

Pursuant to Court's Instructions the Record on Appeal in this matter was condensed. Pages were not renumbered, therefore it appears there are missing pages, however, counsel has confirmed all pertinent information is included in the condensed record.

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, *(caption continued on second page)*

**RECORD ON APPEAL (CONDENSED),
VOL I OF XXVIII**

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,

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

Plaintiffs,

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

Carl B Epps, III

Stephen G Morrison
Laura Callaway Hart
Shelby K Leonard
Elizabeth Scott Moise
Rachel Atkin Hedley
D Kay Tennyson
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellants-Respondents

SOWELL, GRAY, STEPP AND LAFITTE, L L C

Robert E Stepp
Elizabeth Van Doren
A Jackson Barnes
Roland M Franklin, Jr
1310 Gadsden Street
Post Office Box 11449
Columbia, Sc 29211
(803) 929-1400

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

J Emory Smith, Jr
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3680

Attorney for the State

Swati S Patel
Office of the Governor
P O Box 12267
Columbia, SC 29211
(803) 734-5251

Attorney for the Governor

rec'd 7/16/07
adam Schuyler
1488410152

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Abbeville County School District *et al*,

Plaintiffs,

vs

The State of South Carolina, *et al*

Defendants

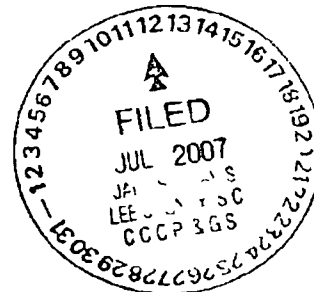
) IN THE COURT OF COMMON PLEAS
) OF THE
) THIRD JUDICIAL CIRCUIT

) Case number 93 CP-31-0169
)

ORDER

NELSON MULLINS RILEY & SCARBOROUGH LLP

Stephen G. Morrison
Carl B. Epps III
Laura Callaway Hart
1320 Main Street, 17th Floor
Post Office Box 11070 (29211)
Columbia, South Carolina 29201
Attorneys for Plaintiffs



SOWELL GRAY STEPP & LAFITTE L L C

Robert E. Stepp
Elizabeth Van Doren Gray
A. Jackson Barnes
Roland M. Franklin, Jr. (on brief)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Attorneys for Defendants Senate and House of Representatives of the State of South Carolina

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

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 State and Governor of South Carolina

Certified as a True Copy

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

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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, ¶¶ 13, 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. Lonn 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

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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

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 underfunded.

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

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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.

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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 districts³ Allendale's 2004

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

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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://es.sc.gov/1_prcs/1_sc_1_district_school_reports/11. 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

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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

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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

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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

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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) SCRPC 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


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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 States 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

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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.

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(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)

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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

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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

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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 EIA (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


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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


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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


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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)


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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

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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)

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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.

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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

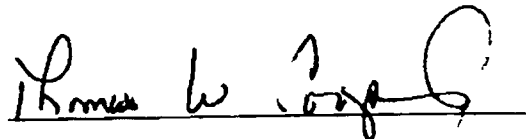
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case. The need for improvement in these areas, however, does not rise to the level of a constitutional violation, except in the areas of early childhood education pointed out in the Order of December 29, 2005.

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

A handwritten signature in black ink, appearing to read "Thomas W. Cooper Jr.", written over a horizontal line.

The Honorable Thomas W. Cooper Jr.

Resident Judge of the Third Judicial Circuit

Manning, South Carolina

July 12, 2007

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Abbeville County School District, *et al*,

Plaintiffs,

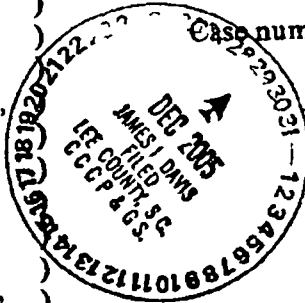
vs

The State of South Carolina, *et al*,

Defendants

IN THE COURT OF COMMON PLEAS
OF THE
THIRD JUDICIAL CIRCUIT

Case number 93-CP-31-0169



ORDER

NELSON MULLINS RILEY & SCARBOROUGH, LLP

Stephen G Morrison
Carl B Epps III
Laura Callaway Hart
1320 Main Street, 17th Floor
Post Office Box 11070 (29211)
Columbia, South Carolina 29201
Attorneys for Plaintiffs

SOWELL GRAY STEPP & LAFITTE, L L C

Robert E Stepp
Elizabeth Van Doren Gray
A Jackson Barnes
Roland M Franklin, Jr (on brief)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Attorneys for Defendants Senate and House of Representatives of the State of
South Carolina

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH
CAROLINA**

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 State and Governor of South Carolina

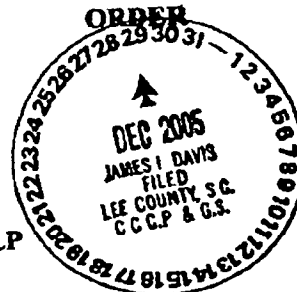
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James I. Davis
Clerk of Court of Common Pleas
Lee County, South Carolina

REC000031

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
Abbeville County School District, *et al*,)
Plaintiffs,)
vs)
The State of South Carolina, *et al*,)
Defendants)

IN THE COURT OF COMMON PLEAS
OF THE
THIRD JUDICIAL CIRCUIT
Case number 93-CP-31 0169



NELSON MULLINS RILEY & SCARBOROUGH, LLP
Stephen G Morrison
Carl B Epps, III
Laura Callaway Hart
1320 Main Street, 17th Floor
Post Office Box 11070 (29211)
Columbia, South Carolina 29201
Attorneys for Plaintiffs

SOWELL GRAY STEPP & LAFITTE, L L C
Robert E Stepp
Elizabeth Van Doren Gray
A Jackson Barnes
Roland M Franklin, Jr (on brief)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Attorneys for Defendants Senate and House of Representatives of the State of
South Carolina

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH
CAROLINA

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 State and Governor of South Carolina

Certified as a True Copy

James I Davis
Clerk, Court of Common Pleas
and General Sessions, Lee
County South Carolina

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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

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



challenging the State's statutory scheme 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.

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6 Defendants³ filed motions to dismiss the Second Amended Complaint pursuant to Rules 12(b)(1) and (6), SCRCP, 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

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 Neilsen 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.



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 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

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.

follows "The General Assembly shall provide for the maintenance and support of a system of free public schools open to 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

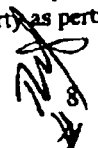
13 In January of 2001, following remand, Plaintiffs again moved to amend their Complaint. The proposed Third Amended Complaint reiterated prior allegations, but also for the first time sought monetary damages and a jury trial. On June 1, 2001, this Court granted Plaintiffs' motion to amend, but denied 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

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.



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 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'g 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. Moorer, 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 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.


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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

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.

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)

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

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 NH Const. pt. 2 art. 83 NJ Const art VIII § 4 para 1 NM. Const. art. XII § 1 NY Const art. XI, § 1 NC Const art IX, § 2 ND 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



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

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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

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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

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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

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 basic 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 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*).

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Massachusetts⁹ – opinions the 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 sufficient to provide the opportunity for South Carolina students to acquire a minimally adequate education. Abbeville County sets a

⁹ Compare McDuffy v. Sec. 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*.

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

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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))

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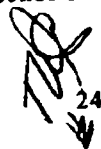
47 Abbeville County constrains this Court not to engage in policy making for education in South Carolina. This case is not a forum about what ought to be or what policy choices the Court would make if it were authorized to do so. Accordingly, this Court must decide this case not in terms of whether the 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

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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

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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 'inputs' 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

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 ll 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

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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, 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

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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. 82-17 - p. 83-17. 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

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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 In respect 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

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.

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 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

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

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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

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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

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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 " Flanagan, *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


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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

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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%)

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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

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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

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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*

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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

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(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

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(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


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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.

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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	The Honor Roll Alabama, California, North Carolina, South Carolina, Texas	Shaky Foundations Florida, Illinois, Indiana, Kansas, Maryland, Nevada, New York, Oklahoma, Virginia, West Virginia	Trouble Ahead Kentucky, New Mexico
Weak Accountability	Unrealized Potential Arizona, Massachusetts, South Dakota	Going through the motions Delaware, Georgia, Louisiana, Mississippi, Nebraska, New Hampshire, Ohio, Utah, Wisconsin	Irresponsible States 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 Kauter, *Brookings Papers on Education Policy*, 2001 (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

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- (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

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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

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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

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 1 16 - p 185 1 4 Defendants Exhibit 804

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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 (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 exceptions¹⁵ 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

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

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(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 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

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- (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

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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,

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(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

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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

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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

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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 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 195 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

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.

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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, ll. 8-180, ll. 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 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

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, ll. 23-21, ll. 12.



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

	2000	2001	2002	2003	2004
ELA	36.3%	48.0%	49.3%	42.9% ¹⁹	49.5%

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

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.

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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

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

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%

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(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

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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,

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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

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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 Defendants Exhibit 3329 3326 According to InSite Dillon 2 s
revenues have increased between 1999 and 2002 as follows

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%

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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

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Total			\$724,344

This amounts to \$191 per pupil in addition to funds received under EFA and ELA

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 Timmonsville High School) housed in one building on a campus located in Timmonsville, 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

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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 Average²² 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%.

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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

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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*

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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

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%.



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

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'

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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

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%



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

162 As reported in the State Department InSite 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 (InSite)
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 InSite 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


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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 an 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

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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

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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

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171 Lee was rated Unsatisfactory²⁵ on the 2003 Report Card and its schools were rated as follows

Bishopville Primary School	Average
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

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 %

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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	\$12,00
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

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175 Marion 7 is the product of a recent consolidation of Marion County School District 3 and Marion County School District 4²⁶ 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.

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

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


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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

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 %.



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

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

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)

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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

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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


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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

Elloree Elementary	Average
Holly Hill Elementary	Below Average
St James-Gaillard Elementary	Average
Vance Providence Elementary	Below Average
Elloree High (Middle)	Unsatisfactory

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%

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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 InSite, 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

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

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197 The procedures and requirements for teacher licensure were discussed by several witnesses¹⁰ 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 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*

¹⁰ 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

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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

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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.

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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%

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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 23

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

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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

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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


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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?


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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, 181. Additionally, South Carolina rewards teachers with additional pay as their education increases beyond a bachelor's degree. Tr Trans (06/17/04) p 101, 112-13, 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, 114-17 (07/30/03), p 110, 115-19, (08/1/03) p 180, 113 p 190, 119-20, (09/26/03) p 185 1120 21 (08/11/03), p 93 116) as opposed to "spray and pray" programs (Tr Trans (08/1/03), p 84, 112-3, p 86, 19, (09/21/04) p 156, 117 20), they were of no value. Many superintendents testified

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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

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.

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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. 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),

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 bachelor's 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.*

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 ll. 24-26 p. 206 ll. 1-1. Out-of-field permits are issued to teachers who are fully certified in another teaching field, and

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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 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

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.


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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


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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 Valene 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 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

³⁵ The 2003 Report card shows a total of 92 teachers in the district.

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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, l 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, l 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, l 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 l 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

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teachers hired (21 5%) At the same time, 80% of Hampton 2's teacher are continuing contract teachers Plaintiffs' Exhibit 6152 C J

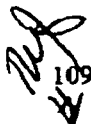
233 The Hampton 2 principals' testimony, however, indicates that they did not view the teachers under their direct supervision as inadequate The principals themselves only identified one teacher at the high school (who was not offered a returning contract), and one at the elementary school (who was not 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


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(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 1 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 warrant certificate³⁷ and twelve held out of field permits Plaintiffs' Exhibit 6439AH Dr Poda provided her statistics on Lee teachers as well,

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 1 12 - p 226, 1 14

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


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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 13

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

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

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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 Ellore High School, testified that twenty of the thirty-eight had less than five years experience.


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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 colleges³⁸ 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 principals identified fourteen teachers throughout the district who

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

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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 principals 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


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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.

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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.

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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


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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

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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


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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

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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

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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


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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 1950s. Since its construction, there has been an addition of a new wing in 1970. Tr. Trans.

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(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

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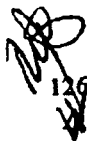
282 Dr Smith testified that although the facilities were old and nearing the end of their life as school facilities, it is his opinion that the facilities are adequate to provide the opportunity for a minimally adequate education Tr Trans (06/29/04), p 44, l 15 - 45, l 21

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


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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 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

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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



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


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- 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

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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

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(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.


131

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.


132


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

133

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 Timmons ville, 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 Timmons ville Education Complex, which is comprised of Brockington Elementary Johnson Middle School and Timmons ville 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

 34

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


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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

136

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

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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, 18 - p 20, 19. 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 Hardceville 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, 12 - p 197, 19.

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


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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, 120 - p. 22, 116

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

139

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, 1 17 - p 23, 1 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 1 23 - p 179, 1 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

McL
141
H

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

 142

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

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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, 1574E1 - 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.


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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 is some 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.


145

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, 11 - P 144, 1 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, 1 25 - p 195 1 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 1 17 - pg 97, 1 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, 11 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

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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


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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


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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

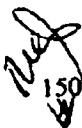

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priority, appropriations to education have substantially increased over time. Between 1994 and 2004, funding to education has increased from 33% of the general fund to 36% of the general fund. Tr. Trans. (08/16/04), p. 23, ll. 24-25, p. 24 ll. 1-4, 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:


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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

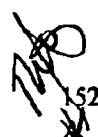
399 In addition to comparisons to the State average and median evidence was also introduced concerning how spending in the Plaintiff Districts compares with average spending in schools that are rated "Good" and "Excellent" under the Report Card Rating system See Plaintiffs' Exhibit 251B Schools in the 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

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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 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

 152

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.

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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 InSight 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

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

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educational 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

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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

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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 person 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

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.

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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 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


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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%

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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


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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

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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 Lonn 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 14-20⁴³

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

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

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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 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

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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 affluence⁴⁴ 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 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

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 18 (03/05/04) p 48 ll 8 9 (04/01/04) p 141 ll 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

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


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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 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 strategies⁴³ 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.

⁴³ See Appendix

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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 succeed. 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.

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


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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-existent 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

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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.

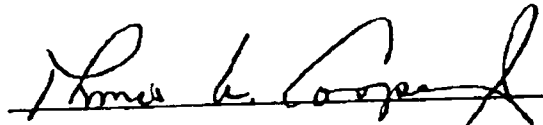
The Court further concludes that the constitutional requirement of adequate funding is not met by the Defendants as a result of their failure to adequately fund early childhood intervention programs.


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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



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

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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(e) 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

⁴⁶ The CSAB, BSAP, and CTBS mentioned in this section are student assessments that pre-dated the PACT tests. They are no longer used.

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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 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

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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. 17-11-17-22.

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 are ready when they start school. (S. Smith, Trial Tr. (6/17/04) at 231-9-15).

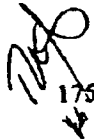
Despite its recognition of the importance of early childhood education, the State continues to cut funding for these programs. Ramsdale Tr. Trans. (8/15/03) p. 72-11-2-13. As a result of decreased funding, the Plaintiff Districts are only able to offer a limited number of early childhood classes. These 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.

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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.


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STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Abbeville County School District, *et al* ,)
Plaintiffs,)
vs)
The State of South Carolina, *et al* ,)
Defendants)

Civil Action No 93-CP-31-169

**ORDER DENYING
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

This matter came before me on October 25 2001 pursuant to Plaintiffs' Notice of Motion and Motion for Reconsideration of Order Denying Plaintiffs' Request for a Jury Trial, or in the Alternative, for a Jury Trial under SCRCP 39(b) Carl B Epps Esquire and Laura Callaway Hart Esquire of Nelson, Mullins, Riley and Scarborough, L L P appeared on behalf of Plaintiffs, and Robert E Stepp, Esquire, and Elizabeth Van Doren Gray, Esquire of Sowell, Gray, Stepp & Laffitte, L L C appeared on behalf of the Senate and the House ¹ Having considered the motion and heard arguments from counsel, the Court finds that the Plaintiffs' Motion for Reconsideration should be denied

Plaintiffs commenced this action with the filing of the Summons and Complaint in November of 1993 The original Complaint set forth four causes of action, all of which sought declaratory relief When the original Complaint was filed, no demand for a jury trial was made by the Plaintiffs Two years later in July of 1995 a Second Amended Complaint was filed The Second Amended Complaint changed some of the parties and added new factual allegations, but sought relief identical to the relief sought

¹ J Emory Smith Esquire who was also present at the hearing represented the State of South Carolina and the governor of the State of South Carolina, also Defendants in this action The State and the Governor joined in the Senate and House s opposition to Plaintiff's Motion

in the original Complaint. When the Second Amended Complaint was filed, no demand for a jury trial was made by the Plaintiffs. After this Court granted the Defendants' motions to dismiss the Second Amended Complaint, Plaintiffs appealed this Court's Order to the South Carolina Supreme Court which affirmed the dismissal of the action with the exception of a claim made pursuant to Article XI, Section 3 of the South Carolina Constitution. The case was remanded to this Court for consideration of this claim, and the Court has tentatively set a trial date of July 28, 2003.

In January of 2001, eight years after the filing of the original Complaint, Plaintiffs moved to further amend their Complaint and submitted a proposed Third Amended Complaint that sought damages but advanced no new issues or theories of liability. Plaintiffs also sought for the first time to have their claims heard by a jury. On June 1, 2001, this Court issued an Order granting Plaintiffs' Motion to Amend Complaint and denying Plaintiffs' request for a jury trial. On June 11, 2001, Plaintiffs moved the Court for reconsideration of its Order denying Plaintiffs' request for a jury trial.

The Order entered by this Court on June 1, 2001 completely addresses the procedural history of this case and the law applicable to belated demands for jury trials made in connection with amended pleadings. There is no basis to reconsider that Order because the Court, in rendering its prior decision, overlooked nothing. Indeed, King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (Ct. App. 1987) is completely dispositive of the issue presented. The right to a jury trial demanded in an amended pleading 'turns on whether the amended pleading creates new issues of fact.' *Id.*, 291 S.C. at 502, 354 S.E.2d at 403. Plaintiffs did not argue that the Court overlooked any "new" issue of fact that would alter the prior analysis. Thus, to the extent that Plaintiffs' motion seeks a



review of the prior issue, it must necessarily be denied because nothing has transpired between the filing of the Second Amended Complaint and the filing of the Third Amended Complaint to warrant revisiting that question

In their Motion for Reconsideration² Plaintiffs contend that pursuant to Rule 39(b) of the South Carolina Rules of Civil Procedure, this Court should exercise its discretion and grant Plaintiffs' request for a jury trial because "[f]or the same reasons the Court concluded there was no prejudice to the Defendants in allowing Plaintiffs to amend their complaint to add a claim for damages, there would be no prejudice to the Defendants in allowing Plaintiffs to try their case before a jury Motion for Reconsideration at 1 Plaintiffs' argument is unavailing

Under South Carolina law, the right to trial by jury is recognized as a 'substantial right Broome v. Watts, 319 S C 337, 340, 461 S E 2d 46, 48 (1995), North Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc., 307 S C 533, 535, 416 S E 2d 637, 638 (1992) Nevertheless Rule 38(d) provides that this substantial right can be waived³ Once waiver occurs, Rule 39(b) provides that the court in its discretion upon motion may order a trial by jury of any or all issues ' Rule 39(b), SCRCP Although Rule 39(b) does not 'expressly limit the court's discretion in ordering a trial by jury where a party has not made a proper demand Patterson v McNeill-Patterson & Associates, Inc., 312 S C 471, 472, 441 S E 2d 328, 329 n 2 (Ct App 1994), this

² The motion seeks relief in the alternative under Rule 39(b) Because this issue is somewhat different from what Plaintiffs argued previously, it is separately addressed in this Order

³ Rule 38(d) provides, in relevant part that [t]he failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury



discretion should not be loosely used or applied, because it could so easily take on the character of arbitrariness" Seitz v Hammond, 35 F R D 567, 567 (E D S C 1964) Accordingly, "a party should not be relieved of his waiver of trial by jury 'unless there are special circumstances excusing the failure to make a timely demand' " *Id* (quoting Wright, *Federal Courts*, 356 (1963))

In the present case, Plaintiffs do not present any special circumstances which would warrant this Court's exercise of its discretion to grant a jury trial in the face of the prior waiver. Indeed, the special circumstances of this case weigh heavily against granting Plaintiffs requested relief. Changing this case into a jury case at this stage of the proceedings would change the character of the action and make the trial of this case considerably more cumbersome. Based upon information currently available, it appears that this case may take six weeks or more to try. That is a very long time to expect a jury to serve.⁴ The presence of a jury would necessarily lengthen the time necessary to try the case because of the many proceedings that will have to take place outside of the jury's presence. Resolution of this case by a jury would probably require the submission of numerous special interrogatories, which are no real substitute for findings of fact by the Court as trier of fact.

Moreover, whether Defendants are prejudiced is not the issue. Plaintiffs are not entitled to a jury trial as a matter of right and are not entitled to an exercise of the Court's discretion in their favor. Under these circumstances, to say that the Senate and the House would not be prejudiced if the Court permits Plaintiffs to demand a jury trial adds nothing to the analysis because that is not the standard.

⁴ This Order is being issued *Nunc Pro Tunc* to reflect this Court's oral ruling from the bench on June 25, 2003, approximately one month before the beginning of the trial on June 28, 2003. The trial was actually spread over a period of sixteen months and encompassed one hundred one days of trial testimony.



Finally, in their previous submissions to the Court on this issue, the Senate and the House limited their arguments to Plaintiffs' procedural right to demand a jury trial at this stage in the proceedings. In their Motion for Reconsideration, however, Plaintiffs sought relief under SCRCP 39(b), which raised for the first time the question whether Plaintiffs are entitled to a jury trial at all. Obviously, if Plaintiffs are not substantively entitled to a jury trial on the issues framed by the Third Amended Complaint, there is no basis for the exercise of discretion in Plaintiffs' favor under 39(b).

The South Carolina Constitution provides that "the right to a trial by jury shall be preserved inviolate." See SC Const art I, § 14. South Carolina courts consistently interpret this section to mean, however, that a jury trial is guaranteed only in those cases in which it was available at the time of the adoption of the South Carolina Constitution of 1868. See Medlock v. 1985 Ford F-150 Pick Up, 308 S C 68, 69, 417 S E 2d 85, 86 (1992), C W Matthews Constr. Co. v. South Carolina Tax Comm'n, 267 S C 548, 230 S E 2d 223 (1976). Only if the action would have been brought in law in 1868 does a plaintiff have a right to a jury trial. Thus, analysis of whether the right to jury trial is accorded begins with the practice in 1868 and rests on whether, in 1868, the action would have been in law or in equity. See James F. Flanagan, *South Carolina Civil Procedure* 321 (2nd ed. 1996). If a cause of action was not in existence in 1868, the court analogizes that right to one that was in existence at that time to determine whether it would be treated as law or equity. Wallace v. Milliken & Co., 305 S C 118, 406 S E 2d 358 (1991). State v. 1920 Studebaker Touring Car, 251 P 701 (Or 1926).

Article XI, Section 3 of the South Carolina Constitution of 1895 was not in effect in 1868, therefore, the Court must analogize this claim to constitutional causes of action



in existence in 1868 Rights derived from the State Constitution are historically equitable in nature, although jury trials are available for certain claims See e.g. Gilliland v. Phillips, 1 S C 152 (1869) (complaint alleging that government unconstitutionally violated the Contracts Clause is an action at law) The constitutional issue in this case is equitable in nature, and, in accordance with past case law, a jury trial is not warranted⁵

The Plaintiffs Third Amended Complaint is in the form of a declaratory judgment action and is limited by Court Order to injunctive relief⁶ Actions that seek orders directing a party to perform specific acts, such as injunctions, are quintessentially equitable ones See Miller v Borg-Warner Acceptance Corp., 279 S C 90, 92, 302

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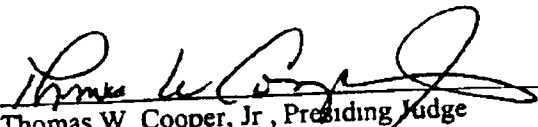
Indeed, a review of the cases across the country challenging the adequacy of funding for education reveals that every action has been an equitable challenge in the form of a declaratory judgment action and as such, have been non-jury actions See e.g., Roosevelt Elementary School Dist No. 6 v Bishop 877 P 2d 806 (Ariz 1994) DuPree v Alma School Dist No. 30 of Crawford County 651 S W 2d 90 (Ark 1993) Lujan v Colorado State Bd of Educ 649 P 2d 1005 (Colo 1982) (en banc) Horton v Meskill, 376 A 2d 359 (Conn 1977) McDaniel v Thomas, 285 S E 2d 156 (Ga 1981) Thompson v Engleking 537 P 2d 635 (Id 1975), People ex rel Jones v. Adams, 350 N E 2d 767 (Ill 1976) Rose v Council for Better Ed., Inc 790 S W 2d 186 (Ky 1989) Charlet v Legislature of the State of Louisiana 713 So 2d 1199 (La 1998) McDuffy v Secretary of the Exec. Office of Education 615 N E.2d 516 (Mass 1993) Hornbeck v Somerset County Bd of Educ 458 A 2d 758 (Md 1983), East Jackson Pub Schools v State 348 N W 2d 303 (Mich App 1984), Skeen v State 505 N W 2d 299 (Minn 1993) Claremont School Dist v Governor, 703 A 2d 1353 (N H 1997), Abbott v Burke, 575 A 2d 359 (N J 1990) Campaign for Fiscal Equity, Inc v State 655 N E 2d 661 (N Y 1995) Board of Educ., Levittown Union Free School Dist v Nyquist, 439 N E 2d 359 (N Y 1982) appeal dismissed 459 U S 1138 1139 (1993) RE FIT v Cuomo, 655 N E 2d 647 (N Y 1995) Britt v North Carolina State Board of Educ, 357 S E 2d 432 (N C App 1987) Leandro v State, 488 S E 2d 249 (N C 1997) Board of Educ of the City School Dist. of Cincinnati v Walker 390 N E 2d 813 825 (Oh 1979) DeRolph v. State 677 N E 2d 733 (Oh 1997) Fair School Fin Council of Oklahoma, Inc v State, 746 P 2d 1135 (Okla 1987), Olsen v State ex rel Johnson, 554 P 2d 139 (Or 1976) Danson v Causey, 399 A 2d 360 (Pa.1979), Richland County v Campbell 364 S E 2d 470 (S C 1988) Tennessee Small School Systems v McWhorter 851 S W 2d 139 (Tenn 1993) Brigham v State, 692 A 2d 384 (Vt.1997) Kukor v Grover, 436 N W 2d 568 (Wis 1988), Washakie County School Dist No One v Herschler, 606 P 2d 310 (Wy 1980)

⁶ By previous Order this Court had denied Plaintiff's request for money damages Therefore the Third Amended Complaint is limited to a request for the Court to declare the Education Finance Act unconstitutional as implemented declare the level of funding inadequate and require the General Assembly to draft a proposal for a new system of funding education in south Carolina It also requests remedial monetary relief which this Court has denied for reasons set forth in another Order

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S E 2d 340, 341 (1983), Bramlett v. Young, 229 S C 519, 93 S E 2d 873 (1956), Linton v. Gaillard, 203 S C 19, 25 S E 2d 896 (1943), Smith v. Ashmore, 184 S C 283, 286 192 S E 289, 291 (1937), Godfrey v. Heller, 311 S C 516 517 429 S E 2d 859, 860 (Ct App 1993) *But see* Fort Sumter Hotel v. South Carolina Tax Commission, 201 S C 50, 21 S E 2d 393, 397 (1942) (stating that the writ of mandamus is a legal proceeding that employs equitable rules) Thus, Plaintiffs' action is an equitable one and, therefore, Plaintiffs are not entitled to a jury trial

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Request for a Jury Trial, or in the Alternative, for a Jury Trial under SCRCP 39(b) is hereby denied

NUNC PRO TUNC


Thomas W Cooper, Jr , Presiding Judge
Third Judicial Circuit

Manning South Carolina

Dated Dec. 3rd, 2004

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Abbeville County School District, *et al* ,)

Plaintiffs,)

vs)

The State of South Carolina, *et al*)

Defendants)

Civil Action No 93-CP-31-169

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS**

This matter came before me on October 25, 2001 pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure upon the motion of Defendant Warren K. Giese, in his representative capacity and as designee of the President Pro Tempore of the South Carolina Senate, David Wilkins as Speaker of the South Carolina House of Representatives (hereinafter the Senate and the House) the State of South Carolina and the Governor of the State of South Carolina for an Order granting their motion to dismiss Plaintiffs' Third Amended Complaint on various grounds. Carl B. Epps, Esquire, and Laura Callaway Hart, Esquire, of Nelson, Mullins, Riley and Scarborough, L.L.P. appeared on behalf of Plaintiffs. Robert E. Stepp, Esquire, and Elizabeth Van Doren Gray, Esquire of Sowell, Gray, Stepp & Laffitte, L.L.C. appeared on behalf of the Senate and the House and J. Emory Smith, Esquire, appeared on behalf of the State of South Carolina and the Governor of the State of South Carolina. Having considered the motion and heard arguments from counsel the Court finds that the Senate and House's motion should be granted in part and denied in part as follows:

Plaintiffs commenced this action with the filing of the Summons and Complaint in November of 1993. The original Complaint set forth four causes of action, all of



which sought declaratory relief. When the original Complaint was filed, Plaintiffs did not request monetary damages as a form of relief. Two years later in July of 1995, a Second Amended Complaint was filed. The Second Amended Complaint changed some of the parties and added new factual allegations but sought relief identical to the relief sought in the original Complaint. After this Court granted Defendants' motions to dismiss the Second Amended Complaint, Plaintiffs appealed this Court's Order to the South Carolina Supreme Court which affirmed the dismissal of the action with the exception of a claim made pursuant to Article XI, Section 3 of the South Carolina Constitution. The case was remanded to this Court for consideration of this claim. A trial date has been set for July 28, 2003.

In January of 2001, eight years after the filing of the original Complaint, Plaintiffs moved to further amend their Complaint and submitted a proposed Third Amended Complaint that sought both monetary damages and a jury trial but advanced no new issues or theories of liability. On June 1, 2001, this Court issued an Order granting Plaintiffs leave to amend but denying the request for a jury trial. On June 11, 2001, Plaintiffs moved for reconsideration of the Order denying Plaintiffs' request for a jury trial. The reasons for the Court's denial of Plaintiffs' jury trial request is set forth in a separate Order. On July 23, 2001, the Senate and the House moved to dismiss the Third Amended Complaint.

The Senate and House's motion was based on a number of grounds. With respect to Plaintiffs' claim for money damages, the Senate and House asserted that Plaintiffs' claims for damages are barred as a matter of law because Article XI, Section 3 of the South Carolina Constitution (the Education Clause) is not self-executing, that even if



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the Education Clause was self-executing, money damages are not a proper remedy for a violation, and that the common law doctrine of legislative immunity and the South Carolina Tort Claims Act S C Code Ann § 15-78-10, *et seq* (Supp 2002), protect the Senate and House from a suit for money damages

The Senate and the House also sought dismissal on the grounds that the school district Plaintiffs and the taxpayer Plaintiffs lacked standing under the Education Clause to prosecute this matter; that former students lacked standing to prosecute this matter, that the Third Amended Complaint fails as a matter of law to the extent it is based on a legal distinction between the State and its political subdivisions that the Third Amended Complaint fails to state facts sufficient to constitute a cause of action to the extent it asks the Court to adjudicate a political question, that the Third Amended Complaint fails as a matter of law to the extent it advances equal protection claims and that the Third Amended Complaint fails as a matter of law because it is based on alleged acts and omissions not within the constitutional duty defined by the South Carolina Supreme Court

A ruling on a 12(b)(6) motion to dismiss for failure to state a claim must be based solely upon the allegations set forth on the face of the complaint Dye v Gancy 320 S C 65 67 463 S E 2d 97, 98 (Ct App 1995) A motion to dismiss should be granted if the facts and inferences therefrom would not entitle a plaintiff to any relief on any theory of the case Stiles v. Onorato 318 S C 297, 300, 457 S E 2d 601, 603 (1995), Gancy 320 S C at 67-68 463 S E 2d at 99 Toussaint v Ham, 292 S C 415 416 357 S E 2d 8 9 (1987) The question is whether in the light most favorable to the plaintiff,



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and with every doubt resolved in her behalf, the complaint states any valid claim for relief" Ham, supra

The Court finds that Plaintiffs' claims for damages are barred as a matter of law because the Education Clause is not self-executing and, as such, cannot serve as the basis for an action for damages. In 1995, the Supreme Court of Vermont outlined a two-part test for determining when direct actions for money damages based on violations of state constitutional rights are available.³ First [a court] must determine whether the constitutional provisions are self-executing that is, whether they support an action against the state or its agents without implementing legislation. Second, if [the court] find[s] a provision is self-executing [the court] must determine whether monetary damages are available as a remedy for a violation. ' Shields v. Gerhart, 658 A 2d 924, 927 (Vt 1995) (citing Figueroa v. State, 604 P 2d 1198, 1206 (Haw 1979)) See also Ferrer v. State 655 N Y S 2d 900 (Ct Cl N Y 1996). As is set forth below, the Court finds that Article XI, Section 3 of the South Carolina Constitution ('the Education Clause') is not self-executing and even if it were damages are not available as a remedy for violation of that constitutional provision.

In determining whether a constitutional provision is self-executing most jurisdictions have measured their constitutions against the standard adopted by the United States Supreme Court in Davis v. Burke. ' Shields 658 A 2d at 928. In Davis, the United States Supreme Court observed that

³ The test utilized by the Vermont Supreme Court is derived from a well established Supreme Court precedent, as well as case law from various state jurisdictions. See e.g. Davis v. Burke 179 U S 399 (1900) Bush v. Lucas, 462 U S 367 (1983), Schweiker v. Chilicky 487 U S 412 (1988) Kelley v. Property Dev., Inc. v. Town of Lebanon 627 A 2d 909 (1993)

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'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law

Davis, 179 U S at 403 (quoting Cooley Constitutional Limitations, 99 (1883)) The South Carolina Supreme Court has succinctly stated that '[a] constitutional provision is self-executing, when no legislation is necessary to give effect to it Becker v Atlantic Coast Line R. Co., 128 S C 131, 138, 121 S E 476, 478 (1924) Determining whether a constitutional provision supplies a sufficient rule "entails application of certain relevant criteria, none of which is dispositive Shields, *supra* at 928 Consistent with the South Carolina Supreme Court's analysis, the Shields court explained

[f]irst, a self-executing provision should do more than express only general principles it may describe the right in detail including the means for its enjoyment and protection Ordinarily a self executing provision does not contain a directive to the legislature for further action The legislative history may be particularly informative as to the provision's intended purpose Finally, a decision for or against self execution must harmonize with the scheme of rights established in the constitution as a whole

Shields, *supra* at 928 (internal citations omitted)

Applying these general principles it is clear that the South Carolina Education Clause is not self-executing and, as such, cannot serve as a basis for a cause of action for damages⁵ The Education Clause provides that "[T]he General Assembly *shall provide*

⁵ In Abbeville County Sch. Dist. v. State, 335 S C 58 515 S E 2d 535 (1999) the South Carolina Supreme Court permitted a cause of action pursuant to the Education Clause of the State Constitution However, in Abbeville County the only claim was for a declaratory judgment that the then current system of funding violated the State Education Clause No claim for monetary damages was made Here the question is whether monetary damages are available for an alleged violation of the Education Clause Abbeville County in no way compels an affirmative answer to this question

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for the maintenance and support of a system of free public schools open to all children in the State, and shall establish organize and support such other public institutions of learning, as may be desirable ' (Emphasis added) Although in South Carolina the general presumption is that all constitutional provisions are self executing, Brice v McDow, 116 S C 324, 331, 108 S E 84, 87 (1921), this presumption is easily overcome in this instance The text of Article XI, Section 3 explicitly calls for legislation to give effect to the rights contained in the Clause⁶ To that end, the State Constitution also provides that school districts may be authorized by the legislature to levy taxes for educational purposes See Art X, Sections 5, 6 The Education Finance Act of 1977, S C Code Ann §§ 59-20-10 to -80 (Supp 2002), the Education Improvement Act, S C Code Ann §§ 59-21-420 to 450 (Supp 2002), and the Education Accountability Act of 1998, S C Code Ann §§ 59 18-100 to 1930 (Supp 2002) are among the countless acts of the General Assembly adopted to give effect to the Education Clause⁷ The South Carolina Supreme Court has expressly recognized that the Education Clause lies within the province of the legislature, and has declined to 'usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State Abbeville County, 335 S C at 69, 515 S E 2d at 541 This statement recognizes

⁶ Indeed in every case in which the State Supreme Court has examined a provision of our Constitution containing the phrase shall provide it has found that provision not to be self executing See Neel v Shealy 261 S C 266 199 S E 2d 524 (1973) (holding that Article VIII Section 7 which says [t]he General Assembly shall provide for the structure organization powers duties functions and the responsibilities of counties is not self executing) Lauraglen Mills v Ruff 52 S C 448 30 S E 2d 587 (1898) (finding that Article IX Section 2 which says that [t]he General Assembly shall provide for the formation organization and regulation of corporations requires that there be legislation to that effect)

⁷ As has already been determined, however, there is no private right of action under the EFA See Abbeville County, 335 S C at 65-66 515 S E 2d at 539



that the Education Clause is not self-executing because it depends on the legislature to supply the "rules by means of which those principles may be given the force of law" Davis, 179 U S at 403

Finally, the Education Clause makes no mention of a plaintiff's recourse if the provision is violated⁸ While the lack of a specific remedy should not itself defeat the contention that a constitutional provision is self executing," Shields, 658 A 2d at 929 the absence of a specified remedy is evidence that the Education Clause was not intended to be self-executing *Id*

Because the Education Clause expresses only general principles requiring legislative action to become operative contains a directive to the legislature for further action, and because the Supreme Court has implied that the Education Clause is not self-executing Article XI Section 3 cannot serve as a basis for a cause of action for damages against the House and Senate Accordingly, Plaintiffs' claim for damages arising from Article XI, Section 3 is hereby dismissed

Yet, even if an appellate court were to determine that the Education Clause is self-executing, this Court further finds that this is not the appropriate case for the awarding of damages "The fact that the constitutional provision is self-executing means only that the rights contained therein do not need further legislative action to become operative It does not necessarily mean that monetary damages are the proper remedy for a violation Shields 658 A 2d at 930, *see also* Carlson v Green 446 U S 14, 18-19 (1980) (holding,

⁸ Compare Article I Section 13 of the South Carolina Constitution which provides that private property shall not be taken for private use without the consent of the owner nor for public use *without just compensation being first made therefore* Unlike the Education Clause Article I, section 13 implies a remedy and has been held to be self-executing Owens v South Carolina State Hwy Dept, 239 S C 44 53 121 S E 2d 240 245 (1961)

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in the federal context, that a direct action for damages under the Constitution can be maintained only where no other equally effective or adequate remedy exists)

Except for the Takings Clause, S C Const Art I, Section 13, the South Carolina Constitution does not expressly provide damage remedies for constitutional violations. While the Court has the ability, based on the common law, to award damages for constitutional violations the exercise of this power

'requires policy decisions by the court, and it should be aware of them and face them candidly. The court is not required to provide the civil remedy, and yet judicial tradition gives it the authority to do this under appropriate circumstances. The court has discretion, and it must be careful to exercise that discretion cautiously and soundly

Spackman v. Board of Educ. of the Box Elder County Sch. Dist., 16 P 3d 533, 538 (Utah 2000) (quoting Restatement of Torts § 874A cmt d at 303). To that end in order to ensure that damages for constitutional violations are permitted only 'under appropriate circumstances," courts have found that a plaintiff must establish the following three elements before he or she may proceed with a private suit for damages

First a plaintiff "must establish that he or she suffered a 'flagrant' violation of his or her constitutional rights. Spackman, 16 P 3d at 538. In essence this means that a defendant must have violated clearly established constitutional rights of which a reasonable person would have known. *Id.* (quoting Harlow v. Fitzgerald, 457 U S 800, 818 (1982)). This requirement ensures that a government employee is allowed the ordinary human frailties of forgetfulness, distractibility, or misjudgment without rendering [him or her]self liable for a constitutional violation. ' Spackman, *supra* (quoting Bott v. DeLand, 922 P 2d 732, 739-40 (Utah 1996)). Second a plaintiff must establish that existing remedies do not redress his or her injuries. Spackman, *supra*



This requirement is meant to ensure that the courts use their common law remedial power cautiously and in favor of existing remedies." *Id* Finally, a plaintiff must establish that equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff's rights or redress his or her injuries' *Id* This requirement is meant to take advantage of the meaningful role equitable relief can play in redressing constitutional remedies, while not implicating so many of the difficult policy considerations raised by a decision to award damages *Id*⁹

The Court finds that the first element has not been established Specifically, Spackman requires that a plaintiff must establish that he/she suffered a flagrant violation of his/her constitutional rights In essence, this means that a defendant must have violated clearly established constitutional rights of which a reasonable person would have known Inasmuch as a clear definition of the constitutional rights accorded under the Education Clause was not delineated until the Abbeville County decision was rendered by the Supreme Court on April 22, 1999, the violation of clearly established rights of which a reasonable person would have known could not have occurred under these circumstances

Most importantly, Plaintiffs cannot establish that equitable relief is inadequate to redress any injuries Plaintiffs may have suffered The court in Abbeville County makes it clear that this Court has the power of judicial review over the implementation of Article

⁹ In a footnote the Spackman court notes that in fact, many forceful arguments have been made that equitable relief is often a more appropriate remedy for constitutional torts than are damages Spackman, 16 P 3d at 539 n 12 (citing Vicki C Jackson *The Supreme Court the Eleventh Amendment and State Sovereign Immunity* 98 Yale L J 91-94 (1988) Christina Whitman *Constitutional Torts* 79 Mich L Rev 5, 47 57 (1980) Susan Bandes *Reinventing Bivens The Self Executing Constitution* 68 S Cal L Rev 289 294 (1995) (observing that "[i]n many cases damages are not the most appropriate or effective remedy, declaratory or injunctive relief is preferable")) That is particularly true in this case



XI, Section 3, and can fashion relief pursuant to that power. Plaintiffs therefore have a direct, judicial remedy sanctioned by the South Carolina Supreme Court Abbeville County, 515 S E 2d at 539. The right to seek a declaratory judgment concerning the State's constitutional compliance is a substantial right, and provides the basis for judicially ordered remedy, albeit not the award of monetary damages.

