

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAY 1 2008

APPEAL FROM LEE COUNTY S.C. SUPREME COURT
Thomas W. Cooper, Jr., Circuit Court Judge
Case No. 2007-65159

Abbeville County School District, *et al.*, Petitioner,

v.

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

BRIEF OF *AMICI CURIAE*
SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER
AND
SOUTH CAROLINA ASSOCIATION OF SCHOOL NURSES

Susan J. Rose
Susan B. Berkowitz
South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, South Carolina 29202
Telephone: (803) 779-1113, ex. 102
Facsimile: (803) 779-5951
Email: srose@scjustice.org
sberk@scjustice.org

Attorneys for *Amicus* South Carolina Appleseed
Legal Justice Center

Edward W. Laney, IV
R. Hawthorne Barrett
Turner Padgett Graham & Laney P.A.
P.O. Box 1473

**STATE OF SOUTH CAROLINA
In the Supreme Court**

APPEAL FROM LEE COUNTY
Thomas W. Cooper, Jr., Circuit Court Judge
Case No. 2007-65159

Abbeville County School District, *et al.*, Petitioner,

v.

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

**BRIEF OF *AMICI CURIAE*
SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER
AND
SOUTH CAROLINA ASSOCIATION OF SCHOOL NURSES**

Susan J. Rose
Susan B. Berkowitz
South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, South Carolina 29202
Telephone: (803) 779-1113, ex. 102
Facsimile: (803) 779-5951
Email: srose@scjustice.org
sberk@scjustice.org

Attorneys for *Amicus* South Carolina Appleseed
Legal Justice Center

Edward W. Laney, IV
R. Hawthorne Barrett
Turner Padget Graham & Laney P.A.
P.O. Box 1473

Columbia, SC 29202
Telephone: (803) 254-2200
Facsimile: (803) 400-1454
Email: elaney@turnerpadget.com
tbarrett@turnerpadget.com

Attorneys for *Amicus* South Carolina
Association of School Nurses

TABLE OF CONTENTS

Table of Authorities.....iii

Introduction.....1

Identity of *Amici Curiae*.....1

Argument.....3

I. In order to fulfill its constitutional obligation to provide the opportunity for the required standard of education for *all* students, the state must consider the pervasiveness of poverty within the plaintiff districts and the impact of poverty on a student’s educational performance.....3

A. The disparity in academic performance known as the “achievement gap” exists between students from poverty and those from wealth, and high-poverty schools face particular obstacles to academic achievement.....3

B. A high percentage of South Carolina’s students attend rural schools where the relative isolation, combined with socioeconomic factors of poverty, create barriers to educational opportunity and challenges not faced by wealthier schools in more populated areas.....6

1. The relative isolation of rural schools means students endure longer bus rides and have fewer opportunities for cultural and social exposure.....6

2. Socioeconomic conditions commonly experienced by families living in poverty create barriers to learning by challenging the student’s attendance, preparedness and concentration.....9

II. School-based mechanisms, policies, and financial inabilities prevalent in the high-poverty plaintiff districts hinder the ability of school-age children in those districts to receive an education.....11

III. Schools and school districts throughout the United States with high levels of poverty have successfully refuted the presumption that “poor children cannot learn” by utilizing a common set of best practices designed to alleviate the effects of poverty and close the achievement gap.....12

A. **Through effective deployment of sufficient resources, numerous high-poverty schools have made substantial and sustained improvements in student performance.12**

B. **Theoretical challenges and commonly- accepted negative beliefs about poverty and education must be neutralized and replaced with a culture that believes in, encourages, and expects success from all.....14**

C. **“It’s being done.”15**

Conclusion.....18

TABLE OF AUTHORITIES

Cases

Abbeville Co. School District, et al., vs. State of South Carolina, et al.,
No. 93-CP-31- 0169 (3rd Cir) (2005).....11

Campaign for Fiscal Equity, Inc., et al., v. State of New York, et al.,
187 Misc.2d 1, 719 N.Y.S.2d 475 (2001).....11,12,18,19

Campaign for Fiscal Equity, Inc., et al., v. State of New York, et al.,
100 N.Y.2d 893, 801 N.E.2d 326 (2003).....11

Statutes, Codes and Rules

South Carolina Code Ann. § 59-67-1057

South Carolina Code Ann. § 59-16-10.....8

Secondary Sources

Whitney C. Allgood, *The Need for Adequate Resources for At-Risk Children*,
Working Paper No. 277, Economic Policy Institute, 2006.....3

State of California, Department of Education, *Closing the Achievement Gap:
Achieving Success for All Students*, available at
<http://closigntheachievementgap.org/cs/ctag/print/htdocs/success.htm>.....16

