

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

CONSORTIUM FOR ADEQUATE SCHOOL \*  
FUNDING IN GEORGIA, INC., et al., \*

Plaintiffs, \*

v. \*

THE STATE OF GEORGIA, et al., \*

Defendants. \*

CIVIL ACTION FILE

NO. 2004CV91004

PLAINTIFFS' MEMORANDUM ADDRESSING STANDARDS FOR COURT  
REVIEW OF WHETHER STUDENTS ARE DENIED CONSTITUTIONALLY  
ADEQUATE EDUCATIONAL OPPORTUNITIES

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**I. INTRODUCTION AND SUMMARY OF ANALYSIS.**

This memorandum discusses the standards for the Court to employ in addressing Plaintiffs' constitutional education adequacy challenge. Plaintiffs show in this memorandum that the Georgia Constitution has established a broad standard for the provision of an adequate education to the children of Georgia. Plaintiffs present the Court with a framework for application of this constitutional standard based upon the jurisprudence of the highest courts of its sister states as well as Georgia law and educational standards.

Article VIII, Section I, Paragraph I of the Georgia Constitution of 1983 provides:

The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall

be provided for by taxation.

The Georgia Supreme Court has held that a constitutionally "adequate" education in Georgia is an education that is "designed to produce individuals who can function in society." *McDaniel v. Thomas*, 248 Ga. 632, 644 (1981).<sup>1</sup> The Supreme Court in *McDaniel* expressly held that an adequate education is more than a "minimum" education, and that "even a 'minimum' education 'must provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full participation in the political process.'" *McDaniel v. Thomas*, 248 Ga. 632, 644 (1981). These are the "basic educational opportunities" that all students in Georgia must be afforded.

The Quality Basic Education ("QBE") Act (O.C.G.A. §20-2-130 et seq.) created the original structure for Georgia's current school funding system that has been in effect since 1985. This Court must determine whether, in view of the results that have emanated from the State's chronic failure to fully fund and to update the basic cost components of the QBE formula, the State's current education and funding system can now be found to be "designed to produce" individuals who can function in our society in the Plaintiff Districts.

In making this legal determination, the relevant question is not whether QBE, when originally passed by unanimous General Assembly vote in 1985, was "designed" to produce citizens who could function in society. Rather the question is whether QBE

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<sup>1</sup> The final interpretation of the "adequate public education" mandate is one for the Georgia courts, which have exclusive jurisdiction to interpret the Constitution. *Thompson v. Talmadge*, 201 Ga. 867, 872-873 (1947).

and the patchwork of state education statutes and regulations adopted over the past two decades to accompany it, as currently funded and implemented, are so designed.

This analysis will require an evaluation of the evidence of Georgia's recent educational "output" measures (e.g., graduation rates, dropout rates, achievement test scores, standardized test scores, college preparedness measures, job skills readiness, etc.). It also warrants an evaluation of evidence of educational "inputs" to address the connection between the failures in educational results (i.e., "outputs") on the one hand, and the State's consistent non-funding and under-funding of QBE, and the resultant pervasive lack of adequate resources to establish and maintain needed programs and services in the schools, on the other hand. *See, e.g., Hoke County Board of Education v. State*, 599 S.E.2d 365, 381-383 (N. C. 2004).

As held by this Court, "the question of whether the State has met its constitutional mandate to provide an adequate education is a factual issue to be decided on an evidentiary record." Order on Def's Motion to Dismiss, p. 8. Plaintiffs must adduce evidence proving "that existing state funding for public education deprives students in any particular school district [i.e., in the Plaintiff Districts] of basic educational opportunities" that are "designed to produce individuals who can function in society." *McDaniel*, 248 Ga. at 644. Thus, as in most other state adequacy cases, the totality of evidence presented at trial will direct the Court's determination of whether the State has met its constitutional obligation.

At trial, Plaintiffs will present evidence for the Court to weigh and consider regarding years of experience with under-funding of education, coupled with an appallingly large number of children -- in Georgia generally, and in the Plaintiff and

Consortium Districts in particular -- who fail to obtain the basic components of a high school education. The Court will hear and consider evidence regarding educational “outputs” in Georgia and in the Plaintiff and Consortium Districts -- including, *inter alia*, high school graduation and drop-out rates and standardized test scores over a number of years. For example, Plaintiffs will offer evidence from the most recently published national study (using nationally accepted graduation calculation methodology) that once again shows Georgia near the bottom among states in graduation rates, with only 56.3% of Georgia students graduating in 2002-03, and only 45.9% of Black students and 39.5% of Hispanic students graduating, within four years of entering high school. “Diplomas Count: An Essential Guide to Graduation Policy and Rates”, *Education Week* (Vol. 5, Issue 41S, June 22, 2006), <http://www.edweek.org/ew/toc/2006/06/22/index.html>.

