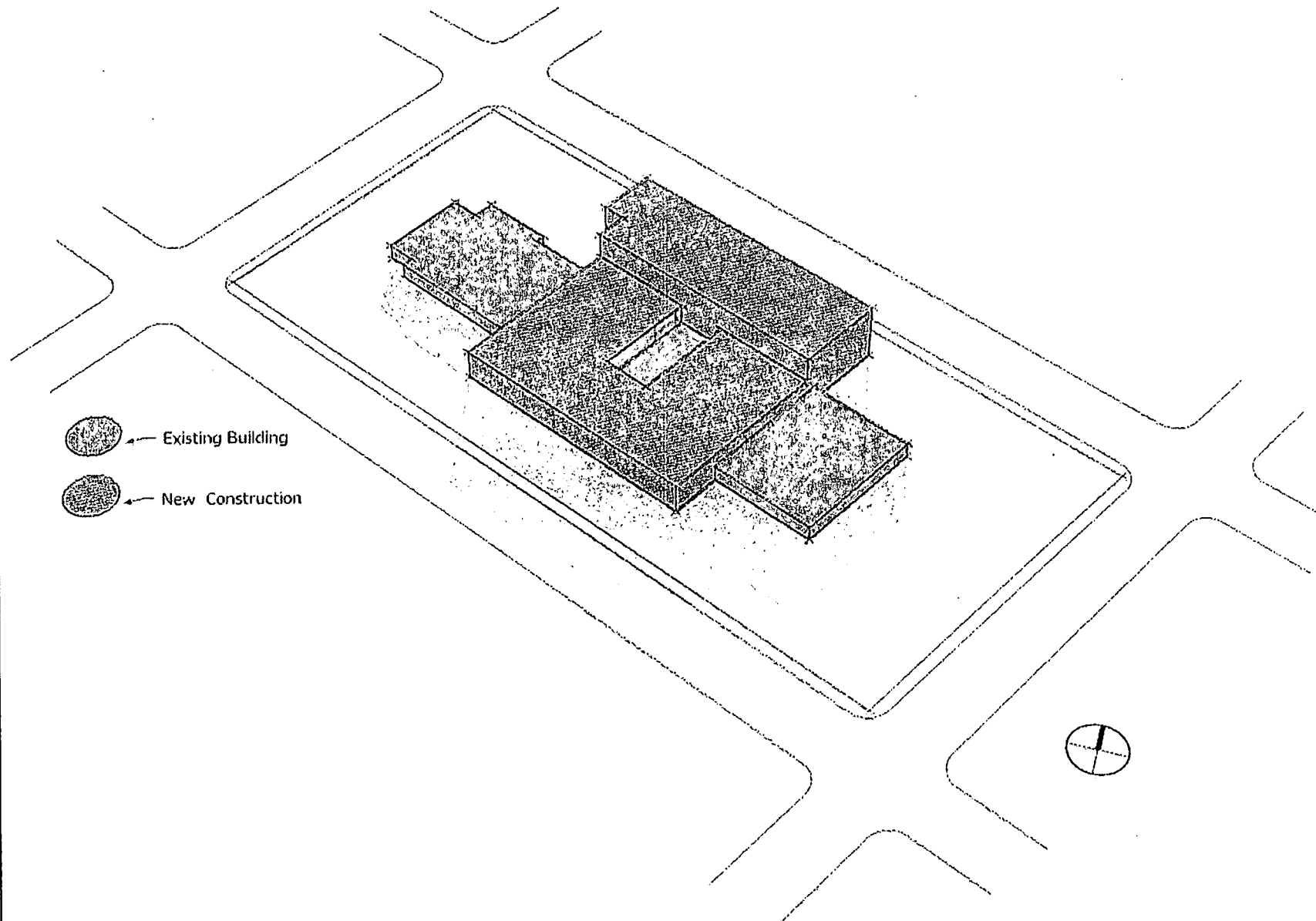
East Elementary School
Additions & Renovations
Dillon County School System



East Elementary School
Additions & Renovations
Dillon County School System



East Elementary School
Additions & Renovations
Dillon County School System



- Existing Building
- New Construction

East Elementary School
Additions & Renovations
Dillon County School System

Stewart Heights Elementary School

Brief Scope:

Stewart Heights Elementary School Addition will consist of an eight classroom addition with required toilet rooms and storage. There will also be an alternate for two additional classrooms.

Site Conditions:

The site is relatively flat and there are no existing structures that will be affected by the addition. All site amenities (playground equipment) will remain where located. The project will need a new transformer for power. James Street is the road to the North and is approximately 100' from the addition. The sewer will need run to James Street. Water should be available in James Street. It will be an additional 150' to West Calhoun Street for utilities if required.

Program Requirements:

8 Classrooms. Group Toilet rooms that will service this wing only. Two staff toilets. Storage Room. Their will be a conditioned connector to the existing building that will be approximately 10' wide by 25' long.

Provide an alternate for two additional classrooms

Total Square Footage Requirements:

Base square footage for Building: 9,000. sf gross.

Add Alternate square footage: 2,000. s.f. gross.

Schedule of Alternates:

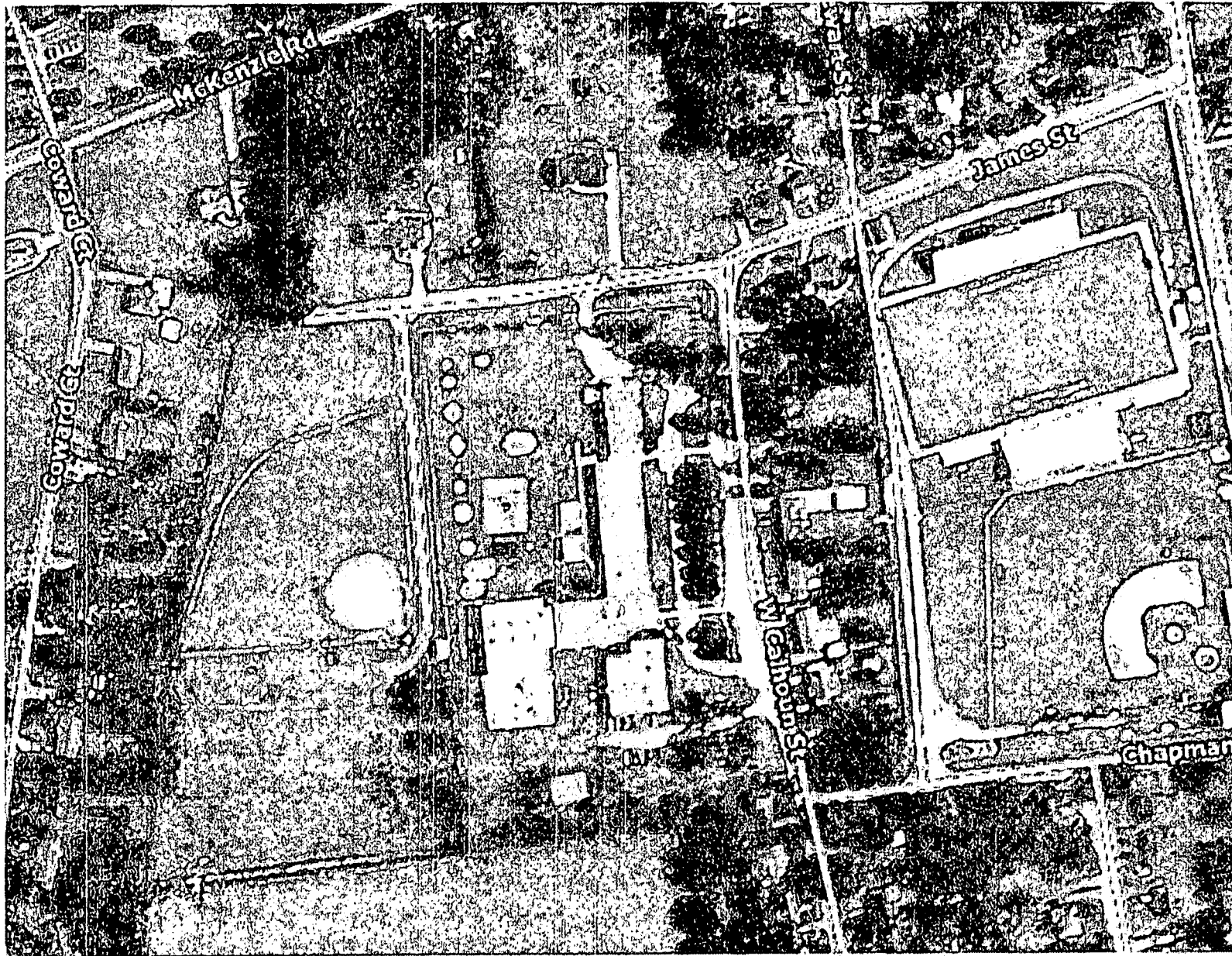
- An add alternate for two additional classrooms will be designed into the project.
-

Additional Infrastructure Requirements:

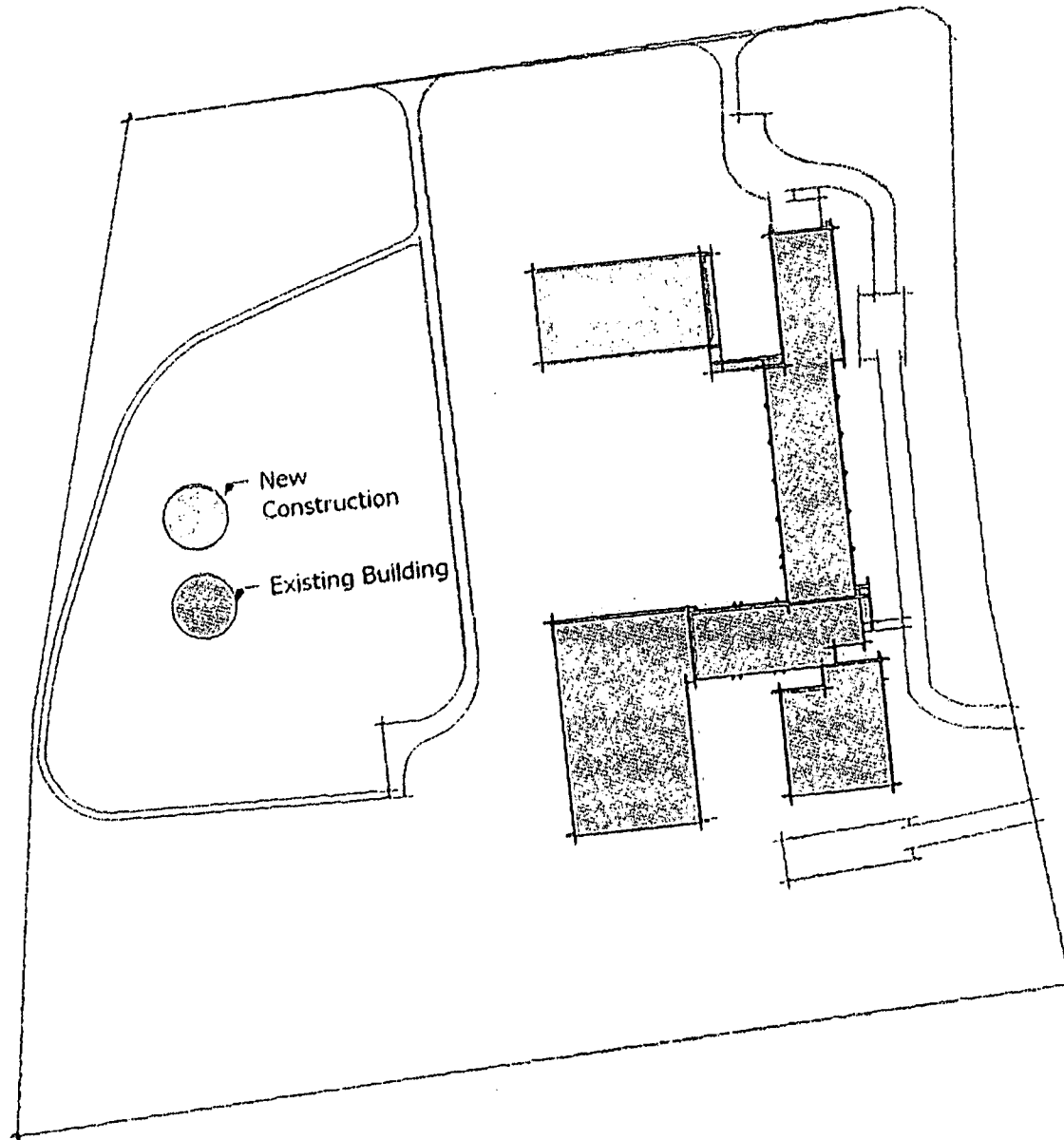
None.

Additional Site Related Line Items:

At this time we see no underground issues that may arise. The site for the addition is over existing playground fields.



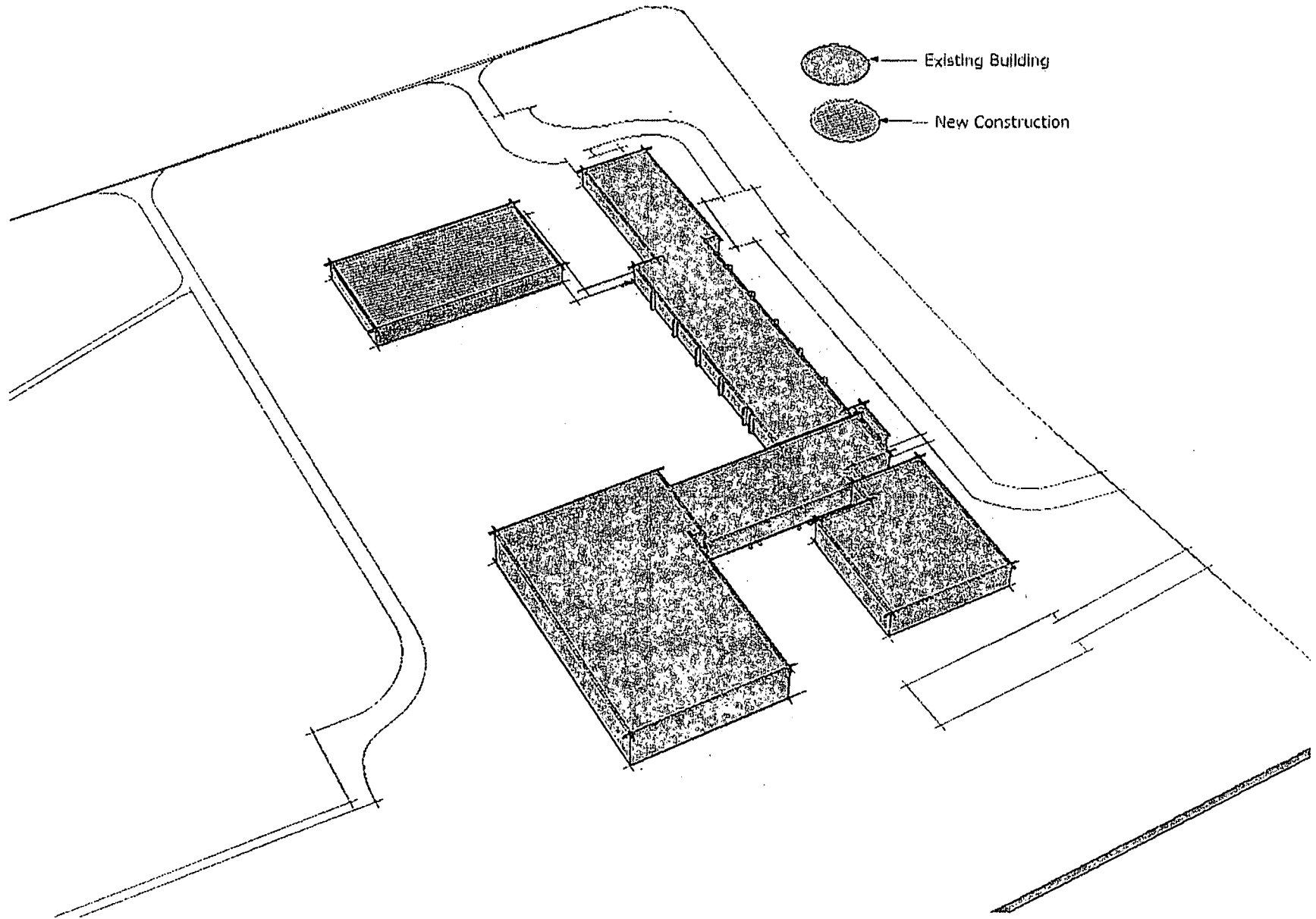
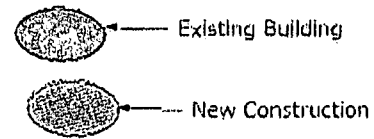
Stewart Heights Elementary Sch.
Additions & Renovations
Dillon County School System



Stewart Heights Elementary School
Additions & Renovations
Dillon County School System

Stewart Heights Elementary School Additions & Renovations

Sep/2007



Stewart Heights Elementary School
Additions & Renovations
Dillon County School System



Lake Marion High School & Technology Center

A Haven of Excellence and High Expectations

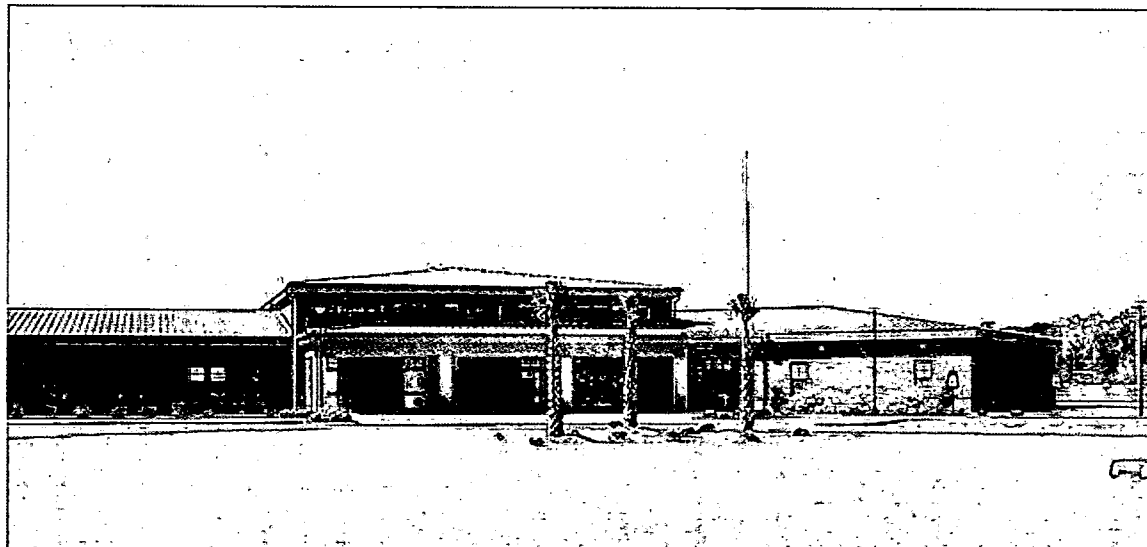
3656 Tee Vee Road (PO Box 650), Santee, SC 29142 / 803-854-9213 / FAX 803-854-5202

Lake Marion High
School & Technology
Center

Mon, March 31, 2008 Orangeburg Consolidated Sch... > Schools > Lake Marion High School & T...

Mission Statement

The mission of Lake Marion High School and Technology Center is to collaborate with parents and stakeholders to provide a safe learning environment that ensures all students become life-long learners and productive citizens in their communities and in a global society.



Ms. Rose Pelzer-Brower, Principal

Directions to School

What's New

07-08 Information

Newsletters

Student Handbook &
Course Description
Guide

School Information

School Calendar

Lunch Menu

Administration

Faculty

Office of Student
Services

Media Center

Athletics

Student
Organizations

School Improvement
Council

School Map

School History

SACS Documents

Useful Links

Contact Form

Home

Career and Technology Education Month

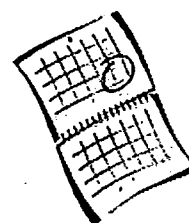


February is National Career and Technology Education Month. The CATE department is holding an open house for 8th and 9th grade students on Thursday, January 31, from 6:00 p.m. to 7:30 pm. Students will have an opportunity to register for CATE classes for the 08-09 school year.

Early Dismissal



3rd Nine Weeks Progress Reports



Progress reports for the 3rd nine week grading period will be issued to students during the week of February 25. Please contact the LMHS guidance department if you have any questions about a student's grades.

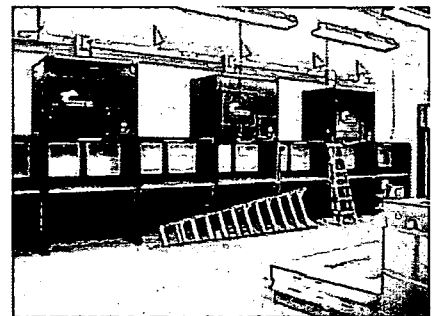
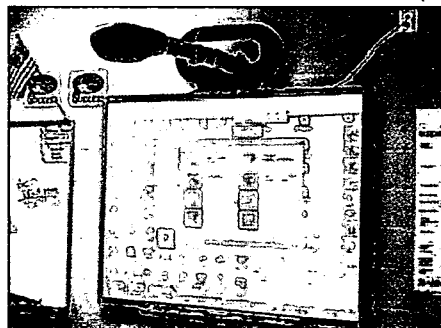
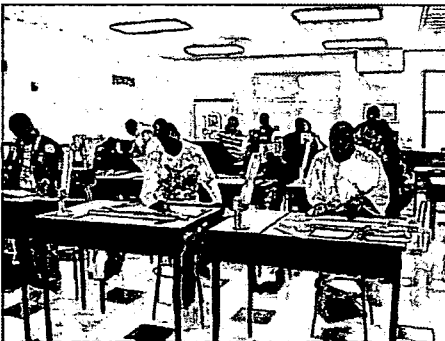
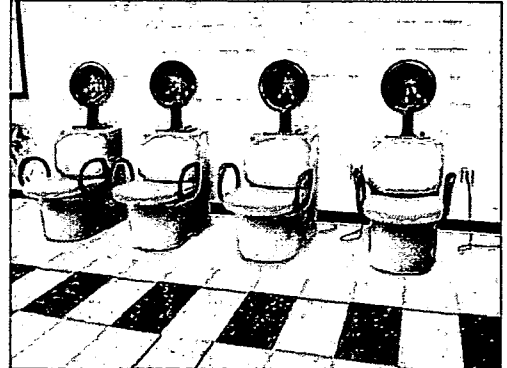
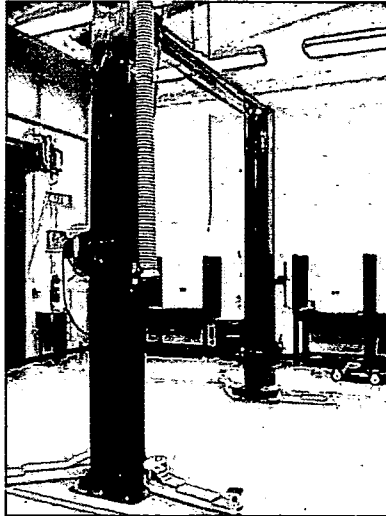
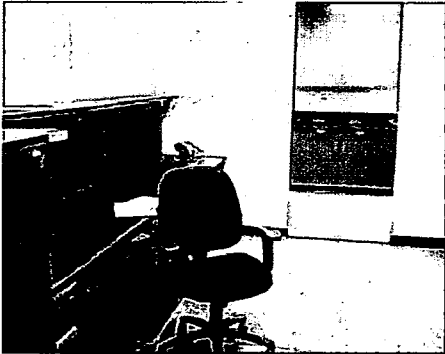
SACS



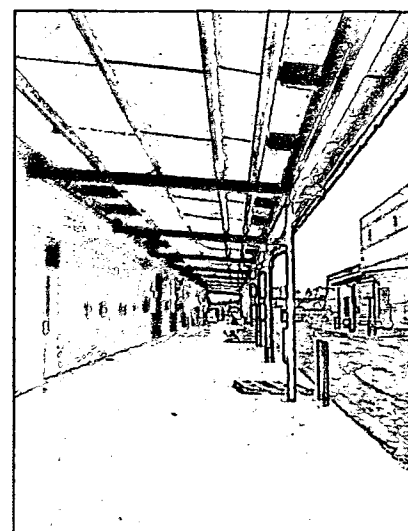
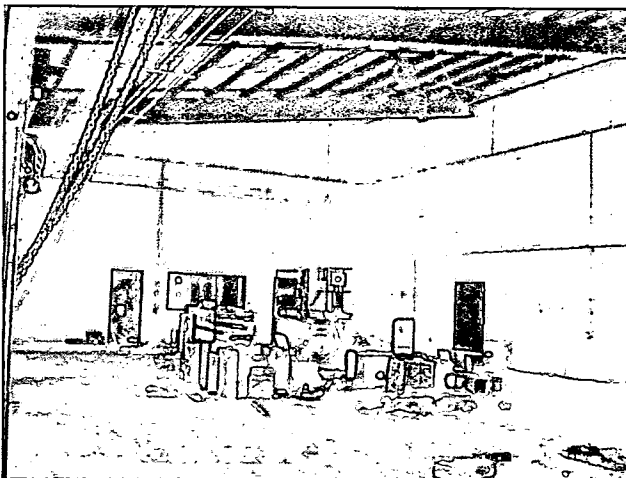
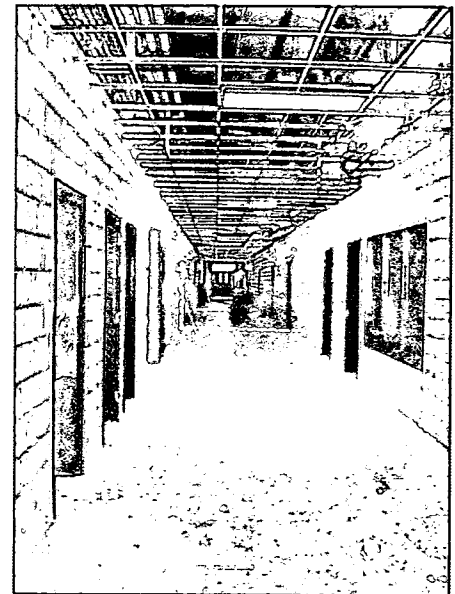
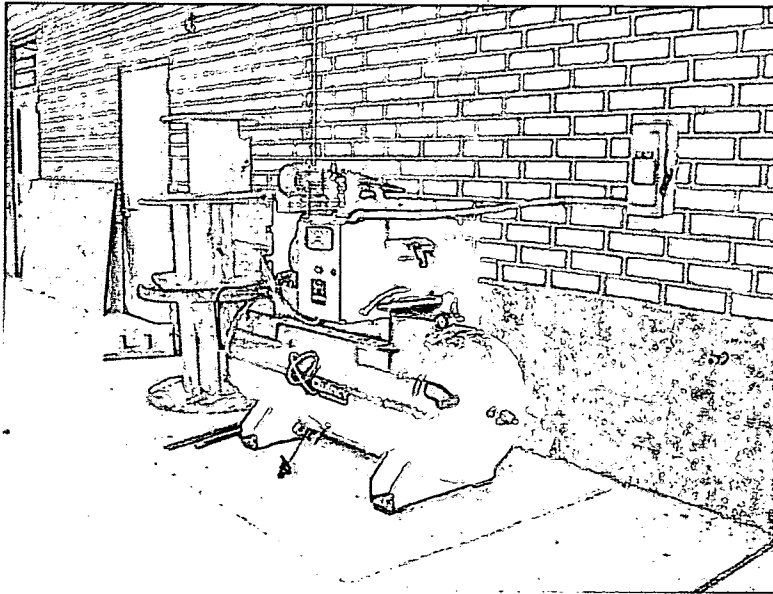
Lee County School District

New Career Wing

As of 01/10/08



Lee County School District
New Career Wing Construction History
As of 10/22/07



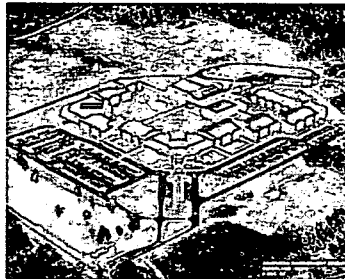
Our County
School Testing
School to Work
Safe & Drug Free
No Child Left Behind
Legislative Delegation
Volunteers
Area College Partners

A New Day

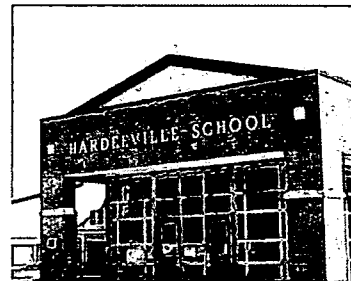
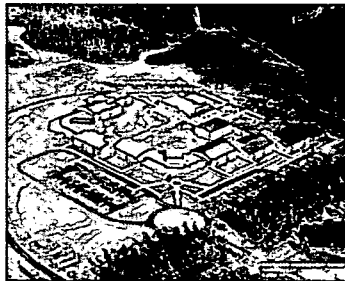


Ridgeland Campus....Open for Education!

Search



Hardeeville Campus... We are too!!



Hardeeville Elementary School

Hardeeville Elementary School

Pre-K to 6th Grade

(843) 784-8400

P. O. Box 527

150 Hurricane Alley

Hardeeville, SC 29927

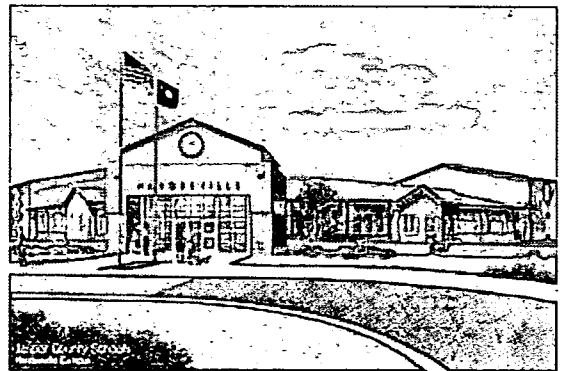
Dr. Barbara Baxter, Principal

School Improvement Council:

Dr. Robert Barrett, Chairperson

Parent Teacher Association:

Priscilla Green, President



Search

Ridgeland Elementary School

Ridgeland Elementary School

Pre-K to 6th grade

(843) 717-1300

FAX 717-1309

250 Jaguar Trail

Ridgeland, SC 29936

Sharyn Taylor Cox, Principal

School Improvement Council:

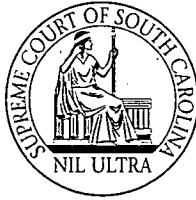
Roslyn Warren, Chairperson

Parent Teacher Association:

Cynthia Hasty, President



Search



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST. OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 31, 2008

Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Nelson Mullins Riley & Scarborough
P O Box 11070
Columbia, SC 29211

Re: Abbeville Cty Sch Dist v. State of SC

Dear Counsel:

This will acknowledge receipt of your Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record in the above entitled matter.

This is also to confirm with opposing counsel that any Return to the above motion should be served and filed in this office by 5:00 p.m. on Wednesday, April 2, 2008. Upon receipt of the return, the matter will be taken under consideration and you will be notified as soon as action has been taken.

Very truly yours,


CLERK

DES/jjp

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Attorney General Henry D. McMaster
Assistant Deputy Attorney General J. Emory Smith, Jr.
Swati Shah Patel, Esquire

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

1320 Main Street / 17th Floor / Columbia, SC 29201

Tel: 803.799.2000 Fax: 803.255.9038

www.nelsonmullins.com

Shelby K. Leonardi

Tel: 803.255.9597

Fax: 803.255.9166

shelby.leonardi@nelsonmullins.com

March 28, 2008

RECEIVED

MAR 28 2008

S.C. SUPREME COURT

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29211

RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Court of Appeals Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed for filing are the original and one (1) copy of the following documents:

- Initial Reply Brief of Appellants-Respondents
- Second Supplemental Designation of Matter to be Included in the Record on Appeal (including Certification)
- Proof of Service

Please file the originals and return clocked-in copies to us via our courier.

Also enclosed are an original and seven (7) copies of Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record and our check in the amount of \$25.00. Please file the original and six (6) copies and return the remaining clocked-in copy to us.

By copy of this letter to other counsel, we are serving each of them with a copy of the above-referenced documents.

The Honorable Daniel E. Shearouse
March 28, 2008
Page 2

Very truly yours,


Shelby K. Leonardi

SHL:ljs

Enclosures

cc: Robert E. Stepp, Esquire (via hand delivery; w/enclosures)
Elizabeth Van Doren Gray, Esquire (via hand delivery; w/enclosures)
A. Jackson Barnes, Esquire (via hand delivery; w/enclosures)
J. Emory Smith, Jr., Esquire (via hand delivery; w/enclosures)
Swati Patel, Esquire (via hand delivery; w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a

parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Katisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a

minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,
Lee County School District,
Marion County School District 7,
Orangeburg School District 3,
Lena Manning, individually, and as a taxpayer residing
in Allendale County and as Guardian ad Litem of
Courtney V.; Courtney V., a minor, by and through
Lena Manning, as Guardian ad Litem; Pamela
Williams, individually, and as a taxpayer residing in
Dillon County, and as parent and Guardian ad Litem of
Katisha W.; Katisha W., a minor, by and through
Pamela Williams as Guardian ad Litem; Eddie Wright,
individually, and as a taxpayer residing in Florence
County, and as parent and Guardian ad Litem of
Brandon F.; Brandon F., a minor, by and through
Eddie Wright as Guardian ad Litem; Brenda Brooks,
individually, and as a taxpayer residing in Hampton
County, and as parent and Guardian ad Litem of Tyrin
B.; Tyrin B., a minor, by and through Brenda Brooks
as Guardian ad Litem; Marva Tigner, individually, and
as a taxpayer residing in Jasper County, and as parent
and Guardian ad Litem of Bryan T. and Bradley T.;
Bryan T., a minor, by and through Marva Tigner as
Guardian ad Litem; Bradley T., a minor, by and
through Marva Tigner as Guardian ad Litem; Gail Y.
Harriott, individually, and as a taxpayer residing in Lee
County and as parent and Guardian ad Litem of
Rashade H.; Rashade H., a minor, by and through Gail
Y. Harriott, as Guardian ad Litem; Linda Carraway,
individually, and as a taxpayer residing in Marion
County, and as parent and Guardian ad Litem of
Kimberly W.; Kimberly W., a minor, by and through
Linda Carraway as Guardian ad Litem; Bernice Profit,
individually, and as a taxpayer residing in Orangeburg
County and as parent and Guardian ad Litem of Russell
H.; Russell H., a minor, by and through Bernice Profit,
as Guardian ad Litem, are

Appellants-
Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*

of the Senate and as a representative of the South
Carolina Senate; Robert W. Harrell, Jr., as
Speaker of the House of Representatives
and as a representative of the South Carolina
House of Representatives, ...

Respondents-
Appellants,

and

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ...

Respondents.

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO STRIKE POST-TRIAL
MATTER OUTSIDE OF RECORD FROM BRIEFING AND FROM THE RECORD**

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, Appellant-
Respondents ("Plaintiffs" or "Plaintiff Districts") submit this Reply in support of their Motion
to Strike Post-Trial Matter.

INTRODUCTION

Defendants' post-trial information is not appropriate for judicial notice by trial courts or
appellate courts. Even if the information were accurate, it is incomplete because Plaintiffs
have had no opportunity to rebut it with related information that would destroy or undercut the
conclusions Defendants urge upon this Court. Further, Defendants claim that all the material
is "presumably uncontroverted" and indisputable and that the material Defendants selected
from Plaintiff Districts' websites constitute admissions by a party. They are incorrect on all
points.

Based on this post-trial information, Defendants argue that this Court should dismiss
Plaintiffs' appeal as moot, leaving the parties to return to the trial court to re-litigate the case.

However, the post-trial matter is not relevant to many issues raised in Plaintiffs' appeal and does not in any way render this appeal of those issues moot. A decision by this Court on the merits of all issues raised in this appeal is necessary to resolve those outstanding issues between the parties.

Further, the schools are continuing to operate and the General Assembly is continuing to legislate. If the Court vacates the trial court order, as Defendants argue it should, the result would be to send the case back to the trial court for rulings on the effects of post-trial information on the public school system. Any appeal from such a future trial court decision would undoubtedly be met at this Court, like this appeal, with an argument from Defendants that the circumstances have again changed because the schools continue to operate, and the General Assembly continues to legislate. The case would never come to an end, the children of South Carolina will continue to suffer, and the issues would never be finally resolved.

ARGUMENT

A. The Post-Trial Information is Not Appropriate for Judicial Notice.

“For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof.” Masters v. Rodgers Dev. Group, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984) (citing Moss v. Aetna Life Ins. Co., 267 S.C. 370, 228 S.E.2d 108 (1976), and State v. Broad River Power Co., 177 S.C. 240, 181 S.E. 41 (1935)). “Unless a fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable of verification by reference to readily available sources of indisputable reliability, it is not subject to judicial notice.” Masters, 283 S.C. at 255, 321 S.E.2d at 194.

Moreover, taking judicial notice for the first time on appeal is dangerous, as noted by the South Carolina Court of Appeals:

Appellate courts are generally reluctant to notice adjudicative facts even when those facts may be absolutely reliable. See United States v. Jones, 580 F.2d 219 (6th Cir. 1978) (applying Fed. R. Evid. 201); Turner, Judicial Notice and Federal Rule of Evidence 201-A Rule Ready For Change, 45 U. Pitt. L. Rev. 181, 196 (1983). Notice of "facts" for the first time on appeal may deny the adverse party the opportunity to contest the matters noticed; it may also violate the general principle that appellate review should be limited to the record. Comment, The Presently Expanding Concept of Judicial Notice, 13 Vill. L. Rev. 528, 560 (1968); Morgan, Judicial Notice, 57 Harv. L. Rev. 269, 293 (1944). Finally, appellate courts, limited to the "cold" record, cannot be as sensitive to the appropriateness of judicial notice as the trial judge. Turner, supra at 196. For the foregoing reasons we hold that original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable.

Masters, 283 S.C. at 256, 321 S.E.2d at 197.

Here, Defendants' post-trial allegations do not meet the strict requirements for judicial notice. Plaintiff Districts' websites serve many purposes, including as public relations tools, and the information contained in them is not necessarily indisputable or definite. Websites are highly changeable and include links to information and statements by other entities and persons which the Plaintiff Districts cannot authenticate or verify. See, e.g., <http://www.dillon2.k12.sc.us/home/bondreferendum.asp> (Dillon 2's bond referendum page, updated December 7, 2007 after the trial court's orders and containing links to newspaper articles and videos) (**Exhibit A**); <http://www.dillon2.k12.sc.us/home/welcometodillon1.asp> (Dillon 2's community page containing links and information from multiple other entities, including South of the Border) (**Exhibit B**); <http://www.florence4.k12.sc.us/> (Florence 4's website stating that it is "a work in progress" and containing links to multiple pages that are "under construction") (**Exhibit C**); <http://www.leeschoolsk12.org> (Lee County's page on

construction of its Career Wing, including links to photographs on various dates, all after the trial court's orders) (**Exhibit D**); <http://www.leeschoolsk12.org> (Lee County's News page containing items for the newspaper, updated on multiple dates after the trial court's order) (**Exhibit E**). Because of their changeability due to continuous updating and their inclusion of third party statements, information from websites do not have the reliability necessary to qualify as material suitable for judicial notice.

Defendants' reliance on the websites to show that the statements in them are "public knowledge" is incorrect and insufficient to qualify them as appropriate for judicial notice. In addition, judicial notice of such post-trial evidence would strip Plaintiffs of their right to be heard and deprive them of the opportunity to present evidence rebutting Defendants' claims. Further, Defendants admit this Court has not addressed whether South Carolina courts may take judicial notice of information found on a website. (Defs.' Br. 7.) The Court would set a dangerous precedent were it to take judicial notice on the basis of a website on the internet, as the Court of Appeals previously described in Masters.

The only precedent Defendants cite to support their argument that the Court should take judicial notice of website information is federal law from other districts and circuits and is not binding on this Court. Furthermore, all the cited cases address the propriety of a *trial court* taking judicial notice of website information and, as the Masters court recognized, appellate courts should be held to a higher standard when taking judicial notice of facts presented for the first time on appeal. Finally, the cited courts took judicial notice of website information that was not subject to interpretation or clarification. See, e.g., United States v. Chapel, 41 F.3d 1338, 1342 (9th Cir. 1994) (affirming trial court taking judicial notice of a bank's FDIC insured status because the issue was "substantial and undisputed"); Mitchell v. Nix, No. 105-

2349, 2007 WL 779067 at 4 (N.D. Ga. Mar. 8, 2007) (taking judicial notice of the release dates of five former prisoners). The information Defendants ask the Court to take judicial notice of in this case, however, goes to the heart of the case and is subject to clarification.

Thus, the Court should not take judicial notice as urged by Defendants because the facts are not indisputable, as required by South Carolina courts. Additionally, to take judicial notice of the “facts” Defendants assert would deny Plaintiffs an opportunity to contest such facts and would violate Rule 210(c) of the South Carolina Rules of Appellate Practice. Accordingly, this Court should deny Defendants’ request regarding judicial notice.

B. If the Information Contained in Post-Trial Websites is Already in the Record From Other Sources, as Defendants Claim, the Post-Trial Website Information is Unnecessary.

This Court has held that it “will not consider any fact which does not appear in the transcript of record nor will any fact stated in an exception be considered unless it appears from the record that it is true. Likewise, counsel is prohibited from embodying in their briefs any fact which does not appear in the record. Rule 8, Section 7, of the Rules of this Court. Nothing should be omitted from the transcript of record that is necessary to a proper understanding and decision of the questions to be decided.” S.C. State Highway Dep’t v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962).

Defendants claim that the information concerning facilities in Plaintiff Districts that they selected from visits to the districts’ websites is already supported by testimony in the trial record, citing to several passages of testimony. (Defs.’ Return at 8-10.) Although Plaintiffs disagree that the testimony supports Defendants’ arguments, any additional information from websites is unnecessary on this appeal.

C. Information in Plaintiff Districts' Websites Cannot be Characterized as Admissions by Parties or Conclusive as to All Facility Issues.

Defendants seek to use information regarding facility upgrades—either new buildings or renovations to some buildings—selected from Plaintiff Districts' websites to argue that all of Plaintiffs' facilities are either new or will be new, or they are completely renovated or will be completely renovated.

First, no such statements can be found in any of the websites. Defendants urge the Court to draw that conclusion, but the websites do not support it. For example, as of April 4, 2008, the Dillon 2 website contained only miscellaneous, uncaptioned photographs of six schools, information provided by the architect (not statements by the district itself) on **proposed** building and additions plans for three schools, and miscellaneous newspaper articles, unauthenticated and written by anonymous authors. See <http://www.dillon2.k12.sc.us/home/construction.asp>. The website for Marion 7 has no information describing its facilities, and certainly no statement supporting Defendants. See <http://www.marion7.k12.sc.us/education/district/district.php?sectionid=1>.

Second, the websites contain statements and information contributed or written by persons other than the managing agents of the Plaintiff Districts. For example, the websites have proposed plans from outside architects, newspaper articles, and much information to which no contributor is identified. Clearly, such statements and information could not be construed as admissions by a party, simply because a party included links to them on its website.

Third, Defendants' simple assertion that the websites are "public" does not establish their reliability or notoriety sufficient to allow courts to take judicial notice of them.

Finally, if the Court were to take judicial notice of the material offered by Defendants, Plaintiff should be allowed to supplement the record with additional information relating to the facilities. Substantial facility issues remain, and Plaintiffs should not be prejudiced by the inclusion of incomplete information selected by Defendants from websites.

D. Legislative Provisos May Be Judicially Noticed, if Relevant, but Not the Disputed "Facts" Asserted by Defendants Based on the Provisos.

Contrary to Defendants' argument, Plaintiffs did not identify provisos passed by the General Assembly as items that should be excluded. The "facts" and conclusions Defendants urge on this Court from those provisos, however, are inappropriate and are disputed by Plaintiffs.

For example, Defendants cited to the General Appropriations Bill of 2007-08, Part IB, Proviso 1.3, Act 117 of 2007, for the purpose of showing projections by the General Assembly of 2007-08 per-pupil funding for every district, not only from the State's Education Finance Act ("EFA") formula but also from unidentified federal and local sources. (See Defs.' Initial Brief at 19.) The federal and local numbers are questionable and not verified in any way. Defendants have no control over the federal distribution of funding; their projections of amounts from federal sources are not confirmed or sourced in any way; and their inclusion of projected federal funding in the state budget proviso is essentially meaningless. Defendants also do not explain their projections of "per pupil" local funding in the 2007-08 state appropriations bill, except to claim that it does not include revenues from local bond issues. The local funding projections also do not account for the revenue swap effected by Act 388 of 2006 in which the new state sales tax is substituted for certain local property taxes. The

figures in this bill are nothing more than projections, and in the case of the federal and local funds, are unexplained and unverified estimates.

The General Assembly first began including projections of federal and local funding in the 2003-04 General Appropriations Bill, and their projections have historically been wildly inaccurate. In the 2005-06 General Appropriations Bill, for example, the General Assembly projected the average total "per pupil" funding level for 2005-06 at \$9,826, including state, federal and local funds but excluding revenues of local bond issues. See Part IB, Proviso 1.3, Act 115 of 2005. According to the State Department of Education's InSite chart—which is based on the school districts' actual audited financial statements and showing the state averages for fiscal year 2006—the average per-pupil spending level was actually \$8,159, including state, federal, and local funds but excluding capital improvement costs, (see http://ed.sc.gov/agency/offices/finance/insite/documents/06Insitestate_001.xls), a difference of \$1,667 per pupil or a total funding error of **\$1,157,968,214** (using a total student count of 694,642 as calculated by InSite, id.) or **\$1,117,960,214** (using a total student count of 670,433, as projected by the General Assembly in its budget proviso). The projected per-pupil funding stated in Defendant's initial brief, taken from the General Assembly's unexplained projections, clearly is not credible proof of actual funding. This is not the type of information that should be judicially noticed.

The other proviso cited in Defendants' Return was a 2007 proviso in which the General Assembly acknowledged that "[t]here is a definite and compelling need for new and renovated school facilities in Dillon County, inasmuch as many of the existing school facilities therein are dilapidated and obsolete." The proviso authorized the three school districts in Dillon County, including Plaintiff Dillon 2, to utilize appropriation-based acquisition agreements and to hold a

referendum for the issuance of general obligation bonds to be repaid by the proceeds from a sales and use tax for the construction and renovation of school facilities in all three districts. See Act 137 of 2007. Plaintiffs have no argument against this Court taking judicial notice of this proviso. However, the conclusion urged by Defendants—that the school facilities in Dillon 2 are now completely re-built or renovated and no issues of safety or adequacy remain—is unwarranted. Such a conclusion requires a leap from the authorization in the proviso by the General Assembly to raise local funds to meet the "definite and compelling need for new and renovated school facilities" to a conclusion that the facilities, which even the General Assembly characterized as "dilapidated and obsolete," are currently entirely safe and adequate. The bond referendum was not passed until December 2007, and the design and construction has barely had time to begin, if it has begun at all. Also, neither the trial record nor the post-trial information proffered by Defendants supports an argument that all facility issues have been or even will be resolved as a result.

E. Plaintiffs Did Not Request, and Had No Opportunity to be Heard, on the Trial Court's Judicial Notice of School or School District Report Cards and the Information Contained in Them is Subject to Dispute.

The trial court incorrectly stated in its July 12, 2007 Order that both parties had requested it to take judicial notice of all report cards issued during the pendency of this case. Plaintiffs have searched the record and have located no such request by either party. After the evidence was closed, Defendants requested in their closing argument that the court take judicial notice of the 2004 report cards. (Tr. (12/9/04) 233:7-11.) Defendants made no request for judicial notice of other report cards.

Plaintiffs made no request for judicial notice of any report cards. The only information typically found on report cards that Plaintiffs were aware the trial court had taken judicial

notice of prior to the close of evidence was of 2004 PACT scores, 2004 HSAP (exit exam) scores, and 2004 AYP (adequate yearly progress) status. See Exhibits A and B, attached to Plaintiffs' Motion to Strike. Plaintiffs had no opportunity prior to the close of evidence to be heard or to contest any other matters taken into evidence by the trial court through judicial notice, in violation of Rule 201(e), SCRE.

Material contained in the report cards contains at least some unreliable information that is not appropriate for judicial notice. For example, Defendants attempt to rely on graduation rates as reported on 2004 school report cards. However, these graduation rates are known to be unreliable and were calculated in a manner different from the graduation rates used at trial. The graduation rates entered as exhibits at trial were based on data from the National Center for Education Statistics (NCES). (See Pls.' Exs. 6094 (raw data) and 6858 (graduation rates).) By contrast, the report card graduation rates (which only appeared on report cards beginning in 2003) are based on longitudinal data on students that is incomplete and that lends itself to overstating the actual graduation rates. The EOC has recognized problems with the "precision and accuracy" of the graduation rates published in the report cards because of these data limitations. The EOC now requires that until more accurate data is available in 2009, all report cards must include a warning that the graduation rates published in the report cards may be higher than the actual graduation rates. See, e.g., 2007-08 Accountability Manual at 36-37 (found at <http://www.sceoc.com>) (attached as **Exhibit F**). Because the 2004 graduation rates cited by the Defendants, which are found only on report cards that were not judicially noticed during trial, are known to be unreliable and were calculated in a manner different from the graduation rates used at trial, they are not proper subjects for judicial notice.

CONCLUSION

Based on the law and facts discussed in Plaintiff's Motion and this Reply, the Court should strike post-trial evidence from briefs and arguments.

Respectfully submitted,

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(803) 799-2000

April 4, 2008
Columbia, SC



Dillon School District Two

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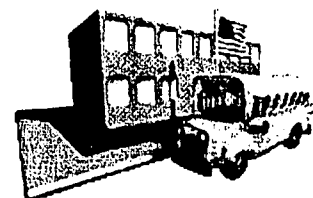
Bond Referendum

December 4, 2007

Approved By Voters

Updated

(12/7/07)



Proposed Building Plan

Dillon Middle School

East Elementary School

Stewart Heights Elementary School

Information

- Dillon Herald Editorial September 6, 2007
- Dillon Herald Editorial September 13, 2007
- Sales Tax Referendum Meeting Held September 17, 2007
- Residents voice concern over new Dillon 2 middle school site - News - South Carolina Now (SCNow.com)
- Dillon Herald Editorial September 26, 2007

EXHIBIT

A



- [Dillon Herald September 27, 2007](#)
- [A Look At Our Public Schools](#) *(Requires Windows Media Player)*
- [Dillon County school bond referendum concerns addressed - News - South Carolina Now \(SCNow.com\) October 4, 2007](#)
- [Dillon County Schools: Building For Our Future](#) *(Requires Windows Media Player) NEW 11/19/20*
- [The State 12-04-2007 Dillon County schools in crisis](#)
- [The State 12-05-2007 Millions to go to Dillon schools](#)
- [Dillon County approves school bond - News - South Carolina Now \(SCNow.com\)](#)
- [By Betsy Finklea - Dillon Herald Bond Referendum Passes](#)

For Additional Information Contact**Dillon County Board of Education**

Richard Schafer, Chairman

(843) 774-8711

Dillon School District Two

D. Ray Rogers, Superintendent

(843)-774-1200

843-774-1200 405 West Washington Street, Dillon, SC 29536 843-774-1203 (fax)

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- [Dillon County Chamber of Commerce](#)
- [Dillon County Development Board](#)
- [Dillon, SC Weather!](#)
- [Dillon Yellow Pages](#)
- [Dillon County Obituaries 1800 - 2003](#)
- [Dillon County Newspapers - SCGenWeb](#)
- [Carolinanow SC: Pee Dee District](#)
- [Search US: Dillon, SC](#)
- [Dillon County Airport](#)
- [Dillon County, South Carolina - SCGenWeb - Genealogy](#)

Visitor Information

- [Dillon, South Carolina - Hotels, Motels](#)
- [South of the Border](#)
- [Local Businesses around Dillon, SC](#)

Real Estate Information

- [Dillon County Realtors](#)
(updated 7/10/07)

Links to Additional Realtor Information

- [Dillon, South Carolina real estate, SC REALTORS®](#)
- [Dillon South Carolina - Residential Real Estate](#)
- [Discover Our Town Dillon, SC](#)
- [Dillon, South Carolina REALTORS®, HomeGain](#)
- [List of Contractors in Dillon, South Carolina](#)

Employment

- [Discover Our Town Dillon, SC](#)
- [Dillon South Carolina SC - Jobs, Employment](#)
- [South Carolina Employment Security Commission](#)

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- [Dillon County Library](#)
- [Dillon County Sheriff's Department](#)

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- [Dillon Data](#)
- [Dillon School District One](#)
- [Dillon County Technology](#)
- [Dillon School District Three](#)
- [Dillon County Education](#)



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- ➡ [Visitor In](#)
- ➡ [Real Es](#)
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- ➡ [Realtor](#)
- ➡ [Employ](#)
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EXHIBIT

B

Center

843-774-1200 405 West Washington Street, Dillon, SC 29536 843-774-1203 (fax)

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Daily Announcements

We are very happy to have our new web presence. It is still a work in process. Please look around and let us know how you feel about it.

Our thanks goes out to our Web Masters Stephanie S. Bolden, Amy Fouse, Michelle Heyward, Patricia Wright, Robert McDonald, and William Livingston for their continuous work on this project.

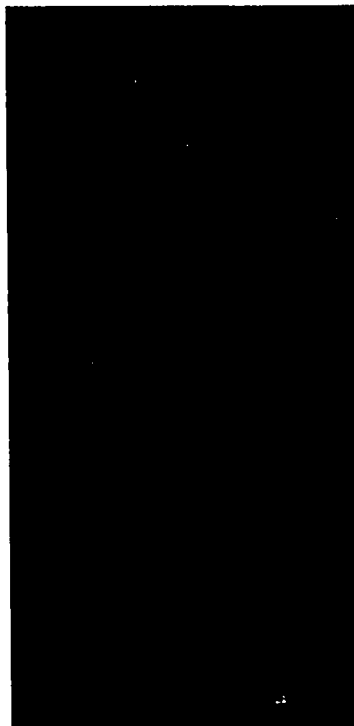
District Mission Statement

THE MISSION OF FLORENCE COUNTY SCHOOL DISTRICT FOUR, IN UNISON WITH PARENTS AND COMMUNITY, IS TO GUARANTEE AN EXCELLENT EDUCATION FOR EACH STUDENT BY PROVIDING HIGHLY QUALIFIED PERSONNEL, RIGOROUS CURRICULUM, AND SAFE AND WELL-MAINTAINED FACILITIES.

A Message from the Superintendent

As superintendent of Florence County School District Four, I am committed to ensuring that students, parents, staff



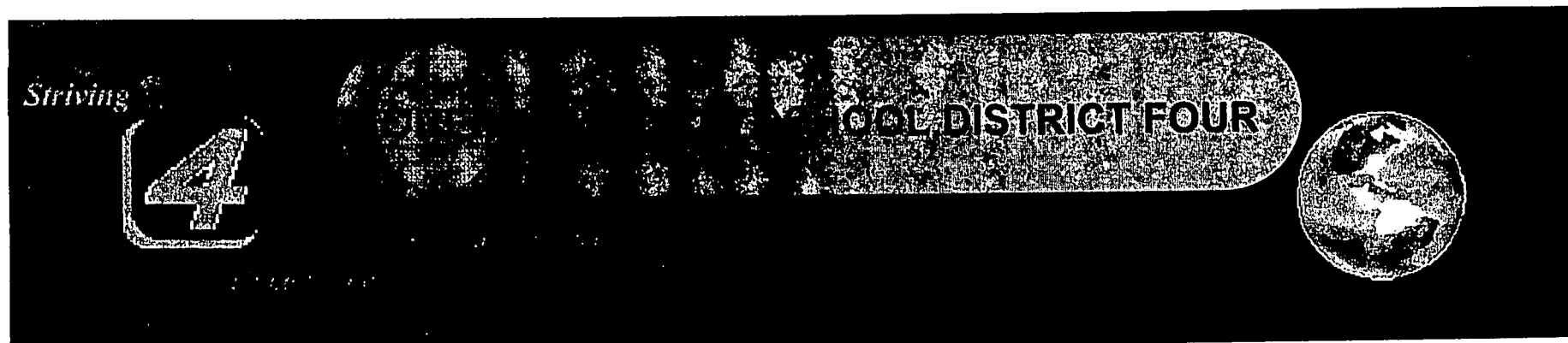


Bertha W. McCants, Ed.D.

members and the community at-large are aware of the strategies that must be consistently implemented for sustained student achievement. We all have roles to play on our journey to systematic success; as we embrace local, state and federal accountability mandates.

There are great things happening throughout the district. We have talented students who excel in academics, the arts and athletics. Our goal is to develop our students' character, as well as, their minds to become contributing citizens with compassion for mankind. Our staff members are top-notch professionals.

We invite you to visit our schools and take a personal tour of our buildings and grounds. There is excitement in the air!