Karin Chenoweth, “It’s Being Done”: Academic Success in Unexpected Schools,
Harvard Education Press, 2007, an excerpt of which appeared as the column *No
reason schools can’t expect success from poor children*, The Greeley Tribune,
April 23, 2007.....15,17,18

Eline R. Delisio, *Got Questions? Ask the Homework Lady*, Education World, May 19,
2005, available at <http://education-world.com/a-issues/chat/chat144.shtml>.....10

George Farkas, *How Educational Inequality Develops*, National Poverty Center
Working Paper series, #06-09, 2006, available at
http://www.npc.umich.edu/publications/working_papers.....10,11

Barbara Ferry, *Poor health habits reason for grade gap*, The New Mexican, June 30, 2005, available at <http://www.freenewmexican.com/news/29529.html>.....9

Focus on Children, Boston Public Schools. *Murphy School Principal Marry Russo selected as MA principal of the year*, May 7, 2004, available at http://boston.k12.ma.us/bps/news/news_5_7_04.asp.....15

David Grissmer and Ann Flanagan, *Exploring Rapid Achievement Gains in North Carolina and Texas*, National Education Goals Panel, 1998.....13

H. Gregory Hawkins, *Understanding “Poor” Performance” Palmetto Achievement Challenge Test (PACT) Scores and Poverty*, The Jim Self Center on the Future, 2001.....3,4,10

H. Gregory Hawkins, *Education Accountability, School Report Card Ratings, and Spudd Webb: The Goal Really is Higher for Some than for Others*, The Jim Self Center on the Future, 2002.....13

The Impact of Poverty on Brain Development: Multiple Pathways, National Center for Children in Poverty, Columbia School of Public Health, 1998.....6

Learning Points Associates, *Achievement Gaps Literature Library, Schools Matter: Four Steps to Closing the Achievement Gap Once and For All*, available at <http://www.learnignpt.org/gaplibrary/text/schoolsmatter/php>.....14,18

Anne C. Lewis, *Redefining ‘Inexcusable,’* Phi Delta Kappan 86.2:100, University of South Carolina Libraries, 2004.....6

Gregory C. Malhoit, *Providing Rural Students with a High- Quality Education: The Rural Perspective on the Concept of Educational Adequacy*, Rural School and Community Trust, 2005.....3,6,8

Martha S. McCall et al., *Achievement Gaps, An Examination of Differences in Student Achievement and Growth*, Northwest Evaluation Association, November 2006.....3

Oregon Department of Education, Office of Educational Improvement and Innovation, *Closing the Achievement Gap, Oregon’s Plan for Success of All Students*, Vol. 1. No.1. August 2005.....15

Michael A. Rebell, *“Poverty, Meaningful Educational Opportunity, And the Necessary Role of the Court,”* 85 N.C. L. Rev. 1468-1544 (2007).....9

Richard Rothstein, *Even the Best Schools Can’t Close the Race Achievement Gap,* Poverty and Race Research Action Council, 2004.....10

Bridget Schulte and Dan Keating, *Pupils’ Poverty Drives Achievement Gap,* The Washington Post, September 2, 2001, at A01, available at <http://www.washingtonpost.com/ac2/wp-dyn/A27602-2001Aug31?la>.....3

Symposium, *The Social Costs of Inadequate Education,* Teachers College Symposium on Educational Equity, Columbia University (2005).....5

U.S. Dept. of Education, National Center for Education Statistics, “Dropout Rates in the United States, 2000,” available at http://nces.ed.gov/pubs2002/droppub_2001/.....4

U.S. Dept of Education, National Center for Education Statistics, “Dropout Rates in the United States: 2004,” available at: <http://nces.ed.gov/pubs2007/dropout/Table.asp>.....5

Joy Woodson, *The Long Ride to Class: Bus Travel Time is 2 Hours or More Each Way for Some Students,* The State, Oct. 27, 2007, at A1.....7

INTRODUCTION

Amici seek to show the court that the State can compensate for, and overcome, the poverty-based obstructions to a child's opportunity to learn by properly applying appropriate resources. This would give all the state's children the real opportunity for academic achievement regardless of geographical or economic differences.

IDENTITY OF AMICI CURIAE

South Carolina Appleseed Legal Justice Center ("the Center") advocates for low income people in South Carolina. The Center's goal is to effect systemic change by acting through the courts, the legislature, administrative agencies, the community, and the media, and by helping others do the same through education, training and co-counseling. In furtherance of that goal, the Center seeks to improve the public school system so that it will better serve low-income and minority students in South Carolina. By collaborating with the legal, educational and social services communities, the Center advocates for legislation and policies that ensure equal educational opportunities for all children.