Accordingly, because the Plaintiffs have failed to establish a 'flagrant' violation, and because the Court can require the General Assembly to correct a violation, this Court should not allow damages to be awarded in this case.¹⁰ See Spackman, 16 P 3d at 539 (observing that in general, the legislative branch has the authority, and in many cases is better suited, to establish appropriate remedies for individual remedies). To allow damages in this case would be to create a new remedy not envisioned by the State Constitution. In the exercise of its discretion, the Court denies Plaintiffs' request for money damages.

As an additional ground for dismissing Plaintiffs' claim for money damages, the Court finds that both the common law doctrine of legislative immunity and the South Carolina Tort Claims Act protect the Defendants from a suit for money damages. Sound public policy has long recognized an absolute immunity of members of legislative

¹⁰ Courts have noted that allowing a damages claim to go forward would present an array of problems. See Ross v. Creighton Univ., 740 F Supp 1319, 1329 (N D Ill 1990) (predicting that the courts could be deluged and school shut down if students were allowed to bring damages claims against a school) *aff'd in part rev'd in part on other grounds* 957 F 2d 410 (7th Cir 1992). Peter W. v. San Francisco Unified Sch. Dist., 131 Cal Rptr 854, 861 (Cal Ct App 1976) (predicting that the financial burden on schools and society from individual damages would be beyond calculation). Hunter v. Board of Educ., 439 A 2d 582, 585 (Md 1982) (concluding that an award of money damages represents a singularly inappropriate remedy for asserted errors in the educational process). See also Comment, *Educational Malpractice in Sex Education*, 49 SMU L Rev 101, 103 (1995) (noting that the measurement of lost opportunity costs would vary widely depending on whether a student would have obtained a minimum wage job or become a professional if she had received an adequate education).

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bodies for acts in the performance of their duties " Richardson v McGill, 273 S C 142, 145-46, 255 S E 2d 341, 343 (1979) As the United States Supreme Court observed absolute immunity for state legislators finds support both in history and reason

Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability Furthermore, the time and energy required to defend against a lawsuit are of particular concern at the local level, where the part-time citizen-legislator remains commonplace And the threat of liability may significantly deter service in local government, where prestige and pecuniary rewards may pale in comparison to the threat of civil liability

Bogan v Scott-Harris, 523 U S 44, 52 (1998) (internal citations omitted) *see also* Tenney v Brandhove, 341 U S 367 (1951) (holding that state legislators are absolutely privileged in their legislative acts in an action against them for damages) ¹² This action plainly involves legislative issues Damages are not recoverable against the Defendants individually or against the legislature as a whole under the doctrine of legislative immunity ¹³

¹² Both Bogan and Tenney involved claims made pursuant to 42 U S C section 1983 However, [t]he basis of the Court's decision in Tenney v Brandhove was the absolute immunity which the common law of England and the United States has long afforded legislators at all levels against civil liability for acts done within the sphere of their legislative activities ' Bruce v Riddle 464 F Supp 745 747 (D S C 1979) Thus the enactment of section 1983 did not abrogate the legislative immunity which the Court found to exist at common law The result [in Tenney] would not have been altered if the plaintiff had alleged causes of action for constitutional violations independent of the Civil Rights Act. *Id*

¹³ The appropriation of public funds and the levying of taxes are legislative functions about which the courts do not substitute their judgment Gregory v. Rollins 230 S C 269 274 95 S E 2d 487 491 92 (1956) Indeed, to grant Plaintiffs requested monetary relief this Court would have to take on the role of a super legislature or super-school board - roles that our Supreme Court has eschewed Abbeville County 335 S C at 69 515 S E 2d at 541 (We do not intend the courts of this State to become super legislatures or super-school boards) The case law makes it clear that the Court may if Plaintiffs prove a violation, order the State to craft a remedy *See e g* Opinion of the Justices, 624 So 2d 107 (Ala. 1993)

The court finds further that the Tort Claims Act does not create an exception to the doctrine of sovereign immunity that would permit this case to proceed Under the Act a governmental entity is not liable for a loss resulting from

(1) legislative, judicial, or quasi-judicial action *or inaction*,

* * *

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule regulation, or written policies

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee or

* * *

(11) assessment or collection of taxes or special assessments or enforcement of tax laws

S C Code Ann 15-78-60 (Supp 2002) (emphasis added) The Act codifies common law legislative immunity, which bars this action and actually creates additional immunity from suit for governmental entities Construing the Act liberally, as this Court must do in favor of limiting liability, it becomes clear that if this case is grounded in tort, Plaintiffs Third Amended Complaint must be dismissed on any theory of liability Plaintiffs advance

If Plaintiffs' claim is based on legislative action or inaction, both common law legislative immunity and the legislative immunity codified by section 15-78-60 (1) of the Act mandate that the claims for damages in Plaintiffs Complaint be dismissed as a matter of law If Plaintiffs theory of recovery rests on the allegation that the House and Senate adopted laws that have an adverse impact on the State system of education or that


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the House and Senate failed to adopt certain laws, Plaintiffs' claim for damages must be dismissed pursuant to sections 15-78-60 (4) & (5) of the Act. If Plaintiffs' theory of recovery is that the House and Senate improperly delegated and enforced tax laws then Plaintiffs' claim for damages must be dismissed pursuant to section 15-78-60 (11) of the Act. Therefore, the Senate and House's motion to dismiss Plaintiffs' prayer for monetary damages in the Third Amended Complaint is hereby granted.¹

Finally, as to the matter of standing, consistent with the Court's ruling above student Plaintiffs who are no longer students lack standing to pursue this action. In Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), the United States Supreme Court articulated the "irreducible constitutional minimum" that standing requires

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical[.] Second, there must be a

¹ Plaintiffs contend that sovereign immunity, as codified in the South Carolina Tort Claims Act, should not apply when the claim is a 'constitutional tort. According to Plaintiffs, whereas the State may hide behind a cloak of sovereign immunity for statutory violations because it, as the sovereign, created the statutes, it cannot hide from that which governs it – the Constitution – because as to the Constitution it too is a servant, not the sovereign. The Court finds this argument unpersuasive when applied to the facts of this case. Even assuming that Plaintiffs' argument has some merit, the validity of Plaintiffs' argument depends on whether Article XI, Section 3 is self-executing. In sum, if a constitutional provision is self-executing, i.e., no legislation is necessary to give effect to the provision or to provide a remedy, then perhaps Plaintiffs are correct. In that instance, the legislature could not bar the availability of the constitutional remedy by statutory enactment. But where a constitutional provision is not self-executing, i.e., legislation is necessary to give effect to the provision and provide a remedy, Plaintiffs' argument fails. The application of sovereign immunity to a non self-executing provision does not operate to bar a party from an otherwise available damages remedy, and the legislature can immunize itself from any potential liability. Clearly Article XI, Section 3 is not self-executing. As previously observed, "[a] constitutional provision is self-executing when no legislation is necessary to give effect to it." Becker v. Atlantic Coast Line R. Co., 128 S.C. 131, 121 S.E. 476, 478 (1924). The Education Clause provides that "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State, and shall establish, organize and support such other public institutions of learning as may be desirable." (Emphasis added). The very words of the Clause make it clear that legislation is by definition necessary to give effect to the Clause. That the Education Clause is not self-executing is an unescapable conclusion.



causal connection between the injury and the conduct complained of – the injury has to be fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision

Id at 560-61 (citations and internal quotation marks omitted) (alterations in original)

The party seeking to establish standing 'carries the burden of demonstrating each of the three elements Sea Pines Ass'n for the Protection of Wildlife v. South Carolina Dep't of Natural Resources and Community Serv's Associates, Inc., 345 S C 594 601, 550 S E 2d 287, 291 (2001) In the present case, the Plaintiff former students fail to meet their burden

The concept of mootness is 'a corollary of the principles embodied in the justiciability concepts of standing and ripeness" Jackson v. State 331 S C 486, 491, 489 S E 2d 915, 917, n 2 (1997) Before an action can be maintained, 'there must exist a justiciable controversy ' Byrd v. Irmo High School 321 S C 426, 430, 468 S E 2d 861, 864 (1996) A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination *Id* A court should "not pass on moot and academic questions or make an adjudication where there remains no actual controversy ' *Id* at 431, 468 S E 2d at 864 'A case becomes moot when judgment if rendered will have no practical effect upon [the] existing controversy This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief" Mathis v. South Carolina State Highway Dep't 260 S C 344, 346 195 S E 2d 713 715 (1973)

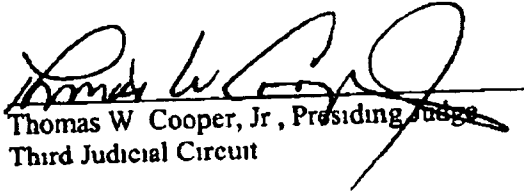
Since this Court has determined that the Plaintiffs are not entitled to pursue and recover



money damages, the Court finds that the claims of the former students are now moot due to their status

In all other respects, the motions of the Defendants to dismiss the Third Amended Complaint for failure to state or constitute a cause of action are denied

IT IS THEREFORE ORDERED that the Senate and House's motion to dismiss Plaintiff's prayer for monetary damages in the Third Amended Complaint is hereby granted, and the Senate and House's motion to dismiss the Third Amended Complaint in all other respects is hereby denied


Thomas W Cooper, Jr, Presiding Judge
Third Judicial Circuit

Manning, South Carolina

~~December 3~~ 2008

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

Abbeville County School District, et al,)

Plaintiffs,)

vs)

The State of South Carolina, et al,)

Defendants)

ORDER

C/A No 93-CP-31-169

This matter is before me on the Defendants' motions for directed verdicts pursuant to Rule 50(a) SCRPC and came to be argued at the conclusion of the Plaintiffs' case in chief. "In ruling on a motion for a directed verdict, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. When the evidence yields only one inference, a directed verdict in favor of the moving party is proper." Swinton Creek Nursery vs. Edisto Farm Credit 334 S C 469, 514 S E 2d 126. Conversely, "if the evidence is susceptible of more than one reasonable inference, the trial court should deny the motion for directed verdict." Scoggins vs. McClellon 321 S C 264, 468 S E 2d 12 (Ct. App 1996)

The Defendants' motions fit into ten categories, each of which will be taken in turn

SEPARATION OF POWERS/POLITICAL QUESTION

To the extent that the Plaintiffs' causes of action may be construed to rest upon flaws in the legislative process, the Defendants' motion is granted. While such "flaws", if they exist, are appropriate evidentiary considerations, they do not form a separate basis for liability. The propriety or impropriety of the legislative process is not within the



control of this court. The results of that process, however, are appropriate matters for this court's intrusion

The remaining grounds of the Defendants' motions in this area are denied

DISTRICT, STUDENTS AND TAXPAYER STANDING

The Defendants' motions to dismiss based on the standing issues, although some of the closest legal issues involved, are denied. While the court in the Abbeville case made it clear that the duties arising under the Education Clause of the Constitution are owed to the students, the court also recognized that "the purpose of providing a public education is a benefit not just the individual receiving it, but also the public at large."

Abbeville Sch. Dist. v. State of South Carolina, 335 S.C. 58, 515 S.E. 2d 535 (1999)

This court has read Judge Floyd's Opinion in the Smith v. School District of Greenville case, but feels that this case is distinguished from that Opinion. Judge Floyd cited two South Carolina Opinions considering whether or not a school district was an arm of the State. Those two cases reached differing opinions and therefore provided little guidance. Both of those cases involved questions of sovereign immunity under the Eleventh Amendment of the United States Constitution. This court feels as did the Galstrap court, cited in the Plaintiffs' Memorandum, that the questions involved here are such important ones that the rules on standing will not be "inflexibly applied." Certainly, there are few more important issues than the education of the State's citizens. The court therefore finds that issues of fact and law exist as to the Districts, Students and Tax Payers' standing to prosecute this action.

CAPACITY TO SUE

The issue of the Plaintiff districts' capacity to sue is the closest legal issue in this area. However, this court is convinced by the Central Delta Water Agency and

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Minnesota State Board cases cited by the Plaintiffs that issues of fact and law exist as to the districts' capacity to bring this suit. The Seattle School District case also cited by the Plaintiffs is additional authority in that regard. The Defendants' motion to dismiss is therefore denied.

EDUCATION MALPRACTICE THEORY

The Plaintiffs have conceded, and this court agrees, that its case does not rest on an education malpractice theory. To the extent that some of the allegations in the complaint might be construed in that fashion, the Defendants' motion for directed verdict is granted.

DELEGABLE DUTIES AND FAILURE TO MEET MAXIMUM DEBT LIMITATION

The Defendants' motion for a directed verdict as to these issues is denied. While the South Carolina Constitution and statutory enactments contemplate and provide that school districts will provide some of the funding necessary to comply with the Education Clause of the Constitution, the failure of school districts to exhaust their ability to raise money through local taxes and to reach their debt limit in that regard is not a bar to the districts' maintaining this suit. Substantial factual issues have been raised during the trial as to the taxing capacity and ability of the school districts involved to survive the Defendants' motion in this regard. The Defendants' motion to dismiss is therefore denied.

NO DISTINCTION BETWEEN STATE AND LOCAL FUNDS

The Defendants' motion for directed verdict on these issues is denied. There is a combination of monies from various sources that impact the education process. The monies are raised differently, allocated differently and accounted for separately. Indeed, the financial documents offered into evidence by both sides are indicative of

10/3

that fact. The Plaintiffs have presented evidence regarding the shifting of financial responsibility from the State to the local level. The fact that those monies are eventually dedicated to the general education purposes of the district does not destroy the distinction between the monies that come from the State and from local sources

RELATIVE FUNDING OF SCHOOL DISTRICTS

To the extent that the Plaintiffs' causes of action rest upon issues of the relative funding for or wealth of school district, the Defendants' motion for directed verdict is granted. That issue has been foreclosed under the Richland County v. Campbell case cited in the Defendants' Memorandum. However, as the Plaintiffs have suggested in their Memorandum, relative funding may be, and has been accepted as an evidentiary issue bearing on the allegations of the Plaintiffs

EDUCATION FINANCE ACT, EDUCATION IMPROVEMENT ACT, AND EDUCATION ACCOUNTABILITY ACT

The Abbeville case asserts and the Plaintiffs concede, that their claims in this case are not based on the above acts but are grounded in the Education Clause of the South Carolina Constitution

ALLEGED UNCONSTITUTIONAL LEGISLATION

The Abbeville court stated that the Campbell case disposes of any claims that the EFA and/or EIA are violative on their face of either the State or Federal Equal Protection Clause. Whether any statutes are violative of the Education Clause of the South Carolina Constitution, or whether those statutes, as applied, fail to meet the Constitutional minimum established by the Abbeville case is a mixed matter of law and fact and the Defendants' motions as to a directed verdict in that regard are denied

DEFINITION OF MINIMALLY ADEQUATE EDUCATION



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DEFINITION OF MINIMALLY ADEQUATE EDUCATION



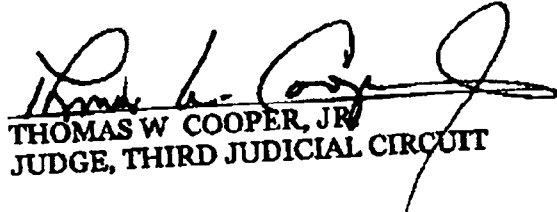
This court is not prepared to rule at the directed verdict stage of this case as to the components of a minimally adequate education or of the threshold requirements which must be met in order to meet the standard established by the Abbeville court. This court is mindful of the cases cited by the Abbeville court and has considered, and will continue to consider the evidence offered by both sides on this most seminal issue of this case

To the extent that the Defendants move for a direction of verdict as to a precise definition of "minimally adequate education" at this stage of the proceedings, the motion is denied

AND IT IS SO ORDERED

At Manning, South Carolina

Dated Sept 17, 2009


THOMAS W COOPER, JR.
JUDGE, THIRD JUDICIAL CIRCUIT

Rec'd 6/26/03

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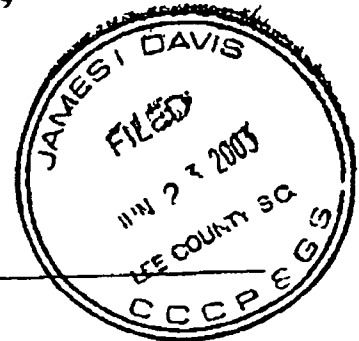
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STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

Abbeville County School District et al)
Plaintiffs,)
v)
The State of South Carolina et al ,)
Defendants)

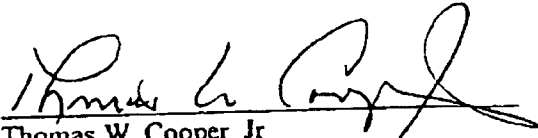
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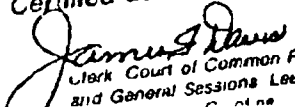
ORDER

Pursuant to Rule 42(b) of the South Carolina Rules of Civil Procedure the Court elects to try separately the claims of the following School Districts at a nonjury trial to begin July 28, 2003 Lee County School District Marion County School District 7 Hampton County School District 2 Jasper County School District Allendale County School District, Dillon County School District 2, Orangeburg School District 3 and Florence County School District 4 The Court also elects to try the claims of the following individuals residing in those school districts named above Bryan Tigner Bradley Tigner and Ms Marva Tigner Kimberly Wise, and Mrs Linda Carraway All claims and all defenses by and between all other plaintiffs not named herein and defendants are specifically reserved for trial at a later date

AND IT IS SO ORDERED


Thomas W Cooper Jr
Judge Third Judicial Circuit

Marked South Carolina
June 20 2003

Certified as a True Copy

Clerk Court of Common Pleas
and General Sessions Lee
County

REC000246

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

Abbeville County School
District, et al ,)

Plaintiffs)

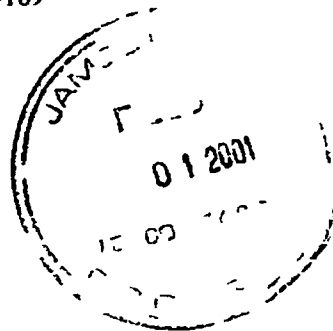
vs)

The State of South Carolina, et al)

Defendants)

IN THE COURT OF COMMON PLEAS
IN THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO 93-CP 31-169

ORDER



This matter is before the Court pursuant to Plaintiffs' Motion to Amend the Complaint. In January 2001 Plaintiffs moved to amend Second Amended Complaint, and provided Defendants with a proposed Third Amended Complaint. In the Third Amended Complaint, Plaintiffs requested a Jury Trial. Upon review of applicable legal authority, it is the order of the Court that Plaintiffs' Motion to Amend Complaint is granted, but Plaintiffs' request for a Jury Trial is denied.

Standard for Amendments

Rule 15 of the South Carolina Rules of Civil Procedure governs amendments to pleadings. It provides that a party may amend his pleading by leave of the court at any time "and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15, SCRPC. This rule and the corresponding rule 15 of the Federal Rules of Civil Procedure evinces a bias in favor of granting amendments and unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial. Forrester v. Smith & Steele Builders, Inc., 295 S C 504 369 S E 2d 156 (Ct App 1988).

Amendments to the pleadings may be offered at any time even up to and after the time of trial. Denial of leave to amend is an abuse of discretion in the absence of a proper reason such as bad faith, undue delay, or prejudice. Id., 295 S C at 507 369 S E 2d at 158. However, a lengthy delay in seeking an amendment is not sufficient reason to deny leave to amend. "Delay in seeking leave to amend pleadings regardless of the length of the delay will not ordinarily be held to bar an amendment in the absence of a finding of prejudice." Id., 295 S C at 508, 369 S E 2d at 159. See also Potomac Leasing Co. v. Bone, 294 S C 494 497, 366 S E 2d 26, 28 (Ct App 1988) (delay alone regardless of its length, is not enough to bar [a proposed amendment] if the other party is not prejudiced).

The prejudice required to bar an amendment to the pleadings is "a lack of notice that [a] new issue is going to be tried and a lack of opportunity to refute it." Duncan v. CRS Sirmine

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Court of Common Pleas
Third Judicial Circuit
Abbeville County, South Carolina

REC000247

Engineers, Inc., 337 S C 537, 542, 524 S E 2d 115, 117 (Ct App 1999) The burden is on the party opposing the motion to establish prejudice Id. In considering whether the opposing party has established prejudice, the court should look to whether the opposing party has the opportunity to prepare the issue for trial Id.

Here, as in Forrester, the Plaintiffs seek to amend the complaint to seek monetary damages. In Forrester, The Court of Appeals held that an amendment seeking monetary damages would not prejudice the Defendant and reversed the trial court's denial of the motion to amend. The court stated, "the fact that the City will be obliged to go to some additional time and expense in order to answer the amended complaint does not constitute such prejudice as will preclude the amendment."

While the proposed amendments will obviously require the Defendants to commit additional attention and resources in response, the Defendants will suffer no prejudice from such an amendment. Trial is set for June 2002. Defendants will have sufficient time and opportunity to prepare a defense to the relief sought in the proposed amendment. The fact that damages are now sought does not change the theory of the case, and Defendants have not established that the amendment will prejudice their preparation of a defense to the amendment. The Motion to Amend is therefore GRANTED.

Request for Jury Trial

Rule 38 of the South Carolina Rules of Civil Procedure governs when a demand for a jury trial shall be made. A demand for a jury trial must be made not later than 10 days after service of the last pleading directed to the issue. Rule 38(d) then makes clear that "failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury."

A litigant's entitlement to a jury trial on the issues presented by an amended pleading, when no prior demand for a jury trial has been made, turns on whether the amended pleadings create new issues of fact. King v. Shorter, 291 S C 501, 354 S E 2d 402 (Ct App 1987).

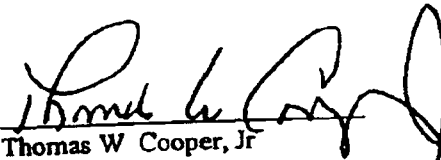
Shorter addressed a situation quite similar to this case. In that case, defendant Shorter served three sets of pleadings and did not request a jury trial in any of them. In a fourth proposed amendment, Shorter moved to transfer the case to the jury calendar, which was denied by the trial judge, although the motion to amend was granted. On appeal, Shorter argued that the trial judge abused his discretion in denying the motion to transfer. The Court of Appeals held that Shorter had waived his right to a jury trial, and that since the new claims involved the same facts as the old claims, no new right to a jury trial arose in connection with the amendment. Id. at 403.

Although Plaintiffs are now seeking different relief, the underlying issues as to liability remain the same. This is illustrated by the Third Amended Complaint which incorporates all prior allegations of the complaint into the claim for damages. No new issues of fact exist. Plaintiffs' request for a jury trial is therefore DENIED.



AND IT IS SO ORDERED

May 30, 2000
Columbia, SC



Thomas W Cooper, Jr
Presiding Judge

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 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 Come
 Coker Come 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 Tyrn Brooks Tyrn 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 Harnott
 individually, and as a taxpayer residing in Lee County and as
 parent and Guardian ad Litem of Rashade Harnott, Rashade Harnott,
 a minor by and through Gail Y Harnott, 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

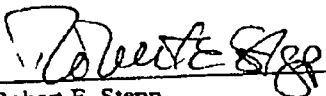
Respondents

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Case No 93-CP 31 0169

The State of South Carolina, et al ,
v
Abbeville County School District, 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 do hereby certify that on August 15 2007 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

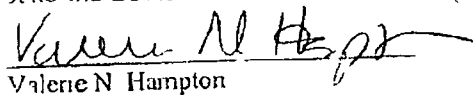
NOTICE OF CROSS-APPEAL

Counsel Served

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
Attorneys for Plaintiffs

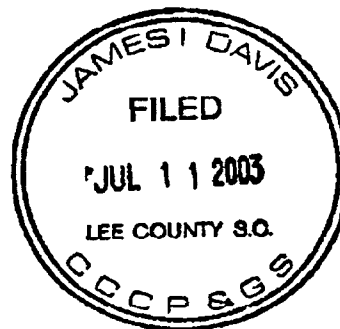
OFFICE OF THE ATTORNEY GENERAL

Henry D McMaster
J Emory Smith, Jr
Elizabeth R McMahon
Post Office Box 11549
Columbia South Carolina 29211-1549
Attorneys for Defendants the State and Governor of South Carolina


Valerie N Hampton

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEE) DOCKET 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 Vincent,)
Courtney Vincent a minor by and through)



FOURTH AMENDED COMPLAINT

(Jury Trial Requested)

(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)

Plaintiffs

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,

Defendants

Plaintiffs in this matter allege as follows

1 The Plaintiff Lena Manning is a taxpayer residing in Allendale County and is the legal guardian of Courtney Vincent her granddaughter, a minor, who is enrolled in the public schools of Allendale School District She brings this action in her capacity as a taxpayer and in her capacity as the Guardian ad Litem of Courtney Vincent

2 The Plaintiff Courtney Vincent is a minor enrolled in the public schools of Allendale County School District She brings this action by and through her Guardian ad Litem Lena Manning

3 3 The Plaintiff William Mills is a taxpayer residing in Allendale County and is the legal guardian of Waylon Priester his stepson a minor who is enrolled in the public schools of Allendale County School District He brings this action in his capacity as a taxpayer and in his capacity as the Guardian ad Litem of Waylon Priester

4 The Plaintiff Waylon Priester is a minor enrolled in the public school system in Allendale County School District He brings this action by and through his Guardian ad Litem William Mills

5 The Plaintiff Betty Bagley is a taxpayer residing in Bamberg County and is the legal guardian of Tyler Bagley a minor who is enrolled in the public schools of Bamberg County School District 1 She brings this action in her capacity as a taxpayer and in her capacity as the Guardian ad Litem of Tyler Bagley

6 The Plaintiff Tyler Bagley is a minor enrolled in the public school system in Bamberg County School District 1 He brings this action by and through his Guardian ad Litem Betty Bagley

7 The Plaintiff Evert Comer is a taxpayer residing in Bamberg County and is the legal guardian of Kimberly Comer a minor who is enrolled in the public schools of Bamberg County School District 2 He brings this action in his capacity as a taxpayer and in his capacity as the Guardian ad Litem of Kimberly Comer

8 The Plaintiff Kimberly Comer is a minor enrolled in the public school system in Bamberg County School District 2 She brings this action by and through her Guardian ad Litem, Evert Comer Jr

9 The Plaintiff Marla Q Jameson is a taxpayer residing in Barnwell County and is the legal guardian of Eleanor Jameson a minor who is enrolled in the public schools of Barnwell County School District 19 She brings this action in her capacity as a taxpayer and in her capacity as the Guardian ad Litem of Eleanor Jameson

10 The Plaintiff Eleanor Jameson is a minor enrolled in the public school system in Bamberg County School District 19 She brings this action by and through her Guardian ad Litem Marla Q Jameson

11 The Plaintiff Victor M Lancaster Sr is a taxpayer residing in Barnwell County and is the legal guardian of Christie Lancaster a minor who is enrolled in the public schools

of Barnwell County School District 29. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Christie Lancaster.

12 The Plaintiff Christie Lancaster is a minor enrolled in the public school system in Barnwell County School District 29. She brings this action by and through her Guardian ad Litem, Victor M. Lancaster, Sr.

13 The Plaintiff Dr. Charles Clark is a taxpayer residing in Chesterfield County and is the legal guardian of Candace Clark, a minor, who is enrolled in the public schools of Chesterfield County School District. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Candace Clark.

14 The Plaintiff Candace Clark is a minor enrolled in the public school system in Chesterfield County School District. She brings this action by and through her Guardian ad Litem, Dr. Charles Clark.

15 The Plaintiff Colonel Larry Coker is a taxpayer residing in Clarendon County and is the legal guardian of Corrie Coker, a minor, who is enrolled in the public schools of Clarendon County School District 3. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Corrie Coker.

16 The Plaintiff Corrie Coker is a minor enrolled in the public school system in Clarendon County School District 3. She brings this action by and through her Guardian ad Litem, Colonel Larry Coker.

17 The Plaintiff Pamela Williams is a taxpayer residing in Dillon County and is the parent and Guardian ad Litem of Katisha Williams, who is enrolled in the public schools of Dillon County School District No. 2. She brings this action in her capacity as a taxpayer and in her capacity as parent and Guardian ad Litem of Katisha Williams.

18 Katusha Williams is a minor enrolled in the public school system in Dillon County School District No 2 She brings this action by and through her Guardian ad Litem Pamela Williams

19 The Plaintiff Eddie Wright is a taxpayer residing in Florence County and is the parent and Guardian ad Litem of Brandon Fullard who is enrolled in the public schools of Florence County School District No 4

20 Brandon Fullard is a minor enrolled in the public school system in Florence County School District No 4 He brings this action by and through his Guardian ad Litem Eddie Wright

21 The Plaintiff John Whiteside is a taxpayer residing in Florence County and is the legal guardian of Joel Whiteside a minor, who is enrolled in the public schools of Florence County School District 5 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Joel Whiteside

22 The Plaintiff Joel Whiteside is a minor enrolled in the public school system in Florence County School District 5 He brings this action by and through his Guardian ad Litem John Whiteside

23 The Plaintiff Dr Francis Mills is a taxpayer residing in Hampton County and is the legal guardian of Amy Mills a minor, who is enrolled in the public schools of Hampton County School District 1 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Amy Mills

24 The Plaintiff Amy Mills is a minor enrolled in the public school system in Hampton County School District 1 She brings this action by and through her Guardian ad Litem, Dr Francis Mills

25 The Plaintiff Brenda Brooks is a taxpayer residing in Hampton County and is the parent and Guardian ad Litem of Tyrin Brooks, a minor who is enrolled in the public schools of Hampton County School District No 2 She brings this action in her capacity as a taxpayer and as the Guardian ad Litem of Tyrin Brooks

26 The Plaintiff Tyrin Brooks is a minor enrolled in the public school system in Hampton County School District No 2 He brings this action by and through his Guardian ad Litem Brenda Brooks

27 The Plaintiff Marva Tigner is a taxpayer residing in Jasper County and is the parent and Guardian ad Litem of Bryan Tigner and the Guardian ad Litem of Bradley Tigner She brings this action in her capacity as a taxpayer and as the Guardian ad Litem of Bryan Tigner and as the Guardian ad Litem of Bradley Tigner

28 The Plaintiff Bryan Tigner is a minor enrolled in the public schools of Jasper County School District He brings this action by and through his Guardian ad Litem Marva Tigner

29 The Plaintiff Bradley Tigner is a minor enrolled in the public schools of Jasper County School District He brings this action by through his Guardian ad Litem Marva Tigner

30 The Plaintiff Robert Elisha Short is a taxpayer residing in Laurens County and is the legal guardian of Robert B Short a minor who is enrolled in the public schools of Laurens County School District 55 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Robert B Short

31 The Plaintiff Robert B Short is a minor enrolled in the public school system in Laurens County School District 55 He brings this action by and through his Guardian ad Litem Robert Elisha Short

32 The Plaintiff Dr A Keith Bridges is a taxpayer residing in Laurens County and is the legal guardian of Jorgana Ranson Bridges a minor, who is enrolled in the public schools of Laurens County School District 56 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Jorgana Ranson Bridges

33 The Plaintiff Jorgana Ranson Bridges is a minor enrolled in the public school system in Laurens County School District 56 She brings this action by and through her Guardian ad Litem Dr A Keith Bridges

34 The Plaintiff Gail Y Harriott is a taxpayer residing in Lee County and is the legal guardian of Rashade Harriott a minor, who is enrolled in the public schools of Lee County School District She brings this action in her capacity as a taxpayer and in her capacity as parent and Guardian ad Litem of Rashade Harriott

35 The Plaintiff Rashade Harriott is a minor enrolled in the public school system in Lee County School District He brings this action by and through his Guardian ad Litem Gail Y Harriott

36 The Plaintiff Linda Carraway is a taxpayer residing in Marion County and is the parent and legal guardian of Kimberly Wise a minor who is enrolled in the public schools of Marion County School District No 7 She brings this action in her capacity as a taxpayer and in her capacity as parent and Guardian ad Litem of Kimberly Wise

37 The Plaintiff Kimberly Wise is a minor enrolled in the public school system in Marion County School District No 7 She brings this action by and through her Guardian ad Litem Linda Carraway

38 The Plaintiff Dr John Nobles is a taxpayer residing in Marlboro County and is the legal guardian of Erin Nobles a minor who is enrolled in the public schools of Marlboro County School District He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Erin Nobles

39 The Plaintiff Erin Nobles is a minor enrolled in the public school system in Marlboro County School District She brings this action by and through her Guardian ad Litem Dr John Nobles

40 The Plaintiff Patricia Hampton is a taxpayer residing in McCormick County and is the legal guardian of Krystle Hampton, a minor, who is enrolled in the public schools of McCormick County School District She brings this action in her capacity as a taxpayer and in her capacity as parent and Guardian ad Litem of Krystle Hampton

41 The Plaintiff Krystle Hampton is a minor enrolled in the public school system in McCormick County School District She brings this action by and through her Guardian ad Litem, Patricia Hampton

42 The Plaintiff Bernice Profit is a taxpayer residing in Orangeburg County and is the legal guardian of Russell Hezekiah a minor who is enrolled in the public schools of Orangeburg Consolidated School District No 3 She brings this action in her capacity as a taxpayer and in her capacity as parent and Guardian ad Litem of Russell Hezekiah

43 The Plaintiff Russell Hezekiah is a minor enrolled in the public school system in Orangeburg Consolidated School District No 3 He brings this action by and through his Guardian ad Litem Bernice Profit

44 The Plaintiff Matlin P Brown is a taxpayer residing in Orangeburg County and is the legal guardian of Tanisha P Brown, a minor who is enrolled in the public schools of Orangeburg County School District 1 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Tanisha P Brown

45 The Plaintiff Tanisha P Brown is a minor enrolled in the public school system in Orangeburg County School District 1 She brings this action by and through her Guardian ad Litem Matlin P Brown

46 The Plaintiff James Berry is a taxpayer residing in Orangeburg County and is the legal guardian of Dondrea Berry a minor who is enrolled in the public schools of Orangeburg County School District 2 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Dondrea Berry

47 The Plaintiff Dondrea Berry is a minor enrolled in the public school system in Orangeburg County School District 2 She brings this action by and through her Guardian ad Litem James Berry

48 The Plaintiff Gerald Smith is a taxpayer residing in Orangeburg County and is the legal guardian of Brenda Smith a minor who is enrolled in the public schools of Orangeburg County School District 8 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Brenda Smith

49 The Plaintiff Brenda Smith is a minor enrolled in the public school system in Orangeburg County School District 8. She brings this action by and through her Guardian ad Litem, Gerald Smith.