As alleged in the Complaint, even using Georgia’s inflated graduation calculation methodology, the graduation rates in the Plaintiff Districts, fall below state averages in Georgia and across the country -- and for minority students, well below overall state averages. (Complaint ¶114.)

Evidence will also be presented concerning educational “inputs” in these districts (e.g., teacher quality and training, curriculum, course offerings, facilities, equipment, textbooks, educational programming, etc.) and whether sufficient resources are available to these districts to establish and maintain effective programs to address the critical educational needs of those students most at-risk of academic failure (e.g., students living in poverty, students with disabilities, non-English speaking students, and students needing alternative educational programming or remedial assistance). This and other evidence will guide the Court’s determination and findings as to whether the existing

Georgia School education and funding system as enacted, funded and implemented, "deprives students in any particular school district [i.e., in the Plaintiff Districts] of basic educational opportunities" and thereby breaches the State's constitutional obligation.

*McDaniel*, 248 Ga. at 644.

The Georgia Constitution contains some of the strongest language on educational adequacy of any state constitution. Indeed, as the Georgia Supreme Court pointed out in *McDaniel*, "Georgia appears to be the only state in the union which employs [the phrase "adequate public education"] in its constitution to delineate the state's basic obligation with respect to education. See *Pauley v. Kelly*, 255 S.E.2d 859, 863-874, 884-886 (W.Va. 1979)." *McDaniel*, 248 Ga. at 644. In contrast, other state courts have had to interpret a variety of less specific language in the education clauses of their state constitutions even to find a right to an "adequate" education. Nonetheless, many decisions of the highest courts of other states have interpreted weaker constitutional language to find the school funding systems constitutionally inadequate.

These state court decisions collectively provide persuasive authority concerning the threshold constitutional standards of an adequate education. (See, Section II herein.) Like the Georgia Supreme Court, high courts in other states have held that the ultimate standard for a constitutionally adequate education is whether it is designed to produce individuals who can function in society. As discussed in Section II of this brief, these decisions recognize that to function in our society, individuals must be properly prepared educationally in terms of advanced literacy, scope of knowledge, and ability to grasp complex ideas so as to exercise the fundamental rights and duties of citizenship, voting and jury service. Additionally, they recognize that to function in society, individuals

must be prepared to advance through higher education and to engage in productive employment.

In our present global economy, education is the key to Georgia's economic success and the future of each individual. Today, the *sine qua non* of even a minimally acceptable education, let alone an adequate education, is high school graduation. High school graduation has become the effective gateway to participation in our society and its institutions. Unlike a generation ago, the consequences of failing to complete high school in America today are potentially disastrous, both for the individual students and for the State of Georgia. Consequently, a key substantive standard for measuring an adequate education is high school graduation.

This memorandum also discusses the analyses and approaches used by courts in other states determining the constitutional adequacy of educational systems. In the absence of educational standards adopted by the legislative or executive branches of government that expressly define the constitutional obligation, these courts have applied judicial standards in whole or in part, in determining whether students were denied constitutionally adequate educational opportunities. In other instances, the courts have determined that the failure of the legislative or executive branches to adopt educational standards implementing the constitutional obligation was itself a constitutional breach.

Where the courts found legislative or executive branch standards present, even though not comprehensive, many have used these standards as an evidentiary referent in considering whether students are denied an adequate education. This memorandum discusses some of the education standards that have been adopted by the General Assembly and the State Board of Education, which provide appropriate evidentiary

referents for the Court's review at trial of the State's intent regarding the parameters of an adequate education. The Court may consider these standards as part of the evidence in determining whether Georgia students, and particularly students in the Plaintiff Districts, are being denied an adequate education.