The Center has a strong interest in the outcome of this case, as the Court's decision will affect all school-age children throughout the state who come from economically disadvantaged backgrounds. These children are currently at high risk of not receiving a "minimally adequate" education. The failure to provide such an opportunity to these children would prevent them from becoming productive members of society or attaining economic security for themselves and their families.

The South Carolina Association of School Nurses (“the Association”) promotes the delivery of quality health programs to the school population by strengthening the growth of professional school health nurses and advancing the practice of school nursing. The Association also seeks to increase the community’s awareness of both the roles of school nurses and the impact of school health services on academic performance. In addition, the Association works to increase the availability of school health services to South Carolina’s students.

The Association recognizes the undeniable link between health and education, and it believes physical, psychological and emotional well-being all enhance academic achievement. Inez Tenenbaum, former South Carolina Superintendent of Education, affirmed this belief when she stated, “A study conducted found that there is a missing key in southern school districts; there is not enough focus on the ‘whole health’ of a child when considering his or her academic performance.” Unmet health needs hinder students’ academic performance, and this is especially true in school districts that have a high percentage of students who live in poverty. Removing these health barriers to learning and meeting the health needs of South Carolina school children should be a priority for our state legislature. If the legislature is to do so, however, it must first address issues related to poverty and education.

ARGUMENT

I. **In order to fulfill its constitutional obligation to provide the opportunity for the required standard of education for all students, the state must consider the pervasiveness of poverty within the plaintiff districts, as well as its impact on educational performance.**¹

A. **The disparity in academic performance known as the “achievement gap” exists between students from poverty and those from wealth, and high-poverty schools face particular obstacles to academic achievement.**²

“The heart of the achievement gap is in how each individual student grows through his or her educational career.”³ A study of the reading level of third graders taken from a sample of students across the United States during the 2004-2005 school year found that for every score level, students in high-poverty schools grew less than their counterparts at wealthier schools. For every two students who start the school year with the same score, the student who attends the high-poverty school is more likely to end the year behind the student who attends the low-poverty school.⁴ In South Carolina, the numerical correlation between poverty and academic performance

¹ In South Carolina, poverty in terms of student population is determined by the percentage of students eligible to receive free and reduced-price lunches.

² See Martha S. McCall, et al., *Achievement Gaps, An Examination of Differences in Student Achievement and Growth*, Northwest Evaluation Association, Nov. 2006; Bridget Schulte and Dan Keating, *Pupils’ Poverty Drives Achievement Gap*, The Washington Post, Sept. 2, 2001, available at <http://www.washingtonpost.com> (analysis of test scores and economic status of 50,000 students in the DC area); H. Gregory Hawkins, *Understanding “Poor” Performance” Palmetto Achievement Challenge Test (PACT) Scores and Poverty*, The Jim Self Center on the Future, 2001; Gregory C. Malhoit, *Providing Rural Students with a High- Quality Education: The Rural Perspective on the Concept of Educational Adequacy*, Rural School and Community Trust, 2005; Whitney C. Allgood, *The Need for Adequate Resources for At-Risk Children*, Working Paper No. 277, Economic Policy Institute, 2006.

³ McCall, et al, *supra* note 2, at 32.

⁴ *Id.* at 36.

demonstrates that for every two-percentage point increase in students enrolled in free or reduced-price lunch programs at a school, there will be a one-percent decrease in students meeting or exceeding standards on reading and math levels tested in the Palmetto Achievement Challenge Test (PACT).⁵

South Carolina has established some of the highest academic performance testing standards in the country. All too often, when students score poorly on tests, the response is to point to this fact and counter that the performance is relative – *i.e.*, since the standards are so high, a poor score really is not what it seems. High standards alone are meaningless, however, if institutional obstacles to realistically achieving them remain intact. There is no possible reason why the State would not want all its students to have every opportunity to attain the educational performance goals that it has set.

Students are in danger of having to repeat the grade if they do not perform satisfactorily on the PACT, have consistently poor grades, or, in their teacher's judgment, do not achieve the requirements of their grade level. Research shows that students who are held back in at least one grade have an increased likelihood of eventually dropping out of school entirely.⁶ Nationwide in 2000, young adults living in families with incomes in the lowest 20% were six times more likely to drop out of high school.⁷ The 2004 dropout rate for families in this income category was 10.4%, compared with 4.6% for middle income students and 2.5% for students from high-

⁵ Hawkins, *supra* note 3, at 20.

⁶ Hawkins, *supra* note 3, at 20.

⁷ U.S. Dept. of Education, National Center for Education Statistics, "Dropout Rates in The United States, 2000," *available at* http://nces.ed.gov/pubs2002/droppub_2001/.

income families.⁸ High dropout rates carry detrimental consequences for the community at large. For example, a dropout has limited potential earnings, lower interest in seeking higher education, decreased opportunities to contribute to society, and increased reliance on publicly supported benefit programs. Clearly, then, high dropout rates are a legitimate public concern.