50 The Plaintiff Thomas Shealy is a taxpayer residing in Saluda County and is the legal guardian of Thomas Shealy Jr., a minor, who is enrolled in the public schools of Saluda County School District. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Thomas Shealy Jr.

51 The Plaintiff Thomas Shealy Jr. is a minor enrolled in the public school system in Saluda County School District. He brings this action by and through his Guardian ad Litem Thomas Shealy.

52 The Plaintiff school districts are political subdivisions existing pursuant to the laws of the State of South Carolina and are empowered to bring suit pursuant to the provisions of S.C. Code Ann. § 59-17-10 (1976).

53 Defendant Mark C. Sanford is the duly elected Governor of the State of South Carolina and a citizen and resident of the State of South Carolina, and is sued in his representative capacity.

54 Defendant Warren K. Giese is the Chairman of the Senate Education Committee and Chairman of the Education Subcommittee of the Senate Finance Committee and is sued in his representative capacity as the designated representative of the South Carolina Senate.

55 Defendant David H. Wilkins is an elected member of the South Carolina House of Representatives and Speaker of the House of Representatives, is a citizen and resident of the State of South Carolina and is sued in his representative capacity as Speaker of the South Carolina House of Representatives.

56 This action seeks a judgment for monetary damages and a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, S C Code Ann § 15-53-10 et seq

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

57 Article XI § 3, of the Constitution of the State of South Carolina directs that the General Assembly "shall provide for the maintenance and support of a system of free public schools open to all children in the state "

58 The education clause of the South Carolina Constitution Art XI § 3, requires the State through the General Assembly to provide the opportunity for each child to receive an adequate educational opportunity

59 Pursuant to Article XI § 3 of the South Carolina Constitution the State of South Carolina has a duty to provide the pupils of the public schools of this State adequate and safe facilities in which they have the opportunity to acquire at a minimum

- a The ability to read, write, and speak the English language, and knowledge of mathematics and physical science
- b A fundamental knowledge of economic, social, and political systems, and of history and governmental processes and
- c Academic and vocational skills

60 All pupils in South Carolina public schools are entitled to receive at a minimum that level of education necessary for them to meaningfully exercise the right to 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 among other constitutionally protected rights

61 There is a link between the adequacy of funding and resources and the quality of educational opportunities afforded to pupils, and adequate state support is necessary to provide an opportunity for an adequate education, and to offer, among other things, compensatory and remedial programs attract and retain qualified teachers and enable students in the Plaintiff districts to receive a constitutionally sufficient educational opportunity as explained above

62 The current funding and support of the system of education in and by the State of South Carolina is inadequate to provide the pupils of the Plaintiff school districts and similar districts with adequate educational opportunities required by the South Carolina Constitution

63 The constitutional obligations of the State of South Carolina as set forth above are non-delegable

64 Plaintiff school districts and similar districts as a group have low fiscal capacities and find it difficult or impossible to provide sufficient resources to offer adequate educational opportunities for the pupils residing and attending public schools within their districts and the State has not met its constitutional obligations to the Plaintiff districts or their students by providing the necessary resources

65 As a group, and as allowed by irrational and non uniform local funding laws the Plaintiff school districts and similar districts have had to increase millages and the citizens and taxpayers of the Plaintiff school districts and similar districts including but not limited to the individual Plaintiffs have had to attempt to meet and fund the needs associated with attempts to provide an adequate education to the pupils in their districts although the responsibility for such funding constitutionally belongs to the State In some instances state law prevents the Plaintiffs from raising additional revenue to support their school systems through its irrational and arbitrary local funding laws The Plaintiff districts as a result are

and have been unable to provide adequate educational opportunities to the students enrolled in the Plaintiff districts

66 Funding of educational needs of South Carolina pupils has not been determined through a statewide appraisal and consideration of the programs, facilities, and accompanying resources necessary to provide the educational services to which each child is entitled by the South Carolina Constitution and as a result the funding provided by the State and the Defendants is necessarily arbitrary and capricious and the State has not met its constitutional obligations to the Plaintiff districts or their students

67 Decisions by the Defendants regarding funding and support of public education in South Carolina traditionally have been dominated by political debate focused on the distribution systems used to allocate available funds rather than a rational consideration of the educational needs of the pupils and the educational opportunities pupils must be given to meet the constitutionally required educational objectives for a constitutionally required adequate education

68 The following statistics and circumstances are demonstrative of educational needs and issues that have not been considered or addressed or have been addressed inadequately by the Defendants in their allocation and distribution of funds and resources to the school districts

- a The students in the Plaintiff districts are not receiving educational opportunities guaranteed by the State Constitution
- b For those Plaintiff school districts which possess minimally adequate physical facilities equipment libraries instructional materials and curricula the resources needed to educate their students lack consistency and at best provide

only temporary relief. In other instances, minimally adequate physical facilities and even inadequate facilities have been provided by extraordinary local tax efforts,

- c A large percentage of pupils in the Plaintiff school districts and similar districts live in poverty and/or are deemed "at risk" students,
- d A large percentage of pupils in the Plaintiff school districts and similar districts have exceptional educational needs
- e The Plaintiff school districts and similar districts are not able to recruit and retain sufficient numbers of qualified instructional or other personnel,
- f A large percentage of pupils in the Plaintiff school districts score Below Basic on the Palmetto Achievement Challenge Test intended by the State and the Defendants to measure educational achievement. They also perform poorly on all other measures of educational outcomes and often drop out of school because the opportunities afforded them are not sufficient to provide them with a minimally adequate education
- g The percentage of teaching and administrative personnel who have earned Masters and Doctorate Degrees, and/or other post-Baccalaureate teacher training is less in the Plaintiff school districts and similar districts than in districts that possess higher fiscal capacities
- h The Plaintiff school districts and similar districts are not able to serve academically gifted pupils adequately or as extensively as are districts with greater fiscal capacities which not only are able to but do serve academically gifted pupils more extensively

- i As a group Plaintiff school districts and similar districts have inadequate and/or unsafe physical facilities equipment and libraries, and have limited and inadequate instructional materials and equipment and curriculum offerings
- j The average education attained by residents in the Plaintiff school districts is impermissibly low, and not sufficient to allow them to enjoy constitutionally protected rights or to receive the education required by the State Constitution or to assist their children in obtaining an adequate education
- k The need for Plaintiff school districts and similar districts to increase their local property taxes has made it more difficult to attract new industry and jobs and
- l The percentage of student candidates qualifying for Advanced Placement or higher education classes is lower in the Plaintiff school districts and similar districts than in districts with greater fiscal capacities

69 As a group, Plaintiff school districts and similar districts are not receiving adequate state resources and support to obtain the educational opportunities guaranteed by the State Constitution or to deliver those educational opportunities to the students

70 The State and the Defendants have impermissibly and unlawfully attempted to shift their burden of funding education to the Plaintiff districts

71 The distribution by the State and the Defendants of State funds without regard to the fiscal capacities of the local school districts coupled with the failure by the State and the Defendants to determine and provide funds to meet the actual educational needs in the local school districts and combined with the State's unlawfully shifting the burden of providing educational opportunities from the State to the local districts has resulted in the need for the Plaintiff school districts and similar districts to fund the educational needs of the pupils to the

extent they have been capable, although the responsibility for such funding constitutionally belongs to the State. Even with extraordinary efforts by local school districts to raise the necessary funds, funding remains inadequate, and the Plaintiff districts are unable to provide constitutionally mandated educational opportunities to their students.

72 The Defendants have participated in the drafting of unconstitutional statutes and/or have failed subsequently to ameliorate the unconstitutional aspects of those statutes to the detriment of the Plaintiffs named herein. In many instances, the General Assembly has failed to comply with its own laws.

73 Defendants have violated Article XI §3 of the Constitution of the State of South Carolina by failing to adequately support and provide adequate educational opportunities in South Carolina, inasmuch as they have failed to carry out their constitutional and statutory duties to insure adequate educational opportunities for all children within the State, and specifically children in the Plaintiff districts.

74 The Plaintiffs are entitled to a declaratory judgment that the Defendants have failed and continue to fail to carry out their constitutional and statutory duties to insure that adequate educational opportunities are provided by the State of South Carolina to children in the Plaintiff districts.

FOR A SECOND CAUSE OF ACTION
(Damages)

75 The Plaintiffs incorporate and reallege the allegations contained in Paragraphs 1 through 74 above as fully as if repeated herein verbatim.

76 As a direct and proximate result of the wrongful acts and omissions of the Defendants described above, the Plaintiff school districts suffered injuries and damages.

(including but not limited to the costs required to operate the schools in the districts, to meet the educational needs of the pupils in the districts and to construct renovate repair and maintain the physical facilities of the schools, which costs were unlawfully and unconstitutionally delegated by the State of South Carolina to the Plaintiff school districts

77 In the alternative, and as a direct and proximate result of the wrongful acts and omissions of the Defendants described above the Plaintiff school districts suffered injuries and damages including but not limited to being deprived of adequate state funds to enable them to provide adequate educational opportunities to the pupils in their schools, given the limited fiscal capacities of the Plaintiff school districts Such damages include but are not limited to the difference between the limited local funding the Plaintiff school districts have been able to raise due to their limited fiscal capacities and the actual costs required to operate the schools in the districts to meet the educational needs of the pupils in the districts and to construct renovate, repair and maintain the physical facilities of the schools

78 As a direct and proximate result of the wrongful acts and omissions of the Defendants, described above, the Plaintiff taxpayers suffered injuries and damages, including but not limited to increased tax burdens imposed in an attempt to generate sufficient and adequate funds to enable the Plaintiff school districts to attempt to provide adequate educational opportunities to the pupils in their schools Alternatively the State has not allowed some of the Plaintiff districts to raise funds because of irrational and unconstitutional local fiscal autonomy constraints

79 As a direct and proximate result of the wrongful acts and omissions of the Defendants described above the Plaintiffs the minor Plaintiffs enrolled in schools operated by the Plaintiff school districts and their parents suffered injuries and damages including but

not limited to the inability to obtain an adequate education and the resulting consequences thereof or by having to raise money from local sources to attempt to educate children within their districts in an uneven and impermissible manner

WHEREFORE, the Plaintiffs pray that the Court issue an Order as follows

a Declaring that the State and other defendants have failed to meet their constitutional obligations under Article XI § 3 of the South Carolina Constitution,

b Declaring that the current system of funding and supporting education in South Carolina is inadequate to meet the minimum educational needs of the students in the Plaintiff districts named herein and is therefore unconstitutional under the Constitution of the State of South Carolina,

c Requiring the Legislature to appropriate resources necessary to address in a compensatory and remedial fashion those inadequacies which have resulted to the Plaintiff school districts and students as a result of the failure to meet its constitutional obligations

d Requiring the Defendants to draft a proposal for a new system for providing an adequate education in South Carolina which when adopted will adequately meet the educational needs of all the Plaintiff districts and their students,

e Requiring the Defendants to fund and support a new South Carolina education system sufficient to adequately meet the educational needs of each student in the Plaintiff districts

f Requiring the Defendants to pay damages to the Plaintiff school districts in an amount sufficient to compensate them for the expenditures they incurred as a direct and proximate result of the failure of the Defendants to discharge their

constitutional duties to assess properly and to fund adequately the educational needs of the pupils of the Plaintiff school districts including but not limited to the failure of the Defendants to provide adequate and safe facilities in the Plaintiff school districts,

g Requiring the Defendants to pay damages to the individual Plaintiff taxpayers in an amount sufficient to compensate them for the increased local taxes they were required to pay as a direct and proximate result of the failure of the Defendants to assess properly and to fund adequately the educational needs of the pupils of the Plaintiff school districts

h Requiring the Defendants to pay damages to the individual minor Plaintiffs who are pupils in the Plaintiff school districts in an amount sufficient to compensate them for the failure of the Defendants to discharge their constitutional duties to assess properly and to fund adequately their educational needs thereby depriving them of an adequate education, including without limitation direct presumed, consequential and special damages,

i Providing for such other and further relief as the Court deems just and proper

NELSON MULLINS RILEY & SCARBOROUGH L L P

By Laura Callaway Hart
Carl B Epps III (SC Bar No 001903)
Laura Callaway Hart (SC Bar No 002766)
Post Office Box 11070 (29211)
Columbia SC 29201
(803) 799-2000

Attorneys for Plaintiffs

Columbia, South Carolina

July 10 2003

CERTIFICATE OF SERVICE

I the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough, L L P attorneys for Plaintiffs do hereby certify that I have served all
counsel in this action with a copy of the pleading(s) hereinbelow specified by via U S mail, to
the following

Pleadings

Fourth Amended Complaint

Counsel Served

Robert E Stepp Esquire
Elizabeth Van Doren Gray Esquire
A Jackson Barnes, Esquire
Sowell Gray Stepp & Laffite, L L C
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

J Emory Smith Jr Esquire
Deputy Attorney General
P O Box 11549
Columbia South Carolina 29211

Stella J Koster

Administrative Assistant

July 10, 2003

REC000338

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LEE) DOCKET 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 3,)
Marion County School District 4,)
Marlboro County School District,)
McCormick County School District,)
Orangeburg County School District 1,)
Orangeburg County School District 2,)
Orangeburg County School District 3,)
Orangeburg County School District 6,)
Orangeburg County School District 8,)
Saluda County School District,)
and Williamsburg County School)
District, 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)
Williams Mills, as Guardian ad Litem,)

SECOND AMENDED COMPLAINT

Betty Bagley, individually, and as a)
 taxpayer residing in Bamberg Courty and)
 as 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 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 Coker, Corrie Coker, 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 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,)
 Benny Burrison, Jr , individually, and)
 as a taxpayer residing in Hampton County)
 and as parent and Guardian ad Litem of)
 Shamon Burrison, Shamon Burrison, a)
 minor, by and through Benny Burrison,)
 Jr , 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 A Keith Bridges, as)
Guardian ad Litem, Hampton L Logan,)
individually, and as a taxpayer residing)
in Lee County and as parent and Guardian)
ad Litem of Kimberly Logan, Kimberly)
Logan, a minor, by and through Hampton)
L Logan, 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, 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,)

Plaintiffs,)

vs)

The State of South Carolina, David M
 Beasley, as Governor of the State of
 South Carolina, Nikki Setzler, as
 Chairman of the Senate Education
 Committee and Chairman of the
 Education Subcommittee 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, Barbara S Nielsen,
 as State Superintendent of Education
 and as a representative of the State
 Department of Education, Celia Gettys,
 as Chairman of the South Carolina State
 Board of Education,

 Defendants

Plaintiffs in this matter allege as follows

1 The Plaintiff William Mills is a taxpayer residing in Allendale County and is the legal guardian of Waylon Priester, his stepson, a minor, who is enrolled in the public schools of Allendale County School District He brings this action in his capacity as a taxpayer and in his capacity as the Guardian ad Litem of Waylon Priester

2 The Plaintiff Waylon Priester is a minor enrolled in the public school system in Allendale County School District He brings this action by and through his Guardian ad Litem, William Mills

3 The Plaintiff Betty Bagley is a taxpayer residing in Bamberg County and is the legal guardian of Tyler Bagley, a minor, who is enrolled in the public schools of Bamberg County School District 1 She brings this action in her capacity as a taxpayer and in her capacity as the Guardian ad Litem of Tyler Bagley

4 The Plaintiff Tyler Bagley is a minor enrolled in the public school system in Bamberg County School District 1 He brings this action by and through his Guardian ad Litem, Betty Bagley

5 The Plaintiff Evert Comer is a taxpayer residing in Bamberg County and is the legal guardian of Kimberly Comer, a minor, who is enrolled in the public schools of Bamberg County School District 2 He brings this action in his capacity as a taxpayer and in his capacity as the Guardian ad Litem of Kimberly Comer

6 The Plaintiff Kimberly Comer is a minor enrolled in the public school system in Bamberg County School District 2 She brings this action by and through her Guardian ad Litem, Evert Comer, Jr

7 The Plaintiff Marla Q Jameson is a taxpayer residing in Barnwell County and is the legal guardian of Eleanor Jameson, a minor, who is enrolled in the public schools of Barnwell County School District 19 She brings this action in her capacity as a taxpayer and in her capacity as the Guardian ad Litem of Eleanor Jameson

8 The Plaintiff Eleanor Jameson is a minor enrolled in the public school system in Bamberg County School District 19 She brings this action by and through her Guardian ad Litem, Marla Q Jameson

9 The Plaintiff Victor M Lancaster, Sr is a taxpayer residing in Barnwell County and is the legal guardian of Christie Lancaster, a minor, who is enrolled in the public schools of Barnwell County School District 29 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Christie Lancaster

10 The Plaintiff Christie Lancaster is a minor enrolled in the public school system in Barnwell County School District 29 She brings this action by and through her Guardian ad Litem, Victor M Lancaster, Sr

11 The Plaintiff Dr Charles Clark is a taxpayer residing in Chesterfield County and is the legal guardian of Candace Clark, a minor, who is enrolled in the public schools of Chesterfield County School District He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Candace Clark

12 The Plaintiff Candace Clark is a minor enrolled in the public school system in Chesterfield County School District She brings this action by and through her Guardian ad Litem, Dr Charles Clark

13 The Plaintiff Colonel Larry Coker is a taxpayer residing in Clarendon County and is the legal guardian of Corrie Coker, a

minor, who is enrolled in the public schools of Clarendon County School District 3. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Corrie Coker.

14 The Plaintiff Corrie Coker is a minor enrolled in the public school system in Clarendon County School District 3. She brings this action by and through her Guardian ad Litem, Colonel Larry Coker.

15 The Plaintiff John Whiteside is a taxpayer residing in Florence County and is the legal guardian of Joel Whiteside, a minor, who is enrolled in the public schools of Florence County School District 5. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Joel Whiteside.

16 The Plaintiff Joel Whiteside is a minor enrolled in the public school system in Florence County School District 5. He brings this action by and through his Guardian ad Litem, John Whiteside.

17 The Plaintiff Dr. Francis Mills is a taxpayer residing in Hampton County and is the legal guardian of Amy Mills, a minor, who is enrolled in the public schools of Hampton County School District 1. He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Amy Mills.

18 The Plaintiff Amy Mills is a minor enrolled in the public school system in Hampton County School District 1. She brings this action by and through her Guardian ad Litem, Dr. Francis Mills.

19 The Plaintiff Benny Burrison, Jr is a taxpayer residing in Hampton County and is the legal guardian of Shamon Burrison, a minor, who is enrolled in the public schools of Hampton County School District 2 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Shamon Burrison

20 The Plaintiff Shamon Burrison is a minor enrolled in the public school system in Hampton County School District 2 He brings this action by and through his Guardian ad Litem, Benny Burrison, Jr

21 The Plaintiff Robert Elisha Short is a taxpayer residing in Laurens County and is the legal guardian of Robert B Short, a minor, who is enrolled in the public schools of Laurens County School District 55 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Robert B Short

22 The Plaintiff Robert B Short is a minor enrolled in the public school system in Laurens County School District 55 He brings this action by and through his Guardian ad Litem, Robert Elisha Short

23 The Plaintiff Dr A Keith Bridges is a taxpayer residing in Laurens County and is the legal guardian of Jorgana Ranson Bridges, a minor, who is enrolled in the public schools of Laurens County School District 56 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Jorgana Ranson Bridges

24 The Plaintiff Jorgana Ranson Bridges is a minor enrolled in the public school system in Laurens County School District 56 She brings this action by and through her Guardian ad Litem, Dr A Keith Bridges

25 The Plaintiff Hampton L Logan is a taxpayer residing in Lee County and is the legal guardian of Kimberly Logan, a minor, who is enrolled in the public schools of Lee County School District He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Kimberly Logan

26 The Plaintiff Kimberly Logan is a minor enrolled in the public school system in Lee County School District She brings this action by and through her Guardian ad Litem, Hampton L Logan

27 The Plaintiff Dr John Nobles is a taxpayer residing in Marlboro County and is the legal guardian of Erin Nobles, a minor, who is enrolled in the public schools of Marlboro County School District He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Erin Nobles

28 The Plaintiff Erin Nobles is a minor enrolled in the public school system in Marlboro County School District. She brings this action by and through her Guardian ad Litem, Dr John Nobles

29 The Plaintiff Patricia Hampton is a taxpayer residing in McCormick County and is the legal guardian of Krystle Hampton, a minor, who is enrolled in the public schools of McCormick County School District She brings this action in her capacity as a

taxpayer and in her capacity as parent and Guardian ad Litem of Krystle Hampton

30 The Plaintiff Krystle Hampton is a minor enrolled in the public school system in McCormick County School District She brings this action by and through her Guardian ad Litem, Patricia Hampton

31 The Plaintiff Matlin P Brown is a taxpayer residing in Orangeburg County and is the legal guardian of Tanisha P Brown, a minor, who is enrolled in the public schools of Orangeburg County School District 1 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Tanisha P Brown

32 The Plaintiff Tanisha P Brown is a minor enrolled in the public school system in Orangeburg County School District 1 She brings this action by and through her Guardian ad Litem, Matlin P Brown

33 The Plaintiff James Berry is a taxpayer residing in Orangeburg County and is the legal guardian of Dondrea Berry, a minor, who is enrolled in the public schools of Orangeburg County School District 2 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Dondrea Berry

34 The Plaintiff Dondrea Berry is a minor enrolled in the public school system in Orangeburg County School District 2 She brings this action by and through her Guardian ad Litem, James Berry

35 The Plaintiff Gerald Smith is a taxpayer residing in Orangeburg County and is the legal guardian of Brenda Smith, a minor, who is enrolled in the public schools of Orangeburg County School District 8 He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Brenda Smith

36 The Plaintiff Brenda Smith is a minor enrolled in the public school system in Orangeburg County School District 8 She brings this action by and through her Guardian ad Litem, Gerald Smith

37 The Plaintiff Thomas Shealy is a taxpayer residing in Saluda County and is the legal guardian of Thomas Shealy, Jr a minor, who is enrolled in the public schools of Orangeburg County School District He brings this action in his capacity as a taxpayer and in his capacity as parent and Guardian ad Litem of Thomas Shealy, Jr

38 The Plaintiff Thomas Shealy, Jr is a minor enrolled in the public school system in Saluda County School District He brings this action by and through his Guardian ad Litem, Thomas Shealy

39 The Plaintiff school districts are political subdivisions existing pursuant to the laws of the State of South Carolina and are empowered to bring suit pursuant to the provisions of S C Code Ann § 59-17-10 (Law Co-op 1990)

40 Defendant David M Beasley, is the duly elected Governor of the State of South Carolina, and a citizen and resident of the

State of South Carolina, and is sued in his representative capacity

41 Defendant Nikki Setzler is the Chairman of the Senate Education Committee and Chairman of the Education Subcommittee of the Senate Finance committee, and is sued in his representative capacity as a properly designated representative of the South Carolina Senate

42 The Defendant David H Wilkins is an elected member of the South Carolina House of Representatives and Speaker of the House of Representatives, is a citizen and resident of the State of South Carolina, and is sued in his representative capacity as Speaker of the South Carolina House of Representatives

43 Defendant Barbara Nielsen is the duly elected State Superintendent of Education and a citizen and resident of the State of South Carolina, and is sued in her capacity as a proper representative of the State Department of Education In her representative role, she is given certain powers and duties under Title 59 of the South Carolina Code of Laws, which include, but are not limited to those set forth under S C Code Ann §§59-3-30 and 59-20-60(8)

44 Defendant Celia Gettys is the Chairman of the South Carolina State Board of Education, and is a citizen and resident of the State of South Carolina, and is sued in his representative capacity as a proper representative for the South Carolina State Board of Education In her representative capacity, she has certain powers and duties as are outlined in Title 59 of the South Carolina Code, which include, but are not limited to, auditing the

fiscal aspects of the EFA, making surveys of the school system in our State, and suggesting necessary changes

45 This is a declaratory judgement action brought pursuant to the Uniform Declaratory Judgments Act, S C Code Ann § 15-33-10, et seq

46 S C Code Ann § 59-20-40 provides for shared funding between the State of South Carolina and local school districts

47 The Education Finance Act provides that the amount funded by the school districts for the South Carolina Foundation Program shall be computed based in part on the ability of each school district to pay S C Code Ann § 59-20-40(e)

48 The purpose of the Education Finance Act is to "guarantee ~~to each student~~ in the public schools of South Carolina the ~~availability of all reasonable educational programs and services~~ appropriate to his needs, and which are substantially equal to those available to other students with similar needs and reasonably comparable from a program standpoint to those students of all other classifications, notwithstanding geographic differences and varying local economic factors " S C Code Ann § 59-20-30

49 The Education Finance Act specifically excludes from the shared funding system transportation, capital outlay and employee benefits S.C Code Ann § 59-20-20(2) ~~At the time the Educational Finance Act was passed, the State paid virtually all of these costs without burdening local districts~~

50 Under the current Funding System, funding of the benefits described in paragraph 49 is determined without regard to ability

to raise revenue, with the exception of a portion of the funding for employee benefits

51 The funds generated by the Education Improvement Act (hereinafter "EIA") are also distributed without regard to the Plaintiff school districts' ability to raise funds locally

52 The distribution of those funds for the programs set forth in paragraphs 49 and 51 without regard to ability to pay, coupled with the State's shifting of the burden from the State to the local districts, has resulted in the need for the Plaintiff school districts to increase millages to meet needed funding for transportation, capital outlay and fringe benefits and other programs

53 That Plaintiff school districts, as a group, have low tax bases to raise, from local sources, sufficient revenue to adequately educate the individual students residing within their districts

54 That there is considerable disparity between funds available for education in districts with a greater assessed valuation per pupil in Average Daily Membership, as compared with funds available in Plaintiff school districts, as a group

55 ~~That the current funding system is inadequate, inadequate and lacks uniformity.~~

56 ~~That under the current funding system, the Plaintiff school districts, as a group, lack permanent sources of revenue to offer adequate educational opportunities to their students and offer more limited educational opportunities as compared with~~

districts with a greater assessed valuation per pupil in Average Daily Membership

57 ~~That the Plaintiff school districts, as a group, lack~~ permanent sources of revenue to insure that adequate educational opportunities are available to their students. Specifically, the Plaintiff school districts have to make a much greater financial effort, as compared with districts with a greater assessed valuation per pupil in Average Daily Membership, to provide adequate technological equipment, laboratory facilities, physical facilities, instructional materials, advanced foreign language courses, board curricula and other facets of education which are necessary to prepare their students intellectually to meet the challenges of the future

58 That there is a statistical correlation between the funding available for education and the quality of education provided, which has been exemplified by studies conducted in South Carolina showing that the failure to consider assessed valuation within a school district in distributing education funds results in less assurance that students from districts with low assessed property valuation receive adequate and equitable educational opportunities. Accordingly, the Plaintiffs allege that the following statistics are demonstrative

- a The average educational level attained by residents in districts with a greater assessed valuation per pupil in Average Daily Membership is higher than the average

educational level attained by residents in the Plaintiff school districts, as a group

- b The percentage of student candidates qualifying for advanced placement, or higher education classes, is greater in districts with a greater assessed valuation per pupil in Average Daily Membership than in the Plaintiff school districts, as a group
- c The degree to which the Plaintiff school districts, as a group, are financially able to serve academically gifted students is lower than the degree to which districts with a greater assessed valuation per pupil in Average Daily Membership are able to serve such students
- d The percentage of teaching and administrative staff with Masters and Doctorate Degrees is greater in districts with a greater assessed valuation per pupil in Average Daily Membership than in the Plaintiff school districts, as a group
- e Districts with a greater assessed valuation per pupil in Average Daily Membership are able to offer and do offer higher salaries to their teaching staff than do the Plaintiff school districts as a group, making it difficult for the Plaintiff school districts to compete for, attract, and retain the more highly qualified teaching staff

f On a national scale, the average Scholastic Aptitude Test ("SAT") score of South Carolina students is the lowest of any state in the country

59 In order to equalize per pupil expenditures as compared with those expenditures in districts with a greater assessed valuation per pupil in Average Daily Membership in the State, the Plaintiff school districts as a group would have to considerably increase their millages

60 Districts with a greater assessed valuation per pupil in Average Daily Membership received considerably higher funding for employee fringe benefits than would have been received had the money been allocated under the Education Finance Act formula, as demonstrated, by way of example, by the table set forth below, which reflects statistics for the Fiscal Year 1986-87 South Carolina Legislative Audit Council, Review of the Education Finance Act, at 14 (1988)

<u>DISTRICT</u>	<u>WEALTH RANKING</u>	<u>ACTUAL FUNDS</u>	<u>EFA ALLOCATION</u>
Beaufort	1	\$2,819,468	\$ 609,866
Dorchester 3	2	268,264	104,867
Fairfield	3	1,181,066	556,154
Horry	4	5,541,207	3,725,580
Calhoun	5	599,151	325,024
Orangeburg 8	88	154,955	182,413
Dillon 3	89	420,083	497,637
Barnwell 19	90	319,098	360,218
Clarendon 3	91	316,812	398,840
Marion 4	92	160,755	186,029

FOR A FIRST CAUSE OF ACTION

61 Plaintiffs reallege each and every allegation set forth above as if fully repeated herein

62 That Article XIV, §1, of the Amendments to the United States Constitution prohibits any state from denying its citizens equal protection of the laws

63 That education is a fundamental right and all citizens are entitled to the opportunity for an education adequate to meet today's needs

64 That the students and taxpayers in South Carolina are entitled to equal protection of the laws, regardless of wealth or geographical location, including equal educational opportunities

65 ~~That all students in South Carolina are entitled to receive, at a minimum, that level of education necessary for them to meaningfully exercise the right to 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.~~

66 That there is a link between the adequacy of funding and the quality of educational opportunities afforded to students

67 That the Plaintiff school districts, as a group, under the current system, are receiving inequitable funding due to distribution of EIA funds and funding for fringe benefits, capital outlay, and transportation, without regard to ability to raise revenues, which has brought about the following results

- a ~~As a group, Plaintiff school districts are unable to~~
~~furnish the same level of educational opportunities as is~~
~~available in districts with a greater assessed valuation~~
per pupil in Average Daily Membership,

- b ~~As a group,~~ Plaintiff school districts are unable to
furnish an adequate level of education to its students,
- c Plaintiff school districts, as a group, have had to raise
property taxes to meet funding requirements
- d As a group, Plaintiff school districts have inferior
physical facilities, equipment, libraries, instructional
materials and narrower curricula than that which is
available in districts with a greater assessed valuation
per pupil in Average Daily Membership
- e In Plaintiff school districts which have reasonably
comparable physical facilities, equipment, libraries,
instructional materials and curricula as are available in
districts with a greater assessed valuation per pupil in
Average Daily Memberships, the funding has come from
sources which provide no assurance of needed future
funding and thus provides, at best, temporary relief and
has come, in many instances, from extraordinary tax
efforts,
- f As a group, Plaintiff school districts have difficulty
attracting and retaining in employment highly qualified
education personnel, and
- g The need for Plaintiff school districts to increase
property taxes has made it difficult to attract industry

68 That because of the inequities outlined herein, the
Plaintiff students are receiving educational opportunities of a

lower quality than those available to students in districts with a greater assessed valuation per pupil in Average Daily Membership

69 That because of the inequities outlined herein, the Plaintiff taxpayers are paying higher property taxes to fund their children's education than those taxpayers in districts with a greater assessed valuation per pupil in Average Daily Membership

70 As a group, Plaintiff School Districts are not receiving adequate state funding to meet the educational needs of their students outlined in paragraph 65,

71 That the Plaintiff students are being deprived of adequate funding, resources and educational tools necessary to achieve that minimum level of education described in paragraph 65

72 That the failure to adequately fund education for students in South Carolina, specifically the individual Plaintiff students, tends to make the quality of education a function of the wealth and economic status of their parents and neighbors and a measure of the tax base of the school district in which they reside

73 That the exclusion of funding for fringe benefits, capital outlay and transportation from the Education Finance Act, and the failure to distribute EIA funds based on ability to pay, tends to make the quality of education of students in South Carolina, including the individual Plaintiff students, a function of the wealth and economic status of their parents and neighbors and a measure of the tax base of the school district in which they reside

74 ~~That the present funding system results in an inequitable,~~
~~and discriminating opportunity for educational advantage, reducing,~~
~~the opportunity for students in the Plaintiff school districts to~~
achieve an adequate and meaningful education, and to receive
reasonably comparable educational opportunities as compared with
students attending school in districts with a greater assessed
valuation per pupil in Average Daily Membership

75 That the Defendants have violated Article XIV, §1, of the
Amendments to the United States Constitution by failing to
adequately and equitably fund education in South Carolina, insomuch
as they have failed to carry out their constitutional and statutory
duties in failing to insure that funding is available to furnish an
adequate education, and in failing to insure funding to furnish
equal educational opportunities for all children within the state
to the detriment of the Plaintiffs named herein

76 That the Defendants have participated in the drafting of
unconstitutional statutes and/or have failed to subsequently
ameliorate the unconstitutional aspects of those statutes to the
detriment of the Plaintiffs named herein.

FOR A SECOND CAUSE OF ACTION

77 Plaintiffs reallege each and every allegation of the
complaint set forth above as if fully repeated herein

78 Article 1, §3, of the Constitution of the State of South
Carolina, directs that no person shall be denied equal protection
of the laws

79 That the Defendants herein have violated Article 1, §3, of the Constitution of the State of South Carolina, by failing to adequately and equitably fund education in South Carolina, in failing to carry out their constitutional and statutory duties to insure that funding is available for adequate educational opportunities and in failing to provide equal educational opportunities for all children within the state, to the detriment of the Plaintiffs named herein

80 That the Defendants participated in the drafting of unconstitutional statutes and/or have failed to subsequently ameliorate the unconstitutional aspects of those statutes, to the detriment of the Plaintiffs named herein

FOR A THIRD CAUSE OF ACTION

81 Plaintiffs reallege each and every paragraph set forth above as if fully repeated herein

82 Article XI, §3, of the Constitution of the State of South Carolina, directs that the General Assembly "shall provide for the maintenance and support of a system of free public schools open to all children in the state "

83 That Defendants have violated Article XI, §3, of the Constitution of the State of South Carolina, by failing to adequately and equitably fund education in South Carolina, insomuch as they have failed to carry out their constitutional and statutory duties to insure that funding is available for adequate educational opportunities and in failing to provide funding to insure equal educational opportunities for all children within the state

84 The Defendants have participated in the drafting of unconstitutional statutes and/or have failed to subsequently ameliorate the unconstitutional aspects of those statutes, to the detriment of the Plaintiffs named herein

FOR A FOURTH CAUSE OF ACTION

85 Plaintiffs reallege each and every allegation set forth above as if fully repeated herein

86 That the purposes~~es~~ of~~the~~ the Education Finance Act to guarantee the availability of minimum educational programs appropriate to meet the individual students' needs, and to furnish programs which are substantially equal to those available to other students, without regard to geographic location or wealth, are not being carried out under the current funding system, in part, because it excludes funding for employee fringe benefits, transportation, and capital outlay

87 That the components of the foundation program set forth under the Education Finance Act are not being funded at the level mandated by the Act

88 That the Defendants herein have failed to carry out the spirit and purpose of the Education Finance Act and continue to fail to carry out the spirit and purpose of the Act

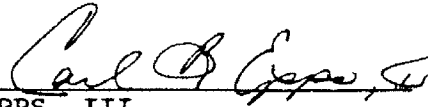
89 That the Defendants herein have failed and continue to fail to satisfy the funding mandates set out under the Education Finance Act

WHEREFORE, the Plaintiffs pray that the Court issue an Order as follows

- A Declaring the Education Finance Act unconstitutional as implemented
- B Declaring that the current system of funding in South Carolina is inadequate to meet the minimum educational needs of the students in South Carolina, especially students named herein,
- C Requiring the Legislature to amend the Education Finance Act to include funding for employee benefits, capital outlay and transportation
- D Requiring the Legislature to appropriate funds necessary to address in a remedial fashion those inequities which have resulted to the Plaintiff School Districts as a result of the failure to include funds for employee benefits, capital outlay and transportation in the Education Finance Act, in other words, requiring the State of South Carolina to appropriate and distribute those funds which would have been distributed since the enactment of the Education Finance Act had funds for employee fringe benefits, capital outlay, and transportation been included in the Education Finance Act as enacted, and
- E Requiring the Defendants to draft a proposal for a new system for funding education in South Carolina which will adequately and equitably meet the needs of all students across the state, regardless of geographical location and wealth

TURNER, PADGET, GRAHAM & LANEY, P A

BY



CARL B EPPS, III

ELIZABETH H PHILPOT

CURTIS L OTT

Turner, Padget, Graham & Laney, P A

Post Office Box 1473

Columbia, South Carolina 29202-1473

(803) 254-2200

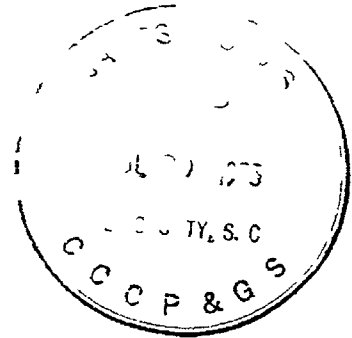
ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

July 19, 1995

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE) DOCKET 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 3,)
Marion County School District 4,)
Marlboro County School District,)
McCormick County School District,)
Orangeburg County School District 1,)
Orangeburg County School District 2,)
Orangeburg County School District 3,)
Orangeburg County School District 6,)
Orangeburg County School District 8,)
Saluda County School District,)
and Williamsburg County School)
District, 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)
Williams Mills, as Guardian ad Litem,)



AMENDED SUMMONS

Betty Bagley, individually, and as a)
 taxpayer residing in Bamberg County and)
 as 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 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 Coker, Corrie Coker, 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 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,)
 Benny Burrison, Jr , individually, and)
 as a taxpayer residing in Hampton County)
 and as parent and Guardian ad Litem of)
 Shamon Burrison, Shamon Burrison, a)
 minor, by and through Benny Burrison,)
 Jr , 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 A Keith Bridges, as)
 Guardian ad Litem, Hampton L Logan,)
 individually, and as a taxpayer residing)
 in Lee County and as parent and Guardian)
 ad Litem of Kimberly Logan, Kimberly)
 Logan, a minor, by and through Hampton)
 L Logan, 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, 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,)

Plaintiffs,)

vs)

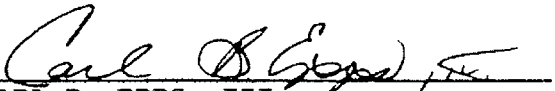
1

The State of South Carolina	David M	)
Beasley, as Governor of the State of		)
South Carolina	Nikki Setzler, as	)
Chairman of the Senate Education		)
Committee and Chairman of the		)
Education Subcommittee 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, Barbara S Nielsen,		)
as State Superintendent of Education		)
and as a representative of the State		)
Department of Education, Celia Gettys,		)
as Chairman of the South Carolina State		)
Board of Education,		)
		)
		)
Defendants		)

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER THE SECOND AMENDED COMPLAINT in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Second Amended Complaint on the subscribers at their offices at Post Office Box 1473, Columbia, South Carolina 29202, within thirty (30) days after the service thereof, exclusive of the date of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint

TURNER, PADGET, GRAHAM & LANEY, P A

BY 
CARL B EPPS, III
ELIZABETH H PHILPOT
CURTIS L OTT
Post Office Box 1473
Columbia, South Carolina 29202-1473
(803) 254-2200

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

July 19, 1995

1 HOW MUCH OF THAT IS GOING TO INVOLVE -- THAT IS I AM
2 SOMEWHAT RELUCTANT TO LISTEN TO SIX WEEKS OF TESTIMONY AND
3 THEN TAKE ANOTHER SIX WEEKS HOME IN PRINTED FORM TO HAVE
4 TO READ

5 HOWEVER IF THEY ARE SIMPLY LIMITED OR SOMEWHAT
6 LIMITED, EITHER EXCERPTS FROM DEPOSITIONS OR LIMITED
7 NUMBERS OF WITNESSES WHO ARE ADDRESSED IN THAT AREA I
8 DON'T MIND TAKING THOSE THINGS HOME AND READING THEM IN
9 THAT FASHION CAN YOU ALL GIVE ME SOME IDEA OF WHAT THE
10 SCOPE OF THIS DEPOSITION ISSUE IS GOING TO INVOLVE?