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Job Listings

Florence County School District Four

Positions to be advertised – Week of 3/31/08

ELEMENTARY

Media Specialist

Elementary

Early Childhood

MIDDLE

Assistant Principal

Science

HIGH SCHOOL

Spanish

Chemistry

English

Math

School Psychologist II or III, Speech Pathologist (CCC) & Special Ed;



Science & Math (Alternative School)

Cafeteria Supervisor/Manager

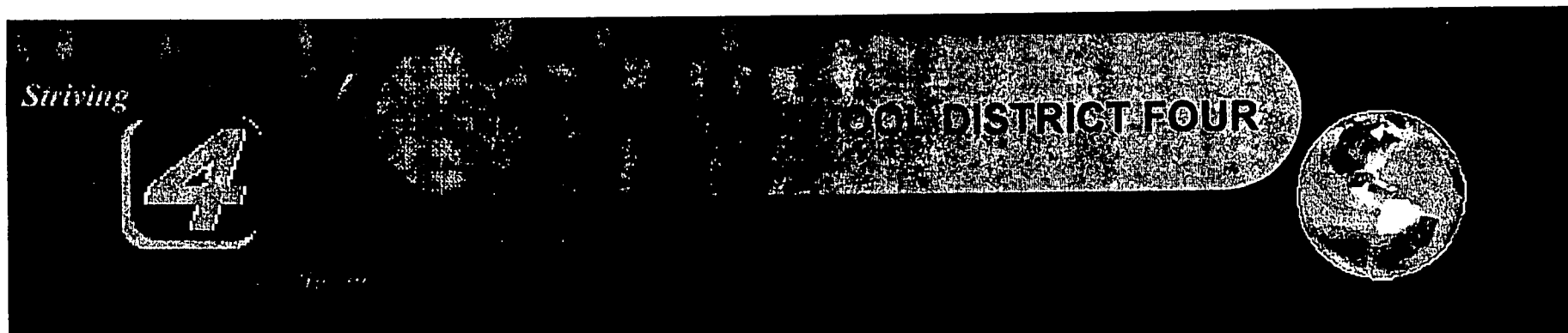
For more information contact:

HR Department

843-346-5391 ext. 312 or email HR@florence4.k12.sc.us

EQUAL OPPORTUNITY EMPLOYER

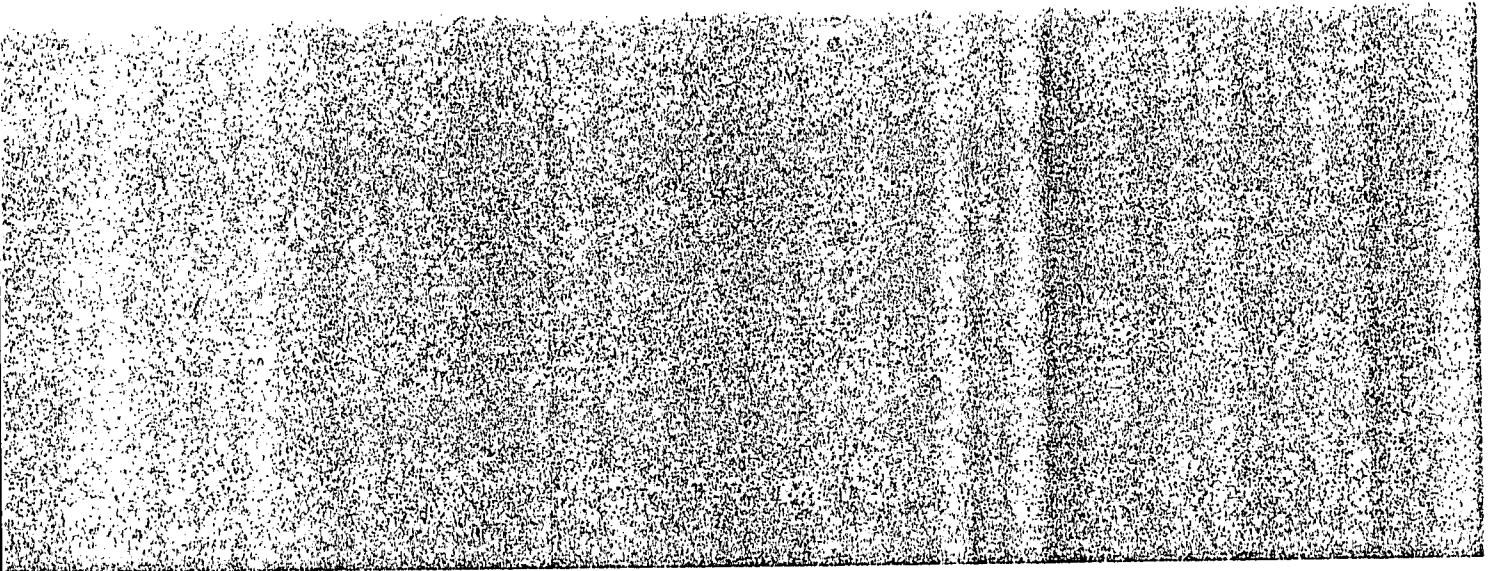




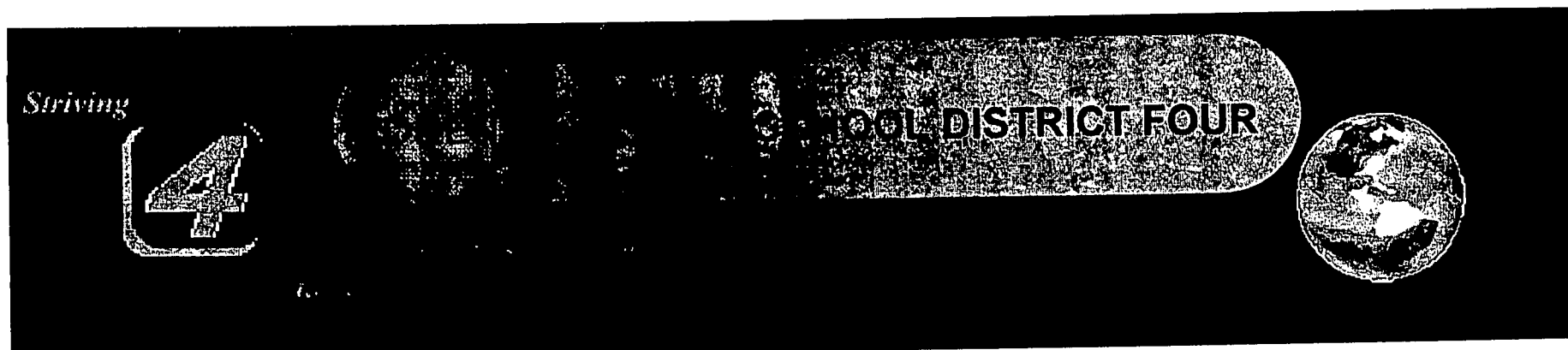
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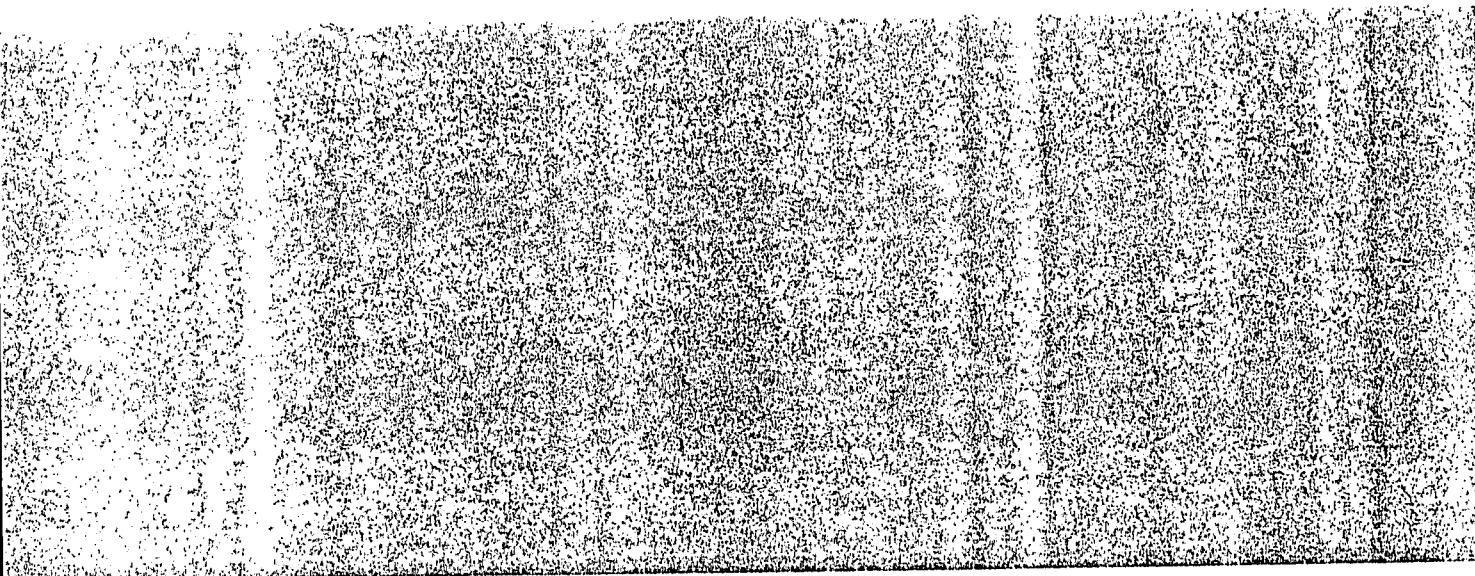
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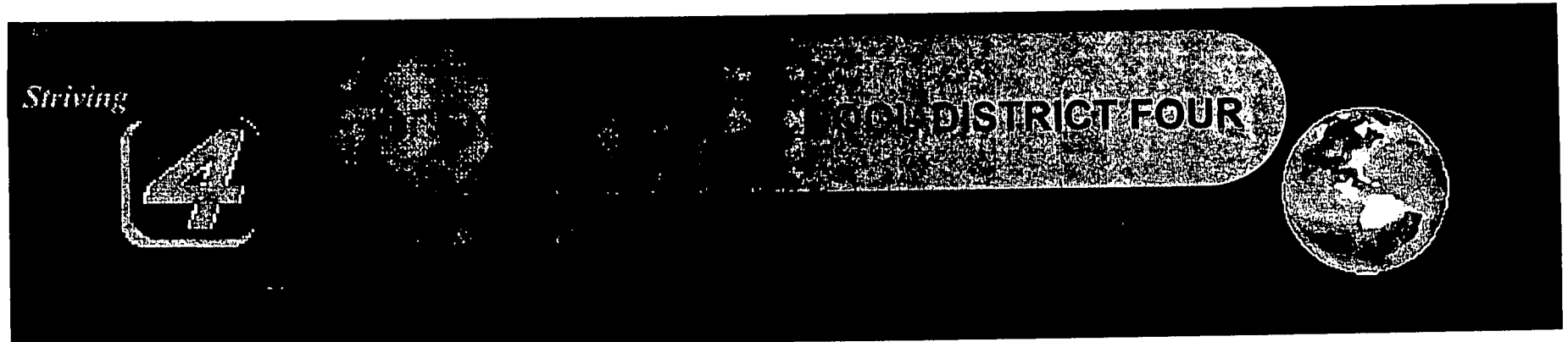
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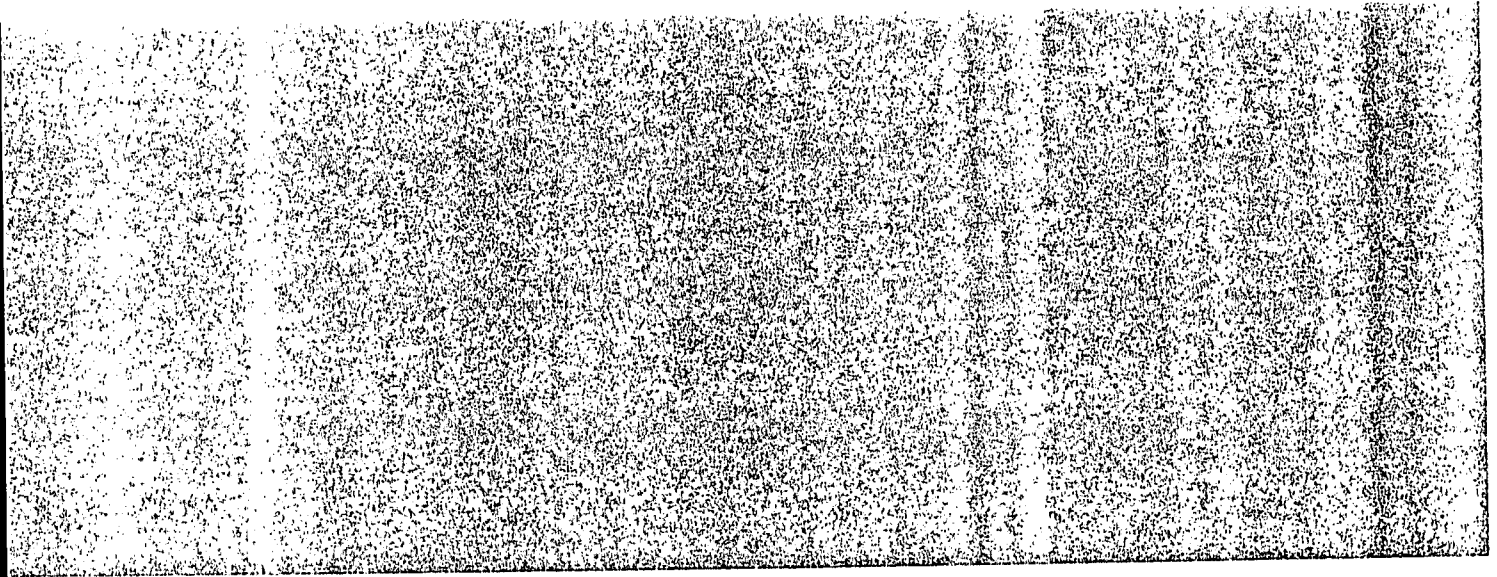
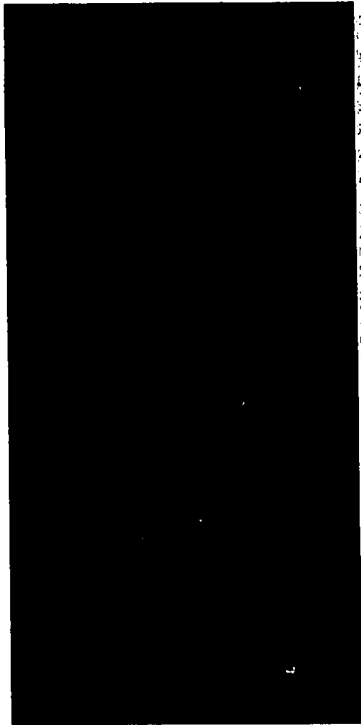
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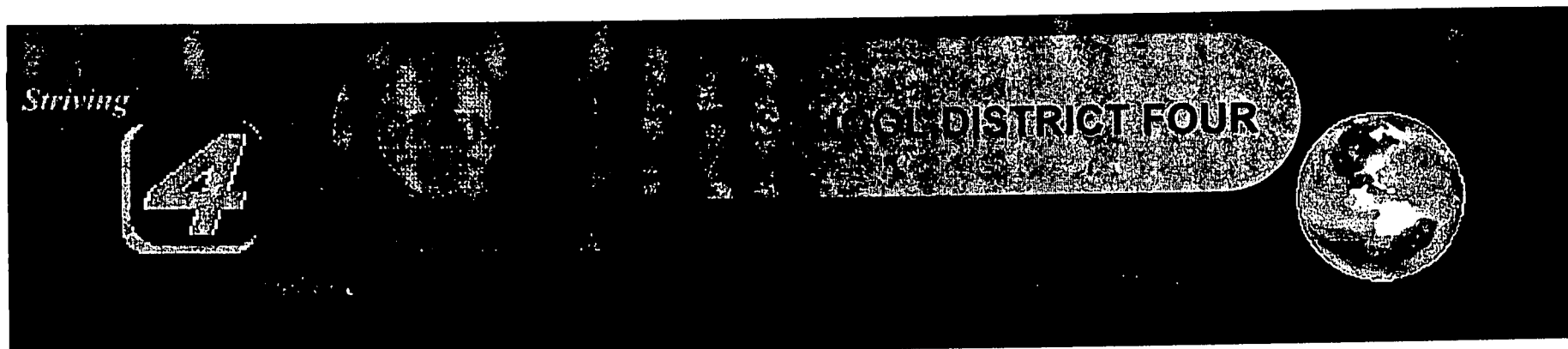
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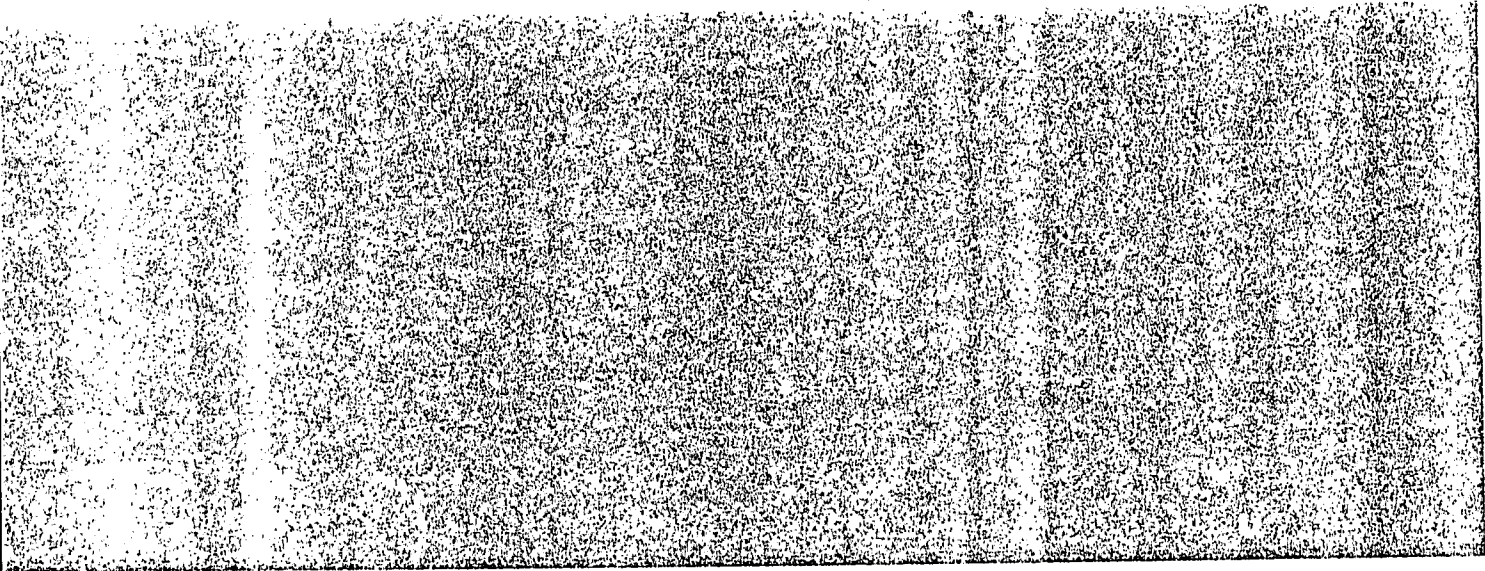
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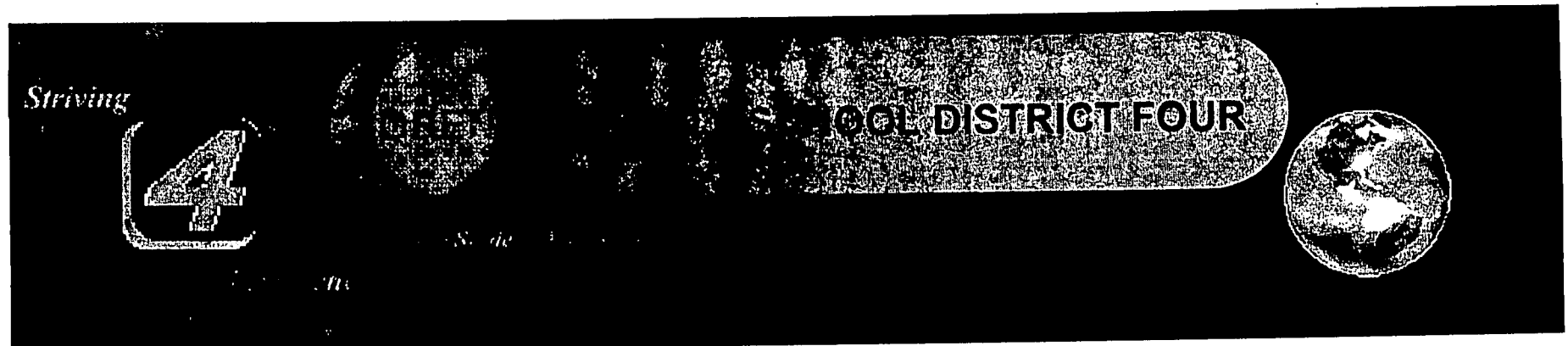
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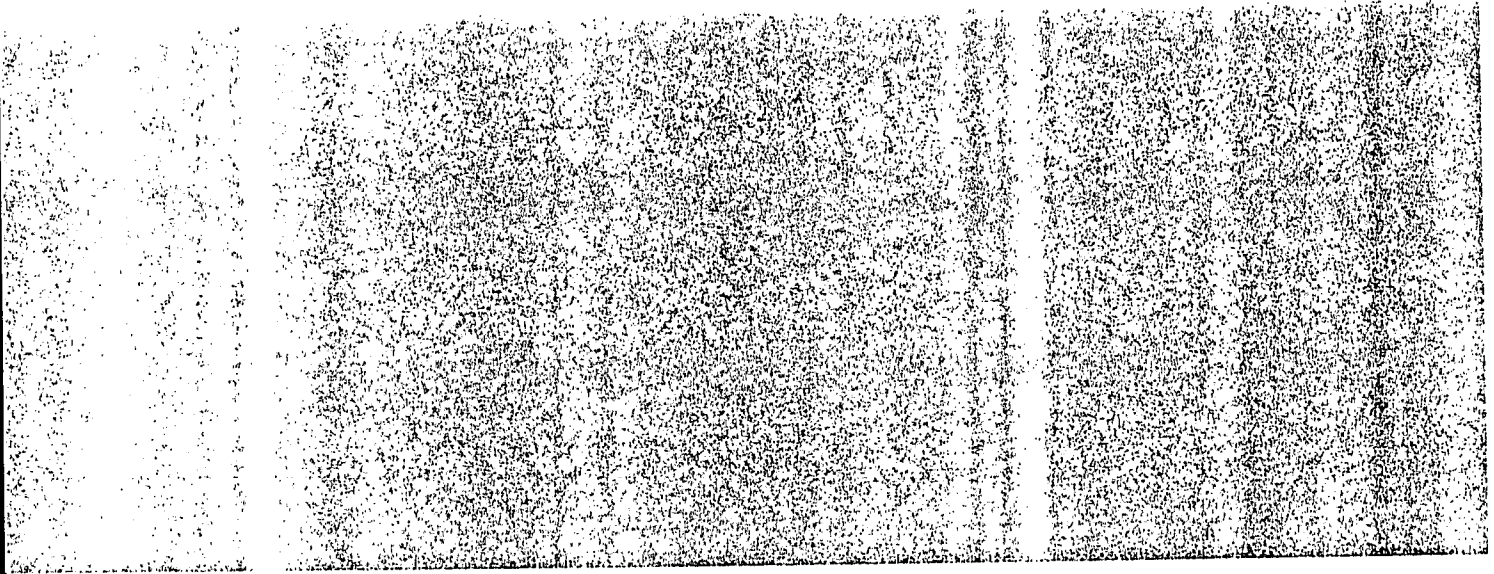
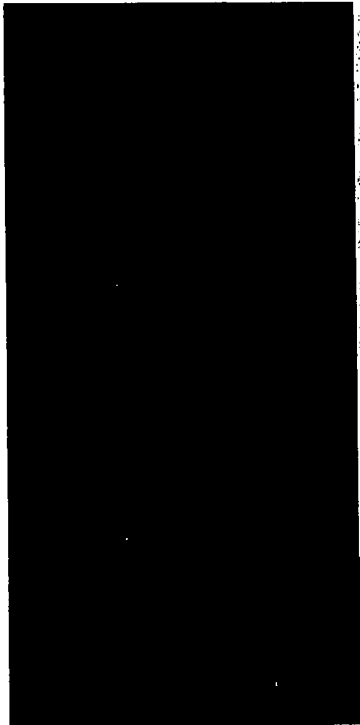
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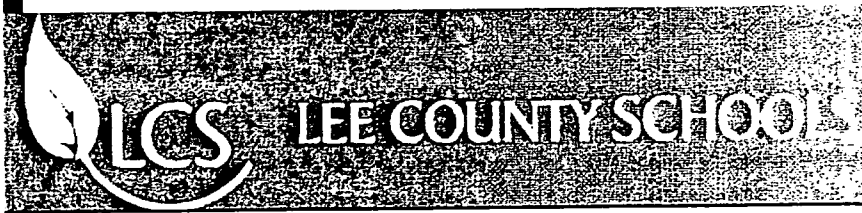
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Career Wing

Career Wing Schematic

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[Photo History as of 10/3/07](#)

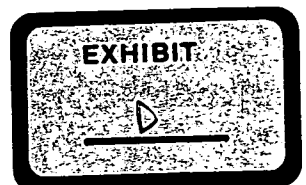
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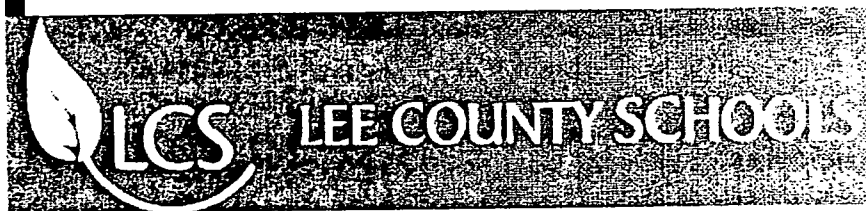
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[2007-2008 School Schedule](#)
[Calendar of Events for April NEW](#)
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[Our District - "At-a-Glance"](#)
[School Board Policy Manual](#)
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Customer Service Survey
Directions to the Lee County School District Administrative Office

District News

Each Sunday, Lee County School District is featured in The Educator of The Item newspaper. These submissions are posted here for you to view the latest news in our district.

[September 9, 2007](#)[September 16, 2007](#)[September 23, 2007](#)[October 7, 2007](#)[October 14, 2007](#)[October 21, 2007](#)[October 28, 2007](#)[November 4, 2007](#)[November 11, 2007](#)[November 18, 2007](#)[December 2, 2007](#)[December 9, 2007](#)[January 13, 2008](#)[January 20, 2008](#)[January 27, 2008](#)[February 3, 2008](#)[February 10, 2008](#)[February 17, 2008](#)[February 24, 2008](#)[March 2, 2008](#)[March 9, 2008](#)**EXHIBIT****E**

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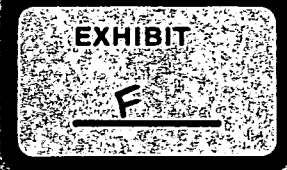
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SC EDUCATION OVERSIGHT COMMITTEE

0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99

PO Box 108674 | 227 E. Main Building II | Columbia, SC 29201 | 803.732.6130 | www.sceducationoversight.org



Ratings Criteria

- ❑ Longitudinal High School Assessment Program (HSAP) performance: This factor gauges the percentage of students who pass the HSAP by the spring graduation two years after taking the examination for the first time. Students transferring to other schools should be deleted from the calculation; however students dropping out are included. Longitudinal HSAP performance is the percentage of students who score a "2" level or higher on both ELA and Math within two years after taking it for the first time.
- ❑ First-attempt HSAP performance: The percentage of students taking the High School Assessment Program (HSAP) for the first time who passed both the English language arts and mathematics subtests by scoring at the performance level of "2" or higher.
- ❑ Percentage passing End of Course tests: The percent of passing scores (70 or higher) on all of the End of Course tests administered in the high school during the school year and subsequent summer session. The end-of-course assessments currently include Algebra I, English I, and Physical Science (and Biology I when the test is reinstated). The U.S. History and Constitution End of Course test will be administered in 2007-2008, pending approval by the EOC. In June 2007 the EOC adopted the following policies regarding End of Course test results: for the school years 2007-2008, 2008-2009 and 2009-2010, End of Course test scores for courses offered through the Virtual High School and End of Course test scores for courses offered through dual high school and college credit, are to be reported with the high school in which the student is enrolled and calculated into the school ratings and in the district's ratings.
- ❑ On-time Graduation rate: The percentage of all students (including students with disabilities) enrolled for the first time in grade nine four years prior to the year of the report card who earn a standard high school diploma (not GED), adjusted for transfers in and out of the school. Adjustments for students transferring out of the school or district cannot be made for those students for whom there is not evidence of enrollment in another state diploma granting program (for example, requests for transcripts from another state diploma granting program, placement in the juvenile or criminal justice system, etc.). Data from students who meet the state diploma requirements as a result of attending summer school and/or successfully passing HSAP in the summer following their senior year will be included in the calculation of the on-time graduation rate; this should take effect as soon as the State Department of Education and school districts can arrange for timely receipt of the data needed.

Note Regarding On-time Graduation Rate Criterion: The precision and accuracy of the on-time graduation rate calculated for the school and district report cards is currently limited by the lack of accurate identifiers to track the progress of students. Based on a study of the progress of two cohorts of students (those who were ninth graders in 1999-2000 and those who were ninth graders in 2000-2001) in six South Carolina schools, on studies of enrollments of cohorts of students from eighth grade through grade twelve, and on information provided by high school principals, the assumption that students who leave the state's high schools before graduation are transferring to another school is erroneous in many cases (for a discussion of this issue at the national level, see *What Counts: Defining and Improving High School Graduation Rates*, available from the National Association of Secondary School Principals at http://www.principals.org/s_nassp/sec.asp?CID=29&DID=50356.) To improve the accuracy of the identification of legitimate transfers and to more accurately discriminate them from school dropouts a project to assign unique student identification numbers to all South Carolina public school students was implemented in Fall 2005. It is expected that the phase-in of the student identifier system will allow accurate tracking of ninth and tenth grade students in 2006-2007, ninth, tenth, and eleventh graders in 2007-2008, and ninth, tenth, eleventh, and twelfth graders

by 2008-2009. However, until more accurate measures of high school graduation rate are available in 2009, the following statement will accompany all references to the high school on-time graduation rate reported on school and district report cards:

“NOTE: On-time graduation rates published on the S.C. school and district report cards may be higher than the actual rates because of incomplete data on students who are no longer enrolled in the school or district.”

Calculation of Absolute Rating

Ratings are calculated using a mathematical formula that results in an index. The following point distribution is applied to each of the criteria for the calculation of the absolute index (the percentage weighting for each criterion is applied to the calculation of the index):

Criteria for High School Ratings

Criterion	Points Assigned				
	5	4	3	2	1
Longitudinal Exit Exam Passage Rate (30%)	100%	97.5–99.9%	90.7–97.4%	87.3–90.6%	Below 87.3%
First-attempt HSAP Passage Rate (20%)	62.9% or more	53.7–62.8%	37.4–53.6%	26.7–37.3%	Below 26.7%
% Scoring 70 or Above on End of Course Tests (20%)	87.8% or more	72.4–87.7%	41.6–72.3%	26.2–41.5%	Below 26.2%
On-time Graduation Rate (30%)	88.3% or more	79.6–88.2%	62.2–79.5%	53.5–62.1%	Below 53.5%

The index is calculated using the following formula:

- (1) Match the school's data/performance to the points assigned to each rating criterion in the table above.
- (2) Add the weighted points for each criterion. Weighted points are calculated by multiplying the assigned points by the weighting factor assigned to each criterion.

The resulting index determines the school's Absolute rating as follows:

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a

taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as

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Of whom:

Allendale County School District,
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Hampton County School District 2,
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 individually, and as a taxpayer residing in Orangeburg
 County and as parent and Guardian ad Litem of Russell
 H.; Russell H., a minor, by and through Bernice Profit,
 as Guardian ad Litem, are Appellants-
 Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*
 of the Senate and as a representative of the South
 Carolina Senate; Robert W. Harrell, Jr., as
 Speaker of the House of Representatives
 and as a representative of the South Carolina
 House of Representatives, ... Respondents-
 Appellants,

and

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ... Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants-Respondents, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by hand delivery to the following addresses:

Pleadings: Plaintiffs' Reply in Support of Motion to Strike Post-Trial Matter
Outside of Record From Briefing and From The Record

Counsel Served:

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Elizabeth Van Doren Gray
A. Jackson Barnes
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1310 Gadsden Street
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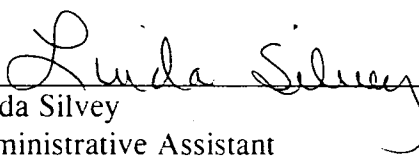
Henry D. McMaster
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OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA
Rembert C. Dennis Building
Columbia, SC 29201

Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

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Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina



Linda Silvey
Administrative Assistant

April 4, 2008

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

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 of the Senate and as a representative of the South
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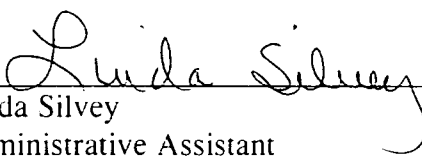
Henry D. McMaster
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Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina



Linda Silvey
Administrative Assistant

April 4, 2008

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 28 2008

APPEAL FROM LEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

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by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of whom:

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Appellants-
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v.

Glenn F. McConnell, as President <i>Pro Tempore</i> of the Senate and as a representative of the South Carolina Senate; Robert W. Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives, ...	Respondents- Appellants,
and	
The State of South Carolina; Mark C. Sanford, as Governor of the State of South Carolina, ...	Respondents.

**PLAINTIFFS' MOTION TO STRIKE POST-TRIAL MATTER
OUTSIDE OF RECORD FROM BRIEFING AND FROM THE RECORD**

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, Appellant-Respondents ("Plaintiffs" or "Plaintiff Districts")¹ move this Court for an Order striking post-trial information from the Initial Cross-Appeal Brief and Designation of Matter of Respondents/Appellants Glenn F. McConnell and Robert William Harrell, Jr. ("Defendants' Initial Brief" and "Defendants' Designation of Matter") and the Initial Brief and Supplemental Designation of Matter of Respondents/Appellants Glenn F. McConnell and Robert William Harrell, Jr. ("Defendants' Response Brief" and "Defendants' Supplemental Designation of Matter").

Although this trial ended on December 9, 2004, Defendants repeatedly included numerous references to information outside of the record that post-dates the trial's end. All post-trial information should be stricken from the record on appeal and from every portion of

¹ For clarity's sake, Appellant-Respondents in this cross-appeal, who were Plaintiffs below, are referred to herein as "Plaintiffs." Respondents-Appellants, who were Defendants below, are referred to herein as "Defendants."

Defendants' briefs discussing or relying on such information. The grounds for this motion are as follows:

- Defendants' post-trial matter should be stricken because it is not a part of the record on appeal.
- Defendants' post-trial matter should be stricken because it has not been judicially evaluated for admissibility and reliability.
- Alternatively, if this Court allows Defendants to introduce post-trial evidence, the Court should allow Plaintiffs the opportunity to rebut the evidence.

INTRODUCTION

In this appeal, Defendants have improperly introduced information and actions that arose and occurred after the close of trial.² Specifically, Defendants have cited the following sources of information for support in their briefing to this Court:³

- Dillon Sch. Dist. Two, <http://www.dillon2.k12.sc.us/home/bondreferendum.asp> (Defs.' Initial Br. 14-16.)
- Florence County Sch. Dist 4, <http://www.florence4.k12.sc.us/schools.html> (Defs.' Initial Br. 14-16.)
- Jasper County Sch. Dist., <http://www.jcsd.net/#> (Defs.' Initial Br. 14-16.)
- Lee County Schs., http://www.leeschoolsk12.org/site_res_view_folder.aspx?id+667fabf3-4943-49e0-92ab-2ed37ec6185e (Defs.' Initial Br. 14-16.)
- Lake Marion High Sch. & Tech. Ctr., http://www.obg3.k12.sc.us/education/School/schoolhistory.php?sectiondetailid+65&sc_id=1197316792 (Defs.' Initial Br. 14-16.)
- 2007-2008 Per Pupil Funding (projected) (Defs.' Initial Br. 19.)

² Pursuant to Chief Justice Toal's request, Defendants have briefed the potential effect of post-trial legislation on the continued viability of Plaintiffs' claims. Plaintiffs do not seek to strike that post-trial evidence.

³ Plaintiffs provide this list of information outside the trial record for the convenience of the Court and all parties. However, to the extent that any information designated, cited, and/or discussed by Defendants in any briefing or other document submitted to this Court is not included on this list, Plaintiffs include such information in this motion to strike.

- PACT Scores from 2005, 2006, and 2007, <http://ed.sc.gov/agency/offices/assessment/pact/scores.html>. (Defs.' Initial Br. 48; Defs.' Response Br. 107.)
- 2005-2006 Per Pupil Funding; South Carolina Department of Education, available at <http://ed.sc.gov/agency/offices/finance/insite/> (Defs.' Response Br. 71, 73.)
- Dillon County Sch. Dist. 2, available at <http://www.dillon2.k.12.sc.us/home/bondreferendum> (Defs.' Response Br. 58.)
- Dillon County Sch. Dist. 2, available at <http://www.dillon2.k.12.sc.us/home/middleschoomaps.asp> (Defs.' Response Br. 58.)
- Dillon County Sch. Dist. 2, available at <http://www.dillon2.k.12.sc.us/home/shsmaps.asp> (Defs.' Response Br. 59.)
- Lee Sch. Dist, available at http://www.leeschoolsk12.org/site/res/view_folder.aspx?id=791107b4-0b59-401d-8a76-49b6c9101711 (Defs.' Response Br. 61.)
- Orangeburg County Consol. Sch. Dist. #3 available at, http://www.obg3.k12.sc.us/education/components/sectionlist.php?sectiondetailid=5&sc_id=1201012415 (Defs.' Response Br. 56.)
- Jasper County Sch. Dist., available at <http://www.jcsd.net/#> (Defs.' Supp. Designation of Matter at 23.)
- Dillon County Sch. Dist., 2 available at <http://www.dillon2.k12sc.us/home/eastmaps.asp> (Defs.' Supp. Designation of Matter at 25.)
- <http://www.theitem.com/apps/pbcs.dll/article?AID=/20071221/ITNEWS01/775490447&SearchID=73306328726290> (Defs.' Supp. Designation of Matter at 30.)
- <http://www.sceoc.org/CmsPortal/AgencyHomePagetemplate.aspx?NRMODE=Published&NRNODEGUID={6D239C2F-64A3-42EE-A813-8D57402F6EFC}&NRORIGINALURL=/glossaryofterms/&NRCACHEHINT=N&oModifyGuest#GraduationRate> (Defs.' Supp. Design. of Matter at 34.)
- Report Cards from 2004 and after (Defs.' Response Br. 110-11, nn.35, 36.)⁴

⁴ The trial court took judicial notice of 2004 PACT scores, HSAP scores, and AYP findings. The court did not take judicial notice of the 2004 report cards (or any subsequent report cards). (Tr. (9/30/04) 50:10-53:3 (trial court stating "I am perfectly content to stop right there," *id.* at

Plaintiffs respectfully request that the Court strike the above-listed information, as well as any other post-trial information improperly included, from the record and to strike any portions of Defendants' briefs that use, refer to, or rely on the information and any other references to information, documents, or actions taken since the trial ended on December 9, 2004.

ARGUMENT

A. Defendants' Post-Trial Matter Should Be Stricken Because It is Not A Part of the Record on Appeal.

"The Record [on Appeal] shall not . . . include matter which was not presented to the lower court or tribunal." S.C. R. App. P. 210(c) (emphasis added). Further, "[a]ttorneys should not include information that is not in the record" as "courts are bound by what is contained in the record." Jean Hoefer Toal et al., Appellate Practice in South Carolina 213 (2d ed. 2002).

Not surprisingly, South Carolina trial and appellate courts consistently apply the Rule's plain and well-established language to exclude evidence outside of the record. See, e.g., Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005) (refusing to entertain appellant's argument because it was outside the record on appeal); S.C. State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (emphasizing that the South Carolina Supreme Court will not consider *any* fact that does not appear in transcript of record); Tunstall v. Lerner Shops, 160 S.C. 557, 562, 159 S.E. 386, 388 (1931) (finding that South Carolina courts may not consider alleged facts that are outside of the record); Bushardt v. United Inv. Co., 121 S.C. 324, 328, 113 S.E. 637, 639 (1922)

51:23-24 (**Exhibit A**); (11/5/04) 188:4-189:16 (**Exhibit B**.) Plaintiffs have moved to strike all other post-trial information not presented and noted judicially at trial, including information from 2004, 2005, and 2006 report cards and from district websites.

(holding that a South Carolina court cannot raise an exception outside of the record); Timms v. Timms, 286 S.C. 291, 294, 333 S.E.2d 74, 75 (Ct. App. 1985) (holding that the Court of Appeals is confined to the record in deciding issues on appeal).

Similarly, other jurisdictions have strictly excluded facts outside of the record in similar education funding cases. For example, in DeRolph v. State, 677 N.E.2d 733 (Ohio 1997), several school districts filed suit for declaratory relief seeking a determination that the state's system of funding public education was unconstitutional. Id. at 733. The Supreme Court of Ohio refused to consider evidence of facts outside of the record proffered by the state, and only considered evidence reflected in the record that the state failed to provide funding, teachers, buildings, and equipment to the school districts. Id. at 742. In excluding the state's evidence pertaining to facts outside of the record, the court opined, "it is imperative to consider the record as presented to us." Id.; see also Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 346 (N.Y. 2003) (commenting that although new regulations are being phased in and show promise, "[the] court cannot conjecture about the possible effect of pending reforms, at least when determining whether, on the evidence gathered over four years and presented during the seven-month trial, a constitutional violation exists").

Therefore, based on clear and long-standing law, Plaintiffs respectfully ask this Court to decide this case on the record established in the trial court, not on later-enacted circumstances that were not presented to or considered by the trial court.

B. Defendants' Post-Trial Matter Should Be Stricken Because It Has Not Been Judicially Evaluated for Admissibility and Reliability.

Defendants' post-trial information should be stricken because, unlike at trial, Defendants have not been required to demonstrate the admissibility and reliability of this

information before entering it into the record. Specifically, the post-trial evidence that Defendants are attempting to enter into the record is not subject to ordinary evidentiary procedures that would ensure its admissibility and reliability.

Furthermore, Defendants' citations to post-trial internet websites pose additional evidentiary problems because Defendants did not provide copies to the Court or Plaintiffs, and because of the ever-changing nature of the Internet, the original evidence that Defendants rely on is not available for review.

C. Alternatively, if This Court Allows Defendants to Introduce Post-Trial Evidence, the Court Should Allow Plaintiffs the Opportunity to Rebut the Evidence.

If this Court were to allow Defendants to introduce post-trial evidence into the record, fundamental principles of fairness require that Plaintiffs also be allowed to confront and rebut the evidence. The end effect, of course, would be to create a mini-trial on appeal.

For example, some of the additional information Defendants seek to add includes information from websites of some of the schools in the Plaintiff Districts. As is true with businesses or institutions, the schools include information on their websites that promotes the school, not information highlighting deficiencies in their facilities or workforce. Defendants, however, assert that "all of the Plaintiff Districts were in the process of getting new schools or substantially renovating, remodeling or adding on to existing facilities . . . " (Defs.' Initial Brief 14), and imply that all the facility problems demonstrated at trial have remarkably been eliminated in the three years since the trial ended. This is simply untrue, and Plaintiffs have additional post-trial evidence that would rebut Defendants' position. To avoid unfair and unbalanced litigation to occur in the appellate court, due process requires that Plaintiffs be allowed to give the full picture.

Other post-trial evidence proffered by Defendants includes statistics found from the State Department of Education's website. Defendants' attempt to present and to draw conclusions from data that has not been considered by the trial court, after presentation of evidence from both sides, is improper. Although this post-trial matter should not be put in the record at this late date, if this information (or misinformation) is permitted, Plaintiffs and their experts must be given the chance to analyze the data and present their own conclusions drawn from the information.

CONCLUSION

Defendants cannot use post-trial, piece-meal information to avoid or postpone a final decision on whether they have met their constitutional obligation under the Education Clause. This case began over fourteen years ago, and trial of this case took place over eighteen months. Both parties were given ample opportunity to develop the evidence prior to and at trial. Massive amounts of evidence were introduced.

The information at issue, however, is not part of the record. Therefore, the South Carolina Rules of Appellate Practice and basic evidence jurisprudence require that this post-trial information be stricken from the record.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

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March 28, 2008
Columbia, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE) COURT OF COMMON PLEAS

ABBEVILLE, ET AL,)
 PLAINTIFFS,) TRANSCRIPT OF RECORD
VS.)
STATE OF S.C., ET AL,)
 DEFENDANTS)

SEPTEMBER 30TH, 2004
MANNING, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS W. COOPER, JR., PRESIDING JUDGE.

A P P E A R A N C E S:

CARL EPPS, ESQUIRE
LAURA HART, ESQUIRE
STEVE MORRISON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

ELIZABETH VAN DOREN GRAY, ESQUIRE
ROBERT STEPP, ESQUIRE
JACKSON BARNES, ESQUIRE
TRACEY GREEN, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

KATHLEEN RICHARDSON, RPR
OFFICIAL COURT REPORTER

EXHIBIT

A

1 JUDICIAL NOTICE OF THOSE THINGS, I DIDN'T WANT TO
2 FORECLOSE EITHER ONE OF YOU FROM EXPLORING THAT ASPECT OF
3 THIS PARTICULAR CASE.

4 THAT IS TO SAY, NOT OPENING UP A WHOLE WORLD TO
5 COMMENT UPON WHAT'S THERE NOW, BUT TO THE EXTENT THAT IT
6 BEARS ON THESE -- THE A.Y.P. SCORES AND CRITERIA AND
7 THINGS OF THAT NATURE, THEN I THINK THE ULTIMATE QUESTIONS
8 CAN BE -- CAN SPRING FROM THAT. THAT'S WHAT I WAS REALLY
9 GETTING TO. MR. EPPS?

10 MR. EPPS: YOUR HONOR, JUST FOR THE RECORD SO
11 THE COURT WILL UNDERSTAND, WITH THE PRINCIPALS THAT I HAVE
12 PUT UP, I HAVE PURPOSEFULLY RESTRICTED IT TO THE TIMEFRAME
13 DURING THE DEPOSITION ON THE ASSUMPTION THAT THE -- THE
14 RULING ESSENTIALLY WAS THE PURPOSE OF THIS WAS TO ADDRESS
15 ISSUES RAISED IN THAT DEPOSITION.

16 THE COURT: THAT'S RIGHT.

17 MR. EPPS: AND SO I KEPT EVERYTHING BACK IN
18 THE -- IN THE TIMEFRAME OF THE DEPOSITION. NOW, WHAT I
19 UNDERSTAND THE COURT TO BE SAYING IS THAT TO THE EXTENT
20 A.Y.P. IN AND OF ITSELF, STANDING ALONE, COULD INFLUENCE
21 THIS WITNESS'S TESTIMONY, THEN IT'S FAIR GAME FOR MR.
22 STEPP TO ASK THE QUESTIONS ABOUT IT AND OF COURSE MRS.
23 HART.

24 BUT I HAVE TAKEN MY WITNESSES DOWN. AND THE QUESTION
25 NOW BECOMES DO WE NEED AS A DEFENSE TEAM -- EXCUSE ME --

1 AS A PLAINTIFFS' TEAM, AS PART OF OUR CASE TO BE
2 ADDRESSING THAT ISSUE WITH REMAINING PART OF OUR REBUTTAL
3 BECAUSE THAT TYPICALLY WILL NOT BE REBUTTAL EVIDENCE.

4 THE COURT: YES. AND I DON'T THINK YOU -- ANY
5 MORE THAN -- THAN EVERY ASPECT OF THE 2004 PACT SCORES
6 HAVE TO BE ADDRESSED, WOULD YOU ALL HAVE TO REOPEN AND GO
7 INTO THESE? I MEAN, THEY ARE WHAT THEY ARE REALLY.

8 MR. EPPS: I UNDERSTAND THAT, YOUR HONOR, BUT
9 THE PACT SCORES CAME IN DURING THEIR CASE. I UNDERSTAND
10 THAT.

11 THE COURT: THEY DID.

12 MR. EPPS: THE A.Y.P. IS APPARENTLY COMING IN
13 DURING OUR CASE.

14 THE COURT: WELL, IT WAS RELEASED--

15 MR. STEPP: JUST PUBLISHED YESTERDAY.

16 MR. EPPS: WHICH I DIDN'T KNOW. APPRECIATE THE
17 COURT TELLING US.

18 THE COURT: RIGHT.

19 MR. EPPS: ARE THOSE, YOU KNOW, YOUR HONOR -- IS
20 THE A.Y.P. THE ONLY THING THAT THE COURT'S AWARE OF NOW?
21 I UNDERSTAND THERE'S BEEN SOME POINT IN TIME REPORT CARDS
22 WILL COME OUT, FOR EXAMPLE.

23 THE COURT: AND I'M PERFECTLY CONTENT TO STOP
24 RIGHT THERE QUITE FRANKLY. THEY JUST LEAPED OUT AT ME
25 BECAUSE THEY WERE -- I GUESS IT'S A COMBINATION OF THE

1 FACT THAT THIS HAPPENS TO BE AN EVEN NUMBERED YEAR AND
2 PACT SCORES AND A.Y.P. SCORES ALL BEING USED IN ONE OF THE
3 RACES, YOU KNOW, THAT'S THE REASON IT JUST JUMPED -- I
4 WOULDN'T HAVE KNOWN THE RESULTS WERE OUT HAD I NOT READ
5 THAT.

6 BUT HAVING READ THAT AS THE WITNESS HAS BEEN
7 TESTIFYING TODAY, I HAVE BEEN ONLINE, I'VE LOOKED AT THE
8 A.Y.P.

9 MR. EPPS: RIGHT. I GUESS, YOUR HONOR, AT SOME
10 POINT IN TIME, PERHAPS WHEN WE CLOSE OUR -- I DON'T KNOW.
11 WE WILL NEED TO TALK TO THE COURT ABOUT THIS, AS TO WHEN
12 WE REALLY DO SHUT THE EVIDENCE DOWN.

13 THE COURT: RIGHT. WELL, I THINK WHEN THE LAST
14 WORD IS SAID IN THIS CASE, THAT IS WHEN -- AND WHEN
15 EVERYBODY SAYS, ALL REST, THAT'S GOING TO BE THE END OF
16 IT.

17 THE JUDICIAL NOTICE RULE 201 SAYS, A PARTY IS
18 ENTITLED UPON TIMELY REQUEST TO AN OPPORTUNITY TO BE HEARD
19 AS TO PROPRIETY OF TAKING JUDICIAL NOTICE AND THE TENOR OF
20 THE MATTER NOTES IN THE ABSENCE OF PRIOR NOTIFICATION THAT
21 THE REQUEST MADE BE MADE AFTER JUDICIAL NOTICE HAS BEEN
22 TAKEN. JUDICIAL NOTICE MAY BE TAKEN AT ANY STAGE OF THE
23 PROCEEDING.

24 AND SO I -- I'M INTERPRETING THAT TO MEAN AS LONG AS
25 YOU ALL ARE ABLE TO -- IN THE PRESENTATION OF EVIDENCE TO

1 ADDRESS THESE ISSUES, THAT THEY CAN BE ADDRESSED.

2 MR. EPPS: ONCE THE EVIDENCE SHUTS DOWN--

3 THE COURT: THAT'S IT.

4 MR. EPPS: OKAY. AND WE WILL JUST SEQUESTER THE
5 JURY?

6 THE COURT: YES, THE JURY WILL BE SEQUESTERED, I
7 SUPPOSE. WELL, THE FINAL PART OF THE RULE SAYS THE COURT
8 SHALL INSTRUCT THE JURY TO ACCEPT AS CONCLUSIVE ANY FACT
9 JUDICIALLY NOTICED, AND SO I WILL MAKE SURE THAT THE JURY
10 IS PROPERLY INSTRUCTED.

11 BUT GETTING US BACK TO THE SCOPE OF WHERE WE ARE IN
12 THIS, MY -- YOU WERE GOING TO ASK ABOUT--

13 MR. STEPP: I DON'T THINK WE'VE GOT A PROBLEM.
14 I WILL REQUEST THE COURT TO TAKE JUDICIAL NOTICE OF THE
15 A.Y.P. I THINK YOU HAVE DONE THAT. THAT WAY WE DON'T
16 HAVE TO QUESTION THE WITNESSES ABOUT IT. AND IT SUITS ME
17 TO SORT OF PROCEED THE WAY WE HAVE BEEN PROCEEDING.
18 THAT'S THE ONLY QUESTION I -- I HAD ABOUT IT.

19 THE COURT: I HAD, BUT OF COURSE, I WILL ALLOW
20 MRS. HART ON REDIRECT IF SHE CHOOSES--

21 MR. STEPP: SURE. UNDERSTOOD.

22 THE COURT: -- TO GO INTO THAT. ALL RIGHT.

23 MR. STEPP: ONE MORE QUESTION.

24 BY MR. STEPP:

25 Q MRS. GREENE-RICHARDSON, YOU'RE NOT TRYING -- YOUR

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEE)

ABBEVILLE, ET AL,)
) PLAINTIFFS,) TRANSCRIPT OF RECORD
VS.)
STATE OF S.C., ET AL,)
DEFENDANTS)

NOVEMBER 5TH, 2004
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS W. COOPER, JR., PRESIDING JUDGE.

A P P E A R A N C E S:

CARL EPPS, ESQUIRE
LAURA HART, ESQUIRE
STEVE MORRISON, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

ELIZABETH VAN DOREN GRAY, ESQUIRE
ROBERT STEPP, ESQUIRE
JACKSON BARNES, ESQUIRE
EMORY SMITH, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

KATHLEEN RICHARDSON, RPR
OFFICIAL COURT REPORTER

EXHIBIT

B

1 DEMANDS AND THEIR ABILITY TO MEET THE DEMANDS CERTAINLY
2 FROM A STUDENT-BY-STUDENT PERSPECTIVE WOULD NOT SUGGEST
3 THAT ONE STUDENT, ALL STUDENTS.

4 **MR. MORRISON:** YOUR HONOR, AT THIS POINT WE
5 UNDERSTAND FROM THE DEFENSE THAT THEY WOULD LIKE TO
6 OFFER INTO EVIDENCE BEFORE THE EVIDENCE IS CLOSED THE
7 RECENT H.S.A.P. EXIT EXAM DATA.

8 THAT DATA COMES FROM THE STATE DEPARTMENT, BUT
9 IF IT DOES COME IN, WE WOULD LIKE TO EXPLAIN THAT
10 DATA OR HAVE THE OPPORTUNITY TO PLACE THAT IN
11 CONTEXT.

12 DR. ANDERSON IS PREPARED TO DO THAT AT THIS
13 POINT IN TIME IF -- I KNOW WE'RE NOT IN THE DEFENSE
14 CASE. FRANKLY I'M -- WE'RE AT THE COURT'S DISPOSAL.
15 IF THE COURT WANTS TO ACCEPT THE EXIT DATA THAT CAME
16 OUT A MONTH OR SO AGO AND YOU ACCEPT IT AS EVIDENCE,
17 WE WOULD PUT IN A BRIEF EXPLANATION OF IT AT THIS
18 POINT TO SHOW WHY IT SHOWS WHAT IT DOES SHOW.

19 **THE COURT:** ALL RIGHT. MR. STEPP, WHAT SAYS THE
20 DEFENSE TO THAT?

21 **MR. STEPP:** WELL, WE CERTAINLY ASKED YOUR HONOR
22 YESTERDAY EITHER PERMIT US TO PUT IT IN, TO
23 SUPPLEMENT THE RECORD OR TAKE JUDICIAL NOTICE OF.
24 IT'D PROBABLY MAKE MORE SENSE FOR US TO FRANKLY
25 PROFFER A COPY OF IT WITH AN EXHIBIT STICKER ON IT.

1 WE'RE NOT PREPARED TO DO THAT TODAY, BUT WE
2 WOULD LIKE THAT EVIDENCE IN THE RECORD.

3 THE COURT: ALL RIGHT, SIR. OKAY. I'LL ACCEPT
4 IT THEN AS A DEFENSE EXHIBIT. AND SPECIFICALLY IS
5 THE--

6 MR. MORRISON: HIGH SCHOOL ASSESSMENT PROGRAM
7 TEST SCORES. AND I HAVE A COPY OF THE STATE SCORES
8 AND THEN THE INDIVIDUAL DISTRICT -- I MEAN THE
9 INDIVIDUAL DISTRICT AND SCHOOL SCORES FROM OUR
10 DISTRICTS. I DON'T KNOW IF THAT'S WHAT THEY MIGHT
11 HAVE INTENDED TO PUT IN, SO I'M JUST GOING TO HAND
12 THAT TO THEM.

13 BUT I THINK THE POINT IS, WE WILL ASSUME THAT
14 THEY ARE IN OR THEY ARE COMING IN, AND I'D LIKE TO
15 ASK DR. ANDERSON ABOUT THEM.