Not surprisingly, higher levels of education statistically increase employment options and future earnings. Only about half of the nation's dropouts hold down regular jobs, compared with 69% of high school graduates.⁹ This dooms a large number of dropouts to sporadic and lower incomes and prevents them from contributing much, if anything, to the tax base. Furthermore, students who have had the opportunity to obtain an education are also more likely to pursue higher education, seek fulfilling employment, and enjoy a higher degree of economic stability. In addition, people with higher levels of educational attainment are more likely to vote and participate in the governmental and civic processes.¹⁰ Conversely, the lack of an adequate education severely limits a child's options and opportunities and makes that child more likely to be arrested, become pregnant, use drugs, experience violence, and require public assistance.¹¹

⁸ U.S. Dept of Education, National Center for Education Statistics, "Dropout Rates in the United States:2004," *available at*: <http://nces.ed.gov/pubs2007/dropout/Table.asp>.

⁹ Symposium, *The Social Costs of Inadequate Education*, Teachers College Symposium on Educational Equity, Columbia University (2005).

¹⁰ *Id.* at 18.

¹¹ *Id.* at 17.

B. A high percentage of South Carolina's students attend rural schools, where the relative isolation, combined with socioeconomic factors of poverty, create barriers to educational opportunity and challenges not faced by wealthier schools in more populated areas.

Poverty is pervasive in the plaintiff school districts. Although educational opportunity is just one facet of a child's life, the impact that poverty has on every other area of existence culminates to decrease that child's learning experience.¹² In other words, "...poverty robs children of all sorts of opportunities to learn, to become curious, and to be guided wisely by adults."¹³ To overcome these disabling conditions, and obtain an adequate education, children living in poverty need more financial resources, increased programs developed to address specialized needs, instructional supplies, more effective and high-quality teachers, and access to technology and high-quality curriculum.¹⁴ Unfortunately, these resources that are common in wealthier districts are unavailable where they are most sorely needed.

1. The relative isolation of rural schools means students endure longer bus rides and have fewer opportunities for cultural and social exposure.

Rural schools are by nature generally isolated. Longer distances between the schools and the students they serve result in those student riding buses for long amounts of time. In 2007, more than 400 school bus routes in the state extended past

¹² The Impact of Poverty on Brain Development: Multiple Pathways, prepared by the National Center for Children in Poverty, Columbia School of Public Health, 1998.

¹³ Anne C. Lewis, *Redefining 'Inexcusable'*, Phi Delta Kappan 86.2:100, University of South Carolina Libraries, 2004.

¹⁴ See Malhoit, *supra* note 2.

90 minutes each way.¹⁵ This is in spite of a law specifically designed to prohibit excessively lengthy bus rides.¹⁶ Granted, the law includes conditions under which the maximum time a student can spend riding a school bus may be exceeded. Significantly, though, these conditions (*i.e.*, low population density, circuitous or meandering roads, waterway barriers, etc.) are common occurrences along any vehicular route in rural South Carolina. For example, in Lexington County School District 4 (one of the plaintiff districts in this case), children nearest the Saluda County line face a nearly two-hour one-way trip.”¹⁷

When a student rides a bus for an extended period, he or she is not studying, playing, resting, or otherwise enjoying the options that are available to students who have the advantage of other transportation options, or who simply live closer to school. The lack of transportation options also affects the student’s wellbeing in other, less obvious ways. A student facing extended bus rides is often unable to participate in extracurricular after-school activities. When this occurs, the student misses out on what can be a critical part of a student’s social development, as well as a potential source of pride and enthusiasm about school. Again, the students losing these opportunities are often the ones who most desperately need them.

¹⁵ Joy Woodson, *The Long Ride to Class: Bus Travel Time is 2 Hours or More Each Way for Some Students*, *The State*, Oct. 27, 2007, at A1.

¹⁶ See S.C. Code Ann. §59-67-105(A)(1976): “A student may not ride continuously on a state-owned school bus for more than ninety minutes. With the approval of the Department of Education, the ninety-minute maximum ride time may be exceeded when the area's geography requires longer than average highway travel because of a circuitous or meandering road network, extremely low population density, or waterway barriers. The ninety-minute maximum ride time may be exceeded when attendance zones are multidistrict or countywide.”

¹⁷ Woodson, *supra* note 14, at A1.