11 MR EPPS YOUR HONOR, WE HAVE TWO ISSUES FIRST OF
12 ALL IS WHETHER THEY CAN USE THE DEPOSITIONS WE DO NOT
13 THINK THEY CAN THE WITNESSES ARE UNDER THE SUBPOENA
14 POWER OF THE STATE AND THE COURT, SO THAT'S ISSUE NUMBER
15 ONE

16 ISSUE NUMBER TWO IS THEY LISTED I THINK
17 ACCORDING TO MY COUNT 55 DEPOSITIONS OF VARIOUS UNSUNDRY
18 WITNESSES TAKEN IN THE CASE SO THE DEPOSITIONS I THINK
19 ARE EITHER SCHOOL SUPERINTENDENTS, PRINCIPALS OR -- I KNOW
20 THEY LISTED GOVERNOR SANFORD AND FORMER GOVERNOR HODGES
21 DEPOSITION

22 SO IT'S OUR POSITION THAT ALL THESE POTENTIAL
23 WITNESSES, SHOULD THEY CHOOSE TO CALL THEM, ARE AVAILABLE
24 TO BE CALLED TO THE STAND DURING THE TRIAL OF THIS CASE,
25 SO NUMBER ONE WE OBJECT TO THE USE OF THAT DEPOSITION

1 WHATSOEVER

2 AND NUMBER TWO, SINCE THERE ARE INDEED 55
3 DEPOSITIONS, THEN I THINK IT WOULD BE UNUSUALLY AND
4 UNFAIRLY BURDENSOME TO SIMPLY PUT THOSE IN THE COURT'S LAP
5 AND SAY READ THESE AND TRY TO FIGURE OUT WHAT THE POINT
6 IS

7 SO IF THEY HAVE A QUIBBLE WITH THE DEPOSITION,
8 IF WE GET TO THAT ISSUE, IF THE WITNESS IS NOT AVAILABLE,
9 THEN I THINK AT A MINIMUM THAT THEY SHOULD BE REQUIRED TO
10 POINT OUT WHAT IN THE DEPOSITION THEY THINK IS PERTINENT
11 WE DON'T THINK AS AN INITIAL MATTER THAT THEY HAVE THE
12 RIGHT TO USE THE DEPOSITIONS

13 THE COURT I ASSUME THAT THERE WOULD BE DESIGNATIONS
14 IN ANY EVENT --

15 MR STEPP YES, SIR

16 THE COURT -- AS TO WHAT AREAS WE COULD USE AND
17 MR STEPP, I TAKE IT THAT THESE -- THE DEPOSITIONS THAT
18 YOU WOULD OFFER WOULD BE USED ONLY IN YOUR PORTION OF THE
19 CASE OR ARE YOU REFERRING TO

20 MR STEPP YES, SIR WE WOULD INTEND TO PROFFER
21 DEPOSITION TESTIMONY OF THE SUPERINTENDENTS OF EACH OF THE
22 EIGHT PLAINTIFF DISTRICTS, WHICH I CERTAINLY CONSIDER TO
23 BE THE TESTIMONY OF THE PARTY OPPONENT AS WELL AS THE
24 PRINCIPALS OF EACH OF THE SCHOOLS IN THE PLAINTIFF
25 DISTRICTS WHICH I ALSO THINK WOULD SPEAK FOR THE DISTRICT

1 OR FOR THE SCHOOLS WITHIN THOSE DISTRICTS, SO THESE ARE
2 NOT JUST WITNESS DEPOSITIONS IN THAT REGARD

3 BUT YOU KNOW WE CAN PROBABLY -- IF WE ARE, IF
4 NOBODY -- IF THE RULE IS GOING TO BE NOBODY'S GOING TO
5 READ ANY DEPOSITION TESTIMONY, THAT'S WHAT YOUR HONOR
6 WANTS TO DO, WE CAN PROBABLY WORK AROUND THAT ALTHOUGH WE
7 WILL HAVE TO, YOU KNOW, PUT SUBPOENAS OUT FOR SOME OF THE
8 PEOPLE TO MAKE SURE THEY TESTIFY, NOT EVERYBODY WHOSE
9 DEPOSITION WE TOOK IS ON THE PLAINTIFFS' WITNESS LIST

10 AND YOU KNOW, TO THE EXTENT AT THE END OF THE
11 PLAINTIFFS' CASE HE'S CALLED THOSE PEOPLE, WE HAVE MADE
12 OUR POINTS, WE PROBABLY WOULDN'T PROFFER THE DEPOSITIONS
13 AT THAT POINT BUT YOU KNOW, FOR NOW IN AN EFFORT TO BE
14 COMPLETE IN MY WITNESS LIST, WE DID IDENTIFY THEM

15 SO FIRST I THINK WE DO HAVE THE RIGHT TO USE
16 THEM BECAUSE THEY ARE PARTY OPPONENTS SECOND WE MAY OR
17 MAY NOT PROFFER THEM IF THESE PEOPLE TESTIFY AND THIRD
18 AS LONG AS THE RULE APPLIES TO EVERYBODY, IF HE'S NOT
19 GOING TO BE READING MY PEOPLE EITHER, THEN MAYBE I WON'T
20 READ HIS, SO YOU KNOW WHATEVER WAY

21 THE COURT ALL RIGHT

22 (WHEREUPON THERE WAS A PAUSE)

23 THE COURT RULE 32 A 2 WOULD APPEAR TO BE THE
24 APPROPRIATE RULE DEALING WITH THE USE OF DEPOSITIONS IN
25 COURT PROCEEDING, APPLIES TO DEPOSITION OF PARTIES OR OF

1 ANYONE WHO AT THE TIME OF TAKING THE DEPOSITION WAS AN
2 OFFICER, DIRECTOR ETC UNDER 30 B 6 MAY BE USED BY AN
3 ADVERSE PARTY FOR ANY PURPOSE THAT WOULD APPEAR TO
4 DISPOSE OF THE RIGHT TO USE THE DEPOSITIONS OF CERTAIN
5 PARTIES

6 NOW, IT DOESN'T GO TO THE ISSUE OF WITNESSES, OF
7 COURSE THAT'S A SEPARATE ISSUE AT ALL AND AS A
8 THRESHOLD MATTER, THE COURT WOULD RULE IN THAT REGARD
9 SIMPLY ADOPTING THE RULES, THE RULES OF CIVIL PROCEDURE

10 AS TO HOW WE WILL ACTUALLY HANDLE THE
11 ADMINISTRATIVE PRESENTATION OF THESE ISSUES, APPARENTLY IT
12 IS NOT GOING TO BE A REAL ISSUE, MR STEPP UNTIL YOU
13 START TO PRESENT YOUR CASE AND THEN TO THE EXTENT
14 NECESSARY THERE MAY BE NOT A MAJOR ISSUE IN THAT REGARD
15 FOR US TO DEAL WITH I DON'T THINK

16 MR STEPP I DON'T THINK WE HAVE TO RESOLVE IT
17 TODAY

18 THE COURT THAT'S RIGHT

19 MR STEPP AND I DON'T KNOW WHETHER THE PLAINTIFFS
20 PLAN TO -- THE PLAINTIFFS' WITNESS LIST DOES NOT INCLUDE
21 ANY TESTIMONY FROM MY CLIENTS

22 THE COURT RIGHT

23 MR STEPP I WOULD NOTE THAT NOTWITHSTANDING THAT, I
24 DID RECEIVE ON FRIDAY SUBPOENAS FOR I THINK FOUR MEMBERS
25 OF THE GENERAL ASSEMBLY, BUT THEY ARE NOT ON THE

1 WHICH INCREASES THE DIFFICULTY AND IS ADDED TO THE
2 INEFFICIENCY OF THE STANDING APPROPRIATION

3 Q NOW DOCTOR, WHERE DID YOU FIND THIS DOCUMENT?

4 A IN THE SOUTH CAROLINIAN, A LIBRARY AT THE UNIVERSITY

5 Q WHAT IS DR THORNEWELL SAYING ABOUT THE PUBLIC SCHOOL
6 SYSTEM THEN AS EARLY AS 1853?

7 MR STEPP I OBJECT, YOUR HONOR THE WITNESS CANNOT
8 INTERPRET THE SENTENCE HE HAS READ THE SENTENCE THE
9 EXHIBIT IS IN EVIDENCE

10 THE COURT THAT'S RIGHT THE DOCTOR OF COURSE IS
11 ENTITLED TO DRAW HIS OWN OPINION FROM WHAT HE HAS READ,
12 BUT I WILL ALLOW HIM TO DO THAT

13 Q IF YOU WOULD, WHAT OPINIONS DO YOU DRAW FROM HAVING
14 READ THAT STUDY, THIS PORTION OF OUR HISTORY?

15 A THIS PORTION AND THIS -- THIS PARTICULAR SENTENCE AND
16 THE ENTIRE REPORT IS THAT THE SCHOOL SYSTEM AS SET UP IN
17 1811 WAS NOT WORKING, AND AGAIN, THERE WAS SOMETHING ON
18 THE BOOKS BUT THE PRACIICE OF THE SYSTEM WAS INEFFECTIVE

19 Q THIS IS THE START OF A LONG TRIAL, RIGHT DOCTOR?

20 A YES, SIR

21 Q ALL RIGHT LET'S TURN THEN TO THE 1868 CONSTITUTION
22 CAN YOU TELL US -- JUST GIVE US A LITTLE BACKGROUND ON THE
23 1868 CONSTITUTION AND PLACE THAT IN CONTEXT FOR US

24 A YES, SIR OF COURSE BETWEEN 1853 AND 1868 WE HAD THE
25 CIVIL WAR AND BEGINNING IN 1865 RECONSTRUCTION THE 1868

1 CONSTITUTION IS THE SO CALLED RECONSTRUCTION CONSTITUTION
2 AND THE 1868 CONSTITUTION PROVIDED FOR THE FIRST TIME IN
3 THE CONSTITUTION OF SOUTH CAROLINA FOR A FREE PUBLIC MAY
4 -- ACTUALLY MANDATED TO THE GENERAL ASSEMBLY, THE GENERAL
5 ASSEMBLY SHALL CREATE I BELIEVE IT'S SOMETHING LIKE A
6 LIBERAL SYSTEM OF FREE PUBLIC SCHOOLS FOR ALL THE CHILDREN
7 OF THE STATE

8 AND LATER IN THE EDUCATION ARTICLE IT MADE THE
9 SPECIFIC NOTATION THAT ALL PUBLIC SCHOOLS WILL BE OPEN TO
10 CHILDREN REGARDLESS OF ALL -- OF ALL RACES

11 Q NOW, CAN YOU TALK TO US ABOUT THE PEOPLE THAT ARE
12 WRITING THIS 1868 RECONSTRUCTION CONSTITUTION WHO IS
13 INVOLVED IN THAT PROCESS?

14 A THE CONSTITUTIONAL CONVENTION IN 1868 VERY HEAVILY
15 AFRICAN AMERICAN THERE WERE SOME LOCAL WHITES BUT
16 AFRICAN AMERICAN MAJORITY IN THE CONSTITUTIONAL
17 CONVENTION

18 AND ONE OF THE THINGS THAT THE EX-SLAVES OR THE
19 FREE PERSONS OF COLOR AS THEY WERE NOW CALLED WANTED WAS
20 EDUCATION AND A PUBLIC EDUCATION SYSTEM IT'S INTERESTING
21 TO NOTE THAT BY CREATING A PUBLIC EDUCATION SYSTEM THAT
22 THEY WANTED FOR THEMSELVES, FOR THEIR CHILDREN, THEY WERE
23 ALSO OPENING UP EDUCATIONAL OPPORTUNITY TO POOR WHITE
24 CHILDREN WHO HAD BEEN DENIED THAT PRIOR TO THE CIVIL WAR

25 Q LET'S LOOK AT THE SPECIFIC LANGUAGE OF -- I AM

1 THE COURT FIRST OF ALL IT'S A LEADING QUESTION AND
2 SECONDLY BECAUSE WITHIN AN AREA THE WITNESS SAID HE WAS
3 NOT GOING TO TALK ABOUT

4 (WHEREUPON QUESTIONING RESUMED)

5 Q ALL RIGHT MOVING FORWARD TO THE 1895 CONSTITUTION,
6 WHAT WAS GOING ON IN THE AREA OF EDUCATION IN 1895?

7 A WELL, IN 1890 WE HAVE THE SO-CALLED POPULOUS REVOLT
8 OF BEN TILLMAN IN WHICH THE OLD HAMPTON LED ESTABLISHMENT
9 WAS TOSSED OUT OF OFFICE AND YOU HAVE TILLMAN CALLING
10 HIMSELF A REFORMER

11 AND ONE OF THE THINGS HE DID IN 1895 WAS TO
12 WRITE A NEW CONSTITUTION AND INSIST UPON A NEW
13 CONSTITUTION, AND THE BASIS PURPOSE OF THAT WAS TO
14 ELIMINATE AFRICAN AMERICAN PARTICIPATION IN POLITICAL
15 AFFAIRS

16 THIS GOES BACK TO GOVENOTORIAL ELECTION OF 1890
17 WHEN THE HAMPTON CANDIDATE APPEALED TO THE STATE'S BLACK
18 VOTERS AND TILLMAN SAID THAT THERE WOULD NEVER BE ANOTHER
19 CHANCE FOR AFRICAN AMERICANS TO BE THE DECIDING -- CAST A
20 DECIDING BLOCK OF VOTES BETWEEN TWO COMPETING WHITE
21 CANDIDATES

22 AND UNDER THE CONSTITUTION OF 1895 YOU STILL
23 HAVE A PUBLIC SCHOOL SYSTEM, BUT IT'S TO BE SEGREGATED BY
24 RACE

25 Q WHAT DID THE REPORTS ON EDUCATION SAY WITH REGARD TO

1 THE DIRECTIVE CONTAINED IN THE 1895 CONSTITUTION?

2 A IN 1897 SECRETARY OF EDUCATION MAYFIELD I BELIEVE IT
3 WAS ISSUED A REPORT THAT SAYS THAT THE STATE IS NOT DOING
4 WHAT IT SHOULD AND I BELIEVE THERE'S ANOTHER SECTION OF
5 1895 CONSTITUTION THAT REFERS TO THE FUNDING OF THE
6 SCHOOLS AND THE SCHOOL OFFICERS BY THE STATE

7 BUT HE MENTIONS THE AGAIN THE COUNTRY SCHOOLS
8 THIS IS THE PHRASE YOU WILL HEAR -- THE COUNTRY SCHOOLS
9 ARE NOT RECEIVING -- THE CHILDREN IN OUR COUNTRY SCHOOLS
10 ARE NOT RECEIVING THE OPPORTUNITIES THAT OTHER CHILDREN
11 ARE

12 Q DR EDGAR LET S STEP BACK AND SEE IF WE CAN PULL UP
13 THE CONSTITUTION FROM -- I AM SORRY I SAID STEP BACK I
14 MEANT STEP FORWARD GO FORWARD AGAIN THE SOUTH CAROLINA
15 STATE CONSTITUTION OF 1895 CONTAINS ARTICLE 11 SECTION 4
16 COULD YOU READ THAT INTO THE RECORD AND THEN TELL US THE
17 ORDER -- THE HISTORICAL ORIGIN OF THAT, PLEASE

18 A YES, SIR THE SALARIES OF THE STATE AND COUNTY
19 SCHOOL OFFICERS AND COMPENSATION OF COUNTY TREASURERS FOR
20 COLLECTING AND DISBURSING SCHOOL MONEY SHALL NOT BE PAID
21 OUT OF THE SCHOOL FUNDS BUT SHALL BE OTHERWISE PROVIDED
22 FOR BY THE GENERAL ASSEMBLY

23 SO THE STATE DID -- DESPITE THE FACT THAT THE
24 TAXES ARE -- AND MILL IS BEING COLLECTED IN THE COUNTIES,
25 THE STATE IS ASSUMING RESPONSIBILITY FOR PAYING

Walter Edgar Ph D (Plaintiffs' Expert)
Claude Henry Neuffer Prof of Southern Studies
Dir of Institute for Southern Studies USC
Redirect Examination by Mr Morrison

1 Q DR NIELSEN'S?

2 A -- REPORT

3 Q I HEAR YOU OKAY LET'S SEE I THINK I HAVE GOT
4 THE RIGHT -- IT'S THE 1993 WE WERE TALKING ABOUT WHEN THE
5 SUIT WAS FILED?

6 A YES SIR THAT WAS DR NIELSEN

7 Q AND I THINK WHAT YOU'RE TALKING ABOUT IS SOMETHING IN
8 DR NIELSEN'S REPORT?

9 A I THINK THAT IS ELECTRONIC
10 THE COURT 2491 I BELIEVE

11 Q RIGHT 2491 I HAVE IN MY NOTES DEFENDANT'S EXHIBIT
12 2491 AND THE BATES PAGE THAT WAS CALLED UP WAS 2649
13 THERE WE GO AND COULD YOU PULL OUT THIS FIRST PARAGRAPH
14 HERE?

15 A YES, SIR

16 Q AND COULD YOU JUST BLOW THAT UP? IS THAT OR IS THAT
17 ON FILE?

18 A I CAN -- I CAN

19 Q YOU SEE IT?

20 A YES, SIR I CAN SEE IT

21 Q ALL RIGHT AND THE QUOTE FROM THE SUPERINTENDENT OF
22 EDUCATION IS WE BELIEVE ALL CHILDREN CAN LEARN AT HIGH
23 LEVELS AND WE ARE DESIGNING A NEW EDUCATION SYSTEM TO MEET
24 THAT HIGHER LEVEL OF EXPECTATION AND THEN WHAT WAS THE
25 DATE ON THIS, 2000 OR '93 OKAY

1 A THIS IS '93

2 Q OKAY NOW CAN YOU TELL US THE HISTORY OF THIS
3 COMMENT ALL -- WE BELIEVE THAT ALL CHILDREN CAN LEARN AT
4 HIGH LEVELS IN TERMS -- CAN YOU PLACE THAT IN A HISTORICAL
5 CONTEXT?

6 A THAT -- IN HISTORICAL CONTEXT THAT CERTAINLY IS A
7 CHANGE AND WE HAVE SUPERINTENDENTS OF EDUCATION REPORTING
8 WELL INTO THE 20TH CENTURY THAT CERTAIN CHILDREN SHOULD
9 NOT BE EDUCATED BECAUSE THEY WERE GOOD FIELD HANDS OR THEY
10 WERE A GOOD MILL HAND

11 IN FACT, CHARLIE WILLIAMS WHO WAS STATE
12 SUPERINTENDENT OF EDUCATION MADE A COMMENT UPSTATE AT A
13 SPEECH THAT THE STATE HAD ALWAYS UNDEREDUCATED, HAD --
14 EXCUSE ME -- IT'S A PARAPHRASE THAT HE ONLY WANTED TO
15 EDUCATE -- ONLY WANTED TO EDUCATE MANY JUST TO PUT THEM IN
16 THE MILLS AND KEEP THEM ON THE FARMS

17 BY THE TIME HE GOT BACK TO COLUMBIA HE WAS
18 PUTTING SPIN CONTROL ON THAT, BUT IT -- OTHER
19 SUPERINTENDENTS EARLIER IN THE CENTURY HAD BEEN PRETTY
20 BLUNT

21 I WAS -- I DID NOT KNOW THIS WHEN I HAD WRITTEN
22 MY HISTORY BUT AS LATE AS THE 1950'S IN ROCK HILL OF
23 COURSE THERE WERE SEGREGATED SCHOOLS FOR BLACK AND WHITE
24 CHILDREN BUT WITHIN THE WHITE SCHOOL BUILDINGS MILL
25 CHILDREN WERE PUT IN SEPARATE CLASSROOMS

1 Q AND SO SINCE 1993 WHEN THIS SUIT WAS BROUGHT, THE
2 SUPERINTENDENT SAYS ALL CHILDREN CAN BE EDUCATED AT HIGH
3 LEVELS?

4 A YES, SIR

5 Q NOW, IN THE LAST TEN YEARS -- IS TEN YEARS ENOUGH
6 TIME AS A HISTORIAN TO MEASURE THE IMPACT OF ANYTHING?

7 A A TEN YEAR LOOK BACK IN THAT CASE, YES SIR

8 Q OKAY AND AS WE LOOK BACK OF THOSE TEN YEARS AND YOU
9 ARE LOOKING NOW AT THE DATA THAT YOU SAW PRESENTED BY MR
10 EPPS IN THE OPENING STATEMENT, IS IT YOUR CONCLUSION THAT
11 ALL CHILDREN INCLUDING THE CHILDREN IN THESE DISTRICTS ARE
12 LEARNING AT HIGHER LEVELS?

13 MR STEPP OBJECTION BEYOND THE SCOPE OF HIS
14 EXPERTISE

15 THE COURT WELL I WILL ALLOW HIM TO ANSWER THE
16 QUESTION IF IT'S REPHRASED IN A NON-LEADING MANNER

17 MR STEPP MY OBJECTION IS THAT, BUT IT'S ALSO JUDGE
18 THAT HE SAID HE'S NOT GOING TO TALK ABOUT EDUCATIONAL
19 OPPORTUNITIES, NOT GOING TO TALK ABOUT EDUCATIONAL POLICY

20 THE COURT RIGHT I THINK HE'S GOING TO TALK ABOUT
21 THE DATA AND WHETHER THE DATA THAT HE HAS REVIEWED AND
22 SEEN HERE IN COURT REFLECTS THAT THE CHILDREN ARE LEARNING
23 I THINK IS THE--

24 MR MORRISON YES, SIR

25 MR STEPP YOUR HONOR HE HAS NOT BEEN QUALIFIED IN

1 THAT CURRICULUM DEVELOPERS MAKE, OKAY, TO THE CURRICULUM
2 AS ENACTED BY TEACHERS IN THE CLASSROOM TO THE CURRICULUM
3 AS EXPERIENCED BY THE STUDENTS IN THAT CLASSROOM AND HOW
4 THAT BREAKS DOWN WE HAVE TRIED TO EXPLORE OVER THE LAST
5 THREE DECADES

6 Q DID YOU CONCLUDE FROM THAT THAT THE CURRICULUM IS
7 WRITTEN DOWN IS NOT NECESSARILY WHAT IS COMMUNICATED TO
8 THE STUDENTS?

9 A WELL, IT IS AND IT ISN'T IN SOME -- HERE'S WHERE
10 WE -- AND THIS GOES BACK TO MY COMMENT ABOUT THE STUDY
11 THAT WE DID ON THE FOUR BLOCK LITERACY MODEL THAT'S A --
12 IT'S A VERY STRUCTURED CURRICULUM

13 THERE ARE FOUR BLOCKS THERE'S A WORD WALL
14 BLOCK, THERE'S A DIRECT TEACHING BLOCK A GUIDED TEACHING
15 BLOCK, THERE'S A SELF SELECTED READING BLOCK, THERE'S A
16 WRITING BLOCK

17 THOSE THINGS ARE FAIRLY STRAIGHT FORWARD AND
18 THE TEACHERS ARE TRAINED -- YOU KNOW -- HOW TO IMPLEMENT
19 EACH OF THOSE BLOCKS IN THE CLASSROOM AND THERE ARE
20 MATERIALS THAT GO ALONG WITH IT

21 WHAT WE STUDIED WAS WHETHER OR NOT ALL THE
22 TEACHERS THAT HAD THE SAME MATERIALS AND WERE TRAINED BY
23 THE SAME PEOPLE IN GREENVILLE COUNTY IMPLEMENTED IT IN THE
24 SAME WAY

25 AND WE FOUND HUGE DIFFERENCES IN IMPLEMENTATION,

1 THAT SOME TEACHERS HAD HIGH LEVELS OF IMPLEMENTATION
2 OTHERS HAD ALMOST NO IMPLEMENTATION WHATSOEVER AND
3 FURTHERMORE AS I POINTED OUT EARLIER WE FOUND THAT ON
4 AVERAGE THOSE TEACHERS THAT HAD HIGHER LEVELS OF
5 IMPLEMENTATION DID HAVE STUDENTS THAT HAD HIGHER PACT
6 READING SCORES THAN THOSE STUDENTS -- THAN THOSE TEACHERS
7 WHO HAD LOWER LEVELS OF IMPLEMENTATION

8 SO NO, YOU CAN'T ASSUME IT AND WE HAVE
9 DOCUMENTED -- I HAVE DOCUMENTED AT LEAST HALF A DOZEN
10 STUDIES THE DIFFERENCES IN DEGREES OF IMPLEMENTATION GIVEN
11 THE SAME CURRICULUM WHEN YOU GO INTO CLASSROOMS AND LOOK

12 Q ALL RIGHT LET'S TAKE THAT NOW AND TURN TO YOUR WORK
13 IN SOUTH CAROLINA AND THE FIRST WORK AS I UNDERSTAND IT
14 WAS TO WORK WITH TEACHERS?

15 A YES

16 Q AND TELL US ABOUT THAT PLEASE

17 A WELL AGAIN THERE WAS A GREAT NEED WHEN I CAME INTO
18 SOUTH CAROLINA IN 1973, THE ENTIRE STATE-WIDE TESTING
19 PROGRAM CONSISTED OF THE COMPREHENSIVE TEST OF BASIC
20 SKILLS ADMINISTERED AT GRADES FOUR, SEVEN AND TEN THAT
21 WAS IT

22 Q C S A T ?

23 A THE C T B S

24 Q I M SORRY

25 A C T B S WAS ADMINISTERED AND NOBODY THOUGHT MUCH

1 THAT THAT IS INDEED ALL THAT YOU NEED TO OFFER STUDENTS TO
2 GIVE THEM AN EDUCATIONAL OPPORTUNITY?

3 A THAT'S THE WAY I REMEMBER IT

4 Q ALL RIGHT, SIR NOW, DO YOU BELIEVE THAT TO BE
5 CORRECT OR INCORRECT?

6 A I DON'T BELIEVE THAT TO BE CORRECT

7 Q AND JUST TELL ME WHY YOU DON'T THINK SIMPLY ALIGNING
8 STANDARDS TO A CURRICULUM VERSUS TESTING CREATES OR
9 REPRESENTS OPPORTUNITY

10 A THERE HAS BEEN AT LEAST 40 YEARS OF RESEARCH DEALING
11 WITH OPPORTUNITY TO LEARN THAT'S IN THE EDUCATION OF
12 LITERATURE AVAILABLE TO EVERYONE AND THE DEFINITION OF
13 OPPORTUNITY THAT WAS GIVEN BY THE DEFENDANTS IS
14 INCONSISTENT WITH THAT LONGSTANDING DEFINITION, AND
15 THEREFORE IT'S NOT MY PERSONAL OPINION THAT IT'S
16 INCORRECT

17 IT SIMPLY IS INCORRECT FROM THE BODY OF RESEARCH
18 THAT HAS BEEN DONE IN THE AREA LET ME JUST ELABORATE A
19 LITTLE BIT ON THAT ONE OF THE POINTS MADE BY THE DEFENSE
20 IS THAT OPPORTUNITY IS AN OBJECTIVE REALITY

21 TO A CERTAIN EXTENT IT IS OBJECTIVE BUT
22 THERE'S A KEY PERCEPTUAL PART OF OPPORTUNITY/ THAT IS TO
23 SAY TO TAKE ADVANTAGE OF OPPORTUNITY YOU HAVE TO PERCEIVE
24 THAT AN OPPORTUNITY EXISTS

25 FOR EXAMPLE, LETS TAKE THE STUDENT WHO HAS

1 FAILED MISERABLY IN MATHEMATICS FOR LETS SAY FIVE
2 CONSECUTIVE YEARS, GRADES ONE THROUGH FIVE, AND COMES INTO
3 SIXTH GRADE AND WE ARE GOING TO PROVIDE HIM ACCORDING TO
4 OBJECTIVE REALITY THE OPPORTUNITY TO TAKE SIXTH GRADE
5 MATHEMATICS

6 AFTER FAILING FOR FIVE YEARS IN A ROW IN
7 MATHEMATICS, THE EVIDENCE IS FAIRLY CLEAR THAT THAT CHILD
8 DOESN'T PERCEIVE THAT AS AN OPPORTUNITY TO SUCCEED, THAT
9 THAT STUDENT RATHER SEES THAT AS YET ANOTHER OPPORTUNITY
10 TO FAIL MISERABLY IN A SUBJECT THAT HE IS REQUIRED TO
11 TAKE

12 SO I THINK PART OF THE REASON THAT I DISAGREE
13 WITH THE PERSPECTIVE IS THAT OPPORTUNITY IS MORE THAN
14 OBJECTIVE ALTHOUGH THERE IS AN OBJECTIVE PART

15 THE SECOND POINT THAT WAS MADE AS I REMEMBER IT
16 IS THAT OPPORTUNITY SOMEHOW RESIDES OUTSIDE THE STUDENT
17 AND AS YOU ALL MIGHT GET RESIDES IN THE EDUCATION SYSTEM
18 OR IT RESIDES IN THE STANDARDS OR IT RESIDES IN THE
19 CURRICULUM OR IT RESIDES IN THE ALIGNMENT OF THE
20 STANDARDS THE CURRICULUM AND THE TESTS

21 MY QUESTION THERE, AND YOU KNOW CERTAINLY FROM
22 AN EDUCATIONAL RESEARCH POINT OF VIEW, WHERE IS THE
23 STUDENT IN ALL OF THIS? TO ME OPPORTUNITY IS THE DEGREE
24 OF FIT BETWEEN THE DEMANDS THAT YOU PLACE ON THE STUDENT
25 AND THE ABILITY OF THE STUDENT TO MEET THOSE DEMANDS

1 IN OTHER WORDS, IF I TAKE -- IF I SAY TO YOU AS
2 THE STUDENT I HAVE A TEST VOLUME LETS SAY AND I SAY SPELL
3 CHRYSANTHEMUM, AND YOU SAY DID THE STUDENT HAVE THE
4 OPPORTUNITY TO LEARN TO SPELL CHRYSANTHEMUM

5 MY QUESTION IS TO BE AT WHAT LEVEL OF STUDENT
6 ARE WE TALKING ABOUT A FIRST GRADE STUDENT, A SECOND
7 GRADE STUDENT, A FOURTH GRADE STUDENT, WHERE IN THE
8 CUMULATIVE NATURE OF THE CURRICULUM IS CHRYSANTHEMUM AN
9 APPROPRIATE SPELLING WORD

10 FOR A FIRST GRADE STUDENT THERE'D BE A LARGE GAP
11 BETWEEN THE ACADEMIC DEMANDS OF SPELLING CHRYSANTHEMUM AND
12 THE STUDENT'S ABILITY TO SPELL YOU WOULDN'T WANT TO
13 JUDGE THAT STUDENT AS A POOR SPELLER BECAUSE THE STUDENT
14 DOESN'T SPELL CHRYSANTHEMUM

15 SO RATHER THAN OBJECTIVITY RESIDING OUTSIDE THE
16 PERSON, OPPORTUNITY TO LEARN IS THE INTERSECTION OR
17 INTERACTION OF THE STUDENT WITH THE THING TO BE LEARNED,
18 AND THE LARGER THE GAP, THE LESS THE OPPORTUNITY THE
19 SMALLER THE GAP, THE GREATER THE OPPORTUNITY WHICH LEADS
20 TO THE THIRD CONCERN THAT I HAVE WITH THE DEFINITION

21 AND THAT IS OBJECTIVE -- OPPORTUNITY IS NOT
22 DICHOTOMOUS, THAT IS TO SAY IT'S NOT SOMETHING THAT YOU
23 HAVE OR YOU DON'T HAVE RATHER THERE ARE DEGREES OF
24 OPPORTUNITY

25 THERE'S MORE OPPORTUNITY, THERE'S LESS

1 OPPORTUNITY AND WHAT WE ARE TALKING HERE, TALKING ABOUT
2 IN WORKING WITH ECONOMICALLY DISADVANTAGED STUDENTS IS NOT
3 ONLY IS THAT GAP VERY LARGE AND THEREFORE THEY HAVE LESS
4 OPPORTUNITY AS I'M DEFINING IT, BUT THERE IS AMPLE
5 EVIDENCE THAT OVER TIME AND PARTICULARLY AS THEY MAKE
6 TRANSITIONS FROM ONE SCHOOL LEVEL TO THE NEXT, THAT THAT
7 GAP INCREASES

8 SO AN INITIAL GAP THEY MAY BE THIS LARGE, OKAY,
9 OVER TIME IT BECOMES ALMOST AN INSURMOUNTABLE GAP, WHICH
10 IF YOU ONLY LOOK AT IT OBJECTIVELY YOU'D SAY WELL, THEY
11 HAD THE OPPORTUNITY, THEY -- WE GAVE THEM THE TEST FOR
12 IT

13 BUT A TEXTBOOK THAT THEY CAN'T READ DOES NOT
14 PROVIDE OPPORTUNITY SHOWING SLIDES TO VISUALLY IMPAIRED
15 STUDENTS BECAUSE THE SLIDES ARE THERE WITHOUT TAKING INTO
16 CONSIDERATION THE VISUAL IMPAIRMENT IS NOT OPPORTUNITY

17 PLAYING AUDITORY TAPES TO PEOPLE WHO HAVE
18 AUDITORY DEFICIENCIES EVEN THOUGH THE TAPES LOOK LIKE AN
19 OPPORTUNITY BUT FOR THOSE STUDENTS IT'S NOT AN
20 OPPORTUNITY

21 SO FOR THREE REASONS I REALLY QUESTION THE
22 DEFINITION OF OPPORTUNITY TO LEARN BECAUSE -- AND AGAIN,
23 THIS IS -- THIS IS SIMPLY NOT I DON'T LIKE THE
24 DEFINITION I M NOT DOING A JABERLOCHY IN THE SENSE OF
25 WORDS MEANS WHAT I WANT THEM TO MEAN BUT I DO THINK IT'S

1 IMPERATIVE AS AN EDUCATOR TO SAY THAT I WORKED 30 YEARS IN
2 THE FIELD

3 AND IN THIS 30 YEARS WE DEVELOPED A BODY OF
4 KNOWLEDGE THAT IF YOU'RE GOING TO CRITICIZE THE FIELD, YOU
5 HAVE TO UNDERSTAND THE FIELD FIRST

6 Q YOU SAID AN AWFUL LOT AND I APPRECIATE THAT LET'S
7 GO BACK TO WHAT'S MISSING IN THE STATE'S POSITION AS TO
8 WHAT REALLY CREATES AN OPPORTUNITY FOR A CHILD TO RECEIVE
9 AN EDUCATION

10 A WELL, IN THEIR POSITION THEY SAY YOU NEED STANDARDS
11 YOU NEED A CURRICULUM WHICH APPARENTLY IS DIFFERENT FROM
12 STANDARDS, WHICH WILL BE A SLIGHTLY DIFFERENT DEFINITION
13 THAT I HAVE BECAUSE MY VIEW OF CURRICULUM STANDARDS IS A
14 PART OF THE CURRICULUM

15 AND THEN YOU HAVE THE TESTS OR ASSESSMENTS,
16 THOSE WILL BE THE THREE COMPONENTS THAT THEY TALKED
17 ABOUT WHAT I WOULD ARGUE IS THAT THE STANDARDS ARE
18 CRITICAL--

19 MR BARNES YOUR HONOR I'D LIKE TO MAKE AN
20 OBJECTION AT THIS POINT IF I COULD I'M NOT SURE WHERE
21 ANY OF THIS FITS INTO THE AREAS IN WHICH MR -- EXCUSE ME
22 WHICH DR ANDERSON WAS QUALIFIED AS AN EXPERT EARLIER

23 I MEAN, HE'S TALKING GENERALLY NOW ABOUT THE
24 EDUCATIONAL POLICIES OF SOUTH CAROLINA I THINK HE'S AN
25 EDUCATIONAL RESEARCHER

Lorin Anderson, Ph D (Plaintiffs' Expert)
Carolina Distinguished Professor of Education
University of South Carolina
Redirect Examination by Mr Epps

1 WE LIMITED HIS POLICY DISCUSSIONS TO FOUR VERY
2 SPECIFIC AREAS THAT HE'S RESEARCHED AND HE'S TALKING
3 GENERALLY NOW ABOUT CURRICULUM WHICH WASN'T EVEN IN ONE OF
4 THE THINGS THAT HE WAS LISTED OR QUALIFIED AS AN EXPERT
5 FOR I THINK THIS IS WAY BEYOND THE SCOPE OF HOW HE IS
6 QUALIFIED

7 THE COURT I THINK HE WAS QUALIFIED AS TO -- MY
8 RECOLLECTION WAS -- PROBABLY CALL IT UP ON THIS COMPUTER,
9 BUT I HAD WRITTEN IT DOWN AT SOME PLACE MY RECOLLECTION
10 WAS THAT THERE WAS SOMETHING ABOUT EDUCATIONAL STANDARDS

11 MR BARNES THE THINGS I HAD YOUR HONOR, WERE
12 POLICY IN THE FOUR AREAS THAT HE HAD DONE RESEARCH,
13 CLASSROOM ASSESSMENT THAT IS YOU KNOW ENHANCED WAYS
14 TEACHERS CAN USE ASSESSMENT TECHNIQUES TO ENHANCE THEIR
15 TEACHING, STANDARDIZED TESTS WHICH I M SURE MR EPPS IS
16 GOING TO HAVE HIM TALK ABOUT HIS CHARTS TRACKING AND
17 GROUPING STUDENTS, EFFECTIVE TEACHING MODELS FOR
18 DISADVANTAGED STUDENTS, CLASSROOM ENVIRONMENT WHICH HE
19 SAYS WENT HAND IN HAND WITH THAT AND LEARNING HOW TIME
20 RELATES TO LEARNING

21 THE COURT RIGHT OKAY THE QUESTION AS I
22 UNDERSTAND IT OBVIOUSLY WHEN HE TALKS ABOUT CURRICULUM HE
23 TALKS ABOUT STANDARDS AND THINGS OF THAT NATURE I THINK
24 THAT THE WIDE AREA IN WHICH HE HAS BEEN QUALIFIED AS AN
25 EXPERT ALLOWS HIM TO TESTIFY GENERALLY ABOUT THESE

1 PARTICULAR AREAS

2 IT IS I GUESS AS HE MENTIONED A FEW MOMENTS AGO
3 ABOUT OPPORTUNITY IT IS -- THE FIELD IS NOT DICHOTOMOUS,
4 IT BLENDS ITSELF FROM ONE AREA TO THE OTHER AND
5 CERTAINLY THE LINE OF QUESTIONING NOW ABOUT THE TYPES OF
6 INFORMATION THAT HE'S OBSERVED AND STUDIED WOULD BE
7 RELEVANT TO THOSE PARTICULAR POINTS

8 I'M GOING TO ALLOW HIM TO DO IT HE STILL HAS
9 TO LAY SOME FOUNDATION FOR HIS OPINION NATURALLY BUT I'M
10 GOING TO ALLOW HIM TO TESTIFY TO IT

11 MR EPPS THANK YOU, YOUR HONOR

12 (WHEREUPON QUESTIONING RESUMED)

13 Q I M SORRY DR ANDERSON WE WERE INTERRUPTED YOU
14 WERE TELLING US THE PROBLEMS WITH JUST YOU AND USING THIS
15 OBJECTIVE CRITERIA WITH ACTUALLY PROVIDING A CHILD AN
16 ADEQUATE EDUCATIONAL OPPORTUNITY?