16 THE COURT: OKAY.

17 BY MR. MORRISON:

18 Q DR. ANDERSON, HAVE YOU HAD THE OPPORTUNITY TO LOOK AT
19 THE H.S.A.P. EXIT EXAM SCORES? THAT'S THE NEW EXIT EXAM
20 SCORES FOR THIS YEAR?

21 A YES, I HAVE.

22 Q AND HAVE YOU LOOKED AT THOSE IN COMPARISON WITH THE
23 OLD EXIT EXAM SCORES?

24 A YES, I HAVE.

25 Q AND HAVE YOU LOOKED AT THEM WITH REGARD TO THE CUT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

RECEIVED

MAR 28 2008

S.C. SUPREME COURT

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a

taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually; and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as

Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Plaintiffs,

Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,

Lee County School District,
 Marion County School District 7,
 Orangeburg School District 3,
 Lena Manning, individually, and as a taxpayer residing
 in Allendale County and as Guardian ad Litem of
 Courtney V.; Courtney V., a minor, by and through
 Lena Manning, as Guardian ad Litem; Pamela
 Williams, individually, and as a taxpayer residing in
 Dillon County, and as parent and Guardian ad Litem of
 Katisha W.; Katisha W., a minor, by and through
 Pamela Williams as Guardian ad Litem; Eddie Wright,
 individually, and as a taxpayer residing in Florence
 County, and as parent and Guardian ad Litem of
 Brandon F.; Brandon F., a minor, by and through
 Eddie Wright as Guardian ad Litem; Brenda Brooks,
 individually, and as a taxpayer residing in Hampton
 County, and as parent and Guardian ad Litem of Tyrin
 B.; Tyrin B., a minor, by and through Brenda Brooks
 as Guardian ad Litem; Marva Tigner, individually, and
 as a taxpayer residing in Jasper County, and as parent
 and Guardian ad Litem of Bryan T. and Bradley T.;
 Bryan T., a minor, by and through Marva Tigner as
 Guardian ad Litem; Bradley T., a minor, by and
 through Marva Tigner as Guardian ad Litem; Gail Y.
 Harriott, individually, and as a taxpayer residing in Lee
 County and as parent and Guardian ad Litem of
 Rashade H.; Rashade H., a minor, by and through Gail
 Y. Harriott, as Guardian ad Litem; Linda Carraway,
 individually, and as a taxpayer residing in Marion
 County, and as parent and Guardian ad Litem of
 Kimberly W.; Kimberly W., a minor, by and through
 Linda Carraway as Guardian ad Litem; Bernice Profit,
 individually, and as a taxpayer residing in Orangeburg
 County and as parent and Guardian ad Litem of Russell
 H.; Russell H., a minor, by and through Bernice Profit,
 as Guardian ad Litem, are

Appellants-
 Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*
 of the Senate and as a representative of the South
 Carolina Senate; Robert W. Harrell, Jr., as
 Speaker of the House of Representatives
 and as a representative of the South Carolina
 House of Representatives, ...

Respondents-
 Appellants,

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MAR 28 2008

S.C. SUPREME COURT

and

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ... Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants-Respondents, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by hand delivery to the following addresses:

Pleadings:

- Initial Reply Brief of Appellants-Respondents
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- Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record
- Proof of Service

Counsel Served:

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
SOWELL GRAY STEPP & LAFITTE, L.L.C.
1310 Gadsden Street
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Henry D. McMaster
J. Emory Smith, Jr.
OFFICE OF THE ATTORNEY GENERAL OF
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Rembert C. Dennis Building
Columbia, SC 29201

Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina



Linda Silvey
Administrative Assistant

March 28, 2008

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

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MAR 28 2008

S.C. SUPREME COURT

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a

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Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,

Lee County School District,
 Marion County School District 7,
 Orangeburg School District 3,
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 H.; Russell H., a minor, by and through Bernice Profit,
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v.

Glenn F. McConnell, as President *Pro Tempore*
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 and as a representative of the South Carolina
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 Appellants,

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MAR 28 2008

S.C. SUPREME COURT

and

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
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PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants-Respondents, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by hand delivery to the following addresses:

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- Motion to Strike Post-Trial Matter Outside of Record From Briefing and From the Record
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Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
SOWELL GRAY STEPP & LAFITTE, L.L.C.
1310 Gadsden Street
Columbia, SC 29201

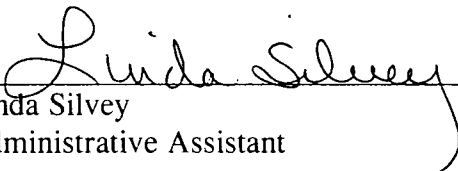
Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

Henry D. McMaster
J. Emory Smith, Jr.
OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA
Rembert C. Dennis Building
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Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina



Linda Silvey
Administrative Assistant

March 28, 2008

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAR 28 2008

APPEAL FROM LEE COUNTY
Court of Common Pleas
Thomas W. Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 2007-65159

Abbeville County School District, *et al.*, ... Appellants / Respondents

vs.

The State of South Carolina, *et al.*, ... Respondents / Appellants.

PROOF OF SERVICE

I, the undersigned employee, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for the Respondents / Appellants, do hereby certify that on March 28, 2008 I have served all counsel in this action with a copy of the Initial Reply Brief of Respondents / Appellants Glenn F. McConnell and Robert William Harrell, Jr. and the Designation of Matter to be Included in the Record on Appeal by hand delivery to the following addresses:

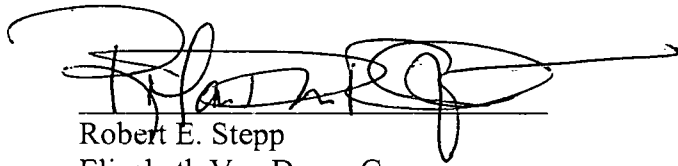
Counsel Served: NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Carl B. Epps, III
Stephen G. Morrison
Laura Callaway Hart
Shelby K. Leonardi
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
Attorneys for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL

Henry D. McMaster
J. Emory Smith, Jr.
Rembert Dennis Bldg.
1000 Assembly Street, Room 519
Columbia, South Carolina 29201

March 28, 2008

A handwritten signature in black ink, appearing to read 'Robert E. Stepp', written over a horizontal line.

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
Roland M. Franklin, Jr.
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondents / Appellants
Glenn F. McConnell and Robert William
Harrell, Jr.



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED
FEB 28 2008
S.C. SUPREME COURT

February 28, 2008

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Abbeville County School District v. State 93-CP-31-169
Concurrence of State and Governor in Brief of Respondents/ Appellants
McConnell and Harrell

Dear Mr. Shearouse:

In lieu of a formal brief, I would appreciate your accepting this letter as a statement of concurrence of the Respondents State and Governor in the legal arguments in the above brief of Respondents McConnell and Harrell to be filed this week. This concurrence is subject to the following conditions. As to those issues in the Brief of Respondents McConnell and Harrell which they are appealing in their Cross Appeal brief, the State and the Governor crave reference to the December 29, 2005, and July 12, 2007, Orders of the Honorable Thomas W. Cooper, Jr, Circuit Court Judge. The State and the Governor have not appealed those Orders and respectfully request that Judge Cooper's Orders be affirmed. To any extent that Respondents' Brief may take positions different from the Orders of Judge Cooper or request that the Orders be vacated or reversed, the State and the Governor respectfully request that Judge Cooper's Orders be followed.

If you have questions or prefer a more formal filing regarding this position, please let me know. I am mailing and emailing copies of this letter to counsel for the other parties.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for the State and the Governor

The Honorable Daniel E. Shearouse

February 28, 2008

Page 2

cc: Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Elizabeth Scott Moise, Esquire
Rachel Atkin Hedley, Esquire
D. Kay Tennyson, Esquire
Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Swati Shah Patel, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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FEB 28 2008

APPEAL FROM LEE COUNTY
Court of Common Pleas
Thomas W. Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 2007-65159

Abbeville County School District, *et al.*, ...Appellants / Respondents

vs.

The State of South Carolina, *et al.*, ...Respondents / Appellants.

PROOF OF SERVICE

I, the undersigned employee, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C, attorneys for the Respondents / Appellants, do hereby certify that on February 28, 2008 I have served all counsel in this action with a copy of the Initial Brief of Respondents / Appellants Glenn F. McConnell and Robert William Harrell, Jr. and the Designation of Matter to be Included in the Record on Appeal by hand delivery to the following addresses:

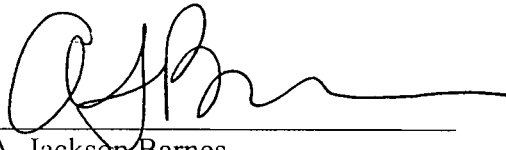
Counsel Served: NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Carl B. Epps, III
Stephen G. Morrison
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Shelby K. Leonardi
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
Attorneys for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL

Henry D. McMaster
J. Emory Smith, Jr.
Rembert Dennis Bldg.
1000 Assembly Street, Room 519
Columbia, South Carolina 29201

February 28, 2008

A handwritten signature in black ink, appearing to read 'A. Jackson Barnes', written over a horizontal line.

A. Jackson Barnes
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Respondents / Appellants Glenn F.
McConnell and Robert William Harrell, Jr.**

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

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Tel: 803.799.2000 Fax: 803.255.9038

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Shelby K. Leonardi

Tel: 803.255.9597

Fax: 803.255.9166

shelby.leonardi@nelsonmullins.com

February 28, 2008

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29211

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FEB 28 2008
S.C. SUPREME COURT

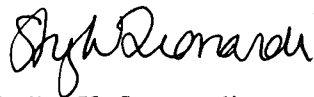
RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Court of Appeals Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed for filing are the original and one (1) copy of the Initial Respondents' Brief of Appellants-Respondents, Supplemental Designation of Matter to be Included in the Record on Appeal (including Certification), and Proof of Service in regard to the above matter. Please file the originals and return clocked-in copies to us.

By copy of this letter to other counsel, we are serving each of them with a copy of the above-referenced documents.

Very truly yours,



Shelby K. Leonardi

SHL:sik

Enclosures

cc: Robert E. Stepp, Esquire (via hand delivery; w/enclosures)



The Honorable Daniel E. Shearouse
February 28, 2008
Page 2

Elizabeth Van Doren Gray, Esquire (via hand delivery; w/enclosures)
A. Jackson Barnes, Esquire (via hand delivery; w/enclosures)
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Swati Patel, Esquire (via hand delivery; w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
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Of whom:

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v.

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Speaker of the House of Representatives
and as a representative of the South Carolina
House of Representatives, ...

Respondents-
Appellants,

and

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FEB 26 2008

S.C. SUPREME COURT

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South Carolina, ...

Respondents.

PROOF OF SERVICE

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Pleadings: **Initial Respondents' Brief of Appellants-Respondents; and**

 Supplemental Designation of Matter to be Included in the
 Record of Appeal (including Certification)

Counsel Served:

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
SOWELL GRAY STEPP & LAFITTE, L.L.C.
1310 Gadsden Street
Columbia, SC 29201

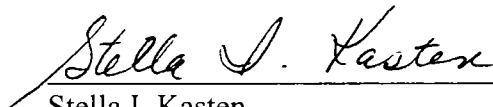
Henry D. McMaster
J. Emory Smith, Jr.
OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA
Rembert C. Dennis Building
Columbia, SC 29201

Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina

A handwritten signature in cursive script, reading "Stella I. Kasten", is written over a horizontal line.

Stella I. Kasten
Administrative Assistant

February 28, 2008

The Supreme Court of South Carolina

Abbeville County School
District, et al.,

Appellants-Respondents,

v.

The State of South Carolina,
Warren K. Gièse, as Chairman
of the Senate Education
Committee and Chairman of
the Senate Finance Committee,
in his representative capacity as
a properly designated
representative of the South
Carolina Senate and David H.
Wilkins, as Speaker of the
House of Representatives and
as a representative of the South
Carolina House of
Representatives are

Respondents-Appellants

and State of South Carolina,
and Mark C. Sanford as
Governor of the State of South
Carolina is

Respondents.

ORDER

The notices of appeal in this case were filed on August 9 and 15, 2007. Due to the complexity of this case, we find it necessary to address certain issues regarding the briefs, record and time schedule at the outset.

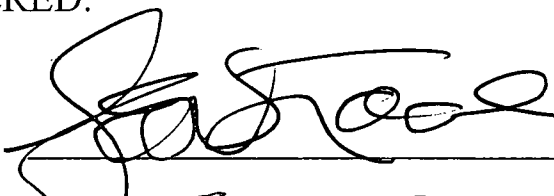
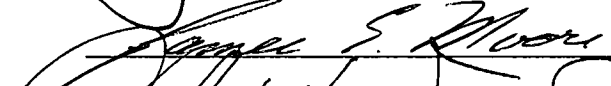
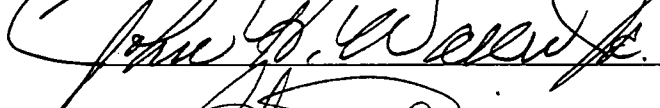
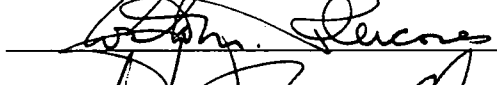
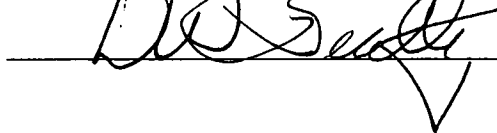
The briefing schedule shall be as follows. Appellants' initial briefs and designations of matter shall be served and filed by November 28, 2007. Respondents' initial briefs and designations of matter shall be served and filed by February 13, 2008. Appellants shall then have until March 13, 2008, to serve and file their reply briefs. The record on appeal shall be served and filed by April 2, 2008. All final briefs shall be served and filed by April 16, 2008. No extensions of time will be granted absent extraordinary circumstances.

All briefs and the record on appeal shall be in electronic format on CDs or DVDs. The briefs shall be in Microsoft Word. The parties shall serve one copy of the initial briefs on the opposing parties and file one copy with this Court, both in electronic format. The parties shall serve one copy of the final briefs in electronic format on the opposing parties and file two electronic copies and seven hard copies with this Court. The record on appeal shall be served and filed in the same manner. The electronic briefs shall contain hyperlinks to the transcripts or exhibits that are cited in the brief, and those transcripts and exhibits should be included on the CD or DVD that contains the brief. The parties may also include hyperlinks to case citations from Westlaw if so desired, but this is not required. Appellants' and

respondents' principal briefs shall not exceed 150 pages in length and reply briefs shall not exceed 75 pages in length. No exceptions will be made absent extraordinary circumstances.

We understand that the format set forth above includes the use of technology we have not used at this level before. Accordingly, the parties are directed to contact the Court immediately with any questions or issues that may arise in the process.

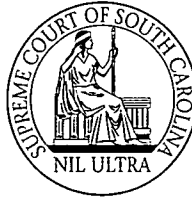
IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

September 5, 2007

Copy to: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.
Assistant Attorney General Elizabeth R. McMahon
Swati Shah Patel, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 21, 2007

Carl B. Epps, III, Esquire
Nelson Mullins Riley & Scarborough
P O Box 11070
Columbia, SC 29211

Re: Abbeville Cty Sch Dist v. State of SC

Dear Counsel:

This responds to your letter dated December 17, 2007. After you telephone conversation with Ms. Peebles, she spoke with me and I explained to her that what you had included in your initial brief was consistent with the discussion the parties had with the Chief Justice during the conference of August 30, 2007. Therefore, I have no concerns with the initial brief that you have submitted.

Very truly yours,



CLERK

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Attorney General Henry D. McMaster
Assistant Deputy Attorney General J. Emory Smith, Jr.
Swati Shah Patel, Esquire

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

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DEC 17 2007

S.C. SUPREME COURT

Carl B. Epps, III
Tel: 803.255.9751
carl.epps@nelsonmullins.com

December 17, 2007

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Court of Appeals Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearhouse,

On Thursday, December 13, 2007, we filed our initial brief in the above-referenced case. Enclosed with the brief were several pages entitled Record Compilation 1 through Record Compilation 14. We received a call from Ms. Jean Peebles on Friday, December 14 asking for a written explanation of those pages.

In our meeting with Justice Toal on August 30, 2007, we discussed the possibility of compiling quotes from the record supporting a single proposition onto one page for ease of reference. It was our impression that Justice Toal was amenable to the idea, and the pages in question are compiled quotes. Our final briefs will be submitted in electronic format with hyperlinks to the record cited in the brief. Where a record compilation of quotes is noted in the brief, the words "record compilation" will be hyperlinked to the quotes at issue. The record compilation pages will then include additional hyperlinks directly to the cited pages of the record. Because our initial briefs were submitted only in hard copy, we included hard copies of the record compilation pages for the Court's and opposing counsel's reference.

The record compilation pages do not include any material that is not included in the brief or in the record. All of the citations are also included in a string citation in the text of the brief. The benefit of compiling information in this format is simply that where there is extensive record support for a single proposition, the Court will be able to easily retrieve and review the supporting quotations.

The Honorable Daniel E. Shearouse
December 17, 2007
Page 2

Please let us know if you have additional questions or concerns regarding the record compilation pages.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Carl Epps". The signature is fluid and cursive, with the first name "Carl" being more prominent than the last name "Epps".

Carl B. Epps, III

CBEIII:shl

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
J. Emory Smith, Jr., Esquire
Swati Patel, Esquire

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

1320 Main Street / 17th Floor / Columbia, SC 29201

Tel: 803.799.2000 Fax: 803.255.9038

www.nelsonmullins.com

Laura Callaway Hart

Tel: 803.255.9752

Fax: 803.255.9038

laura.hart@nelsonmullins.com

December 13, 2007

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29211

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DEC 13 2007
S.C. SUPREME COURT

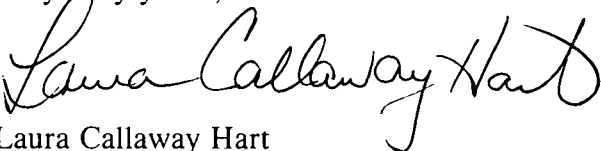
RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Court of Appeals Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed for filing are the original and one (1) copy of the Initial Brief of Appellant, Designation of Matter to be Included in the Record of Appeal, Certificate of Counsel, and Certificate of Service in regard to the above matter. Please file the originals and return clocked-in copies to us.

By copy of this letter to other counsel, we are serving each of them with a copy of the above-referenced documents.

Very truly yours,



Laura Callaway Hart

LCH:sik

Enclosures

cc: Robert E. Stepp, Esquire (via hand delivery; w/enclosures)

The Honorable Daniel E. Shearouse

December 13, 2007

Page 2

Elizabeth Van Doren Gray, Esquire (via hand delivery; w/enclosures)

A. Jackson Barnes, Esquire (via hand delivery; w/enclosures)

J. Emory Smith, Jr., Esquire (via hand delivery; w/enclosures)

Swati Patel, Esquire (via hand delivery; w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

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DEC 13 2007

S.C. SUPREME COURT

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a

taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Kathisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as

Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem, Plaintiffs,

Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,

Lee County School District,
Marion County School District 7,
Orangeburg School District 3,
Lena Manning, individually, and as a taxpayer residing
in Allendale County and as Guardian ad Litem of
Courtney V.; Courtney V., a minor, by and through
Lena Manning, as Guardian ad Litem; Pamela
Williams, individually, and as a taxpayer residing in
Dillon County, and as parent and Guardian ad Litem of
Katisha W.; Katisha W., a minor, by and through
Pamela Williams as Guardian ad Litem; Eddie Wright,
individually, and as a taxpayer residing in Florence
County, and as parent and Guardian ad Litem of
Brandon F.; Brandon F., a minor, by and through
Eddie Wright as Guardian ad Litem; Brenda Brooks,
individually, and as a taxpayer residing in Hampton
County, and as parent and Guardian ad Litem of Tyrin
B.; Tyrin B., a minor, by and through Brenda Brooks
as Guardian ad Litem; Marva Tigner, individually, and
as a taxpayer residing in Jasper County, and as parent
and Guardian ad Litem of Bryan T. and Bradley T.;
Bryan T., a minor, by and through Marva Tigner as
Guardian ad Litem; Bradley T., a minor, by and
through Marva Tigner as Guardian ad Litem; Gail Y.
Harriott, individually, and as a taxpayer residing in Lee
County and as parent and Guardian ad Litem of
Rashade H.; Rashade H., a minor, by and through Gail
Y. Harriott, as Guardian ad Litem; Linda Carraway,
individually, and as a taxpayer residing in Marion
County, and as parent and Guardian ad Litem of
Kimberly W.; Kimberly W., a minor, by and through
Linda Carraway as Guardian ad Litem; Bernice Profit,
individually, and as a taxpayer residing in Orangeburg
County and as parent and Guardian ad Litem of Russell
H.; Russell H., a minor, by and through Bernice Profit,
as Guardian ad Litem, are Appellants-
Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*
of the Senate and as a representative of the South
Carolina Senate; Robert W. Harrell, Jr., as
Speaker of the House of Representatives
and as a representative of the South Carolina
House of Representatives, ... Respondents-
Appellants,

and

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DEC 13 2007

S.C. SUPREME COURT

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ...

Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants-Respondents, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by hand delivery to the following addresses:

Pleadings:

Initial Brief of Appellant;

**Designation of Matter to be Included in the Record of
Appeal; and**

Certificate of Counsel

Counsel Served:

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
SOWELL GRAY STEPP & LAFITTE, L.L.C.
1310 Gadsden Street
Columbia, SC 29201

Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

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J. Emory Smith, Jr.
OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA
Rembert C. Dennis Building
Columbia, SC 29201

Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
South Carolina State House
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina

A handwritten signature in cursive script, reading "Stella I. Kasten", is written over a horizontal line.

Stella I. Kasten
Administrative Assistant

December 13, 2007

THE STATE OF SOUTH CAROLINA
In The Supreme Court

*Amended
Title*

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a

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Plaintiffs,

Of whom:

Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,
Lee County School District,
Marion County School District 7,
Orangeburg School District 3,
Lena Manning, individually, and as a taxpayer residing
in Allendale County and as Guardian ad Litem of
Courtney V.; Courtney V., a minor, by and through
Lena Manning, as Guardian ad Litem; Pamela
Williams, individually, and as a taxpayer residing in
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Katisha W.; Katisha W., a minor, by and through
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individually, and as a taxpayer residing in Florence
County, and as parent and Guardian ad Litem of
Brandon F.; Brandon F., a minor, by and through
Eddie Wright as Guardian ad Litem; Brenda Brooks,
individually, and as a taxpayer residing in Hampton
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B.; Tyrin B., a minor, by and through Brenda Brooks
as Guardian ad Litem; Marva Tigner, individually, and
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and Guardian ad Litem of Bryan T. and Bradley T.;
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Guardian ad Litem; Bradley T., a minor, by and
through Marva Tigner as Guardian ad Litem; Gail Y.
Harriott, individually, and as a taxpayer residing in Lee
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Y. Harriott, as Guardian ad Litem; Linda Carraway,
individually, and as a taxpayer residing in Marion
County, and as parent and Guardian ad Litem of
Kimberly W.; Kimberly W., a minor, by and through
Linda Carraway as Guardian ad Litem; Bernice Profit,
individually, and as a taxpayer residing in Orangeburg
County and as parent and Guardian ad Litem of Russell
H.; Russell H., a minor, by and through Bernice Profit,
as Guardian ad Litem, are Appellants-
Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*

of the Senate and as a representative of the South Carolina Senate; Robert W. Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives, ...	Respondents- Appellants,
and	
The State of South Carolina; Mark C. Sanford, as Governor of the State of South Carolina, ...	Respondents.



SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

December 13, 2007

RECEIVED

DEC 13 2007

S.C. SUPREME COURT

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Abbeville School District, et al. v. The State of South Carolina, et al.
Case No.: 2007-65159
Civil Action Number 93-CP-31-169
SGS&L File Number 2014/1500

Dear Mr. Shearouse:

Enclosed are the original and three copies of the Initial Cross-Appeal Brief of Respondents / Appellants Glenn F. McConnell and Robert William Harrell, Jr. and the original and three copies of the Designation of Matter to be Included in the Record on Appeal in the referenced matter. Please file and return the clocked copies to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving counsel of record.

Very truly yours,

A. Jackson Barnes

AJB:jlw
Enclosures

cc: J. Emory Smith, Esquire
Henry D. McMaster, Esquire
Carl B. Epps, III, Esquire
Laura C. Hart, Esquire
Stephen G. Morrison, Esquire
Shelby K. Leonardi, Esquire
Michael Hitchcock, Esquire
Bradley S. Wright, Esquire

A. Jackson Barnes
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Columbia, SC 29211

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FACSIMILE 803.929.0300
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEE COUNTY
Court of Common Pleas
Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2007-65159

Abbeville County School District, *et al.*, ...Appellants / Respondents

vs.

The State of South Carolina, *et al.*, ...Respondents / Appellants.

PROOF OF SERVICE

I, the undersigned employee, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C, attorneys for the Respondents / Appellants, do hereby certify that on December 13, 2007 I have served all counsel in this action with a copy of the Initial Cross-Appeal Brief of Respondents / Appellants Glenn F. McConnell and Robert William Harrell, Jr. and the Designation of Matter to be Included in the Record on Appeal by hand delivery to the following addresses:

Counsel Served: NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.
Carl B. Epps, III
Stephen G. Morrison
Laura Callaway Hart
Shelby K. Leonardi
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
Attorneys for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL
Henry D. McMaster
J. Emory Smith, Jr.
Rembert Dennis Bldg.
1000 Assembly Street, Room 519
Columbia, South Carolina 29201

December 13, 2007


A. Jackson Barnes
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Respondents / Appellants Glenn F.
McConnell and Robert William Harrell, Jr.**

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

1320 Main Street / 17th Floor / Columbia, SC 29201

Tel: 803.799.2000 Fax: 803.255.9166

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November 19, 2007

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NOV 19 2007

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

S.C. SUPREME COURT

RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Supreme Court Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed please find an amended caption for the above-referenced case. The caption has been amended in the following respects:

- The following Plaintiffs, whose claims have not yet been tried to judgment and were mistakenly included in the Notice of Appeal, are no longer identified as Appellants-Respondents: Abbeville County School District; Bamberg County School District 1; Bamberg County School District 2; Barnwell County School District 19; Barnwell County School District 29; Barnwell County School District 45; Berkeley County School District; Chesterfield County School District; Clarendon County School District 1; Clarendon County School District 2; Clarendon County School District 3; Dillon County School District 1; Dillon County School District 3; Florence County School District 1; Florence County School District 2; Florence County School District 3; Florence County School District 5; Hampton County School District 1; Laurens County School District 55; Laurens County School District 56; Lexington County School District 4; Marion County School District 1; Marion County School District 2; Marlboro County School District; McCormick County School District; Orangeburg Consolidated School District 5; Saluda County School District; Williamsburg County School District; William L. Mills, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler B.; Tyler

B., a minor, by and through Betty Bagley, as Guardian ad Litem; Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C. a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County and as parent and Guardian ad Litem of Candace C.; Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County and as parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside, as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton county and as parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert S.; Robert S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha B.; Tanisha B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S.; and Thomas S., a minor, by and through Thomas Shealy, as Guardian ad Litem.

- Pursuant to an agreement with the Defendants, Glenn F. McConnell, as President *Pro Tempore* of the Senate and as a representative of the South Carolina Senate, is substituted for Warren K. Giese, as Chairman of the Senate Education Committee and

The Honorable Daniel E. Shearouse
November 19, 2007
Page 3

Chairman of the Senate Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate, and that Robert W. Harrell, Jr., as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives, is substituted for David H. Wilkins, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives.

- Plaintiffs have complied with the Court's August 13, 2007 Order regarding personal data identifiers and included only the last initial of minor Plaintiffs.

Defendants are aware of these changes and do not object to the amended caption. Pursuant to our conversation with Ms. Peebles, we understand that the motions filing fee of \$25.00 is not required for this request. Per the request of Ms. Peebles, please also find enclosed a disk containing the amended caption in Word format.

Please notify us if you need additional information regarding the enclosed amended caption. Thank you for your consideration.

With kind regards, I am

Very truly yours,



Shelby K. Leonardi

SKL:shl

Enclosure

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
J. Emory Smith, Jr., Esquire
Swati Patel, Esquire

RECEIVED

NOV 19 2007

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney V.; Courtney V., a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon P.; Waylon P., a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a

parent and Guardian ad Litem of Tyler B.; Tyler B., a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly C.; Kimberly C., a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor J.; Eleanor J., a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie L.; Christie L., a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace C., a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie C.; Corrie C., a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha W.; Katisha W., a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon F.; Brandon F., a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel W.; Joel W., a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy M.; Amy M., a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin B.; Tyrin B., a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan T. and Bradley T.; Bryan T., a minor, by and through Marva Tigner as Guardian ad Litem; Bradley T., a

minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. S.; Robert B. S., a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson B.; Jorgana Ranson B., a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade H.; Rashade H., a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly W.; Kimberly W., a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin N.; Erin N., a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle H.; Krystle H., a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell H.; Russell H., a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. B.; Tanisha P. B., a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea B.; Dondrea B., a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda S.; Brenda S., a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas S., Jr.; Thomas S., Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem, Plaintiffs,

Of whom:

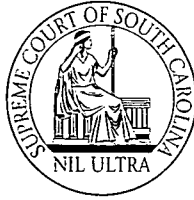
Allendale County School District,
Dillon County School District 2,
Florence County School District 4,
Hampton County School District 2,
Jasper County School District,
Lee County School District,
Marion County School District 7,
Orangeburg School District 3,
Lena Manning, individually, and as a taxpayer residing
in Allendale County and as Guardian ad Litem of
Courtney V.; Courtney V., a minor, by and through
Lena Manning, as Guardian ad Litem; Pamela
Williams, individually, and as a taxpayer residing in
Dillon County, and as parent and Guardian ad Litem of
Katisha W.; Katisha W., a minor, by and through
Pamela Williams as Guardian ad Litem; Eddie Wright,
individually, and as a taxpayer residing in Florence
County, and as parent and Guardian ad Litem of
Brandon F.; Brandon F., a minor, by and through
Eddie Wright as Guardian ad Litem; Brenda Brooks,
individually, and as a taxpayer residing in Hampton
County, and as parent and Guardian ad Litem of Tyrin
B.; Tyrin B., a minor, by and through Brenda Brooks
as Guardian ad Litem; Marva Tigner, individually, and
as a taxpayer residing in Jasper County, and as parent
and Guardian ad Litem of Bryan T. and Bradley T.;
Bryan T., a minor, by and through Marva Tigner as
Guardian ad Litem; Bradley T., a minor, by and
through Marva Tigner as Guardian ad Litem; Gail Y.
Harriott, individually, and as a taxpayer residing in Lee
County and as parent and Guardian ad Litem of
Rashade H.; Rashade H., a minor, by and through Gail
Y. Harriott, as Guardian ad Litem; Linda Carraway,
individually, and as a taxpayer residing in Marion
County, and as parent and Guardian ad Litem of
Kimberly W.; Kimberly W., a minor, by and through
Linda Carraway as Guardian ad Litem; Bernice Profit,
individually, and as a taxpayer residing in Orangeburg
County and as parent and Guardian ad Litem of Russell
H.; Russell H., a minor, by and through Bernice Profit,
as Guardian ad Litem, are

Appellants-
Respondents,

v.

Glenn F. McConnell, as President *Pro Tempore*

of the Senate and as a representative of the South
Carolina Senate; Robert W. Harrell, Jr., as
Speaker of the House of Representatives
and as a representative of the South Carolina
House of Representatives, ... Respondents-
Appellants,
and
The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ... Respondents.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 19, 2007

Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Nelson Mullins Riley
& Scarborough
P O Box 11070
Columbia, SC 29211

Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Sowell, Gray, Stepp
& Laffitte, L.L.C.
P O Box 11449
Columbia, SC 29211

Re: Abbeville County School District, et al. v. State of SC

Dear Counsel:

Enclosed is an order of the Court revising the briefing schedule in the above matter.

Carl B. Epps, III, Esquire
Re: Abbeyville Cty. School Dist. v. State of SC
November 19, 2007
Page two

Please be advised that the appellants/respondents and the respondents/appellants may each serve and file an appellant's initial brief and designation of matter, a respondent's initial brief and designation of matter and an appellant's initial reply brief and designation of matter pursuant to the time limits of the enclosed order.

Very truly yours,

Daniel E. Shearouse
P 5

CLERK

DES/jjp

cc: Attorney General Henry D. McMaster
Assistant Deputy Attorney General J. Emory Smith, Jr.
Swati Shah Patel, Esquire

The Supreme Court of South Carolina

Abbeville County School
District, et al.,

Appellants-Respondents,

v.

The State of South Carolina, et
al., of whom Warren K. Giese,
as Chairman of the Senate
Education Committee and
Chairman of the Senate Finance
Committee, in his
representative capacity as a
properly designated
representative of the South
Carolina Senate and David H.
Wilkins, as Speaker of the
House of Representatives and
as a representative of the South
Carolina House of
Representatives are

Respondents-Appellants

and State of South Carolina,
Mark C. Sanford as Governor
of the State of South Carolina is Respondent.

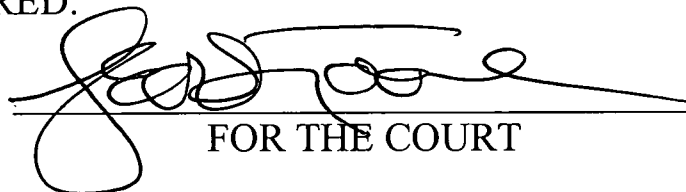
ORDER

By order dated September 5, 2007, this Court set a briefing
schedule for this appeal. Appellants-respondents, with the consent of all
parties, now move the Court to extend the time for all deadlines an additional

fifteen days. Specifically, appellants-respondents state they need the additional time to identify appropriate designations for the Record on Appeal and to clarify the issues and evidence for this Court's review. Appellants-respondents state the additional time will help ensure the appellate issues raised will be properly briefed and framed for the Court. We construe this motion as requesting a fifteen day extension of time to serve and file the appellants' briefs and designations of matter only.

The briefing schedule shall now be as follows: Appellants' initial briefs and designations of matter shall be served and filed by December 13, 2007. Respondents' initial briefs and designations of matter shall be served and filed by February 28, 2008. Appellants shall then have until March 28, 2008, to serve and file their reply briefs. The record on appeal shall be served and filed by April 17, 2008. All final briefs shall be served and filed by May 1, 2008. No further extensions of time will be granted absent extraordinary circumstances.

IT IS SO ORDERED.

 C. J.
FOR THE COURT

Columbia, South Carolina

November 19, 2007

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9038
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Laura Callaway Hart
Tel: 803.255.9752
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laura.hart@nelsonmullins.com

November 16, 2007

RECEIVED

NOV 16 2007

Hand Delivered

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29211

RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Civil Action No. 93-CP-31-169
Court of Appeals Case Tracking No. 2007-65159
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed for filing are the original and seven (7) copies of the Appellant's Motion for Extensions of time for Briefing and Designations of Matter in regard to the above matter. Also enclosed is the Court's filing fee of \$25.00. Please file the original and return a clocked-in copy to us.

By copy of this letter to other counsel, we are serving each of them with a copy of the above-referenced pleading.

Very truly yours,



Laura Callaway Hart

LCH:sik

Enclosures

cc: Robert E. Stepp, Esquire (w/enclosures)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 16 2007

APPEAL FROM LEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

Abbeville County School
District, et al.

Appellants-
Respondents.

v.

Warren K. Giese, as
Chairman of the Senate Education
Committee and Chairman of the Senate
Finance Committee, in his representative
capacity as a properly designated
representative of the South Carolina
Senate; David H. Wilkins, as Speaker
of the House of Representatives and as
a representative of the South Carolina
House of Representatives, ...

Respondents-
Appellants,

v.

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina, ...

Respondents.

MOTION FOR EXTENSIONS OF TIME FOR BRIEFING AND
DESIGNATIONS OF MATTER

The Appellants-Respondents, with the consent of all parties, hereby move the Court for an Order extending the time for all deadlines under the current Scheduling Order for an additional fifteen (15) days. This case involves a substantial constitutional issue and is unusual in both its size and its complexity. The trial in this case consumed over 100 days, and the transcript of testimony exceeds 24,000 pages. Additionally, approximately 4400 exhibits were introduced. The case involves questions of law and questions of fact, and the multiple issues raised are complex. Despite their best efforts, Appellants- Respondents need the additional time to to

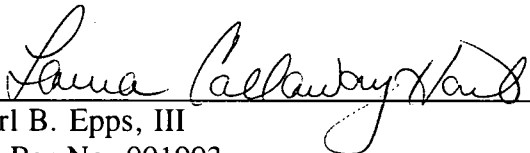
identify appropriate designations for the Record on Appeal and to clarify the issues and evidence for the Court's review. Appellants-Respondents believe that if the additional time is granted it will help ensure that the appellate issues raised by this case will be properly briefed and framed for the Court.

Wherefore, the Appellants-Respondents, by and with the consent of all other parties, ask this Court to grant its request to extend all deadlines by fifteen (15) days.

November 16, 2007

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Carl B. Epps, III

SC Bar No. 001903

E-Mail: carl.epps@nelsonmullins.com

Stephen G. Morrison

SC Bar No. 004103

E-Mail: steve.morrison@nelsonmullins.com

Laura Callaway Hart

SC Bar No. 002766

E-Mail: laura.hart@nelsonmullins.com

Shelby K. Leonardi

SC Bar No. 70570

E-Mail: shelby.leonardi@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Appellants-Respondents

WE CONSENT:

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: Elizabeth Van Doren Gray Date: November 16, 2007
by Laura Callaway Hunt with authorization,

Robert E. Stepp

Elizabeth Van Doren Gray

A. Jackson Barnes

Roland M. Franklin, Jr.

1310 Gadsden Street

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Respondents-Appellants

WE CONSENT:

SOUTH CAROLINA ATTORNEY GENERAL

By: J. Emory Smith Date: November 16, 2007
by Rena C. Dennis with authorization

Henry D. McMaster

J. Emory Smith, Jr.

Office Of The Attorney General Of The State Of South Carolina

Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211-1549

(803) 734-3970

Attorneys for Respondent State of South Carolina

WE CONSENT:

OFFICE OF THE GOVERNOR

By: Swati S. Patel Date: November 16, 2007
by Luma Calhoun Hart with authorization
Swati S. Patel
Office of the Governor
P.O. Box 12267
Columbia, SC 29211
(803) 734.5251

Attorney for Respondent Governor of South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

The State of South Carolina, *et al.*, ... Respondents,
v.
Abbeville County School District, *et al.*, ... Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings:

**Motion for Extensions of Time for Briefing and
Designations of Matter**

Counsel Served:

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
SOWELL GRAY STEPP & LAFITTE, L.L.C.
1310 Gadsden Street
Columbia, SC 29201

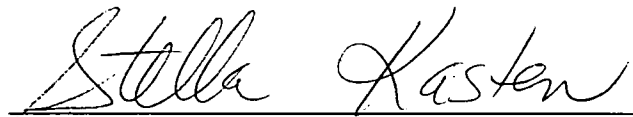
Henry D. McMaster
J. Emory Smith, Jr.
OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF SOUTH CAROLINA
Rembert C. Dennis Building
Columbia, SC 29201

Attorneys for Respondents-Appellants
Senate and House of Representatives of the
State of South Carolina

Attorneys for Respondent State of South
Carolina

Swati S. Patel
Office of the Governor
P.O. Box 12267
Columbia, SC 29211

Attorney for Respondent Governor of
South Carolina

A handwritten signature in cursive script, reading "Stella Kasten", written over a horizontal line.

Stella I. Kasten
Administrative Assistant

November 16, 2007



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

SEP 13 2007

September 13, 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Abbeville County School District v. State 93-CP-31-169

Dear Mr. Shearouse:

I would appreciate your removing Elizabeth McMahon, Esquire, from the mailing list for this case. She left the is no longer employed by the Office of the Attorney General and is not providing representation in this case. Thank you for your assistance.

Yours very truly,

J. Emory Smith, Jr.

Assistant Deputy Attorney General

cc: Stephen G. Morrison, Esquire
Carl B. Epps, III, Esquire
Laura Calloway Hart, Esquire
Shelby K. Leonardi, Esquire
Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Swati Shah Patel, Esquire

The Supreme Court of South Carolina

Abbeville County School
District, et al.,

Appellants-Respondents,

v.

The State of South Carolina,
Warren K. Giese, as Chairman
of the Senate Education
Committee and Chairman of
the Senate Finance Committee,
in his representative capacity as
a properly designated
representative of the South
Carolina Senate and David H.
Wilkins, as Speaker of the
House of Representatives and
as a representative of the South
Carolina House of
Representatives are

Respondents-Appellants

and State of South Carolina,
and Mark C. Sanford as
Governor of the State of South
Carolina is

Respondents.

ORDER

The notices of appeal in this case were filed on August 9 and 15, 2007. Due to the complexity of this case, we find it necessary to address certain issues regarding the briefs, record and time schedule at the outset.

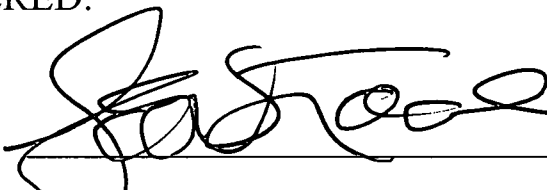
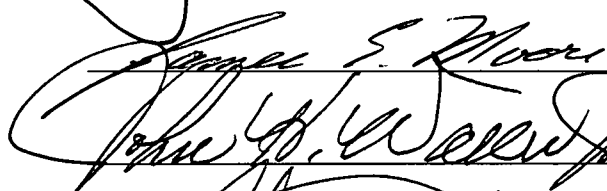
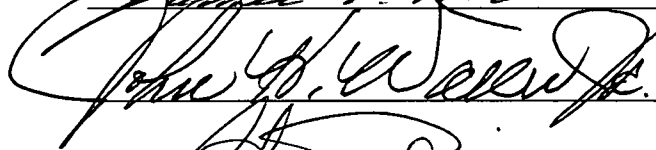
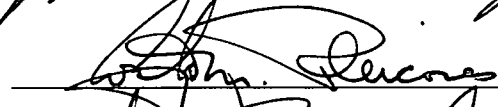
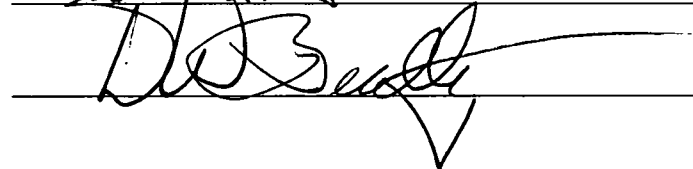
The briefing schedule shall be as follows. Appellants' initial briefs and designations of matter shall be served and filed by November 28, 2007. Respondents' initial briefs and designations of matter shall be served and filed by February 13, 2008. Appellants shall then have until March 13, 2008, to serve and file their reply briefs. The record on appeal shall be served and filed by April 2, 2008. All final briefs shall be served and filed by April 16, 2008. No extensions of time will be granted absent extraordinary circumstances.

All briefs and the record on appeal shall be in electronic format on CDs or DVDs. The briefs shall be in Microsoft Word. The parties shall serve one copy of the initial briefs on the opposing parties and file one copy with this Court, both in electronic format. The parties shall serve one copy of the final briefs in electronic format on the opposing parties and file two electronic copies and seven hard copies with this Court. The record on appeal shall be served and filed in the same manner. The electronic briefs shall contain hyperlinks to the transcripts or exhibits that are cited in the brief, and those transcripts and exhibits should be included on the CD or DVD that contains the brief. The parties may also include hyperlinks to case citations from Westlaw if so desired, but this is not required. Appellants' and

respondents' principal briefs shall not exceed 150 pages in length and reply briefs shall not exceed 75 pages in length. No exceptions will be made absent extraordinary circumstances.

We understand that the format set forth above includes the use of technology we have not used at this level before. Accordingly, the parties are directed to contact the Court immediately with any questions or issues that may arise in the process.

IT IS SO ORDERED.

 C. J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

September 5, 2007

Copy to: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Roland M. Franklin, Jr., Esquire
Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Assistant Deputy Attorney General J. Emory Smith, Jr.
Assistant Attorney General Elizabeth R. McMahon
Swati Shah Patel, Esquire

RECEIVED

AUG 27 2007



S.C. SUPREME COURT

State of South Carolina**Office of the Governor**MARK SANFORD
GOVERNORPO Box 12267
COLUMBIA, SC 29211

FAX COVER SHEET

MAIN FAX NUMBER: (803) 734-5167

DATE: August 28, 2007

TO: Jean Peebles

FROM: Swati Patel

FAX NUMBER: 734-1499

PAGES: (including this one): 2

IF YOU DO NOT RECEIVE ALL OF THE SHEETS INDICATED, PLEASE CONTACT THE
GOVERNOR'S OFFICE AT (803) 734-2100.

TO: Jean Peebles
FROM: Swati Patel
RE: Updated information
DATE: August 28, 2007

Per your request, my new information is below:

Swati S. Patel
Office of the Governor
P.O. Box 11267
Columbia, SC 29211

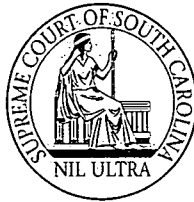
(803) 734-2100 (phone)
(803) 734-5167 (fax)
spatel@gov.sc.gov

RECEIVED
AUG 28 2007
S.C. SUPREME COURT

RECEIVED

AUG 27 2007

S.C. SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 28, 2007

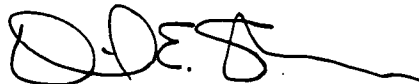
Carl B. Epps, III, Esquire
Nelson Mullins Riley
& Scarborough
P O Box 11070
Columbia, SC 29211

Re: Abbeville Cty Sch Dist v. State of SC

Dear Counsel:

This responds to your letter to Chief Justice Toal dated August 24, 2007. Please be advised that the Chief Justice will be willing to meet with the lawyers in this case at 2:00 p.m. on August 30, 2007, in the Supreme Court Building in Columbia. Please ensure that each party to this appeal is represented by an attorney at this meeting.

Very truly yours,



CLERK

cc: Attorney General Henry D. McMaster
Assistant Deputy Attorney General J. Emory Smith, Jr.,
Assistant Attorney General Elizabeth R. McMahon
Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
Ronald M. Franklin, Jr., Esquire
A. Jackson Barnes, Esquire
Swati S. Patel, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com



Carl B. Epps, III
Tel: 803.255.9751
carl.epps@nelsonmullins.com

August 24, 2007

The Honorable Jean H. Toal
Chief Justice
South Carolina Supreme Court
Post Office Box 12456
Columbia, SC 29211

RE: Abbeville County School District, et al. v. State of South Carolina, et al.
Lee County Court of Common Pleas
Civil Action No. 93-CP-31-169
Our File No. 11884/01500

Dear Chief Justice Toal:

The parties to the above captioned appeal would like to meet with you to discuss timelines and scheduling issues associated with the Plaintiffs' appeal and the House and Senate's cross-appeals, as well as other related issues, such as electronic filings. In our discussions among counsel we know that everyone involved in the case is available after 2:00 P.M. on August 30, 2007. If you can work us into your schedule we will very much appreciate it. We do not think the meeting should last more than thirty minutes.

Please let us know if you can accommodate our request, and of course if the date is not convenient, we will meet with you whenever your schedule allows.

Thank you very much for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Carl Epps".
Carl B. Epps, III

CBEIII:ljs

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
J. Emory Smith, Jr., Esquire
Swati Patel, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 24, 2007

Carl B. Epps, III, Esquire
Stephen G. Morrison, Esquire
Laura Callaway Hart, Esquire
Shelby K. Leonardi, Esquire
Nelson Mullins Riley
& Scarborough
P O Box 11070
Columbia, SC 29211

Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
Sowell, Gray, Stepp
& Laffitte, L.L.C.
P O Box 11449
Columbia, SC 29211

Re: Abbeville County School Dist v. State of SC - 2007-65159

Dear Counsel:

This office has received your Notices of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

Carl B. Epps, III, Esquire

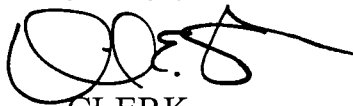
Re: Abbeville Cty Sch District v. State of SC

August 24, 2007

Page two

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/jjp

Enclosure

cc: Assistant Deputy Attorney General J. Emory Smith, Jr.,
Assistant Attorney General Elizabeth R. McMahon

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court:²

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.
2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.
3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.
4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/ Jean H. Toal C. J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Columbia, South Carolina

August 13, 2007



SOWELL • GRAY

SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

August 15, 2007

RECEIVED

AUG 15 2007

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

S.C. SUPREME COURT

Re: Abbeville School District, et al. v. The State of South Carolina, et al.
Civil Action Number 93-CP-31-169
SGS&L File Number 2014/1500

Dear Mr. Shearouse:

Enclosed are an original and one copy of the Notice of Cross-Appeal in the referenced matter. Please file and return the clocked copy to me via our courier. I also enclose a check for \$100.00 for the filing fee. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving counsel of record.

Very truly yours,


Robert E. Stepp

Enclosures

cc: J. Emory Smith, Esquire
Carl B. Epps, III, Esquire
Laura C. Hart, Esquire
Stephen G. Morrison, Esquire
Michael Hitchcock, Esquire
Charles F. Reid Esquire

Robert E. Stepp
rstepp@sowell.com
DD 803.231.7836

1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211

PHONE 803.929.1400
FACSIMILE 803.929.0300
WEBSITE www.sowell.com

RECEIVED

AUG 15 2007

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No.: 93-CP-31-0169

RECEIVED

AUG 15 2007

S.C. SUPREME COURT

Abbeville County School District, Allendale County School District, Bamberg County School District 1, Bamberg County School District 2, Barnwell County School District 19, Barnwell County School District 29, Barnwell County School District 45, Berkeley County School District, Chesterfield County School District, Clarendon County School District 1, Clarendon County School District 2, Clarendon County School District 3, Dillon County School District 1, Dillon County School District 2, Dillon County School District 3, Florence County School District 1, Florence County School District 2, Florence County School District 3, Florence County School District 4, Florence County School District 5, Hampton County School District 1, Hampton County School District 2, Jasper County School District, Laurens County School District 55, Laurens County School District 56, Lee County School District, Lexington County School District 4, Marion County School District 1, Marion County School District 2, Marion County School District 7, Marlboro County School District, McCormick County School District, Orangeburg Consolidated School District 3, Orangeburg Consolidated School District 5, Saluda County School District and Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney Vincent; Courtney Vincent, a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a Taxpayer residing in Allendale County and as Guardian ad Litem of Waylon Priester; Waylon Priester, a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler Bagley; Tyler Bagley, a minor, by and through Betty Bagley, as Guardian ad Litem, Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly Comer; Kimberly Comer, a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County, and as a parent and Guardian ad Litem of Eleanor Jameson; Eleanor Jameson, a minor, by and through

Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County, and as parent and Guardian ad Litem of Christie Lancaster; Christie Lancaster, a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County, and as parent and Guardian ad Litem of Candace Clark, a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County, and as a parent and Guardian ad Litem of Corrie Coker; Corrie Coker, a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha Williams; Kathisha Williams, a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent an Guardian ad Litem of Brandon Fullard; Brandon Bullard, a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as Parent and Guardian ad Litem of Joel Whiteside; Joel Whiteside, a minor, by and through John Whiteside as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton County and as a parent and Guardian ad Litem of Amy Mills; Amy Mills, a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin Brooks; Tyrin Brooks, a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan Tigner and Bradley Tigner; Bryan Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Bradley Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. Short; Robert B. Short, a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson Bridges; Jorgana Ranson Bridges, a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade Harriott; Rashade Harriott, a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly Wise; Kimberly Wise, a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin Nobles; Erin Nobles, a minor, by and through Dr. John Nobles, as Guardian ad

Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle Hampton; Krystle Hampton, a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell Hezekiah; Russell Hezekiah, a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. Brown; Tanisha P. Brown, a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea Berry; Dondrea Berry, a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda Smith; Brenda Smith, a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas Shealy, Jr.; Thomas Shealy, Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem,

Appellants,

vs.

The State of South Carolina, Mark C. Sanford, as Governor of The State of South Carolina; Warren K. Giese, as Chairman of the Senate Education Committee and Chairman of the Senate Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate; David H. Wilkins, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives,

Respondents.

NOTICE OF CROSS-APPEAL

Pursuant to Rule 203(c), SCACR, Respondents Warren K. Giese, as Chairman of the Senate Education Committee and Chairman of the Senate Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate; David H. Wilkins, as Speaker of the House of Representatives and as a

representative of the South Carolina House of Representatives, hereby cross-appeal from the Order of the Honorable Thomas W. Cooper, Jr. dated December 29, 2005, a copy of which is attached to Appellants' Notice of Appeal as Exhibit A, and from the Order on Reconsideration of the Honorable Thomas W. Cooper, Jr. dated July 12, 2007, a copy of which is attached to Appellants' Notice of Appeal as Exhibit B. Respondents received written notice of the entry of the Order on Reconsideration on July 16, 2007, and received written notice of Appellant's Notice of Appeal on August 13, 2007.

By:



Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
Roland M. Franklin, Jr.
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Respondents Senate and the House
of Representatives of the State of South Carolina**

Columbia, South Carolina

August 15, 2007

Other Counsel of Record:

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Carl B. Epps, III

Stephen G. Morrison

Laura Callaway Hart

Shelby K. Leonardi

Post Office Box 11070

Columbia, South Carolina 29211-1070

(803) 799-2000

Attorneys for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL

Henry D. McMaster

J. Emory Smith, Jr.

Elizabeth R. McMahon

Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211-1549

Attorneys for Defendants the State and Governor of South Carolina

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

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Tel: 803.799.2000 Fax: 803.255.9038

www.nelsonmullins.com

Shelby K. Leonardi

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Fax: 803.255.9166

shelby.leonardi@nelsonmullins.com

August 13, 2007

Hand Delivered

The Honorable Daniel E. Shearouse

Clerk of Court

South Carolina Supreme Court

ATTN: Jean Peebles

1231 Gervais Street

Columbia, SC 29201

RE: *Abbeville County School District, et al. v. State of South Carolina, et al.*
Lee County Court of Common Pleas
Civil Action No. 93-CP-31-169
Our File No. 11884/01500

Dear Ms. Peebles:

Enclosed is a diskette which contains the *Abbeville* caption in Word format.

Please let me know if you have any trouble with the diskette or need additional information.

Thank you.

Sincerely,



Shelby K. Leonardi

SKL:sik

Enclosure

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9038
www.nelsonmullins.com

Shelby K. Leonardi
Tel: 803.255.9597
Fax: 803.255.9166
shelby.leonardi@nelsonmullins.com

August 9, 2007

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: *Abbeville County School District, et al. v. State of South Carolina, et al.*
Lee County Court of Common Pleas
Civil Action No. 93-CP-31-169
Our File No. 11884/01500

Dear Mr. Shearouse:

Enclosed are an original and one copy of the Notice of Appeal in the above-captioned case. Please file and return a clocked copy to me via our courier. A check for the \$100 filing is also enclosed. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving counsel of record.

Sincerely,



Shelby K. Leonardi

SKL:sik

Enclosures

cc: Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
A. Jackson Barnes, Esquire
J. Emory Smith, Jr., Esquire

sub G.
only

RECEIVED

AUG 9 2007

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEE COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-169

RECEIVED

AUG 9 2007

S.C. SUPREME COURT

The State of South Carolina; Mark C. Sanford, as
Governor of the State of
South Carolina; Warren K. Giese, as
Chairman of the Senate Education
Committee and Chairman of the Senate
Finance Committee, in his representative
capacity as a properly designated
representative of the South Carolina
Senate; David H. Wilkins, as Speaker
of the House of Representatives and as
a representative of the South Carolina
House of Representatives, ... Respondents,

v.