The isolation of rural school districts affects educational opportunities in other ways as well. Rural and high poverty areas frequently lack the cultural infrastructure that schools in wealthier communities rely upon to supplement their educational services. Longer distances to museums, libraries, and cultural centers often limit the world of a poor, rural student. Through a limited window comes limited light, and for many poor children, their school provides the only opportunity for knowledge about the world outside of their immediate surroundings.¹⁸ This obviously makes school all the more important. Yet, children who attend a school that denies them the opportunity for a minimally adequate education are not exposed to the outside world and the opportunities it presents. Nor do they receive the tools that would enable them to become productive members of that society. These failures shortchange the students, their families, the community, and the state.

In addition, there may be minimal availability of more rigorous and high-level course offerings in high-poverty or rural schools. This could stem from the absence of qualified instructors in the district to teach advanced classes or specialized subjects. It could also be the result of too few students applying to take them, thereby negating the cost effectiveness of developing such a curriculum.¹⁹ The only option for a poor student attending a school in this situation is to enroll in low-level or non-academic courses. This is but another example of a rural district's isolation

¹⁸ See Malhoit, *supra* note 2, at 19.

¹⁹ In 2007, the General Assembly authorized the South Carolina Virtual School program (S.C. Code Ann. 59-16-10 *et seq.* (1976)), designed to allow students to take classes online that are not offered in their brick-and-mortar school. As participation requires the use of a computer and high-speed internet, children that are poor and do not have access to these tools are effectively shut out from participating.

negatively affecting the educational opportunities available to their students. Simply put, the impact of this isolation cannot be ignored when considering the issues involved in this appeal.

2. Socioeconomic conditions commonly experienced by families living in poverty create barriers to learning by challenging the student's attendance, preparedness and concentration.

Overcrowded housing, hunger, and lack of medical care constitute the three struggles most associated with poverty.²⁰ Overall, lower-income children are in poorer health, and poor health depresses student achievement.²¹ “Children from low-income households are more likely to have severe vision impairments, hearing problems, untreated cavities, and exposure to lead dust and poisoning and/or asthma. All of these things affect a student's ability to learn.”²² Inadequate nutrition or lack of access to sufficient amounts of healthy food results in difficulty with concentration. Sometimes, the free or reduced-price meals at the school are the only food a child receives all day. Poor health in young children often manifests itself in symptoms such as poor self-control, irritability, and lack of focus, which may be

²⁰ Michael A. Rebell, “*Poverty, Meaningful Educational Opportunity, And the Necessary Role of the Court*,” 85 N.C. L. Rev. 1468-1544, 1471. This article argues for a commitment to “meaningful educational opportunity,” that in essence would require school districts and local public and nonprofit agencies to provide a comprehensive range of specific in-school and coordinated out-of-school services to children from backgrounds of concentrated poverty. The article further contends that the needed reforms cannot be achieved without the continued and expanded involvement of the courts.

²¹ Barbara Ferry, *Poor Health Habits Reasons for Grade Gap*, The New Mexican, June 30, 2005, available at <http://www.freewmexican.com/news/29529.html>

²² Rebell, *supra* note 19, at 1472.

mistaken as a need for remedial classes, special education, or worse, unwarranted disciplinary measures.

Primary care physicians are fewer and farther apart in low-income communities, and disadvantaged children may be more likely to miss school for conditions which would otherwise have received treatment.²³ Coping with untreated health issues causes a greater propensity to fall behind academically, whether the student attends school with compromised concentration, motivation and focus, or stays home and misses instruction time.

Children in poor households are also likely to have fewer educational opportunities and resources readily available at home. Such children often have household responsibilities that take precedence over homework or academic studies. If a child is working to support a family, taking care of siblings, or running household errands, these adult “chores” take an inevitable toll on performance during the school day. Furthermore, the very concept of homework causes more problems for children without a support system at home.²⁴ The presence of household material resources (including books), interaction among household members, and the amount of instruction a child receives from parents all impact the child’s preparation for, and

²³ Richard Rothstein, *Even the Best Schools Can’t Close the Race Achievement Gap*, Poverty and Race Research Action Council, 2004 *see also* Hawkins, *supra* note 2, at 6-8.

²⁴ Ellen R. Delisio, *Got Questions? Ask the Homework Lady*, Education World, May 19, 2005, *available at* http://education-world.com/a_issues/chat/chat144.shtml.

performance in, school.²⁵ Households operating on the financial margins are less likely to be able to provide this support consistently and with the necessary quality.

II. School-based mechanisms, policies, and financial inabilities prevalent in the high-poverty plaintiff districts operate to hinder the ability of school-age children in those districts to receive an education.

“Opportunity means the *chance* for progress or achievement to occur...”
Abbeville Co. School District, et al., v. South Carolina, et al. Case No.93-CP-31-169, Order dated December 25, 2005, at 16. “As the trial court (in Campaign for Fiscal Equity v. New York, 187 Misc. 2d at 63, 719 N.Y.S. 2d 475 (N.Y. 2003)) correctly observed, ‘this opportunity must still be placed within reach of all students,’ including those ‘who present with socioeconomic deficits.’”²⁶ Are all of the children in the plaintiff districts afforded that chance? Is this opportunity placed within the reach of all of the children in those districts? These questions are obviously of central importance to this case.