17 A RIGHT WELL, AND WHAT I WAS SAYING WAS THAT THE
18 STANDARDS, THE CURRICULUM AND THE TESTS ARE CERTAINLY
19 COMPONENTS OF OPPORTUNITY, BUT THAT'S NOT PROVIDING AN
20 OPPORTUNITY

21 THAT IS ONLY -- THAT IS ALMOST CREATING THE
22 CONDITIONS WITHIN WHICH OPPORTUNITY IS TO BE PROVIDED
23 PEOPLE PROVIDE OPPORTUNITIES

24 AS I WAS SAYING EARLIER, IF YOU DEFINE
25 OPPORTUNITY AS A DEGREE OF FIT BETWEEN THE DEMANDS OF A

1 TASK THAT'S GIVEN TO A STUDENT IN SCHOOL AND THE STUDENT'S
2 ABILITY TO MEET THOSE DEMANDS, WHAT I WOULD ARGUE IS THE
3 LARGER THE GAP THE BETTER THE TEACHING THAT'S NEEDED,
4 THAT IF YOU CAN TAKE STUDENTS THAT ARE VERY CLOSE IN TERMS
5 OF THEIR ABILITY TO MEET THE DEMANDS, YOU CAN GET THEM
6 THERE WITH A REASONABLY SHORT PERIOD OF TIME, BACK TO MY
7 TIME CONCERNS, BUT ALSO YOU DON'T NEED THE BEST TEACHERS
8 IN THE WORLD BECAUSE YOU DON'T HAVE TO MOVE THEM AS FAR TO
9 PROVIDE OPPORTUNITY FOR THEM TO LEARN

10 IN CONTRAST IF THE GAP IS VERY WIDE AS IT IS IN
11 MANY OF THE STUDENTS THAT WE ARE DEALING WITH, THE GAP
12 BETWEEN THEIR ABILITIES TO MEET THE DEMANDS THAT ARE BEING
13 ESTABLISHED, OKAY, THEN YOU NEED THE VERY BEST TEACHERS
14 THAT ARE POSSIBLE

15 NOW, WHAT ARE THOSE DEMANDS? AND NOW WE ARE
16 GETTING INTO HOW THESE THINGS FIT TOGETHER AND HOW DO YOU
17 KNOW THAT THE DEMANDS ARE BEING MET AND WHAT PART DOES
18 CURRICULUM WHICH IS THE THIRD PIECE OF THE SCHOOL FIT INTO
19 ALL OF THIS

20 LINKING WHAT I'M SAYING TO WHAT THE DEFENSE HAS
21 PRESENTED, I WOULD -- IT SEEMS THAT WHAT I MEAN BY
22 ACADEMIC DEMANDS IS WHAT THEY MEAN BY STANDARDS

23 AND THE STANDARDS, THE STATE STANDARDS COME
24 DIRECTLY OUT OF THE EDUCATION ACCOUNTABILITY ACT BECAUSE
25 THE EDUCATION ACCOUNTABILITY ACT HAS SEVEN COMPETENCIES

1 PAPER, YOU ARE MISSING THE POINT ALIGNMENT IS SOMETHING
2 THAT HAPPENS IN THE CLASSROOM IT'S REAL LIFE, IT'S FLESH
3 AND BLOOD, IT'S KIDS

4 Q WHAT IS THE IMPORTANT -- OTHER THAN THE CHILD, WHAT
5 IS THE MOST IMPORTANT ELEMENT OF CREATING THE OPPORTUNITY
6 MISSING IN THIS SITUATION?

7 A I THINK THERE ARE TWO I THINK THE FIRST ONE AND I
8 THINK THIS HAS BEEN GENERALLY ACCEPTED NOW FOR THE LAST
9 SEVERAL YEARS IS TEACHER QUALITY, THAT TO MAKE ALIGNMENT
10 COME ALIVE YOU NEED TEACHERS WHO ARE QUALIFIED TO HELP
11 STUDENTS MOVE ACROSS THAT GAP AND ACHIEVE THE STANDARDS
12 THAT YOU HAVE SET

13 THE SECOND I WOULD ARGUE IS A -- A STABLE
14 INFRASTRUCTURE AND BY STABLE INFRASTRUCTURE WHAT I'M
15 TALKING ABOUT IS YOU NEED THINGS TO BE IN PLACE THAT ARE
16 THERE FOR A WHILE THE RESOURCES NEED TO BE THERE OVER
17 TIME, AND THEY NEED TO BE SUFFICIENT RESOURCES OVER TIME
18 TO HELP STUDENTS MOVE ACROSS THE GAP THAT HAS BEEN CREATED
19 BY THE -- BY THE DIFFERENCE IN THE ACADEMIC DEMANDS AND
20 THE STUDENT ABILITY TO MEET THOSE DEMANDS

21 ANOTHER WAY OF SAYING THAT IS THE LARGER THE GAP
22 BETWEEN THOSE TWO THAT WE ARE TALKING ABOUT, THE GREATER
23 RESOURCES THAT ARE NEEDED AND THE GREATER THE NEED FOR A
24 STABLE INFRASTRUCTURE SO THAT THESE RESOURCES ARE NOT HERE
25 TODAY, GONE TOMORROW

1 AND MEASUREMENT TERMS OF VALIDITY, OKAY AND THE VALIDITY
2 IS DOES THE TEST MEASURE WHAT IT'S SUPPOSED TO MEASURE
3 DOES THE TEST MEASURE TO GET DATA FOR THE PURPOSE FOR
4 WHICH THE TEST WAS BEING USED

5 SO THEY WANT TO MAKE SURE THAT THESE PACT TESTS
6 ARE ALIGNED WITH THE STANDARDS BECAUSE WE HAVE SET AT
7 LEAST INITIALLY A LEVEL THAT WE CALL BASIC, OKAY, AS THE
8 CUT OFF SCORE

9 I WOULD ARGUE THEREFORE THAT WITHIN THIS LITTLE
10 TRIAGE THAT WE HAVE SET UP THAT BASIC DEFINES MINIMUM, AND
11 WHEN YOU PUT THE TWO TOGETHER, THE STANDARDS AND THE TESTS
12 THEREFORE IN COMBINATION ALIGNED AS THEY ARE IN PAPER,
13 THEY WOULD DEFINE MINIMALLY ADEQUATE EDUCATION

14 NOW, THE CURRICULUM THEN COMES IN AS THE VEHICLE
15 CONNECTING THE STUDENTS WITH THIS MINIMALLY ADEQUATE
16 EDUCATION IN OTHER WORDS THE CURRICULUM AS DELIVERED BY
17 THE TEACHER UNIQUE TO THE NEEDS OF THE STUDENTS, STUDENTS
18 HAVE TO BE IN HERE OKAY THAT DEFINES WHAT I SEE AS
19 OPPORTUNITY TO ACQUIRE

20 AND SO THAT'S THE MAPPING THAT I SEE THAT FALLS
21 FROM THE EDUCATION ACCOUNTABILITY ACT TO THE TRIANGLE
22 BASICALLY THAT WAS ELUCIDATED BY THE DEFENSE

23 Q YOU USED THE WORDS I WOULD ARGUE AND YOU EXPLAINED
24 THAT EARLIER BUT JUST SOMETIMES IN LEGAL SETTINGS IT
25 DOESN'T REALLY WORK VERY WELL IS THAT DIFFERENT THAN

1 THE COURT THE SCREEN IS FINE

2 MR EPPS THANK YOU

3 (WHEREUPON QUESTIONING RESUMED)

4 Q DR ANDERSON, TELL ME IF YOU WILL WHAT THIS IS

5 A ALL RIGHT LET ME GO BACK TO THE SOURCE OF THE
6 DATA THESE ARE 2002 PACT DATA THAT THE STATE OF SOUTH
7 CAROLINA HAS A CONTRACT WITH A CORPORATION TO SCORE THE
8 PACT DATA

9 IN OTHER WORDS, OUR TESTS ARE SENT TO A
10 CORPORATION I BELIEVE IN MINNEAPOLIS OR SOMEWHERE IN
11 MINNESOTA AND THEN THEY SCORE IT AND THEY SEND BACK A DATA
12 FILE, DATA FILE GOES TO THE SOUTH CAROLINA DEPARTMENT OF
13 EDUCATION AND BASICALLY THREE COPIES OF THE DATA FILE ARE
14 MADE

15 ONE OF THE COPIES GOES TO THE OFFICE OF
16 RESEARCH, ONE GOES TO THE COPY -- TO THE OFFICE OF
17 ASSESSMENT AND THE THIRD GOES TO THE EDUCATIONAL OVERSIGHT
18 COMMITTEE

19 EACH OF THESE GROUPS TAKE THOSE RAW DATA AND USE
20 DIFFERENT WHAT I MIGHT CALL EXCLUSIONARY RULES IN OTHER
21 WORDS, THEY EXCLUDE SOME OF THE DATA FROM THE DATA EXCEPT
22 WHERE IT COMES FROM THE CONTRACTOR

23 THEIR EXCLUSIONARY RULES ARE SPECIFIC TO THE
24 PURPOSE FOR WHICH THE DATA ARE TO BE USED, AND THIS IS A
25 VERY COMMON PRACTICE IN RESEARCH THAT DATA IS USED FOR

1 DIFFERENT PURPOSES AND YOU MAKE DIFFERENT SELECTIONS BASED
2 UPON THE PURPOSE FOR WHICH YOU ARE GOING TO USE THE DATA
3 FOR EXAMPLE THE OFFICE OF RESEARCH, THEIR PRIMARY PURPOSE
4 IN USING THE DATA IS TO PREPARE THE SCHOOL FOR THOSE

5 SO IT'S VERY IMPORTANT IN THEIR FINAL DATA SETS
6 ONLY THOSE STUDENTS WHO WERE ENROLLED AT THE 45TH DAY OF
7 ATTENDANCE AND ALSO TOOK THE TEST ARE INCLUDED IN THEIR
8 DATA SET

9 IF THEY DIDN'T MEET THOSE CRITERIA THEY WERE
10 EXCLUDED THE OFFICE OF ASSESSMENT ON THE OTHER HAND HAS
11 A DIFFERENT PURPOSE AND THEY EXCLUDE STUDENTS FOR HAVING
12 SCORES BASED ON ANY TYPE OF ACCOMMODATIONS IN THE TESTING
13 PROCESS

14 AND BY ACCOMMODATIONS I MEAN ACCOMMODATIONS
15 BECAUSE OF DISABILITY, I ALSO MEAN ACCOMMODATIONS FOR THE
16 PURPOSE OF OFF GRADE LEVEL TESTING, CERTAIN DISTRICTS TEST
17 STUDENTS AT GRADE LEVELS BELOW THE GRADE LEVEL IN WHICH
18 THEY ARE ENROLLED

19 FOR THE OFFICE OF ASSESSMENT DATA SET, THEY
20 WOULD BE EXCLUDED THE EDUCATIONAL OVERSIGHT COMMITTEE
21 USING THEIR DATA FOR THE PURPOSE OF OVERSIGHT SO THEY DO
22 THE MINIMAL AMOUNT OF WHAT'S CALLED CLEANING

23 THE ONLY GROUPS THAT ARE ASSIGNED ARE PEOPLE
24 THAT DON'T HAVE ANY GRADE LEVEL ASSIGNMENT THAT MIGHT BE
25 MISSING A GRADE LEVEL, THEY PERIODICALLY WILL LOCATE

1 MULTIPLE RECORDS FOR THE SAME STUDENT, BUT MULTIPLE
2 RECORDS, THIS IS A PROBLEM WITH THE CONTRACTOR

3 INSTEAD OF JUST ONE RECORD THAT HAS BOTH E L A
4 AND MATH SCORES ON IT, SOMEHOW IN THE SCORING THEY HAVE
5 THE SAME STUDENT TWICE ONE WHERE THE E L A RECORD WAS
6 ABOVE THE MATH RECORDS AND THOSE HAVE TO BE COMBINED

7 GIVEN THE NATURE OF THE DATA, AND THE CHOICES
8 THAT I HAVE AND ALSO GIVEN THE NATURE OF THE CASE, I
9 DECIDED TO GO WITH THE MOST INCLUSIVE, OKAY DATA SET
10 THAT IS TO SAY THE DATA SET THAT HAD THE LEAST
11 EXCLUSIONS

12 SO THAT'S THE FIRST THING THAT I WANTED TO MAKE
13 CLEAR THE SECOND THING I WANT TO MAKE CLEAR IS THE
14 DIFFERENCE BETWEEN THE DESIGNATION BB2 AND BB1 THE WAY
15 TO UNDERSTAND THIS IS YOU HAVE SEEN DATA SO FAR, YOU
16 PRESENTED DATA SO FAR IN TERMS OF PERCENTAGES OF STUDENTS
17 THAT ARE BELOW BASIC

18 BB MEANS BELOW BASIC BUT IF YOU LOOK AT THE
19 REPORT CARD, THERE'S ALSO AN IMPROVEMENT RATING AND THE
20 IDEA WAS TO TRY TO GIVE PEOPLE OPPORTUNITY, TO GIVE
21 SCHOOLS OPPORTUNITIES TO DEMONSTRATE IMPROVEMENT

22 THE PROBLEM IN TERMS OF RAW SCORES ON THESE
23 TESTS -- AND RAW SCORES MEANS JUST SIMPLY THE NUMBER
24 CORRECT -- THAT THE BB IS A VERY LARGE RANGE IN OTHER
25 WORDS, IF YOU GO ALL THE WAY FROM ZERO CORRECT UP TO 30

1 CORRECT -- 47 POINT SCALE

2 AND IF YOU ARE TRYING TO GET IMPROVEMENT AND THE

3 BB LET'S SAY IS 28 THEN A PERSON THAT MOVES FROM TWO, A

4 STUDENT THAT MOVES FROM TWO TO 18 IS NOT GOING TO

5 DEMONSTRATE IMPROVEMENT RELATIVE TO THE CATEGORY

6 SO WHAT WAS DECIDED WAS THAT THEY WOULD DIVIDE

7 BB, BELOW BASIC, INTO TWO GROUPS THAT THEY CALL BB2 WHICH

8 IS THE GROUP CLOSEST TO THE BASIC CUT-OFF -- AND THE

9 REASON IT'S CALLED BB2 IS THEY GET TWO POINTS FOR THAT BB

10 -- AND THEN THE LOWEST ONE AND THAT GROUP IS CALLED BB1

11 OKAY NOW THE WAY THEY DECIDED THAT IS SIMPLY

12 BY SOMETHING CALLED STANDARD AREA OF MEASUREMENT OKAY

13 IN OTHER WORDS, THE BB2'S ARE KIND OF WITHIN SPITTING

14 RANGE SO TO SPEAK OF THE BB2'S OF THE BB CUT-OFF

15 OKAY THEY ARE WITHIN TWO STANDARD AREAS OF THE

16 BB CUT-OFF MEASURE AND THEN EVERYTHING ELSE BELOW THAT IS

17 BB1

18 Q ALL RIGHT LET ME STOP HERE FOR A SECOND YOUR

19 HONOR THE COURT REPORTER NEEDS A BREAK

20 THE COURT THANK YOU WE WERE GETTING TO THAT POINT

21 AND IT'S A GOOD STOPPING POINT LET'S TAKE ABOUT 15

22 MINUTES AND START BACK AT FIVE MINUTES OF THE HOUR

23 MR EPPS THANK YOU, YOUR HONOR

24 (WHEREUPON A RECESS WAS HAD)

25 THE COURT MR EPPS?

1 THE OFFICE OF RESEARCH DATA SETS COME UP WITH
2 20 1 PERCENT THE OFFICE OF ASSESSMENT DATA SET WOULD
3 COME UP WITH 19 7 PERCENT THE E O C DATA SET COME UP
4 WITH 20 6 PERCENT SO IN NO CASES WERE THE DIFFERENCES
5 WITHIN THESE CATEGORIES GREATER THAN ONE PERCENT
6 Q ALL RIGHT, SIR WITH THAT PREFACE, THE BB1 AND THE
7 BB2 DATA -- NOW BB2 DATA, THEY BOTH WERE BELOW BASIC IS
8 THAT CORRECT?
9 A THAT'S CORRECT
10 Q THAT'S WHAT THE BB STANDS FOR?
11 A THAT'S RIGHT
12 Q NOW THE BB2 DATA IS THE PEOPLE WHO ARE IN COMPARISON
13 IN THE -- HAVE BETTER TEST SCORES THAN THE BB1?
14 A THAT'S RIGHT THE BB2'S ARE CLOSER TO THE CUT-OFF
15 SCORE BETWEEN BELOW BASIC AND BASIC
16 Q ALL RIGHT SO BB1 IS THE ABSOLUTE BOTTOM?
17 A THAT IS TRUE
18 Q AND THIS, THIS DATA SET, THIS INFORMATION IS NOT
19 DISSEMINATED FOR THE PUBLIC AS BB1 BB2 AS I UNDERSTAND?
20 A NO BB1 BB2 AS I SAID EARLIER WAS AN ATTEMPT TO
21 GIVE CREDIT FOR IMPROVEMENT IN SOME OF THE DISTRICTS THAT
22 HAD LARGE PROPORTIONS OF BELOW BASIC STUDENTS SOME OF
23 THESE WERE SO FAR BELOW THAT THE OPPORTUNITIES TO SHOW
24 IMPROVEMENT IN TERMS OF MOVEMENT FROM NOT SCORE TO SCORE
25 BUT CATEGORY TO CATEGORY WAS VERY SMALL

1 Q IF YOU GO -- IF CAN WE GO BACK AND FORTH TO 14 -- "A"
2 PLEASE JUST FOR A SECOND IF YOU COMPARE THESE THREE
3 GRAPHS 1404A TO 1404 B 1404 C AND LOOK AT THE STUDENT'S
4 PERFORMANCE WHAT IS HAPPENING TO THESE STUDENTS FROM
5 THEIR READINESS FOR SCHOOL BASED ON THE C S A B TESTS?

6 A RIGHT

7 Q AND WHAT HAPPENS TO THEM DURING SCHOOL?

8 A WELL, AS I SAID EARLIER, I REALLY BELIEVE THAT WHAT
9 THIS SUGGESTS IS THAT ONE OF THE CULPRITS AND
10 DISADVANTAGES STUDENTS HERE IS THE SCHOOL ITSELF IS THE
11 SCHOOL PROGRAM THAT THEY ARE BEING PROVIDED IF THE
12 SCHOOL WERE IN FACT DOING AN ADEQUATE JOB YOU WOULD SEE
13 MUCH MORE OF A FLAT LINE

14 THAT'S WHAT YOU SEE IN A LOT OF THE OTHER STATE
15 DATA WHEN YOU LOOK AT THE STATE AS A WHOLE, IT TENDS NOT
16 TO NECESSARILY INCREASE OR DECREASE BUT THERE'S THE IDEA
17 THAT YOU TAKE WHAT YOU GET AND YOU WORK WITH IT BUT YOU
18 DON T HARM THE STUDENTS UNDER YOUR CARE

19 Q I WANT TO COME BACK TO THAT BEFORE WE WRAP THIS UP
20 BUT -- I KNOW EVERYBODY IS THINKING WE ARE THERE, BUT I AM
21 NOT

22 A I WAS HOPING

23 Q YOU DOING ALL RIGHT?

24 A I'M FINE

25 Q OKAY DR ANDERSON I WANT TO GO BACK TO A

1 ANALYSIS THERE'S SOMETIMES IN WHICH THE NUMBER OF GRAPHS
2 CHANGE I JUST WANTED TO MAKE SURE THEY WERE BEING
3 CONSISTENT HERE YES, THE SAME ANALYSIS DONE FROM THE
4 REPORT CARD DATA, AND THE NUMBERS BASICALLY MEAN THE SAME
5 THING

6 AND WHAT YOU SEE HERE IS A VERY SIMILAR PATTERN
7 SOME OF THE BARS ARE SLIGHTLY HIGHER, SOME OF THE DRAFT
8 BARS ARE SLIGHTLY HIGHER, BUT THE PATTERN RESULTS ARE
9 BASICALLY THE SAME AS WE SAW WITH THE ELEMENTARY SCHOOL
10 TEACHERS

11 Q IF I WERE TO COMPARE FOR EXAMPLE STABILITY OF STAFF
12 WITH ELEMENTARY SCHOOL TEACHERS AND MIDDLE SCHOOL TEACHERS
13 ON 1404 D AND 1404E WHAT I WILL ACTUALLY FIND IS THE
14 STAFF'S ABILITY IN THE MIDDLE SCHOOLS IS LOWER?

15 A SLIGHTLY LOWER, RIGHT

16 Q ALL RIGHT, SIR

17 A BUT I THINK THE SALARY -- I HAVEN'T SEEN THEM SIDE BY
18 SIDE BUT THE SALARY IS A LITTLE BIT OFF I MEAN, THEY
19 WILL -- THAT'S WHAT I'M SAYING THERE'S VARIATIONS THEY
20 ARE QUITE SLIGHT IN TERMS OF MAGNITUDE

21 Q NOW, 1404F I THINK WE CAN DO FAIRLY QUICKLY THAT'S
22 THE HIGH SCHOOLS?

23 A RIGHT AND WHAT'S INTERESTING HERE IS THE TWO THINGS
24 THAT ARE DIFFERENT FROM THE PATTERN THAT WE'VE SEEN IN THE
25 ELEMENTARY SCHOOLS ARE THE TEACHING IN-FIELD AND THE

1 SALARIES

2 AND MY BEST INTERPRETATION IS HERE IS AT THIS --
3 THERE'S STRONGER REQUIREMENTS BEING IMPOSED ON HIGH SCHOOL
4 TEACHERS IN TERMS OF NOT TEACHING OUT OF FIELD I DON'T
5 KNOW IF IT'S MORE GREATER SANCTIONS OR WHAT MIGHT BE THE
6 SITUATION, BUT HERE YOU SEE THE SITUATION WHICH IS REALLY
7 NO DIFFERENT BETWEEN THE PLAINTIFF DISTRICTS AND THE OTHER
8 DISTRICTS IN TERMS OF THAT

9 AND ALSO THE SALARY DIFFERENCES ARE NOT AS GREAT
10 IN HIGH SCHOOL AS THEY ARE IN ELEMENTARY OR MIDDLE SCHOOL

11 Q AS YOU GO ACROSS THESE THREE GRAPHS LOOKING AT THESE
12 CHARTS, LOOKING AT FIRST GRAMMAR SCHOOL ELEMENTARY
13 SCHOOL, THEN MIDDLE SCHOOL, THEN HIGH SCHOOL, BASED ON ALL
14 CRITERIA, CONTINUING CONTRACTS, ADVANCED DEGREES, TEACHING
15 IN FIELD, STAFF STABILITY AND SALARY, WHAT CONCLUSIONS DO
16 YOU DRAW?

17 A WELL AGAIN, MY PURPOSE IN LOOKING AT THIS WAS TO SEE
18 PLAUSIBLE EXPLANATIONS FOR THE DECREASING EFFECTIVENESS
19 THAT I SAW IN THE ACHIEVEMENT GRAPHS, TO SEE WHETHER OR
20 NOT THESE INDICATORS OF TEACHER QUALITY -- AND THESE ARE
21 VERY ROUGH INDICATORS OF TEACHER QUALITY -- BUT WHETHER OR
22 NOT THERE WERE DIFFERENCES HERE THAT WOULD PARALLEL OR
23 POSSIBLY EXPLAIN THE DIFFERENCES THAT WE SAW IN
24 ACHIEVEMENT

25 AND I WOULD SAY IN MOST OF THE CASES THAT WE ARE

1 LOOKING AT, AND ALL OF THESE BY THE WAY ARE WHAT WE CALL
2 IN THE RESEARCH STATISTICALLY SIGNIFICANT, THAT IS TO SAY
3 THEY ARE DIFFERENCES THAT YOU WOULDN'T EXPECT DUE TO JUST
4 CHANCE ALONE, BUT YOU KNOW WITH THE EXCEPTION OF THE
5 TEACHING IN-FIELD WHICH IS NOT -- ACROSS ELEMENTARY,
6 MIDDLE AND HIGH SCHOOL I HOLD THESE TO BE PLAUSIBLE
7 INDICATORS OF A DEFICIENCY OF TEACHER QUALITY

8 Q TEACHER QUALITY AND OR STAFF STABILITY?

9 A YES

10 Q NOW LET'S LOOK AT 1404G, DR ANDERSON

11 A YES

12 Q AND I THINK IT'S SELF EXPLANATORY BUT JUST TAKE US
13 THROUGH THAT IF YOU WILL

14 A OKAY THE OTHER THING THAT -- THE OTHER DATA THAT ON
15 THE REPORT CARD PERTAINED TO STUDENTS, AND I SELECTED A
16 FEW THINGS THAT I THOUGHT MIGHT BE RELATED TO WHAT I CALL
17 CURRICULUM RIGOR PARTS OF CURRICULUM RIGOR IS
18 OPPORTUNITIES FOR ADVANCEMENT IN LEARNING AS IN GIFTED
19 TALENTED COURSES, A P COURSES WHICH WE HAVE SEEN AND SO
20 FORTH

21 REPEATING GRADES WOULD BE AN INDICATION OF A
22 LACK OF RIGOR BECAUSE IT'S PUTTING THEM BACK IN AND
23 GETTING THEM IN REPETITION UP TO CURRICULUM WE KNOW -- WE
24 DO KNOW FOR EXAMPLE A GREAT DEAL OF RESEARCH THAT BEING
25 OVER AGE FOR GRADE IS IN FACT A PREDICTOR OF DROPOUT SO

1 DISTRICTS AND STUDENTS?

2 A LET ME SAY IT A DIFFERENT WAY BECAUSE I WON'T BE
3 LED--

4 MR BARNES EXCUSE ME

5 THE COURT DR ANDERSON REFUSES TO BE LED I
6 OVERRULE THE OBJECTION AND--

7 THE WITNESS THANK YOU, YOUR HONOR

8 THE COURT LET HIM ANSWER THE QUESTION

9 A I DON'T THINK IT'S THE STANDARDS THAT'S WHY I
10 DIDN'T WANT TO BE LED THAT WAY WHAT I WOULD ARGUE IS
11 FOLLOWS STANDARDS ARE AN INDICATION IN MY MODEL OF
12 CURRICULUM RIGOR

13 THE HIGHER THE STANDARDS, THE MORE CURRICULUM
14 RIGOR, THE LOWER THE STANDARDS, THE LOWER THE CURRICULUM
15 RIGOR WHAT I WOULD SAY IS AS FOLLOWS THEREFORE ANY
16 AGENCY THAT IS RESPONSIBLE FOR INCREASING THE CURRICULUM
17 RIGOR BY ALTERING THE STANDARDS SHOULD BE RESPONSIBLE FOR
18 PROVIDING THE RESOURCES NEEDED FOR THE SCHOOLS TO ACHIEVE
19 THOSE STANDARDS

20 Q DO YOU HAVE AN OPINION AS TO WHY THE STUDENTS IN THE
21 PLAINTIFF DISTRICTS ARE NOT MEETING THE STANDARDS AND IN
22 YOUR VIEW NOT RECEIVING A MINIMALLY ADEQUATE EDUCATIONAL
23 OPPORTUNITY?

24 A YES, I DON'T THINK THEY HAVE THE RESOURCES NECFSSARY

25 Q AND BY RESOURCES YOU MEAN WHAT?

1 PROGRAM, WHAT TYPE OF TRAINING DOES THE TEACHER NEED?

2 THE COURT YES, SIR I SUSTAIN THAT OBJECTION

3 MR BARNES THANK YOU, YOUR HONOR

4 Q ALL RIGHT WHAT RESOURCES THEN DOES THE SCHOOL NEED
5 IN ORDER TO IMPLEMENT A FOUR BLOCK PROGRAM IF IT COMES
6 DOWN TO IMPLEMENTATION?

7 MR BARNES SAME OBJECTION, YOUR HONOR

8 THE COURT I WILL ALLOW THIS BECAUSE IT'S MORE
9 GENERAL IN ITS NATURE

10 A WE LOOK AT FACTORS RELATED TO IMPLEMENTATION, SO I
11 CAN ADDRESS THAT WITHIN THIS CONTEXT ONE WAS PRINCIPAL
12 LEADERSHIP, THAT THE TEACHERS HAD TO PERCEIVE THAT THE
13 PRINCIPALS WERE COMMITTED TO IMPLEMENTATION OF THE FOUR
14 BLOCK MODEL

15 THE SECOND WAS SUSTAINED PROFESSIONAL
16 DEVELOPMENT, NOT JUST ONE SHOT PROFESSIONAL DEVELOPMENT
17 BUT SUSTAINED PROFESSIONAL DEVELOPMENT THAT THE MORE YEARS
18 OF PROFESSIONAL DEVELOPMENT THAT THE TEACHERS HAD -- AND
19 WE HAD A WIDE RANGE BY THE TIME WE WENT IN THERE

20 FOUR BLOCKS HAD BEEN INITIATED IN GREENVILLE I
21 BELIEVE SIX OR SEVEN YEARS EARLIER, SO WE HAD SOME
22 TEACHERS THAT HAD RECEIVED TRAINING ONE YEAR, SOME HAD
23 RECEIVED TRAINING FOR TWO CONSECUTIVE YEARS, NOT THE SAME
24 TRAINING BUT ON-GOING TRAINING, AND WE FOUND THE MORE
25 YEARS OF TRAINING, THE MORE YEARS OF CONTINUOUS TRAINING

1 AND UPGRADING, THE HIGHER THE DEGREE OF IMPLEMENTATION
2 WHICH IS CONSISTENT WITH ALL THE PROFESSIONAL DEVELOPMENT
3 LITERATURE OUT THERE

4 IF YOU WANT PEOPLE TO IMPLEMENT NEW PROGRAMS,
5 YOU CAN'T JUST INVITE THEM TO A SEMINAR YOU REALLY HAVE
6 TO SUSTAIN THAT KIND OF SUPPORT AND HELP FOR LONGER
7 PERIODS OF TIME

8 WE ALSO FOUND THAT EXPERIENCE WAS INTERESTINGLY
9 RELATED TO IMPLEMENTATION, TEACHER EXPERIENCES, IN THE
10 FOLLOWING SENSE THAT NOVICE TEACHERS HAD LOWER LEVELS OF
11 IMPLEMENTATION AND VERY EXPERIENCED TEACHERS ALSO HAD
12 LOWER LEVELS OF IMPLEMENTATION

13 THE HIGHEST LEVELS OF IMPLEMENTATION WERE
14 TEACHERS KIND OF MID-LEVEL EXPERIENCE IF THE -- IN TERMS
15 OF YEARS OF TEACHING EXPERIENCE MY INTERPRETATION OF
16 THAT WAS AS FOLLOWS THAT -- AND THIS IS RELEVANT TO THIS
17 POINT WE MADE UNDER DIRECT EXAMINATION AND THAT IS THAT
18 THE NOVICE TEACHERS DIDN T HAVE THE EXPERIENTIAL
19 BACKGROUNDS TO BENEFIT FROM THE FOUR BLOCK PROGRAM WHEREAS
20 THE VERY, VERY OLD TEACHERS --

21 MR BARNES YOUR HONOR--

22 A -- USED IT PART--

23 THE COURT SORRY YES SIR

24 MR BARNES I D JUST LIKE TO RENEW MY OBJECTION I
25 JUST THINK WE ARE WAY AWAY FROM WHERE WE WERE

1 SOME OF THEM WORK AT DIFFERENT FACTORIES, BE IT
2 IN FLORENCE OR IN MARION OR MULLINS OR -- YOU KNOW -- I'D
3 SAY WITHIN A 40 TO 50 MILE RADIUS OF THEIR -- MOST PEOPLE
4 TRAVEL OUT TO WORK THERE ARE SOME FEW THAT STILL WORK ON
5 THE FARMS THERE, BUT FARMING HAS BECOME SO MECHANIZED TILL
6 MOST OF THE PARENTS OF THE CHILDREN THERE I WOULD NOT SAY
7 ARE INVOLVED IN FARMING, MOST OF THEM ARE NOT
8 Q WHAT DO THE CHILDREN HAVE IN THE WAY OF ROLE MODELS?
9 A PRETTY MUCH THE PEOPLE IN THE LOCAL COMMUNITY THERE
10 WHICH ARE THEIR PARENTS AND A FEW MINISTERS THAT ARE THERE
11 THAT GO TO -- YOU KNOW -- THAT LEAD THEIR CHURCHES AND
12 THEIR TEACHERS TEACHERS ARE PROBABLY THEIR MAIN ADULT
13 CONTACT
14 Q THEIR NEIGHBORHOODS WHERE THEY LIVE, DO THEY HAVE --
15 JUST GENERALLY THE TYPE AND QUALITY OF THE HOMES?
16 A WELL, MANY -- OF COURSE IT'S NOT LIKE THEY REALLY I
17 GUESS YOU'D SAY THERE ARE CLUSTERS OF HOUSES, BUT FOR THE
18 MANY OF THEM ARE PREFABRICATED HOMES OR SOME PEOPLE CALL
19 THEM MOBILE HOMES TRAILERS A LOT OF THE FAMILIES LIVE
20 IN THAT TYPE OF HOUSING
21 AND IT IS DISBURSED THROUGHOUT THE DISTRICT WE
22 DO -- IT'S SPREAD OUT YOU WILL HAVE CLUSTERS OF SOME
23 MOBILE HOME PARKS I GUESS YOU'D SAY, BUT COMPARED TO IN
24 TOWNS THEY'RE FAIRLY SMART -- SMALL NUMBERS I'D SAY THE
25 TEN, 15 HOME RANGE TOGETHER

1 Q ALL RIGHT I DIDN'T CATCH WHAT PERCENTAGE YOU
2 SAID WE HAVE DOCUMENTATION OF THIS, BUT APPROXIMATELY
3 WHAT PERCENTAGE OF YOUR CHILDREN ARE FREE AND REDUCED
4 LUNCH?