Abbeville County School District,
Allendale County School District,
Bamberg County School District 1,
Bamberg County School District 2,
Barnwell County School District 19,
Barnwell County School District 29,
Barnwell County School District 45,
Berkeley County School District,
Chesterfield County School District,
Clarendon County School District 1,
Clarendon County School District 2,
Clarendon County School District 3,
Dillon County School District 1,
Dillon County School District 2,
Dillon County School District 3,
Florence County School District 1,
Florence County School District 2,
Florence County School District 3,
Florence County School District 4,

Florence County School District 5,
Hampton County School District 1,
Hampton County School District 2,
Jasper County School District,
Laurens County School District 55,
Laurens County School District 56,
Lee County School District,
Lexington County School District 4,
Marion County School District 1,
Marion County School District 2,
Marion County School District 7,
Marlboro County School District,
McCormick County School District,
Orangeburg Consolidated School District 3,
Orangeburg Consolidated School District 5,
Saluda County School District and
Williamsburg County School District; Lena Manning,
individually, and as a taxpayer residing in Allendale
County and as Guardian ad Litem of Courtney Vincent;
Courtney Vincent, a minor, by and through Lena
Manning, as Guardian ad Litem
William L. Mills, individually, and as a
taxpayer residing in Allendale County
and as Guardian ad Litem
of Waylon Priester; Waylon Priester, a
minor, by and through William Mills, as
Guardian ad Litem; Betty Bagley,
individually, and as a taxpayer residing
in Bamberg County and as a parent and
Guardian ad Litem of Tyler Bagley; Tyler
Bagley, a minor, by and through Betty
Bagley, as Guardian ad Litem; Evert
Comer, Jr., individually, and as a taxpayer
residing in Bamberg County and as parent
and Guardian ad Litem of Kimberly Comer; Kimberly
Comer a minor, by and through Evert Comer, Jr., as
Guardian ad Litem; Marla Q. Jameson, individually,
and as a taxpayer residing in Barnwell County and as a
parent and Guardian ad Litem of Eleanor Jameson;
Eleanor Jameson, a minor, by and through Marla Q.
Jameson, as Guardian ad Litem; Victor M. Lancaster,
Sr., individually, and as a taxpayer residing in Barnwell
County and as parent and Guardian ad Litem of Christie
Lancaster; Christie Lancaster, a minor, by and through
Victor M. Lancaster, Sr., as Guardian ad Litem; Dr.
Charles Clark, individually, and as a taxpayer residing

in Chesterfield County and as parent and Guardian ad Litem of Candace Clark; Candace Clark, a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County and as parent and Guardian ad Litem of Corrie Coke; Corrie Coker, a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha Williams; Katisha Williams, a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon Fullard; Brandon Fullard, a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as parent and Guardian ad Litem of Joel Whiteside, Joel Whiteside, a minor, by and through John Whiteside, as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton county and as parent and Guardian ad Litem of Amy Mills; Amy Mills, a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin Brooks; Tyrin Brooks, a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan Tigner and Bradley Tigner; Bryan Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Bradley Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. Short; Robert B. Short, a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson Bridges; Jorgana Ranson Bridges, a minor, by and through Dr. Keith

A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade Harriott; Rashade Harriott, a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly Wise; Kimberly Wise, a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin Nobles; Erin Nobles, a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle Hampton; Krystle Hampton, a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell Hezekiah; Russell Hezekiah, a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. Brown; Tanisha P. Brown, a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea Berry; Dondrea Berry, a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda Smith; Brenda Smith, a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas Shealy, Jr.; Thomas Shealy, Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem, ... Appellants.

NOTICE OF APPEAL

Abbeville County School District; Allendale County School District; Bamberg County School District 1; Bamberg County School District 2; Barnwell County School District 19; Barnwell County School District 29; Barnwell County School District 45; Berkeley County School District; Chesterfield County School District; Clarendon County School District 1; Clarendon County School District 2; Clarendon County School District 3; Dillon County School District 1; Dillon County School District 2; Dillon County School District 3; Florence County School District 1; Florence County School District 2; Florence County School District 3; Florence County School District 4; Florence County School District 5; Hampton County School District 1; Hampton County School District 2; Jasper County School District; Laurens County School District 55; Laurens County School District 56; Lee County School District; Lexington County School District 4; Marion County School District 1; Marion County School District 2; Marion County School District 7; Marlboro County School District; McCormick County School District; Orangeburg Consolidated School District 3; Orangeburg Consolidated School District 5; Saluda County School District; Williamsburg County School District; Lena Manning, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Courtney Vincent; Courtney Vincent, a minor, by and through Lena Manning, as Guardian ad Litem; William L. Mills, individually, and as a taxpayer residing in Allendale County and as Guardian ad Litem of Waylon Priester; Waylon Priester, a minor, by and through William Mills, as Guardian ad Litem; Betty Bagley, individually, and as a taxpayer residing in Bamberg County and as a parent and Guardian ad Litem of Tyler Bagley; Tyler Bagley, a minor, by and through Betty Bagley, as Guardian ad Litem; Evert Comer, Jr., individually, and as a taxpayer residing in Bamberg County and as parent and Guardian ad Litem of Kimberly Comer; Kimberly Comer a minor, by and through Evert Comer, Jr., as Guardian ad Litem; Marla Q. Jameson, individually, and as a taxpayer residing in Barnwell County and as a parent and Guardian ad Litem of Eleanor Jameson; Eleanor Jameson, a minor, by and through Marla Q. Jameson, as Guardian ad Litem; Victor M. Lancaster, Sr., individually, and as a taxpayer residing in Barnwell County and as parent and Guardian ad Litem of Christie Lancaster; Christie Lancaster, a minor, by and through Victor M. Lancaster, Sr., as Guardian ad Litem; Dr. Charles Clark, individually, and as a taxpayer residing in Chesterfield County and as parent and Guardian ad Litem of Candace Clark; Candace Clark, a minor, by and through Dr. Charles Clark, as Guardian ad Litem; Colonel Larry Coker, individually, and as a taxpayer residing in Clarendon County and as parent and Guardian ad Litem of Corrie Coke; Corrie Coker, a minor, by and through Colonel Larry Coker, as Guardian ad Litem; Pamela Williams, individually, and as a taxpayer residing in Dillon County, and as parent and Guardian ad Litem of Katisha Williams; Katisha Williams, a minor, by and through Pamela Williams as Guardian ad Litem; Eddie Wright, individually, and as a taxpayer residing in Florence County, and as parent and Guardian ad Litem of Brandon Fullard; Brandon Fullard, a minor, by and through Eddie Wright as Guardian ad Litem; John Whiteside, individually, and as a taxpayer residing in Florence County and as parent and Guardian ad Litem of Joel Whiteside, Joel Whiteside, a minor, by

and through John Whiteside, as Guardian ad Litem; Dr. Francis Mills, individually, and as a taxpayer residing in Hampton county and as parent and Guardian ad Litem of Amy Mills; Amy Mills, a minor, by and through Dr. Francis Mills, as Guardian ad Litem; Brenda Brooks, individually, and as a taxpayer residing in Hampton County, and as parent and Guardian ad Litem of Tyrin Brooks; Tyrin Brooks, a minor, by and through Brenda Brooks as Guardian ad Litem; Marva Tigner, individually, and as a taxpayer residing in Jasper County, and as parent and Guardian ad Litem of Bryan Tigner and Bradley Tigner; Bryan Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Bradley Tigner, a minor, by and through Marva Tigner as Guardian ad Litem; Robert Elisha Short, individually, and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Robert B. Short; Robert B. Short, a minor, by and through Robert Elisha Short, as Guardian ad Litem; Dr. Keith A. Bridges, individually and as a taxpayer residing in Laurens County and as parent and Guardian ad Litem of Jorgana Ranson Bridges; Jorgana Ranson Bridges, a minor, by and through Dr. Keith A. Bridges, as Guardian ad Litem; Gail Y. Harriott, individually, and as a taxpayer residing in Lee County and as parent and Guardian ad Litem of Rashade Harriott; Rashade Harriott, a minor, by and through Gail Y. Harriott, as Guardian ad Litem; Linda Carraway, individually, and as a taxpayer residing in Marion County, and as parent and Guardian ad Litem of Kimberly Wise; Kimberly Wise, a minor, by and through Linda Carraway as Guardian ad Litem; Dr. John Nobles, individually, and as a taxpayer residing in Marlboro County and as parent and Guardian ad Litem of Erin Nobles; Erin Nobles, a minor, by and through Dr. John Nobles, as Guardian ad Litem; Patricia Hampton, individually, and as a taxpayer residing in McCormick County and as parent and Guardian ad Litem of Krystle Hampton; Krystle Hampton, a minor, by and through Patricia Hampton, as Guardian ad Litem; Bernice Profit, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Russell Hezekiah; Russell Hezekiah, a minor, by and through Bernice Profit, as Guardian ad Litem; Matlin P. Brown, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Tanisha P. Brown; Tanisha P. Brown, a minor, by and through Matlin P. Brown, as Guardian ad Litem; James Berry, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Dondrea Berry; Dondrea Berry, a minor, by and through James Berry, as Guardian ad Litem; Gerald Smith, individually, and as a taxpayer residing in Orangeburg County and as parent and Guardian ad Litem of Brenda Smith; Brenda Smith, a minor, by and through Gerald Smith, as Guardian ad Litem; Thomas Shealy, individually, and as a taxpayer residing in Saluda County and as parent and Guardian ad Litem of Thomas Shealy, Jr.; and Thomas Shealy, Jr., a minor, by and through Thomas Shealy, as Guardian ad Litem, appeal the Order of the Honorable Thomas W. Cooper, Jr. dated July 12, 2007, is to alter or amend, and the Order of the Honorable Thomas December 29, 2005, setting forth the Court's judgment following (as Exhibits A and B). Appellants received written notice of on July 12, 2007.

August 9, 2007

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Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	
Abbeville County School District, <i>et. al.</i> ,	)	Case number 93-CP-31-0169
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
The State of South Carolina, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

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A non-jury trial commenced in this matter on July 28, 2003, and ended on December 9, 2004. During the course of 102 days of trial, 112 witnesses testified in person or by deposition, generating approximately 23,100 pages of transcript. Approximately 4,400 documents were received into evidence. This Court carefully considered the testimony of the witnesses, all of the exhibits, and the proposed findings of fact and conclusions of law submitted by the parties.

This Court found and concluded:

The instructional facilities in the Plaintiff Districts are safe and adequate to provide the opportunity for a minimally adequate education as defined in Abbeville County School District v. State, 335 S.C. 58, 515 S.E.2d 535 (1999).

The South Carolina curriculum standards at the minimum encompass the knowledge and skills necessary to satisfy the definition for a minimally adequate education as set out in Abbeville County.

The South Carolina system of teacher licensure, including the minimum passing scores on Praxis I and the different Praxis II tests, is sufficient to ensure at least minimally competent teachers to provide instruction consistent with the curriculum standards.

Inputs into the educational system, except for the funding of early childhood intervention programs, are sufficient to satisfy the constitutional requirement.

The constitutional requirement of adequate funding is not met by Defendants as a result of their failure to adequately fund early childhood intervention programs.

The students in the Plaintiff Districts are denied the opportunity to receive a minimally adequate education because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements.

The Plaintiff Districts and Defendants¹ both filed Rule 59(e), SCRCP, motions to alter or amend. This Court has carefully considered the motions, and finds and concludes as follows:

Plaintiffs' Motion to Alter or Amend

A. Inputs

1. Plaintiffs contend that the level of "inputs," or resources, available to educate students in the Plaintiff Districts is insufficient to create the opportunity for each child to acquire a minimally adequate education. (Plaintiffs' Motion to Alter or Amend, ¶¶ 1-3, 5, & 6). Plaintiffs do not suggest what level of these inputs would be necessary to create that opportunity. This makes it difficult for the Court to determine the levels are insufficient. However, plaintiffs do itemize certain specific alleged deficiencies in "inputs" which are treated below.

Teacher quality issues

2. Plaintiffs assert "the fact that quality teachers can and do make a difference in providing educational opportunities was endorsed by every witness." However, the definition of a "quality teacher" was a matter of some disagreement. Moreover, the extent of the relationship between teacher characteristics and achievement is minimal.

¹ The House and the Senate jointly filed a Rule 59(e), SCRCP, motion to alter or amend. The State also filed a Rule 59(e) motion. The motions are identical, and the Court will refer to them collectively as the

3. Defendants, on the other hand, offered credible evidence proving the lack of correlation between certain teacher characteristics and better student achievement. The analyses performed by Dr. Michael Podgursky and Dr. David Armor are significant in that regard. Thus, the claim that the relatively lower levels of student achievement in the Plaintiff Districts are the result of relatively lower levels of certain positive teacher characteristics is not supported by any objective evidence.

4. Plaintiffs' attempt to equate teacher characteristics with teacher quality is not supported by the evidence. While Dr. Linda Darling-Hammond and others maintained otherwise, Dr. Berry, who is a disciple of Dr. Darling-Hammond, admitted there is "scant" evidence to support the notion that particular methods of teacher preparation favored by Dr. Darling-Hammond increase student achievement.

5. While teachers do matter, the things that make a difference cannot be objectively measured. As Plaintiffs' own witness Dr. Lorin Anderson put it, "[w]hat you do is more important than who you are." (Tr. Trans. (11/29/04), p.64, line 24-p.65, line 1). To the extent that teachers in the Plaintiff Districts are not employing the techniques that make a difference in achievement, they should be encouraged to do so. This does not require action by the General Assembly.

Teacher licensure

6. Plaintiffs question the sufficiency of the South Carolina teacher licensing procedures, and particularly the Praxis examinations utilized in that process. This criticism assumes, however, that the General Assembly has constructed the Praxis test and is responsible for its content, which is not the case. The Praxis tests, of which there

are many, are published by Educational Testing Services, who, presumably, are experts in their field and are qualified to determine the content level of the tests they offer. The State Department of Education (SDE) elects to use Praxis as a part of its teacher licensing procedures, although it is free to use different tests if it feels Praxis is not sufficiently rigorous. The fact that many states use the Praxis test as a part of their licensing procedure is contrary to Plaintiffs' assertion that the tests are not useful.

7. As to the question of whether the cut scores are appropriately set, Plaintiffs acknowledge that the Praxis II cut scores are set at the content knowledge level believed to be sufficient for an entry level teacher.

8. The entire process is controlled by SDE, and particularly by Dr. Poda. If the cut scores need to be raised, there is no impediment to doing so. Dr. Poda pointed out that cut scores for Praxis II were routinely reviewed and, in the course of such reviews, were raised and lowered as appropriate. This Court has relied on SDE and the Board of Education to set the score appropriately under all circumstances.

9. There is no doubt the teacher licensing procedures in South Carolina are not perfect, but perfection is not the constitutional standard. South Carolina has been repeatedly recognized for its efforts to improve teacher quality. It would be anomalous in the face of such recognition for this Court to conclude the system is insufficient to insure teachers are at least minimally competent.

Teacher compensation

10. Plaintiffs also argue the weight of evidence shows teachers in the Plaintiff Districts were insufficiently compensated under the constitutional standard. While teachers' salaries are relevant, if Plaintiffs presume that pay can be increased to a level

sufficient to overcome all of the other obstacles to recruitment and retention acknowledged by Plaintiffs, they have never said how much more pay would be necessary, and there is nothing in the record from which the Court (or the General Assembly) could make that determination. While Dr. Podgursky did acknowledge that higher pay would likely increase the applicant pool in the Plaintiff Districts, there is no basis to conclude that the larger number of applicants would all have the characteristics Plaintiffs value.

11. Plaintiffs contend that ¶ 208 of the order pertaining to teacher salaries disregards substantial pieces of evidence entirely. Plaintiffs, however, misconstrue ¶ 208, which must be read in context and in its entirety. That portion of the order speaks to Plaintiffs' reliance on "average" teacher salaries and the conclusions to be drawn therefrom.

12. Every Plaintiff superintendent testified they have difficulty attracting and retaining teachers of the type to which they aspire, which for the most part involves teachers with more education and experience. Because those characteristics are not related to student achievement in any significant way, however, it cannot be said that their failure to hire such teachers explains the relatively lower levels of student achievement in the Plaintiff Districts or that improving the percentages of teachers with those characteristics would improve achievement.

13. More important, however, is the lack of objective evidence that higher teacher pay would result in better teacher quality. Both Dr. Podgursky and Dr. Armor analyzed teacher pay and student achievement, and neither found any statistically significant positive relationship.

14. There is nothing in the record from which the Court can objectively conclude that current levels of teacher compensation deny students the opportunity to acquire a minimally adequate education, or that raising teacher pay would create such an opportunity.

Curriculum

15. Plaintiffs argue the curriculum in the Plaintiff Districts is often outdated and teachers in the Plaintiff Districts are unable to effectively deliver the curriculum to the students. Plaintiffs ask this Court to reconsider its ruling that the curriculum and teachers in the Plaintiff Districts are adequate.

16. As this Court noted in its order, principals of each of the schools in the Plaintiff Districts testified, via deposition, that the teachers in their schools were, for the most part, teaching the State adopted curriculum standards in their classrooms, and that the curriculum being taught in their schools was aligned to the state uniform curriculum standards.² Further, many of the Plaintiff Districts certified to SDE that they were following the required instructional programs and were offering the courses mandated by SDE. Plaintiffs have given this Court no reason to amend its prior ruling.

Transportation

17. The cost of transporting public school students continues to rise. The State has shifted a large portion of the responsibility for paying drivers' salaries to the local school districts, while the responsibility for purchasing and maintaining the fleet of buses rests on the State. The transition from small- or medium-sized schools, serving limited geographic areas, to large consolidated schools, some of which serve an entire

² See Order ¶¶ 118-19, 129-30, 139, 148, 158, 167, 177, & 188.

county, has increased the transportation burden on local districts and the State alike. Increases in length of routes, number of students transported, fuel costs, and bus maintenance absorb a substantial part of the budgets of the districts and the State. A greater cost is borne, however, by the children who have to spend far too much time riding to and from school, time that is largely wasted, since it can not be devoted to any useful endeavor. The tremendous shared cost of transportation, both monetary and otherwise, has become a necessary component in the education process. The State has struggled to keep the fleet of buses current via the issuance of bonds and general appropriations and, with the help of SDE, has maintained an aging fleet admirably. This Court cannot find that the necessary shifting of some of the cost of the transportation of students to the local districts rises to the level of a violation of the Constitution.

Time on task

18. The General Assembly has enacted several pieces of legislation providing for and authorizing extended learning time through summer school, after-school learning programs, homework centers and similar interventions. Plaintiffs contend many of these are ineffective because the course offerings are limited and the sessions are too brief. Additionally, Plaintiffs contend the programs are under-funded.

19. These additional learning opportunities were provided as supplements to the normal school day and school year. Nowhere does Abbeville County mandate these supplemental interventions as a constitutional requirement. Clearly, the programs are beneficial, especially to at-risk students. However, the lack of such programs does not amount to a constitutional violation.

Instructional materials

20. Plaintiffs assert that “testimony from superintendents, principals and teachers . . . demonstrate that the Plaintiff districts did not have, and lacked the funding to purchase, adequate instructional materials.” The question is whether the Plaintiff Districts receive adequate revenues to purchase instructional materials and supplies. The evidence clearly shows that they do.

21. The InSite data for 1999-2000, through 2002-2003, show that each Plaintiff District other than Orangeburg 3 and Dillon 2 spent more than the State average for instructional materials, in most cases by a significant amount. (Defendants’ Exhibits 3263, 3153, 3327-3336). For example, for 2003, the average district in the State spent just over \$150 per pupil in this category. For the same year, Jasper spent in excess of \$500 per pupil, Orangeburg 3 spent over \$300 per pupil, and Florence 4, Lee, and Hampton 2 spent over \$200 per pupil. These figures do not support Plaintiffs’ argument that materials and supplies are massively underfunded in the Plaintiff Districts. Additionally, each principal specialist in the Plaintiff District receives additional funds for materials and supplies, as does each teacher specialist.

Vocational education

22. Every Plaintiff District offers vocational programs that comply with State regulations. This fact alone is certainly evidence from which the Court can conclude that students in the Plaintiff Districts have the opportunity to acquire vocational skills. Nevertheless, Plaintiffs would prefer to offer vocational programs other than the ones they currently are offering. Abbeville County, however, does not specify that particular vocational courses must be made available. Thus, no constitutional violation can be premised on the failure of the Plaintiff Districts to offer particular courses.

B. Facilities

23. Plaintiffs contend the facilities in their districts do not meet the “safe and adequate” standard of Abbeville County. (Plaintiffs’ Motion to Alter or Amend, ¶ 4). They aver this Court’s order, with respect to all the Plaintiff Districts, and especially with regard to J.V. Martin Junior High School in Dillon County School District 2, and West Hardeeville Elementary School in Jasper County, is without evidentiary support.

24. The issue of facilities was treated extensively in this Court’s order. (See Order, ¶¶ 262-393). This Court concluded all the facilities in the Plaintiff Districts were either safe, adequate, and sufficient to provide students the opportunity to acquire a minimally adequate education, or had deficiencies that were being remedied by the district.

25. Plaintiffs’ contention that this Court’s order is without factual support as to all of their facilities is flawed because Plaintiffs do not distinguish among any of the facilities, and would have the Court declare them all to be unsafe and inadequate. Such a blanket condemnation is unsupported by the evidence. For example, Jasper County is currently building two new PK-12 facilities which will accommodate all students in that district. All of the facilities in Orangeburg 3 are either new or newly renovated, Dillon 2 has renovated many of its schools, and Florence 4 has recently completed an addition to its K-12 facility to include additional space. Therefore, Plaintiffs’ argument that the facilities, generally, in their districts are unsafe and inadequate is without merit.

26. Further, yearly report cards, required from each of the Plaintiff Districts, show continuing renovations and construction in many of the districts.³ Allendale’s 2004

³ Both plaintiffs and defendants requested this Court take judicial notice of the yearly report cards issued during the pendency of this litigation.

and 2005 report cards reflected renovations to Allendale-Fairfax Middle School. Dillon 2's report card for 2004 noted renovations to Stewart Heights Elementary School, Gordon Elementary, and J.V. Martin Junior High School, as well as updates to the district's technology infrastructure. Renovations at Lower Lee and West Lee Elementary Schools were mentioned in both the 2004 and 2005 report cards from Lee County School District. Both Lower Lee and West Lee contain a new inquiry science lab in line with the state's science standards. In Marion 7, grants enabled the district to partially re-roof and renovate Rains Centenary Elementary, and the old high school in Britton's Neck was completely renovated to become the new Britton's Neck Elementary. In 2005, Orangeburg 3 closed two high schools and consolidated them. The new Lake Marion High School and Technology Center is partnered with Orangeburg-Calhoun Technical College. These report cards show that facilities in the Plaintiff Districts continue to be renovated.⁴

27. Moreover, Plaintiffs have not conclusively shown that facilities have an impact on the quality of instruction or performance in the Plaintiff Districts. As noted in this Court's order, "[t]here is no empirical evidence that would support a finding that achievement is related to the condition of facilities." (Order, ¶ 268). For example, Dillon 2 noted, in its 2004 and 2005 report cards, that renovations and new construction are needed at all of the district's schools and at the district office. However, in 2004 and 2005, Dillon 2 had an average absolute rating, the highest of any of the Plaintiff Districts.⁵

⁴ Florence 4, Hampton 2, and Jasper did not mention any new or renovated facilities in either 2004 or 2005. Florence 4 did construct two new classrooms in 2003.

⁵ See <http://ed.sc.gov/topics/researchandstats/schoolreportcard/>. In 2006, Dillon 2's absolute rating dropped to unsatisfactory.

28. Finally, the Plaintiff Districts have not satisfied their burden of proving that their facilities are unsafe. Each of the Plaintiff Districts certified to the State Department of Education that its facilities comply with DHEC regulations; are adequate in size and arrangement to house its programs; comply with fire marshal regulations; have safe and adequately maintained playgrounds, physical education, and play equipment; have sufficient fire extinguishers; have adequate light, ventilation, and heating; and comply with all OSHA standards.

C. Race

29. Plaintiffs contend race is a relevant factor to consider in determining whether an opportunity for a minimally adequate education exists. (Plaintiffs' Motion to Alter or Amend, ¶ 7).

30. As this Court previously ruled on each of the many occasions the issue was raised:

(a) The issue was not injected until the fourth amended complaint was filed, just weeks before the trial began. By that time, the case was several years old, had been through a second and third amended complaint, had been to the Supreme Court and back, extensive discovery had been completed, and the case was on the eve of trial. The issue was simply raised too late.

(b) It was not necessary to consider race as a factor separate from poverty to grant relief to Plaintiffs because, in this case, race and poverty are practically synonymous. Certainly, race and poverty are collinear, inasmuch as the percentage of students on free and reduced lunch (the agreed-upon proxy for poverty) is very nearly the same as the percentage of African-American students in each district. Any remedy or

relief accorded to those students in poverty will necessarily inure primarily to the benefit of African-American students as well.

(c) Plaintiffs' argument that the State's failure to present a "culturally relevant" instructional program addressing the peculiar needs of ethnicity amounts to a constitutional violation also fails. Meeting students "where they are" has always been and will always be an instructional challenge, even among the so-called "middle class white culture," which Plaintiffs claim to be the basis of the typical educational pedagogy. Moreover, the teachers in this case testified about their efforts to make the curriculum relevant to all of their students. Finally, there is no established template for instruction unique to African-American students living in poverty that differs from instruction given to Caucasian students living in poverty. By and large, the baggage of poverty is the same despite differences in race. Single parent households, a lack of reading material in the home, and the lack of a stable family unit are just examples of obstacles which poor children, both Caucasian and African-American, must overcome in order to thrive.

31. There is no established constitutional standard that distinguishes between the instruction of poor African-American students and poor Caucasian students. Further, it is clear that any change in the Plaintiff Districts that benefits students in poverty will also benefit African-American students. For these reasons, and because the issue of race was injected late in the proceedings, this Court stands by its ruling as to the issue of race.

D. Comparison of the Plaintiff Districts to other districts

32. As Plaintiffs note in their motion, this Court admitted evidence of comparison to national averages and state averages, but ruled comparison evidence

between particular schools or school districts was inadmissible. Plaintiffs ask this Court to reconsider its holding. (Plaintiffs' Motion to Alter or Amend, ¶ 8).

33. Much of the data introduced at trial was derived from various standardized tests (BSAP, PACT, etc), the results of which were used to compare students and schools to each other, to a norm, or to establish an average standard. Comparisons were essential to give meaning to the standardized test results and to enable this Court to evaluate that evidence in assessing the "outputs" of the educational process in the Plaintiff Districts. However, such comparisons are different than comparing a specific Plaintiff District to a non-plaintiff district in an attempt to prove that the distinctions between them evidence a constitutional violation. That type of equal protection argument was rejected by the Supreme Court in Abbeville County.

34. In holding that Plaintiffs' federal equal protection claim, based on inadequate funding, and state equal protection claim, based on inequitable funding, both failed, the Abbeville County Court foreclosed further argument tending to prove that the failure to fund the Plaintiff Districts at a level equal to the non-plaintiff districts violates the educational clause of the constitution.

35. As Plaintiffs note in their memorandum supporting their motion, this Court used comparisons to assist in establishing a baseline against which the opportunity to acquire a minimally adequate education may be determined. It found poor PACT results alone were not evidence of a lack of an opportunity to receive a minimally adequate education. Nor was the high incidence of poverty in the Plaintiff Districts alone evidence of the lack of an opportunity to receive a minimally adequate education. Instead, this Court found that "when those two factors come together so dramatically as

they do in the case of the Plaintiff Districts, this Court is led to the conclusion that the children of the Plaintiff Districts are not receiving the opportunity to obtain a minimally adequate education.” (Order pp.159-160). The high percentages of students on free and reduced lunch and the percentage of students scoring below basic in English/Language Arts and Math, taken together, assisted this Court in its decision.

36. Necessarily, this Court’s decision rested implicitly, at least, upon a comparison to the percentage of students in other districts in the same disputed categories. While that type of comparison was necessary to this Court’s decision, the comparisons sought by the Plaintiff Districts were not. The issue was not how a particular Plaintiff District compared to a particular non-plaintiff district.

37. A violation of the education clause of the South Carolina Constitution would not be proven by evidence, for example, that a Lee County District did not possess the same local funding capacity, facilities and/or instructional opportunities as a Greenville County District. No real purpose would have been served by that evidence other than to state the obvious: the Plaintiff Districts do not have the same level of local funding, and in many cases, the same type of facilities and other “inputs,” and do not perform as well as many other, non-plaintiff districts.

E. Use of deposition testimony

38. Plaintiffs objected to the use of deposition testimony of employees of the Plaintiff Districts, primarily on the issue of curriculum standards, alignment with curriculum standards, and personnel qualifications. The objections have two principal bases: (1) the South Carolina Rules of Civil Procedure do not allow the use of the

depositions in this manner; and (2) the deposition testimony was taken out of context and improperly ruled upon by the Court. (Plaintiffs' Motion to Alter or Amend, ¶ 10).

39. Defendants offered the deposition testimony of approximately two dozen current and former employees of the Plaintiff Districts, some of whom testified at trial. This Court chose to allow testimony via deposition in an effort to avoid the further prolongation of the longest civil trial in the history of our state. Without the live testimony of the witnesses in question, the trial lasted 102 days. The addition of the live testimony of these witnesses would have added at least 20 days to the trial.

40. Rule 32(a)(3)(E), SCRCP, allows the use of deposition testimony under "such exceptional circumstances as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court."

41. The witnesses in question had been deposed under the Rules, and lawyers for all parties had the opportunity to participate. This Court found the interests of justice were well served by allowing the deposition testimony to be used under the "exceptional circumstances" created by the length and scope of this trial.

42. The question of whether this Court drew improper or incorrect conclusions from the testimony will be answered by the appellate court's review of the depositions, the entirety of which were made a part of the record. Further, this Court notes it did not rely entirely on deposition testimony to make its decision; the deposition evidence constituted only a part of the fact finding process.

F. Remedial issues resulting from the factual findings

43. Plaintiffs ask the Court to reconsider its decision not to require Defendants to take specific action to address the constitutional failure to provide the opportunity for a minimally adequate education as found by the Court. (Plaintiffs' Motion to Alter or Amend ¶¶ 11 & 12).

44. The mandates and limitations of the Abbeville County opinion are clear:

(a) Plaintiffs' claims that the Education Finance Act of 1977⁶ (EFA) and/or the Education Improvement Act⁷ (EIA) are unconstitutional on their face because of funding deficiencies, inadequacies, or inequities were struck down by Abbeville County. Our Supreme Court held Richland County v. Campbell⁸ was dispositive of Plaintiffs' claim that the EFA and/or the EIA are violative on their face of either the state or the federal equal protection clause. Further, our Supreme Court held Plaintiffs' equal protection claim, predicated on inadequate funding, was foreclosed by the United State Supreme Court's decision in San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). This Court is bound by the decision of our state Supreme Court.

(b) The Abbeville County Court, while defining "within deliberately broad parameters, the outlines of the constitution's requirement of minimally adequate education," recognized that the members of the Court were "not experts in education," and did "not intend to dictate the programs utilized in our public schools." 335 S.C. at 69, 515 S.E.2d at 540.

(c) Further, the Abbeville County Court emphasized "that the constitutional duty to ensure the provision of a minimally adequate education to each

⁶ S.C. Code §§ 59-20-10 to -80 (1990 & Supp. 1998).

⁷ 1984 S.C. Acts 512.

student in South Carolina rests on the legislative branch of government.” 335 S.C. at 69, 515 S.E.2d at 541.

45. Plaintiffs ask this Court to require Defendants to draft a proposal for a new education system in South Carolina and to fund and support said system. Further, Plaintiffs ask this Court to require Defendants to do so within a court-mandated time frame. A decision by this Court requiring Defendants to take such actions would, in effect, make this Court the super-legislature or super-school board which the Abbeville County Court warned against, and would be counter to the judicial restraint the Supreme Court mandated in Abbeville County.

G. Clerical error

46. Plaintiffs alerted this Court to an error in the original order. In paragraph 14 of the order, this Court referred to the third amended complaint. The complaint in effect at the time of the July 3, 2003, hearing, and under which this case was tried, was the fourth amended complaint.

Defendants’ Motion to Alter or Amend

H. Burden of proof

47. Defendants argue that the burden of proof in this case is beyond a reasonable doubt. (Defendants’ Motion to Alter or Amend, ¶ 1). Defendants base their argument on the doctrine that statutes are presumed constitutional and will only be declared unconstitutional when their invalidity is shown beyond a reasonable doubt. Further, Defendants argue a finding that the educational system is unconstitutional

⁸ Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988).

necessarily entails a finding that the statutes upon which the system is based are, at least in part, unconstitutional either facially or as applied to Plaintiffs.

48. The Plaintiff Districts, however, do not challenge the constitutionality of individual statutes. Rather, they challenge the constitutionality of the educational opportunities offered to children in the Plaintiff Districts. This is an equitable civil case assessing the constitutionality of the educational system as a whole. Therefore, the proper burden of proof is by a preponderance of the evidence.

I. This Court's finding that the State must overcome the effects of poverty to the extent it is educationally possible

49. Defendants argue the Court erred in concluding the State is required to overcome the effects of poverty, "to the extent that it is educationally possible," (Order ¶ 428) on academic achievement, because such a finding is (1) outside the scope of the education clause, and (2) creates a standard that is higher than the one defined in Abbeville County. (Defendants' Motion to Alter or Amend, ¶¶ 2-3).

50. Defendants further contend poverty is the primary explanation for the great deficiencies in achievement levels in the Plaintiff Districts. Defense experts opined that, after adjusting for poverty, students in the Plaintiff Districts are scoring similarly to students in the rest of the state.

51. After again considering Defendants' arguments, this Court finds the defense experts' testimony unpersuasive. This Court stands by its order, which stated:

In determining whether opportunity actually accords "the chance for progress or advancement to occur," one must examine not only the means by which the opportunity is offered, but also the characteristics of the one to whom it is offered. . . . While factoring out poverty is possible in statistical analysis, poverty is a reality in the lives of the students in the Plaintiff Districts which can not be factored out.

(Order, ¶¶ 35 & 419).

52. The evidence shows students in the Plaintiff Districts are scoring well below the state average and are not gaining the skills they need to experience “a chance at life” and the opportunity to become productive citizens. (Order ¶ 30).

53. The issue is whether each child is being offered the opportunity to acquire a minimally adequate education. This includes students who live in poverty, and just as adjustments need to be made for handicapped children, schools need to adjust to meet the educational needs of children raised in poverty. As this Court found, “[t]he stairway that is one child’s avenue to achievement and success is simply an obstacle to one unable to climb.” (Order, ¶ 35).

54. All witnesses, including the State’s witnesses, agreed that all students, including at-risk students, can learn at high levels. Many witnesses, including defense experts, testified regarding the resources and programs needed for at-risk students to achieve at high levels. Examples provided by these witnesses reinforce the conclusion that at-risk students can and do learn at high levels if provided the right learning environment and skilled teachers.

55. Defendants also argue the Court’s finding that the State has failed the Abbeville County test is contrary to the Court’s earlier statement in the order that issues such as poverty “lie outside the traditionally accepted scope of education policy, and require interventions beyond those traditionally produced by schools.” (Order ¶ 427). This argument is without merit. Tradition is not the standard by which this Court judges constitutionality. The education clause in the South Carolina Constitution was designed

to allow the General Assembly flexibility in meeting modern needs and changing conditions.

J. This Court's finding that the education clause of the South Carolina Constitution imposes an obligation on Defendants to provide early childhood intervention programs to each child

56. Defendants contend in their motion to alter or amend that early intervention programs are not required under the education clause for the General Assembly to meet its duty to provide a minimally adequate education. (Defendants' Motion to Alter or Amend, ¶¶ 4, 10, & 15).

57. Abbeville County set the "constitutional floor below which the General Assembly may not fall, but beyond which the General Assembly is not constitutionally required to advance." (Order, ¶ 43 (citing Abbeville County 335 S.C. at 69, 515 S.E.2d at 540)). The facts adduced at trial showed well beyond a preponderance of the evidence that early intervention programs are required to educate children in poverty, and the State's policies as set forth in numerous statutes specifically acknowledge this obligation. Early intervention programs are required to educate children in poverty. Without early intervention programs, the opportunities for children in poverty to acquire a minimally adequate education are illusory. By neglecting to provide early intervention programs for children in poverty, the General Assembly has fallen below the constitutional floor established in Abbeville County.

58. The education clause requires the General Assembly to provide a "system of free public school." S.C. Const., Art. XI, § 3. The parameters of that "system" in terms of age or grade levels are not defined in the education clause, nor are they defined in Abbeville County. The reason for that is simple: the education clause was designed to

allow the General Assembly flexibility in meeting modern needs and changing conditions, so long as it meets its constitutional obligations. See Richland County v. Campbell, 294 S.C. 346, 349, 364 S.E.2d 470, 472 (1988); Moseley v. Welch, 209 S.C. 19, 33-34, 39 S.E.2d 133, 140 (1946).

59. The absence of any age or grade level parameters demonstrates that the duty of the General Assembly is to provide whatever is necessary to ensure children have the opportunity to receive a minimally adequate education. Evidence of dismal academic achievement, combined with high levels of poverty in the Plaintiff Districts, supports the conclusion that the educational system is not providing the constitutionally required opportunity to children in poverty.

60. Based on the language of the South Carolina Constitution and Abbeville County, this Court found the State owes a duty to provide children in poverty early childhood interventions to ensure they have the opportunity to acquire a minimally adequate education. The evidence presented at trial mandated such a conclusion. The State's own expert, Dr. Walberg, testified the "first four to six years of life can be very decisive in a child's development" and "before schooling really begins, children [raised in poverty] are behind in the abilities that they need to succeed in school." (Order, ¶ 422). Senator Mathews testified the General Assembly recognized "the years from birth through five years of age are critical to a child's ability to learn." (Appendix to Order, p.164). The General Assembly recognized the need for early intervention in the 1984 version of the ELA. (Appendix to Order, p. 164).

61. Although the General Assembly was and is aware of the necessity of early intervention programs to ensure children are prepared to start school, the programs

designed to accomplish this goal were never fully funded or were never created. (Appendix to Order, pp. 165-66). Despite all the evidence from both Plaintiffs and Defendants which shows early intervention programs are required to prepare children in poverty for school, Defendants maintain early intervention programs are not constitutionally required to provide an opportunity for a minimally adequate education.

62. The South Carolina Constitution and Abbeville County require that each child be given the opportunity to acquire an education. If the State is to fulfill its obligations, children raised in poverty must be given the means to avail themselves of the opportunity to learn and receive an education. The Court found the State has failed its youngest, most vulnerable students. This Court did not overstep its bounds in finding that the State is responsible for implementing programs for the youngest students, for whom the effects of poverty pose a great obstacle. Defendants' argument to the contrary is without merit.

K. Student achievement as a factor in evaluating the existence of the opportunity for a minimally adequate education

63. Defendants argue the Court erred in relying on academic achievement to determine whether the constitutionally mandated opportunity for a minimally adequate education exists in the Plaintiff Districts. (Defendants' Motion to Alter or Amend ¶ 5).

64. This Court stated, in its summary, it "does not find that poor PACT test results alone are evidence of a lack of an opportunity to receive a minimally adequate education." (Order, p.159). In finding that the opportunity was absent in the Plaintiff Districts, the Court did not rely on student performance alone. The Court specifically stated:

When those two factors [poor PACT test results and a high incidence of poverty] come together so dramatically as they do in the case of the Plaintiff Districts, this Court is led to the conclusion that the children of the Plaintiff Districts are not receiving the opportunity to obtain a minimally adequate education.

(Order at p. 160).

65. This Court did not, as Defendants allege, base its holding solely on academic achievement. This Court based its conclusion on the interplay between achievement and poverty. Thus, Defendants' argument is without merit.

L. Defendants' argument that an opportunity for one student is an opportunity for all students

66. Defendants argue that if some students in the Plaintiff Districts are achieving success, all students in the districts necessarily have the *opportunity* to acquire a minimally adequate education. (Defendants' Motion to Alter or Amend, ¶¶ 6, 7) (emphasis added). Defendants aver any level of achievement, by any number of students, is sufficient to demonstrate that the State has fulfilled its constitutional obligations, and that those students who are not performing well have simply chosen not to avail themselves of the opportunity to acquire a minimally adequate education. Further, Defendants assert that this assessment obviates the need to consider the end result of the educational process.

67. Defendants' argument runs contrary to the testimony of the State's experts, including that of Dr. James Guthrie.

68. The State's obligation is not merely to make education available to some. The State is directed to provide the opportunity for "*each* child to *receive* a minimally adequate education." Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540 (emphasis

added). All of South Carolina's children – including poor and at-risk children – are entitled to that opportunity.

69. In its December 29, 2005, order, this Court directly addressed this argument. The order provided:

The Defendants contend that [the] large percentages of students in the Plaintiff Districts [who] have scored at least the basic on the [PACT] tests indicate[] that all students in those districts have the opportunity to obtain a minimally adequate education. The Defendants [ascribe] to the theory that the cup is "half full." However, the converse of that belief is that 40 to 60% of the students in the Plaintiff Districts are scoring at below basic.

(Order, ¶ 418). Therefore, this Court again rejects the contention that the academic success of some students is evidence of an opportunity for all.

70. Defendants also argue all at-risk students share common characteristics and should therefore be viewed collectively when determining whether they have the opportunity to acquire a minimally adequate education. This argument is merely another way of stating that an opportunity for one child is an opportunity for all. This Court therefore rejects Defendants' arguments.

M. Education Accountability Act (EAA) interventions

71. Defendants argue the existing interventions for young students in poverty are sufficient to satisfy the constitutional obligation of the State, to the extent the State is so obligated. They also claim this Court erred in finding the interventions under the EAA have been largely ineffective. They argue this Court's conclusion is not supported by proof beyond a reasonable doubt. Defendants alternatively argue the preponderance of the evidence has shown that EAA interventions have improved achievement. (Motion to Alter or Amend, ¶¶ 8 & 9).

72. The evidence presented to this Court shows EAA interventions were largely ineffective. There is no empirical or statistical evidence to suggest those monies had any appreciable impact on student achievement. (Order ¶ 431). The EAA interventions do not remedy the educational needs of children in the Plaintiff Districts.

73. Further, the EAA intervention programs are only implemented after a school or district receives a below average or unsatisfactory report card rating. The intended benefits from these programs are not sufficient to overcome the effects of poverty or to meet the needs of the students in the Plaintiff Districts. The Court is not persuaded to change its ruling as to this issue.

N. Standing

74. Defendants argue the Court erred in failing to enter judgment in their favor because the Plaintiff Districts, students, and taxpayers do not have standing to maintain this action. (Defendants' Motion to Alter or Amend, ¶ 11).

75. This argument was rejected by this Court at the motion to dismiss and directed verdict stages of this litigation. This Court noted the Abbeville County Court recognized "the purpose of providing a public education is a benefit not just to the individual receiving it, but also the public at large." (335 S.C. at 66, 515 S.E.2d at 539). This Court then held that, because the questions involved in the instant case are so important, the rules on standing should not be "inflexibly applied." (Order denying Defendants' Motion for a Directed Verdict, Sept. 17, 2004).

76. This Court has considered Defendants' arguments on the issue of standing, and is not persuaded to change its ruling. Plaintiffs had standing to bring this action.

O. Capacity to sue the State

77. Defendants argue the Plaintiff Districts lack the capacity to sue the State. (Defendants' Motion to Alter or Amend, ¶ 12).

78. In response to Defendants' Motion for a Directed Verdict, this Court ruled the Plaintiff's Districts' capacity to sue was an issue encompassing both issues of fact and law. This Court found facts supporting the Plaintiff Districts' capacity to sue the State. Defendants have not presented any reason for this Court to change its ruling.

P. Legislative immunity

79. Defendants argue the Court erred in failing to enter judgment in their favor because legislative immunity bars claims against the Governor and the State to the extent that their legislative powers are at issue. (Defendants' Motion to Alter or Amend, ¶ 13).

80. Plaintiffs are no longer pursuing monetary damages in this action. Therefore, legislative immunity is inapplicable and Defendants' claim must be rejected.

Q. Separation of powers and political question doctrine

81. Defendants characterize the allegations in this litigation as non-justiciable political questions and argue that the Court is without the authority or power to resolve such issues because exercising such authority would violate the separation of powers doctrine. More specifically, Defendants argue all decisions regarding the appropriation of funds are exclusively within the province of the legislature, and this Court is barred as a matter of law from basing liability on the decisions made by the General Assembly with respect to the appropriation of funds. (Defendants' Motion to Alter or Amend, ¶¶ 14 & 16).

82. This Court previously held that the results of the legislative process are appropriate matters for the Court's consideration. Such consideration does not violate either the separation of powers doctrine or the political question doctrine.

83. Further, the South Carolina Supreme Court found error in citing "separation of powers and the political question doctrine as the basis for declining to decide the meaning of the education clause." Abbeville County, 335 S.C. at 67, 515 S.E.2d at 539.

84. Based on this Court's prior holdings and the South Carolina Supreme Court's holding, Defendants' Motion to Alter or Amend on this ground must be denied.

CONCLUSION

The testimony of Dr. Paula Harris, Superintendent of the Allendale County School District, is illustrative of the divide between the Abbeville standard of an "opportunity to obtain a minimally adequate education," and a professional educator's goals in obtaining success for her students.

In my opinion the students are not doing better because we have not been able to present them a complete package of instruction, and that complete package would include a teacher who is highly skilled, facilities that are adequate and that are wired for technology, that are wired for electrical needs, . . . that are wired like this courtroom is. Materials that meet their specific needs, a wealth of materials. My children need books like you wouldn't believe. We are getting there with the curriculum, but having the curriculum and not being able to deliver it efficiently doesn't help a lot, so my take on that is we haven't been able to present a complete package that would allow our children to be successful.

(Trial Tr. (09/30/03), p.200, line 15-p.201, line 5).

Dr. Harris asks for what every good educator should ask for and what every concerned parent wants for his/her child: the absolute best of every component involved

in the child's education. That goal is a laudable one and it should continue to be the aspiration of everyone involved in the educational process, but **IT IS NOT** the constitutional standard. As difficult as it may be to accept or understand, this case has never been about what is **best** for the children of the State, or what programs, facilities, and resources the court might wish were available to the children of our State.

From the adoption of our state's first constitution until the Supreme Court decision in Abbeville County, the education clause lacked **any qualitative** standard. The standard established within "deliberately broad parameters" the right of each child to receive an opportunity to obtain a minimally adequate education. This standard created a "constitutional floor" below which the educational processes of the State could not sink. The Abbeville Court chose to adopt a minimal standard, rather than an ideal, recognizing and acknowledging that the constitutional responsibility for the education of the State's children was a legislative one.

When the Abbeville County Court established the enunciated standard, this case was remanded for the trial court's determination of whether or not the standard was met in the Plaintiff Districts. This court was faced with establishing a **quantitative** standard where none previously existed. This quantitative standard was then examined through the prism of the Abbeville County qualitative standard, resulting in the findings and conclusions contained in this court's Order of December 29, 2005.

Neither the standard adopted by the Abbeville County Court, nor this Court's findings of December 29, 2005, indicate a lack of recognition of the many areas of improvement needed within our educational system. Many aspects of the system cry out for improvement. Plaintiffs have pointed out those areas throughout the history of this

case. The need for improvement in these areas, however, does not rise to the level of a constitutional violation, except in the areas of early childhood education pointed out in the Order of December 29, 2005.

In the final analysis, the responsibility rests, as it should, upon the shoulders of the elected representatives of the people of South Carolina, to decide whether the educational futures of the children of the State will rest upon the constitutional floor established by the Court, or upon a higher level.

For the foregoing reasons, the Motions of Plaintiffs and Defendants to alter or amend this Court's order are **DENIED**. Further, this Court has considered each of the arguments raised to it by Plaintiffs and Defendants. Any issues not specifically addressed in this Order have been considered and are hereby denied.

AND IT IS SO ORDERED.

/s/ Thomas W. Cooper, Jr.

The Honorable Thomas W. Cooper, Jr.

Resident Judge of the Third Judicial Circuit

Manning, South Carolina

July 12, 2007

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	
Abbeville County School District, <i>et al.</i> ,	)	Case number 93-CP-31-0169
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER
	)	
The State of South Carolina, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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A non-jury trial commenced in this matter on July 28, 2003 and ended on December 9, 2004. During the course of 102 days of trial, 112 witnesses testified in person or by deposition, generating approximately 23,100 pages of transcript. Approximately 4,400 documents were received into evidence. This Court has carefully considered the testimony of the witnesses, all of the exhibits, and the proposed findings of fact and conclusions of law submitted by the parties. Generally, this Order does not formally distinguish between findings of fact and conclusions of law. Instead, this Order addresses the factual and legal issues as they arise in the context of this case. Part One of this Order considers the applicable legal standard and the measure of proof. Part Two examines the evidence in light of the legal standard to determine how the question presented must be answered.

The Court finds and concludes as follows:

PART ONE

I. INTRODUCTION

1. This case is before the Court upon remand from the South Carolina Supreme Court for further proceedings. The Plaintiffs in this action are school districts, students and taxpayers who individually and collectively challenge the State's funding of South Carolina's public schools. The school district Plaintiffs are as follows: Allendale County School District ("Allendale"); Dillon County School District 2 ("Dillon 2"); Florence County School District 4 ("Florence 4"); Hampton County School District 2 ("Hampton 2"); Jasper County School District ("Jasper"); Lee County School District ("Lee"); Marion County School District 7 ("Marion 7"); and Orangeburg County School District 3 ("Orangeburg 3"). In addition, 25 individually named parents and 26 students

from specified school districts joined as Plaintiffs. The Plaintiffs are represented by Carl B. Epps, Stephen G. Morrison, and Laura Callaway Hart, all of Nelson Mullins Riley & Scarborough, L.L.P.

2. The Defendants include The State of South Carolina; Mark C. Sanford, as Governor of the State of South Carolina; Warren K. Giese¹, as Chairman of the Senate Education Committee and Chairman of the Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate; and David H. Wilkins, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives. The Senate and the House are represented by Robert E. Stepp, Elizabeth Van Doren Gray, A. Jackson Barnes, and Roland M. Franklin, Jr. (on brief) of Sowell Gray Stepp & Laffitte, L.L.C. The State of South Carolina and the Governor are represented by Henry D. McMaster, Attorney General of the State of South Carolina, J. Emory Smith, Jr., Assistant Deputy Attorney General of the State of South Carolina, and Elizabeth R. McMahon, Assistant Attorney General of the State of South Carolina.

II. PROCEDURAL HISTORY

A. Prior Trial Court Proceedings

3. This case has been in litigation for more than ten years. On November 1, 1993, forty of the more than eighty school districts in the State of South Carolina, together with certain students and taxpayers, commenced a declaratory judgment action in the Court of Common Pleas for Lee County challenging the State's statutory scheme

¹ Senator Giese has retired from his service in the Senate and Senator John Courson now serves as Chairman of the Senate Education Committee. Senator Courson has not been formally substituted as a Defendant.

for funding its public schools. Thereafter, as a result of district consolidations², the number of Plaintiff Districts was reduced to thirty-six. Prior to trial, Plaintiffs' counsel selected eight school districts as trial plaintiffs for this proceeding. *See* Order dated June 20, 2003.

4. Plaintiffs' Second Amended Complaint filed July 20, 1995, alleged violations of the South Carolina Constitution's education clause, S.C. Const. art. XI, § 3, the equal protection clauses of the State and federal constitutions, and violation of the Education Finance Act of 1977 ("EFA"), S.C. Code §§ 59-20-10 to -80 (1990 & Supp. 1998). Specifically, Plaintiffs' Second Amended Complaint alleged that the State's statutory scheme of public funding for education (1) was under funded, lacked uniformity and imposed unlawful tax burdens on Plaintiffs; (2) was not serving the purposes for which it was enacted; (3) had resulted in a disparity in the educational opportunities for students throughout the State; and (4) was not being funded at the level mandated by the EFA and the Education Improvement Act ("EIA").

5. Plaintiffs sought a declaration that the EFA was unconstitutional as implemented, as well as a declaration that the level of education funding was inadequate. Plaintiffs further requested that the Court order the General Assembly to draft a new system for education funding in South Carolina and to appropriate funds alleged to be necessary to remedy past alleged inequities in funding.

² Marion 3 and Marion 4 were consolidated into Marion County School District 7. Orangeburg 3 was the product of a consolidation between Orangeburg 3 and Orangeburg 7. Both Marion 7 and Orangeburg 3 were trial plaintiffs.

6. Defendants³ filed motions to dismiss the Second Amended Complaint pursuant to Rules 12(b)(1) and (6), SCRCF, which were heard by this Court on July 3, 1995. Defendants contended, among other things, that the facts as alleged did not constitute violations of the State or federal constitutions as a matter of law, and that no private right of action exists under the EFA. On September 20, 1996, this Court granted Defendants' motions to dismiss, and dismissed Plaintiffs' Second Amended Complaint with prejudice for failure to state facts sufficient to constitute a cause of action.

7. Specifically, this Court concluded as follows:

The very funding scheme at issue herein passed constitutional muster in Richland County v. Campbell [294 S.C. 346, 364 S.E.2d 470 (1988)] on equity grounds. The inclusion in this action of an adequacy claim does not prevent dismissal since the South Carolina Constitution is devoid of any standard upon which to adjudicate any such claim. There is no allegation that children are deprived of a meaningful education in this state. The Plaintiffs allege laudable goals for our educational system – 'to meaningfully exercise the right of free speech, to participate meaningfully in government at all levels, to compete academically and in the job market and to make economic contributions to society' – however, these goals, despite their merit, are not rights mandated by the constitution. While this Court is mindful of the importance of education to our society and our state and the futures of its children, these concerns cannot convert a non-justiciable

³ At the time of the filing of the Second Amended Complaint, the Defendants in this action were as follows: The State of South Carolina; the Honorable David M. Beasley, in his representative capacity as Governor; The Honorable Nikki G. Setzler, in his representative capacity as Chairman of the Senate Education Committee and Chairman of the Education Subcommittee and Chairman of the Education Subcommittee of the Senate Finance Committee, and as the agreed Representative of the South Carolina Senate; The Honorable David H. Wilkins, in his representative capacity as Speaker of the House of Representatives and as a Representative of the South Carolina House of Representatives; The Honorable Barbara S. Neilsen, in her representative capacity as State Superintendent of Education; and Ms. Celia Gettys, in her representative capacity as Chairman of the South Carolina State Board of Education. Following her election in 1998 as Superintendent of Education, Inez Tenenbaum was substituted for Barbara Neilson in her representative capacity. Both Tenenbaum and the South Carolina State Board of Education were voluntarily dismissed by Plaintiffs pursuant to Rule 41(a)(1)(A), South Carolina Rules of Civil Procedure as defendants on October 17, 2001.

controversy into a justiciable one. Further, if this court were to accept Plaintiffs' invitation to define the education clause as stated in ¶ 65 [of Plaintiffs' Complaint]; to declare the current system unconstitutional on the grounds [it] is underfunded, unequal, and inadequate; to be available to monitor the Legislature's reform efforts; and to require remedial funding, the courts would undeniably and irreversibly encroach on the functions given expressly to the legislative branch in the South Carolina Constitution. . . . This intervention would clearly violate the education clause and arguably the separation of powers clause. After reviewing the legislative efforts of the South Carolina General Assembly to provide funding for the public school system; after providing the necessary freedom to the legislature to meet changing needs; after giving every indulgence to constitutional validity; and after demanding clear and convincing proof that the current system is repugnant to the United States and South Carolina Constitutions, this court cannot find that a genuine issue of material fact exists based on the allegations of the Second Amended Complaint.

B. The *Abbeville County* Decision

8. Plaintiffs appealed the September 20, 1996 Order to the South Carolina Supreme Court, which affirmed dismissal of the action with the exception of the claim made pursuant to Article XI, Section 3 of the South Carolina Constitution. *See Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999).⁴ Specifically, the Supreme Court held that the Amended Complaint stated a claim for violation of the State Constitution's education clause, which provides as follows: "The General Assembly shall provide for the maintenance and support of a system of free public schools open to

⁴ The dismissal of Plaintiffs' claims under the equal protection clauses of the State and Federal constitutions was summarily affirmed under the strength of prior decisions of the Court. *Abbeville County*, 335 S.C. at 64-65, 515 S.E.2d at 538 (citing *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470 (1988)). Likewise, the Supreme Court affirmed the dismissal of Plaintiffs' claims brought under the EFA, finding that the EFA does not create a private right of action. *Abbeville County*, *supra* at 65, 515 S.E.2d at 539.

all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.” S.C. Const. art. XI, § 3.

9. In reaching that conclusion, the Supreme Court declared that it was its duty “to interpret and declare the meaning of the Constitution,” and, therefore, this Court “erred in using judicial restraint, separation of powers, and the political question doctrine as the basis for declining to decide the meaning of the education clause.” Abbeville County, 335 S.C. at 67, 515 S.E.2d at 539.

10. The Court noted that at the heart of the education clause controversy is the question of what duty the State Constitution imposes on the General Assembly by directing it to “provide for the maintenance and support of a system of free public schools open to all children.” *Id.* at 66, 515 S.E.2d at 539. The Supreme Court answered this question, holding that the education clause requires the General Assembly “to provide the opportunity for each child to receive a minimally adequate education.” *Id.* at 68, 515 S.E.2d at 540. The Court defined minimally adequate education

to include providing students adequate and safe facilities in which they have the opportunity to acquire:

- 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science;
- 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and
- 3) academic and vocational skills.

Id. The Supreme Court then remanded the case to this Court for a determination of whether the requisite opportunity is present in the Plaintiff Districts.

11. In defining what constitutes a minimally adequate education, the Supreme Court acknowledged that members of the judiciary “are not experts in education, and we

do not intend to dictate the programs utilized in our public schools.” *Id.* at 69, 515 S.E.2d at 540. Instead, the Court “defined, within deliberately broad parameters, the outlines of the constitution’s requirement of minimally adequate education.” *Id.*

12. The Court emphasized that “the constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government.” *Id.* at 69, 515 S.E.2d at 541. Thus, the Court concluded, “[w]e do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards.” *Id.* This declaration is in accord with the previous recognition by the Supreme Court that under Article XI, section 3, “the framers of the Constitution have left the legislature free to choose the means of funding the schools of this state to meet modern needs.” Richland County v. Campbell, 294 S.C. 346, 349, 364 S.E.2d 470, 472 (1988). *See also* Moseley v. Welch, 209 S.C. 19, 33-34, 39 S.E.2d 133, 140 (1946) (“The development of our school system in South Carolina has demonstrated the wisdom of the framers of the Constitution in leaving the General Assembly free to meet changing conditions.”).