If there are institutional mechanisms in place, such as school or district policies, procedures, or practices that effectively curtail the chances for academic achievement of children from backgrounds of poverty, the answer to both of these questions is an unequivocal “no.” When a child has to ride for two hours on the school bus every day because they live in a poor rural district, that is one such mechanism. When a child’s class never sees the inside of a museum because the school does not have enough money for a field trip, that is another. When a child

²⁵ See George Farkas, *How Educational Inequality Develops*, National Poverty Center Working Paper series, #06-09, 2006.

²⁶ Campaign for Fiscal Equity et al., v. State of New York et al., 100 N.Y.2d 893, 801 N.E. 2d 326, 337 (N.Y. 2003) (*citing* 187 Misc. 2d at 63, 719 N.Y.S.2d 475 (2001)).

reports to school with an undiagnosed eye condition and is placed in special education because the instructor confuses his ability to see with his ability to learn, that is still another. When a child does not get enough to eat at home and is relegated to a continuous diet of peanut butter-and-jelly sandwiches at school as an “alternative meal” because their parent has not returned the application for free or reduced-price lunches, that is an additional mechanism. When a child does not have current edition textbooks to study from, that is such a mechanism. When a child is continually left behind in lessons because no one has taken the time to help them catch up, that is such a mechanism. Each of these examples is real, and these problems diminish the prospects for progress or achievement. Thus, the students in these districts never get the requisite “chance” they deserve.

III. Schools and school districts throughout the United States with high levels of poverty have successfully refuted the presumption that “poor children cannot learn” by utilizing a common set of best practices designed to alleviate the effects of poverty and close the achievement gap.

A. Through effective deployment of sufficient resources, numerous high-poverty schools have made substantial and sustained improvements in student performance.

“Demography is not destiny.”²⁷ Institutional disparities that manifest over time require institutional remedies, and to bring children growing up in poverty to common, meaningful educational standards will cost more. According to Dr. Gregory Hawkins of Clemson University’s Jim Self Center, “both the National Education Association and The Education Trust advance the ideal that ‘all children can achieve,’ but acknowledge that poverty and inequitable learning resources and

²⁷ Campaign for Fiscal Equity et al., v. State of New York et al., 187 Misc. 2d at 63, 719 N.Y.S.2d 475 (2001), at 491.

opportunities constitute a very real and debilitating obstacle to widespread realization of this ideal.”²⁸ Dr. Hawkins contends that “if we really want to activate and enable the vast potential in every child in every school, we must consider ways to meaningfully counter poverty’s effects,” and offers by way of solution the notion that “public policy and programs, economic development strategies and the like have potential to mitigate the effects of poverty in our schools,” which data shows as the greatest hurdle to all children achieving high and rigorous standards.²⁹

After students in North Carolina and Texas made greater combined student achievement gains in math and reading (National Assessment of Educational Progress test scores from 1992-1996), than any other state, a study concluded that the gains, which were significant and sustained over time, were most plausibly explained by the policy environment established in each state.³⁰ The overarching reasons for policy success were leadership from the business community, political leadership, and the continuity and stability of reform policies over time. These reform policies included state-wide academic standards, systems of accountability, increased local flexibility for administrations and teachers in meeting those standards, computerized feedback systems and data for continuous improvement, shifting resources to schools with more disadvantaged students, and the infrastructure to sustain reform.³¹

²⁸ H. Gregory Hawkins, *Educational Accountability, School Report Cards and Spudd Webb: The Goal Really is Higher for Some than for Others*, The Jim Self Center on the Future, 2002.

²⁹ *Id.*

³⁰ David Grissmer and Ann Flanagan, Exploring Rapid Achievement Gains in North Carolina and Texas, National Education Goals Panel, November 1998.

³¹ *Id.*

B. Theoretical challenges and commonly-accepted negative beliefs about poverty and education must be neutralized and replaced with a culture that believes in, encourages, and expects success from all.

Theoretical challenges regarding schools and children of poverty pose obstacles to the commitment needed to find solutions. Too often, the following erroneous assumptions serve as excuses for inaction: poor children cannot learn; poor families do not value education; teachers do not want to teach in poor areas or in difficult circumstances; poor schools and children are beyond help and hope. Everyone with an interest in the public school system, including students, has heard variations of these beliefs from teachers, administrators, policy-makers and litigants in equity-funding cases. Theoretical barriers and commonly-accepted negative beliefs about poverty and education must be neutralized and replaced with a culture that encourages success.