Finally, the Court's analysis must also be based upon a review of evidence as to whether the State has determined and provided the actual cost of an adequate education, and thereafter adjusted the funding of education in light of changes needed to address persistent educational deficiencies within the State and assure execution of the State's constitutional obligation. As discussed in Section IV, the decisions of the highest courts of other states indicate that a state cannot use "politics as usual" to justify the failure to implement a funding system based on educationally related factors designed to achieve the requisite constitutional result of an adequate education. Yet, the evidence will show this is precisely what Georgia has done.

**II. A CONSTITUTIONALLY ADEQUATE EDUCATION IS ONE DESIGNED TO PRODUCE INDIVIDUALS WHO CAN FUNCTION IN SOCIETY.**

Consistent with the *McDaniel* decision, a number of other state courts have interpreted a constitutionally adequate education as one designed to produce individuals who can function in society both as civic participants and as competitors in the job market. These decisions provide useful guidance concerning threshold standards to assist this Court in assessing whether students are denied a constitutionally adequate education.

Other states' constitutions include a variety of terms that have been interpreted by their highest courts as imposing a duty to provide an "adequate" education. In most cases, the ultimate standard of a constitutionally adequate education has been viewed as an education that prepares students to function in society, or words to that effect.

For example, the North Carolina Supreme Court held that the right to the "privilege of education" gave rise to the right to a "sound basic" education, which must "enable the student to function in a complex and rapidly changing society." *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997). This includes "enabl[ing] the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society." The North Carolina Court also applied judicial standards of an adequate education that emphasized preparation to function in society: (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 and 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. *Id.* at 255 (citing *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) and *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W.V. 1979)).

In New York, the constitutional mandate of a school system "wherein all the children of this state may be educated," was held to require the state to ensure a "sound basic education" for all children. A sound basic education must provide "the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants." This includes an "employment component" because for employment today "a high school level education is now all but indispensable." *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 328, 330-332 (N.Y. 2003).

Similarly, the Kentucky Supreme Court, in holding that state's school funding system constitutionally inadequate in violation of the requirement for an "efficient" system of public schools, applied standards of an adequate education articulating the capacities that individuals need in order to function in modern society, both as civic participants and as individuals who are self-sufficient and have an understanding of the society in which they function.<sup>2</sup> The Kentucky standards were based on earlier standards applied by the West Virginia Supreme Court<sup>3</sup> and were subsequently adopted

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<sup>2</sup> An educated child must possess "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 students 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 level 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 v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989).

<sup>3</sup> *Pauley v. Kelly*, 255 S.E.2d at 877 (W.V. 1979) (interpreting the requirement for a "thorough and efficient" system of public schools).

by the Supreme Courts of Arkansas<sup>4</sup>, South Carolina<sup>5</sup>, Massachusetts<sup>6</sup> and New Hampshire<sup>7</sup> for testing the constitutional adequacy of their school funding systems.

Thus, many states' highest courts are in agreement with the Georgia Supreme Court that the primary purpose of an adequate education is to produce individuals who can function in society. To function in a democratic society an individual must be prepared for civic participation, including voting and jury service<sup>8</sup>, and for productive employment or further education, and must have an understanding of how our increasingly complex and technological society works. Moreover, to function productively in society, the individual must be prepared with the skills and knowledge to hold viable employment or to advance within the higher education system. The Georgia General Assembly has recognized these principles in general statements of policy and legislative findings of the Georgia legislature.<sup>9</sup> For example, the Georgia General

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<sup>4</sup> *Lake View Sch. Dist. v. Huckabee*, 91 S.W.3d 472, 487-488 (Ark. 2002) (requiring "a general, suitable, and efficient system of free public schools.").

<sup>5</sup> *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535, 539-540 (S.C. 1999) (requiring that "the General Assembly shall provide for the maintenance and support of a system of free public education" deemed to guarantee a "minimally adequate education" that meets certain broad substantive academic and vocational standards).

<sup>6</sup> *McDuffy v. Secretary of Executive Office of Education*, 615 N.E.2d 516, 527 (Mass. 1993) (education provision of Constitution specifies that "Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties").

<sup>7</sup> *Claremont Sch Dist. v. Governor*, 703 A.2d 1353, 1361-1362 (N.H. 1997) (Constitution provides, "Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government").

<sup>8</sup> As noted by the New York Court of Appeals, for individuals to serve on juries "capably and knowledgeably" they must have at least a "meaningful high school education." *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d at 330-331 (NY 2003).