C. Proceedings on Remand

13. In January of 2001, following remand, Plaintiffs again moved to amend their Complaint. The proposed Third Amended Complaint reiterated prior allegations, but also for the first time sought monetary damages and a jury trial. On June 1, 2001, this Court granted Plaintiffs’ motion to amend, but denied Plaintiffs’ request for a jury trial, finding that Plaintiffs had waived any right to trial by jury that may have attached to the

case. Additionally, this Court denied Plaintiffs' request for monetary damages, finding that the South Carolina Constitution's education clause is not self-executing and, as such, cannot serve as a basis for a cause of action for damages against the Defendants. *See* Order dated December 3, 2004.

14. The Third Amended Complaint also contained allegations regarding the racial characteristics of the Plaintiff Districts. On July 3, 2003, this Court granted Defendants' motion to strike the allegations regarding race contained in the Third Amended Complaint because it was too late to inject those issues into the case.⁵

III. QUESTION PRESENTED

15. Abbeville County creates but one issue for determination by this Court: Are the students in the Plaintiff Districts being provided the opportunity to acquire a minimally adequate education in adequate and safe facilities as defined by the South Carolina Supreme Court? Any attempt to answer this question must begin with consideration of the standard of proof.

A. Burden and Standard of Proof

16. The Plaintiffs contend that the appropriate standard of proof is the preponderance of evidence standard usually applied in civil cases. The Defendants urge the Court to adopt a standard of proof beyond a reasonable doubt which applies in

⁵ Throughout the trial, Plaintiffs continued to proffer evidence concerning the racial composition of the Plaintiff Districts and its alleged impact. While the Court allowed some evidence of the racial makeup of the Plaintiff Districts for limited purposes, the Court finds that student achievement is not a function of race, but rather of poverty. Moreover, Dr. Greg Hawkins, a Plaintiff's expert testified that in the Plaintiff Districts, race and poverty were collinear, i.e. essentially one and the same. Tr. Trans. (08/14/03), p. 38, ll. 4-7. Therefore, there is no need for the Court to consider race as a separate factor. Accordingly, the Court has considered only evidence relating to poverty as pertinent to this case.

criminal cases and in cases which seek to have legislative enactments declared unconstitutional.

17. The Plaintiffs ask this Court to declare both the funding and substantive components of South Carolina's educational system to be unconstitutional. *See* Fourth Amended Complaint at p. 21.

18. South Carolina's system of funding and supporting education is the result of various statutory enactments. It is well established that all statutes are presumed constitutional and will not be declared unconstitutional "unless [their] repugnance to the constitution is clear and beyond a reasonable doubt." Joytime Distribs. & Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (citing Westvaco Corp. v. South Carolina Dep't of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995)); Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 398, 596 S.E.2d 42, 47 (2004), *reh'ing denied* (May 25, 2004). "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." Joytime Distribs., *supra*. As our Supreme Court has explained,

[a]n adjudication that an act of the legislature is violative of the constitution, state or federal, and, therefore, invalid calls into play a delicate power of the courts and should be exercised with utmost caution and only in clear cases. It is a 'balance' of the government of checks and balances and constitutes a restraint upon the representatives of the people, whose the government is; and those representatives, constituting the legislature, are vested with plenary powers of government, limited only by the constitution, with which, it must be assumed, they consciously try to comply. In the interpretation and application of it, courts are and should be cognizant of a strong presumption in favor of the validity of legislation. It has often been said by this and

other courts that unconstitutionality is found only when it is seen beyond a reasonable doubt.

State ex rel. Edwards v. Query, 207 S.C. 500, 528, 37 S.E.2d 241, 252 (1946). *See also* State ex rel. Richards v. Moorner, 152 S.C. 455, 464, 150 S.E. 269, 272 (1929) (observing that ““it is a grave matter to declare a solemn enactment of the legislature, a coordinate branch of the government, invalid, and . . . the court in its deliberations and conclusions should be guided by the well-settled principle that the unconstitutionality of an act must be shown beyond a reasonable doubt.””).

19. However the Plaintiffs do not claim that the statutes governing education in South Carolina are unconstitutional. They contend instead that the system of public schools in the Plaintiff Districts does not provide an opportunity for a minimally adequate education to each child and is, therefore, unconstitutional. The question therefore is not whether individual statutes affecting education in South Carolina are constitutional, but whether the educational opportunities presented by the interplay and implementation of the system of free public schools developed by the General Assembly meet the constitutional mandate of offering each child in the Plaintiff Districts the opportunity for a minimally adequate education. As the South Carolina Supreme Court stated clearly in the Abbeville opinion, “At the heart of this controversy is the question of the duty imposed upon the General Assembly by this constitutional provision.” Abbeville County Sch. Dist. v. State, 335 S.C. 58, 67, 515 S.E.2d 535, 539 (1999). The question to be decided by this Court then, stated another way: Is the State meeting its constitutional obligation of providing to each child an opportunity for a minimally adequate education, or is it not?

20. As emphasized in Abbeville, the “constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina” rests firmly on the State. *Id.* at 69, 515 S.E.2d at 541.). The means by which the State chooses to comply with this duty is left to the General Assembly, but it must comply. For example, the State may choose to employ a shared funding system, it may choose to require a certain number of school days or years, or it may choose to require certain characteristics of teachers or administrators. All of those matters are left to the General Assembly. It may choose to legislate in any fashion it desires, so long as it acts constitutionally and meets its mandate of providing each child the opportunity for a minimally adequate education. If the General Assembly were to enact a specific piece of legislation that was constitutionally impermissible because, for example, it violated equal protection or due process, the Defendants would be correct in arguing that a challenge to the legislation must be proven beyond a reasonable doubt. This is what occurred in Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988), when Richland County and some of its citizens unsuccessfully claimed that the shared funding plan in the Education Finance Act violated the equal protection guarantee of the South Carolina Constitution. This was also the allegation in Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946), when citizens of Williamsburg County successfully proved that a school funding statute was unconstitutional in that it denied them due process and equal protection of the law.

21. The State’s legislative enactments may carry a presumption of validity, and the General Assembly is, and should be, afforded great latitude in determining the means

and methods they employ to meet their constitutional mandate, but the ultimate question before the Court is whether they have done so.

22. Therefore, each statute enacted by the General Assembly that affects the system of public schools may be constitutionally valid and yet the system, as implemented, may be constitutionally insufficient. If the system of public schools resulting from the actions or inactions of the General Assembly does not provide the opportunity for a minimally adequate education to each student in South Carolina, the State has not fulfilled its mandatory duty under our constitution. This Court is not called upon to decide whether the statutes affecting public education violate some provision of the constitution because they exceeded the constitutional limitations on legislative power, as in Moseley or in Richland County v. Campbell, but whether the system of public schools meets the constitutional mandate of quality outlined in Abbeville. This is an important distinction. In each of the cases cited by Defendants to support their argument on the burden of proof, the constitutionality of a particular statute or ordinance was in question.

23. Giving deference and great weight to the Defendants does not require the Plaintiffs to prove their case beyond a reasonable doubt. While proof beyond a reasonable doubt may be required to establish the invalidity of particular legislative means chosen, it is not required to establish the failure to meet the constitutional ends. "Although. . . the judiciary will not encroach into the legislative field of policy making, as the final authority on constitutional questions the judiciary has the constitutional duty to declare unconstitutional that which transgresses the state constitution." Campbell County Sch. Dist. v. State of Wyo., 907 P.2d 1238, 1264 (Wyo. 1995).

24. The Burden of Proof therefore is by a preponderance of the evidence. Stated succinctly for the purposes of this case, have the Plaintiffs introduced evidence that proves, more likely than not, that the Defendants have failed to provide an opportunity for a minimally adequate education to the children within the Plaintiff Districts?

B. The Abbeville County Standard

25. Plaintiffs first must prove by a preponderance of the evidence that students in the Plaintiff Districts do not have the opportunity to acquire a minimally adequate education as defined in Abbeville County. It is therefore important to examine that decision in detail, and to understand its context. All fifty state constitutions contain provisions that require the state to establish and maintain public school systems open to all children.⁶ To date, more than forty states have faced some form of school finance litigation. Larry J. Obhof, *Rethinking Judicial Activism and Restraint in State School Finance Litigation*, 27 Harv. J.L. & Pub. Pol'y 569, 575 (2004). Of these, approximately twenty-four state courts have upheld their education systems as constitutional, while another seventeen have relied on either their state's education clause or its equal protection clause to find the school finance system unconstitutional. *Id. See also Montoy v. State*, 2003 WL 22902963, *4 (Kan. Dist. Ct.) (summarizing cases).

⁶ See Ala. Const. art. XIV, § 256; Alaska Const. art. VII, § 1; Ariz. Const. art. XI, § 1; Ark. Const. art. XIV, § 1; Cal. Const. art. IX, § 1; Colo. Const. art. IX, § 2; Conn. Const. art. VIII, § 1; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1; Ga. Const. art. VIII, § 1; Haw. Const. art. X, § 1; Idaho Const. art. IX, § 1; Ill. Const. art. X, § 1; Ind. Const. art. VII, § 1; Iowa Const. art. IX, § 3; Kan. Const. art. VI, § 1; Ky. Const. § 183; La. Const. art. VIII, § 1; Me. Const. art. VIII, § 1; Md. Const. art. VIII, § 1; Mass. Const. pt. 2, ch. V, § 2; Mich. Const. art. VII, § 2; Minn. Const. art. XIII, § 1; Miss. Const. art. VIII, § 201; Mo. Const. art. IX, § 1, cl. a; Mont. Const. art. X, § 1; Neb. Const. art. VII, § 1; Nev. Const. art. XI, § 2; N.H. Const. pt. 2, art. 83; N.J. Const. art. VIII, § 4, para. 1; N.M. Const. art. XII, § 1; N.Y. Const. art. XI, § 1; N.C. Const. art. IX, § 2; N.D. Const. art. VIII, § 1; Ohio Const. art. VI, § 3; Okla. Const. art. XIII, § 1; Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; R.I. Const. art. XII, § 1; S.C. Const. art. XI, § 1; S.D. Const. art. VIII, § 1; Tenn. Const. art. XI, § 12; Tex. Const. art. VII, § 1; Utah Const. art. X, § 1; Vt. Const. ch. 2, § 68; Va. Const. art. VIII, § 1; Wash. Const. art. IX, § 1; W. Va. Const. art. XII, § 1; Wis. Const. art. X, § 3; Wyo. Const. art. VII, § 1.

26. As expressly held by our Supreme Court, the Abbeville County standard is one of opportunity. This standard is materially different from the requirements in other states, which tend to focus more on achievement than opportunity. *See e.g., Leandro v. State*, 488 S.E.2d 249 (N.C. 1997) (concluding that the North Carolina Constitution guarantees that each child of the state will receive a sound basic education); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989) (setting forth six goals of educational achievement); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997) (same).

27. The Court's initial task, therefore, is to clearly and intelligibly set forth a standard by which to determine whether the opportunity to acquire a minimally adequate education exists in the Plaintiff Districts or not – a task that is not without difficulty.

28. Abbeville, unlike some decisions from other jurisdictions, did not delineate the specific educational outcomes mandated by the constitution. For example, the first prong of Abbeville requires the State to offer children in the public schools the opportunity to acquire the ability to read, write, and speak the English language, but the Abbeville court did not specify the skill level necessary to fulfill the requirement. The same is true for the educational opportunities set out in the second and third prongs of the Abbeville definition. The Abbeville court did not declare the level of educational opportunities the State must offer, such as the specific grade level or reading level that the State has to provide, standard, although admittedly it would have made this court's task much easier. It would have been possible, for example, to hold that the first prong of Abbeville only requires the opportunity to learn to "read" at the most basic level. The equivalent of a first or second grade education might be sufficient to enable someone to

“read” by identifying words, if the media is simple enough. Similarly, knowing how much change one is owed after purchasing a soft drink at the local convenience store is, to some extent, “knowledge” of math.

29. It is more difficult, however, to assign skill levels to the second prong of the Abbeville definition, which requires the opportunity to acquire “a fundamental knowledge of economic, social and political systems, and history and governmental processes.” Is it sufficient to learn enough to run a household, to interact with a neighbor or employer, to intelligently cast a vote while participating in the political process, or to appreciate one’s place in our government, in history, and the greater society?

30. The court has given the educational opportunities offered to students in the Plaintiff Districts their plain and ordinary meaning, and considered the testimony and other evidence describing the opportunities, and lack of opportunities, offered these students. The court also considered evidence directed to Abbeville’s insightfully articulated language. The criterion, standing alone or together, leads to the same conclusion. The opportunities described in Abbeville are intended to give each child in South Carolina a chance at life: the opportunity to be a productive citizen, to engage meaningfully in the political process, to be adequately informed to serve intelligently on juries, to know his place in the world and how he can, through education, exercise choices in where to live and perhaps raise a family—in short, to receive the opportunity for an education sufficient to join with all South Carolinians as they progress through school and life with an appreciation of this great state and nation.

31. The court begins its examination of the standard set forth in Abbeville by giving the words their plain and ordinary meaning.

1. Opportunity

32. Perhaps the most important word in the Abbeville County opinion is “opportunity.” The education clause does not require the General Assembly to ensure that all children in South Carolina receive a minimally adequate education. Rather, the education clause requires the General Assembly to provide the *opportunity* for all children in South Carolina to acquire a minimally adequate education. *Cf. Jackson v. Benson*, 578 N.W.2d 602, 628 (Wis. 1998) (observing that the state’s uniformity clause, intended to ensure minimal educational opportunities, “does not require the legislature to ensure that all of the children in Wisconsin receive a free uniform basic education,” but rather it “requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education.”).

33. Opportunity connotes availability and occasion. It does not mean achievement or guaranteed success. The most consistent legal definition of opportunity appearing in the case law is “a fit or convenient time” or “a suitable occasion.” See In re House’s Guardianship, 19 N.W. 973 (Minn. 1884); In re Brown, 39 P. 469 (Okla. 1885); Lane v. Fid. Mut. Life Ins. Co., 54 S.E. 854 (N.C. 1906).

34. It hardly requires legal authority, however, to determine the plain and ordinary meaning of the term. Opportunity means the *chance* for progress or advancement to occur. *The American Heritage Dictionary of the English Language* (4th ed. 2000). Opportunity does not mean that progress, advancement or achievement will, in fact, occur.

35. However, opportunity cannot be measured by a purely objective standard. In determining whether opportunity actually accords “the chance for progress or

advancement to occur,” one must examine not only the means by which the opportunity is offered, but also the characteristics of the one to whom it is offered. The stairway that is one child’s avenue to achievement and success is simply an obstacle to one unable to climb. So it is with opportunity, which cannot be measured or evaluated in some abstract qualitative way without taking into account the characteristics of the ones to whom the opportunity is offered.

2. Minimally Adequate

36. The phrase “minimally adequate education” appears to be unique to the judicial lexicon of South Carolina. Any consideration of the evidence in this case must take into account the implications inherent in this description of what is constitutionally required in South Carolina. One commentator has undertaken to categorize the various constitutional standards that have been adopted by courts considering adequacy cases:

Several scholars, analyzing state education articles or clauses, have classified them into four categories based upon the level of duty imposed on the state legislature. These categories range from those which merely ‘provide for a system of free public schools,’ Category I, to those which make education an important or paramount duty of the state, Category IV. Included within that range are Category II clauses which impose some minimum standard of quality that the state education system must provide and Category III clauses with “stronger and more specific education mandates.

Staros, J., *School Finance Litigation in Florida*, 23 Stetson L.Rev. 497 (1994) at 498-99. South Carolina’s constitutional provision on its face appears to belong in Category I, but as interpreted by the Supreme Court in Abbeville County, might now be considered as belonging in Category II. In either case, however, it does not install educational **achievement** as the paramount duty of the State.

37. “Minimally” is derived from “minimum”, which means “[t]he least quantity assignable, admissible or possible in [a] given case and is opposed to maximum.” Black’s Law Dictionary, 995 (6th ed. 1990). As one court observed, “the only way to logically discuss ‘reaching’ a ‘minimum’ is to ask whether any less can be provided, such that the least is finally attained.” Charlet v. Legislature of the State of Louisiana, 713 So.2d 1199, 1206 (La. App. 1998).

38. “Adequate” pertains to that which is “[s]ufficient . . . equal to what is required; suitable to the case or occasion.” Black’s Law Dictionary, *supra* at 39. Thus, “minimally adequate” refers to the least possible quantity of a thing that is suitable for the occasion. In the content of this litigation, minimally adequate refers to the existence of the least possible quantity of factors or conditions that are necessary to create the opportunity to acquire the fundamental skills outlined in Abbeville County.

39. In this regard, “minimal adequacy” is necessarily understood to mean something less than the most or best that could be done. Much testimony has been offered during the course of this trial for educators and experts about best practices obtaining optimum results. Those practices are laudable goals, but they do not define the constitutional standard outlined in Abbeville County. “Minimal adequacy” is a very low standard, which by definition does not require the best policies or practices. This is yet another distinction between South Carolina’s constitutional standard and standards employed in similar cases in other states.

40. It follows therefore that Article XI, section 3 requires not a ceiling, but rather a floor upon which the General Assembly can build additional opportunities for school children in South Carolina. *Compare* Robinson v. Cahill, 287 A.2d 187, 210-211

(N.J. 1972) (defining what a thorough and efficient education entails and noting that the word thorough in the state’s education clause “connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal.”).

3. Substantive Components of a Minimally Adequate Education

41. In holding that the education clause “requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education,” Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540, our Supreme Court declined to adopt *en bloc* any of the definitions pronounced by courts in other jurisdictions. The Court therefore excluded a plethora of factors deemed necessary to the provision of an “adequate education,” “sound basic education” or “efficient system of education” as adopted by courts in Kentucky⁷, North Carolina⁸, and Massachusetts⁹ – opinions the

⁷ See Rose v. Counsel for Better Educ., 790 S.W.2d 186 (Ky. 1989). In Rose, the Kentucky Supreme Court declared that “an efficient system of education must have as its goal to provide each and every child with at least the seven following capabilities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.” Rose, 790 S.W.2d at 212.

⁸ See Leandro v. State, 488 S.E.2d 249 (N.C. 1997). In Leandro, the North Carolina Supreme Court defined a “sound basic education” as “one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basis economic political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student’s community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage

South Carolina Supreme Court considered, but declined to adopt, when formulating its definition of minimally adequate education. Instead, the Supreme Court defined a minimally adequate education as 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills as the sole constitutional components of a minimally adequate education.

42. It is important, therefore, to note some things that are *not* part of a minimally adequate education as defined by our Supreme Court. A minimally adequate education does not require instruction in music, art, physical education, or foreign languages. Nor does it include extracurricular activities or sports. While we may value these things as a part of a rich educational experience, they are not constitutionally required by Abbeville County.

43. To be sure, it is desirable that the State provide more than whatever is deemed minimally adequate, and the evidence presented at trial establishes that the educational goals of the State extend far beyond minimal adequacy to the highest level of academic skills at each grade level. The constitutional question, however, is not whether additional funding by the State is necessary to reach this goal or whether more money could improve South Carolina's schools, but whether current funding and policies are

in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.” Leandro, 488 S.E.2d at 357 (citing Rose, *supra*).

⁹ Compare McDuffy v. Sec’y of Educ., 615 N.E.2d 516 (Mass. 1993). In McDuffy, the Massachusetts Supreme Court adopted verbatim the goals set forth by the Kentucky Supreme Court in Rose, *supra*.

sufficient to provide the opportunity for South Carolina students to acquire a minimally adequate education. Abbeville County sets a constitutional floor below which the General Assembly may not fall, but beyond which the General Assembly is not constitutionally required to advance. See Abbeville County, 335 S.C. at 69, 515 S.E.2d at 540.

4. Issues Beyond Judicial Review

44. In setting out the question presented in this case, it is also necessary to note certain issues that are not before the Court for decision. Specifically, the role of this Court is restricted to one factual inquiry: whether the opportunity exists for each child in the Plaintiff Districts to acquire a minimally adequate education. In approaching this question, this Court is without mandate or authority to adjudicate what educational policies and programs would better serve the State, or to substitute the judgment of the Court for that of the General Assembly.

45. The Supreme Court has previously observed that our Constitution “places very few restrictions on the power of the General Assembly in the general field of public education” Richland County, 294 S.C. at 349, 364 S.E.2d at 472 (*quoting Moseley*, 209 S.C. at 33, 39 S.E.2d at 140). Moreover, it is well established that “[w]hen the Legislature has enacted a rule embodying a particular policy choice, the courts have no power to annul the Legislature’s judgment by substituting their own views of sound public policy. It is not the province of the courts to perform legislative functions.” Holman v. Bulldog Trucking Co., 331 S.C. 341, 348, 428 S.E.2d 889, 893 (Ct. App. 1993) (internal citation omitted) (citing Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977)). Stated differently, “the responsibility for the justice or wisdom of

legislation rests exclusively with the legislature, whether or not [a court] agree[s] with the laws it enacts.” Adkins v. Comcar Indus., Inc., 316 S.C. 149, 151, 447 S.E.2d 228, 230 (Ct. App. 1994), *aff’d* 323 S.C. 409, 475 S.E.2d 762 (1996). These fundamental principles were echoed by the Supreme Court in Abbeville County. *See Abbeville County*, 335 S.C. at 69, 515 S.E.2d at 541 (“We do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards.”).

46. Thus, this case is not about what the Court thinks is best for education in South Carolina or the Court’s view as to the best way to deliver educational services to students in South Carolina. Nor is the issue how the Plaintiff Districts are treated or perform compared to other districts in the State. *See Abbeville County*, 335 S.C. at 65, 515 S.E.2d at 538 (“Unlike similar suits brought in other states, [plaintiffs] do not seek ‘equal’ state funding since they already receive more than wealthier districts, but instead allege that the funding results in inadequate education.”). Nor is the issue the relative burden on taxpayers in the Plaintiff Districts compared with taxpayers elsewhere. The question presented is absolute, not comparative. Abbeville County does not require a system assuring substantially equal educational facilities and services throughout the State. As in New York, “[t]he Education Article does not by its express terms contain an egalitarian component.” Paynter v. State, 720 N.Y.S.2d 712, 716 (N.Y. 2000) (quoting Reform Educ. Fin. Inequities Today v. Cuomo, 655 N.E.2d 647, 648 (1995)).

47. Abbeville County constrains this Court not to engage in policy making for education in South Carolina. This case is not a forum about what ought to be or what

policy choices the Court would make if it were authorized to do so. Accordingly, this Court must decide this case not in terms of whether the Court believes that one policy is superior and another is wanting, but rather based on whether the system of education policies enacted by the General Assembly sufficiently provides the opportunity for students to acquire a minimally adequate education.

48. However, this Court would be remiss and would abdicate its responsibility under Abbeville County if, having found that the Defendants have failed to provide the opportunity for students to acquire a minimally adequate education, it did not point out where any such failure (s) might lie. Otherwise, the Defendants would be forced to flounder in a sea of uncertainty in trying to determine what system or policies would need to be modified or adopted in order to ensure the existence of an opportunity for a minimally adequate education. In spite of the limitations imposed upon this Court by Abbeville County, the Court is not constrained to avoid reference to specific policies or programs, or the lack thereof, which inhibit an opportunity to acquire a minimally adequate education.

IV. MEASURING THE OPPORTUNITY FOR A MINIMALLY ADEQUATE EDUCATION

A. Inputs versus Outputs

49. To answer the question whether each child in the Plaintiff Districts has the opportunity to acquire a minimally adequate education, it is necessary to determine how the presence or absence of such an opportunity can and should be measured. By expressly stating the requirements of the education clause in terms of an opportunity, the Supreme Court has clearly declined to require any particular set of “outcomes” as establishing the existence of a minimally adequate education. However, it is impossible

to measure the presence or absence of an opportunity to acquire a minimally adequate education without some examination of the outcomes of the educational process.

50. How is the presence or absence of the opportunity to learn to be determined? Many courts have struggled to establish judicially manageable standards upon which to adjudicate such a claim, given that this is an area “traditionally deferred to state legislatures.” San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 40 (1973). In the absence of a manageable standard against which the unconstitutionality of South Carolina’s system of funding education can be determined, any decision by this Court might appear to be “an unwise and unwarranted entry into the controversial area of public school financing, whereby this Court would convene as a ‘superlegislature,’ legislating in a turbulent field of social, economic and political policy.’” McDaniel v. Thomas, 285 S.E.2d 156, 165 (Ga. 1981) (quoting Thompson v. Engelking, 537 P.2d 635 (1975)). With these competing considerations in mind, the Court must determine how the presence or absence of the opportunity to acquire a minimally adequate education can be measured.

51. Much of the evidence presented in this case can be loosely grouped into two categories: “Inputs” refers to the instrumentalities of learning that are provided to districts, schools and students. Inputs include money, curriculum, teachers, and programs. “Outcomes” on the other hand refer to the success of the students in those districts and schools, and include test scores, graduation rates, and other results of the educational process.

52. Overshadowing both “inputs and outcomes” hovers the dark specter of poverty. Poverty alone explains “well over 62% of the variation of PACT scores,” one of

the more significant “outcomes” of the educational process. See Tr. Trans. (8/14/03, p. 37 ll. 21-22). Moreover, poverty dramatically affects the efficacy of “in puts” offered by the process. Therefore, any analysis of the presence or absence of “opportunity” must be determined against the backdrop of poverty. (The affects of poverty on the educational process and on the constitutional obligations of the Defendants is discussed in greater detail below.)

53. The education clause of the Constitution does not require the State to ensure that all students acquire a minimally adequate education. However, it does require the State to provide to “each child”¹⁰ the “the opportunity to obtain a minimally adequate education.” Therefore, inputs, outcomes, and the impact of poverty¹¹ must be taken into account in determining whether or not the State has fulfilled its constitutional obligation.

54. Therefore, the Court finds that it cannot rely exclusively on evidence of inputs or exclusively on outputs in reaching a determination of whether a constitutional violation exists.

B. Funding for Education: State versus Federal Sources

55. One of the principal inputs into the education process is money. In considering whether funding is sufficient, the question of whether all sources of funding should be considered also arises.

56. In South Carolina, “public education is funded by the federal, state, and local governments.” Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538. In general,

¹⁰ The Court construes the constitutional requirement not to refer to individual students, but to groups of students who share similar characteristics. In this case, the evidence largely focused on students in poverty, referred to in the evidence as “at-risk” students. The Court does not construe Abbeville County’s reference to “each child” to include students in special education programs. Indeed, Plaintiffs’ evidence often referred to the problems associated with “aggregations” of students in poverty. See, e.g. Tr. Trans. (01/09/04), p. 36, ll. 16-18; (01/13/04), p. 183, ll. 14-15; (02/24/04), p. 47, ll. 24 – p. 48, l. 1.

¹¹ Throughout the trial of this case, all parties have conceded that eligibility for free and reduced lunches amounts to a proxy for poverty. See e.g. tr. trans. (8/14/03) p. 69 ll. 13-19.

federal revenue accounts for approximately 9% of funding for education in South Carolina, while local revenue accounts for approximately 40%, and State funding accounts for roughly 50% of the total revenue spent on education in South Carolina. *See* Plaintiffs' Exhibit 6010. This tripartite structure of funding has long been the means funding education in South Carolina. *See id.*

57. Plaintiffs maintained early on in this litigation that federal funding is irrelevant to the determination of whether the State meets the obligations imposed upon it by the education clause of the South Carolina Constitution. The Court finds this argument unpersuasive for several reasons.

58. First, Plaintiffs' argument rests on many federal statutes that expressly provide that federal aid may not be used to "supplant" state and local funds available for the education of a state's children. Deciding what constitutes a "supplementation" or "supplantation" is a complex question completely controlled by federal law, and which the federal statutory scheme places exclusively in the hands of the United States Secretary of Education. Hoke County Bd. of Educ. v. State, 599 S.E.2d 365, 396 (N.C. 2004). *See* 20 U.S.C. § 1234(a) (2002). There is no evidence in the record that the United States Secretary of Education has either refused or withdrawn federal funding from the State because such funds were being used in violation of Title I, 20 U.S.C. § 6321 (b)(1). The present case does not involve even an allegation that the State of South Carolina has supplanted State funds with federal aid. There is no basis to conclude that federal aid is supplanting education funds provided by the State. Thus, the Court finds that the provisions of the federal statutes cited by Plaintiffs have no application to this case.

59. Nor are federal funds always limited in their use, which enhances their relevance to the issue before the Court. For example, when a school's free and reduced lunch percentage is greater than 50%, the Title I funds become highly flexible, and those funds can be used for school-wide projects. The funds are basically treated as general funds by the district. Tr. Trans. (06/28/04), p. 82, l. 7 - p. 83, l. 7. It would therefore be inappropriate to ignore those funds in deciding this case.

60. Further, while the State has a duty to provide the opportunity for every child to acquire a minimally adequate education, the Court finds that no State statutory or constitutional provision obligates the State to be the exclusive source of the opportunity's funding. Certainly Abbeville County does not command that result. *See also Hoke County*, 599 S.E.2d at 395-396. The Court finds that in providing that South Carolina's education clause "requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education," Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540, the South Carolina Supreme Court did not set any limits by which the State must provide that opportunity. Instead, the Court left it up to the General Assembly of the State "to determine the way in which educational opportunities are delivered to the children of our State." *Id.* at 69, 515 S.E.2d at 541.

61. The question of whether federal funding is relevant to the proceedings before this Court is a novel one. Very little guidance on this question is available from other jurisdictions. This Court will attempt, therefore, to answer this question in a way that, in the Court's judgment, the South Carolina Supreme Court would answer the question. Examined in that light, the Court's conclusion that federal funds are relevant is strengthened. If Plaintiffs' position were adopted by the Court, then anything regarded as

necessary to create the opportunity for a minimally adequate education that is currently provided by federal dollars would have to be replicated by the State. It does not appear that our Supreme Court would regard such a redundant duplication of public resources as necessary to meet the constitutional requirements of Abbeville County.¹²

62. Irrespective of funding sources, this Court's role is to determine that every child is receiving an opportunity to acquire a minimally adequate education as defined by our Supreme Court, and to determine that the State's funding scheme adequately provides resources in compliance with that constitutional directive. For this purpose, federal funds are relevant and should be included in the Court's analysis.

C. Funding for Education: State verses Local Sources

63. Plaintiffs also contend that "local" funds should be excluded from any determination of whether "the State" is providing the opportunity for a minimally adequate education.

64. The General Assembly of the State of South Carolina is entrusted with the taxing power "and except by express permission of the sovereign authority, this power cannot be delegated to any subordinate agency." Crow v. McAlpine, 277 S.C. 240, 243, 285 S.E.2d 355, 357 (1981) (citing Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949)).¹³ The taxing power is "one of the highest prerogatives of the General Assembly." Crow, 277 S.C. at 244, 285 S.E.2d at 358. Article X, section 6 of the South Carolina Constitution provides that "[t]he General Assembly may vest the power of

¹² Finally, Federal dollars are public moneys derived through the taxing of our State's citizens. The fact that the money flows through the federal government back to the State does not distinguish its public character.

¹³ The General Assembly "is a body created by the state constitution under which all political power is vested in and derived from the people; it is a coordinate branch of the state government exercising part of the state's sovereign powers." 81A C.J.S. *States* § 40.

assessing and collecting taxes in all of the political subdivisions of the State.” S.C.

CONST. art. X, § 6.

65. It is well established that “[s]chool districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State’s taxing power.” Crow, 277 S.C. at 243-44, 285 S.E.2d at 357 (citing cases). As a body politic, a school district is merely a creature of the State, Wright v. Colleton County Sch. Dist., 301 S.C. 282, 288, 391 S.E.2d 564, 568 (1990), performing State functions. Parker v. Bates, 216 S.C. 52, 60, 56 S.E.2d 723, 725 (1949) (quoting Chesterfield County v. State Hwy Dep’t., 191 S.C. 39, 46, 3 S.E.2d 686, 689 (1939)); Willis Constr. Co., Inc. v. Sumter Airport Comm’n, 308 S.C. 505, 509, 419 S.E.2d 240, 241 (Ct. App. 1992) (observing that a political subdivision “is a division or subdivision of the State invested with governmental functions.”). “Ordinarily, a political subdivision may exercise whatever portion of *state power* the State, under its own constitution and laws, chooses to delegate to the subdivision.” City of Columbus v. Ours Garage & Wrecker Serv., 536 U.S. 424, 428 (2002) (emphasis added).

66. Thus, while the State may have the constitutional duty to provide students of the State with the opportunity to acquire a minimally adequate education, local school districts and other political subdivisions may be authorized to levy taxes as a means to assist in achieving this end. Bowaters Carolina Corp. v. Smith, 257 S.C. 563, 570, 186 S.E.2d 761, 763 (1972); Hay v. Leonard, 212 S.C. 81, 97-98, 46 S.E.2d 653, 660 (1948) (observing that “Article XI, section 6, provides that any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.”). Because the power to tax is an exclusive prerogative of the General Assembly, once this

power is delegated to a political subdivision, the local revenue raised for education by that political subdivision is, in fact, State revenue procured by the State through the delegation of the power to tax. *See City of Columbus, supra* at 437 (“‘The principle is well settled that local governmental units are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion.’”). Therefore, there is no distinction between State and local funding as a matter of law, and funding from “local” sources is relevant to determining whether resources are sufficient to create the opportunity for a minimally adequate education.

PART TWO

V. DESCRIPTION OF PRINCIPAL EDUCATION LEGISLATION

67. South Carolina’s system of educational policies and the funding thereof are embodied in many different legislative enactments. The discussion that follows is a general description of the principal legislative components of South Carolina’s education system.

A. The Education Finance Act of 1977 (“EFA”)

68. Historically, in South Carolina local governments provided the largest share of revenue allocated to the operations and maintenance of public schools. Jackson L. Flanigan & Michael D. Richardson, *South Carolina Educational Finance*, 5 (2d ed. 1993). Prior to the adoption of the EFA, the sales tax operated as the main source of revenue used to fund South Carolina’s public schools by the State, while the property tax operated as the main source of revenue used to fund South Carolina’s public schools by local governments. *Id.* at 5-7. However, as disparities in local capacity to finance public

schools became more obvious and problematic, the State began to take steps to address and ameliorate the problem of disparities in property wealth by enacting the EFA on June 10, 1977. The EFA was recognized as “the most comprehensive piece of legislation for public education to be enacted in South Carolina.” *Id* at 9. The EFA distributes funds using a wealth-sensitive formula, which results in districts with low property wealth, such as the Plaintiff Districts, receiving more money than wealthier districts. Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538; Richland County, 294 S.C. at 350, 364 S.E.2d at 472 (observing that “school districts which lack a sufficient tax base *receive proportionally more* state funds and are required to *pay proportionately less* local revenue for public school operation.” (emphasis in original)).

69. Presently codified at S.C. Code Ann. § 59-20-10, *et. seq.* (Rev. 2004), the purpose of the EFA is to provide to each student in South Carolina public schools the availability of minimum education programs and services appropriate to the student’s needs; to encourage school district initiative in seeking more effective means in achieving the goals of the various programs; to establish a procedure for the distribution of a specified portion of State education funds to ensure the funds are provided on the basis of need; to make it possible for each school district to provide a minimum program and to do so with equal local tax effort; to establish a reasonable balance between the portion of the funds to be paid by the State and the portion of the funds to be paid by the districts in support of education foundation programs; to require each local school district to contribute its fair share to the required local effort; and to ensure that tax dollars spent in South Carolina’s public schools are utilized effectively. S.C. Code Ann. § 59-20-30 (1) – (7). The goals of the EFA were to be accomplished “by providing each public school

student an equal education opportunity in terms of financial support, and requiring each school district to report how these financial resources are used in providing education programs.” Flanigan, *et al.*, *supra* at 9-10.

70. The EFA relates to South Carolina’s “foundation” program, which is defined in the Act as “programs for South Carolina’s public school students, regardless of their geographic location, after the students are transported to school and housed in school plants.” S.C. Code Ann. § 59-20-20(1). The basic component of funding under EFA is the Base Student Cost (“BSC”). S.C. Code Ann. § 59-20-40. The EFA includes “pupil weights,” which increase the amount of money that a district receives depending upon the characteristics of the district’s student population. S.C. Code Ann. § 59-20-40. The weight for each category is multiplied by the BSC and by the number of students in that category. The categories and weights for each under EFA are as follows:

Kindergarten Pupils 1.30	Primary Pupils (grades 1 - 3) 1.24
Elementary Pupils (grades 4 - 8) base students 1.00	High School Pupils (grades 9 – 12) 1.25 -Special programs for exceptional students weightings
Handicapped 1.74 -Educable mentally handicapped -Learning disabilities	Handicapped 2.04 -Trainable mentally handicapped -Emotionally handicapped -Orthopedically handicapped
Handicapped 2.57 -Visually handicapped -Hearing handicapped -Pupils with autism	Speech Handicapped Pupils 1.90
Homebound Pupils 2.80 -Pupils who are homebound -Pupils who reside in emergency shelters	Pre-Vocational 1.20 -Add-on weights for early childhood development and academic weightings assistance
Early Childhood Assistance 0.26	Grades 4-12 Academic Assistant 0.114
Adult Education 0.15	

71. Under the EFA's "weighted pupil" approach, a district receives the BSC multiplied by the factor listed above for each student in each category. S.C. Code Ann. § 59-20-40(d). Districts with large numbers of students in the weighted categories listed above obviously get much more total revenue under the EFA formula. Pupil weights are also assigned under Act 135, which is discussed below. Significantly "poverty" is not assigned a pupil weight.

72. EFA requires that at least 85% of the funds received in each classification be spent for direct or indirect aid for the children in that classification. S.C. Code Ann. § 59-20-50(3). The districts have flexibility to spend up to 15% of the weighted money outside of programs for the classifications that generated the funds, and may provide "indirect" aid for students in the classifications. As of 2002, however, districts have been given much greater flexibility by the General Assembly. *See infra* at section VI. (H).

73. Teacher salaries are paid through EFA, and each district is required to adhere to the State minimum salary schedule. S.C. Code Ann. § 59-20-50(4)(a). Additionally, no teacher or administrator's salary may be reduced from the prior year's salary for the same job. *Id.* EFA requires a district to conform to a maximum pupil/teacher ratio currently of 21:1 in reading and math for grades 1-3 in order to qualify for funds. S.C. Code Ann. § 59-20-40(5). Actual pupil/teacher ratios in the Plaintiff Districts are substantially lower than the maximum.

74. The EFA distributes funds based on a wealth sensitive formula, so that districts with lower tax bases receive more revenue per pupil than districts with higher property values. The EFA baseline is seventy (70%) percent, meaning that before wealth adjustments are made, the State provides 70% of the cost of the foundation program, with

the remaining 30% being paid with local revenues. Because of the wealth sensitivity of the EFA, however, the actual percentage varies “dramatically” from district to district. Tr. Trans. (08/16/04), p. 58 ll. 24 – p. 59 ll. 12. For example, the percentages of EFA State support to the Plaintiff Districts are as follows: Allendale (80%); Dillon 2 (84%); Florence 4 (83%); Hampton 2 (86%); Jasper (76%); Lee (85%); Marion 7 (87%); and Orangeburg 3 (82%). Defendants’ Exhibit 2913. By contrast, the percentages of EFA State support for selected other non-Plaintiff Districts are as follows: York 2 (16%); Beaufort (23%); Oconee (51%); and Spartanburg 5 (58%). *Id.*

75. A significant portion of Plaintiffs’ case was devoted to establishing that the EFA is underfunded. Plaintiffs presented evidence showing that while the level of funding the BSC has varied each year, beginning in 2000, the “required” BSC has been more than the BSC funded by the State. Plaintiffs’ Exhibits 6612PP and 6612QQ. Of course, the BSC is only one component of funding received by the districts from the State, as established below

B. The 1984 Education Improvement Act (“EIA”)

76. In 1984, the General Assembly enacted the EIA, which raised the State sales tax from 4% to 5% to provide additional revenue to fund education. S.C. Code Ann. § 59-20-10, *et seq.* (Rev. 2004). All money generated by the sales tax in South Carolina is used for education, with the 1% represented by the EIA being placed annually in a special account. *See* S.C. Code Ann. § 59-21-1010(B); 12-36-2620 (Supp. 2003). The other 4% is placed in the general fund, but is nonetheless required to be spent on education. *See* S.C. Code Ann. § 59-20-1010(A); 12-36-2620(1) (Rev. 2000). Unlike the EFA, the EIA primarily supports categorical programs, and distributes funds without

regard to a school district's tax base. Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538. Most of these categorical programs are targeted to students who need extra academic assistance, and therefore districts with higher numbers of these students tend to receive higher funding under EIA. S.C. Code Ann. § 59-20-40 (Rev. 2004 & Supp. 2004).

77. The reforms incorporated into EIA were sweeping. EIA raised the academic requirements for a high school diploma in South Carolina; set minimum academic standards for participation in interscholastic activities; required almost all schools to offer a college preparatory curriculum; required schools to emphasize higher order thinking problem solving skills; required African–American history to be a part of the curriculum; imposed a minimum instruction time of six hours for each school day; established kindergarten programs for five year olds; established gifted and talented programs in each district; established the first high school exit exam; revised the promotion policy; provided funding for compensatory and remedial programs for failing students; created a student loan program for persons who want to become teachers, and for the cancellation of the debt for teachers who serve in critical needs areas; established the critical needs certification program; raised teacher salaries; established teacher incentive programs to provide extra compensation for good teachers; imposed a basic skills examination for new teachers; established a 180 day school year; and implemented measures to attract and retain better principals. Flanigan states that EIA “provided the greatest percentage increase of funding per-cent per-pupil in the nation.” Flanigan, *supra* p. 85.

C. The Early Childhood Development and Academic Assistance Act (“Act 135”)

78. In 1993, the General Assembly adopted the Early Childhood Development and Academic Assistance Act, which is generally known as Act 135. *See* S.C. Code Ann. § 59-139-05 *et seq.* (Rev. 2004). As set forth in S.C. Code Ann. § 59-139-05, the purposes of Act 135 are as follows:

- (1) to place an emphasis on early childhood education and prevention while promoting assistance for students at every grade level which is more flexible and tailored to individual needs and learning styles;
- (2) to focus the state's resources on academic success and prevention of academic problems;
- (3) to establish the expectation that by providing extra assistance and learning time that enables young students to attain essential skills and success all children will be prepared for the fourth grade and all students will graduate from high school with their peers;
- (4) to promote the advancement of developmentally appropriate curriculum and coordinated programs from preschool through grade three which are supportive of the curriculum for grades four through twelve; and
- (5) to allow districts and schools greater flexibility in providing targeted, coordinated programs of student assistance.

79. Act 135 provides funds for kindergarten through grade 3 programs, as well as providing funds for academic assistance for students in all grades. Act 135 provides interventions that are directly targeted to students who need academic assistance, many of whom are in the Plaintiff Districts. As implemented, Act 135 assigns pupil weights in addition to those assigned under EFA. S.C. Code Ann. § 59-139-20. The Act 135 weights for poverty are specifically for free and reduced lunch students in all grades as follows:

Grades 1-3 = 0.26; Grades 4-12 = 0.114. *Id.*

Because the Plaintiff Districts have high percentages of students on free and reduced lunch, these weights cause them to receive relatively more per pupil funding than districts with fewer students on the free and reduced lunch programs..

D. The South Carolina School-to-Work Transition Act of 1994

80. In 1994, the General Assembly found that “[e]ven though more than half of the state’s high school students do not go on to college but seek to enter the job market, South Carolina has no clear system for school-to work transition.” S.C. Code Ann. § 59-52-20(a) (Rev. 2004). Specifically, the General Assembly expressed concern that unlike other nations,

South Carolina’s secondary education system does not provide . . . steps in educating and preparing our youth for work. Our nation has traditionally divided students into college-bound and noncollege bound. While college-bound students are required to follow a challenging and clearly defined curriculum, the noncollege bound have entered the ‘general track’ which is less academically challenging and is often cited as preparing students for ‘nothing in particular.’ In South Carolina, fifty-two percent of our students are in the ‘general track’ while twenty-eight percent of the students are directed into the academic college-prep track, and the other twenty percent of the students are placed in the vocational track. ‘General track’ students receive little preparation for higher education and little guidance on how to move into a career that can support an acceptable quality of life. Their reading, writing, math, and communications skills are generally inadequate for the demands of today’s quality employers and for higher education.

S.C. Code Ann. § 59-52-20(c). Therefore, in 1994, the General Assembly enacted the South Carolina School-to-Work Transition Act, S.C. Code Ann. § 59-52-10, *et seq.*

81. Pursuant to the Act, as part of the school-to-work system, the State Board of Education was required to establish a structure to prepare students for employment and lifelong learning with four components: (1) quality schooling having a rigorous curriculum; (2) career counseling; (3) work exploration and experience; and (4) structured work-based learning. S.C. Code Ann. § 59-52-40(A). Moreover, pursuant to the Act, the State Board of Education, beginning with school year 1994-95, was required to adopt regulations regarding “quality schooling,” which at a minimum were to include (1) a rigorous, relevant academic curriculum to include rigorous applied academic methodologies in math, science and communications skills, with the goal of eliminating the “general track” for students enrolling in high school on or after the 1996-97 school year; and (2) changes in vocational educational programs to expand their content, relevancy and rigor. S.C. Code Ann. § 59-52-40(B)(1) (a)-(f); (B)(2) (a)-(b). Finally, under the Act, beginning in the 1996-97 school year, the State Board of Education was required to establish (1) regulations for career exploration and counseling, integrating career counseling activities into the kindergarten through twelfth grade curriculum; (2) a range of mentoring opportunities; (3) structured work-based opportunities, including the establishment of a youth apprenticeship. S.C. Code Ann. § 59-52-40(C)(1) – (3).

E. Educator Improvement Act of 1997

82. In 1997, the South Carolina General Assembly amended 1979 Act No. 187 to provide for “a fair, cohesive, and comprehensive system for the training, certification, initial employment, evaluation, and continuous professional development of public educators in this State.” S.C. Code Ann. § 59-26-10 (Rev. 2004). The General Assembly required that the State Board of Education (a) upgrade the standards for

educators in a fair, professional, and reasonable manner; (b) assure that prospective teachers have basic reading, mathematics, and writing skills; (c) improve the educator training programs and the evaluation procedures for those programs; (d) assure that prospective teachers know and understand their teaching areas; (e) assure that school districts implement a comprehensive system for assisting, developing, and evaluating teachers employed at all contract levels. S.C. Code Ann. § 59-26-10(a) – (e).

Specifically, the amendment required the State Board of Education to:

- (a) develop and implement a plan for the continuous evaluation and upgrading of standards for program approval of undergraduate and graduate education training programs of colleges and universities in this State;
- (b) adopt policies and procedures which result in visiting teams with a balanced composition of teachers, administrators, and higher education facilities;
- (c) establish program approval procedures which shall assure that all members of visiting teams review and approve undergraduate and graduate education programs have attended training programs in program approval procedures within two years prior to service on such teams;
- (d) render advice and aid to departments and colleges of education concerning their curricula, program approval standards, and results on the examinations provided for in this chapter; and
- (e) adopt program approval standards so that all colleges and universities in this State that offer undergraduate degrees in education shall require that students successfully complete the basic skills examination that is developed in compliance with this chapter before final admittance into the undergraduate teacher education program.

S.C. Code Ann. § 59-26-20 (a) – (e).

83. Moreover, the amendment provided that in the area of cognitive assessments for teachers and teacher certification, the State Board of Education must (1) adopt a basic skills examination in reading, writing, and mathematics that is suitable to determine whether students may be admitted into a teacher education program; (2) adopt nationally recognized teaching examinations that measure the cognitive teaching area competencies for initial job assignments in public schools of this State; (3) use nationally recognized specific teaching area examinations approved by the State Board of Education for certification purposes; (4) report the results of the teaching examinations to the student in written form that provides specific information about the student's strengths and weaknesses; (5) report to each teacher training institution in the State the performance of the institution's graduates on teaching examinations; (6) provide for the security and integrity of the tests that are administered under the certification program; (7) award a teaching certificate to a person who successfully completes the scholastic requirements for teaching at an approved college or university and the examination he or she is required to take for certification purposes; (8) award a conditional teaching certificate to a person eligible to hold a teaching certificate who does not qualify for full certification if the person has earned a bachelor's degree from an accredited college or university with a major in a certification area for which the board has determined there exists a critical shortage of teachers; and (9) promulgate regulations and procedures whereby course credits that may be applied to the recertification requirements of all public school teachers are earned in courses that are relevant to the area in which the teacher is recertified. S.C. Code Ann. § 59-26-30(1)-(9).

F. The Education Accountability Act ("EAA")

84. The EAA represents a fundamental reform of South Carolina's education program, including the now famous school and district report cards. *See* S.C. Code Ann. § 59-18-110 (2) (Rev. 2004). The purpose of the EAA is to establish "a performance based accountability system for public education which focuses on teaching and learning so that students are equipped with a strong academic foundation." S.C. Code Ann. § 59-18-100. Accountability is nationally recognized as improving student achievement for all students, including those in poverty. The adoption of the EAA in 1998 elevated South Carolina into the upper echelon of states that have adopted accountability programs. South Carolina's program is nationally recognized as one of the very best. Table 3, Defendants' Exhibit 2780, p. 2, is reprinted from a publication of the Brookings Institution in 2001, which shows South Carolina as an "Honor Roll" State.

States Classified by Quality of Standards and Accountability			
Accountability/ Standards	Solid Standards A or B	Mediocre Standards C	Inferior Standards D or F
Strong Accountability	<i>The Honor Roll:</i> Alabama, California, North Carolina, South Carolina , Texas	<i>Shaky Foundations</i> Florida, Illinois, Indiana, Kansas, Maryland, Nevada, New York, Oklahoma, Virginia, West Virginia	<i>Trouble Ahead:</i> Kentucky, New Mexico
Weak Accountability	<i>Unrealized Potential:</i> Arizona, Massachusetts, South Dakota	<i>Going through the Motions:</i> Delaware, Georgia, Louisiana, Mississippi, Nebraska, New Hampshire, Ohio, Utah, Wisconsin	<i>Irresponsible States:</i> Alaska, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, Wyoming
Source: Finn and Kanstoroom, <i>Brookings Papers on Education Policy, 2001</i> (Washington, DC.: Brookings Institution Press, 2001). Note: Strong accountability means the state employs report cards and ratings of schools, rewards successful schools, has authority to reconstitute or make major changes to failing schools, and exercises such authority. Solid standards are clear, measurable, comprehensive, and rigorous.			

85. The objectives of the EAA are as follows:

- (1) [to] use academic achievement standards to push schools and students toward higher performance by aligning the state assessment to those standards and linking policies and criteria for performance standards, accreditation, reporting, school rewards, and targeted assistance;
- (2) [to] provide an annual report card with a performance indicator system that is logical, reasonable, fair, challenging, and technically defensible which furnishes clear and specific information about school and district academic performance and other performance to parents and the public;

- (3) [to] require all districts to establish local accountability systems to stimulate quality teaching and learning practices and target assistance to low performing schools;
- (4) [to] provide resources to strengthen the process of teaching and learning in the classroom to improve student performance and reduce gaps in performance;
- (5) [to] support professional development as integral to improvement and to the actual work of teachers and school staff; and
- (6) [to] expand the ability to evaluate the system and to conduct in-depth studies on implementation, efficiency, and the effectiveness of academic improvement efforts.

S.C. Code Ann. § 59-18-110.

86. The EAA directs the State Board of Education “to adopt grade specific performance-oriented educational standards in the core academic areas of mathematics, English/language arts, social studies (history, government, economics and geography), and science for kindergarten through twelfth grade and for grades nine through twelve adopt specific academic standards for benchmark courses in mathematics, English/language arts, social studies and science.” S.C. Code Ann. § 59-18-300. The purpose of the standards are to promote the goals of providing every student with the following competencies: (1) reading, viewing and listening to complex information in the English language; (2) reading and speaking effectively in the English language; (3) solving problems by applying mathematics; (4) conducting research and communicating findings; (5) understanding and applying specific concepts; (6) obtaining a working knowledge of the world, United States, and South Carolina history, government, economics and geography; and (7) using information to make decisions. *Id.* The EAA

requires that the standards “be reflective of the highest level of academic skills with the rigor necessary to improve the curriculum and instruction in South Carolina’s schools” *Id.*

87. Under the EAA, the State Board of Education must “develop, select or adopt a first grade readiness test which is linked to the adopted grade one academic standards and a second grade readiness test which is linked to the adopted grade two academic standards.” S.C. Code Ann. 59-18-330. The purpose of the tests is to measure individual student readiness. *Id.* The State Board of Education is also required to select a norm referenced test “to obtain an indication of student and school performance relative to national performance levels.” S.C. Code Ann. § 59-18-340. The norm referenced test is to be administered annually “to a statistically valid random sample of students in at least three grades from grades three to eleven.” *Id.* In addition, high schools must offer PSAT tests to tenth grade students “in order to assess and identify curricular areas that need to be strengthened and reinforced.” S.C. Code Ann. §59-18-350. The results of the PSAT are to be used as diagnostic tools “to provide academic assistance to students whose scores reflect the need for such assistance.” *Id.*

88. The EAA provides technical assistance for schools and districts in which large numbers of students are performing below expectations. The EAA requires that at the beginning of each school year, a school must notify parents of a need for a conference for each student in grades three through twelve who is lacking in the skills necessary to perform at his or her current grade level based on assessment results, school work, or teacher judgment. S.C. Code Ann. § 59-18-500 (A). At the conference, the student, parent and appropriate school personnel will discuss steps needed to assure student

success at the next grade level, and an academic plan will be developed to outline the actions the student and parents will undertake to further student success. *Id.* At the end of the school year, if the student's performance has not improved or if the terms of the academic plan have not been met, the student "may be retained, . . . required to attend summer school, or . . . required to attend a comprehensive remediation program the following year designed to address objectives outlined in the academic plan for promotion." S.C. Code Ann. § 59-18-500 (C).

89. The State standards and assessments are subject to cyclical review by the State Board of Education and the Education Oversight Committee "to ensure that standards and assessments are maintaining high expectations for learning and teaching." S.C. Code Ann. § 59-18-360 (Supp. 2004). As part of the review, a task force consisting of parents, business and industry leaders, community leaders, and educators "must examine the standards and assessment system to determine rigor and relevancy." *Id.* The SDE is required to provide assessment results annually on individuals and students in a manner easily understood by the public. S.C. Code Ann. § 59-18-370 (Rev. 2004).

90. In addition to requiring the State Board of Education to adopt a state-wide assessment program to measure student performance, S.C. Code Ann. § 59-18-310, the EAA requires school districts to establish and annually review a performance based accountability system to reinforce the State accountability system. S.C. Code Ann. § 59-18-1300.

91. Pursuant to the EAA, the Education Oversight Committee, along with the State Board of Education, must establish annual report cards on the performance for the elementary, middle, high schools and school districts of the State. S.C. Code Ann. § 59-

18-900 (A). The report cards serve four purposes: “(1) inform parents and the public about the school’s performance; (2) assist in addressing the strengths and weaknesses within a particular school; (3) recognize schools with high performance; and (4) evaluate and focus resources on schools with low performance.” *Id.* at (1) – (4).

92. The report cards have five academic performance ratings of Excellent, Good, Average, Below Average, and Unsatisfactory.¹⁴ S.C. Code Ann. § 59-18-900 (B). Schools in the State receive grades for absolute and improvement performance. *Id.* The report cards include “a comprehensive set of performance indicators with information on comparisons, trends, needs, and performance over time,” and include information in such areas as programs and curriculum, school leadership, community and parent support, faculty qualifications, information on promotion and retention ratios, dropout ratios, student and teacher ratios, and attendance data. S.C. Code Ann. § 59-18-900 (D). The report cards must be made available to the schools and the public no later than November first of each year. S.C. Code Ann. § 59-18-930.

93. The EAA also provides for technical assistance for school districts that receive a rating of unsatisfactory or below average on their report card. Under the EAA, when a school is rated below average or unsatisfactory, the faculty of the school along with the district superintendent and board of trustees must review the school’s improvement plan and revise it, looking at “every aspect of schooling, and must outline activities that, when implemented, can reasonably be expected to improve student performance and increase the rate of student progress.” S.C. Code Ann. § 59-18-1500

¹⁴ There was some discussion during the course of the case as to the basis for rating schools and districts as Excellent, Good, Average, Below Average, or Unsatisfactory. These ratings are a function of how the students in a particular school or district perform on the PACT. *See* Tr. Trans. (01/08/04), p. 183, l. 16 – p. 185, l. 4; Defendants’ Exhibit 804.

(A)(1). Upon review of the revised plan, the South Carolina Department of Education (“SDE”) “is to delineate the activities, support, services, and technical assistance it will make available to support the school’s plan and sustain improvement over time.” S.C. Code Ann. § 59-18-1500 (A)(5). If the recommendations approved by the State Board of Education are not satisfactorily implemented by the school rated unsatisfactory according to the time line developed by the State Board of Education, or if student performance has not met expected progress, the state superintendent may either “(1) furnish continuing advice and technical assistance in implementing the recommendations of the State Board of Education; (2) declare a state of emergency in the school and replace the school’s principal; or (3) declare a state of emergency in the school and assume management of the school.” S.C. Code Ann. § 59-18-1520 (1)-(3).