“Poverty, violence and parental education matter, but research shows that low expectations and less challenging classes matter more.”³² Unfortunately, both are more prevalent in high-poverty schools, as children incorrectly viewed as “not likely to succeed” are discouraged from taking challenging classes, or worse, the curriculum is not available at all.

“The Willingness Gap is the collective will of society to tolerate or reject the inequities in both the educational system and society at large that disproportionately and negatively affect students who are poor, minority, disadvantaged and/or

³² Learning Point Associates Achievement Gaps Literature Library, *Schools Matter: Four Steps to Closing the Achievement Gap Once and For All*, 2008, available at: <http://www/learningpt.org/gaplibrary/text/schoolsmatter.php>.

disabled.”³³ This aspect of the achievement gap, along with the performance gap and the resource gap, indicates that if the achievement gap is to close, it will require a commitment to do so based upon intolerance of systems that work against poor students.

C. “It’s being done”³⁴

When Mary Russo, a principal of the Richard J. Murphy K-8 school in Boston was told “they say it [helping poor students achieve academically] can’t be done,” her response was simply “It’s being done.”³⁵ Since Russo became principal of the school, it has been awarded numerous honors, including designation as a Distinguished Title I School by the Department of Education.³⁶

There is more than enough evidence that poor children are capable of learning. Los Angeles’ Baldwin Academy, where 86% of students are eligible to receive free or reduced-price lunch, has focused on shared decision-making, ongoing analysis of data, high expectations, and collaboration among administrators, teachers

³³ Oregon Department of Education, Office of Educational Improvement and Innovation, *Closing the Achievement Gap, Oregon’s Plan for Success of All Students*, Vol. 1. No.1. August 2005, at 1.

³⁴ Karin Chenoweth, “It’s Being Done”: Academic Success in Unexpected Schools, Harvard Education Press, 2007, an excerpt of which appeared as the column “No reason schools can’t expect success from poor children,” The Greeley Tribune, April 23, 2007.

³⁵ *Id.*

³⁶ Focus on Children, Boston Public Schools. *Murphy School Principal Marry Russo selected as MA principal of the year*, May 7, 2004, available at http://boston.k12.ma.us/bps/news/news_5_7_04.asp

and parents to continuously meet or exceed all Adequate Yearly Progress (AYP) goals in both English Learning Arts and Mathematics.³⁷

Central Union High School, with 50% of its students eligible for free and reduced-price lunch, adopted programs encouraging teacher flexibility and intensive data analysis combined with technology to provide immediately useful feedback. Central Union was selected a California Distinguished School in 2007. Its school jazz band is ranked in the top 20 in the United States. In addition, the school's Academic Decathlon team has been county champions for 29 consecutive years.³⁸

Another example that disproves the stereotypes is Giano Intermediate School, a high-poverty school with 82% of the student population eligible for free and reduced-price lunches. Giano set out to reduce the achievement gap and has succeeded admirably. Giano's successful practices have included setting measurable annual goals, providing teacher support, and using a large amount of data analysis. As a result, Giano has received recognition for its reduction of the achievement gap.³⁹

All three of these California schools had student populations with extremely high levels of poverty. Yet, they did not surrender to assumptions. Instead, they adopted similar measures in meeting their goals: a culture of support for teachers and students; high expectations; extensive use of data and immediate feedback provided to those it would benefit; and communication, collaboration and cooperation between teachers, students, parents, administrators, the community, and policy-makers. All

³⁷ State of California, Department of Education, *Closing the Achievement Gap: Achieving Success for All Students*, available at <http://closigntheacheivemtngap.org/cs/ctag/print/htdocs/success.htm>

³⁸ *Id.*

³⁹ *Id.*

three are representative of countless other schools with similar problems that, given the right resources and assistance, are also capable of decreasing the achievement gap and overcoming both perceived and real educational barriers.

In Franklin Elementary School of Delaware, many of the students' parents work in the poultry industry or in service jobs. Seventy-five percent qualify for free- or reduced-price lunches. Franklin continuously posts extremely high passing rates in English and Math Standards. The school has fostered a commitment to each student's success and to providing the resources to attain it. The positive results of that commitment are undeniable.⁴⁰

Philadelphia's M. Hall Stanton Elementary School has a population that is 99% low income. The teachers there have organized instruction to provide help to every child that needs it. As a result, Stanton students regularly meet the commonwealth's math and reading standards at a higher percentage than Pennsylvania students as a whole.