5 A WE HAVE -- I'D SAY THE ELEMENTARY LEVEL WE HAVE ABOUT
6 93 PERCENT I BELIEVE ON FREE OR REDUCED LUNCH AT THE
7 HIGH SCHOOL LEVEL IT'S A LITTLE LESS THAN 90 I BELIEVE

8 Q NOW IN TERMS OF NEEDS, EDUCATIONAL NEEDS WHERE THESE
9 CHILDREN ARE RECEIVING IN YOUR SCHOOL SYSTEM TELL THE
10 COURT A LITTLE BIT ABOUT HOW THE CHILDREN COME TO SCHOOL
11 PREPARED

12 A OKAY OF COURSE MANY OF OUR STUDENTS AS IS OBVIOUS
13 FROM THE HIGH FREE AND REDUCED LUNCH, THE LIST -- COME
14 WITH MANY DISADVANTAGES, ECONOMIC DISADVANTAGES MANY OF
15 THEM COME WHERE THEIR PARENTS, BOTH OF THEM WORK

16 THEY HAVE NOT HAD A LOT OF -- THERE'S NO CHILD
17 CARE IN THE DISTRICT, SO MANY OF THESE CHILDREN ARE CARED
18 FOR EITHER BY A GRANDMOTHER OR AN AUNT OR AN UNCLE OR SOME
19 FRIEND OF THE FAMILY IN THEIR EARLY YEARS BEFORE COMING TO
20 SCHOOL

21 THIS RESULTS IN THEM HAVING -- NOT HAVING A LOT
22 OF ATTENTION DURING THE DAY THEREFORE THEY OFTEN COME
23 WITH A LIMITED VOCABULARY, LIMITED VERBAL EXPERIENCES AND
24 VERY LIMITED VERBAL STIMULATION WHICH RESULTS IN A LIMITED
25 NUMBER OF WORDS THAT THEY HAVE IN THEIR VOCABULARY

1 Q NOW, IS THERE A HIGH UNEMPLOYMENT RATE IN MARION
2 COUNTY?

3 A MARION COUNTY HAS ONE OF THE HIGHEST UNEMPLOYMENT
4 RATES AND IT FLUCTUATES BETWEEN THE HIGHEST AND ABOUT THE
5 THIRD HIGHEST ON A REGULAR BASIS I BELIEVE THE FIGURES I
6 SAW ABOUT A WEEK OR SO AGO IN THE PAPER HAD US THIRD
7 HIGHEST, AND I THINK IT WAS AROUND 16 PERCENT IN MARION
8 COUNTY ARE UNEMPLOYED

9 Q WHAT TYPE OF LIFE'S EXPERIENCES HAVE THESE CHILDREN
10 HAD WHEN THEY COME INTO THE SYSTEM?

11 A MOST OF IT IS WHAT THEY HAVE EXPERIENCED RIGHT IN
12 THEIR HOMES UNLESS THERE S SOME TYPE OF OUTREACH FROM
13 THE SCHOOL SYSTEM TO GET INTO THE HOME AT A VERY EARLY AGE
14 AND WORK WITH THE PARENTS OR THE MOTHER, USUALLY THERE ARE
15 VERY LITTLE EXPERIENCES THAT THEY HAVE

16 THERE'S NO REAL ENTERTAINMENT THERE SOME OF
17 THEM DO ATTEND CHURCHES AND THINGS OF THAT NATURE, BUT
18 THAT'S ABOUT THE EXTENT OF IT WE ARE -- HAVE A BIG
19 AMPITHEATRE -- I THINK LEONARD SKINNARD IS PLAYING THERE
20 TONIGHT AND SOME OF THEM MAY HAVE THAT OPPORTUNITY IN THE
21 FUTURE

22 Q TELL ME WHERE LEONARD SKINNARD IS GOING TO BE?

23 A I THINK IT'S CALLED THE CAROLINA AMPITHEATRE

24 Q IS THAT IN MARION?

25 A IT'S REALLY ON THE EDGE OF MARION BUT IT IS IN

1 DISTRICT SEVEN WE CLAIM IT FOR TAX PURPOSES

2 Q WHAT KIND OF CULTURAL ACTIVITIES OR CULTURAL
3 EXPOSURES ARE YOU ABLE TO GIVE THE CHILDREN IN YOUR
4 SCHOOL?

5 A WE HAVE VERY LIMITED OPPORTUNITY TO GIVE THEM A LOT
6 OF CULTURAL EXPERIENCES THERE'S JUST NOT MUCH THERE
7 IT'S NOT A GREAT DEAL IN MARION COUNTY AS A WHOLE IN
8 MARION AND MULLINS, BUT REALLY VERY, VERY LITTLE OR
9 NOTHING OTHER THAN WHAT IS DONE AT THE SCHOOL

10 JUST AS A SIDE LIGHT AN EXAMPLE OF THIS I
11 THINK A FEW YEARS AGO, THREE OR FOUR YEARS AGO WHEN IT WAS
12 MARION THREE WE HAD A PARTNERSHIP WITH POLICY MANAGEMENT
13 SYSTEM CORPORATION P M S C , AND THE KIDS HAD NEVER BEEN
14 TO A BALLET OR BEEN TO AN ART MUSEUM OR BEEN TO THE
15 MUSEUM, THE STATE MUSEUM IN COLUMBIA

16 THAT ORGANIZATION DID PROVIDE FIELD TRIPS FOR
17 STUDENTS TO FOR EXAMPLE AT CHRISTMAS ATTEND THE BALLET AT
18 THE KOGER CENTER THERE IN COLUMBIA THEY CAME BACK THEY
19 WERE REALLY EXCITED

20 IT WAS A GREAT EXPERIENCE FOR THEM, SOMETHING
21 THEY HAD NEVER BEEN EXPOSED TO AND PEOPLE WOULD FIND
22 THAT HARD TO BELIEVE THAT THEY WOULD ENJOY GOING TO A
23 BALLET HAVING NO EXPERIENCE WITH THAT BUT IT WAS
24 SOMETHING SO NEW, DIFFERENT AND OF COURSE THEY DID TREAT
25 THEM ROYALLY, VERY NICELY

1 THEY PAID THEIR ADMISSION, THEY PROVIDED THEM
2 WITH A MEAL AND WHILE THEY WERE UP THERE, AND IT WAS A
3 REAL ENRICHING EXPERIENCE, MANY OF THEM WROTE ABOUT IT IN
4 THEIR ENGLISH CLASSES AND OTHER CLASSES WHICH GAVE THEM

5 IN OTHER WORDS IT WAS AN OPPORTUNITY FOR THEM TO
6 LEARN AND AN OPPORTUNITY FOR THEM TO DEVELOP A HOOK SO TO
7 SPEAK TO RELATE OTHER EXPERIENCES SO WHEN THEY HAD THE
8 OPPORTUNITY TO WRITE OR HAD TO WRITE, THEY HAD SOME THINGS
9 TO RELATE TO WHEN YOU TALKED ABOUT A BALLET BEFORE THAT
10 WAS PRETTY NEBULOUS THING THAT BALLET -- IT DIDN'T MEAN
11 MUCH TO THEM

12 Q DO YOU THINK, DR DEAN THAT IT'S IMPORTANT TO EXPOSE
13 CHILDREN TO DIFFERENT THINGS DIFFERENT CULTURAL THINGS OR
14 DIFFERENT LEARNING EXPERIENCES, DIFFERENT PROFESSIONALS,
15 DIFFERENT PART OF LIFE THAN CHILDREN LIKE THIS WILL SEE
16 LIVING AT HOME?

17 A ABSOLUTELY BECAUSE THEIR EXPERIENCES ARE VERY
18 LIMITED SO WHEN YOU -- WHEN YOU ARE LEARNING OR YOU READ
19 A BOOK IF YOU DON'T HAVE SOMETHING THAT YOU CAN TIE INTO
20 THAT BOOK OR SOMETHING YOU CAN HANG ON TO IT'S DIFFICULT
21 FOR YOU TO UNDERSTAND WHAT YOU ARE READING IF YOUR
22 EXPERIENCES ARE VERY LIMITED

23 WHEN YOU ARE -- AS YOUR EXPERIENCES ARE
24 BROADENED, AND THE BROADER THEY ARE -- WHEN SOMETHING IS
25 WRITTEN ABOUT FOR EXAMPLE A BALLET OR SOMETHING OUT OF A

1 I THINK ANOTHER THING THAT IT DOES IS THE
2 STUDENTS GET THE IMPRESSION THAT THE TEACHERS DON'T CARE
3 ABOUT THEM BECAUSE THEY ARE IN HERE AND OUT OF HERE A
4 BIG PART ESPECIALLY OF CHILDREN THAT DON'T HAVE A LOT OF
5 -- TO BE EFFECTIVE IN TEACHING YOUNG PEOPLE THEY HAVE TO
6 KNOW YOU CARE ABOUT THEM

7 THEY HAVE TO BELIEVE THAT OR FEEL THAT AND
8 WHEN THEY DON'T FEEL THAT, THEY OFTEN TURN THEM OFF

9 Q WHY DO YOU HAVE SUCH A HIGH TEACHER TURNOVER RATE?

10 A I THINK THERE ARE MANY REASONS FOR THAT I THINK
11 THAT SOME OF IT HAS TO DO WITH OUR LOCATION I THINK MANY
12 TEACHERS HAVE TO TRAVEL PRETTY GOOD DISTANCES IT'S NOT
13 UNUSUAL TO -- FOR PEOPLE TO TRAVEL EVEN FROM MYRTLE BEACH,
14 40, 50 MILES AWAY, NORTH MYRTLE BEACH, FLORENCE, AND
15 THAT'S A HUNDRED MILES ROUND TRIP A DAY AFTER YOU HAVE
16 TAUGHT ALL DAY THAT GETS PRETTY TAXING AFTER A WHILE

17 I THINK TRAVEL IS A FACTOR I THINK WE HAVE NOT
18 HAD THE BEST FACILITIES IT S NOT THE MOST PLEASANT
19 ENVIRONMENT IN SOME OF OUR SCHOOLS TO COME AND TEACH IN
20 I THINK THAT'S A FACTOR

21 WE DO NOT PAY THE VERY HIGHEST SO OFTEN YOU
22 ARE COMING TO TEACH A VERY CHALLENGING POPULATION YOU ARE
23 GOING TO TRAVEL A LONG DISTANCE AND YOU ARE GOING TO NOT
24 BE PAID THAT WELL

25 Q WELL YOUR PAY SCALE IS \$33 010 I GUESS THAT'S AN

1 AVERAGE?

2 A YES, SIR

3 Q THAT'S FOR 2002 NOW DO YOU KNOW WHAT THE STATE
4 AVERAGE PAY SCALE FOR TEACHERS IS?

5 A AS I UNDERSTAND IT IT'S AROUND 39,000

6 Q WHY IS MARION SEVEN SO MUCH LOWER THAN THE STATE
7 AVERAGE?

8 A OF COURSE WHEN YOU LOOK AT -- YOU PAY TEACHERS ON
9 WHERE THEY FALL ON THE STATE SALARY SCHEDULE THAT'S
10 WHERE THE BULK OF THEIR SALARY COMES FROM WHEN YOU HAVE
11 TEACHERS WITH LITTLE EXPERIENCE THEY COME ON THE LOWER
12 END

13 WHEN YOU HAVE A LARGE NUMBER OF YOUNG
14 INEXPERIENCED TEACHERS AND ALTHOUGH NOT A -- WE HAVE
15 IMPROVED THE NUMBER THAT HAVE MASTERS DEGREES, STILL NOT A
16 LARGE NUMBER WITH HIGH DEGREES WHICH USUALLY KICK YOU UP

17 SO WHEN YOU DO AN AVERAGE -- AND MOST OF OUR
18 TEACHERS ARE FALLING ON THE LOWER END OF THE PAY SCALE --
19 THE AVERAGE IS GOING TO BE LOWER THE DISTRICT ITSELF
20 PAYS THE STATE SALARY SCHEDULE PLUS \$300

21 Q NOW UNDER SOUTH CAROLINA LAW YOU HAVE TO MEET THE
22 STATE MINIMUM SALARY SCALES CORRECT?

23 A YES, SIR

24 Q AND JUST TELL THE COURT IF YOU WILL HOW THE SALARY
25 SCALE WORKS, AND THIS IS A STATE MINIMUM SALARY SCALE

1 A HAD KIND OF A PICTURE OF ONE BUT BASICALLY IT'S A
2 SCALE AND IT DIVIDES IT INTO THE DEGREE LEVEL, THE YEARS
3 OF EXPERIENCE, THE -- WHEN I SAY THE DEGREE LEVEL,
4 EDUCATIONAL LEVEL OF THE TEACHER, THE YEARS OF EXPERIENCE
5 THE TEACHER HAS, AND THEY HAVE LITTLE CELLS, ALL THESE
6 LITTLE BOXES DRAWN, AND FOR A BACHELORS DEGREE WITH ZERO
7 YEARS OF EXPERIENCE THERE'S A FIGURE PUT IN THERE FROM THE
8 STATE AND IT'S AROUND \$25,000 FOR A BACHELORS DEGREE PLUS
9 15 HOURS

10 Q 15 HOURS COLLEGE?

11 A COLLEGE CREDIT, FOR FIVE YEARS OF EXPERIENCE THERE
12 WOULD BE A LITTLE BLOCK THERE AND THAT'S WHAT YOU PAY
13 NOW, WE ADD \$300 TO THAT WHATEVER THAT'S -- WHEREVER YOU
14 FALL AND THEN IT GOES TO A MASTERS DEGREE AND IT GOES UP
15 TO 20 -- 22 YEARS IS IT?

16 Q I THINK THAT'S RIGHT

17 A 22 YEARS EXPERIENCE AROUND 20 YEARS OF EXPERIENCE
18 THEN IT GOES TO A MASTERS PLUS 30 AND THEN IT GOES TO A
19 DOCTORATE, THOSE ARE THE EDUCATION

20 Q IT'S BROKEN OUT FIRST OF ALL BY THE DEGREE, SO YOU
21 START OFF WITH A BRAND NEW TEACHER WITH A BACHELORS DEGREE
22 HAS TO BE PAID YOU HAVE TO PAY HER A CERTAIN AMOUNT OF
23 MONEY BUT SHE'S -- THAT PERSON IS ON THE LOW EARNING END
24 OF THE PAY SCALE, CORRECT?

25 A CORRECT

1 Q AND THEN YEARS OF EXPERIENCE NOW EACH YEAR YOU STAY
2 IN SCHOOL TEACHING, WHEREVER YOU ARE, YOUR SALARY GOES UP,
3 IN -- AN INCREMENTAL BUILT-IN SALARY INCREASES?

4 A THAT'S CORRECT

5 Q AND THEN IN ADDITION TO THAT THEY HAVE OTHER THINGS
6 THAT CAN INCREASE YOUR SCALE AND SEPARATE YOU PERHAPS FROM
7 YOUR OTHER UNDERGRADUATE DEGREE COHORTS IS A BACHELOR'S
8 DEGREE PLUS 15?

9 A CORRECT

10 Q THEN WE GET TO MASTERS LEVEL THAT SEPARATES THAT
11 GROUP FROM THE BACHELOR DEGREE PLUS 15 BECAUSE THEN YOU
12 HAVE A MASTERS DEGREE, CORRECT?

13 A CORRECT

14 Q THEN THEY HAVE A MASTERS PLUS IS IT 15 AGAIN?

15 A 30

16 Q 30? ALL RIGHT AND THEN HAVE ANOTHER LEVEL FOR
17 P H D 'S OR--

18 A CORRECT OR DOCTORATE

19 Q OKAY AND THAT'S BASICALLY THE WAY IT WORKS UP THE
20 LADDER AND THEN YOU HAVE ANOTHER SCALE ON THE SIDE THAT
21 MOVES ALONG CORRESPONDINGLY BASED ON YOUR YEARS OF
22 EXPERIENCE?

23 A THAT'S CORRECT

24 Q ALL RIGHT SO WE HAVE THE GENERAL PICTURE NOW AND
25 THAT'S THE MINIMUM PAY SALARY THAT A SCHOOL DISTRICT CAN

1 PAY A TEACHER, RIGHT?

2 A YOU MUST PAY THAT

3 Q OKAY NOW, IN ADDITION TO THAT A SCHOOL DISTRICT CAN
4 PAY WHAT?

5 A WHATEVER THEY CAN AFFORD FROM A LOCAL SUPPLEMENT
6 THEY CAN ADD A LOCAL SUPPLEMENT TO THAT AND MOST SCHOOL
7 DISTRICTS DEVELOP THE LOCAL SUPPLEMENT SCHEDULE TO ADD TO
8 THE STATE SALARY SCHEDULE

9 Q AND MARION SEVEN ADDS HOW MUCH?

10 A \$300 ACROSS THE BOARD WHATEVER IF YOU HAVE ONE YEAR
11 EXPERIENCE, YOU GET \$300, OR ZERO YEARS OF EXPERIENCE IF
12 YOU HAVE A DOCTORATE, YOU GET \$300

13 Q DR DEAN, HAVE YOU EVER -- HAVE YOU EVER LOOKED TO
14 SEE WHAT OTHER DISTRICTS PAID IN THE WAY OF SALARY?

15 A CERTAINLY I HAVE

16 Q WHAT DO THEY PAY?

17 A WELL--

18 THE COURT YES, SIR'

19 MR BARNES YOUR HONOR, MY OBJECTION IS I'M NOT SURE
20 IF DR DEAN HAS A FOUNDATION FOR THAT AND SO HE -- I
21 GUESS IF HE KNOWS, I DON'T HAVE A PROBLEM, BUT I'D LIKE TO
22 KNOW SPECIFICALLY AND HOW HE KNOWS IT

23 MR EPPS IF YOU DON'T TELL ME, TELL ME--

24 A I DO KNOW WHAT SOME OF MY NEIGHBORS PAY WE HAVE
25 ASKED OF THEM IN THE PEE DEE EDUCATION CENTER WE HAVE

1 SHARED SALARY SCHEDULES WITH EACH OTHER, BE IT EVERYTHING
2 FROM COACHING SUPPLEMENT SALARY SCHEDULES TO TEACHER
3 SALARY SCHEDULE SUPPLEMENTS WE HAVE REQUESTED IT FROM
4 HORRY COUNTY AND THEY GAVE IT TO ME AND I JUST ASKED THEM

5 Q JUST TELL ME WHAT HORRY COUNTY PAYS IN THE WAY OF A
6 SUPPLEMENT IN ADDITION TO THE PAY SCALE SET BY THE STATE

7 MR BARNES YOUR HONOR, I THINK DR DEAN IS ABOUT TO
8 TESTIFY TO SOME HEARSAY IF MR EPPS WOULD LIKE TO
9 INTRODUCE THAT DOCUMENT

10 THE COURT WELL, HE'S OFFERING IT I TAKE IT FOR THE
11 PURPOSE OF COMPARISON

12 MR EPPS THAT'S CORRECT, YOUR HONOR

13 THE COURT AND NO DOUBT HE'S OFFERING IT FOR THE
14 TRUTH OF THE MATTER THAT IS ASSERTED TO BE IT'S THE SORT
15 OF INFORMATION HOWEVER WHICH I THINK IS READILY
16 ASCERTAINABLE AND I WILL ALLOW HIM TO TESTIFY ABOUT THAT

17 I WOULD LIKE HOWEVER FOR HIM TO FURNISH COPIES
18 OF THOSE SUPPLEMENT SCHEDULES IF HE COULD BEFORE WE FINISH
19 WITH MARION SEVEN

20 MR BARNES AND YOUR HONOR, IF I COULD JUST FOR
21 PURPOSES OF THE RECORD INTERPOSE ONE MORE OBJECTION WITH
22 REGARD TO THAT TESTIMONY IN THAT IT IS IRRELEVANT AND I
23 WOULD REMIND THE COURT THIS IS AN ADEQUACY CASE, NOT AN
24 EQUITY CASE, SO WHAT HORRY COUNTY PAYS IS NOT RELEVANT TO
25 THE INQUIRY AS TO WHETHER OR NOT WE ARE PROVIDING A

1 MINIMALLY OPPORTUNITY--

2 THE COURT THAT'S WELL TAKEN, MR BARNES I THOUGHT
3 THAT WAS THE REASON YOU STOOD ORIGINALLY TALKING REALLY
4 ABOUT STATE -- ABOUT THE STATE'S PROVISION OF AN
5 OPPORTUNITY TO THE EXTENT THAT OF COURSE THE DEFENSE IN
6 ITS OWN BRIEFS INDICATED THAT THE DISTRICTS ARE ARMS OF
7 THE STATE TO A CERTAIN EXTENT, THERE MIGHT BE SOMETHING
8 THAT TRICKLE DOWN THEORY THAT APPLIES IN THAT REGARD

9 I'M GOING TO ALLOW HIM TO DO IT SIMPLY FOR THE
10 PURPOSE OF COMPARISON AS LONG AS WE DON'T SPEND A WHOLE
11 LOT OF TIME DOWN THIS PATH

12 MR EPPS NO, SIR AND WHAT I WILL DO YOUR HONOR
13 BECAUSE I WILL ASK DR DEAN TO GET IT AND IF HE CANNOT GET
14 THE INFORMATION IN WRITTEN FORM, THEN WE WILL LET THE
15 COURT KNOW THAT IF WE CAN GET IT IN WRITTEN FORM, THEN
16 WE WILL SUBMIT IT TO THE COURT AND TO THE OPPOSING
17 COUNSEL I DO NOT HAVE IT AS I STAND HERE

18 THE COURT I UNDERSTAND THAT

19 MR EPPS I DID NOT THINK IT WOULD BE AN ISSUE, BUT
20 I UNDERSTAND THEIR POSITION

21 THE COURT WE WON'T FUSS ABOUT IT NOW

22 MR EPPS ALL RIGHT, SIR

23 Q GO AHEAD, DR DEAN

24 A CERTAINLY I CAN'T CALL UP EACH CELL ON THE MAT I
25 CAN GIVE YOU A ROUGH RANGE OF THE SALARY SCHEDULES FROM

1 HORRY COUNTY USUALLY IT WAS RIGHT AT A MINIMUM OF \$3,000
2 UP TO AS HIGH AS OVER \$10,000 FOR LOCAL SUPPLEMENTS IN
3 HORRY COUNTY COMPARED TO A \$300 SUPPLEMENT IN MARION
4 DISTRICT

5 IN MARION SCHOOL DISTRICT ONE IT'S AROUND A \$900
6 SUPPLEMENT IN MARION TWO IT'S ABOUT A \$700 SUPPLEMENT

7 Q OKAY WHAT DO THE SALARY SUPPLEMENTS IN THESE OTHER
8 COUNTIES AND I GUESS PARTICULARLY HORRY COUNTY PERHAPS DO
9 TO YOUR ABILITY TO ATTRACT AND RETAIN TEACHERS?

10 A WELL CERTAINLY THAT'S KIND OF AN I GUESS YOU'D SAY AN
11 OBVIOUS THAT IF YOU -- WE OFTEN HIRE AS I SAID
12 INEXPERIENCED TEACHERS THAT DON'T HAVE A LOT OF
13 EXPERIENCE

14 ONCE THEY GET A FEW YEARS OF EXPERIENCE I GUESS
15 YOU WOULD SAY UNDER THEIR BELTS AND IT BECOME -- AND THEY
16 HAVE THE OPPORTUNITY IF THEY ARE LOOKING TO ADVANCE AND TO
17 MAKE A LITTLE MORE MONEY, TAKE CARE OF THEMSELVES AND
18 THEIR FAMILIES, THEY WILL OFTEN APPLY IN SOME OF OUR
19 NEIGHBORING DISTRICTS

20 AND OF COURSE HORRY COUNTY IS A BIG SCHOOL
21 DISTRICT AND THEY HAVE A LOT OF POSITIONS AND OFTEN MANY
22 OF THEM WILL JUMP OVER TO HORRY COUNTY

23 Q I WANT TO TURN ATTENTION NOW, DR DEAN, TO THE 2002
24 PACT SCORES THESE ARE DISTRICT-WIDE PACT SCORES AND
25 THIS IS PLAINTIFF'S 98

1 MATERIAL THAT'S GIVEN

2 Q HAVE YOU TRIED TO RECRUIT TEACHERS WITH SPECIAL
3 READING SKILLS TO COME IN AND HELP THE STUDENTS?

4 A WE HAVE TRIED TO, WE HAVE TRIED TO RECRUIT TEACHERS
5 AND WE HAVE TRIED TO RECRUIT TEACHERS CERTAINLY WITH THE
6 ABILITIES KNOWLEDGE AND SKILLS TO TEACH OUR STUDENTS
7 READING

8 OUR PROBLEM IS WE OFTEN JUST HAVE A VERY SMALL
9 POOL TO SELECT FROM AND USUALLY IT'S -- THE POOL CONSISTS
10 PRIMARILY OF VERY INEXPERIENCED, YOUNG TEACHERS THAT ARE
11 JUST OUT OF COLLEGE, SO THEY HAVE NOT HAD GREAT TRAINING,
12 A GREAT AMOUNT OF TRAINING IN READING TO BEGIN WITH
13 BECAUSE THEY ARE JUST FINISHING THEIR UNDERGRADUATE DEGREE
14 PROGRAM

15 CERTAINLY WE HAVE TRIED TO SUPPLEMENT WHAT THEY
16 KNOW, FOR EXAMPLE WITH THE FOUR BLOCKS METHOD OF TEACHING
17 LANGUAGE ARTS BUT IT'S NOT LIKE HAVING A 20 YEAR PRO IN
18 THERE THAT KNOWS WHAT SHE IS DOING FROM DAY ONE AND REALLY
19 KNOWS HOW TO DIAGNOSE KIDS' WEAKNESSES AND TO GET THEM THE
20 TYPE OF HELP THAT THEY NEED

21 Q WE TALKED ABOUT THE PROGRAMS THAT YOU HAVE LISTED ON
22 YOUR SUPERINTENDENT REPORT HERE TO YOUR PUBLIC AND THE
23 IMPLEMENTATION ISSUES RELATED WITH THOSE PROGRAMS NOW
24 YOU HAVE SOME COMPUTER DRIVEN PROGRAMS WHERE YOU DON'T
25 REALLY NEED A TEACHER, IS THAT NOT CORRECT?

1 READY TO PROFFER SOME HEARSAY TESTIMONY AND SO I'M
2 OBJECTING TO THAT

3 THE COURT I AGREE AND IT IS I WILL SUSTAIN THE
4 OBJECTION THE DOCTOR I THINK HAS ANSWERED THE QUESTION
5 SORT OF ALREADY BASED ON HIS EXPERIENCE AND TALKED ABOUT
6 THE SMALL POOL OF TEACHERS AND THE LIMITED POOL AND THE
7 LIMITED CHOICES THAT HE HAS I AGREE THAT TO GO BEYOND
8 THAT WOULD BE HEARSAY THANK YOU

9 (WHEREUPON QUESTIONING RESUMED)

10 MR EPPS I CAN STATE A QUESTION THAT COULD ELICIT
11 HIS ANSWER I BELIEVE I WILL NOT IF THE COURT WOULDN'T
12 WANT ME TO--

13 THE COURT GET AROUND THE HEARSAY OBJECTION

14 Q WHAT DILEMMA ARE YOU FACED WITH TODAY?

15 A I'M FACED WITH A DILEMMA OF HAVING A VERY SMALL POOL
16 TO CHOOSE FROM

17 Q NO SIR

18 A FOR EXAMPLE--

19 Q STOP WHAT IMMEDIATE DILEMMA ARE YOU FACING AS OF
20 7 30 THIS MORNING?

21 A OKAY WE ARE STILL SHY ONE SEVENTH GRADE ENGLISH
22 TEACHER THIS -- WE HAVE OFFERED THIS TO TWO OTHER
23 APPLICANTS THAT WERE CERTIFIED TEACHERS, BEEN TURNED DOWN
24 BY BOTH OF THEM WE START SCHOOL MONDAY

25 I CAN EMPLOY OR OFFER A CONTRACT TO AN

1 INDIVIDUAL FROM OHIO ON THE PACE PROGRAM OR OPEN THE YEAR
2 WITHOUT A TEACHER AND THAT'S A DIFFICULT CALL TO MAKE --
3 YOU KNOW -- WOULD BE BETTER OFF TO LOOK FOR A WHILE OR DO
4 WE JUST GO AHEAD AND EMPLOY A PACE TEACHER WHICH IS A
5 TEACHER GOING THROUGH AN ALTERNATIVE CERTIFICATION PROCESS
6 FROM OUT OF STATE THAT HAS NEVER SEEN MARION COUNTY
7 PROBABLY

8 I'M ABOUT 99 PERCENT SURE SHE HASN'T BUT SHE
9 HAS A DEGREE IN ENGLISH AND HAS PASSED THE TEST AND
10 THROUGH RECOMMENDATIONS WHERE SHE SERVED AS A SUBSTITUTE
11 THEY SAID SHE'S BEEN PRETTY EFFECTIVE AS A SUBSTITUTE

12 NOW WE ARE GOING TO TAKE A WHIRL ON THIS
13 PROBABLY BECAUSE I REALLY HAVE NO OTHER CHOICES AND WE
14 WILL SEE WHETHER SHE WORKS OUT OR NOT THESE ARE OFTEN
15 THE TYPES OF -- THAT'S A CONCRETE EXAMPLE OF THE TYPE OF
16 SITUATION YOU ARE OFTEN IN WHEN YOU ARE MAKING HIRING
17 DECISIONS

18 IT S NOT LIKE I GET TO PICK FROM FIVE TOP
19 QUALITY ENGLISH TEACHERS AND I'M SELECTING THE BEST ONE
20 I'M SELECTING THE BEST IN OUR PROFESSIONAL JUDGMENT BEING
21 AT THE PRINCIPALS, THE ASSISTANT SUPERINTENDENTS AND
22 MYSELF OFTEN DOING THE INTERVIEWING AND OUR PROFESSIONAL
23 JUDGMENTS, WE MAKE THE BEST DECISIONS WE CAN FROM THE
24 CHOICES WE HAVE TO MAKE

25 WE OFTEN KNOW WE ARE GOING TO BE BEHIND THE

1 EIGHT BALL WITH MANY OF THEM SO TO SPEAK AND THEN WE TRY
2 TO HELP THEM AS BEST WE CAN

3 Q ALL RIGHT LETS GO AHEAD AND TALK ABOUT THIS
4 SITUATION A LITTLE MORE NOW IF YOU HAVE I THINK ABOUT 24
5 PERCENT TURNOVER THIS PAST YEAR, AND I'M NOT GOING TO TRY
6 TO DO THE MATH

7 A THAT'S CORRECT

8 Q BUT LETS ASSUME THAT'S ABOUT 19 NEW TEACHERS THAT YOU
9 HAVE TO FIND IN ANY GIVEN YEAR IS THAT--

10 A THAT'S PRETTY CLOSE

11 Q NOW, HOW DO YOU GO ABOUT GETTING 19 NEW TEACHERS TO
12 COME IN TO MARION SEVEN?

13 A WE ADVERTISE IT IN OUR PAPERS, ESPECIALLY THE STATE
14 PAPER WHICH PRETTY MUCH COVERS THE ENTIRE STATE, AND THE
15 HORRY COUNTY PAPER I THINK IT'S CALLED THE SUN NEWS
16 BECAUSE THERE'S A LOT OF MOVEMENT THAT'S FAIRLY CLOSE TO
17 US THAT A LOT OF PEOPLE ARE MOVING IN AND OUT OF THAT AREA
18 AND THAT'S A POSSIBLE DRIVE TO LIVE DOWN THERE AND DRIVE
19 TO HOUR AREA SO WE -- THOSE ARE THE TWO MAJOR AREAS WE
20 ADVERTISE

21 WE ALSO ATTEND VARIOUS COLLEGE CAREER DAY FAIRS
22 I GUESS YOU WOULD SAY IN THE SPRING OF THE YEAR TO TRY TO
23 RECRUIT TEACHERS FROM THE VARIOUS COLLEGES WE GO TO MOST
24 OF THEM HERE IN STATE

25 WE USE THE ANNUAL TEACHER -- I DON'T KNOW WHAT

1 Q IS THAT A SUMMARY OF YOUR PROFESSIONAL DEVELOPMENT
2 PROGRAM?

3 A IN A SENSE IT IS THAT'S PROBABLY A REAL CLOSE --
4 IT'S KIND OF A SKETCHY OVERVIEW OF IT, BUT

5 Q ALL RIGHT I'M GOING TO -- I HAVE TO ASK YOU HOW HAS
6 THAT WORK IN TERMS OF CREATING A TEACHER THAT CAN CLOSE
7 THE GAP BETWEEN WHAT THE STUDENT NEEDS AND WHAT THE
8 TEACHER IS ABLE TO PROVIDE?

9 A IT CERTAINLY HASN'T BEEN AS EFFECTIVE AS IT NEEDS TO
10 BE BECAUSE WE STILL HAVE HIGH PERCENTAGES OF STUDENTS THAT
11 AREN'T READING AND AREN'T DOING WELL IN MATHEMATICS SO I
12 COULD NOT SAY THAT IT HAD BEEN REAL EFFECTIVE

13 Q WHAT DO THE TEACH -- WHAT DO YOU SEE IN TEACHERS THAT
14 YOU DO NOT THINK ARE EFFECTIVE?

15 A WELL, I THINK THE BIGGEST DIFFICULTY WHEN I OBSERVE
16 CLASSES IS TO CONNECT WITH THE STUDENTS AS I CALL IT OR
17 ENGAGE THE STUDENTS I THINK THAT IS MUCH EASIER SAID
18 THAN ACTUALLY DONE

19 IT TAKES SOMEONE WITH SOME SPECIAL SKILLS AND
20 TALENTS AND PERSONALITY TO GET THE STUDENTS TO BUY INTO
21 WHAT THEY ARE DOING TO BECOME INVOLVED WITH THEM IN THE
22 LEARNING PROCESS AND THAT'S NOT EASILY DONE

23 THERE IS A BIG DIFFERENCE IN JUST GETTING UP AND
24 PRESENTING A LESSON OR JUST HAVING A LESSON AND ENGAGING
25 THE STUDENT AND GETTING THEM INVOLVED IN THE LEARNING

1 PROCESS AND GETTING THE STUDENT TO ACTUALLY LEARN THE
2 MATERIAL AND LEARN THE KNOWLEDGE OR LEARN THE SKILL THAT
3 YOU ARE TRYING TO GET ACROSS

4 Q WHAT HAPPENS TO THE CHILD OR TO THE STUDENT, DR
5 DEAN, WHO ENDS UP WITH ONE OF THESE NONPERFORMING TEACHERS
6 OR TEACHERS THAT YOU WOULD LIKE TO REPLACE AS THE -- AS
7 THE STUDENT GOES THROUGH THE PROCESS?

8 A WELL, WHEN STUDENTS AREN'T ENGAGED AND THEY DON'T
9 LEARN, THEN THEY DON'T -- THEY DON'T DO WELL
10 ACADEMICALLY WHEN THEY DON'T DO WELL ACADEMICALLY, IT
11 RESULTS IN THEM USUALLY ULTIMATELY NOT GRADUATING FROM
12 HIGH SCHOOL DROPPING OUT AND THEY BECOME A BURDEN RATHER
13 THAN A CONTRIBUTING MEMBER OF SOCIETY

14 Q ALL RIGHT I'M GOING TO COME BACK TO THAT TOWARD THE
15 END OF THIS EXAMINATION I WANT TO TURN MY ATTENTION NOW
16 IF WE CAN TO PRINCIPALS DO YOU BELIEVE THAT PRINCIPALS
17 ARE CRITICAL TO A SCHOOL DISTRICT?