94. Dr. John Suber is the Director of the Office of School Quality at the South Carolina Department of Education (“SDE”). That office has responsibility for providing technical assistance to schools under the EAA. Dr. Suber described that technical assistance to include (1) external review teams; (2) principal specialists and principal mentors; (3) curriculum specialists; (4) teacher specialists; (5) curriculum instruction facilitators; (6) homework centers; (7) extra funds for materials and supplies; (8) extra funds for principal specialists to be used in the schools to which they are assigned; and (9) retraining grants, which are additional funds for professional development of teachers in unsatisfactory and below average schools. *See* Tr. Trans. (01/15/04), p. 46, l. 14 – p. 49, l. 4. *See also* S.C. Code Ann. §§ 59-18-1510 (assignment of external review committees); 59-18-1530 (teacher and principal specialists); 59-18-40 (mentoring for

principals); 59-18-1560 (grant programs for schools designated as below average); 59-18-1910 (homework centers).

95. Dr. Suber categorized the technical assistance provided to each Plaintiff District. Defendants' Exhibit 3131. SDE has developed a priority system under which the assistance is allocated to the schools and districts. Tr. Trans. (01/15/04), p. 148, ll. 10-25. Although not all districts that qualify for assistance under the statute receive all types of technical assistance, the Plaintiff Districts have received a full complement of such assistance with only limited exceptions.¹⁵ See Discussion below at Section VIII.

G. Legislative Interventions for "At-Risk" Students

96. In addition to the separately codified education legislation described above, the General Assembly has also enacted many statutory provisions that are intended to enhance educational achievement, especially for at-risk children. In her testimony, Sandy Smith, Director of Research for the House Education and Public Works Committee, identified those programs. They are: (1) four-year-old kindergarten, S.C. Code Ann. § 59-5-65(8); (2) full day five-year-old kindergarten, S.C. Code Ann. § 59-35-10; (3) class size reduction, S.C. Code Ann. § 59-63-65; (4) alternative schools, S.C. Code Ann. § 59-63-1300; (5) First Steps to School Readiness, S.C. Code Ann. § 59-152-10; (6) Early Childhood Development and Academic Assistance Act, S.C. Code Ann. § 59-139-10; (7) homework centers, S.C. Code Ann. § 59-18-1910; (8) summer school, S.C. Reg. 43-240; (9) extended school year, S.C. Code § 59-18-1920; (10) exemption for regulations and statutes, S.C. Code § 49-18-1120; (11) reading recovery, 1004 Proviso

¹⁵ Dr. Suber testified that many of the vacant teacher specialist positions in the 2003-04 school year were for special education positions which according to his testimony were not authorized until late in the education year, making the identification and placement of teacher specialists in the special education area difficult. Tr. Trans. (01/16/04) pp. 237, ll. 2-9.

1A.11; (12) Governor's Institute for Reading, S.C. Code § 59-5-135; (13) school technology (14) Parent Involvement in Education Act, S.C. Code Ann. § 59-28-100, *et seq.*; (15) parent/family literacy programs, S.C. Code Ann. § 59-1-450. *See* Defendants' Exhibit 3297; Tr. Trans. (06/17/04), pp. 39 – 61.

H. Flexible Spending Provisions

97. Each year, for the past two years, the General Assembly of the State has enacted a proviso allowing all school districts in the State to “transfer up to one hundred percent of funds between programs to any instructional program provided the funds are utilized for direct classroom instruction.” Defendants' Exhibit 3297, tab 32, section 1.61. Pursuant to the provisos, school districts may carry forward unexpended funds from the prior fiscal year into the current fiscal year for the same purpose. *Id.* The proviso allows school districts the flexibility and discretion to transfer funds from categories where there is a surplus of funding and expend funds in areas where there is a critical need.

I. Assisting, Developing and Evaluating Professional Teaching (“ADEPT”)

98. Codified at section 59-26-30(B) (Rev. 2004), Assisting, Developing and Evaluating Professional Teaching (“ADEPT”) requires the State Board of Education, operating through the SDE, *inter alia*, to adopt certain standards for teaching effectiveness which shall serve as a foundation for all processes used for assisting, developing, and evaluating teachers throughout the State. S.C. Code Ann. § 59-26-30 (B) (1) – (11). South Carolina is one of only eight states that have adopted this four-step teacher approval process. Tr. Trans. (06/14/04), p. 214, ll. 2-13.

99. The purpose of ADEPT is “to provide for a fair, cohesive, and comprehensive system for the training, certification, initial employment, evaluation, and

continuous professional development of public educators in [the] State.” S.C. Code Ann.

§ 59-26-10. For the purposes of assisting, developing, and evaluating professional teaching, the General Assembly has required the State Board of Education, acting through the SDE, to adopt and promulgate the following policies and standards:

- (1) standards for teaching effectiveness that serve as a foundation for the processes used for assisting, developing, and evaluating teacher candidates, as well as teachers employed under induction, annual, or continuing contracts;
- (2) regulations to be used by colleges and universities for evaluating and assisting teacher candidates;
- (3) regulations to be used by local school districts for providing formalized induction programs for teachers employed under induction contracts;
- (4) regulations to be used by local school districts for evaluating and assisting teachers employed under annual contracts;
- (5) regulations to be used by local school districts for conducting evaluations of teachers employed under continuing contracts;
- (6) regulations so that college, university, and school district strategies, programs, and processes for ADEPT are approved by the State Board of Education. . . ;
- (7) regulations that establish procedures for the State department of Education to provide colleges, universities, and school districts with ongoing technical assistance for ADEPT; and
- (8) regulations and procedures so that school districts shall report to the State Department of Education teacher evaluation results and teacher contract decisions on an annual basis.

S.C. Code Ann. § 59-26-30 (B) (Supp. 2004).

100. A person who receives a teaching contract pursuant to § 59-26-30 (B) may be employed by a school district under a nonrenewable induction contract. S.C. Code Ann. § 59-26-40 (A) (Supp. 2004). At the end of the one year induction contract period, a teacher shall become eligible for employment at the annual contract level. S.C. Code Ann. § 59-26-40 (B). Teachers employed under an annual contract must complete an individualized professional growth plan established by the school or district. S.C. Code Ann. § 59-26-40(D). During the first annual contract year, the annual contract teacher must either complete the formal evaluation process or be provided diagnostic assistance. S.C. Code Ann. § 59-26-40(E). During the evaluation process, a determination is made as to whether a teacher has met “those minimal performance standards of actually being able to apply theory into practice in their classroom.” Tr. Trans. (09/23/03), p. 96, ll. 9-12. Once the formal evaluation process is completed, and the teacher has satisfied the requirements established by the State Department of Education for the professional teaching certificate, the teacher becomes eligible for employment at the continuing contract level. S.C. Code Ann. § 59-26-40 (F).

101. The Court finds that the General Assembly, in enacting EAA and the other statutory provisions herein described, has demonstrated a strong commitment to educating the children of this State.

VI. SOUTH CAROLINA CURRICULUM STANDARDS

102. A central feature of the EAA is the development of grade specific curriculum standards for each subject taught in South Carolina’s public schools. As noted above, the General Assembly has directed that the curriculum standards “be reflective of the highest level of academic skills.” S.C. Code Ann. § 59-18-300. Because

those standards identify both the substantive knowledge and thinking skills that students in South Carolina are expected to learn, they play a key role in the determination of whether or not the opportunity to acquire the knowledge and skills required by Abbeville County is present. To understand whether a curriculum consistent with Abbeville County's requirements is being offered to students in South Carolina, it is important to understand the curriculum standards in greater depth.

103. The curriculum standards outline what a child should be able to know and do in each subject at each grade level. There are now uniform curriculum standards for all courses taught in each grade in South Carolina's public schools, including but not limited to English, language arts, math, social studies, science, physical education, the arts and foreign language. Tr. Trans. (10/06/03), p. 87, ll. 24-25; ll. 1-25; p. 89, ll. 1; Defendants' Exhibit 2575; Plaintiffs' 5024. *See also* Plaintiffs' Exhibits 6207, 6208, 6209, 6214, 6215, 6216, 6217; Defendants' Exhibit 3336. The first year South Carolina had such uniform grade level curriculum standards in place throughout the State was in 1998. Tr. Trans. (06/17/04), p. 6-7. It is expected that these curriculum standards and guides form the framework for instruction in all South Carolina public schools. Trial Trans. (06/17/04), p. 7, l. 24 – p. 8, l. 1; (08/16/04), p. 188, l. 17 – p. 189, l. 11; (10/07/03), p. 75, l. 12 – p. 77, l. 20. The PACT tests are designed to measure student mastery of curriculum standards.

104. The purpose of the standards, as set forth by the Education Oversight Committee, are (1) to set clear, high expectations for student achievement; (2) to guide efforts to measure student achievement; (3) to promote educational equity for all; (4) to help parents in South Carolina determine whether their children are being taught the same

subject content as children across the nation; (5) to inform parents of the academic expectations of their child; (6) to enable parents to participate actively in parent/teacher conferences; and (7) to assist parents in determining how the current grade level expectations are related to successive years' expectations. Defendants' Exhibit 3317. Obviously, the effectiveness of the standards established by the EAA depends, in large measure, upon active and informed parental involvement.

105. The South Carolina Curriculum Standards have been described by educators and others as "rigorous." Tr. Trans. (10/07/03), p. 136, ll. 10-14; (02/09/04), p. 149, ll. 2-4; (02/12/04), p. 125, ll. 19-24; (03/04/04), p. 230, ll. 5-8; (06/09/04), p. 90, ll. 7-15; (08/17/04), p. 201, ll. 5-11. For example, the curriculum standards pertaining to mathematics for eighth graders provide that an eighth grade student should have the ability to use fractions, decimals and integers to solve real-world problems; use proportions to solve practical problems; find the values of algebraic expressions by substituting numbers for variables and using the order of operations; simplify a variety of algebraic expressions; use the Pythagorean Theorem to find the missing length of a side of a right triangle; determine the changes in volume and surface area of three-dimensional figures when one or more measurements is changed; find the area of irregular shapes; identify patterns in graphs to determine whether a relationship exists between two sets of data; and compute the probability of two dependent events. Defendants' Exhibit 2754; Plaintiffs' Exhibit 6207.

106. In English and language arts, an eighth grade student is expected to have mastered a variety of skills including: applying knowledge of the elements of various literary forms to evaluate them; analyzing main ideas and themes in literature that are not

actually stated in the reading; reading all types of print materials including technical and career manuals; summarizing what is read; determining when statements of fact and statement of opinion are not adequately supported in the text; comparing and contrasting themes in what is read; identifying elements of poetry such as rhyme scheme, stanza and refrain; describing how an author uses imagery and symbolism; drawing conclusions and making inferences; using knowledge of roots and affixes to analyze the meaning of complex words; making simple and complex analogies; using listening skills to gain information in interviews; increasing vocabulary through listening experiences; using visual aids, props and technology to support meaning and enhance oral presentations; presenting dramatic readings of literary selections; using techniques to develop and organize ideas before and during writing; writing for extended periods of time; writing multiple-paragraph compositions; writing business letters; and conducting research. Defendants' Exhibit 2752; Plaintiffs' Exhibit 5024.

107. In science, the curriculum standards expect an eighth grade student to be able to: make observations of objects and events; distinguish between qualitative and quantitative observations; select appropriate tools and technology to collect data; make inferences and predictions based on prior knowledge and observable patterns, and discriminate between observations, inferences and predictions; use mathematical thinking during investigations; identify and implement the four stages of problem solving; investigate the diversity and adaptations of organisms over time; examine how natural selection increases population variability; investigate, describe and compare the components of the solar system and the effect of gravity on orbits; compare and contrast the contributions of Copernicus and Galileo; investigate and explain the theory of plate

tectonics; investigate the motion of objects; and investigate Newton's Laws of Motion.

Defendants' Exhibit 2756; Plaintiffs' Exhibit 6208.

108. In social studies, the curriculum standards expect an eighth grade student to: discuss the nature, challenges and contributions of ethnic and religious groups, including African-American and Native American cultures and women; compare and contrast how Europeans developed political, economic and social institutions in South Carolina and other colonies; describe issues related to the ratification of the Constitution; identify major domestic and foreign issues and key figures of early presidencies through the Antebellum Period; describe the causes, sequence and key figures of the Civil War and Reconstruction Era, and their effects on South Carolina and the nation; examine the rise of the women's suffrage movement; compare and contrast the South Carolina and United States constitutional governments; describe how public policy is formed and carried out at all levels of government; explain how one becomes a citizen of the United States; make and use maps, globes, graphs, charts and models to analyze and illustrate physical and cultural features in South Carolina and the United States; describe division of labor and how free enterprise provides goods and services; provide examples of private property, free enterprise, competition and profit; explain collective bargaining; and describe the effect of fiscal policy on the economy. Defendants' Exhibit 2757; Plaintiffs' Exhibit 6209.

109. The Court finds that the curriculum standards, as promulgated and adopted by SDE, the South Carolina Education Oversight Committee, and the State Board of Education comply with the EAA's mandate that South Carolina's curriculum standards be "reflective of the highest level of academic skills with the rigor necessary to improve

the curriculum and instruction in South Carolina's schools" S.C. Code Ann. § 59-18-300. More importantly, the Court finds that the substantive knowledge and skills reflected in the curriculum standards go far beyond the knowledge and skills comprising a minimally adequate education as defined in Abbeville County. Thus, the curriculum standards encompass more than "the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and academic and vocational skills." Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540.

VII. DESCRIPTION OF THE PLAINTIFF DISTRICTS

110. Three of the Plaintiff Districts, Allendale, Jasper and Lee, are county-wide school districts, and five of the Plaintiff Districts are in a county with multiple school districts. Florence County has a total of five districts; Hampton County has two school districts (Nos. 1 and 2); Marion County has three school districts (Nos. 1, 2 and 7)¹⁶; Orangeburg has three school districts (Nos. 3, 4, and 5); and Dillon County has three school districts (Nos. 1, 2, and 3).

111. Each Plaintiff District has its own administrative staff, including a superintendent, a business manager and other district staff. The number of schools within the districts varies between three and seven.

112. The Plaintiff Districts vary widely in enrollment, from the smallest, Marion 7, with 905 students, (Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264) to the

¹⁶ Marion 7 is the product of a merger of School Districts 3 and 4. There were never more than four districts in Marion County.

largest district, Dillon 2, which has a total of 3,681 pupils according to the 2003 District Report Card. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

113. These school districts are, for the most part, located along the I-95 corridor in South Carolina running between the North Carolina state line (Dillon 2) to the Georgia border (Jasper and Hampton counties), and are largely rural in nature. The eight Plaintiff Districts also share the common characteristic of having high percentages of students who qualify for free and reduced lunch under the federal guidelines. This "free and reduced lunch" percentage is frequently used as a proxy for poverty.¹⁷ For purposes of this case, students in poverty were described as "at-risk". Tr. Trans. (8/14/03) at p. 36, ll. 15-18. Other characteristics of the Plaintiff Districts vary substantially. For this reason, the Court will address each Plaintiff District separately, and will describe the relevant characteristics of each Plaintiff District.

A. Allendale County School District

114. Allendale is the most unusual district among the trial plaintiffs. In 1999, the State Superintendent of Education took over control of Allendale from the Allendale County School Board under her statutory authority because Allendale was consistently performing below State minimum standards, and had significant financial, discipline, and student and teacher attendance problems which had not been resolved. Defendants' Exhibit 1326. Tr. Trans. (05/04/04), p. 179, l. 8 – p. 180, l. 22. SDE manages Allendale County School District and appoints its Superintendent, who, at the time of trial, was Dr. Paula Harris. Since SDE acts as the School Board, Dr. Harris reports to and confers with

¹⁷ There was testimony that this indicator was not as accurate at the high school level, when the stigma associated with free and reduced lunch discourages teenagers from taking advantage of the eligibility. Tr. Trans. (01/06/03) p.108, ll.17-24. Also, many witnesses indicated that free and reduced lunch status does not reflect relative levels of poverty for those who are participating in the program. Tr. Trans. (09/23/04), p. 20, l. 23 – p. 21, l. 12.

SDE on issues relating to Allendale County School District. Tr. Trans. (05/05/04), p. 22, ll. 4-19; (05/04/04), p. 180, ll. 19-22.

1. Student Demographics

115. Allendale has two elementary schools, Allendale Elementary School and Fairfax Elementary School; one middle school, Allendale-Fairfax Middle School; and one high school, Allendale-Fairfax High School. In 2003, Allendale had 1,815 pupils enrolled, and employed approximately 153 teachers. *See* Defendants' Exhibit 2971; Plaintiffs' Exhibit 6231 .

116. Of Allendale's students, 87.3% qualified for free and reduced lunch in school year 2001-02. Defendants' Exhibit 3225. The State average for free and reduced lunch students is 48.5%. *Id.* Allendale ranks fourth highest in the State for school districts with children in poverty in *Ranking of Counties and School Districts in South Carolina* ("Rankings Report"). Defendants' Exhibit 3225. Tr. Trans. (09/30/03), p. 99, ll. 4-8.

117. In 2003, Allendale had a 96.1% student attendance rate, which was above the State average of 95.4%. The student-teacher ratio for Allendale in 2003 was 15 to 1, which was significantly below the State district median of 20.6 to 1, and lower than its ratio from the previous year of 16.7 to 1. Defendants' Exhibit 233; Plaintiffs' Exhibit 1321.

2. Curriculum and Instruction

118. Allendale has certified annually to the SDE and the Office of School Quality that the district and its schools have educational standards in place that are consistent with the requirements of the EAA. *See, e.g.* Defendants' Exhibits 2832 and

2833. Dr. Suber testified that his office relies upon the representations made by the superintendents in their certification to the SDE of the conditions and conduct of the schools in the district.

119. Additionally, each principal of a school in Allendale was deposed and portions of their deposition testimony were offered as evidence at trial. Each of those principals testified that for the most part, the teachers in their schools were teaching the curriculum standards in their classrooms and were offering the standard academic courses enumerated within SDE's regulations. *See* Deposition of Judy Franchini, p. 59, ll. 19-21; Deposition of Buren Martin, p. 64, ll. 304; Deposition of Alexia Clamp, p. 33, ll. 23-25; Deposition of Alfonso Lamback, p. 57, ll. 12-14. Moreover, these principals testified that in general, the curriculum being taught in their schools was aligned to the State uniform curriculum standards. Deposition of Judy Franchini, p. 59, ll. 16-17; Deposition of Martin Buren, p. 64, ll. 3-4; Deposition of Alexia Clamp, p. 33, ll. 3-25; Deposition of Alfonso Lamback, p. 57, ll. 12-14.

3. PACT Scores

120. In 2004, 49.5% of Allendale students scored Basic¹⁸ or above on English Language Arts ("ELA") PACT tests, and 52.9% scored Basic or above on Math PACT tests. Defendants' Exhibit 2971; Plaintiffs' 6231. The percentage of students scoring at Basic or above on PACT between 2000 and 2004 are as follows:

Allendale PACT Scores Percent Basic and Above

¹⁸ Definitions of critical terms from annual school report cards:

ADVANCED- student performance exceeded expectations.

PROFICIENT – student performance met expectations.

BASIC – student performance met minimum performance expectations.

BELOW BASIC – student performance did not meet minimum requirements expectations.

	2000	2001	2002	2003	2004
ELA	36.3%	48.0%	49.3%	42.9% ¹⁹	49.5%
Math	32.9%	45.0%	40.5%	50.5%	52.9%

Defendants' Exhibits 0233 (Plaintiffs' 1321), 2971 (Plaintiffs' 6231), 3318; Plaintiffs' Exhibit 6446.

121. Despite gains in the PACT results, Allendale was rated "Unsatisfactory" in 2003 on the annually issued District Report Card²⁰, and its schools are ranked as follows:

Allendale Primary School	Unsatisfactory
Fairfax Elementary School	Average
Allendale-Fairfax Middle School	Unsatisfactory
Allendale-Fairfax High School	Unsatisfactory

Defendants' Exhibits 2972, 2973, 2974, 2975; Plaintiffs' Exhibits 6232, 6233, 6234, 6235.

122. The 2003 District Report Card reports that 39% of tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for Spring 2003 for all seniors was 83.0%. Defendants' 2971; Plaintiffs' 6231.

4. Per Pupil Spending

¹⁹ As will be seen, there was a uniform "dip" throughout the Plaintiff Districts, and indeed state-wide, of PACT ELA scores in 2003. This phenomenon was attributed by State Superintendent of Education Inez Tenenbaum to test fatigue in 2003 when the ELA test was the last test given at the end of two weeks of testing. Tr. Trans. (05/04/04), p. 184, ll. 5-9.

²⁰ The Court takes judicial notice that Allendale's ranking was "Below Average" on the Report Cards released in November of 2004 and "unsatisfactory" on the Report Cards released in November of 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 53.8%; Math 53.7%; Science (first year tested) 22.5%; Social Studies (first year tested) 29%.

123. Allendale has the second highest per pupil expenditure in the State, and the highest among the Plaintiff Districts. Defendants' Exhibit 3225. For the 2002-2003 Fiscal Year, Allendale spent \$10,946 per pupil from all sources, (Defendants' Exhibit 3328), compared to the State average of \$7,232. Defendants' Exhibits 3326, 3328. Per pupil spending in Allendale has increased over time:

Fiscal Year	Per Pupil Expenditures (InSite)
2002-2003	\$10,946
2001-2002	\$10,404
2000-2001	\$10,526
1999-2000	\$8,753

Defendants' Exhibits 3153, 2800, 3326, 3305.

124. When the revenues per pupil from State sources only are analyzed, the State revenues per pupil in Allendale have increased 206%, from \$2,514.50 in 1991-92 to \$5,182.00 in 2001-02. Defendants' Exhibit 2880. This is the time period roughly commensurate with the pendency of this suit.

5. Interventions and Technical Assistance

125. As noted above, the EAA provides for technical assistance for school districts that receive a rating of unsatisfactory or below average. During the 2003-04 school year, Allendale had three principal specialists, seventeen full-time teacher specialists, one part-time teacher specialist, and one curriculum specialist. The district also received \$265,000 in direct additional funds for materials and supplies, retraining grants and homework centers for that year alone. Defendants' Exhibit 3131; Tr. Trans. (03/31/04) pp. 79-90. The total value to the District of these interventions for the 2003-04 school year is as follows:

Unit Value	Total Value

Principal Specialists	3	\$159,810	\$479,430
Teacher Specialists	17 1 part-time	\$100,183	\$1,703,111
Curriculum Specialists	1	\$108,985	\$108,985
Additional Materials			\$265,000
Total			\$2,556,526

This amounts to \$1,361 per pupil in addition to the funding provided under EFA and EIA.

B. Dillon County School District 2

126. Dillon 2 is one of three school districts in Dillon County. At the time of his testimony, Ray Rogers had been the Superintendent for Dillon 2 for twelve years. Dillon 2 is located in the town of Dillon and has four elementary schools: South Elementary, East Elementary, Stewart Heights Elementary and Gordon Elementary. Dillon 2 has one junior high school, J.V. Martin, and one high school, Dillon High School. Dillon 2 had 3,681 students enrolled in 2003 and employed approximately 223 teachers. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

127. Almost 80% of the students enrolled in Dillon 2 were eligible for free and reduced lunch during the 2001-02 school year, which ranks Dillon 2 eleventh in the State for children in poverty. Defendants' Exhibit 3225. The poverty levels for Dillon 2 are substantially above the State average of 48.5% for free and reduced lunch students.

128. In 2003, Dillon 2 had a 95% attendance rate for its students, slightly below the State average of 95.4%. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. The

student-teacher ratio for Dillon 2 in 2003 was 20.7 to 1, which was just above the State district median student-teacher ratio. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. Dillon 2 is the largest Plaintiff District in terms of enrollment.

1. Curriculum and Instruction

129. Dillon 2 has certified to SDE that it is following the required instructional programs and is offering the courses mandated by SDE. Defendants' Exhibits 2832, 2833. There was no deficiency noted by Dillon 2 in the accreditation classification for 2001-2002. Defendants' Exhibit 2834.

130. Additionally, each principal of a school in Dillon 2 was deposed and portions of their deposition testimony were offered as evidence at trial. Dillon 2 principals testified that the teachers in their schools were for the most part teaching the State adopted curriculum standards in their classrooms and were offering the standard academic courses enumerated within SDE's regulations. Moreover, these principals testified that the curriculum being taught in their schools was aligned to the State uniform curriculum standards. Deposition of Polly Elkins, p. 99, ll. 8-13; Deposition of Ja-Novice Green Richardson, pp. 33-34 ll. 23-1; Deposition of Peggy Stafford, p. 34, ll. 6-9; Deposition of Larry Monahan, p. 76, ll. 14-17.

2. PACT Scores

131. In 2004, 59.9% of students in Dillon 2 scored Basic or above on PACT ELA and 62.5% students scored Basic or above on the PACT Math.

Dillon 2 PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	70.4%	56.0%	68.5%	47.8%	59.9%
Math	66.9%	47.0%	54.7%	61.7%	62.5%

Defendants' Exhibits 1117, 0327, 2976 (Plaintiffs' Exhibit 6236), and 3310.

132. Dillon 2 was rated Below Average on the 2003 District Report Card²¹.

Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. However, the ratings for the Elementary Schools in Dillon 2 were much better than the junior high school and high school:

East Elementary	Excellent
South Elementary	Excellent
Stewart Heights Elementary	Good
Gordon Elementary	Average
J.V. Martin Junior High	Below Average
Dillon High School	Below Average

Defendants' Exhibits 2977-2982; Plaintiffs' Exhibits 6237 – 6242).

133. The 2003 District Report Card reports that 56.0% of the tenth graders at Dillon High School passed all three subject tests on the exit exam after their first attempt. The Exit Exam passage rate for spring of 2003 was 84.5%. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. The student attendance rate for Dillon 2 was 95.2%, almost the State average. *Id.*

3. Per Pupil Spending

134. Dillon 2 has the lowest per pupil expenditure among the Plaintiff Districts. In 2002-2003, Dillon 2 spent \$6,255 per pupil compared to the State average of \$7,232.

²¹ The Court takes judicial notice that Dillon 2 raised its absolute rating to "Average" on the 2004 Report Cards released in November of 2004, and maintained at that rating on the 2005 Report Cards. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 60.6%; Math 59.6%; Science (first year tested) 40.8%; Social Studies (first year tested) 50.1%.

Defendants' Exhibit 3329, 3326. According to InSite, Dillon 2's revenues have increased between 1999 and 2002 as follows:

Fiscal Year	Per Pupil Expenditures
2002-2003	\$6,255
2001-2002	\$6,473
2000-2001	\$6,088
1999-2000	\$5,624

Defendants' Exhibits 3153, 2800, 3305, 3329.

135. The testimony revealed that revenue per pupil in Dillon 2 from State sources alone has increased during the pendency of this suit from \$2,481.31 during 1991-92 school year, to \$4,342.00 during the 2001/2002 school year, or an increase of 174%. Defendants' Exhibit 2880.

4. Interventions and Technical Assistance

136. Dillon 2 has also received technical assistance under the EAA. For the 2003-04 school year, Dillon 2 had one principal specialist, one curriculum specialist and three full time teacher specialists. The District received \$155,000 in additional funds for materials and supplies, retraining grants and homework centers for that year alone. Defendants' Exhibit 3131; Tr. Trans. (03/31/04) pp. 79-90. The value to the district to the State of these resources is as follows:

		Unit Value	Total Value
Principal Specialist	1	\$159,810	\$159,810
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	3 1 part-time	\$100,183	\$300,549

Additional Materials			\$155,000
Total			\$724,344

This amounts to \$191 per pupil in addition to funds received under EFA and EIA.

C. Florence County School District 4

137. Florence 4 is one of five school districts located within Florence County. Florence 4 educates all of its students in three schools (Brockington Elementary, Johnson Middle School and Timmons ville High School) housed in one building on a campus located in Timmons ville, South Carolina. The K-12 school facility was virtually new at the time of the trial. Tr. Trans. (02/09/04), p. 127, ll. 11-16.

1. Student Demographics

138. Florence 4 has 1,065 students and in 2003 employed approximately ninety-two teachers. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. In the 2001-02 school year, 77.3% of the students in Florence 4 were eligible for free or reduced lunch and it was ranked sixteenth highest in this category among South Carolina schools districts. Defendants' Exhibit 3225. In 2003, Florence 4 had a 94.4% student attendance rate, which was below the State average of 95.4%. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. In Florence 4 the student teacher ratio in the 2002-2003 school year was 14.2 to 1, which was below the State average of 20.6 to 1. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243.

2. Curriculum and Instruction

139. Florence 4 began implementing the curriculum standards in its schools following their adoption in 1998. The principal of each school in Florence 4 was deposed and portions of those depositions were offered into testimony by the Defendants. Each of those principals testified that for the most part, teachers in their schools were teaching the curriculum standards in their classrooms and were offering the standard academic courses enumerated within the SDE's regulations. These principals also testified that the curriculum being taught in their schools was aligned to the State curriculum standards. *See* Deposition of Leon McCray, p. 23, ll. 4-16; Deposition of Gerard Edwards, p. 20, ll. 11-25; Deposition of Alice Johnson, p. 24, ll. 14-22.

3. PACT Scores

140. In 2004, 59.0% of the students in Florence 4 scored Basic or above on ELA and 58.75% scored basic or above on the Math PACT tests. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. These scores have trended upward overtime:

Florence 4 PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	49.4%	43.0%	49.8%	49.6%	59.0%
Math	46.6%	37.0%	47.9%	51.5%	58.7%

Defendants' Exhibits 1117 (Plaintiffs' Exhibit 1346), 1290 (Plaintiffs' Exhibit 1347), 2983 (Plaintiffs' Exhibit 6243), 3127, 3320.

141. Based on these PACT scores, Florence 4 was rated "Below Average"²² on the annually issued District Report Card for 2003, and its schools were ranked as follows:

Brockington Elementary School

Below Average

²² The Court takes judicial notice that Florence 4's 2004 District report card was unchanged from the previous year, but declined to "unsatisfactory" in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 45.6%; Math 50.0%; Science (first year tested) 32.5%; Social Studies (first year tested) 42.4%.

Johnson Middle School

Unsatisfactory

Timmons ville High School

Below Average

Defendants' Exhibits 2984, 2985, 2986; Plaintiffs' Exhibits 6244, 6245, 6246.

142. On the 2003 Report Card it was reported that 32.8% of tenth graders passed all three subject tests on the Exit Exam on their first attempt. The Exit Exam passage rate for spring 2003 for all seniors was 92.9%. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243.

4. Per Pupil Spending

143. Florence 4 spent \$8,964 per pupil in Fiscal Year 2002-2003, higher than the State average of \$7,232 expenditures per pupil. Defendants' Exhibit 3330. The historical per pupil expenditures for Florence 4 as reflected on InSite data are reflected below:

Fiscal Year	Per Pupil Expenditures (InSite)
2002-2003	\$8,694
2001-2002	\$9,788
2000-2001	\$8,216
1999-2000	\$7,279

Defendants' Exhibits 3330, 3153, 2800, 3305.

144. Additionally, district revenue per pupil from State sources has increased from \$2,598.13 during the 1991-1992 school year to \$4,961.00 during the 2001-2002 school year, an increase of 191%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

145. Florence 4 qualified for the technical assistance under EAA in the form of two curriculum specialists, two full time teacher specialists, and a part-time teacher specialist. Florence 4 also received an additional \$160,000 in 2003-2004 for additional

materials and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The value to the district of these interventions was as follows:

		Unit Value	Total Value
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	2 1 part-time	\$100,183	\$200,366
Additional Materials			\$160,000
Total			\$578,336

This amounts to \$520 per pupil in addition to funds received by Florence 4 under EFA and EIA.

D. Hampton County School District 2

146. Hampton County School District 2 is one of two school districts located in Hampton County. This school district's schools are in Estill, South Carolina, and the district boundary lines are contiguous with the South Carolina-Georgia line.

1. Student Demographics

147. Hampton 2 provides PK-12 education for students in three school facilities, Estill Elementary School, Estill Middle School and Estill High School. In 2003, Hampton 2's enrollment was 1,427. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247. Of those students, 83.9% were eligible for free and reduced lunch, and therefore the school district consists of mostly poor students. Defendants' Exhibit 3225. Hampton 2 employs 105 teachers. *Id.*

2. Curriculum and Instruction

148. As with the other Plaintiff Districts, Hampton 2 began to align its curriculum with the curriculum standards in 1998. The principals of each school in Hampton 2 were deposed and portions of those depositions were offered into testimony by Defendants. Each of those Hampton 2 principals testified that the teachers in their schools were teaching the curriculum standards in their classrooms and were offering the academic courses required by regulation. *See* Deposition of Daisy Orr, p. 54, ll. 8-20; Deposition of Joyce Colter, p. 57, ll. 2-15; Deposition of Archie Franchini, p. 11, ll. 18-23.

3. PACT Scores

149. In 2004, 62.5 % of Hampton 2 students scored at Basic or above on ELA and 56.6% of Hampton 2 students scored at Basic or above on Math. Defendants' Exhibit 3321. These PACT scores have been trending upward since the inception of PACT, and the district showed significant improvement in PACT scores in 2004:

Hampton 2 PACT Scores Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	42.9%	45.0%	43.1%	45.7%	62.5%
Math	30.1%	32.0%	29.7%	40.6%	56.6%

Defendants' Exhibits 1117, 1388, 2987 (Plaintiffs' Exhibit 6247), 3127, 3321.

150. The 2003 Report Card for Hampton 2 evidences a 95.2% student attendance rate, slightly below the State average of 95.4%. The pupil teacher ratio in Hampton 2 is 17.8 to 1 for Hampton 2, significantly smaller than the average State pupil teacher ratio of 20.6 to 1. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

151. The 2003 District Report Card for Hampton 2 reports that 29.3% of tenth graders passed all three subject tests on the exit exam on their first attempt. The Exit

Exam passage rate for Spring 2003 for all seniors was 89.4%. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

152. Hampton County School District 2 was rated "Unsatisfactory"²³ on the 2003 District Report Card and the ratings for the individual schools are as follows:

Estill Elementary School	Below Average
Estill Middle School	Unsatisfactory
Estill High School	Unsatisfactory

Defendants' Exhibits 2988-2990; Plaintiffs' Exhibits 6248-6250.

4. Per Pupil Spending

153. According to the InSite data, in fiscal year 2002-2003 Hampton 2 spent \$8,437 per pupil, compared to the State average of \$7,232. Defendants' Exhibits 3326 and 3331. Based upon the annual Rankings Report, the expenditures per pupil from all sources have increased in Hampton since 1999:

Fiscal Year	Per Pupil Expenditures (InSite)
2002-2003	\$8,437
2001-2002	\$8,645
2000-2001	\$8,407
1999-2000	\$7,180

Defendants' Exhibits 3153, 2800, 3305, 3326.

154. Hampton 2 revenue per pupil from State sources only has increased from \$2,896.17 in the 1991-92 school year to \$5,321.00 during the 2001-2002 school year, an increase of 184%. Defendants' Exhibit 2880.

²³ The Court takes judicial notice that Hampton 2 increased its absolute rating to "Below Average" on its 2004 Report Card released in November 2004, but fell to "unsatisfactory" in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 52.7%; Math 50.2%; Science (first year tested) 26.8 %; Social Studies (first year tested) 38.8 %.

5. Interventions and Technical Assistance

155. Hampton 2 received significant technical assistance during the 2003-04 school year. Hampton 2 had one principal specialist, two full-time curriculum specialists, eight full time teacher specialists, and one part-time teacher specialist. Hampton County School District 2 also received an additional \$235,000 for materials and supplies, retraining grants, and homework centers, as part of the intervention plan. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value to the district of the technical assistance provided to Hampton 2 for the 2003-04 school year is as follows:

		Unit Value	Total Value
Principal Specialist	1	\$159,810	\$159,810
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	8 1 part-time	\$100,183	\$801,464
Additional Materials			\$235,000
Total			\$1,414,254

This amounts to \$944 per pupil in addition to funding received under EFA and EIA.

E. Jasper County School District

156. Jasper is a county-wide school district. The county itself is largely rural and the schools in that district are centered in the two principal communities in that county, West Hardeeville, and Ridgeland. While Jasper is in the process of building two brand new PK-12 facilities that will ultimately house all of its students, Jasper currently has four schools: Ridgeland Elementary, Ridgeland Middle, West Hardeeville Elementary (which houses PK-8 grades) and Jasper High School.

1. Student Demographics

157. Jasper is one of the larger Plaintiff Districts with approximately 3,154 students and 201 teachers. Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251. According to the 2001-02 Rankings Report, 68% of the students in Jasper are eligible for free or reduced lunch, causing it to be ranked 26th in the State in this measure of poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

158. Jasper reports annually to SDE that its curriculum is in compliance with State regulations. Defendants' Exhibit 2833. Additionally, the principals of its five schools testified that the courses being taught in their schools were aligned to the State uniform curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Michael Bull, p. 81, ll. 6-8; Deposition of Kenneth Jenkins, p. 55, ll. 7-10; Deposition of Naomi Reed, p. 54, ll. 3-7; Deposition of Edmond Burnes, p. 63, ll. 8-13.

3. PACT Scores

159. On the 2004 District PACT scores, 49.8% of students in Jasper scored at Basic or above on ELA and 47.5% scored Basic or above on math. Defendants' Exhibit 3322. PACT scores in Jasper were somewhat higher in 2000 than in 2004, but following a precipitous decline in 2001, have been slowly rising:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	48.3%	45.0%	46.1%	46.8%	49.8%
Math	56.5%	32.0%	35.4%	45.5%	47.1%

Defendants' Exhibits 1117, 1542 (Plaintiffs' Exhibit 1368), 2991 (Plaintiffs' Exhibit 6251), and 3322.

160. Jasper was rated Unsatisfactory on the 2003 District Report Card²⁴ (Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251), and its schools were rated as follows:

Ridgeland Elementary	Average
West Hardeeville Elementary (PK-3)	Below Average
Ridgeland Middle	Unsatisfactory
West Hardeeville Elementary (4-8)	Below Average
Jasper High School	Unsatisfactory

Defendants' Exhibits 2992 – 2996; Plaintiffs' Exhibits 6252 – 6256.

161. The 2003 District Report Card also reveals that 36.3% of tenth graders passed all three subject tests on the exit exam after their first attempt, and the overall exit exam passage rate for Spring 2003, was 84.8%. Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251. Jasper had a 94.7% student attendance rate, which was slightly below the State average of 95.4%, and the student teacher ratio in the District was 18.2 to 1, which was below the State district median of 20.6 to 1. *Id.* As reported on the 2003 District Report Card, the District had an average of 11.4 professional development days per teacher in 2003, up from 5.2 days the previous year. *Id.*

4. Per Pupil Spending

²⁴ The Court takes judicial notice that Jasper increased its absolute rating to "Below Average" on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 55.2%; Math 48.2%; Science (first year tested) 33.0 %; Social Studies (first year tested) 43.1 %.

162. As reported in the State Department In\$ite Data, Jasper spent \$8,058 per pupil in school year 2002-2003. Defendants' Exhibit 3326. The Court finds that this amount has been increasing over time.

Fiscal Year	Per Pupil Expenditures (In\$ite)
2002-2003	\$8,058
2001-2002	\$7,822
2000-2001	\$7,358
1999-2000	\$6,821

Defendants' Exhibits 3326, 3305, 2800, 3153. Jasper District revenue per pupil for State sources only has increased from \$2,342.24 during the 1991-1992 school year, to \$4,540.00 during the 2001-02 school year, an increase over 193%. Defendants' Exhibit 2880.

163. Dr. William Singleton, the superintendent of Jasper County School District testified that the science classes in Jasper had to use "road kill" for its science experiments because the district did not have the money available to buy laboratory frogs. Tr. Trans. (04/02/04), p. 40, ll. 13-20. According to In\$ite for 2002-2003, Jasper actually spent \$938,620 for materials and supplies in that year, or more than \$300 per pupil. Defendants' Exhibit 3332. In addition, Susan Cleveland, a seventh grade math teacher at West Hardeeville Elementary School in Jasper County, testified at trial that Jasper had received a \$10 million technology grant that provided significant technology to the district. In fact, Ms. Cleveland testified that the school district had purchased a \$2,000 wide-screen television for her classroom, which apparently had never worked properly and, despite being under warranty, had not been fixed despite her request. Tr. Trans. (04/21/04), pp. 191-192. Additionally, as will be seen below, Jasper receives additional

funding for materials and supplies as part of the interventions provided by the State under EAA.

5. Interventions and Technical Assistance

164. Because Jasper and its schools have been rated Unsatisfactory and Below Average, they have received technical assistance and interventions from SDE. Jasper received a variety of significant technical assistance for the school year 2003-2004: three full-time principal specialists, one curriculum specialist, twelve full-time teacher specialists, and two curriculum instruction facilitators. Additionally, Jasper received and extra \$335,000 from the State for additional material and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value of the technical assistance provided to Jasper for the 2003-04 school year was as follows:

		Unit Value	Total Value
Principal Specialists	3	\$159,810	\$479,430
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	12	\$100,183	\$1,202,196
Curriculum Instruction Facilitator	2	\$6,000	\$12,000
Additional Materials			\$335,000
Total			\$2,137,521

This amounts to \$704 per pupil in addition to funding received under EFA and EIA.

E. Lee County School District

165. Lee County School District is a county-wide school district with four elementary schools (Bishopville Primary, Dennis Intermediate, Lower Lee, and West Lee), one middle school, (Mount Pleasant), and one new high school (Lee Central High School). Tr. Trans. (03/05/04), p. 25 ll. 2-4.

1. Student Demographics

166. Lee has approximately 2,675 students and 232 teachers. Defendants' Exhibit 2997; Plaintiffs' Exhibit 6257. According to the 2001-02 Rankings Report, 81% of the students in Lee County are eligible for free or reduced lunch, causing it to be ranked eighth in the State in terms of the percentage of students in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

167. Lee reports annually to SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its six schools testified that the courses being taught in their schools were aligned to the State uniform curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Sharon Askins; Deposition of Betty Burgess, p. 50, ll. 5-7; Deposition of May Ceasar, p. 73, ll. 16-22; Deposition of Vickie Edwards, p. 67, ll. 10-12; Deposition of Sharon Griggs, p. 45, ll. 5-12; Deposition of Vickie Kirby, p. 58, ll. 15-25; Deposition of Earline McClary, p. 50, ll. 22-25; Deposition of Janice Rivers.

3. PACT Scores

168. Lee County PACT scores for 2004 continued the trend of steady improvement in PACT scores in Lee. Over 55% of all students scored at Basic or above

on ELA PACT tests, and 51.7% of all students in Lee scored at Basic or above on Math PACT tests. Defendants' Exhibit 3323. While Lee's PACT scores in 2001 went down from 2000, since that time, the PACT scores have trended upward. The previous years' PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	58.9%	42.0%	48.5%	48.5%	55.4%
Math	43.9%	31.0%	39.5%	49.0%	51.7%

Defendants' Exhibits 1117, 1719 (Plaintiffs' Exhibit 1378), 2997 (Plaintiffs' Exhibit 6257), 3323.

169. The 2003 District Report Card reported that 32.9% of all tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for the Spring of 2003 was 86.7%. Defendants' Exhibit 2997 (Plaintiffs' Exhibit 6257).

170. According to the 2003 Report Card, the District had a 92.7% student attendance rate, which was below the State average of 95.4%. Defendants' Exhibit 2997; Plaintiffs' Exhibit 6257. The student-teacher ratio for Lee in 2003 was 18.7 to 1, which lower is than the State district median of 20.6 to 1.

171. Lee was rated Unsatisfactory²⁵ on the 2003 Report Card, and its schools were rated as follows:

Bishopville Primary School	Average

²⁵ The Court takes judicial notice that Lee increased its absolute rating to "Below Average" on the 2004 Report Card released in November, 2004, but fell to "unsatisfactory" in 2005.. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 51.0%; Math 50.9; Science (first year tested) 31.9 %; Social Studies (first year tested) 38.9 %.

Dennis Intermediate	Below Average
Lower Lee Elementary School	Unsatisfactory
West Lee Elementary School	Average
Mt. Pleasant Middle School	Unsatisfactory
Lee Central High School	Unsatisfactory

Defendants' Exhibits 2998 – 3003; Plaintiffs' Exhibits 6258 – 6263.

4. Per Pupil Spending

172. As reported in the State Department InSite Data, Lee County School District spent \$8,650 per pupil in school year 2002-2003. Defendants' Exhibit 3333. The Court finds that this amount has been increasing over time. As with other Plaintiff Districts, this amount exceeds the State average of \$7,232. Defendants' Exhibit 3326.

Fiscal Year	Per Pupil Expenditures
2002-2003	\$8,650
2001-2002	\$8,903
2000-2001	\$8,038
1999-2000	\$6,922

Defendants' Exhibits 3305, 2800, 3153, 3333.

173. Lee District revenue per pupil from State sources only has increased from \$2,575.92 during the 1991-1992 school year, to \$4,774 during the 2001-02 school year, an increase of 185%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

174. Lee received the following significant technical assistance under EAA for the school year 2003-2004: two curriculum specialists, eleven full-time teacher specialists, and two curriculum instruction facilitators. Additionally, Lee received

\$310,000 from the State for additional material and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value to the district of the technical assistance provided to Lee for the 2003-04 school year was as follows:

		Unit Value	Total Value
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	11	\$100,183	\$1,102,013
Curriculum Instruction Facilitators	2	\$6,000	\$12,000
Additional Materials			\$310,000
Total			\$1,641,983

This amounts to \$567 per pupil in addition to the funds received under EFA and EIA.

G. Marion County School District 7

175. Marion 7 is the product of a recent consolidation of Marion County School District 3 and Marion County School District 4.²⁶ Its enrollment is by far the smallest of the Plaintiff Districts. During the course of the litigation, Marion 7 built and opened a new high school, combined other schools, and closed and renovated others. As of the close of the evidence in the case, the following were the currently open and active schools in Marion 7: Britton's Neck Elementary School, Rains Centenary Elementary School, and Creek Bridge Middle / High School.

²⁶ Some of the data for Marion 7 is unavailable for purposes of comparison to the other Plaintiff Districts and both parties during trial averaged certain data for Marion 3 and Marion 4, to permit a reasonable comparison to other districts to be made for years prior to the consolidation.

1. Student Demographics

176. Marion 7 has approximately 905 students and sixty-eight teachers. Defendants' Exhibit 3004. According to the 2001-02 Rankings Report, 91.7% of the students in Marion 7 are eligible for free or reduced lunch, causing it to be ranked 3rd among all the school districts in the State in terms of the percentage of students in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

177. Marion 7 reports annually to the SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its schools testified that the courses being taught in their schools were aligned to the State curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Burnie Bell, p. 71, ll. 19-24; Deposition of Frances Baker, pp. 30 – 31, ll. 25 - 14; Deposition of Jean Pearson, p. 34, ll. 7-14; and Deposition of Rex Whitcomb, p. 57, ll. 14-17.

3. PACT Scores

178. Almost 55% of all Marion 7 students scored at Basic or above on ELA PACT tests, and 49.1% of all students in Marion 7 scored at Basic or above on Math PACT tests. Defendants' Exhibit 3324. The previous years' PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	66.0%	39.6%	54.8%	45.3%	54.8%
Math	65.6%	55.0%	48.9%	47.7%	49.1%

Defendants' Exhibits 1117, 2855, 3004 (Plaintiffs' Exhibit 6364), 3324.

179. The 2003 District Report Card reported that 57.9% of all Marion 7 tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for the Spring of 2003 for Marion 7 was 95.4%. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264.

180. According to the 2003 Report Card, Marion 7 had a 94.7% student attendance rate, slightly below the State average of 95.4%. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264. The student-teacher ratio for Marion 7 in 2003 was 20.6 to 1, which identical to the State district median of 20.6 to 1. *Id.*

181. Marion 7 was rated Unsatisfactory on the 2003 Report Card²⁷ (Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264) and its schools were rated as follows:

Britton's Neck Elementary School	Below Average
Rains Centenary Elementary School	Below Average
Creek Bridge Middle School	Unsatisfactory
Creek Bridge High School	not rated ²⁸

Defendants' Exhibit 3005-3008; Plaintiffs' Exhibits 6265 - 6268.

4. Per Pupil Spending

²⁷ The Court takes judicial notice that Marion 7 increased its absolute rating to "Below Average" on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 47.4%; Math 48.9; Science (first year tested) 34.3%; Social Studies (first year tested) 37.7 %.

²⁸ Creek Bridge High School was a new high school and was not rated by the State Department in 2003, or in 2004. In 2005, the first year for which such ratings were available, Creek Bridge High School received an absolute rating of "below average." (Tr. Trans. (08/01/03), p. 23 ll. 6-9.)

182. As reported on SDE InSite data, Marion 7 spent \$9,213 per pupil in school year 2002-2003. Defendants' Exhibit 3334. This amount has been increasing over time.

Fiscal Year	Per Pupil Expenditures InSite
2002-2003	\$9,213
2001-2002	\$9,738
2000-2001	\$9,107 (Average)
1999-2000	\$8,054.50 (Average)

Defendants' Exhibits 3305, 2800, 3147, 3153, 3334.

183. Marion 7 District revenue per pupil from State sources only has increased from \$2,967.97 during the 1991-1992 school year (average of Marion 3 and Marion 4), to \$6,600 during the 2001-02 school year, an increase of 224%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

184. In the 2003-2004 school year, Marion 7 received technical assistance in the form of one curriculum specialist, three full-time teacher specialists, one part-time teacher specialist, and four part time curriculum instruction facilitators. Additionally, Marion 7 received an additional \$255,000 for materials and supplies, retraining grants and homework centers. The total value to the district of the technical assistance provided to Marion 7 for the 2003-04 school year was as follows:

		Unit Value	Total Value
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	3 1 part-time	\$100,183	\$300,549
Curriculum Instruction Facilitator	4	\$6,000	\$24,000
Additional Material			\$255,000

Total			\$688,534

This amounts to \$717 per pupil in addition to funds received under EFA and EIA.

H. Orangeburg County School District 3

185. Orangeburg 3 is the product of a consolidation in 1997 of three school districts in Orangeburg. Most of the data utilized in this trial is from the post-consolidation period, so no data adjustments were needed for comparison purposes.

186. Orangeburg 3 has schools in Elloree, South Carolina, Holly Hill, South Carolina and two other small communities. It has four elementary schools: Elloree Elementary, Holly Hill Elementary, St. James-Gaillard Elementary, and Vance-Providence Elementary Schools. Additionally, Orangeburg 3 has two middle schools, Holly Hill Middle School and Elloree Middle School, and one high school, Holly Hill-Roberts High School.

1. Student Demographics

187. Orangeburg 3 had 3,572 students enrolled in school year 2002-2003, and employed 269 teachers. Defendants' Exhibit 3009. Of these students, 84.4% were eligible for free and reduced lunch during the 2001-2002 school year, resulting in it being ranked sixth in South Carolina among school districts with the highest percentage of children in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

188. Orangeburg 3 reports annually to SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its seven schools testified that the courses being taught in their schools were aligned to the

State curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Carol Szorosy, p. 61, ll. 3-17; James Myers, p. 89, ll. 23-25; Patricia Lott, p. 118, ll. 4-8; Janie Dease, p. 62, ll. 12-16; Joanne Lawton, p. 49, ll. 7-10; Michelle Wilson, p. 42, ll. 20-25.

3. PACT Scores

189. PACT scores for 2004 continued a general trend of improvement. Over 65% of all of the students in the district scored at Basic or above on ELA PACT tests, and 61.4% of all students in Orangeburg 3 scored at Basic or above on Math PACT tests. Defendants' Exhibit 3325. The previous years PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	62.6%	57.0%	59.9%	55.3%	65.3%
Math	53.8%	47.0%	47.7%	55.5%	61.4%

Defendants' Exhibits 1117, 2784, 3009 (Plaintiffs' Exhibit 6269), and 3325.

190. The 2003 Report Card for Orangeburg 3 reported that 51.2% of tenth graders passed all three subject tests on the exit exam on their first attempt. The Exit Exam overall passage rate for seniors in the Spring 2003, was 86.4%. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

191. Orangeburg 3 had a 93.9% student attendance rate in the 2002-2003 school year, below the State average of 95.4% (Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269), and the student teacher ratio for the District is 17.1 to 1, which was better than the State district median of 20.6. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

192. The District was rated Unsatisfactory on its 2003 Report Card²⁹ and its schools received the following individual ratings:

Ellore Elementary	Average
Holly Hill Elementary	Below Average
St. James-Gaillard Elementary	Average
Vance Providence Elementary	Below Average
Ellore High (Middle)	Unsatisfactory
Holly Hill Middle	Below Average
Holly Hill Roberts High School	Unsatisfactory

Defendants' Exhibits 3010 – 3017; Plaintiffs' Exhibits 6270 – 6277.

4. Per Pupil Spending

193. As reported in In\$ite, Orangeburg 3 spent \$8,298 per pupil in school year 2002-2003, as compared to the State average of \$7,232. Defendants' Exhibit 3335 and 3326. This amount has been increasing over time:

Fiscal Year	Per Pupil Expenditures
2002-2003	\$8,298
2001-2002	\$8,450
2000-2001	\$7,895
1999-2000	\$7,099

Defendants' Exhibits 3335, 3305, 2800, 3153.

²⁹ The Court takes judicial notice that Orangeburg 3 increased its absolute rating to "Below Average" on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. . The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 60.3%; Math 60.1; Science (first year tested) 43.2%; Social Studies (first year tested) 55.9 %.

194. District revenue per pupil from State sources has risen from \$2,452.51 during the 1991-1992 school year to \$4,661.00 during the 2001/2002 school year, representing an increase of 190%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

195. For the 2003-04 school year, Orangeburg 3 received technical assistance in the form of one principal leader, two curriculum specialists, nine full-time teacher specialists, one part-time teacher specialist, and seven part-time curriculum instruction facilitators. Additionally, Orangeburg 3 received \$485,000 for additional materials and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), p. 79-80. The total value to the district of the technical assistance provided to Orangeburg 3 for the 2003-04 school year was as follows:

		Unit Value	Total Value
Principal Leader	1	\$159,810	\$159,810
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	9 1 part-time	\$100,183	\$901,647
Curriculum Instruction Facilitator	7	\$6,000	\$42,000
Additional Material			\$485,000
Total			\$1,806,427

This amounts to \$483 per pupil in addition to funds received under EFA and EIA.

VIII. TEACHER ISSUES

196. A great deal of evidence was introduced by Plaintiffs concerning the quality of the teachers in the Plaintiff Districts. This evidence focused primarily on the characteristics of those teachers – e.g., the nature of their teaching certificates, their education level, average salary, and experience. Plaintiffs also introduced evidence of the teacher turnover rate for the Plaintiff Districts. These data were generally contrasted with the state-wide average and median district for each category. The record also contains testimony from each principal within the Plaintiff Districts concerning teacher quality in that principal’s school. Defendants also introduced evidence comparing teacher characteristics in Plaintiff Districts as a group with the characteristics of non-Plaintiff Districts. These issues are addressed in this portion of this Order.

A. Teacher Licensing

197. The procedures and requirements for teacher licensure were discussed by several witnesses³⁰. Plaintiffs suggest that these requirements are inadequate to insure a level of teacher quality commensurate with the opportunity for each child to acquire a minimally adequate education. The Court, however, finds that the system of teacher licensure in South Carolina is more than adequate for this purpose.

198. South Carolina employs a multi-step process to license teachers. *See* Defendants’ Exhibit 671, p. 1. The first step begins before a prospective teacher is even admitted into a teacher education program at the undergraduate level. Prior to admission to such a program, a candidate must take the Praxis I exam, which tests basic skills in reading, writing and math. Most, but not all, states require Praxis I or an equivalent exam as a part of the admissions procedure to a college of education. A minimum score on

³⁰ Plaintiffs called Dr. Janice Poda, Senior Director of the Division of Teacher Quality at SDE, as an expert witness. Dr. Poda’s Division is responsible for all aspects of teacher certification and teacher education in South Carolina.

Praxis I, known in the vernacular as a “cut score,” is required for admission. The cut score for Praxis I is set by the State Board of Education upon the recommendation of SDE. For 1999-00, the reading test cut score for South Carolina was 175, which is about in the middle of the range of cut scores established by the states that use this test, which range from 170 to a high of 178. Defendants’ Exhibit 672. Similarly, South Carolina’s cut score of 172 for the math test is in the middle of the range of scores established by other states for that test. *Id.*

199. While in undergraduate school, a candidate for a teaching certificate must also successfully complete a student teaching experience of at least 60 days. Tr. Trans. (09/22/03), p. 81, ll. 20-24.

200. The candidate for a teaching certificate must, of course, then graduate from an approved institution having completed the required education curriculum along with the other requirements for receipt of an undergraduate degree. The education school approval process is again controlled by SDE, which has adopted the standards for accreditation published by the National Council for the Accreditation of Teacher Education (“NCATE”). See Tr. Trans. (09/22/03), pp. 84-85. To be accredited in South Carolina, the school must either have expressly adopted the NCATE standards or have curricula and programs that meet those standards. Tr. Trans. (09/24/03), p. 14, ll. 11-16.