<sup>9</sup> See also, O.C.G.A. §20-3-601 ("The General Assembly finds and declares the following: (1) It is an essential function of state government to encourage schools and the means of education, as provided in Article VIII, Section I, Paragraph I of the

Assembly's initial statement of QBE's purpose in O.C.G.A. §20-2-131 is consistent with this judicial standard of constitutional adequacy:

The General Assembly of Georgia, recognizing the need for:

(1) Implementing a quality basic education curriculum in public schools statewide which ensures that each student is provided ample opportunity to develop competencies necessary for lifelong learning as well as the competencies needed to maintain good physical and mental health, to participate actively in the governing process and community activities, to protect the environment and conserve public and private resources, and to be an effective worker and responsible citizen of high character ...

(2) Providing all children and youth in Georgia with access to a quality program which supports the development of essential competencies in order that they may realize their potential ...

(14) Providing academic intervention programs designed to assist students who are performing below grade level in order to increase their mastery of critical academic knowledge and skills ...

These constitute primary, broad standards for the Court's assessment of the adequacy of the education provided by the State.

**III. EDUCATIONAL STANDARDS ESTABLISHED BY THE LEGISLATIVE AND EXECUTIVE BRANCHES AND THE ABILITY OF DISTRICTS TO MEET THOSE STANDARDS ARE EVIDENTIARY REFERENTS FOR EVALUATING THE ADEQUACY OF THE GEORGIA SCHOOL FUNDING SYSTEM. THEY ARE NOT DISPOSITIVE OF THE CONSTITUTIONAL QUESTION.**

**A. Executive and Legislative Standards are Evidentiary Referents but the Courts Cannot Cede Judicial Authority to Determine Adequacy.**

Education standards adopted by the legislative or executive branches have been consistently recognized as an important evidentiary referent in courts' assessment of

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Constitution . . ."); 1997 Georgia Laws 1231 ("Whereas, well educated Georgians are necessary for the continued economic growth and prosperity of this state...").

constitutional adequacy. In Georgia, the legislative and executive branches have not adopted a comprehensive meaningful definition of the constitutional right to an adequate education. However, as in other states, the legislature has specified certain educational content standards through statute and has also delegated authority to the State Board of Education to issue regulations and to establish and enforce educational standards.

O.C.G.A. §20-2-240. These are useful to the Court as evidence of the legislature's intent as to the meaning of an adequate education.

It is important to emphasize, however, that the appropriate use of statutory and regulatory standards established by the executive and legislative branches is only as an evidentiary referent. The Court does not cede to the other branches judicial authority to interpret constitutional provisions. As *McDaniel* held, although "it is primarily the legislative branch which must give content to the term 'adequate'" whether the school funding system meets constitutional requirements is a justiciable issue that only the Georgia courts may decide. *Id.* 248 Ga. at 644.

The New York Court of Appeals' consideration of evidence relating to constitutionally inadequate educational opportunities illustrates how courts have used state statutes and regulations as an evidentiary referent without ceding judicial authority as ultimate interpreters of constitutional provisions. The court noted that it would not cede authority to the legislature to determine the ultimate constitutional standard of adequacy, i.e., a "sound basic education." *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 332 (N.Y. Ct. App. 2003). However, it considered state statutes and regulations and other standards as an evidentiary referent for review of alleged

educational inadequacies.<sup>10</sup> These included teacher certification standards, teacher certification test results, class size specifications, library book ratios and student proficiency standards. *Campaign for Fiscal Equity, Inc.* 801 N.E.2d at 333-340.

**B. Whether or Not Districts Satisfy Statutory and Regulatory Standards is also Relevant Evidence, but is Not Dispositive of the Constitutional Issue of Adequacy.**

Courts in other states have also determined that the inability of districts and students to meet statutory and regulatory standards is relevant as an evidentiary matter to whether an adequate education is provided. *See, e.g., Montoy v. State*, 102 P.3d 1160, 1164 (Kan. 2005) (legislature's own definition of suitable education, including accreditation standards, relevant for determining whether constitutionally adequate educational opportunities provided)<sup>11</sup>; *Idaho Sch. for Equal Educational Opportunity v. Evans*, 850 P.2d 724, 734-735 (Idaho 1993) (executive branch standards promulgated pursuant to legislative directive can aid the Court's task of defining the meaning of the constitutional standard)<sup>12</sup>; *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535, 540

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<sup>10</sup> The Court, however, did not unilaterally accept all of the State's proffered standards as providing reliable indicia relative to the issues in contention. For instance, the Court found that certain test results, generated pursuant to State or local norm-based testing requirements, did not provide reliable evidence regarding whether schools were delivering a sound basic education. *Id.* at 339.