18 A ABSOLUTELY

19 Q WHAT DO YOU LOOK FOR IN HIRING A PRINCIPAL?

20 A WE ARE LOOKING FOR AN INDIVIDUAL THAT CAN PROVIDE
21 LEADERSHIP, THAT CAN ENCOURAGE TEACHERS, THAT CAN ASSESS
22 TEACHERS AND THEIR ABILITIES MAKE GOOD HIRING DECISIONS
23 IN EMPLOYING TEACHERS AND MAKE DECISIONS WHEN THEY ARE --
24 AND GIVE ADVICE TO TEACHERS WHEN THEY AREN'T PERFORMING
25 WELL OR NOT DOING WELL WITH THEIR STUDENTS NOT ENGAGING

1 Q GO AHEAD

2 A THAT'S JUST THE SIGN THE FIRST SLIDE THAT I'M
3 LOOKING IS A CEILING IS A ROOF LEAKING PROBLEM AND IT'S AT
4 BRITTON'S NECK ELEMENTARY SCHOOL IN ONE OF THE -- THIS IS
5 AT BRITTON'S NECK ELEMENTARY SCHOOL

6 IT'S OBVIOUSLY IN A RESTROOM ON ONE OF THE
7 WALLS IT HAS SOME WATER STAINS WHICH SHOW A LEAK IT
8 ALSO HAS SOME -- WHAT APPEAR TO BE MOLD OR MILDEW STAINS
9 ON THE WALL

10 THIS IS IN THE RESTROOM AT BRITTON'S NECK
11 ELEMENTARY IT'S AN EXPOSED CONDUIT WHERE THE CONDUIT
12 GOES ELECTRICAL WORK GOES INTO A HAND BLOWER TO DRY
13 HANDS AND OF COURSE THAT IS NOT A GOOD SITUATION TO HAVE
14 EXPOSED CONDUIT OUT LIKE THAT WITH ELECTRICAL HOOKUPS

15 Q THAT'S AN ELEMENTARY?

16 A THAT'S IN THE ELEMENTARY SCHOOL

17 Q NEXT?

18 A THE NEXT IS THE ELEMENTARY SCHOOL AND THIS IS THE
19 TYPICAL HEATING AND AIR CONDITIONING UNIT AT BRITTON'S
20 NECK ELEMENTARY SCHOOL AS YOU CAN SEE IN THE UPPER PART
21 IS AN AIR CONDITIONER IT'S LIKE A WINDOW UNIT

22 THE LOWER PART IS A HEATING UNIT WHERE COILS
23 HEAT UP AND JUST BLOW WARM AIR OUT IT'S A VERY
24 INEFFICIENT FORM OF HEATING AND COOLING IT'S VERY
25 EXPENSIVE AND THAT COSTS THE DISTRICT A LOT IN ORDER TO

1 HEAT AND COOL THAT, THESE BUILDINGS BECAUSE THE
2 INEFFECTIVE HEATING AND AIR CONDITIONING SYSTEM

3 Q WHEN WAS THIS BUILDING BUILT DO YOU KNOW?

4 A 1938 AS I UNDERSTAND IT IT WAS 1938

5 Q ALL RIGHT, SIR HOW ABOUT THE NOISE, IS THERE ANY
6 ISSUE WITH--

7 A YEAH OF COURSE THESE WINDOW UNITS ARE LOUD WHEN
8 THEY RUN, THEY BLOW, THE FANS BLOW, AND WHEN THEY ARE
9 BLOWING COOL OR WARM AIR THAT FAN NOISE IS CONSTANTLY IN
10 THE BACKGROUND IT'S A DISTRACTION TO THE TEACHER AND THE
11 STUDENT AND IT -- THAT'S IT

12 THIS NEXT I THINK IT'S A ROOF, A CEILING LEAK
13 I BELIEVE THIS IS IN THE AUDITORIUM AT BRITTON'S NECK
14 ELEMENTARY AND IT SHOWS SOME PAINT PEELING OFF THE WALL
15 THERE

16 Q ALL RIGHT WE CAN GO THROUGH THESE MORE RAPIDLY
17 THEN WE ARE GOING -- OH, LET'S STOP HERE I'M NOT -- I
18 HAVE GOT THESE THINGS IN HARD COPY MR MORRISON REMINDED
19 ME, MIGHT NOT EVEN BEEN ON THE RECORD LET ME GET THEM
20 OUT

21 (WHEREUPON THERE WAS A PAUSE)

22 MR EPPS YOUR HONOR, I'M GOING TO BEG THE COURT'S
23 INDULGENCE AGAIN I WILL GO BACK AND MATCH THESE UP AND
24 JUST TRY TO GET EXHIBIT RANGES FOR THE DIFFERENT SCHOOLS
25 IF THAT'S OKAY

1 ARE NOT GLAD TO GET A YOUNG PERSON OR A PERSON THAT IS --
2 THAT CAN DO THE JOB, BUT USUALLY THE -- WHEN SOMEONE HAS
3 HAD SOME EXPERIENCE WITH IT, THE GREATER THE LIKELIHOOD
4 THEY KNOW WHAT TO DO, THERE'S LESS DOWN TIME, THEY ARE
5 GOING TO FOLLOW THROUGH AND THEY KNOW THE KIND OF THINGS
6 THAT THEY NEED TO GET ORGANIZED AND GET THE SCHOOL MOVING
7 FORWARD

8 Q CAN YOU HAVE EFFECTIVE TEACHING CADRE OR EFFECTIVE
9 LEARNING EXPERIENCE WITHOUT A GOOD PRINCIPAL? CONSIDER--

10 A I THINK IT -- I GUESS IT'S POSSIBLE IT'S HIGHLY
11 UNLIKELY

12 Q ALL RIGHT I'M GOING TO SHIFT GEARS AGAIN NOW AND WE
13 WILL GO TO TRANSPORTATION AND TALK TO YOU ABOUT
14 TRANSPORTATION ISSUES WITHIN MARION SEVEN SCHOOL
15 DISTRICT AND I'M GOING TO LET YOU JUST DESCRIBE THOSE
16 FOR THE COURT

17 A OKAY WE HAVE SOME WHAT I CONSIDER PRETTY SEVERE
18 TRANSPORTATION ISSUES OUR BUS ROUTES FOR ONE ARE LONG
19 WE HAVE SOME ELEMENTARY SCHOOL STUDENTS THAT ARE ON THE
20 BUS AS MUCH AS FOUR HOURS A DAY, TWO HOURS BEFORE THEY
21 EVER COME TO SCHOOL

22 THEY ARE WORN OUT BEFORE THEY GET THERE AND
23 THEN TWO HOURS IN THE AFTERNOON THE TRIP HOME THAT'S A
24 LONG TIME FOR A FIRST, SECOND THIRD GRADER TO BE ON A
25 BUS THAT'S ONE ISSUE

1 THE SECOND ISSUE IS OUR STATE HAS NOT DONE A
2 GOOD JOB OF MAINTAINING OUR BUS SYSTEM OUR BUSES OFTEN
3 -- THEY ARE OLD, THEY BREAK DOWN THEREFORE THEY BREAK
4 DOWN IN THE MORNINGS, TOO OR THEY DON'T CRANK, THEREFORE
5 THE STUDENTS COME TO SCHOOL LATE

6 WHEN THEY COME LATE, THEY MISS INSTRUCTIONAL
7 TIME WHEN YOU MISS INSTRUCTIONAL TIME, YOU ARE MISSING
8 AN OPPORTUNITY TO LEARN TO ME THESE ARE TWO KEY AREAS IN
9 TRANSPORTATION

10 THE KEY TRANSPORTATION ISSUES IN OUR DISTRICT
11 ARE THE LENGTHY BUS ROUTES, THE LONG TIME -- LENGTH OF
12 TIME THAT OUR STUDENTS ARE ON THE BUSES AND THEN THE
13 SECOND ISSUE IS THAT THE BUSES ARE JUST SHOT

14 THEY ARE WORN OUT AND THEY OFTEN BREAK DOWN AND
15 KIDS MISS LEARNING OPPORTUNITIES BECAUSE THEY ARE BESIDE
16 THE ROAD FREEZING OR GETTING WET OR DOING SOMETHING LIKE
17 THAT

18 Q I HAVE TO ASK YOU THIS QUESTION FOR THE RECORD WHY
19 DON'T YOU REPLACE THE BUSES?

20 A THAT'S NOT -- THAT'S A STATE RESPONSIBILITY THE
21 STATE PURCHASES THE SCHOOL BUSES AND IN NO WAY DO WE HAVE
22 THE FUNDS TO BUY EXTRA SCHOOL BUSES AND PAY FOR THE GAS
23 AND PAY FOR THE EXTRA DRIVERS IN MARION SCHOOL DISTRICT
24 SEVEN

25 Q IF YOU HAVE A CIVIC ACTIVITY SUCH AS IF YOU WANT TO

1 INSTRUCTION, THEY NEED TO SPEND THAT TWO HOURS IN
2 PREPARATION FOR THE NEXT DAY

3 THEREFORE THEY ARE NOT -- THEY JUST SAY NO I'M
4 JUST GOING TO TEACH MY REGULAR LOAD WHICH -- YOU KNOW --
5 YOU CAN APPRECIATE YOU HAVE OTHER INDIVIDUALS THAT ARE
6 REALLY TRYING TO STRETCH IT AND SOME OF THEM ARE FINE --
7 YOU KNOW -- THAT THEY MAKE A REAL EFFORT TO DO THIS

8 USUALLY SOMETIMES AND I WOULDN'T SAY USUALLY,
9 MAYBE THE TEACHER JUST NEEDS THE MONEY, THEY ARE GOING TO
10 DO IT BECAUSE MAYBE THEY HAVE GOT BILLS TO PAY THEY JUST
11 NEED THE EXTRA CASH SO TO SPEAK, SO THEY ARE GOING TO PUT
12 THAT EXTRA TIME IN TO RECEIVE THE ENUMERATION

13 Q BRINGS US BACK TO TEACHER QUALITY I TAKE IT?

14 A I THINK THAT'S A KEY COMPONENT OF WHETHER THIS
15 PROGRAM IS EFFECTIVE AS IT COULD BE IS WHETHER WE COULD
16 HAVE FRESH, READY TO GO QUALITY TEACHERS IN THE
17 AFTERSCHOOL PROGRAM

18 Q ALL RIGHT NOW, I WANT TO TALK TO YOU A LITTLE BIT
19 ABOUT YOUR SUMMER PROGRAM FIRST OF ALL, CAN WE FIND
20 THE

21 (CONFERRING WITH PLAINTIFF COUNSEL)

22 Q WHAT TYPE OF SUMMER SCHOOL WERE YOU ABLE TO OFFER
23 THIS SUMMER, DR DEAN?

24 A THIS SUMMER WE OFFERED 16 DAYS OF SUMMER SCHOOL WE
25 OFFERED ABOUT FOUR HOURS A DAY FOR STUDENTS IN GRADES ONE

1 CAN WE TAKE A BRIEF BREAK? IT MIGHT TAKE SOME TIME WITH
2 THAT AND THIS IS A GOOD STOPPING PLACE WE WILL BE IN
3 RECESS, FOLKS, UNTIL 11 15 PLEASE COURT WILL BE IN
4 RECESS FOR ABOUT 15 MINUTES THANK YOU, DOCTOR YOU CAN
5 STEP DOWN

6 (WHEREUPON THE WITNESS LEFT THE STAND)

7 (WHEREUPON A RECESS WAS HAD)

8 MR EPPS YOUR HONOR, THE NEXT GROUP OF EXHIBITS ARE
9 THE SCHOOL PICTURES

10 THE COURT RIGHT

11 MR EPPS AND I'D LIKE TO INTRODUCE THEM AS A GROUP
12 WE HAVE GIVEN THE OTHER SIDE A COPY THEY HAVE NO
13 OBJECTION

14 THE COURT OKAY VERY GOOD THANK YOU

15 (WITNESS BACK ON STAND)

16 Q DR DEAN, WHAT I WOULD LIKE TO DO NOW IS TAKE YOU
17 THROUGH THE PHOTOGRAPHS OF YOUR FACILITIES AND I WILL HAVE
18 TO READ INTO THE RECORD EACH PICTURE BEFORE WE TALK ABOUT
19 IT AND THEN WE WILL JUST NEED A BRIEF DESCRIPTION

20 IF WE TAKE TOO MUCH TIME WITH EACH -- I WANT YOU
21 TO SAY WHAT IT REPRESENTS, WHAT IT SHOWS, BUT IF WE TAKE
22 TOO MUCH TIME WITH EACH PICTURE, THEN IT WILL BE LONGER
23 THAN WE NEED TO TAKE, OKAY? AND THE FIRST ONE IS
24 BRITTON'S NECK SCHOOL, EXHIBIT 1575A

25 I DO NOT NEED TO READ THE PICTURE NUMBER 1575A

1 AND IT JUST SHOWS THE SCHOOL 1575B, AND WHAT DOES THAT
2 SHOW, PLEASE SIR?

3 A THAT'S THE CEILING TILE WHERE THE ROOF HAS LEAKED AND
4 IT'S REFLECTIVE OF THAT

5 MR EPPS YOUR HONOR THAT IS BLEACHED OUT SO I KNOW
6 THE COURT HAS A HARD COPY OF THAT

7 THE COURT I DO

8 Q ALL RIGHT 1575C

9 A OKAY THIS IS I THINK A TILE WALL IN THE RESTROOM
10 AND IT SHOWS THAT THERE IS SOME DAMAGE THERE TO THE TILE
11 WALL AND ON THE UPPER LEFT SIDE I BELIEVE THERE IS SOME
12 -- EVIDENTLY SOME MILDEW

13 Q ALL RIGHT SIR 1575D

14 A THIS IS THE HAND BLOWDRYER IN THE RESTROOM OF
15 COURSE CONDUIT EXPOSED AND I THINK THAT'S PRIMARILY WHAT
16 THAT IS ELECTRICAL HOOKUPS

17 Q AND WE ESTABLISHED YESTERDAY THAT THIS IS AN
18 ELEMENTARY SCHOOL, CORRECT?

19 A YES IT IS BRITTON'S NECK ELEMENTARY

20 Q ALL RIGHT SIR WE PROBABLY OUGHT TO DO THAT AT THE
21 END OF EACH INTRODUCTION OF EACH ONE 1575E?

22 A THIS IS THE TOP IS A WINDOW AIR CONDITIONING UNIT
23 THE LOWER PART IS THE HEATING UNIT THESE ARE INEFFICIENT
24 IN THE USE OF ELECTRICITY EXPENSIVE TO OPERATE THEY ARE
25 LOUD, HAVE NOISE WHICH MAKES IT DIFFICULT TO TEACH AND THE

1 STUDENTS TO HEAR
2 Q THANK YOU 1575F
3 A THIS IS IN THE AUDITORIUM AT BRITTON'S NECK
4 ELEMENTARY IT'S PAINT PEELING OFF THE WALLS
5 Q 1575G
6 A THIS IS THE MOLDING AT BRITTON'S NECK ELEMENTARY
7 SCHOOL IT'S JUST COME LOOSE FROM THE WALL, COME APART
8 FROM THE WALL, SEPARATED
9 Q WE ARE CHALLENGING -- YOUR HONOR DO YOU HAVE THE
10 HARD COPY?
11 THE COURT YES, SIR
12 Q DR DEAN, YOU DO NOT HAVE A HARD COPY, DO YOU?
13 A NO I DON'T NEXT ONE IS "H"?
14 Q 1575H IS WHERE I AM THESE THINGS GOT SO BLEACHED
15 OUT
16 THE COURT I GAVE IT TO HIM
17 A OKAY NOW "H", THIS IS A DIFFERENT PICTURE FROM WHAT
18 -- FROM THE ONE I WAS LOOKING, VIEWING BEFORE
19 Q YEAH, WE MOVED ON A PICTURE FROM "G" TO "H"
20 A OKAY
21 THE COURT I WILL GIVE YOU THIS
22 A THAT'S PAINT PEELING OFF THE WALL
23 Q LOOK AT THE HARD COPIES I THINK DOCTOR
24 A OKAY
25 Q 1575I

1 A OKAY THIS IS IN THE BACK OLDER SECTION AND IT'S
2 WHERE SOME OF THE PLASTER IS DETERIORATING AND THE PAINT
3 COMING OFF THE WALLS
4 Q 1575J
5 A THIS IS IN THE -- ALSO IN THE BACK AREA OF BRITTON'S
6 NECK ELEMENTARY SCHOOL AND IT'S MOLD AND MILDEW IT'S SORT
7 OF A BASEMENT AREA I BELIEVE WHERE IT GOES DOWN SORT OF
8 BELOW GROUND AND THE WINDOWS PEEK UP ABOVE, BUT THE LOWER
9 PART IS -- THAT'S FROM MOLD AND MILDEW THERE
10 Q DO YOU HAVE MOLD AND MILDEW IN YOUR SCHOOLS?
11 A WE DO HAVE SOME MOLD AND MILDEW IN SCHOOLS
12 Q 1575K
13 A THIS IS WHERE A SINK WAS TAKEN OUT OF THE RESTROOM AT
14 -- I THINK IT WAS AT THE -- EITHER KINDERGARTEN ROOM AT
15 BRITTON S NECK ELEMENTARY SCHOOL
16 Q 1575L
17 A THIS IS JUST PAINT PEELING OFF THE WALLS AT
18 BRITTON'S
19 Q 1575M
20 A "M" THIS IS A ROOM OF COURSE THE AIR CONDITIONER,
21 IT'S SHOWING THAT IT'S -- WHERE SOME OF THE SLATS -- WHERE
22 THE GUIDE THEY ARE OUT OR BROKEN AND THE HEATING UNIT IN
23 THE BOTTOM RIGHT SIDE OF THE ROOM
24 Q 1575N
25 A THIS IS OF COURSE SOME ADDITIONAL DETERIORATING

1 PLASTER AND PAINT PEELING OFF THE WALLS

2 Q 15750

3 A THIS IS IN THE GYMNASIUM SOMETIMES THIS IS REFERRED
4 TO AS THE MIDDLE SCHOOL WING AT BRITTON'S NECK ELEMENTARY
5 SCHOOL THIS PART OF THE BUILDING WAS BUILT IN ABOUT --
6 IN THE MID 80'S I BELIEVE, AND 1980'S, AND THIS -- IT'S A
7 METAL PREFAB TYPE BUILDING IT'S A GYMNASIUM AND IT HAS
8 INSULATION BUT IT HAS A PLASTIC COVERING OVER THE
9 INSULATION AND THIS IS WHERE THE PLASTIC COVERING HAS
10 TORN

11 Q 1575P

12 A I THINK THAT'S THE SAME TYPE SITUATION

13 Q 1575Q

14 A THIS IS THE FLOOR IN THAT GYMNASIUM IT'S A CEMENT
15 FLOOR AND THESE ARE SOME OF THE BASKET -- THE LINES THAT
16 WERE ON THE FLOOR FOR KIDS TO PLAY BASKETBALL BY

17 Q WHY DO YOU HAVE A CEMENT FLOOR IN A GYM?

18 A I COULDN'T EXPLAIN THAT IT WAS THAT WAY WHEN I
19 BECAME SUPERINTENDENT, BUT CERTAINLY THAT'S NOT THE SAFEST
20 SITUATION FOR CHILDREN TO HAVE A CEMENT FLOOR GYM

21 Q 1575R

22 A THIS IS SOME ADDITIONAL WHERE THE PLASTER IS CRACKING
23 AND PAINT PEELING OFF

24 Q 1575S

25 A AND I THINK THAT'S MORE OF THE SAME

1 Q I CANNOT TELL -- IS THAT A CEILING JUNCTURE OR IS
2 THAT THE

3 A I BELIEVE THAT'S A WALL IT MIGHT BE WHERE LIKE TWO
4 PIECES OF DRYWALL HAVE COME TOGETHER

5 Q LOOKS LIKE--

6 A THE JOINT

7 Q DID ONE JUST FALL OFF? IS THAT WHAT I AM SEEING?

8 A I THINK SOME OF THE COMPOUND BETWEEN THE TWO PIECES
9 OF DRYWALL PROBABLY IS COMING OUT AND THE TAPE WHERE IT
10 WAS COVERING IT

11 Q 1575T

12 A THAT S A -- THAT APPEARS TO BE THE COVERING OVER THE
13 INSULATION IN THE GYM THERE

14 Q 1575U

15 A THAT'S A CEILING TILE SHOWING SPOTS WHERE THE ROOF
16 HAS LEAKED AND THAT'S IN THAT -- I THINK BUILDING BUILT IN
17 THE MID 80'S

18 Q ALL RIGHT, SIR WE ARE TURNING NOW TO RAINES
19 CENTENARY SCHOOLS WHAT SCHOOL IS THIS?

20 A THIS WOULD BE RAINES CENTENARY ELEMENTARY SCHOOL

21 Q OKAY WE WILL START OFF WITH THE PICTURE WHICH IS
22 1675B AND THEN WE WILL GO TO 1575W

23 A 1575W IS A RESTROOM IN THE JOHNSON WING THAT WAS
24 BUILT IN THE I THINK ABOUT 1986, AND THIS IS A FLAT ROOF
25 BUILDING, IT LEAKS SOME AND THAT'S SHOWING WHERE THE

1 CEILING TILES HAVE SPOTTED FROM THE LEAK

2 Q TAKE A PICTURE 1568A?

3 A THIS IS THE PICTURE OF THE LIBRARY AT RAINES
4 CENTENARY AS YOU CAN SEE IT'S A FAIRLY SMALL LIBRARY,
5 CRAMPED A LOT OF TABLES AND CHAIRS IN A FAIRLY SMALL
6 AREA AND IT JUST NEEDS ADDITIONAL SPACE FOR READING
7 READING AREAS AND IT'S JUST A VERY CRAMPED AREA

8 Q I WILL COME BACK TO THAT BEFORE I FINISH 1575W

9 A OKAY THIS IS I THINK THE CEILING ON THE PORTABLE
10 CLASSROOM OUT BACK WHERE IT'S LEAKED AND JUST REFLECTIVE
11 OF THE SPOTS WHERE IT HAD LEAKED ON THE CEILING IN THE
12 ROOM

13 Q 1575X

14 MR BARNES CARL DON'T MEAN TO BREAK YOUR RHYTHM,
15 BUT IT'S

16 MR EPPS YOU HAVE TO READ IT ON THE SCREEN

17 MR BARNES SO THIS IS NOT 1568A?

18 MR EPPS YEAH, IT'S 1568A

19 (ATTORNEYS CONFERRING)

20 Q WE HAVE TO GO BACK FOR THE RECORD TO THE LAST SLIDE
21 DR DEAN WE HAVE TWO NUMBER 1575W, AND WE WILL CALL THAT
22 AND JUST MARK THE EXHIBIT AS 1575W ONE -- I'M SORRY W2
23 1575X

24 A YES THIS IS A SINK IN ONE OF THE PORTABLE'S
25 CLASSROOMS WHAT YOU HAVE ON THE LEFT SIDE IS A LITTLE

1 FOUNTAIN, WATER FOUNTAIN DRINKING FOUNTAIN THAT IS
2 MISSING

3 Q OKAY 1575Y

4 A THIS IS ADDITIONAL LEAK, CEILING LEAK, AND IT'S
5 REFLECTING WHERE THE PAINT IS BUCKLING UP

6 Q 1575Z

7 A THIS IS ALSO AN EXAMPLE WHERE WE HAVE HAD A LEAK AND
8 SOME PAINT BUCKLING UP

9 Q ALL RIGHT 1575 A A

10 A OKAY THIS IS A RESTROOM IN THE GYMNASIUM AT RAINES
11 CENTENARY THIS GYMNASIUM, THE FIRST PART OF IT WAS BUILT
12 I THINK ORIGINALLY IT WAS BUILT IN 1938 THE REST THE
13 DRESSING ROOMS ON THE BACK SIDE WERE ADDED IN THE 60'S,
14 SOMETIME 1960'S, AND THIS IS REFLECTIVE OF THE -- AS I SEE
15 IT I THINK IT'S A STALL PETITION AND IT'S A METAL TYPE
16 THAT HAS RUSTED AND SOME OF THE PAINT IS PEELING OFF

17 Q ACID STAINS?

18 A THAT S WHAT I THINK IT IS A RESULT OF

19 Q 1575A B

20 A THIS IS A CEILING TILE THAT IS WHERE THE ROOF HAS
21 LEAKED AND WE -- AND IT'S REFLECTIVE FROM THE WATER STAIN

22 Q 1575AC?

23 A THIS IS THE -- A SINK IN THE DRESSING ROOM IN THE
24 GYMNASIUM AND OF COURSE WHAT YOU SEE HERE IS SOME RUST
25 STAINS UP AT THE TOP ON THE SINK AND THEN YOU CAN SEE HOW

1 THE SINK IS BEGINNING TO PULL AWAY FROM THE WALL, THE --
2 IT'S LIKE I SAID, THIS PART OF THE BUILDING I THINK WAS
3 BUILT IN THE 30'S, 1938 I BELIEVE

4 Q 1575AD?

5 A THIS IS AN ELECTRICAL PANEL THAT IS IN THE RESTROOM,
6 PANEL BOX I DON'T THINK THAT THAT IS LOCKED EITHER
7 DOESN'T APPEAR TO HAVE A LOCK ON IT

8 Q 1575AE?

9 A THIS IS AN ADDITIONAL PARTITION I THINK YOU CAN SEE
10 WHERE IT HAS ACID STAINS ON IT PROBABLY -- AND WHERE IT'S
11 DETERIORATING AND PAINT PEELING OFF

12 Q 1575AF?

13 A OKAY THIS IS OF COURSE A SINK AND ONE OF THE
14 HANDLES IS MISSING OFF OF THE WATER FAUCETS

15 Q 1575AG THAT'S JUST AS PICTURE OF--

16 A BRITTON'S NECK HIGH SCHOOL

17 Q NOW HOW -- THIS IS A RELATIVELY NEW SCHOOL IS IT
18 NOT?

19 A THIS -- THIS SCHOOL IS A 1954 BURNES BUILDING

20 Q OKAY

21 A BUT IT WAS RENOVATED IN 1994 BRITTON'S NECK HIGH
22 WAS

23 Q ALL RIGHT, SIR

24 A AND THIS ADDITIONAL NICE NEW MODERN ENTRANCE WAS
25 ADDED AT THAT TIME AS I UNDERSTAND IT

1 Q LOOKING AT A 1994 ENTRANCE?

2 A YES

3 Q AND A 1954, '54 BUILDING?

4 A CORRECT

5 Q ALL RIGHT 1575AH

6 A OKAY THIS IS A RESTROOM IN BRITTON'S NECK HIGH
7 SCHOOL AND IT SHOWS WHERE ONE OF THE SINKS IS COMING OFF
8 THE WALL AND HAS NOT BEEN REPLACED

9 Q 1575AI

10 A THIS IS ONE OF THE WALLS IN THE BUILDING, PROBABLY
11 HAS RECEIVED SOME MOISTURE AND IT APPEARS TO BE WHERE THE
12 PAINT'S COMING OFF AND THERE'S -- SEEMS TO BE MOLD THERE
13 UP UNDER THIS PAINT

14 Q ALL RIGHT, SIR 1575AJ

15 A THIS IS ANOTHER PICTURE, IT HAS AN ELECTRICAL COVER
16 THAT HAS BEEN CRACKED AND THEN YOU HAVE A WALL THERE THAT
17 HAS RECEIVED MOISTURE, SEEMS TO BE SOME PUCKERING OF THE
18 PAINT WHICH PROBABLY INDICATES THAT THERE'S MILDEW MOLD
19 BEHIND IT

20 Q 1575AK

21 A OKAY THIS IS WHERE -- A SECTION WHERE THE CEILING
22 TILES HAVE BEEN TAKEN OUT AND THEN YOU HAVE YOUR ROOF UP
23 ABOVE THAT THIS IS NOT THE CEILING TILE THE CEILING
24 TILES TAKEN OUT AND THIS IS WHERE THE ROOF HAS ACTUALLY
25 LEAKED

1 Q WHY ARE THE TILES OUT?

2 A WELL THE TILES WERE TAKEN OUT BECAUSE WE WERE GOING
3 TO BE RENOVATING THAT BUILDING AND WE HAD TAKEN THEM OUT

4 Q 1575A L

5 A THIS IS AN EXAMPLE AT BRITTON'S NECK HIGH VERY
6 SIMILAR TO BRITTON'S NECK ELEMENTARY THE TYPE OF HEATING
7 AIR CONDITIONING SYSTEM THAT IS IN THE SCHOOL YOU HAVE A
8 WINDOW UNIT THAT IS NOT EFFICIENT IN THE USE OF
9 ELECTRICITY AND HEATING UNIT THAT IS MORE OR LESS HEAT UP
10 COILS AND BLOWS OVER THESE COILS TO WARM WHICH ARE NOT
11 EFFICIENT AND THEY ARE LOUD YOU ALSO HAVE SOME PAINT
12 PEELING OFF THE WALL THERE

13 Q YOU'RE MISSING A COVER ON THE WINDOW UNIT IS THAT
14 WHAT YOU ARE TELLING ME ON THE UPPER UNIT?

15 A I THINK IT'S JUST ON THERE SORT OF SIDEWAYS

16 Q ALL RIGHT 1575AM

17 A THIS IS ANOTHER WINDOW UNIT THIS ONE SEEMS TO BE
18 COMING AWAY FROM THE WALL IT HAS MOLDING PUT AROUND IT,
19 BUT THE COVER IS NOT FITTING TIGHT OVER IT

20 Q 1575AN

21 A THIS IS A PICTURE OF THE ROOF WHERE IT HAS LEAKED

22 Q 1575AO

23 A THIS IS A WALL WHICH HAS RECEIVED SOME MOISTURE AND
24 OF COURSE IT'S RESULTED IN THE PAINT PEELING OFF AND MOLD
25 AND MILDEW ON THAT WALL

1 Q THIS IS AN EXTERNAL WALL?

2 A NO THIS IS AN INTERIOR WALL IN THE BUILDING

3 Q OKAY

4 A WHEN YOU -- EXCUSE ME WHEN I SAY INTERIOR WALL, I
5 MEANT IT WASN'T FACING THE OUTSIDE IT WAS A WALL IT
6 MAY HAVE BEEN -- THE OTHER SIDE OF THE WALL MAY HAVE BEEN
7 ON THE EXTERIOR THIS PART OF THE WALL WAS ON THE INSIDE
8 OF THE BUILDING THAT'S WHAT I MEAN

9 Q THANKS FOR THE CLARIFICATION, DR DEAN 1575A P

10 A AN ADDITIONAL WALL THAT HAS RECEIVED MOISTURE BECAUSE
11 THIS LEAKING ROOF AND IT'S OBVIOUSLY MOLD AND MILDEW
12 THERE PAINT PEELING OFF

13 Q 1575AQ

14 A I THINK THIS IS MORE OF THE SAME, EXACTLY

15 Q 1575AR

16 A MORE OF THE SAME

17 Q 1575AS

18 A THIS IS A RESTROOM WHERE A SINK HAS COME OFF AND ON
19 THE BASE, THE -- I GUESS YOU CALL IT THE BASEBOARDS THE
20 RUBBER BASEBOARD THAT IS GLUED ON HAS COME OFF ALONG THE
21 FLOOR LINE THERE

22 Q 1575AT

23 A THIS IS ANOTHER CEILING WHERE IT'S LEAKED AND THE
24 PAINT IS CURLING AND PEELING

25 Q 1575AU

1 A I THINK THAT'S MORE OF THE SAME
2 Q ALL RIGHT WE WILL TURN NOW TO PLEASANT GROVE
3 SCHOOL NOW, THIS IS CURRENTLY AN ADULT LEARNING CENTER?
4 A RIGHT
5 Q ALL RIGHT WE WILL JUST TAKE A SECOND WITH THIS
6 1575A W
7 A THIS IS THE TILE FLOOR THIS IS ALSO A BURNES
8 BUILDING BUILT IN 1954 AND THIS TILE IS JUST -- IT'S JUST
9 WORN OUT IT'S WHERE THE CEMENT FLOOR THE TILES ARE JUST
10 WORN SO THIN TILL IT'S JUST THE CEMENT FLOOR EXPOSED
11 THERE
12 Q ALL RIGHT 1575AX
13 A THAT'S THE SAME TYPE SITUATION
14 Q A Y ?
15 A SAME SITUATION
16 Q A Z ?
17 A THIS IS IN THE RESTROOM AND THIS IS ONE OF THE
18 PARTITIONS IT S JUST AN OLD PARTITION WHERE THE PAINT IS
19 STARTING TO CURL FROM THE PARTITION IN THE RESTROOM
20 Q NOW, WE ARE NOT GOING TO GO THROUGH THE PICTURES FOR
21 TERRELL S BAY HIGH SCHOOL WITH YOU, OKAY? BUT YOU ARE
22 FAMILIAR WITH THAT SCHOOL?
23 A VERY FAMILIAR WITH IT
24 Q JUST GIVE ME A GENERAL DESCRIPTION OF TERRELL'S BAY
25 HIGH SCHOOL

1 A OKAY TERRELL'S BAY HIGH SCHOOL WAS BUILT IN 1954
2 IT'S A BURNES BUILDING IT'S A FLAT ROOF BUILDING,
3 CONCRETE OR CEMENT BLOCK WALLS IT REALLY HAD A LOT TO BE
4 DESIRED TO OFFER SUPPORT TO OUR STUDENTS AND TEACHERS

5 I THINK ESPECIALLY OUR SCIENCE LABS WERE VASTLY
6 OUTDATED, AND THE LIGHTING WAS VERY DIM AND DARK IN THERE
7 AND THE -- IT HAD BEEN RETROFITTED FOR HEATING AND AIR
8 CONDITIONING I BELIEVE IN THE 80'S, EARLY 80'S, BUT OTHER
9 THAN THAT THERE HAD BEEN REALLY VERY LITTLE RENOVATIONS TO
10 THAT BUILDING THE ROOF LEAKED AND THE CEILING TILES WERE
11 DETERIORATING AND STARTING TO FALL

12 Q DO YOU HAVE ROOF LEAKS IN ALL OF YOUR BUILDINGS?

13 A I WOULDN'T SAY ALL OF THEM, BUT ALL -- NEARLY EVERY
14 ONE THAT IS FLAT

15 Q OKAY

16 A AND THAT'S A LOT OF THEM

17 Q ALL RIGHT, SIR NOW, WHY IS -- WHAT'S WRONG WITH THE
18 MAINTENANCE, LEVEL OF MAINTENANCE IN THESE BUILDINGS AND
19 THE LEVEL WE ARE REPLACING THINGS THAT HAVE BEEN BROKEN OR
20 TORN OUT OR WHATEVER?

21 A WELL WHEN YOU ARE TALKING ABOUT BUILDINGS OF THIS
22 AGE IN THE 30'S AND IN THE 50'S, MANY OF THEM WERE BUILT
23 ORIGINALLY THEY HAVE -- YOU KNOW -- THEY HAVE OUTLIVED
24 THEIR USEFULNESS AND IT TAKES MAJOR RENOVATIONS TO CORRECT
25 PROBLEMS THAT JUST OVER USE OCCUR

1 AND OF COURSE OUR PRIORITIES HAVE BEEN TO TRY TO
2 UPGRADE BUILDINGS THAT WE THOUGHT WOULD BE USED FOR LONGER
3 PERIOD OF TIME IN THE FUTURE

4 Q WHY CAN'T YOU STAY ON TOP OF THE MAINTENANCE?

5 A WELL, ONE IT'S VERY EXPENSIVE WE DON'T HAVE THE
6 KIND OF MONEY THAT WOULD ALLOW US TO HAVE THESE BUILDINGS
7 PAINTED OR -- YOU KNOW -- THE WALLS PAINTED, SCRAPED AND
8 PAINTED, RE -- ON JUST A REGULAR CYCLE YOU DEAL MORE
9 WITH THE THINGS THAT COME UP THAT ARE CRITICAL

10 IT'S NOT LIKE WE'RE ON SCHEDULE THAT YOU CAN
11 JUST COUNT ON EVERY FIVE YEARS OR SEVEN YEARS OR EVEN TEN
12 YEARS REPAINTING THE BUILDINGS ALSO WHEN YOU ARE TALKING
13 ABOUT REPLACING ROOFS YOU ARE TALKING ABOUT A MAJOR
14 EXPENSE THERE

15 AND TO REPLACE ROOFS TAKES A LOT OF MONEY AND
16 WE -- WE JUST HAVE NOT HAD THOSE TYPES OF FUNDS AVAILABLE
17 TO US TO REPLACE FLAT ROOFS

18 Q NOW, WHY HAS THE DISTRICT NOT REPLACED THE '38
19 BUILDINGS OR THE '54 BUILDINGS?

20 A WELL, TAX BASE IS VERY LOW A MILL IN THE FORMER
21 MARION THREE BROUGHT IN ABOUT \$4,000 AND THE FORMER MARION
22 FOUR WAS LESS THAN THAT SO WHEN YOU CONSOLIDATED THE
23 TWO, THE PRESENT -- UNDER THE PRESENT ASSESSED VALUE WHICH
24 WERE THE VALUE OF THE PROPERTY WAS REASSESSED LAST YEAR,
25 MILL NOW BRINGS IN ABOUT \$9,000 ONE MILL IN MARION

1 DISTRICT SEVEN

2 MARION COUNTY NOW MAKES A STRONG EFFORT IN
3 FUNDING ITS LOCAL EFFORT TOWARDS EDUCATION WE HAVE --
4 THIS COMING YEAR WE ANTICIPATE HAVING ABOUT A 188 MILLS ON
5 THE MARION COUNTY DISTRICT SEVEN FOR EDUCATION

6 AND WHEN YOU HAVE THAT MUCH MILLAGE ON YOU
7 CAN'T REALLY PUT ON MORE MILL -- I MEAN, THE TAXPAYERS
8 CAN'T AFFORD TO PUT ON MORE MILLAGE TO JUST REPAIR, MAKE
9 REPAIR OF BUILDINGS

10 Q NOW, WHEN TEACHERS COME INTO YOUR SCHOOL SYSTEM TO
11 INTERVIEW I ASSUME FOR EXAMPLE, THEY HAVE TO VISIT THE
12 BUILDINGS OR DO VISIT THE BUILDINGS?

13 A MANY OF THEM DO

14 Q DO YOU THINK THAT THE CONDITION OF THE BUILDINGS
15 FIRST OF ALL NEGATIVELY INFLUENCES YOUR ABILITY TO ATTRACT
16 QUALIFIED COMPETENT TEACHERS?

17 A I THINK IT DOES IMPACT WHETHER TEACHERS WILL ACCEPT
18 POSITIONS I CAN SAY THAT OFTEN WE OFFER I WOULD SAY IN
19 THE VICINITY -- WE OFFER TWICE AS MANY AS ACCEPT, SO WE
20 DON'T USUALLY GET OUR FIRST CHOICE SO -- AND I THINK THAT
21 OFTEN IS A RESULT AFTER THEY COME AND VISIT THE SCHOOL

22 I THINK ESPECIALLY WHEN YOU TAKE ART TEACHERS OR
23 MUSIC TEACHERS AND THEY SEE THEY ARE GOING TO BE TEACHING
24 ART OR MUSIC IN THE BACK OF A GYM IN AN OLD DRESSING ROOM
25 AT RAINES CENTENARY ELEMENTARY SCHOOL, THAT THAT IS -- YOU

1 KNOW -- IT WOULD BE DIFFICULT TO GET MOTIVATED TO WANT TO
2 GO TEACH ART OR MUSIC IN A FACILITY LIKE THAT

3 NOT ONLY DO I THINK IT MAKES IT DIFFICULT FOR US
4 TO ATTRACT, BUT WHEN YOU DON'T HAVE A PLEASANT LEARNING
5 ENVIRONMENT THAT YOU THINK IS SUPPORTIVE OF YOU AND YOUR
6 STUDENTS AND I THINK TERRELL'S BAY IS A PRIME EXAMPLE OF
7 THIS, I THINK THAT'S ONE REASON WE HAVE SUCH A HIGH
8 TURNOVER RATE AT TERRELL'S BAY

9 ESPECIALLY BECAUSE WHEN AS YOU -- AND SOME OF
10 YOU HAVE BEEN DOWN THERE AND SOME OF YOU HAVEN'T, BUT AS
11 YOU RIDE IN THE NEIGHBORHOOD THE SCHOOL IS IN, IT WAS JUST
12 A RIGHT DEPRESSING SITUATION EVERY MORNING FOR A TEACHER
13 OR A STUDENT TO RIDE ON THE BUS OR A TEACHER TO RIDE
14 THROUGH THAT NEIGHBORHOOD

15 AND THEN YOU ARE IN THIS SCHOOL, AND THEN THE
16 SCHOOL WHEN YOU GO IN IT'S NOT WELL LIT IT'S DARK AND
17 DIM, AND IT'S NOT BRIGHT, IT'S NOT AN ENCOURAGING TYPE
18 ATMOSPHERE TO LIFT UP YOUR SPIRITS AND ENCOURAGE YOU TO
19 SAY THIS IS -- YOU KNOW -- THIS IS A PLACE I'D REALLY LIKE
20 TO BE I WANT TO BE HERE

21 Q DO YOU THINK THAT THE IMAGE THE SCHOOL OFFERS TO THE
22 STUDENTS IN ANY WAY, DIRECTLY OR INDIRECTLY IMPACTS THE
23 STUDENTS?

24 A I CERTAINLY THINK THE ATMOSPHERE IN SCHOOLS WHETHER
25 THE CEILINGS ARE -- YOU KNOW -- ARE CLEAR AND BRIGHT AND

1 THE LIGHT IS BRIGHT AND IT'S A CHEERFUL TYPE, NOT A DARK
2 OR DINGY TYPE BUILDING THAT IS OLD AND MANY DOORS ARE JUST
3 OLD AND WORN OUT, IT JUST DOESN'T GIVE YOU THE FEELING
4 THAT IT'S INVITING AND A PLACE YOU WOULD WANT TO BE
5 Q I SAID I WOULD COME BACK TO THE ISSUE OF THE
6 LIBRARY AND WE SHOWED THE PICTURE OF ONE LIBRARY OF AT
7 LEAST, MAYBE TWO DO YOU HAVE ANY PROBLEMS WITH THE
8 STOCKING OR THE AVAILABILITY OF MATERIALS FOR STUDENTS IN
9 ANY OF YOUR LIBRARIES?
10 A WELL CERTAINLY WE ALWAYS NEED -- WE HAVE -- WE HAVE
11 ALWAYS NEEDED ADDITIONAL PRINT FOR OUR STUDENTS TO READ,
12 BE IT IN THE FORM OF LIBRARY BOOKS OR OTHER READING
13 MATERIALS AND THAT'S -- THAT IS A NEED
14 IF YOU WANT STUDENTS TO LEARN TO READ, YOU HAVE
15 TO READ AND WHEN YOU HAVE A LIMITED NUMBER OF VOLUMES
16 AND A LIMITED VARIETY OF INTERESTS DIFFERENT KIDS HAVE
17 DIFFERENT INTERESTS, DIFFERENT THINGS SPARK THEM AND MAKE
18 THEM WANT TO LEARN TO READ OR WANT TO READ, NOT
19 NECESSARILY LEARN TO READ, BUT TO READ AND TO SPARK THAT
20 INTEREST OR THAT TO HAVE SOME BOOKS FOR CERTAIN KIND LIKE
21 BOOKS ON SPORTS, SOME GIRLS LIKE GOOD BOOKS ABOUT THAT OR
22 ADVENTURES OR -- AND YOU JUST NEED A VARIETY AND WE DON'T
23 HAVE THE LARGE NUMBER AND VARIETY OF READING MATERIALS
24 THAT WOULD HELP SUPPORT AND ENCOURAGE CHILDREN TO READ
25 MORE WHICH WOULD CARRY OVER TO THEM BEING BETTER READERS

1 Q HOW ABOUT IN YOUR ELEMENTARY SCHOOLS, DO YOU HAVE ANY
2 ISSUES WITH THE AVAILABILITY OF READING MATERIALS?

3 A YES I WAS SPEAKING OF THE ELEMENTARY SCHOOLS AND
4 HIGH SCHOOLS AT THAT PARTICULAR TIME

5 Q OKAY NOW, I'M NOT SURE IF I'M GOING TO PHRASE THIS
6 CORRECTLY SO MAYBE YOU WILL GET THE GIST OF MY QUESTION
7 DO YOU HAVE ANY ISSUES WITH RESPECT TO YOUR ENRICHMENT
8 PROGRAMS OR YOUR CULTURAL STIMULATION PROGRAMS?