201. Prior to certification, a candidate must take a Praxis II examination in the subject area in which certification is sought. Praxis II tests both subject matter mastery and pedagogy. Tr. Trans. (09/24/03), p. 72, ll. 17-20. There are many different Praxis II tests, and the ones required in South Carolina are determined by SDE, along with the required cut score for each. The cut scores for the Praxis II test are determined by a panel

composed of representatives from SDE and representatives of Educational Testing Service, which publishes and administers the Praxis tests. Tr. Trans. (09/23/03), p. 179, ll. 1-25. They are ultimately approved by the State Board of Education upon the recommendation of Dr. Poda and her staff. Tr. Trans. (09/22/03), p. 122, ll. 6-13. The cut scores are set at levels that are intended to exclude “demonstrably incompetent” persons from becoming teachers. Tr. Trans. (06/14/04), p. 221, ll. 5-10. The Praxis II cut scores established by South Carolina are similar to the cut scores established in other states. Defendants’ Exhibits 675 - 679. Although Plaintiffs introduced rebuttal evidence showing that in some tests, South Carolina’s cut scores are below the cut scores in other states for the same test, in many instances the South Carolina scores are higher than in other states. *Id.*

202. Plaintiffs contend that the cut scores are set too low, and that passage of the Praxis II does not guarantee a quality teacher. The Court finds, however, that the level at which the cut scores are set is the responsibility of the State Board of Education and SDE. Those agencies have been directed by the General Assembly to “adopt nationally recognized teacher examinations that measure the cognitive teaching area competencies desired for initial job assignments in typical elementary and secondary schools in this State,” S.C. Code Ann. § 59-26-30 (A)(2), and to “use nationally recognized specific teaching area examinations approved by the State Board of Education for certification purposes.” S.C. Code Ann. § 59-26-30 (A)(3). The cut scores are subject to periodic review by SDE, which is in the process of changing some of the scores at this time. Interestingly, some of the scores will be raised, while others will be lowered. Tr. Trans. (09/22/03), pp. 130 – 131; (11/04/04), p. 97, l. 18 – p. 98, l. 16. In

any event, the Court finds that the responsibility for establishing appropriate cut scores should remain with the State Board of Education and SDE without interference from the Court. The Court also finds that the current scores are not set at a level that constitutes a constitutional violation.

203. In addition to Praxis II, a teacher in South Carolina must also take and pass an additional test called the Principles of Learning and Teaching within three years after he or she begins to teach. Tr. Trans. (09/22/03), p. 103, l. 16 – 104, l. 5. Finally, a teacher must progress through the ADEPT performance evaluation process. Tr. Trans. (09/22/03)p. 134, ll. 12-16.

204. This process is more than sufficient to ensure that teachers who are certified in South Carolina are at least minimally competent to deliver instruction compatible with the constitutional requirements. There are also alternative routes to certification, including somewhat less rigorous requirements for persons who wish to teach in a subject matter for which there is a critical need. Tr. Trans. (09/22/03), p. 182, ll. 9-18. These alternative routes and the requirements thereof have been prescribed by SDE, and the Court necessarily defers to SDE as to the efficacy of those procedures. To the extent that SDE considers them to be insufficiently rigorous to ensure at least minimal teacher competency, the Court assumes that SDE, consistent with its statutory mandate, will take steps on its own to adjust those procedures accordingly.

B. Teacher Salaries

205. Plaintiffs also contend that teacher salaries are inadequate to permit the Plaintiff Districts to attract and retain qualified teachers. When compared with the entry level salaries and average salaries paid by other southeastern states however, South

Carolina compares quite favorably. Defendants' Exhibit 688 shows the beginning and average salaries for teachers in twelve such states. For the 2000-01 academic year, South Carolina's beginning salary was seventh best, and its average salary was eighth best of the twelve states. *Id.*

206. Defendants also introduced evidence concerning teacher compensation compared with compensation for other occupations. Part of the difficulty in analyzing teacher compensation in comparison to other occupations is the fact that teachers typically work on a 190 day contract, Tr. Trans. (08/13/03), p. 103, ll. 24-25, which is substantially shorter than most "full time" workers. The United States Department of Labor tracks compensation information for various labor markets (as defined by the Department of Labor) based on hourly as opposed to annual earnings. These data permit a direct hourly and/or weekly wage comparison of teachers in certain geographic areas compared with other kinds of workers in the same area. Defendants' Exhibits 690, 691, 692, 3261, 3263, 3264, 3265, and 3267 show that teachers in the respective markets analyzed in each exhibit are paid on an hourly and/or weekly basis at a rate that is more than the average for all white collar workers, and more than registered nurses. *Id.* In the Plaintiff Districts, the average teacher pay exceeds the average pay for all workers in the county in which the district is situate by a ratio of 1.51 to 1, which is higher in the Plaintiff Districts than in the non-Plaintiff Districts. Defendants' Exhibit 3269. Given that teachers may be able to earn additional compensation during the summer months if they choose to do so, the Court cannot conclude that teacher compensation in South Carolina represents a constitutionally defective barrier to the attraction of qualified teachers into the profession.

207. Nor does compensation appear to be the principal reason that teachers leave the profession. As analyzed by Dr. Michael Wolkoff, in both Plaintiff and non-Plaintiff Districts, teachers who left teaching on average made less money in their post-teaching employment than they had made as teachers. Defendants' Exhibit 3195; Tr. Trans. (06/21/04), pp. 120 – 122. This suggests that issues other than compensation affect the decision to leave teaching for other employment.

208. Although average teacher salaries in the Plaintiff Districts are generally less than the average salaries in other districts, a comparison of the averages does not reveal how compensation compares for any given teacher. Thus, while the Court acknowledges that the average teacher salary is somewhat lower in the Plaintiff Districts than elsewhere, this fact alone does not support a conclusion that an individual teacher is paid less in a Plaintiff District than he or she would be in another district. For example, the relative experience level of teachers impacts average teacher's salary in a school district.

C. Teacher Turnover

209. Another issue that received considerable attention during the trial is the level of teacher turnover in the Plaintiff Districts. "Turnover" refers to the percentage of new teachers employed at a school or district each academic year. Plaintiffs introduced evidence of the three year average turnover rate for each of the Plaintiff Districts:

District	Teacher Turnover Rate
Allendale	24.4%
Dillon 2	11.73%
Florence 4	20.57%

Hampton 2	25.27%
Jasper	23.73%
Lee	22.77%
Marion 7	22.83%
Orangeburg 3	11.50%

See Plaintiffs' Exhibit 6152C.

210. The three year average turnover rate experienced by the Plaintiff Districts considerably exceeds the average turnover rate for districts across the State, which is 9.4%. *See* Plaintiffs' Exhibit 6152C; Tr. Trans. (04/02/04), p. 81, ll. 2-3.

211. Plaintiffs contend that the rate of turnover itself denies students in the Plaintiff Districts the opportunity to acquire a minimally adequate education, and that the higher turnover rates in their districts are caused by lower salaries relative to other districts in the State, particularly salaries provided in adjoining districts. The superintendents of the Plaintiff Districts all testified that they are unable to pay salary supplements at a level consistent with other districts because they have fewer local dollars available for that purpose. Tr. Trans. (07/30/03), pp. 161-164. Thus, Plaintiffs argue that they are constantly losing their best teachers to other districts in the State.

212. The influx of new teachers every year is also ascribed as the reason that professional development programs are deemed by the Plaintiff Districts to be ineffective. Tr. Trans. (01/15/04), p. 232. According to the superintendents, "sustained" professional development is not possible because of the number of new teachers. Tr. Trans. (08/01/03), p. 179, l. 23 - p. 180, l. 25.

213. Although the rate of turnover is higher in the Plaintiff Districts than the non-Plaintiff Districts, all districts in South Carolina experience some degree of teacher turnover. As analyzed by Dr. Wolkoff, a little more than 80% of the teachers in the Plaintiff Districts who were employed in the prior academic year returned to the Plaintiff Districts to teach for the 2002-03 academic year. Defendants' Exhibit 3179. In the non-Plaintiff Districts, almost 90% of the teachers returned. *Id.* Thus, the raw differences in turnover rates between Plaintiff and non-Plaintiff Districts is less than ten (10%) percent. It is interesting to note however that of the teachers who did not return to the same type district, many left teaching altogether. *Id.* The actual percentage of teachers who switched from Plaintiff to non-Plaintiff Districts is only slightly higher than the percentage of teachers who switched from non-Plaintiff to Plaintiff Districts. *Id.* Over time, the relative number of teachers who have switched from one district type to another has evened out, so that by 2002, there was very little difference in the numbers. Defendants' Exhibits 3185 and 3186. This suggests that compensation disparities are not the only determining factor in teacher mobility. If they were, the percentage of teachers leaving the Plaintiff Districts would surely exceed the percentage of teachers coming into the Plaintiff Districts. Thus, either the pay differences are not as great as perceived by the Plaintiff superintendents, or the pay differences do not explain the migration of teachers between district types.

214. Turnover is certainly a problem in the Plaintiff Districts, but the fact that the percentages of returning teachers are lower in the Plaintiff Districts than in other districts is not itself a violation of the State Constitution, and does not mean that students who are taught by teachers who are new to a school or district do not receive the

opportunity to acquire a minimally adequate education. As discussed below, even brand new teachers without prior teaching experience who have fulfilled the requirements for certification and who are participating in the ADEPT program must be regarded as sufficiently competent to create the opportunity for their students to acquire a minimally adequate education.

215. It is not the case, however, that all teachers who are new to a Plaintiff District are less experienced or less educated than those who left. While such a conclusion is suggested by the anecdotal evidence offered by the superintendents, a more in depth statistical analysis fails to support the point. Defendants offered such an analysis by Dr. Wolkoff, who pointed out that the percentage of new teachers in the Plaintiff Districts with either advanced degrees or education beyond their bachelor's degree was higher than the percentage of the teachers who left. Defendants' Exhibits 3187 and 3188. This was true in both academic year 2002 and 2003. *Id.* Likewise, in many instances, the teachers who come into the Plaintiff Districts to replace those who left are more experienced than those who departed. Defendants' Exhibit 3189.

216. There are factors other than money that affect the ability of any district to attract and retain teachers. As many witnesses testified, the Plaintiff Districts lack housing, shopping, entertainment, and other amenities that would make them more attractive to teachers. Tr. Trans. (09/23/03), p. 25 – p. 27. No doubt at least some of the turnover problem is the result of factors outside of the salary schedule and the local supplements paid by the Plaintiff Districts.

217. Thus, while teacher turnover may present something of a management and planning problem for the Plaintiff Districts, the Court cannot and does not conclude that

the quality of instruction necessarily suffers as a result, or that turnover itself creates the absence of the opportunity for each child to receive a minimally adequate education.

D. Teacher Experience

218. Plaintiffs complain of the relatively lower experience levels of their teachers when compared to teachers in non-Plaintiff Districts. Plaintiffs' Exhibit 6152H. In fact, for the 2000-2001 school year, however, the average experience of teachers in the Plaintiff Districts was over 13.1 years, compared with 13.6 years in the non-Plaintiff Districts. Defendants' Exhibit 697.

219. Beyond the fact that Plaintiffs' intuitive conclusions regarding teacher experience is not borne out by the data, the Court would be hard pressed to find that even brand new teachers are necessarily inadequate to create the opportunity to acquire a minimally adequate education. Given the requirements for teacher licensure, and the support and evaluative programs of ADEPT, new teachers are provided a solid foundation to begin their careers. It would also be anomalous to find both that current teachers are inadequate, and that new teachers would also be inadequate. If new teachers cannot begin to teach without creating a constitutional violation, how could the teacher population in South Carolina be maintained? Plaintiffs' assertions regarding teacher experience are not supported by the evidence, and the Court declines to find that any particular level of teacher experience is constitutionally necessary.

E. Professional Development

220. Teacher quality in South Carolina, however, is not simply a matter of how well teachers are prepared on the day they enter the profession. A minimum of five days of professional development time is provided for each teacher each year. S.C. Code Ann.

§ 59-1-420 (Supp. 2004). In many districts, including the Plaintiff Districts, the actual number of days devoted to teacher professional development is substantially higher. *See* discussion at Section VIII. The purpose of professional development is to improve the competency of all teachers at all experience levels. South Carolina has adopted standards for professional development, to which all such programs should adhere. Plaintiffs' Exhibit 6149. These standards have been described as "extremely comprehensive" and "broad." Tr.Trans. (09/23/03) p. 162, l. 8; l. 11. Additionally, South Carolina rewards teachers with additional pay as their education increases beyond a bachelor's degree. Tr. Trans. (06/17/04) p. 101, ll. 12-13; Plaintiffs' Exhibit 6021. Thus, teachers can and should continually improve their content knowledge and pedagogical skills throughout their careers.

221. Plaintiffs assert that unless such programs were "sustained," (Tr.Trans. (01/14/04), p. 164, ll. 14-17; (07/30/03), p. 110, ll. 15-19; (08/1/03) p. 180, ll. 1-3; p. 190, ll. 19-20; (09/26/03), p. 185, ll. 20-21; (08/11/03), p. 93, ll. 1-6) as opposed to "spray and pray" programs, (Tr.Trans. (08/1/03), p. 84, ll. 2-3; p. 86, l.9; (09/21/04), p. 156, ll. 17-20), they were of no value. Many superintendents testified that the professional development programs that they employed in the Plaintiff Districts were indeed "spray and pray," and therefore could not improve the quality of their teaching forces. *See, e.g.*, Tr. Trans. (07/30/03), p. 110, ll. 15-18; (08/7/03), p. 98, l. 9 – p. 99, l. 25; (09/30/03), p. 18, ll. 3-16. Plaintiffs have not established, however, that there is any impediment that prevents the Plaintiff Districts from providing higher quality, "sustained" professional development for their teachers. There is no evidence that high quality programs are more expensive, or more difficult to obtain. All of the Plaintiff Districts have received

Retraining Grants under the EAA, which are intended to provide even more professional development. To the extent that the professional development that is being provided is not helpful, the Plaintiff Districts can and should focus their efforts on programs that are calculated to meet the needs of their teachers.

222. Overall, the Court finds that South Carolina has an appropriate system to license and compensate teachers. South Carolina has received national recognition for its efforts to improve teacher quality generally, Defendants' Exhibit 3052, and specifically in hard to staff schools. Defendants' Exhibit 3310. Under these circumstances, the Court declines to find that teacher quality in South Carolina is so low that a constitutional violation exists.³¹ With these general findings in mind, it is appropriate to consider more specific facts regarding the characteristics of teachers in the Plaintiff Districts.

F. District Analysis of Teacher Issues

1. Allendale

223. Superintendent Paula Harris testified concerning the characteristics of the teachers in Allendale. According to Dr. Harris, in the 2003-04 school year, of the 140 teachers present in Allendale, seventeen were induction, or new teachers, five of whom were Program for Alternative Certification for Educators ("PACE") teachers.³² Tr.

³¹ To the extent that Plaintiffs' complaint is based on the presence of uncertified teachers in the Plaintiff Districts, the Court finds that Plaintiffs have not proven that the absence of certified teachers is the result of a failure of South Carolina's system of teacher licensure or other State policies.

³² PACE allows the awarding of a conditional teaching certificate to a person eligible to hold a teaching certificate who does not qualify for full certification "provided the person has earned a bachelors degree from an accredited college or university with a major in a certification area for which the [State Board of Education] has determined there exists a critical shortage of teachers, and the person has passed the appropriate teaching examination." S.C. Code Ann. § 59-26-30 (A)(8) (Rev. 2004). The State Board of Education may renew a conditional teaching certificate annually for a maximum of three years "if the holder of the certificate shows satisfactory progress toward completion of a teacher certification program prescribed by the board." *Id.*

Trans. (09/30/03) p. 216, ll. 13-17. Allendale also had five long term substitutes, although two spots were later filled with permanent teachers. Tr. Trans. (09/30/03), p. 94, ll. 21-25.

224. According to the testimony of Dr. Janice Poda, Allendale had a 24.4% three year average teacher turnover rate, 49.6% of its teachers who graduated from non-competitive colleges³³, 20% with “substandard certificates” or out-of-field permits³⁴, and 32.70% with less than five years experience. Tr. Trans. (09/22/03), pp. 100, 151, 175; (09/23/03) p. 21; Plaintiffs’ Exhibits 6152C, 6152E, 6152F, 6152G, 6152H, 6152I. Allendale had 7.3 professional development days per teacher in 2003. Defendants’ Exhibit 2971; Plaintiffs’ Exhibit 6231.

225. While providing this statistical description of Allendale’s teachers, Dr. Poda admitted that she had not been present in the classrooms of Allendale or any other Plaintiff District to observe the quality of instruction provided by any individual teachers in that district. Tr. Trans. (09/22/03), p. 61 ll. 13-25. The principals of the Allendale

³³ These colleges in South Carolina were identified by Dr. Poda as Allen University, Benedict College, Columbia College, Lander College, Morris College, Newberry College, South Carolina State University and USC Aiken. Tr. Trans. (09/23/03), p. 185-87. Dr. Poda also expressed concerns about the quality of the teacher education programs at Claflin College, Wofford College, Erskine College and Limestone College. Tr. Trans. (09/23/03), p. 183.

³⁴ The term “substandard certificates” was used by Dr. Poda to describe certificates issued by the SDE to teachers that might not meet the “highly qualified teacher” requirement under the federal No Child Left Behind legislation. SDE does not characterize any certificates it issues as substandard, and the term includes certificates which have been issued by SDE for many years to teachers it determined to be qualified to teach in South Carolina. Tr. Trans. (09/23/03), p. 197, ll. 15-21. Even according to Dr. Poda, only 1.1% of all teachers in South Carolina hold a substandard certificate as defined by Dr. Poda. Tr. Trans. (11/04/05), p. 205, l. 24 – p. 206, l. 1. Out-of-field permits are issued to teachers who are fully certified in another teaching field, and who have at least twelve hours of academic training in the out of field subject. Tr. Trans. (09/22/03), p. 136, l. 23 to p. 137, l. 5. This permit is often utilized in the area of Special Education where the teacher is certified in the substantive field, but is working toward receiving full certification in Special Education.

schools, however, when questioned about the quality of their teachers, only identified three teachers who were either not offered a contract to return or did not meet ADEPT requirements. The other teachers mentioned by the principals were included in a group they believed would be capable of correction and corrective action was underway for those few teachers identified. Franchini Deposition, p. 36, ll. 18-21; Deposition of Alexia Clamp, p. 66, ll. 7-12; Deposition of Alfonso Lamback, p. 68, ll. 1-4.

2. Dillon 2

226. While Superintendent Ray Rogers complained that he has lost qualified teachers to surrounding counties, including some in North Carolina, that paid higher salaries, Dillon also employs teachers from Florence, Marion, Marlboro, Conway and adjacent North Carolina counties as well. *See* Deposition of Thomas Monahan, p. 86, l. 6 – p. 87, l. 6; Deposition of Derrick Weatherford, p. 62, l. 15 – p. 63, l. 20; Deposition of Polly Elkins, p. 77, l. 23 – p. 78, l. 13; Deposition of Peggy Stafford, p. 50, l. 16 – p. 51, l. 22; Deposition of Jayne Lee, p. 61, l. 20 – p. 62, l. 21; Deposition of Ja-Novice Richardson, p. 55, l. 18 – p. 57, l. 5. Mr. Rogers was not critical of the quality of the teachers in his district. This evaluation was affirmed by the testimony of the principals in Dillon 2 who were largely satisfied with the quality of their teachers, or who were working, as would be expected, to improve any problems of teachers within the ADEPT system.

227. Dillon 2's three year average teacher turnover rate is 11.73%, only slightly higher than the State average. Plaintiffs' Exhibit 6152C. It has the lowest percentage (15.7%) of teachers graduating from non-competitive colleges of any Plaintiff District, (Plaintiffs' Exhibit 6152E) and has the second highest percentage (86.4%) among the

Plaintiff Districts on continuing contracts. Only Marion 7 is higher than Dillon 2, and both are higher than the State average of 84.4%. Plaintiffs' Exhibit 6152F.

228. Dillon 2 has fewer teachers with substandard certificates and out-of-field permits (6.3%) than the other Plaintiff Districts, and also fewer than the State average. Plaintiffs' Exhibit 6152G. Dillon 2 also has a lower percentage of teachers with less than five years experience (14.60%) than all the other Plaintiff Districts and the average district in the State. Plaintiffs' Exhibit 6152H. Dillon 2 is also below the State average for induction contract teachers and has the lowest percentage in that category (2.2%) of the Plaintiff Districts. Plaintiffs' Exhibit 6152I. Dillon 2 ties Orangeburg 3 for the lowest percentage of new teachers hired, both of which are lower than the State average. Dillon 2 had 19.1 professional development days per teacher in 2003. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

229. These data for Dillon 2 are very enlightening given that Dillon 2 is the lowest spending Plaintiff District. Despite revenues and expenditures that are well below the State averages, Dillon 2 has more teachers that fit Plaintiffs' definition of a quality teacher than any other Plaintiff District. This suggests on its face that money and teacher quality are not directly related.

3. Florence 4

230. Dr. Valerie Harrison offered testimony that twenty-seven of the eighty-seven³⁵ teachers in Florence 4 had less than five years experience. Eight teachers were induction contract teachers, and some of the twenty-seven were under full evaluation. Only one teacher in ADEPT failed to meet the goals established for that teacher. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. Dr. Poda's analysis of Florence 4

³⁵ The 2003 Report card shows a total of 92 teachers in the district.

teachers (Plaintiffs' Exhibit 6152A-J) shows that Florence 4 has a three year average teacher turnover rate of 20.57%; 41.1% of its teachers graduated from non-competitive colleges; 53.6% are on continuing contract; and 11.1% have "substandard" certificates or out-of-field permits, which is less than all Plaintiffs Districts except Dillon 2. Dr. Poda testified that 26.2% of Florence 4's teachers have less than five years experience, and 7.4% of its teachers were on induction contracts.

231. At their depositions, however, the principals in the schools in Florence 4 only identified five teachers who were placed on ADEPT improvement plans. Middle School Principal Gerard Edwards reported that the only teacher that had been placed on an ADEPT improvement plan in his school subsequently improved her teaching skills. Deposition of Gerard Edwards, p. 31, l. 8 – p. 32, ll. 15. The remaining two principals in Florence 4 identified two teachers who were either on full evaluations or were not offered contracts for the following school year. Depositions of Alice Johnson, p. 29, ll. 5-16; Deposition of Leon McCrary. The principal of the elementary school refused to identify the two teachers who had been put on ADEPT, and the high school principal reported that the ADEPT plan had not been met by one teacher, but that teacher would be managed according to the ADEPT process. Deposition of Leon McCray, p. 26, ll. 1-11. Additionally, Florence 4 had five professional development days per teacher in 2003. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243.

4. Hampton 2

232. Hampton 2 has approximately 105 teachers. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247. According to Dennis Thompson, Superintendent for Hampton District 2, twenty-three of 103 teachers in Hampton 2 are inexperienced, induction

teachers, or annual contract teachers on full evaluation. Tr. Trans. (10/09/03), p. 30, ll. 1-12. Dr. Poda testified that Hampton 2 had a higher three year average teacher turnover rate (25.27%) than the State average, a higher percentage of teachers who graduated from non-competitive colleges (46.5%), a higher percentage of teachers with substandard or out-of-field certificates (17.7%), a higher percentage of teachers with 0-5 years experience (38.9%), a higher percentage of induction contract teachers (10%), and a higher percentage of new teachers hired (21.5%). At the same time, 80% of Hampton 2's teacher are continuing contract teachers. Plaintiffs' Exhibit 6152 C-J.

233. The Hampton 2 principals' testimony, however, indicates that they did not view the teachers under their direct supervision as inadequate. The principals themselves only identified one teacher at the high school (who was not offered a returning contract), and one at the elementary school (who was not recommended to return for the following year), as inadequate. *See* Deposition of Archie Franchini, p. 85, ll. 4-11; Deposition of Daisy Orr, p. 63, ll. 8-12. Joyce Colter, the principal of Estill Middle School, did not identify any inadequate teachers. Deposition of Joyce Colter, p. 62, ll. 23 – p. 63, ll. 2.

234. The 2003 Report card reported that Hampton 2 had 11.9 professional development days per teacher in the district. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

5. Jasper County

235. According to Dr. Singleton, 40.8% of the teachers in Jasper County are unqualified. Plaintiffs' Exhibit 6457K; Tr. Trans. (04/04/04), pp. 85-89. He testified that approximately twenty-two induction teachers were hired for the 2003-2004 school year.

236. Dr. Poda provided statistics for Jasper County teachers that were somewhat different than Dr. Singleton's. She reported: three year turnover rate (23.73%); teachers graduating from non-competitive colleges (45.8%); continuing contract teachers (74.4%); substandard certificates and out-of-field permits (19.8%); teachers with 0-5 years experience (28.5%); induction contract teachers (8.5%); and percentage of new teachers hired (16.9%). Plaintiffs' Exhibit 6152C-J.

237. When the principals testified concerning the quality of their teachers, they could only identify approximately thirty-two teachers who had any problems at all, and many of those were either placed on ADEPT evaluation, or were not invited to return as a teacher in the district the following year. *See* Deposition Transcripts of Michael Bull, Kenneth Jenkins, Naomi Reed, and Edmond Burnes.

238. The 2003 Report Card shows that Jasper County School District has 11.4 days of professional development per teacher, up from 5.4 in the previous year. Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251.

6. Lee County

239. Dr. Willie Townes, Superintendent of Lee County School District, described his teaching staff as "inexperienced," noting that 27% of his teachers had fewer than five years experience. Tr. Trans. (03/04/04), p. 238, l. 17-25; Plaintiffs' Exhibit 6439AI. Dr. Townes complained about FACES³⁶ teachers, teachers with out-of-field permits, and PACE teachers. He further reported that four of his teachers taught under a

³⁶ FACES is a program in which foreign nationals teach certain subject matters in South Carolina's public schools. FACES was adopted in an effort to alleviate teacher shortages in certain subject matters in South Carolina's public schools. *See* Tr. Trans. (09/22/03), p. 224, l. 12 – p. 226, l. 14.

warrant certificate³⁷ and twelve held out-of-field permits. Plaintiffs' Exhibit 6439AH. Dr. Poda provided her statistics on Lee teachers as well, showing the three year average teacher turnover rate (22.77%); teachers graduating from non-competitive colleges (48.9%); continuing contract teachers (66.5%); teachers with substandard certificates and out-of-field permits (18.5%); induction contract teachers (10.4%); and percentage of new teachers hired (19.3%). Plaintiffs' Exhibit 6152 C-J. Lee had 10.4 professional development days per teacher in 2003. Defendants' Exhibit 2997; Plaintiffs' Exhibit 6257.

240. Dr. Poda admitted that she had not observed any particular teacher in Lee teaching an academic class. Tr. Trans. (09/22/03), p. 61, ll. 20-25. When the principals in Lee were deposed, no principal was able to identify an inadequate teacher. *See* Depositions of Sharon Askins, Betty Burgess, Vickie Edwards, Sharon Griggs, Vickie Kirby, Earline McClary, and Janice Rivers. The principal at the Career and Tech Center described, but did not name, one business education teacher who was going to be placed on an improvement plan. *See* Deposition of Bernice Wright, p. 38, ll. 1-3.

7. Marion 7

241. Dr. Everett Dean testified that he had a large number (23) of inexperienced teachers in his district. This inexperience, according to Dr. Dean, prevented these teachers from effectively instructing the students in his district. Tr. Trans. (10/09/03), p. 87.

³⁷ Warrant certificates were issued in the past by SDE to teachers who had not passed the required teaching exams or who do not have the required professional education courses. *See* Plaintiffs' Exhibit 6134. These certificates have not been issued by SDE for some time, and when the No Child Left Behind Act is finally implemented, will no longer be accepted for teachers regardless of when they were first certified.

242. Dr. Poda's data however, tended to contradict some of Dr. Dean's testimony. Dr. Poda's data reveal that only 2.4% of Marion 7's teachers are induction contract teachers, which is actually one-half of the State average of 4.9%, and second only to Dillon 2 among the Plaintiff Districts. Plaintiffs' Exhibits 6152 C-J. According to Dr. Poda, Marion 7 has a three year average teacher turnover rate of 22.77%. The percentage of teachers in Marion 7 who graduated from non-competitive colleges is 27.4%, which is less than all other Plaintiff Districts with the exception of Dillon 2. Over 86% of Marion 7 teachers are on continuing contract, which is higher than all other Plaintiffs and higher than the State average. Just under 16% of Marion 7's teachers have substandard certificates and out-of-field permits, and 30.2% of teachers in Marion 7 have 0-5 years experience.

243. Marion 7 had 12.8 professional development days per teacher in 2003. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264.

244. The individual principals in the schools in Marion 7, however, when asked to identify any incompetent or inadequate teachers under their supervision, identified but one. That teacher was not offered a contract for the following year. The principals identified only five teachers throughout the district whom they believed needed to be placed on improvement plans. *See* Deposition of Jean Pearson, p. 27, ll. 4-8, p. 24, ll. 4-11; Deposition of Bernie Bell, p. 23, ll. 6-14; and Deposition of Frances Baker, p. 43, ll. 5-7.

245. Rex Whitcomb, the principal of Creek Bridge Middle School, testified in his deposition that there were no teachers he considered to be inadequate or incompetent in his school. He contradicted his own deposition testimony at trial by identifying three

teachers from the middle school and four from the high school whom he considered to be incompetent. Tr. Trans. (08/01/03), p. 202, ll. 19-23; Court's Exhibit 2. A review of those teachers' personnel files shows that of these seven teachers, three of them held master's degrees, five of them were on continuing contracts, one of them was an induction teacher, the average experience level of the seven teachers is in excess of six years, six of them held at least one certification from the SDE, and five of them attended competitive colleges as Plaintiffs defined this factor. At the time of trial, only one of the seven was still teaching in a Plaintiff District. Defendants' Exhibits 2861, 2862, 2863, 2864, 2865, 2866, 2868.

246. Finally, Dr. Terry Peterson's research revealed that Marion 7 has teachers specially trained in reading in every K-3 classroom to provide remedial reading instruction for the district. Tr. Trans. (06/09/04) p. 174, ll. 10-16.

8. Orangeburg Consolidated District 3

247. Orangeburg 3 is increasing its efforts to improve its teaching quality, and is utilizing retraining grants for this purpose. Tr. Trans. (01/15/04), p. 117, l. 24 – p. 118, l. 4; p. 141, l. 20 – p. 143, l. 23; (01/16/04) pp. 137-141; (02/25/04) p. 13, l. 21 - p. 14, l. 25. According to the 2003 Report Cards, Orangeburg 3 had an average of 11.6 professional development days for teachers, up from the 9.5 days of professional development time for the previous year. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

248. As with the other superintendents in the Plaintiff Districts, Dr. David Longshore complained of inexperienced teachers in Orangeburg 3. He testified regarding the number of induction teachers hired at Ellore High and Ellore Middle School. He

complained of teachers who were not returning teachers, and the need to hire new teachers annually. Jackie Shuler, Principal of Elloree High School, testified that twenty of the thirty-eight had less than five years experience and were therefore “inexperienced.” Plaintiffs’ Exhibit 6342F; Tr. Trans. (01/16/04), p. 62.

249. Dr. Poda’s data for Orangeburg 3 did not confirm the testimony of Ms. Shuler or Dr. Longshore. Dr. Poda’s data shows that only 20.8% of Orangeburg 3’s teachers have between 0-5 years experience, which is better than the State average of 24.7% in the 0-5 years experience range. Dr. Poda’s data also showed an 11.5% three year average teacher turnover rate for Orangeburg 3, and that 61.0% of Orangeburg’s teacher graduated from non-competitive colleges.³⁸ Orangeburg 3 has 81.9% of its teachers on continuing contracts, and only 11.1% with substandard certificates and out of field permits, which is second lowest among the Plaintiff Districts.

250. Orangeburg 3’s induction contract teachers made up 5.4% of its work force, slightly higher than the State average, but generally lower than all of the Plaintiff Districts except Dillon and Marion 7. The data offered by Dr. Poda showed that 10.4% of Orangeburg 3’s teachers are “new teachers,” Plaintiffs’ Exhibits 6152 C-J, which is consistent with the three year average turnover of 11.5%.

251. The testimony of the principals of schools in Orangeburg 3 confirmed that the district is not overly burdened with bad teachers. Three of seven principals in Orangeburg 3 had no complaints at all concerning the teacher quality in their respective schools. *See* Deposition of Jane Dease, p. 77, l. 104; Deposition of Carol Szorosy, p. 83, ll. 13-21; and Deposition of Michelle Wilson, p. 63, ll. 9-12. The remaining four

³⁸ This is not surprising as Orangeburg County is the home of two non-competitive colleges on Dr. Poda’s list: South Carolina State University and Claflin College.

principals identified fourteen teachers throughout the district who were not performing up to their expectations. *See* Deposition of Jacqueline Shuler, p. 106, ll. 19-21; Deposition of James Myers, p. 86, ll. 8-14; Deposition of Joann Lawton, p. 69, ll. 10-22; p. 83, ll. 1-9; Deposition of Patricia Lott, p. 116, ll. 15-18. Even Ms. Shuler, who testified at trial and complained about the quality of her teaching staff, only identified four teachers she believed to be “incompetent”. Deposition of Jacqueline Shuler, p. 105, ll. 21 – 106, ll. 25.

252. Based on this evidence, the Court cannot and does not accept the assertion that large percentages of the teachers in the Plaintiff Districts are incompetent. The Court understands the subjectivity of teacher evaluation and the understandable reluctance of principles and superintendents to be overly critical of the members of their teaching staff. On the other hand, no superintendent may ever be completely satisfied that each teacher is the best, but a desire to improve teacher quality in a district does not mean that the current teachers cannot provide instruction at a level sufficient to create the opportunity for each child to acquire a minimally adequate education.

IX. TEACHER CHARACTERISTICS AND TEACHER QUALITY

253. Those differences do not explain the differences in student achievement between those districts. Tr. Trans. (06/21/04), p. 64, ll. 18 – p. 65, l. 2. This is because there is no empirical evidence of a direct relationship between teacher characteristics and student achievement. *See* Defendants’ Exhibits 3163, 3204, 3166, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3194, 3193, 3212, 3213, 3214, 3215, 3283, 3284, 3285, 3285, 3191, and 3192.

254. This conclusion is supported by the statistical analyses offered by both sides concerning the relationship between teacher characteristics and student achievement. *See e.g.*, Defendants' Exhibits 675-679, 681-684, 693-715, 3342; Plaintiffs' Exhibits 6835 A – I. Dr. Armor and Dr. Podgursky each analyzed teacher characteristics such as education and experience, and compared those characteristics to student achievement. Although employing different methodologies, each arrived at the same conclusion: there is no consistently significant, positive relationship between teacher characteristics and student achievement.

255. These analyses are important. The Court does not doubt the sincerity of the beliefs expressed by many of the Plaintiff witnesses who attributed poor student achievement to lower levels of teacher characteristics that are generally considered to be important in the educational community. If this perception is correct, however, it would be revealed in a properly done statistical analysis. This is an important role that statistics serves in analyzing the massive amounts of data that are generated by educational systems. Where perception is not corroborated statistically, however, it is necessary to look deeper to find answers.

256. In rebuttal, Plaintiffs attempted to cast doubt upon the statistical methodology employed by Defendants' experts. Dr. Lorin Anderson used his own database to run correlation and regression analyses similar to those done by Drs. Armor and Podgursky. Dr. Anderson's computations, however, generally agreed with the results reached by the defense witnesses. In some instances, Dr. Anderson's work revealed even less of a relationship between teacher factors and achievement. For example, Dr. Anderson found a .000 relationship between advanced degrees and PACT scores. *See*

Plaintiffs' Exhibit 6835B. Taking the record as whole, therefore, the Court finds that teacher characteristics in the Plaintiffs Districts do not explain any deficits in student achievement in any significant and predictable way.

257. This however does not mean that teachers are not important. It remains possible under the evidence presented to reconcile the view that teachers are an important element in the educational experience of a student with the absence of a meaningful relationship between student achievement and teacher characteristics. Dr. Lorin Anderson's statement that "what you do is more important than who you are" is a conveniently concise way to express the idea introduced into the case by Dr. Walberg that specific teaching practices can make a dramatic difference in student achievement. Tr. Trans. (09/28/04), p. 82, ll. 11-21; Defendants' Exhibit 3307. Most experts from both sides opined that the teacher was the greatest single educational influence on the child's academic development within the school itself. Thus, teachers do matter, but it is good teaching that makes a good teacher, not a particular set of credentials or level of experience.

258. Many witnesses offered their personal definitions of a quality teacher. For example, Dr. Townes testified that

[a] highly qualified teacher is one that's very personable, that's one, that teaches, that touches, one that shows love to the children. A highly qualified teacher is one who is committed and dedicated to the teaching profession and receives every child as that child is when that child comes to them and tries to take that child or takes that child and carries that child as far as that child can go and as much as that child's potential will allow. That's a highly qualified teacher to me.

See Tr. Trans. (Townes) (03/03/04), p. 229, ll. 16-24.

259. Very few of the qualities valued by Dr. Townes and other witnesses are measurable in terms of credentials, because “[w]hat you do is more important than who you are.” Tr. Trans. (11/29/04), p. 64, ll. 24 – p. 65, ll. 1.

260. In summary, while there are differences in the average values for certain teacher characteristics between Plaintiff and non-Plaintiff Districts, these differences (a) mask considerably smaller differences in the actual distribution of teachers with these characteristics in the two groups of districts; (b) do not account for the differences in achievement among districts; and (c) would therefore not greatly affect student achievement in the Plaintiff Districts were they to be equalized.

261. Student achievement might be greatly enhanced if all existing teachers in the Plaintiff Districts, and indeed all districts, employed the teaching techniques referenced by Dr. Herb Walberg and Dr. Anderson, if they are not already doing so. There is no evidence, however, that any systemic impediment exists that would prevent the implementation of these practices.

X. FACILITIES IN THE PLAINTIFF DISTRICTS

262. Abbeville County holds, in part, that the education clause requires the General Assembly to provide safe and adequate facilities. Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540. It is therefore necessary for the Court to determine whether the facilities in the Plaintiff Districts are in fact adequate and safe. It is also necessary to address the question whether the constitutional duty requires that the cost of facilities be paid exclusively by funds appropriated by the General Assembly for that purpose.

263. Plaintiffs contend that local revenue should not be considered when determining whether the General Assembly has provided adequate and safe facilities to

the Plaintiff Districts. As previously discussed above at Section IV(C), however, “local” money is in reality “State” money because the power of school districts in South Carolina to tax flows from the plenary powers of the General Assembly. Bowaters Carolina Corp. v. Smith, 257 S.C. 563, 570, 186 S.E.2d 761, 763 (1972); Hay v. Leonard, 212 S.C. 81, 97-98, 46 S.E.2d 653, 660 (1948) (observing that “Article XI, section 6, provides that any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.”). Because the power to tax, unless delegated, is an exclusive prerogative of the General Assembly (i.e., a coordinate branch of state government), once this power is delegated to a political subdivision or locality, the local revenue raised for education by a political subdivision or locality is, in fact, State revenue procured by the State through the delegation of the power to tax. See City of Columbus, *supra* at 437 (“The principle is well settled that local governmental units are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion.”). Therefore, there is no distinction between State and local funding as a matter of law, and funding from “local” sources is relevant to determining whether resources are sufficient to create the opportunity for a minimally adequate education. The Court is aware of the fiscal limitations on the Plaintiffs’ districts which directly impacts the amount of funding available from “local” sources.

264. The South Carolina Constitution also specifically empowers school districts to issue bonds for the capital expenditures. S.C. CONST. art. X. § 15. Because the Constitution specifically authorizes this source of local revenue for school facilities, the Court cannot conclude that the Constitution requires the entire cost of school buildings to be paid from funds appropriated by the General Assembly for that purpose.

265. Not all funding for facilities in South Carolina derives from local tax revenues, however. The General Assembly approved a \$750,000,000 State Bond Bill, the proceeds of which were distributed to school districts for facilities. Tr. Trans. (08/17/04), p. 148, ll. 2-6; (09/19/03), p. 63, l. 20 – p. 64, l. 8; (09/11/03), p. 101, l. 24 – p. 102, l. 5; p. 106, ll. 1-10. The total dollars attributable to the Plaintiff Districts from the State Bond varies from district to district, with a high of \$5,950,452 for Orangeburg 3 to a low of \$1,500,252 for Florence 4. Plaintiffs' Exhibit 733; Defendants' Exhibit 1423. Between July 1999 and July 2001, \$1,766,134,316 of combined State and local building funds were spent on all South Carolina school buildings. Plaintiffs' Exhibit 306.

266. The eight Plaintiff Districts utilize facilities of various types, sizes and ages, ranging from a single PK-12 complex in Florence 4 to seven facilities in Lee County.

267. To support their case as to facilities, Plaintiffs offered the testimony of both superintendents and principals, as well as photographs of the various buildings; including photographs of non-education areas. Teachers offered anecdotal information about the facilities in which they taught. Of the approximately 1,351 pictures offered into evidence by the Plaintiffs, only 113 depict educational spaces. Nine hundred six of the photographs depict non-educational spaces, including, but not limited to, cafeterias, restrooms, and athletic facilities. The location of 339 of the photographs cannot be identified. A substantial number of photographs offered by the Plaintiffs showed damaged ceiling tiles caused by leaking roofs, worn floor tiles or carpet, restroom facilities that were not properly maintained and tangled, and/or loose computer wires

which needed to be maintained in a more orderly fashion. The photographs of each facility are discussed in more detail below.

268. The actual evidence in this case does not bear out a connection between facilities and educational outcomes. For example, South and East Elementary Schools in Dillon 2 are two of the oldest schools of all of the Plaintiff Districts, yet they have some of the best overall achievement of all of the schools in the Plaintiff Districts. Nor does the work of the Education Oversight Committee support the conclusion that there is a correlation between facilities and academic achievement. Defendants' Exhibit 894, The Relationship of School Facilities Conditions to Selected Student Academic Outcomes, despite a very concerted effort to draw such a correlation, fails to do so. There is no empirical evidence that would support a finding that achievement is related to the condition of facilities.

269. In response to the testimony from Plaintiffs' witnesses, Defendants established that for the academic year 2002-2003, each of the eight Plaintiff Districts certified to the SDE that their facilities: (1) are maintained in accordance with standard requirements established by the South Carolina Department of Health and Environmental Control; (2) are adequate in size and arrangement to accommodate the programs offered; (3) comply with safety regulations compiled by the State's Fire Marshal; (4) have safe and adequately maintained playground, physical education and play equipment; (5) have sufficient fire extinguishers, which are inspected annually and are clearly designated in all buildings; (6) are designed and equipped to serve the specific purpose for which each classroom is used; (7) have adequate light, ventilation, heating in all utilized areas; (8) have properly maintained, safe and attractive facilities and grounds; and (9) comply with

all OSHA standards in all educational laboratories and facilities. The Plaintiff Districts also certified that they have fire drills at least once a month; have plans to provide for the protection and welfare of students in the event of any disaster, tornado, hurricane, fire, and the like; conduct at least one emergency disaster drill within the first month of school; are in compliance with minimum building codes; and have met minimum requirements in all new facilities. Tr. Trans. (07/31/03), p. 83, ll. 1 – p. 84, l. 4; (08/12/03), p. 9, l. 15 – p. 15, l. 1; Defendants' Exhibits 2832, 2833 and 2835; Plaintiffs' Exhibits 6312, 6313 and 6314. Dr. John Suber testified that his department relies on the accuracy of these certifications from each district. Tr. Trans. (01/16/04), p. 188 – p. 190, l. 18. These reports are filed annually. *Id.*

270. To counter the photographic evidence offered by the Plaintiffs, the Defendants offered videotapes of all of the facilities in Dillon 2, Florence 4, Hampton 2, Lee, and Orangeburg 3. *See* Defendants' Exhibits 2827, 2828, 2829, 2829, 2830, and 2852. The photographic videotape evidence of each side selectively depicts only the very worst and best conditions in each school.

271. Defendants also offered the testimony of Dr. James R. Smith who visited each facility in the Plaintiff Districts with the exception of Hardeeville Elementary. Dr. Smith observed that the facilities he visited were adequate for instructional purposes, meaning that they were sufficient to permit learning to occur. Tr. Trans. (06/28/04); Tr. Trans. (06/29/04). This does not mean that all of the facilities in the Plaintiff Districts are new, or modern, or well maintained, however. "Adequate" facilities are those that are sufficient to permit students to acquire the knowledge and skills set out in Abbeville County. They need not be new or modern to satisfy that requirement.

272. Indeed, there are issues and problems with regard to many of the facilities in the Plaintiff Districts. Many of these problems appear be related to maintenance. Tr. Trans. (06/28/04), pp. 191, 194, 196, 201, 209, 210; (06/29/04), pp. 8, 22, 23, 35, 47. Other problems were related to the age of the facilities. Failure of a district to properly maintain its facilities does not, by itself, require the General Assembly to replace them. Further, as several witnesses testified, the conditions shown in the photographs had been corrected since the photographs were taken. Tr. Trans. (04/02/04), p. 32, ll. 1-8; (01/06/04), p. 85, ll. 1-25; (07/31/03), p. 97, ll. 17-25; (07/31/03), p. 99 ll. 16-19; (10/9/03), p. 114, ll. 19 – p. 115, l. 2.

273. As to safety issues, Defendants introduced inspection reports from the State Fire Marshall for each school. *See* specific citations set forth below. Those reports reflect that when unsafe conditions were found at any school by the South Carolina Fire Marshal, those conditions were promptly corrected. No facility was required to close due to its failure to correct citations shown in the Fire Marshal records offered into evidence by the Defendants. *See* Defendants' Exhibits 2117 – 2435; Tr. Trans. (07/31/04), p. 102, ll. 105; (08/7/04), p. 25, ll. 20-25.

274. Based on all of the evidence, the Court finds that the facilities in the Plaintiff Districts are now adequate and safe, although at the time this litigation began (but before trial) at least one facility, East Elementary School in Dillon No. 2, was clearly unsafe. However, as discussed more fully below, the safety problems with that building have now been corrected. Obviously, many of the facilities, because of age and maintenance problems, were certainly not optimum nor ideal. However, that is not the standard of Abbeville County and the facilities in the Plaintiff Districts meet the

Abbeville standard. Further specific consideration of the facilities in each Plaintiff District follows.

A. Allendale

275. Allendale consists of the following facilities: Fairfax Elementary; Allendale Elementary (Primary); Allendale-Fairfax Middle; and Allendale-Fairfax High School. Some photographs of storage buildings were admitted into evidence for this district. *See* Plaintiffs' Exhibits 1563BJ – 1563BP. As previously noted, Allendale County is the one Plaintiff District that is currently run by the SDE.

1. Fairfax Elementary School

276. Fairfax Elementary School was constructed in the 1950's. Since its construction, there has been an addition of a new wing in 1970. Tr. Trans. (10/01/03), p. 35, l. 17 – p. 36, l. 2. The photographs related to this school are Plaintiffs' Exhibits 1563AK – BI.

277. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2143 – 2151. These reports do not show any uncorrected fire safety issues at Fairfax Elementary.

278. Although Dr. Smith found peeling paint on the exterior of Fairfax Elementary School and worn tile on the gym floor was worn, he found that there was adequate space for the number of students and that there were no impediments to providing the opportunity to acquire a minimally adequate education and that the facilities at Fairfax Elementary were sufficient to do so. Tr. Trans., (06/29/04), p. 45, l. 25 – p. 46, l. 23.

279. While there is evidence of lack of maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Allendale Elementary School

280. Allendale Elementary School (formerly Allendale Primary School) was constructed in different years beginning in the 1950's. The photographs related to this school are Plaintiffs' Exhibits 1570 DQ – FD.

281. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2152, and 2154 – 2164. These reports do not show any uncorrected fire safety issues at Allendale Elementary.

282. Dr. Smith testified that although the facilities were old and nearing the end of their life as school facilities, it is his opinion that the facilities are adequate to provide the opportunity for a minimally adequate education. Tr. Trans., (06/29/04), p. 44, l. 15 – 45, l. 21.

283. While this school is older and there is evidence that it is nearing the end of its usefulness as a school facility, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Allendale-Fairfax Middle School

284. Allendale-Fairfax Middle School was originally constructed in 1956. The school was renovated in 1970 to include the addition of two classrooms and a shop/music building was added in 1983. Major renovations to add a new wing, computer rooms,

science labs, other classrooms, bathrooms and new lighting were underway in 2003. Tr. Trans. (10/01/03), p. 42, l. 1 – p. 43, l. 11. The photographs related to this school are Plaintiffs' Exhibits 1570AQ – BL and 1570BN – DP; Plaintiffs' Exhibit 1563L – N; 1563P – AJ. The photographs did not reflect recent renovations to the school building.

285. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibit Nos. 2117-2129. These reports do not show any uncorrected fire safety issues at Allendale-Fairfax Middle School.

286. Dr. Smith testified that maintenance was an overt problem at Allendale-Fairfax Middle School³⁹. Notwithstanding those problems, Dr. Smith testified that the school facilities were adequate and safe and sufficient to provide students the opportunity to acquire a minimally adequate education. Tr. Trans., (06/29/04), p. 47, l. 2 – p. 48, l. 3.

287. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Allendale-Fairfax High School

288. With one exception, the present facilities at Allendale-Fairfax High School were constructed in the 1990s. The vocation building, the only building still in use from the previous high school campus, was originally constructed in 1969. It recently underwent major renovations. The photographs related to this school are Plaintiffs' Exhibits 1563A – 1563K; Plaintiffs' Exhibits 1570A – AP.

289. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School which are Defendants' Exhibits 2130 – 2142.

³⁹ Dr. Smith's visit to Allendale-Fairfax Middle School occurred prior to the renovations. Tr. Trans. (06/29/04), p. 47, l. 24 – p. 48, l. 3.

These reports do not show any uncorrected fire safety issues at Allendale-Fairfax High School.

290. Dr. Smith described Allendale-Fairfax High School as a modern brick structure that was attractive and with a lot of unused space. It was Dr. Smith's opinion that the facilities at Allendale-Fairfax High School were sufficient to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 48, l. 7 – p. 49, l. 6.

291. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

B. Dillon County School District No. 2

292. Dillon 2 consists of the following facilities: J.V. Martin Junior High; East Elementary School; South Elementary School; Gordon Elementary School; Stewart Heights Elementary School; and Dillon High School. While Dillon 2 has some of the older facilities of the Plaintiff Districts, Dillon 2 also has some schools with very high student achievement on PACT.

293. Additionally, as more fully discussed below, Dillon No. 2 has, in some instances, made district-wide decisions to enhance its athletic facilities as opposed to its classroom space. Defendants' Exhibits 2830 and 3309. Tr. Trans. (08/12/03), p. 82, l. 10 – p. 89, l. 6. Dillon No. 2 received \$4,379,781 under the State Bond Act and raised additional capital money locally that resulted in approximately \$6 million being available for capital needs in Dillon No. 2. Tr. Trans. (08/12/03), p. 16, l. 10 – p. 17, l. 13. That amount was largely spent on Dillon High School. Tr. Trans. (08/12/03), p. 17, l. 14 – p. 18, l. 4.

1. J.V. Martin Junior High School

294. J.V. Martin consists of several different buildings. One historical building on the campus was initially constructed in 1896 as a high school. In 1981, following a fire that destroyed the building which housed a major portion of the classrooms used at this facility, a new building was erected. Tr. Trans. (08/06/03), p. 187, l. 21 – p. 189, l. 7. The photographs related to this school are Plaintiffs’ Exhibits 1564D – T; 1564V – 1564X; 1571R, 1571T, 1571V – Z; 1571A – AK; 1571N – AR; 1571AT – BP. At the time of trial, Dillon 2 had received a renovation grant for J.V. Martin in the amount of \$164,300. Tr. Trans. (08/12/03), p. 20, ll. 13-19.

295. Defendants offered copies of South Carolina Fire Marshal inspection reports for J.V. Martin, which are Defendants’ Exhibits 2190 through 2193. These reports do not show any uncorrected fire safety issues at J.V. Martin.

296. Dr. Smith testified that the layout of J.V. Martin was problematical for student management issues. He also testified, however, that the school could function adequately with some adjustments. Tr. Trans. (06/28/04), p. 192, l. 15 – p. 194, l. 12; Tr. Trans. (06/29/04), p. 12, l. 21 – p. 14, l. 13.

297. While the Court finds that the layout of J.V. Martin is not optimal, the Constitution does not require the General Assembly to appropriate money to remedy this problem. Dillon 2 has elected to renovate facilities other than J.V. Martin, while leaving it unchanged. Tr. Trans. (08/07/03), p. 78, l. 24 – p. 89, l. 6; Defendants’ Exhibit 2830.

298. The Court finds that, although there are problems with certain buildings on this campus, this facility as a whole is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. East Elementary School

299. East Elementary School was originally constructed in 1926. There have been subsequent additions of a cafeteria in 1957, and a kindergarten wing and a new library in 1985 and 1997. Tr. Trans. (08/06/03), p. 191, ll. 11-15. The photographs related to this school are Plaintiffs' Exhibits 1564AJ; 1571 BW – CJ.

300. Defendants offered copies of South Carolina Fire Marshal inspection reports for East Elementary School, which are Defendants' Exhibits 2212 – 2219. These reports do not show any uncorrected fire safety issues at East Elementary.

301. Dr. Smith testified that East Elementary is adequate for instructional purposes. Tr. Trans. (06/28/04), p. 187, ll. 13-15. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

302. Plaintiffs offered testimony regarding a ceiling falling in a classroom in 2001. Tr. Trans (08/07/03), p. 60, l. 23 – p. 61, l. 13. Further testimony established that the ceiling was repaired and found to be structurally safe by an engineer following those repairs and before students were allowed back in the classroom. Tr. Trans. (08/12/03), p. 150, l. 10 – p. 151, l. 16 ; *see also* Plaintiffs' Exhibits 5026 and 5027.

3. South Elementary School

303. South Elementary School was constructed in the 1950s. Tr. Trans. (08/06/03), p. 190, ll. 24-25. The photographs related to this school are Plaintiffs' Exhibits 1564BH, 1571BJ, 1571EU, 1571EW, 1571EY; 1571FC, FF, FK, FL, FP, FR, FV, FY, 5033A-C, 5033F-G; 5033I & J.

304. Defendants offered copies of South Carolina Fire Marshal inspection reports for South Elementary School, which are Defendants' Exhibits 2203-2211. These reports do not show any uncorrected fire safety issues at South Elementary.

305. In Dr. Smith's opinion, the facilities at South Elementary School are adequate for the instructional purposes for which they are being used. Tr. Trans., (06/28/04), p. 189, l. 2. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

306. South Elementary was held up as a model school by several witnesses. Although Dillon 2's superintendent and South's principal complained of the school's condition, the accolades given South Elementary and its principal, Peggy Stafford, *see, e.g.*, Tr. Trans. (09/26/03), p. 18, l. 4. – p. 21, l. 18, and the success of its students, would seem to negate any attempt to establish a correlation between facilities and student achievement.

307. While this school is not new and there is evidence of stained ceiling tiles, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Gordon Elementary School

308. Gordon Elementary School was constructed in 1954. Since its construction, there have been additions to the school, the most recent being a \$1.4 million new wing housing sixth grade students. In addition, there is also a new media center space, new cafeteria space, new guidance and administrative space, as well as updated restrooms. Tr. Trans. (08/06/03), p. 189, l. 24 – p. 190, l. 10. The photographs related to this school are Plaintiffs' Exhibits 1564J, 1564Z, 1564AA – BA; 1571BV, 1571CK – EG.

309. Defendants offered copies of South Carolina Fire Marshal inspection reports for Gordon Elementary School, which are Defendants' Exhibits 2220-2228. These reports do not show any uncorrected fire safety issues at Gordon Elementary.

310. Dr. Smith testified that although the gym floor needed resurfacing and maintenance was poor at this school, Gordon Elementary's facilities were adequate for instructional purposes. It is also noted by the Court that Dr. Smith inspected the facilities at Gordon prior to the construction of the new wing. Tr. Trans. (06/28/04), p. 190, l. 24 – p. 192, l. 12. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830. Further, Gordon was renovated again during trial and photographs of the renovations were offered by Defendants at the end of the trial. Defendants' Exhibit 3078.

311. While a portion of this school's facilities is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

5. Stewart Heights Elementary School

312. Stewart Heights Elementary School was constructed in 1956. Tr. Trans. (08/06/03), p. 190, ll. 19-25. Since its construction, there have been renovations to Stewart Heights, Tr. Trans. (08/12/03), p. 19, ll. 3-7, and further renovations are anticipated at a value of \$101,230. Tr. Trans. (08/12/03), p. 20, ll. 13-15. The photographs related to this school are Plaintiffs' Exhibits 1564Y; 1571BQ-BU.

313. Defendants offered copies of South Carolina Fire Marshal inspection reports for Stewart Heights Elementary School, which are Defendants' Exhibits 2186

through 2189. These reports do not show any uncorrected fire safety issues at Stewart Heights Elementary.