Four changes in the educational system are the common focus of several school systems that have succeeded in closing the economic achievement gap: (1) have uniform standards, (2) make the curriculum challenging, (3) provide extra assistance to students who start out behind their peers, and (4) provide good teachers. These are the types of measures undertaken by the schools discussed as examples above, and they clearly work. They are part of the solutions that arise when stereotypes and assumptions are abandoned, and a commitment to quality education for all is made. They also support the following important concept that provides hope

⁴⁰ Chenoweth, *supra* note 34

for South Carolina’s economically disadvantaged students: What schools do, really does matter.⁴¹

CONCLUSION

Public school leaders in South Carolina encourage the exploration and development of options in public education by emphasizing that not every child learns in the same way or fashion and “one size does not fit all.” This is just as true for children in poverty as it is for any other student. Their capability for future civic participation and preparation for employment is undermined when policy-makers limit resources based upon geography or family income. Again, “demographics is not destiny,”⁴² and the interest of the state is greatly served when its young students from all walks of life and backgrounds are given the resources, encouraged, and taught in a manner that not only facilitates but expects academic achievement from everyone involved in the process.. Accomplishing this does not require a miracle – merely commitment from policy-makers, administrators, teachers, parents, and students, to do what is best for South Carolina’s present and future.

“When you overcome drag and gravity with enough thrust and lift, you get flight; when you overcome poverty and discrimination with enough thoughtful instruction, careful organization, and what can only be recognized as the kind of pigheaded optimism displayed by the Wright brothers, you get learning.”⁴³ Poverty in and of itself is not automatically and irreversibly determinative of low academic

⁴¹ Learning Point Associates, *supra* note 32.

⁴² Campaign for Fiscal Equity, *supra* note 27, at 491.

⁴³ Chenoweth, *supra* note 32.

achievement. Although poverty does involve the experience of situations that are proven barriers to success,⁴⁴ alleviation of those barriers results in a narrowing of the achievement gap, as students are free to learn unhindered. All students can learn with sufficient resources. *Amici* have illustrated in this brief that not only is there an extensive correlation between what is spent and student achievement, but also that it is important to determine the most effective and efficient allocation of funds, resources, and talent in order to create opportunities for at-risk students to pursue the education they are entitled to.

Many authorities in education agree that the achievement gap is unlikely to narrow substantially until the various socioeconomic factors that students in poverty experience are addressed. South Carolina has the responsibility of providing all school-age children with an opportunity to obtain a minimally adequate education. If these factors must be alleviated or eliminated in order for the State to progress in carrying out its mandate, then the State has an obligation to participate in doing so. To place the burden on the schools and communities without providing the necessary resources is contradictory, impractical, and ultimately detrimental to those schools and communities.

Amici contend that the trial court erred in its conclusion that inputs into the educational system, with the exception of early childhood education programs, are sufficient to satisfy the constitutional obligation. *Amici* urge this court to enter an order finding that the children of the plaintiff school districts have been denied their opportunity for a minimally-adequate education; directing the State of South Carolina

⁴⁴ See Campaign for Fiscal Equity, *supra*, note 27 at 491.

to present a detailed education plan, including goals and timetables for implementation and review of that plan; and requiring that the State specify and provide the funding required for implementation of this plan.

Respectfully submitted,

By: 

Susan J. Rose
Susan B. Berkowitz
South Carolina Appleseed Legal Justice
Center
Post Office Box 7187
Columbia, South Carolina 29202
Telephone: (803) 779-1113, ex. 102
Facsimile: (803) 779-5951
Email: srose@scjustice.org
sberk@scjustice.org

Attorneys for *Amicus* South Carolina
Appleseed Legal Justice Center

Edward W. Laney, IV
R. Hawthorne Barrett
Turner Padgett Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
Telephone: (803) 254-2200
Facsimile: (803) 400-1454
Email: elaney@turnerpadgett.com
tbarrett@turnerpadgett.com

Attorneys for *Amicus* South Carolina
Association of School Nurses

May /_____, 2008

Columbia, South Carolina



HENRY McMASTER
ATTORNEY GENERAL

April 29, 2008

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

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

Dear Mr. Shearouse:

In lieu of a formal final 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 Respondent's 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.

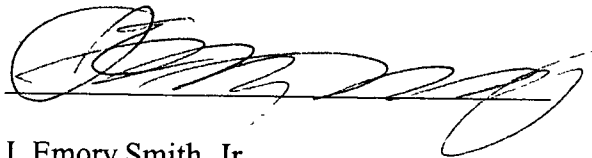
If you have questions or prefer a more formal filing regarding this position, please let me know. I am mailing and emailing copies of this letter to counsel for the other parties.

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE WITH RULE 211 (b)

I hereby certify that the Final letter brief of the State and the Governor comply with Rule 211(b), SCACR. The State and the Governor previously served and filed an initial brief in letter format. This letter is the same except for the reference herein to the final brief.



J. Emory Smith, Jr.
Assistant Deputy Attorney General

April 29, 2008

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