9 A YES I THINK WHEN YOU TALK ABOUT BE IT THINGS SUCH
10 AS MUSIC AND ART AND PROGRAMS THAT CREATE -- THAT PROMOTE
11 CREATIVITY IN YOUNG PEOPLE AND ENCOURAGE THEM TO THINK AND
12 EXPAND THEIR HORIZONS WE ARE FAIRLY LIMITED IN THAT
13 AREA

14 I THINK SOME OF THE KEY CONCERNS I HAVE, AND I
15 MENTIONED THAT ONE IS ESPECIALLY AT RAINES CENTENARY
16 ELEMENTARY WITH THE FACILITIES OF TEACHING ART AND
17 ELEMENTARY MUSIC OR CHORUS IN THE BACK OF A GYM IN AN OLD
18 DRESSING ROOM BUILT IN THE 1960'S AND THAT HAS BEEN GOING
19 ON FOR YEARS WAY PRIOR TO ME BEING SUPERINTENDENT IN THIS
20 DISTRICT

21 THE -- THAT'S ONE EXAMPLE THE OTHER THING IN
22 THE HIGH SCHOOL, ALTHOUGH WE HAVE WHAT PEOPLE GENERALLY
23 CALL HIGH SCHOOL ART AND WE HAVE BAND, BUT WE DON'T HAVE
24 CHORUS OR HIGH SCHOOL CHORUS AVAILABLE TO OUR STUDENTS

25 WE DO NOT HAVE JOURNALISM AVAILABLE TO OUR

1 QUALITY OF INSTRUCTION AND WE LOOKED AT THE NUMBERS ON
2 BOTH ENRICHMENT PROGRAMS AND THE ADVANCED PLACEMENT
3 COURSES

4 WE TALKED ABOUT THE SAT SCORES AND HOW THEY WERE
5 LOWER THAN THE STATE AND OF COURSE THE NATION WE TALKED
6 ABOUT THE PROBLEMS WE FACE WITH GETTING AND KEEPING YOUR
7 PRINCIPALS, SOMETIMES SIMILAR TO THE PROBLEMS WE FACE WITH
8 TEACHERS, SOMETIMES WITH DIFFERENT MEAN

9 WE TALKED ABOUT GIFTED AND TALENTED FUNDING, HOW
10 YOU GET THE STATE MINIMUM AND NOTHING MORE WE TALKED
11 ABOUT THE BUDGET CUTS FROM THE STATE AND WHAT YOU HAD TO
12 DO AS THE SCHOOL DISTRICT TO TRY TO COMPENSATE FOR THAT,
13 NOT A GREAT DEAL DETAIL BUT SOME DETAIL WE TALKED ABOUT
14 THE PROBLEMS YOU FACE FOR NEXT SUMMER IN TRYING TO HAVE A
15 SUMMER SCHOOL WE TALKED ABOUT THE BUDGET CUTS AND FIRST
16 STEPS

17 NOW, GIVEN -- GIVEN THOSE PROBLEMS THAT WE HAVE
18 ADDRESSED OVER THE LAST DAY IS THAT WHAT YOU BASE YOUR
19 TESTIMONY THE CHILDREN IN YOUR DISTRICTS DO NOT HAVE THE
20 OPPORTUNITY TO ACQUIRE A MINIMALLY ADEQUATE EDUCATION AS
21 YOU SEE IT?

22 A THAT IS WHAT I BASE MY TESTIMONY ON AND I CAN ABOUT
23 SUMMARIZE THOSE POINT BY POINT WITH YOU AGAIN BUT IN A
24 NUTSHELL IT FOCUSES PRIMARILY ON TEACHERS, WHETHER WE HAVE
25 THE -- A CARING COMPETENT TEACHER DAY IN AND DAY OUT,

1 PERIOD IN, PERIOD OUT, YEAR IN YEAR OUT FOR OUR STUDENTS
2 AND ESPECIALLY WHETHER THESE TEACHERS CAN TEACH READING
3 AND THEIR ABILITY TO CONNECT WITH THE STUDENTS SO THAT
4 THEY LEARN TO READ

5 I THINK BECAUSE WE DON'T HAVE ADDITIONAL HELP IN
6 TEACHING READING THAT CARRIES OVER TO OUR STUDENT -- TO A
7 LARGE NUMBER OF OUR STUDENTS, APPROXIMATELY 50 PERCENT NOT
8 LEARNING TO READ TO THE DEGREE THEY NEED TO READ

9 I THINK THE TEACHER TURNOVER RATE IS A BIG PART
10 OF WHY WE HAVE DIFFICULTY HAVING CONSISTENTLY QUALITY
11 INSTRUCTION BECAUSE WE ARE CONSTANTLY RETRAINING, BRINGING
12 IN A NEW GROUP OF TEACHERS

13 I THINK THAT'S CAUSED BY LACK OF NOT BEING ABLE
14 TO BE ABLE TO PROVIDE COMPETITIVE SALARIES TO BE ABLE TO
15 BRING PEOPLE IN SO THEREFORE OUR STUDENTS DON'T HAVE THE
16 OPPORTUNITY TO HAVE THE TEACHERS THEY NEED

17 Q WHAT -- AND I KNOW YOU MAY NOT BE AN EXPERT IN ALL OF
18 THIS BUT I JUST WANT TO KNOW WHAT YOU THINK THE STATE
19 COULD DO TO HELP YOU TO MEET THESE CHILDREN'S NEEDS

20 A OKAY I THINK SOME OF THE THINGS THE STATE COULD DO,
21 ONE WOULD BE TO BE INSURE THAT WE ARE HAVING A VERY AMPLE
22 SUPPLY OF HIGHLY QUALIFIED, TRAINED TEACHERS THAT WOULD
23 BE ONE GREAT THING THEY COULD DO

24 Q HOW WOULD THEY DO THAT?

25 A I THINK THEY WOULD HAVE TO REALLY GET OUR

1 Q OKAY AND IS THIS A FORM THAT YOU FILL OUT EVERY

2 YEAR?

3 A YES

4 Q OKAY AND WHAT TIME OF YEAR DOES THIS FORM GET

5 FILLED OUT AND SENT IN, PLEASE SIR?

6 A TO BE HONEST WITH YOU I DON'T KNOW BUT IT'S -- IT'S

7 INTO THE SCHOOL YEAR A LITTLE BIT

8 Q OKAY AND THERE ARE TWO OPTIONS THERE, AREN'T THERE,

9 DR DEAN?

10 A IF THERE ARE TWO OPTIONS

11 Q AND THE FIRST ONE SAYS THAT YOU CERTIFY THAT THE

12 ABOVE NAMED DISTRICT IS IN COMPLIANCE WITH ALL APPLICABLE

13 STANDARDS IN ACCORDANCE WITH SOUTH CAROLINA STATUTES

14 STATE BOARD REGULATIONS AND PROGRAM GUIDELINES AS REQUIRED

15 BY THE DISTRICT OFFICE STANDARDS, IS THAT CORRECT?

16 A THAT'S CORRECT

17 Q AND THE SECOND OPTION DR DEAN IS THAT YOU CERTIFY

18 THAT THE ABOVE NAMED DISTRICT IS NOT IN COMPLIANCE WITH

19 ALL APPLICABLE STANDARDS IN ACCORDANCE WITH SOUTH CAROLINA

20 STATUTES, STATE BOARD REGULATIONS AND PROGRAM GUIDELINES,

21 AS REQUIRED BY THE DISTRICT OFFICE STANDARDS AND THE

22 STANDARDS WITH WHICH THE DISTRICT IS NOT IN COMPLIANCE ARE

23 LISTED ON THE REVERSE SIDE OF THIS CERTIFICATION IS THAT

24 CORRECT?

25 A THAT'S CORRECT

1 Q OKAY AND DR DEAN, WHEN YOU LAST FILLED THIS
2 DOCUMENT OUT FOR MARION SCHOOL DISTRICT NUMBER SEVEN, DID
3 YOU SELECT THE FIRST OPTION OR THE SECOND OPTION?
4 A I SELECTED THE FIRST OPTION
5 Q OKAY
6 MR BARNES FOR THE RECORD YOUR HONOR THIS IS
7 DEFENDANT'S EXHIBIT NUMBER 2833
8 THE COURT OKAY THANK YOU
9 Q DR DEAN, HAVE YOU SEEN A COPY OF DEFENDANT S EXHIBIT
10 NUMBER 2833 BEFORE?
11 A IS THAT ON THE SCREEN?
12 Q YES SIR, I'M SORRY
13 A IT -- I'M -- RECOGNIZE THIS DOCUMENT
14 Q OKAY
15 A I HAVE SEEN IT BEFORE
16 Q AND THESE ARE THE STANDARDS, ARE THEY NOT, THAT WHEN
17 YOU CHECK THE BOX SAYING YOU ARE COMPLYING WITH STANDARDS
18 THAT THESE ARE THE STANDARDS TO WHICH YOU ARE INDICATING
19 YOU HAVE COMPLIED IS THAT CORRECT?
20 A THAT IS CORRECT
21 Q OKAY LET ME GET YOU, DR DEAN, IF I COULD TO READ
22 FOR ME, AND CAN YOU READ THAT OKAY OR IS IT BETTER FOR ME
23 TO READ THEM?
24 THE COURT GIVE HIM MY HARD COPY, LET YOU ALL DECIDE
25 HOW TO DO IT I CAN SEE IT FROM THE SCREEN

1 A THAT IS CORRECT

2 Q SO THERE ARE NO STUDENTS GOING TO SCHOOL IN THIS
3 BUILDING IN MARION SEVEN CORRECT?

4 A WELL, THERE ARE

5 Q PRE-K THROUGH 12 STUDENTS?

6 A PRE-K THROUGH 12 STUDENTS ARE NOT ATTENDING THERE

7 Q OKAY IS THERE ANY WORK THAT'S GOING TO BE DONE TO
8 THE RAINES CENTENARY SCHOOL?

9 A WE ALSO HAVE WRITTEN A WRIT GRANT FOR THAT AND THAT'S
10 OUT FOR BID AND IT WAS ABOUT A FOUR HUNDRED AND I THINK
11 \$25 000 GRANT SO THERE WILL BE SOME RENOVATIONS AT RAINES
12 CENTENARY ALSO

13 Q WELL, WILL THESE PROBLEMS DEPICTED IN THE PHOTOGRAPHS
14 OF RAINES CENTENARY SCHOOL BE REMEDIED AS A RESULT OF THE
15 RENOVATION OF THAT SCHOOL?

16 A I THINK SOME OF THEM WILL BE YOU WANT ME TO SPEAK
17 SPECIFICALLY ABOUT WHAT I THINK?

18 Q YES, SIR, PLEASE

19 A I THINK THE RESTROOMS IN THE GYM, THOSE RENOVATIONS,
20 UPGRADES OF THE RESTROOMS IN THE 1938 GYM AND THAT WERE
21 DEPICTED IN THOSE -- THOSE ARE SCHEDULED TO BE ADDRESSED
22 HOPEFULLY SOME OF THE LEAKING ROOF WILL BE
23 ADDRESSED BECAUSE IT IS CALLING FOR A NEW ROOF I THINK
24 THE SIZE OF THE LIBRARY WILL NOT BE ADDRESSED THE -- NOT
25 A LOT ON THE INSTRUCTIONAL AREA WILL BE ADDRESSED

1 IT'S MORE OF A STRUCTURAL THINGS LIKE THE ROOF
2 SOME HEATING, AIR CONDITIONING ISSUES WILL BE UPGRADED AND
3 SOME PLUMBING ISSUES WITHIN THE RESTROOMS IN THE GYMNASIUM
4 WILL BE ADDRESSED

5 THAT'S PRETTY MUCH WHAT THAT -- ALSO IT DOES
6 INCLUDE I THINK THE NEW FIRE ALARM SYSTEM AND INTERCOM
7 SYSTEM, THOSE KINDS OF THINGS

8 Q IS THERE ANY MONEY IN THE BUDGET FOR LOCKS TO COVER
9 UP A BOX THAT'S IN THE BATHROOM?

10 A I THINK THAT MIGHT BE PART OF IT, TOO, IT'S TO MOVE
11 THAT BREAKER BOX HOPEFULLY IT WILL BE

12 Q OKAY

13 A THAT IS, ALTERNATE I WILL SAY IT'S NOT A -- IT'S NOT
14 A FRONT LINE THING IT DEPENDS ON HOW THE BIDS COME IN
15 WHETHER WE WILL GET THAT DONE

16 Q SO IN TERMS OF FACILITIES IN MARION SEVEN, IT'S
17 REALLY A NEW DAY IN A LOT OF WAYS, ISN'T IT?

18 A WELL, WE CERTAINLY ARE TRYING TO MAKE SOME PROGRESS
19 IN THOSE AREAS I -- AS I SAID, I HAVE BEEN THERE NINE
20 YEARS AND THEY WERE DEPLORABLE WHEN I -- AND SOME -- AND
21 REALLY THE STUDENTS HAVE NOT EXPERIENCED MUCH OF THIS
22 CHANGE AS OF YET, SO IT'S -- YOU KNOW -- WE ARE TRYING TO
23 MAKE EFFORTS AND THESE EFFORTS WERE MADE PRIMARILY THROUGH
24 WRITING FEDERAL GRANTS TO PAY FOR THESE KIND OF
25 RENOVATIONS

1 PROBABLY GETTING CLOSE TO WRAPPING UP BUT I NEED TO GO
2 THROUGH MY LISTS BECAUSE I TOOK SOME THINGS OUT OF ORDER

3 THE COURT ALL RIGHT

4 (WHEREUPON THERE WAS A PAUSE)

5 Q DR DEAN, I BELIEVE YOU SAID EARLIER THAT YOU AGREE
6 THAT THE CURRICULUM STANDARDS IN SOUTH CAROLINA ARE
7 RIGOROUS?

8 A THAT S CORRECT

9 Q ARE YOU CURRENTLY IMPLEMENTING OR DO YOU -- ARE YOU
10 CURRENTLY TEACHING THE STANDARDS IN YOUR SCHOOL?

11 A YES, OUR TEACHERS ARE ATTEMPTING TO TEACH THE
12 STANDARDS THE CURRICULUM WE HAVE DEVELOPED IS GEARED
13 TOWARD ALIGNMENT WITH THE STATE STANDARDS THAT'S BEEN --
14 WE WORK TOWARD

15 Q ARE YOU FULLY ALIGNED?

16 A I THINK THAT -- UNDERSTAND CURRICULUM DEVELOPMENT IS
17 A FLOWING PROCESS IT NEVER GETS TOTALLY FIRM BUT WE
18 CERTAINLY -- THAT'S WHERE WE WORK TOWARD THAT'S WHERE OUR
19 EFFORTS IN CURRICULUM DEVELOPMENT HAVE BEEN AND CONTINUE
20 TO BE

21 WE -- I COULD NOT SAY WE HAVE A MODEL
22 CURRICULUM BUT I THINK WE ARE CERTAINLY MAKING PROGRESS
23 IN THOSE AREAS AND WE ARE MAKING EVERY EFFORT WITH THE
24 KNOWLEDGE AND SKILLS WE HAVE TO ALIGN OUR CURRICULUM WITH
25 THE STATE STANDARDS

1 YOU KNOW OF TEACHERS, DO YOU NOT, WHO HAVE THOSE THREE
2 SKILLS OR CHARACTERISTICS WHO DON'T NECESSARILY HAVE
3 MASTERS DEGREES, WHO ARE NOT BOARD CERTIFIED WHO MAYBE
4 EVEN ONLY HAVE A BACHELORS DEGREE, DON'T YOU?

5 A YES, THERE ARE INDIVIDUALS THAT CAN DO IT THAT JUST
6 HAVE A BACHELORS DEGREE THAT'S NOT THE NORM BUT IT --
7 THERE ARE SOME INDIVIDUALS THAT HAVE TO -- THAT COULD BE
8 THAT WAY

9 Q AND ARE THOSE SKILLS OR CHARACTERISTICS OF A HIGH
10 QUALITY TEACHER NECESSARILY RELATED TO THE NUMBER OF YEARS
11 OF EXPERIENCE THEY HAVE?

12 A NO, NOT NECESSARILY, ALTHOUGH I WILL SAY THAT USUALLY
13 IT'S DIFFICULT FOR A FIRST YEAR TEACHER OR SOMEONE WITH
14 VERY LITTLE EXPERIENCE TO DO THAT REAL EFFECTIVELY RIGHT
15 OFF THE BAT

16 IT'S LIKE MOST ANY PROFESSION, THE MORE
17 EXPERIENCE YOU HAVE, THE GREATER THE LIKELIHOOD SOMEBODY
18 WILL DEVELOP THAT REPERTOIRE OR THAT ABILITY TO DO IT

19 Q OKAY HOLD ON ONE SECOND OKAY, DR DEAN, I'M
20 THROUGH THANK YOU VERY MUCH

21 THE COURT THANK YOU MR EPPS, REDIRECT?

22 MR EPPS THANK YOU, YOUR HONOR

23 **REDIRECT EXAMINATION BY MR EPPS**

24 Q DR DEAN, I DON'T EVEN KNOW WHY WE ARE HERE

25 MR BARNES ME NEITHER

1 AND YOU KNOW, THOSE -- THE DATA SOURCES I
2 PRIMARYLY USE CERTAINLY I CAN ALSO LOOK AT TEST DATA AND
3 OTHER DATA TO MAKE DECISIONS ABOUT WHETHER STUDENTS ARE
4 LEARNING
5 Q ALL RIGHT CAN YOU ALSO LOOK AT A TEACHER IN A
6 CLASSROOM TO TELL WHETHER SHE IS ACTIVELY ENGAGING THE
7 CHILD?
8 A I'M CAPABLE OF DOING THAT, YES
9 Q I ASSUME THAT YOU BASE YOUR TESTIMONY AT LEAST IN
10 PART ON PERSONAL OBSERVATIONS --
11 A YES
12 Q -- ABOUT WHO WAS GOOD AND WHO WAS NOT OR WHO WAS
13 ENGAGING THE CHILD AND WHO WAS NOT, IS THAT CORRECT?
14 A YES
15 Q NOW, YOU WERE ASKED YESTERDAY ABOUT ADVANCED DEGREES
16 BEYOND BACHELORS DEGREES AND YOU SAID AS I UNDERSTOOD
17 YOUR TESTIMONY THAT A BACHELORS DEGREE TEACHER COULD
18 ENGAGE THE STUDENT BUT THIS WOULD BE THE EXCEPTION IF NOT
19 THE RULE AS I UNDERSTOOD YOUR TESTIMONY IS THAT RIGHT?
20 A I WOULD SAY JUST SOMEONE COMING IN WITH A BACHELORS
21 DEGREE, THE LIKELIHOOD OF THEM DOING THAT REAL EFFECTIVELY
22 IS NOT AS GREAT AS SOMEONE THAT -- THAT HAS EXPERIENCE AND
23 HAS DONE IT AND LEARNED TO DO -- AND HAS DONE IT OVER A
24 PERIOD OF -- YOU KNOW -- SEVERAL YEARS
25 CERTAINLY I WOULDN'T SAY THEY COULDN'T ENGAGE

1 THEM ANY, BUT I THINK WITH MORE EXPERIENCE MORE GREATER
2 EDUCATION, THOSE TYPE OF FACTORS USUALLY RESULT IN THE
3 TEACHER BEING MORE EFFECTIVE AND BEING ABLE TO ENGAGE
4 STUDENTS TO A GREATER DEGREE IT'S NOT -- NOTHING IS
5 ABSOLUTE ALWAYS ONE WAY OR THE OTHER I DON'T THINK

6 Q DO YOU BELIEVE THAT IT'S IMPORTANT TO HAVE AS MANY
7 TEACHERS AS YOU CAN WITH ADVANCED DEGREES IN YOUR
8 CLASSROOMS?

9 A I THINK -- I THINK THAT WOULD -- I THINK IT INCREASES
10 THE LIKELIHOOD OF YOU HAVING HIGH QUALITY TEACHERS WHEN
11 THEY HAVE ADVANCED DEGREES

12 Q DO ADVANCED DEGREES VERSUS BACHELORS DEGREES MAKE A
13 DIFFERENCE TO YOU IN PREDICTING THE QUALITY OF THE
14 TEACHERS?

15 A THE ODDS ARE WITH YOU WHEN YOU HIRE TEACHERS WITH
16 ADVANCED DEGREES, BUT IT'S JUST NOT THE DEGREE THAT MAKES
17 THE DIFFERENCE, IT IS THE INDIVIDUAL

18 Q ALL RIGHT YOU SAID YESTERDAY ALSO ABOUT TEACHERS
19 THAT -- WHEN YOU ARE TALKING ABOUT TEACHER CERTIFICATION
20 THAT UNCERTIFIED TEACHERS COULD ENGAGE THE STUDENTS COULD
21 ENGAGE THE STUDENTS WHAT DID YOU MEAN BY THAT?

22 MR BARNES OBJECTION YOUR HONOR I DIDN'T SAY
23 THAT I DIDN'T TALK ABOUT UNCERTIFIED TEACHERS

24 Q WELL, DID YOU SAY THAT? WERE YOU ASKED THAT
25 QUESTION? DID YOU SAY THAT?

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1 SCHOOL ARE NOT GOING TO BE IN THAT BUILDING THIS COMING
2 SCHOOL YEAR

3 A NO, MA'AM

4 Q RIGHT WHAT IMPACT, IF ANY, DOES THE CONDITION OF
5 THE OLD TERRELL'S BAY HIGH SCHOOL HAVE ON THE CHILDREN WHO
6 ARE NOW GOING TO BE IN THE NEW SCHOOL?

7 A WELL -- YOU KNOW -- I LISTENED TO EARLIER TESTIMONY
8 AND I'M WONDERING IF -- IF PEOPLE THINK THAT JUST BECAUSE
9 THESE CHILDREN ARE NOW MOVING TO A NEW BUILDING THAT ALL
10 THESE ISSUES THAT THEY HAVE LIVED IN FOR HOWEVER MANY
11 YEARS THAT THEY HAVE BEEN IN SCHOOL ARE JUST GOING TO GO
12 AWAY

13 IT'S NOT GOING TO GO AWAY THE FACT THAT THEY
14 HAVE OPERATED IN A LESS THAN ADEQUATE SCHOOL FACILITY WITH
15 ALL THE OTHER ISSUES INVOLVED IS NOT GOING TO JUST
16 DISAPPEAR AND I WOULD SAY ALSO THAT THIS IS
17 GENERATIONAL

18 IF WE MOVE TO THE NEW SCHOOL THESE PARENTS OF
19 THESE CHILDREN ARE EXCEPTIONALLY -- EVEN IN MY ON
20 EXPERIENCE -- ARE EVEN MORE UNDEREDUCATED THAN ANY
21 POPULATION I HAVE WORKED WITH BEFORE, THEY ALL WENT
22 THROUGH THAT FACILITY

23 PART OF THEIR LACK OF ABILITY TO BE EDUCATED OR
24 THEIR EDUCATION I THINK HAS A LOT TO DO WITH THE
25 FACILITIES THAT THEY WERE INVOLVED IN SO THIS IS NOT

1 JUST GOING TO GO AWAY WHEN WE MOVE INTO THE NEW BUILDING

2 AND I WOULD ALSO SAY UNLESS SOMETHING IS DONE TO
3 ALLEVIATE THE STRAIGHTS THAT THIS SCHOOL DISTRICT FINDS
4 ITSELF IN IN GIVEN EIGHT, NINE TEN YEARS FROM NOW THAT
5 FACILITY IS GOING TO BE THE NEW -- IT'S GOING TO BE A
6 NEWER CRAPPY BUILDING

7 Q DO YOU THINK, MR WHITCOMB THAT THAT BUILDING THAT
8 WE JUST LOOKED AT LIMITED THE OPPORTUNITY FOR A MINIMALLY
9 ADEQUATE EDUCATION WHILE THOSE STUDENTS WERE THERE?

10 MR STEPP OBJECTION YOUR HONOR IF HE'S GOING TO
11 DRAW SOME CONCLUSION BETWEEN FACILITY CONDITION AND
12 STUDENTS ACHIEVEMENT, I DON'T THINK HE'S QUALIFIED AND I
13 DON'T THINK THE FOUNDATION HAS BEEN LAID

14 THE COURT ALL RIGHT COULD YOU -- HE'S TESTIFIED
15 SORT OF OBLIQUELY ALONG THOSE SAME POINTS COULD YOU
16 CLEAN THAT QUESTION UP SOMEWHAT, MS HART?

17 Q WELL MR WHITCOMB, YOU INDICATED THAT BUILDING WAS
18 NEITHER SAFE NOR ADEQUATE?

19 A THAT'S CORRECT

20 Q IS THAT RIGHT ? OKAY DID THESE CHILDREN -- WELL,
21 I'M GOING TO SKIP A LITTLE AHEAD IN ORDER TO TIE THIS UP
22 THESE CHILDREN, ARE THEY PASSING PACT AND THE EXIT EXAM AT
23 THE LEVELS THAT THE STATE EXPECTS THEM TO PASS?

24 A NO MA'AM IN FACT, IN MARION SEVEN THE -- THIS
25 PARTICULAR SCHOOL IS EVEN UNDERPERFORMING COMPARED TO THE

1 REST

2 Q OKAY DOES THAT SUGGEST TO YOU THAT THERE'S A GAP
3 BETWEEN WHAT THESE CHILDREN ARE ABLE TO DO AT THE LEVEL OF
4 LEARNING WHERE THEY EXIST AND THE LEVEL OF LEARNING THAT
5 YOU HAVE GIVEN TO THEM, PROVIDED TO THEM?

6 A ABSOLUTELY WE ARE -- AS EDUCATORS ARE APPRECIATIVE
7 OF THE STANDARDS THAT HAVE BEEN DEVELOPED IN OUR
8 CURRICULUM THE FIRST TIME IN MY CAREER SINCE THE
9 STANDARDS HAVE COME, THERE ARE SOME CLEAR OBJECTIVES TO
10 ACCOMPLISH ACADEMICALLY AND TEACHERS KNOW WHAT THEY ARE
11 TEACHERS AREN'T NECESSARILY MAKING CHOICES ABOUT
12 WHAT IS TAUGHT ON WHAT GRADE LEVEL IT'S PRETTY MUCH LAID
13 OUT FOR US AND I THINK A GOOD JOB HAS BEEN DONE IN
14 LAYING OUT THOSE EXPECTATIONS

15 ON THE OTHER HAND THE INFRASTRUCTURE REQUIRED
16 TO ADDRESS THOSE STANDARDS IS NOT IN PLACE THOSE
17 PICTURES OF THAT FACILITY WE JUST LOOKED AT IS JUST AN
18 EXAMPLE OF THAT THERE ARE OTHERS

19 AND ONCE YOU TRAVEL THROUGH THE EDUCATIONAL
20 SYSTEM IF YOU ARE DEFICIENT IN THE BEGINNING AND THAT IS
21 NOT REMEDIED IN THE BEGINNING, ALL'S IT DOES IS BECOME AN
22 EVER INCREASING GAP BETWEEN WHAT THE STUDENTS ARE ABLE TO
23 DO AND WHAT THEY SHOULD BE ABLE TO DO

24 AND OUR TEACHERS IN THE UPPER ELEMENTARY GRADES,
25 WHICH IS WHAT MIDDLE SCHOOL IS, SPEND AN EXTRAORDINARY

1 AMOUNT OF TIME TRYING TO REMEDIATE STUDENTS SO THEY CAN
2 INTRODUCE GRADE LEVEL STANDARDS, AND OF COURSE THAT IS
3 TIME TAKEN AWAY FROM TEACHING GRADE LEVEL STANDARDS SO AS
4 A CONSEQUENCE THE CHILDREN CONTINUE TO WIDELY GAP BETWEEN
5 WHAT THEY SHOULD KNOW AND WHAT THEY CAN KNOW

6 Q DOES THIS -- DOES THE BUILDING TERRELL'S BAY
7 BUILDING, TEND TO WIDEN THAT GAP OR LESSEN THAT GAP?

8 A I -- CERTAINLY DOESN'T HELP AND IF A TEACHER IS
9 TRYING TO PLAN A LESSON, FOR EXAMPLE, THAT REQUIRES L E D
10 PROJECTOR BUT REALIZING THAT SHE IS NOT GOING TO BE ABLE
11 TO DO THAT BECAUSE OF THE WIRING IN THE BUILDING OR
12 WHATEVER, THEN SHE'S GOING TO BACK UP AND DO SOMETHING
13 DIFFERENT

14 IT MIGHT NOT BE AS GOOD A LESSON AS IT WOULD
15 HAVE BEEN HAD SHE BEEN ABLE TO DO THAT YOU KNOW, IT'S
16 REALLY SUCH A COMPLEX TASK IN THE SENSE OF TEACHING THAT
17 SO MANY VARIABLES INVOLVE -- ONE OF THE THINGS THAT GOOD
18 GOALING PRINCIPAL DOES IS ELIMINATE SOME OF THE NEGATIVE
19 VARIABLES AS MUCH AS POSSIBLE PROVIDING GOOD DISCIPLINE
20 PROVIDING A CLEAN FACILITY AND MAKING SURE THOSE THINGS
21 ARE ALL IN PLACE SO THOSE ARE ISSUES FOR THE TEACHER WHO
22 SHOULD NOT BE WORRIED ABOUT THOSE THINGS

23 THE TEACHER NEEDS TO BE FOCUSING ON WHAT THEY
24 ARE TEACHING NOW AND WHAT THEY ARE GOING TO TEACH AFTER
25 THAT, NOT WHETHER, YOU KNOW DO I HAVE TO MOVE THESE KIDS

1 BECAUSE THE ROOF IS LEAKING AND CAN THESE KIDS SEE FROM
2 WHERE THEY SIT THIS MINIMAL PROJECTOR I HAVE OR WHATEVER

3 I MEAN, IT'S A WHOLE COMPLEX SET OF ISSUES
4 SURROUNDING THESE THINGS KEEPING THE TEACHERS FROM DOING
5 WHAT THEY ARE SUPPOSED TO DO

6 Q SO THE CONDITION OF THE BUILDING IS ONE OF THOSE
7 VARIABLES THAT--

8 A OKAY LET ME GIVE YOU AN EXAMPLE LUNCH TIME ON A
9 RAINY DAY YOU SAW THE STAINS IN THE CAFETERIA ROOF AND
10 WATER IS DRIPPING DOWN HERE AND THERE THE SEATS THE
11 AVAILABLE SEATS WOULD FILL AND OF COURSE THAT MEANT
12 STUDENTS HAD TO WAIT IN ORDER TO BE SERVED LUNCH AND SIT
13 DOWN AND EAT

14 AND YOU KNOW, AS A CONSEQUENCE ON SEVERAL
15 OCCASIONS WE EXTENDED OUR RECESS TIME WHICH WASN'T REAL
16 LONG TO START WITH IN ORDER TO ACCOMMODATE ALLOWING
17 EVERYBODY TO EAT

18 WELL -- YOU KNOW THAT -- OBVIOUSLY WHEN YOU'RE
19 TAKING TIME AWAY FROM ANY PART OF THE INSTRUCTIONAL DAY,
20 YOU ARE DIMINISHING THE AMOUNT OF TIME SPENT ON THE TASK
21 THAT WE ARE THERE TO ACCOMPLISH

22 Q OTHER EXAMPLES OF HOW THE BUILDING EFFECTS THE
23 LEARNING ENVIRONMENT?

24 A WELL, YEAH I BELIEVE THAT AND AGAIN THIS IS BASED
25 ON MY PERSONAL EXPERIENCE WITH INDIVIDUAL PEOPLE, STUDENTS

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1 AND TEACHERS, BEING SICK BECAUSE OF THE ENVIRONMENT AND
2 PEOPLE COMING IN AND FEELING FINE AND BY THE END OF THE
3 DAY THEY'VE GOT HEADACHES AND ALL THESE THINGS GO TO THE
4 DOCTOR, THE DOCTOR SENDS THEM A NOTE, YOU KNOW, YOU NEED
5 TO DO SOMETHING ABOUT THIS TEACHER'S CLASSROOM
6 Q THAT SORT OF LEADS TO THIS QUESTION I THINK AND THAT
7 IS ABOUT THE BUS, THE BUSES AND THE TRANSPORTATION DID
8 THAT ADEQUATELY SUPPORT THE LEARNING AT TERRELL'S BAY HIGH
9 SCHOOL AND CREEK BRIDGE MIDDLE SCHOOL?
10 A THE BUS SYSTEM IN MARION SEVEN IN PARTICULAR AND IN
11 ALSO -- I WOULD SAY ALSO TO SOME DEGREE IN CHARLESTON
12 COUNTY IS THE BUSES ARE INADEQUATE TO THE TASK THAT NEVER
13 -- THE EXCEPTIONALLY LONG ROUTES ARE A FUNCTION OF NOT
14 HAVING ENOUGH BUSES, AND TIME SPENT ON THE ROAD FOR
15 CHILDREN ARE FUNCTION OF NOT HAVING ENOUGH BUSES
16 THE AGE OF THE BUS FLEET ITSELF ESPECIALLY IN
17 MARION SEVEN I NOTED BUSES BREAKING DOWN CONTINUOUSLY
18 THERE WERE MANY, MANY AFTERNOONS -- LET ME SAY THIS WHEN
19 THE STUDENTS ARRIVED IN THE MORNING, I WAS THE FIRST
20 PERSON THEY SAW
21 WHEN THEY LEFT IN THE AFTERNOON, I WAS THE LAST
22 PERSON THEY SAW I WAS THERE I NEVER LEFT THE KIDS,
23 EVEN THE HIGH SCHOOL CHILDREN NEVER DID I LEAVE THEM
24 UNSUPERVISED IN THE YARD
25 AS A CONSEQUENCE I SPENT MANY VALUABLE HOURS IN

1 THE YARD WITH KIDS UP TO AN HOUR, HOUR AND A HALF,
2 SOMETIMES TWO HOURS WAITING FOR A BUS TO COME PICK UP
3 THESE STUDENTS

4 AND I FELT IT MY DUTY AS A RESPONSIBLE ADULT
5 I'M A PARENT I CERTAINLY WOULDN'T WANT MY CHILD TO BE
6 SUPERVISED WITH THAT DEGREE OF CARE SO I DID NOT -- I WAS
7 NEVER COMFORTABLE JUST LEAVING THEM THERE

8 BUT THAT WAS VALUABLE TIME OF MINE BECAUSE I --
9 YOU KNOW -- BEING A PRINCIPAL IS A PEOPLE JOB DURING THE
10 DAY WHEN PEOPLE ARE THERE, I WOULD TYPICALLY GET MY
11 ADMINISTRATIVE DUTIES -- YOU KNOW -- THESE REPORTS THAT
12 YOU HAVE BEEN LOOKING AT AND ALL THOSE THINGS DONE WHEN
13 THE CHILDREN LEFT BUT IF I'M STANDING OUT THERE AT
14 BUSES, AT THE BUS STOP, THAT'S NOT HAPPENING AND

15 Q WHAT ABOUT IN THE MORNINGS WHEN THE BUSES DELIVER THE
16 CHILDREN?

17 A THAT'S THE OTHER THING, THE SAME DEAL FREQUENTLY I
18 -- I COULD -- I CAN'T SAY HOW FREQUENTLY WITH ANY DEGREE
19 OF ACCURACY, BUT REGULARLY THERE WERE BUSES LATE TO THE
20 SCHOOL

21 OF COURSE WHEN THEY ARRIVE LATE, SOMETIMES AS
22 MUCH AS AN HOUR LATE, WE'D HAVE TO FEED THEM BREAKFAST AND
23 AT LEAST GIVE THEM THE OPPORTUNITY TO EAT BREAKFAST, AND
24 OF COURSE THEY WERE MISSING CLASS TIME

25 NOW IN THE MIDDLE SCHOOL PROGRAM THAT WAS

1 VIRTUALLY AN ENTIRE PERIOD, AN HOUR IN THE HIGH SCHOOL
2 THAT'S MOST OF ONE BLOCK SO IN BOTH INSTANCES STUDENTS
3 WERE ESPECIALLY -- NOW, I WOULD SAY THIS

4 ON THE HIGH SCHOOL SIDE, WHEN IT WAS TERRELL'S
5 BAY HIGH SCHOOL, THE STUDENTS MISSING THAT FIRST BLOCK OF
6 TIME, THAT IS VERY OFTEN THEIR MATH CLASS OR THEIR ENGLISH
7 CLASS BECAUSE WE TRIED AS MUCH AS POSSIBLE TO GET THE MATH
8 IN PARTICULAR IN EARLY IN THE MORNING BECAUSE ALL -- ALL
9 THE STUDIES WE WERE AWARE OF INDICATE THAT STUDENTS SEEM
10 TO PERFORM BETTER EARLIER IN THE DAY FOR THOSE KINDS OF
11 CONTEXT

12 THE COURT MS HART IF YOU IN THE NEXT FIVE MINUTES
13 OR SO LOOK FOR A GOOD STOPPING PLACE

14 MS HART NO, THIS IS A GOOD STOPPING PLACE I WAS
15 ABOUT TO GO TO ANOTHER TOPIC

16 THE COURT IF IT IS, THEN WE WILL STOP THANK
17 YOU FOLKS, WE WILL STOP FOR LUNCH NOW AND COME BACK AT
18 2 15 MR WHITCOMB WHILE YOU RE OFF THE STAND YOU CAN'T
19 TALK WITH YOUR ATTORNEYS ABOUT YOUR TESTIMONY, OKAY? TALK
20 ABOUT ANYTHING ELSE, BUT NOT YOUR TESTIMONY BE IN RECESS
21 UNTIL 2 15

22 (WHEREUPON COURT WAS IN RECESS FOR LUNCH)

23 THE COURT THANK YOU LADIES AND GENTLEMEN PLEASE
24 BE SEATED MR WHITCOMB, IF YOU WILL RESUME THE STAND,
25 PLEASE SIR YOU ARE STILL UNDER OATH, OF COURSE MS