314. Dr. Smith's opinion of this facility is that it is adequate for the instructional purposes for which it is being used. Tr. Trans. (06/28/04), p. 190, ll. 18-21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

315. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

6. Dillon High School

316. Dillon High School was constructed in 1970. Since its construction, there have been significant (\$4.5 million) renovations to classrooms in 2000, as well as additions to the cafeteria. A state-of-the-art weight training facility was constructed in 2000. Tr. Trans. (08/06/03), p. 187, ll. 14-21; (08/12/03), p. 82, l. 6 – p. 85, l. 16. The photographs related to this school are Plaintiffs' Exhibits 1564B&C; 1571A-Q.

317. Defendants offered copies of South Carolina Fire Marshal inspection reports for Dillon High School, which are Defendants' Exhibits 2194 through 2202. These reports do not show any uncorrected fire safety issues at Dillon High School.

318. Dr. Smith testified extensively about the facilities he found at Dillon High School. His testimony was that the common areas of the facility, such as the hallways, were poorly maintained and, although the design of the building was unusual, it was, "without a doubt," adequate. Tr. Trans. (06/28/04), p. 198, l. 25. Dr. Smith testified that the cafeteria, library and weight room, and athletics' director's office were impressive.

Tr. Trans. (06/28/04), p. 194, l. 17 – p. 198, l. 25. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibits 2830 and 3309.

319. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

C. Florence County School District Four

320. Florence 4, located in Timmonsville, South Carolina, has a new PK – 12 facility, as well as a separate career and technology center currently in use in the district. Tr. Trans. (02/09/04), p. 38, l. 13 – p. 39, l. 13. The school superintendent at trial, while indicating a few minor problems, did not claim any conditions in the facilities which are unsafe or inadequate. Tr. Trans. (02/19/04), p. 127, l. 11 – p. 128, l. 3.

321. The Timmonsville Education Complex, which is comprised of Brockington Elementary, Johnson Middle School and Timmonsville High School, was constructed in 2000. Tr. Trans. (02/09/04), p. 127, ll. 11-16. Since its construction, there have been further additions to the elementary school wing of two classrooms. Deposition of Alice Johnson, p. 9, ll. 3-6. No photographs of this facility were offered by the Plaintiffs; however, Defendants offered a videotape showing the facility. *See* Defendants' Exhibit 2831.

322. Although Defendants offered South Carolina Fire Marshal documents relative to Florence 4, they related to the former facilities used by the district and bear no information with regard to the facility presently being used by the district. There was no testimony by Plaintiffs of any fire code related problems. There was no testimony from any witness regarding safety issues at this school.

323. Dr. Smith testified that this is a beautiful, modern facility that showed pride in ownership. He did not go into every classroom in this facility because it is a brand new school. Tr. Trans. (06/29/04), p. 49, l. 50 – p. 52, l. 21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

324. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

D. Hampton School District Two

325. Hampton 2 consists of three buildings: Estill Elementary; Estill Middle School; and Estill High School. Defendants offered into evidence a videotape of the facilities as proof of their adequacy. *See* Defendants' Exhibit 2852. Substantial renovations to the schools took place prior to trial. Tr. Trans. (10/09/03), p. 113, l. 12 – p. 114, l. 18. According to the testimony of Dennis Thompson, Superintendent of Hampton 2, the photographs introduced by the Plaintiffs did not reflect \$1.7 million in renovation work to Hampton 2 schools, or \$300,000 in additional anticipated work. Tr. Trans. (10/09/03), p. 114, l. 19 – p. 115, l. 2. Superintendent Thompson acknowledged that prior to trial, Hampton 2 had also received a \$745,000 grant from the State to be used in further renovations. Tr. Trans. (10/09/03), p. 115, l. 19-25.

1. Estill Elementary School

326. Estill Elementary School was originally constructed in 1939. Since its construction, there have been additions in 1962 and 1981. Tr. Trans. (10/08/03), p. 192, ll. 1-5. The photographs related to this school are Plaintiffs' Exhibits 1565A – H; 1572A

– BD. Estill Elementary received three grants totaling \$700,000 for renovations in December of 2002. Defendants’ Exhibit 2629.

327. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill Elementary School, which are Defendants’ Exhibits 2165 – 2179 and 2181. These reports do not show any uncorrected fire safety issues at Estill Elementary.

328. Although Dr. Smith expressed concerns about the public street that divides the campus, he testified that the facility is adequate to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 14, l. 21 – p. 17, l. 5. There was testimony that the students going and coming across the street was kept to a minimum, and that the street was barricaded to traffic during the school day. Tr. Trans. (10/08/03), p. 191, l. 11. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants’ Exhibits 2852, 3309.

329. While this school is not new and there are concerns with the campus being divided by a public street, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Estill Middle School

330. Estill Middle School was constructed in 1954. Since its construction, additions were made in 1960, 1961, 2000 and 2001. The photographs related to this school are Plaintiffs’ Exhibits 1572BZ – DD.

331. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill Middle School, which are Defendants’ Exhibits 2277 through 2287. These reports do not show any uncorrected fire safety issues at Estill Middle.

332. Dr. Smith testified that the school-wide facilities, such as the gym and cafeteria, were not well maintained, and there were missing ceiling and floor tiles throughout the facility. Dr. Smith testified that the facilities were sufficient to provide an adequate educational opportunity. Tr. Trans. (06/29/04), p. 17, l. 6 – p. 18, l. 3. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

333. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Estill High School

334. Estill High School was constructed in 1984. Since its construction, there have been additions in 1991 and 1994 of a music/gymnasium complex. Tr. Trans. (10/09/03), p. 111, ll. 6-13. The photographs related to this school are Plaintiffs' Exhibits 1572BE – BY.

335. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill High School, which are Defendants' Exhibits 2262 – 2276. These reports do not show any uncorrected fire safety issues at Estill High.

336. Dr. Smith testified that Estill High School is an attractive, modern facility that has generally not been well maintained. At the time of Dr. Smith's visit, there were places where the facility needed to be repainted and floors that needed to be cleaned and waxed. Dr. Smith further testified that an entire wing appeared to be used by the school for storage space. Dr. Smith testified that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/28/04), p. 18, l. 8 – p. 20, l. 9. The videotape offered

into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

337. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

E. Jasper County School District

338. Jasper County is building two new PK-12 complexes, one in the southern part of the county in Hardeeville and one in the northern part of the county in Ridgeland, to replace all existing schools in Jasper County. At trial, District Superintendent William Singleton testified that following completion of the two new facilities, all of the facilities issues for Jasper would be remedied. Tr. Trans. (04/20/04), p. 191, l. 2 – p. 197, l. 9.

339. Although the district is in the process of building two new facilities, evidence regarding the present facilities was offered by both the Plaintiffs and Defendants.

1. Ridgeland Middle School

340. The photographs related to this school are Plaintiffs' Exhibits 1573CA – DJ and 1566AM – AR.

341. Defendants offered copies of South Carolina Fire Marshal inspection reports for Ridgeland Middle School, which are Defendants' Exhibits 2288 through 2300. These reports do not show any uncorrected fire safety issues at Ridgeland Middle.

342. Dr. Smith testified that although Ridgeland Middle School is an older, poorly maintained facility, with paint peeling from the walls and dirty floors, these factors are not an impediment to providing adequate instruction. Dr. Smith found the

facility to be sufficient to provide the opportunity for students to acquire an adequate education. Tr. Trans. (06/28/04), p. 21, l. 20 – p. 22, l. 16.

343. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Jasper County High School

344. The photographs related to this school are Plaintiffs' Exhibits 1573A through Z and 1566A through Q.

345. Defendants offered copies of South Carolina Fire Marshal inspection reports for Jasper County High School, which are Defendants' Exhibits 2301 – 2326. These reports do not show any uncorrected fire safety issues at Jasper County High.

346. Dr. Smith testified that although the restrooms at Jasper County High School were clean, the general maintenance of the facility was substandard. Notwithstanding those findings, Dr. Smith's opinion is that this facility was sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 22, l. 17 – p. 23, l. 16.

347. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. West Hardeeville School

348. The photographs related to this school are Plaintiffs' Exhibits 1573DK through GC and 1566AT through AX.

349. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2327 – 2330. These reports do not show any uncorrected fire safety issues at West Hardeeville School.

350. Dr. Smith did not visit the school because he was advised that West Hardeeville Elementary was identical to Ridgeland Elementary which he did visit. Tr. Trans. (06/30/04), p. 178, l. 23 – p. 179, l. 5.

351. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Ridgeland Elementary

352. The photographs related to this school are Plaintiffs' Exhibits 1573AA – BZ and 1566R – AL.

353. Defendants offered copies of South Carolina Fire Marshal inspection reports for Ridgeland Elementary School, which are Defendants' Exhibits 2331 – 2345. These reports do not show any uncorrected fire safety issues at Ridgeland Elementary.

354. Dr. Smith testified that he witnessed substandard maintenance at Ridgeland Elementary, and that many of the classrooms were cluttered. He observed a large library and playground area. However, Dr. Smith found the facilities to be sufficient to provide an adequate education opportunity. Tr. Trans. (06/29/04), p. 20, l. 19 – p. 21, l. 16..

355. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

F. Lee County School District

356. Lee County School District consists of Dennis Intermediate School, Bishopville Primary School, Lee County Career and Technology Center, Lower Lee Primary, West Lee, Mt. Pleasant Middle, and Lee Central High School. Defendants offered a video of the district facilities to evidence their adequacy. *See* Defendants' Exhibit 2839.

357. The Court finds that the facilities in Lee County are safe and adequate.

1. Dennis Intermediate School

358. Substantial additions were made to the facility in 1985 and 1988. The photographs related to this school are Plaintiffs' Exhibits 1567K through AO and 1574 BD through CD. Lee County was able to do substantial wiring and lighting work with an E-Rate Grant. Tr. Trans. (03/05/04), p. 32, ll. 10-14.

359. Defendants offered copies of South Carolina Fire Marshal inspection reports for Dennis Intermediate School (noted on those reports as Bishopville Junior High School), which are Defendants' Exhibits 2363 – 2370. These reports do not show any uncorrected fire safety issues at Dennis Intermediate School.

360. Dr. Smith testified that the facilities were sufficient to provide a minimally adequate education. Tr. Trans., (06/29/04), p. 28, ll. 1-25. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

361. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Bishopville Primary School

362. The photographs related to this school are Plaintiffs' Exhibits 1567A – J; 1574F – BC.

363. Defendants offered copies of South Carolina Fire Marshal inspection reports for Bishopville Primary School, which are Defendants' Exhibits 2395 – 2397 and 2399 – 2408. These reports do not show any uncorrected fire safety issues at Bishopville Primary.

364. Dr. Smith testified that the facility was attractive and that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 23, l. 25 – p. 24, l. 22. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

365. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Lower Lee Elementary

366. Lower Lee Elementary School was constructed in 1986. Since its construction, there have been additions of new classroom wings. The photographs related to this school are Plaintiffs' Exhibits 1567BZ – CZ; 1574EA – EH. In 1999, Lee County received \$3.9 million in State bond money, and a portion of those funds were used to renovate Lower Lee. Tr. Trans. (03/05/04), p. 31, ll. 5-8.

367. Dr. Smith testified that at the time he visited the school, there was construction work underway on the playground. Dr. Smith concluded that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 24, l. 25 – p. 25, l. 22. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

368. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. West Lee Elementary

369. West Lee Elementary School was constructed in the 1960s. Since its construction, there have been several additions (1966 and 1983), including the recent addition of a kindergarten wing in 2004 paid for with State bond money. Tr. Trans. (03/05/04), p. 31, ll. 5-8. The photographs related to this school are Plaintiffs' Exhibits 1567EN – FM; 1574FS – GT.

370. Defendants offered copies of South Carolina Fire Marshal inspection reports for West Lee Elementary School, which are Defendants' Exhibits 2380 – 2394. These reports do not show any uncorrected fire safety issues at West Lee Elementary.

371. Dr. Smith testified that this was an older facility with worn floor tiles and the restrooms were in disrepair. Dr. Smith was also concerned that he witnessed a physical education class being held in a portable classroom, although he found that there were other areas on the campus (such as the multi-purpose room) where this class could have been held. Notwithstanding these findings, Dr. Smith found the facility to be sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 26, l. 1 – p. 27, l. 17. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

372. While this school is not new and there is evidence of poor maintenance and past moisture problems, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

5. Mount Pleasant Middle School

373. The photographs related to this school are Plaintiffs' Exhibits 1567DB – EM; 1574EI – FS.

374. Defendants offered copies of South Carolina Fire Marshal inspection reports for Mount Pleasant Middle School, which are Defendants' Exhibits 2371 – 2398. These reports do not show any uncorrected fire safety issues at Mount Pleasant Middle.

375. Dr. Smith testified that this is a modern structure, with classrooms that ran the gamut of clean and neatly maintained to messy and dirty. He testified that the facilities were sufficient to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 29, l. 3 – p. 30, l. 17. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

376. While this school is not new and there some is evidence of a lack of maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

6. Lee Central High School

377. Lee Central High School is a state-of-the-art facility, newly constructed and opened in 2001. Although there was some testimony regarding roof leaks at this facility, those issues are related to construction problems that should be corrected by the contractor. Tr. Trans. (03/05/04), p. 31, ll. 20-25.

378. Dr. Smith testified that Lee Central High School is a beautiful facility and is one of the nicest schools he has seen in the country. Dr. Smith commented that the school appeared to have been built for a larger student body than it presently accommodates. He observed a lot of empty or unused space at the facility. Dr. Smith testified that the facilities at Lee Central High School were “absolutely” sufficient to

provide the opportunity for a minimally adequate education. Tr. Trans. (06/29/04), p. 30, l. 25 – p. 33, l. 7. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

379. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

G. Marion School District 7

380. Marion 7 has recently experienced a complete restructuring and the District now has three facilities: Brittons Neck Elementary; Rains-Centenary Elementary; and Creek Bridge Middle/High School. Tr. Trans. (07/30/03), p. 142, l. 11 – P. 144, l. 19. The photographs for the district are Plaintiffs' Exhibits 1568A; 1575A – AZ. Many of these photographs, however, predate the significant renovations that have taken place in Marion 7 facilities.

1. Brittons Neck Elementary

381. Brittons Neck Elementary (formerly known as Brittons Neck High School) was constructed in the 1950s, with renovations and additions in 1985. (Tr. Trans. (08/04/03), p. 194, l. 25 – p. 195, l. 10. This facility has undergone substantial renovations and retrofitting to transform it from a high school to an elementary school. Tr. Trans. (07/31/03), p. 96, l. 17 – pg. 97, l. 9. The photographs related to this school are Plaintiffs' Exhibits 1575A – 1575U.

382. At the time Dr. Smith visited this campus, it was temporarily being used as a middle school during the construction of the new middle/high school (Creek Bridge High School). Dr. Smith found that it was adequate for instructional purposes. Tr. Trans.

(06/28/04), p. 203, ll. 7 – 21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2828.

383. During trial, there was testimony by the school district that Britton's Neck Elementary school was to undergo a complete renovation to transform this facility from a high school to a PK – 6 grade school and that such renovation would likely remedy all facilities problems for that school. Tr. Trans. (08/01/03), p. 24, ll. 2-13.

384. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Rains-Centenary Elementary

385. Rains-Centenary Elementary was original constructed in 1938. A wing housing a media center, cafeteria and additional classrooms was added in 1986. Tr. Trans. (08/01/03), p. 20, ll. 4-12. Likewise, this facility is scheduled to be renovated and there is testimony that such renovations would remedy almost all existing facilities issues. Tr. Trans. (07/31/03), p. 100, l. 7 – p. 101., l. 15.

386. Defendants offered copies of South Carolina Fire Marshal inspection reports for Rains-Centenary Elementary School, which are Defendants' Exhibits 2409 – 2412. These reports do not show any uncorrected fire safety issues at Rains-Centenary Elementary.

387. Dr. Smith testified that Rains-Centenary Elementary Schools is an example of an older school that had been well maintained and that the administration or faculty had attractively decorated. Tr. Trans., (06/28/04), p. 204, l. 8 – p. 208, l. 4. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2828.

388. While this school is an older school, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Creek Bridge Middle/High School

389. Dr. Dean, superintendent for Marion 7, testified that the new Middle / High School facility would remedy the facilities issues at the old Brittons Neck High School and Terrells Bay High School. According to trial testimony, this facility opened in the 2003-2004 school year. Tr. Trans. (07/30/03), p. 142 – 144.

390. The Court finds that this new facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

H. Orangeburg School District Three

391. At the time of trial, the facilities in Orangeburg 3 were in transition. The District was in the process of building a consolidated, district-wide high school (Lake Marion High School) to replace the two existing high schools. Likewise, Holly Hill Middle School would be moving into the former Holly Hill-Roberts High School facility, a building that was substantially renovated in 1992. The principal for the middle school testified that such a move would remedy the facilities problems at the current Holly Hill Middle School. *See* Deposition of JoAnn Lawton, p. 14, l. 10 – p. 15, l. 10. Dr. David Longshore, the Superintendent of Orangeburg Consolidated District 3, testified that upon completion of the construction and consolidation of the schools in his district in 2005, all facilities in Orangeburg 3 would be safe and adequate. Tr. Trans. (01/06/04), p. 140, l. 15 – p. 143, l. 16.

392. Dr. Smith testified that the other two facilities in the District, Vance-Providence Elementary and St. James-Gaillard Elementary, were both adequate facilities that provided their students with the opportunity for a minimally adequate education. *See* Tr. Trans. (06/29/04), p. 36, ll. 2-15; p. 39, l. 22 – p. 40, l. 11. In fact, Dr. Smith testified that all of the current facilities in Orangeburg 3 were adequate and safe in their current conditions. *See* Tr. Trans. (06/29/04), p. 34, l. 8 – p. 44, l. 10.

393. Accordingly, this Court finds that any deficiencies in the facilities are currently being remedied by the school district and those not being replaced or repaired are safe and adequate and are sufficient to provide students the opportunity to acquire a minimally adequate education.

XI. REVENUE AND SPENDING ANALYSIS FOR PLAINTIFF DISTRICTS

394. Specific revenue and spending information for each Plaintiff District is discussed above at Section VIII. As set out there, the Plaintiff Districts' per pupil expenditures and revenues tend to be among the highest in the State, and have been increasing over time. *See* Tr. Trans. (08/16/04), p. 65, ll. 1 – 10.

395. Since this lawsuit was filed in 1993, State revenues in the Plaintiff Districts have more than doubled. *See* Defendants' Exhibit 2880. Thus, whatever the situation that was present in those districts when this case began, substantial increases in funding have occurred in the intervening decade. Tr. Trans. (08/16/04), p. 38, l. 20 – p. 40, l. 6. Representative Harrell, Chairman of the House Ways and Means Committee, testified that education is a top priority in the budgeting process. Tr. Trans. (08/16/04), p. 24, ll. 10-12. In 1994, Chairman Harrell's Committee purposefully amended its rules and "move[d] education to the front of the budget bill so that it would be the first item

that was taken up in the State budget every year.” Tr. Trans. (08/16/04), p. 47, ll. 10-25; p. 48, ll. 1-8. Thus, since 1994, as a result of the General Assembly designating education as the number one budgeting priority, appropriations to education have substantially increased over time. Between 1994 and 2004, funding to education has increased from 33% of the general fund to 36% of the general fund. Tr. Trans. (08/16/04), p. 23, ll. 24-25; p. 24, ll. 1-4; p. 38, ll. 20-25; p. 49, ll. 3-15; p. 50, ll. 1-25. Notwithstanding budget cuts that began in fiscal year 2000, education has remained the number one priority of the State and, in fact, State appropriations to education between fiscal year 2000 and fiscal year 2001 “increased dramatically.” Tr. Trans. (08/16/04), p. 39, ll. 1-25; p. 40, ll. 1-6.

396. Beginning in 2002, budget difficulties resulted in across the board cuts for all agencies and programs, including education. Some of the cuts impacted adversely on critical areas of need such as early childhood education, kindergarten and pre-kindergarten programs, and homework centers.

397. Based on the testimony of the superintendents of the Plaintiff Districts, however, all of the additional revenue has been insufficient to create the opportunity for students in the Plaintiff Districts to acquire a minimally adequate education. This raises the central question as to a relationship between spending and achievement. Unless such a relationship can be demonstrated, the Court cannot conclude that the relatively poorer achievement of students in the Plaintiff Districts results from lack of money, or that increasing revenues will increase achievement.

398. Plaintiff District revenues from all sources exceed the State median, in most cases by a substantial amount. The exact amounts for FY 2001 - 2002, the most recent year for which the information was available during the trial are as follows:

Revenue Per Pupil from Federal, Local, and State sources

Allendale \$10,360	Dillon 2 \$6,734
Florence 4 \$8,004	Hampton 2 \$8,908
Jasper \$7,857	Lee \$7,619
Marion 7 \$10,034	Orangeburg 3 \$8,012
District Median \$7,357	

Defendants' Exhibit 3225. As noted earlier, these revenues have been increasing over time.

399. In addition to comparisons to the State average and median, evidence was also introduced concerning how spending in the Plaintiff Districts compares with average spending in schools that are rated "Good" and "Excellent" under the Report Card Rating system. *See* Plaintiffs' Exhibit 251B. Schools in the Plaintiff Districts spend more per pupil, on average, than the "Good" and "Excellent" schools.

400. Additionally, per pupil expenditures are less in the "Above 75%ile Schools," which were referred to in the testimony as "gap closing schools." Plaintiffs' Exhibit 251, pp. 26 – 28. The mean per pupil expenditure for the gap closing schools, as reflected in Plaintiffs' Exhibit 251B is \$5,545. By contrast, the mean per pupil expenditure for schools in the Plaintiff Districts is shown in Plaintiffs' Exhibit 251B as \$5,664. The fact that the Plaintiff school mean exceeds the gap closing school mean is

consistent with the higher per pupil expenditures as the district level for the Plaintiff Districts.

401. Plaintiffs disputed the conclusions to be drawn from the information on their per pupil expenditures. According to Plaintiffs, their per pupil figures are exaggerated because of certain diseconomies of scale. It is certainly true, for example, that the per pupil expenditure of Marion 7 for district leadership will be higher than districts with more students. When the actual expenditures of the Plaintiff Districts for instruction are examined, however, it is clear that Plaintiffs are in fact spending more per pupil than other districts. *See* Defendants' Exhibits 3327 – 3335. Spending in this general category would not be unduly affected by diseconomies of scale that pertain to small districts. As noted by Dr. Miley in his report on school district size and efficiency, "the higher correlations are in the functional areas that have the least cost per pupil. The largest expense category, Instructional, which is over half the cost of services, has the smallest correlations." Plaintiffs' Exhibit 191, p. 49. This means that while diseconomies of scale may exist in certain expenditure categories, those categories make up only a small percentage of overall expenditures. Thus, the fact that small districts, which include some, but not all, of the Plaintiff Districts, spend more per pupil in fixed cost categories does not mean that all of their per pupil expenditures are affected by diseconomies of scale such that that their spending cannot fairly be compared to other districts.

402. It is clear that there is little, if any, relationship between spending and achievement. The Plaintiff Districts tend to be the highest spending districts in the State, yet their achievement is lower. Dillon 2 presents a powerful illustration of the absence of

any direct relationship between money and achievement. As noted above, Dillon 2 is the lowest spending of the Plaintiff Districts, and in fact spends less than the State average. Notwithstanding this relatively low level of spending, student achievement in Dillon 2 is among the highest of all of the Plaintiff Districts, with over 59.9% (ELA) and 62.5% (Math) of its students scoring at Basic or above on PACT for the 2004 school year. *See* Defendants' Exhibit 3319. At certain schools in Dillon 2, the students exhibit excellent performance. *See* Defendants' Exhibit 3339. The per pupil expenditures at East and South elementary schools are far below the average for Plaintiff District elementary schools. *Id.*

403. The absence of any meaningful connection between spending and achievement is not something that is unique to South Carolina. Nationally, per pupil expenditures have increased by 800% from the early 1970's until the present. *See* Defendants' Exhibit 627. Over that same period of time, student achievement as measured by the nationally administered National Assessment of Educational Progress ("NAEP") test has remained flat. *See* Defendants' Exhibit 626.

404. A similar longitudinal analysis is not possible in South Carolina because until the PACT test was begun in 1999, there was no consistent way to measure educational achievement in South Carolina. Since 1999, achievement on the PACT test has shown sporadic improvement in South Carolina in general and also in the Plaintiff Districts. The time period from 1999 through 2004 has been marked both by increases and decreases in spending in the Plaintiff Districts. *See* Defendants' Exhibit 3304M.

405. Plaintiffs offered testimony from Dr. Terry Peterson, who to presented the revenue and spending data for the Plaintiff Districts in a way different from the manner in

which it is kept and presented in the ordinary course by SDE. For purposes of his testimony, Dr. Peterson included capital expenditures, but excluded federal funds and revenues generated by extra local effort.⁴⁰ See Tr. Trans. (06/07/04), p. 223, l. 21 – p. 224, l. 3; p. 240, ll. 2-10; (06/08/04), p. 40, ll. 7-19; (06/10/04), p. 106, l. 17 – p. 106, l. 19. Dr. Peterson then compared the relative percentage of expenditures by Plaintiff Districts with non-Plaintiff Districts. Tr. Trans. (06/07/04), p. 170, ll. 12-22. Using this methodology, it appears that Plaintiff Districts actually spend less than non-Plaintiff Districts. See *e.g.*, Plaintiffs’ Exhibit 6633. But this method of organizing and presenting the figures is unique to Dr. Peterson, and is inconsistent with the manner by which spending data is presented by SDE and EOC. Beyond this inconsistency, however, the Court finds that grouping capital expenditures with operating expenditures, and then removing federal and certain local revenues does not fairly reflect the actual money that is being spent to educate the children in a district. As Dr. Miley noted, because capital expenditures are “time related,” including them in a cost analysis would “skew the data.” Plaintiffs’ Exhibit 191, p. 48. For purposes of the Court’s analysis, the figures published by SDE in the In\$ight data, and as reported by EOC on the report cards, will be used. Those sources of information make it clear that the Plaintiff Districts, with the exception of Dillon 2, have higher levels of per pupil expenditures and revenues than the average and median districts.

406. Defendants introduced the result of four “professional judgment panels” conducted by Dr. Smith. The purpose of these panels was to determine whether experienced educators and educational administrators could develop educational

⁴⁰ Dr. Peterson excluded local funds to the extent they represented “extra effort” at the local level beyond the average State local effort. Tr. Trans. (06/08/04), p. 38, l. 6 – p. 40, l. 21.

programs calculated to achieve the elements of a minimally adequate education as defined by the Supreme Court in Abbeville County at given expenditure levels. Tr. Trans. (06/18/04), p. 75, l. 4 – p. 78, l. 4. Each panel was asked to perform the task using the lowest amount of money spent by any of the Plaintiff Districts in 2000, the average amount spent by all districts in South Carolina in 2000, and the amount then spent by the Plaintiff District with the highest percentage of students on free and reduced lunch in 2000. At the time these exercises were performed, Dillon 2 was the lowest spending Plaintiff District at \$5,623 per pupil, Clarendon 1 was the Plaintiff District with the highest percentage of students on free and reduced lunch and spent \$7,826 in 2000, and the average spent by all districts in South Carolina in 2000 was \$6,373. Tr. Trans. (06/28/04), p. 103, l. 24 – p. 104, l. 24. Three of the panels were composed of educators and administrators from outside South Carolina, while one panel was composed of professionals from South Carolina. All four panels concluded that they could construct educational programs sufficient to meet the definition of a minimally adequate education as defined in Abbeville County for the amounts of money they were given to work with. Each panel was “very confident” of the result of their work, although the confidence level tended to go up as the amount of money increased. *See* Defendants’ Exhibit 2772, p. 21; Defendants’ Exhibit 2773, p. 19; Defendants’ Exhibit 2774, p. 16; Defendants’ Exhibit 2775 p. 18.

407. Plaintiffs attacked the results of this exercise on the basis that the assumptions given to the panel members were inconsistent with the legal and educational realities in South Carolina. Tr. Trans. (09/29/04), p. 15, ll. 8-18. One of the chief criticisms leveled by Plaintiffs is that the panels were told to assume that teacher salaries

were adequate to attract and retain competent personnel, which is, of course, vigorously disputed by the Plaintiffs in this case.

408. These criticisms by Plaintiff are shared to some extent by the Court but they bear on the weight that the Court gives to the professional judgment panels' work, it does not render them inadmissible, or require the Court completely to disregard the panels' findings. See Small v. Pioneer Mach., Inc., 316 S.C. 479, 489, 450 S.E.2d 609, 616 (Ct. App. 1994). To the Court, the most important conclusion that could be drawn from the panels' reports is that **generally** there is sufficient money available to achieve the educational outcomes identified in Abbeville County.

409. Opposing the hypothetical conclusions drawn by the professional judgment panels is the overwhelming body of testimony from the Plaintiffs' witnesses, most of whom uniformly contended that the Plaintiff schools were under funded in almost every area. The Plaintiffs' contention is not that their schools are under funded in relation to other schools in the State, but that they are under funded in relation to the specific needs imposed upon them by the economic conditions of their districts, and the socioeconomic status of their students.

410. Based on this evidence, this Court cannot conclude what particular level of spending in excess of what of Plaintiff Districts are currently spending is necessary to satisfy the constitutional obligation to provide the opportunity for students to acquire a minimally adequate education. Indeed, even the Plaintiffs' witnesses had difficulty placing a dollar amount on what was needed to provide an opportunity for a minimally adequate education, although they contended it that it was much higher than the amounts currently being provided. This Court cannot conclude that the mere allocation of

additional funds, without directing those funds to specific programs to meet various specific needs would lead to higher achievement in the Plaintiff Districts or elsewhere for that matter.⁴¹

411. However, as discussed below, this Court does believe that certain program funding which has been cut in the past, and the failure to fund other programs which have been adopted to deal with the specific needs of children in poverty in their early childhood years deprives those children of the opportunity to obtain a minimally adequate education. That is not to say that the allocation of additional funds, without directing those funds toward specific needs, will cure the constitutional deficit. Prior history has taught us that the allocation of funds alone (e.g. a 800% increase in per people funding as referred to above) is no assurance that educational levels of achievement will be raised.

XII. THE RELATIONSHIP BETWEEN OTHER INPUTS AND ACHIEVEMENT

412. Defendants introduced considerable evidence concerning the relationship, or lack of relationship, between other school inputs⁴² and student achievement. This evidence bears on the issue raised by Plaintiffs concerning whether the relatively poor achievement of students in the Plaintiff Districts is the result of the relatively lower levels of these inputs in those districts. If such a relationship exists, it would be possible to conclude that increasing the level of these other inputs in the Plaintiff Districts would have the effect of improving student achievement. This evidence also bears on the extent

⁴¹ Dr. Darling-Hammond testified that “money makes a difference only when spent well”, and further injected that the Plaintiff Districts cannot obviously spend what they don’t have. Tr. Trans. (8/11/03), p. 208, ll. 24- p. 209 ll. 2.

⁴² See Defendants’ Exhibit 251. These inputs include the following: dollars per student, student-teacher ratio, student attendance, teacher attendance, student retention, days of professional development allotted, percentage of teachers with advanced degrees, percentage of contract teachers, percentage of teachers with out-of-field certification, teacher retention rate, average teacher salary, percent of budget spent on teacher salaries principal tenure, and the like.

to which the State has the capacity to improve student achievement through school based policies. While neither of the questions is the precise legal issue presented in this case, this evidence clarifies and puts in context the many variables that affect student achievement, and therefore is pertinent to the Court's decision.

413. Many of these variables are identified in Plaintiffs' Exhibit 251, Table 8. This exhibit captures most, if not all of the input issues raised by Plaintiffs in their case, and provides a convenient way to compare the inputs present in schools with different levels of achievement.

414. Plaintiffs' Exhibit 251 shows the mean values for all schools in the State. Comparing these "average" values to the gap closing schools is particularly instructive. The difference between the gap closing schools and the average of all schools is virtually indistinguishable in most categories.

415. Yet the gap closing schools are clearly accomplishing results that are highly desirable and are much better than average. These results do not appear to be correlated in any significant way with the input values for the gap closing schools. Whatever is driving the better achievement in these schools is not attributable to superior resources.

416. When the mean input values for the schools in the Plaintiff Districts are compared to the mean values in the gap closing schools, *see* Plaintiff's Exhibit 251B, the fact that the Plaintiff school values are somewhat lower (with the exception of per pupil expenditures) does not explain the relatively poorer performance of the schools in those districts. This is but further corroboration of the analyses done by Dr. Podgursky, Dr.

Armor, and others that demonstrate the absence of any direct relationship between these inputs and student achievement.

XIII. THE RELATIONSHIP BETWEEN POVERTY AND ACHIEVEMENT

417. This analysis raises the obvious question: If student achievement is not significantly related to money, teacher characteristics, or other school inputs, what accounts for the fact that students in some districts perform better than students in others?

The most recent administration of the Pact test yielded the following results:

Percent of Students Scoring Basic or Above on 2005 PACT		
District	ELA	Math
Allendale	53.8%	53.1%
Dillon 2	60.6%	59.6%
Florence 4	45.6%	50.0%
Hampton 2	52.7%	50.2%
Jasper	55.2%	48.2%
Lee	51.0%	50.9%
Marion 7	47.4%	48.9%
Orangeburg 3	60.3%	60.1%

418. The Defendants contend that since large percentages of students in the Plaintiff Districts have scored at least the basic on the test indicates that all students in those districts have the opportunity to obtain a minimally adequate education. The Defendants describe to the theory that the cup is “half full”. However, the converse of that belief is that 40 to 60 % of the students in the Plaintiff Districts are scoring at below

basic. According to the testimony offered by Suzette Lee, a student scoring below basic has not met minimum standards for student performance based on the approved curriculum standards. That student is not prepared for the next grade and must have an academic assistance plan. Tr. Trans. (8/12/03) p. 176 ll. 22 – p. 177 ll. 3. The Defendants are correct in saying that bad outcomes alone do not mean that opportunity is not present and it is not possible to say that all students who fail to achieve were deprived of the opportunity to success.

419. The Defendants offered the analysis of Dr. Walberg and others which, in effect, “factored out” the characteristics of poverty from other inputs in the educational process. The results of those analyses would lead to the conclusion that, except for the factor of poverty, there is little difference between schools in the Plaintiff Districts, and other schools in the State. While factoring out poverty is possible in a statistical analysis, poverty is a reality in the lives of the students in the Plaintiff Districts which can not be factored out. It is the most pervasive influence in their lives and in their educational abilities and achievement. Indeed the record in this case makes it clear that the principal factor that is directly associated with different levels of student performance is poverty.

420. This relationship was introduced into the case early on by Plaintiffs through the testimony of Dr. Greg Hawkins. Dr. Hawkins presented the first of many statistical analyses of information contained in the school report cards received by the Court. *See* Plaintiffs’ Exhibit 5051. According to Dr. Hawkins’ analysis, two-thirds of the differences in PACT scores at the district level are accounted for by differing percentages of students on free and reduced lunch. Tr. Trans. (08/14/03), p. 102, ll. 15-19. Stated another way, if all of the districts in South Carolina had the same percentage

of students on free and reduced lunch, the range of average PACT scores would only be one-third as great as it currently is. Tr. Trans. (08/14/03), p. 103, ll. 12-23. This would be true without changing any other variables, such as teacher characteristics, funding, professional development days, or teacher turnover.

421. Similar results were obtained by every other researcher who looked at this relationship, including Dr. Anderson, who also testified for the Plaintiffs. *See* Plaintiffs' Exhibit 6835C.

422. Moreover, the relationship between poverty and achievement would appear to be greater in the very young. Dr. Walberg testified that "the first four to six years of life can be very decisive in a child's development. They are the formative years where they are exposed mainly to the parents ... Tr. Trans. (7/1/04) p. 176 ll. 21-24. Dr. Walberg further testified that "...before schooling really begins, children are behind in the abilities that they need to succeed in school." Dr. Walberg further concluded that the child's ability affects achievement, but all the other factors (socioeconomic factors related to poverty) have a continuing impact. Tr. Trans. (7/1/04) p.. 177 ll. 7-14.

423. Taking all of this evidence together, it is apparent that poverty is directly related to achievement, and explains most of the variation in achievement between districts and schools.

424. There was considerable debate in the case about whether poverty "causes" poor achievement. Dr. Lorin Anderson's path analysis is said by him to reveal causation. Tr. Trans. (11/05/04), p. 19, ll. 24 – p. 20, ll. 6. That analysis demonstrates a direct effect of poverty on PACT scores of minus .765, Plaintiffs' Exhibit 6835C, meaning that for

every 1% increase in the poverty level, there will be a reduction in PACT scores of three-quarters of one percent. Tr. Trans. (11/29/04), p. 22, ll. 14-20.⁴³

425. Dr. Hawkins' scattergraph/scatterplot analysis reached a similar result. According to Dr. Hawkins, the relationship between free and reduced lunches (a proxy for poverty) and student achievement as determined PACT scores, is a profound negative relationship. The correlation coefficient, according to Dr. Hawkins, is minus 0.789. Dr. Hawkins explained that statisticians spend their careers trying to get to the point where they can explain that level of variation. He characterized it as a "very, very strong, and extremely strong correlation." Tr. Trans. (8/14/03) p. 70 ll. 1-15.

426. The statistical analysis of the experts, as well as anecdotal evidence, indicates that poverty is, in turn, both the parent and the child of poor academic achievement. Each follows the other in a debilitating and destructive cycle until some outside agency or force interrupts the sequence.

427. Whether regarded as causative (as this Court concludes) or not, the relationship between poverty and achievement is not accidental, as explained by Dr. Hawkins and Dr. Walberg. Poverty itself is associated with conditions that Dr. Hawkins called "risk factors," which themselves are associated with poor academic performance. Plaintiffs' Exhibit 5051. Similarly, Dr. Walberg charted relationships between poverty and intervening conditions that themselves affect achievement. Defendants' Exhibits 628 and 630. It is important to note that both the risk factors identified by Dr. Hawkins and

⁴³ The powerful nature of this relationship should be contrasted with the much weaker relationship between teacher variables and achievement, again as revealed by Dr. Anderson's path analysis: For every 1% increase in the composite "teacher quality" variable, there will only be a .1% increase in PACT scores, a 10 to 1 ratio. *Id.* Thus, if one attempts to raise PACT scores by 25% by improving teacher quality alone, a 250% improvement in those characteristics would be necessary.

the conditions identified by Dr. Walberg are factors that are present in society as a whole, and are not directly related to school programs. Ameliorating these factors would have a positive effect on achievement, (Tr. Trans. (11/05/04), p. 21, ll. 9-19), but these issues lie outside the traditionally accepted scope of education policy, and require interventions beyond those traditionally produced by schools.

428. This brings the Court to the question that lies at the heart of this case.

Although schools cannot reasonably be expected to eliminate poverty, can schools address in specific ways the effects of poverty on achievement, and if so, must they do so as a matter of constitutional obligation? The Abbeville Court provides the answer. “We hold today that the South Carolina constitution’s education clause requires the General Assembly to provide the opportunity for **each** child to receive a minimally adequate education. Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540 (emphasis added). The modifier “each” is dispositive of the question. “Each child” refers to children born to poverty as surely it does to those born to affluence.⁴⁴ The State’s obligation to provide an opportunity for a minimally adequate education is, in no way, reduced to children born to poverty. It is, in fact, enhanced for such children. The indisputable relationship between poverty and academic achievement and the magnified impact of poverty on the abilities of the very youngest, the most vulnerable, form the basis of the obligation. Should the impact of poverty not be addressed, at an early age, in the educational process, there would be no constitutionally mandated “opportunity” as defined above. The Court

⁴⁴ The superintendents referred collectively to their at-risk students when describing the difficulties faced by the Plaintiff Districts. Tr. Trans. (01/06/04), p. 125, ll. 1-8; (03/05/04), p. 48, ll. 8-9; (04/01/04), p. 141, l. 20; p. 142, ll. 10-18; (10/08/03), p. 117, ll. 2-21; (02/09/04), p. 32, ll. 5-9. Data generated, collected, and published by SDE breaks student populations down into groups of students, including students on free and reduced lunch and students who pay for lunch. Most, if not all of the expert witnesses called by both sides referred collectively to at-risk students as sharing common characteristics that create challenges for educational policy. It is therefore appropriate under the evidence to consider such students collectively.

therefore finds that the education clause of the South Carolina Constitution as defined in Abbeville County, imposes an obligation upon the General Assembly and the State of South Carolina to create an educational system that overcomes, to the extent that is educationally possible, the effects of poverty on the very young, to the pre-kindergarten and kindergarten, to enable them to begin the educational process in a more equal fashion to those born outside of poverty.

429. This Court further finds that in spite of the educational improvements enacted by the Defendants in recent years and the funding offered in support of those programs, the Defendants have failed in their constitutional responsibility to provide an opportunity for minimally adequate education to the very youngest and, in doing so, have failed to address the very reality testified to by their own expert Dr. Walberg, that before school really begins with children of poverty, they are already behind in the abilities that they need to succeed in school.

430. One factor that limits the ability of schools to overcome the effect of poverty on achievement is the limited amount of time that children are in at school relative to the time that they are in a different environment. Dr. Walberg illustrated this disparity in Defendants' Exhibit 3307, page 5. As calculated by him, a child spends approximately 12,960 hours in school during the first 18 years of his or her life. That must be compared with the approximately 144,720 hours that the same child would spend outside of school during the same period. Even if the school day or year were substantially extended, the relative time out of school would still far exceed the time in school. The challenges that schools face in trying to alter environmental factors that affect achievement are therefore apparent.

431. The difficulty for schools to ameliorate the effects of poverty on achievement is acknowledged by Plaintiffs' expert Dr. Lorin Anderson. When discussing the factors associated with poverty that intervene to impede achievement, such as prenatal factors, family status, divorce, frequent moving, and child rearing, *see* Defendants' Exhibit 3307, p. 3, Dr. Anderson noted that "if they can be altered, there's hope for minimizing or decreasing the effect of poverty on achievement." Tr. Trans. (11/05/04), p. 21, ll. 9-19. The above factors explain in part the ineffectiveness of remedial efforts mandated by the EEA on Plaintiff Districts. While the millions of dollars spent each year on the Plaintiff Districts no doubt have resulted in isolated incidences of improvement, there is no empirical or statistical evidence to suggest that those monies had any appreciable impact on improving student achievement. Since so much of a child's intellectual capacity and ability is formulated during within the first four to six years of life, as testified to by Dr. Walberg, and since poverty, especially at a young age, accounts for more than 2/3's of the difference in academic achievement, as measured by test scores, as testified to by Dr. Hawkins, the overlay of poverty on the very young appears to create a template for poor academic achievement and intellectual ability that is very difficult to break. That is why it is essential to address the impact of poverty as early as possible in the lives of the children affected by it.

432. While Dr. Guthrie opined that the educational community has not "constructed a series of strategies and activities that would enable me or any other reasonable person . . . to assert that schools can overcome the effects of poverty in order to elevate achievement." Tr. Trans. (09/21/04), p. 58, ll. 7 – 14, that does not mean that

others have not developed specific programs and strategies⁴⁵ that, appropriately funded show considerable promise in ameliorating at least the effect of poverty on achievement.

**XIV. THE OPPORTUNITY TO ACQUIRE A MINIMALLY ADEQUATE
EDUCATION DOES NOT EXIST FOR EVERY STUDENT IN
THE PLAINTIFF DISTRICTS**

433. The foregoing factual findings provide an appropriate and necessary context for resolution of the ultimate issue in this case: Have the Defendants provided the children in the Plaintiff Districts the opportunity to acquire a minimally adequate education? I find they have not.

XV. SUMMARY

As it is been stated throughout this Order, the distinction between opportunity and achievement has been contested by the parties since the trial began. The Plaintiffs have taken the position that: (1) All children can learn at high levels; (2) Large percentages of children in the Plaintiff Districts fail the PACT test, and other measures of educational achievement; therefore, the opportunity for those students to learn must be absent.

The Defendants take the position that bad outcomes alone do not mean that opportunity is not present and, further, that the Court cannot conclude that all students who fail to achieve were deprived of the opportunity to success. The Defendants further argue that the results of the PACT test should not be used as a basis for making cause and effect statements about the effectiveness of the instruction offered to different groups.

This Court does not find that poor PACT test results alone are evidence of a lack of an opportunity to receive a minimally adequate education. Neither does it hold that a high incidence of poverty (as reflected by the percentage of students on free and reduced lunch) is evidence of a lack of an opportunity to receive a minimally adequate education.

⁴⁵ See Appendix.

However, when those two factors come together so dramatically as they do in the case of the Plaintiff Districts, this Court is led to the conclusion that the children of the Plaintiff Districts are not receiving the opportunity to obtain a minimally adequate education. Here there is evidence that the Plaintiff Districts have from 68% to 91.7% of students on free and reduced lunch. PACT scores for the Plaintiff Districts for the year 2002 indicate that 31.5% to 56.9% are scoring at below basic in ELA and 45.3% to 80.3% are scoring at below basic in math.

The impact of poverty on achievement is not questioned and the statistics cited above are irrefutable evidence of that impact. There is testimony from experts and educators alike that effective early childhood intervention, especially to children who are born into poverty, can make a difference in educational abilities and achievements. In our State, as in most states, statistical evidence leading to that conclusion is somewhat lacking or inconclusive, because effective pre-kindergarten programs and four-year-old kindergarten programs are non-existence or unavailable to the masses. Moreover, early childhood intervention from pre-kindergarten to grade three has not received the priority needed to be an effective force in minimizing the impact of poverty on educational abilities and achievement throughout the educational process.

The Plaintiff Districts have received substantial amounts of monies under the EAA and similar programs in remediation as a response to the poor academic performance of certain schools and school districts. The expenditure of those monies has been largely ineffective because they come too late.

The child born to poverty whose cognitive abilities have been largely formed by the age of six in a setting largely devoid of the printed word, the life blood of literacy,

and other stabilizing influences necessary for normal development, is already behind, before he or she receives the first word of instruction in a formal educational setting. It is for that reason that early childhood intervention at the pre-kindergarten level and continuing through at least grade three is necessary to minimize, to the extent possible, the impact and the effect of poverty on the educational abilities and achievements of those children.

Such early intervention not only makes educational and humanitarian sense, it also makes economic sense. The testimony in this record of experts, educators, and legislators alike is that the dollars spent in early childhood intervention are the most effective expenditures in the educational process.

XVI. CONCLUSIONS

The Court concludes that the instructional facilities in the Plaintiff Districts are safe and adequate to provide the opportunity for a minimally adequate education as defined in Abbeville County.

The Court concludes that the South Carolina Curriculum Standards at the minimum encompass the knowledge and skills necessary to satisfy the definition for a minimally adequate education as set out in Abbeville County.

The Court further concludes that the South Carolina system of teacher licensure, including the minimum passing scores on Praxis I and the different Praxis II tests, is sufficient to ensure at least minimally competent teachers to provide instruction consistent with the curriculum standards.

The Court further concludes that inputs into the educational system, except for the funding of early childhood intervention programs, are sufficient to satisfy the constitutional requirement.

The Court further concludes that the constitutional requirement of adequate funding is not met by the Defendants as a result of their failure to adequately fund early childhood intervention programs.

Finally, this Court concludes that the students in the Plaintiff Districts are denied the opportunity to receive a minimally adequate education because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements.

IT IS THEREFORE ORDERED that judgment shall be entered for the Plaintiffs consistent with the findings and conclusions set out above.

AND IT IS SO ORDERED.

/s/ Thomas W. Cooper, Jr.

The Honorable Thomas W. Cooper, Jr.

Resident Judge of the Third Judicial Circuit

Manning, South Carolina

December 29, 2005

APPENDIX

Early childhood intervention

The importance of early childhood intervention, especially for at-risk children, is virtually undisputed by any of the expert witnesses or educators who testified in the trial.

At-risk students benefit the most when additional time is provided early in their lives in the form of early childhood intervention.

- Q: What would it take to close that gap . . . that coming out of poverty brings with the child?
- A: High quality, high quality early childhood programs. The sooner, the earlier, the better.

(Harris, Trial Tr. (9/30/03) 107:24-108:2, Harris 107.24 - 108.2.)

Students entering school from low-income families consistently demonstrate fewer cognitive, language, and social skills than children from non-poverty families. Many students from the Plaintiff Districts lack prior exposure to print rich environments, standard English or experiences beyond their front yard. This lack of exposure detracts from their ability to relate to, or comprehend and learn what is expected in their initial years of schooling. The at-risk five-year-old is behind his or her counterparts from the first day that child enters kindergarten. Pre-kindergarten programs are critical in preparing at-risk students for school. Dr. William Singleton, Superintendent of the Jasper County testified about the lack of exposure to reading materials experienced by the at-risk children in his district. "...Many of those students come from a home that does not have reading material. You will never see a newspaper on the lawn. So reading material is very important." Tr. Trans. (4/01/04) p. 146 ll. 13 – 16.

The evidence shows that when a child reaches third grade (the first year that PACT tests are given) and is performing below grade level that child is at-risk of academic failure. The same evidence also shows that the educational system has failed to provide too many at-risk children with an opportunity to acquire a minimally adequate education in their first 4 years of school. Examination results of third graders are disturbing in terms of the actual numbers of children failing to perform at grade level or above by the end of the third grade, a point in which point they have been in school for four years. This trend only continues as at-risk children move from grade to grade and their scores and performance continues to decline.

The South Carolina General Assembly has been well aware of the importance of early childhood development for many years. Senator John Matthews has been actively involved in the improvement of education within the State for more than two decades of legislative service. He testified that the Southern Regional Educational Board developed studies indicating that the earlier the intervention in the learning process of a child, the easier it is to bring the child up to standards and, from an investment standpoint, the State

receives a bigger return on the investment. Tr. Trans. (8/15/03) p. 180 ll. 11-15. Senator Matthews further acknowledged the legislative recognition that the years from birth through five years of age are critical to a child's ability to learn. Tr. Trans. (8/15/03) p. 221 ll. 8-18; p. 222 ll. 1-5.

The South Carolina General Assembly has incorporated provisions for early childhood education for at least 20 years. Indeed, it recognized in the initial 1984 version of the EIA that unless appropriate interventions are provided, early deficiencies in a child's skills and knowledge presage an unsuccessful school experience.

Compensatory education students are those who enter school with severe deficiencies in skills, knowledge, motivation, and other requisite traits which are necessary for building successful school experiences. These students have not formed the appropriate basis for learning as a result of having inadequate language development experiences, insufficient opportunities to experience success, and inadequate developmental opportunities. Therefore, such students can be expected to perform poorly, and will continue to perform poorly, on tests such as the CSAB, BSAP, and CTBS unless appropriate intervention is provided.

(Plaintiffs' Exhibit 5035 at 12).⁴⁶

The EFA included a weight in the basic funding formula for five-year-old kindergarten students who attended a half-day program. S.C. Code Ann. §§ 59-20-40(c), 59-20-40(c) and 59-35-10 (West Supp. 2004). The EIA added a voluntary half-day program for four-year-olds with predicted significant readiness deficiencies, *Id.* §59-5-65(8), but funded that program with an "add-on weight" meaning that each district received the same amount of funding for each four-year-old student regardless of the districts' respective taxpaying abilities. The General Assembly expanded the half-day program for five-year-olds to a full-day program in 1998. *Id.* § 59-35-10. Sandy Smith of the House Education and Public Works Committee testified that these provisions evidenced the State's policy to reach young children in the preschool years and provide for their educational needs. (S. Smith, Trial Tr. (6/17/04) at 232:15-233:5).

Through the EIA, the General Assembly also imposed a requirement on the Governor to develop a state plan on early childhood development and education "to assist the state in providing appropriate services for preschool children." (Plaintiffs' Exhibit 5035 (EIA) at 12) Ms. Smith confirmed that this provision was further evidence of South Carolina's public policy regarding early childhood intervention. (S. Smith, Trial Tr. (6/17/04) at 240:9-24).

In 1993, the General Assembly reinforced its belief in the necessity and efficacy of early childhood education through Act 135. Among the stated purposes of Act 135 were to emphasize early childhood education and prevention of future education

⁴⁶ The CSAB, BSAP, and CTBS mentioned in this section are student assessments that pre-dated the PACT tests. They are no longer used.

problems, to provide extra assistance and learning time so that young students will be prepared for fourth grade and eventually graduate with their peers, and to promote advancement of curriculum and programs beginning in the preschool years and extending through grade three to support the students' future success in grades four through twelve. S.C. Code Ann. § 59-139-05 (West 2004).

The National Education Goals adopted by the South Carolina General Assembly in 1993 specifically referenced the policy of the State that all children in South Carolina would start school ready to learn. S.C. Code Ann. § 59-141-10(A)(1) (West 2004). This state policy was confirmed by Sandy Smith at trial. (S. Smith, Trial Tr. (6/17/04) at 147:10-22).

Finally and perhaps most significantly, the General Assembly made explicit findings of fact regarding the importance and necessity of early childhood education and interventions in the First Steps to School Readiness Act of 1999. The preamble reads as follows:

Whereas, recent research has shown that children's brains develop more rapidly and earlier than previously understood and that early stimulation of the brain increases the learning ability of a child; and

Whereas, recent research in neuroscience supports the critical importance of the early childhood years and its life-long effects on a child's development; and

Whereas, the General Assembly realizes that without proper care, nurturing, and support during the early years of life, children have difficulty learning when they enter school; and

Whereas, parents have the primary role and duty to raise, educate, and transmit values to their children, while communities can support parents as the primary caregivers and educators of their young children; and

Whereas, the members of the General Assembly recognize that improving results for children and their families can best be accomplished when state government works in partnership with communities and families to define common goals, expected results, and benchmarks for services to children and families; joins with communities and families in building the capacity to accomplish shared results; and supports local efforts through more efficient state accountability, data collection, and administrative systems.

(Plaintiffs' Exhibit 5040 (First Steps) at 3-4).

The legislation itself included provisions for high quality early childhood development and education services as well as provisions for parental involvement and education efforts, and for health care and nutrition services for young children. All First

Steps activities and services must focus on lifelong learning through school readiness, parenting skills, family literacy, and adult and continuing education; health care and nutrition of young children; quality child care; and transportation for those services. S.C. Code Ann. § 59-152-100 (West 2004). In the words of Marie-Louise Ramsdale, the first Director of the South Carolina First Steps program, the overriding purpose of this legislation was “[t]o ensure that each South Carolina child could arrive at first grade healthy and ready to succeed in school and in life.” (Ramsdale, Trial Tr. (8/15/03) at 12:20-24.) Sandy Smith confirmed that the State’s policy was to prepare a child to learn for a lifetime. (S. Smith, Trial Tr. (6/18/04) at 96:12-17.)

Senator John C. Land, III, a thirty year legislator and the third most senior member of the South Carolina Senate, testified that the First Steps program was one of the best programs ever developed by the General Assembly, but its effectiveness was thwarted because it was never fully funded. Tr. Trans. (1/05/04) p. 17 ll. 17-22.

Sandy Smith agreed that the many statutes enacted by the General Assembly that provide early childhood development and educational services, including First Steps and Act 135, generally embodied the policy of the State of South Carolina “to reach children as much as possible before kindergarten so that they’re ready when they start school.” (S. Smith, Trial Tr. (6/17/04) at 231:9-15.)

Despite its recognition of the importance of early childhood education, the State continues to cut funding for these programs. Ramsdale Tr. Trans. (8/15/03) p. 72 ll. 2-13. As a result of decreased funding, the Plaintiff Districts are only able to offer a limited number of early childhood classes. These classes fail to accommodate more than half of the children in need. Dr. Singleton of Jasper testified that his district is only able to serve approximately half of the four-year-olds in the early childhood education program. See, e.g., Singleton, Trial Tr. (4/1/04) at 167:19-168:4. He stated, “We’d love to serve all of the four year olds, but right now we do not have those revenues to do that.” Id. at 168:14-15. Dr. Longshore testified that Orangeburg 3’s early childhood program is currently serving approximately 100 of the 240-260 children that enter school each year in that district. (Longshore, Trial Tr. (1/6/04) at 151:9-152:3.) Other districts also offered similar testimony. Consequently, many children in the Plaintiff Districts start school unprepared and continue to fall further and further behind.

Based on the evidence presented, effective and appropriate pre-school programs can materially assist at-risk children to be able to go to kindergarten and have an opportunity to acquire a minimally adequate education from the start. The absence of such pre-school intervention for at-risk children materially affects their ability to acquire this opportunity from the start of their academic ladder. For instance, Valerie Harrison testified: “[I]t is essential to get these kids on, on track early so that as they move through the grades they will have less problems.” (Harrison, Trial Tr. (2/9/04) at 45:1-3.)

Defendants question this expenditure as having no proven long-term effect or advantage for the children. Yet the Defendants’ own experts agree that early childhood

education is critical for at-risk students: "High quality preschool for students from lower income backgrounds has significant long-term impacts . . . on student academic achievement, as well as other desired social and community outcomes . . . Full-day kindergarten for students from low income backgrounds also has significant positive impacts on student learning in the early elementary grades." (Guthrie, Trial Tr. (9/21/04) at 152:3-13.)

The goal of pre-kindergarten is to prepare students to come to kindergarten with the skills and knowledge to be able to obtain the benefits of a kindergarten and early elementary education. For children at-risk, effective early children intervention from pre-kindergarten through grade 3 is essential to ensure such children the opportunity to receive a minimally adequate education.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 93-CP-31-0169

The State of South Carolina, *et al.*, ... Respondents,

v.

Abbeville County School District, *et al.*, ... Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the documents hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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