<sup>11</sup> The court clarified that it would not automatically assume that the educational standards adopted by other branches of government carried out the constitutional mandate:

Although in *Montoy I.* . . . we concluded that accreditation standards may not always adequately define a suitable education, our examination of the extensive record in this case leads us to conclude that we need look no further than the legislature's own definition of suitable education to determine that the standard is not being met under the current financing formula.

*Id.*  
<sup>12</sup>

The court noted that:  
Balancing our constitutional duty to define the meaning of the thoroughness

(S.C. 1999) (relevant for constitutional inquiry that the legislature "has acknowledged the need 'to guarantee to each student in the public schools of South Carolina the availability of at least minimum educational programs and services'"); *Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997) (high failure rate of low-income students on state determined proficiency standards is evidence of inadequate educational opportunities); *See also, Hoke County Bd. of Ed. v. State*, 599 S.E.2d 365, 382-83 (2004).

**C. Judicial Standards Fill the Gaps in Legislative and Executive Standards.**

Where legislatures have not adopted appropriate standards of an adequate education, a number of courts have applied judicial standards. For example, in the absence of appropriate legislative standards, the Kentucky Supreme Court determined that a constitutionally adequate education must provide individuals with at least seven capacities needed in order to function in modern society. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989; *see note 2, supra.*) A number of other state supreme courts have also used these seven capacities in reviewing the adequacy of their school funding systems. (*See supra*, notes 3-7.)

Some courts have held that the failure of the legislature to adopt standards for an adequate education in the face of the constitutional obligation to provide an adequate education is itself a derogation of the constitutional duty. Indeed, the New Hampshire

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requirement of art. 9 § 1 . . . with the political difficulties of the task has been made simpler for this Court because the executive branch of government has already promulgated educational standards pursuant to the legislature's directive . . . We have examined the standards and now hold that, under art. 9 § 1 the requirements for school facilities, instructional programs and textbooks, and transportation systems as contained in those regulations . . . are consistent with our view of thoroughness.

Supreme Court held that, because the state constitution places a duty on the legislative and executive branches to provide a constitutionally adequate education to every child and because the task of defining the parameters of the education mandated by the constitution is in the first instance for the legislature and the Governor (*Claremont v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993)), the failure of the other branches of government to specify adequacy standards was itself a violation of the constitutional duty. The court held:

“While the Judiciary has the duty to construe and interpret the word ‘education’ by providing broad constitutional guidelines, the Legislature is obligated to give specific substantive content to the word and to the program it deems necessary to provide that ‘education’ within the broad guidelines.” *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wash. 2d 476, 585 P.2d 71, 95 (1978).

*Claremont v. Governor*, 703 A.2d 1353, 1359-60 (N.H. 1997). The Arkansas Supreme Court, in reviewing the adequacy of the Arkansas school funding system, took the state Department of Education to task for not defining a constitutionally adequate education under its legislative authority to do so. *Lake View School District No. 25 v. Huckabee*, 91 S.W.3d 472, 486-488 (Ark. 2002). Similarly, the New Jersey Supreme Court, in finding that state’s school funding system constitutionally inadequate, held that “the State must define in some discernible way the educational obligation” and noted that the “State has never spelled out the content of the constitutionally mandated educational opportunity.” *Robinson v. Cahill*, 303 A.2d 273, 297 (N.J. 1973).

**D. Selected Examples of Evidentiary Referents for Educational Standards in Georgia.**

The combination of the State’s primary constitutional obligation to provide adequate public education and the recognition that “it is primarily the legislative branch

of government which must give content to the term 'adequate'" (*McDaniel*, 248 Ga. at 644), imposes a duty on the State to adopt standards defining a constitutionally adequate education that is designed to produce individuals who can function in society. To the extent that they exist in Georgia statutes and regulations, such standards have been and will be offered by Plaintiffs as an evidentiary referent in combination with evidence regarding their actual implementation and results in order to aid the Court in determining whether students are denied constitutionally adequate educational opportunities.

Consistent with this approach, this Court in this case may consider evidence which addresses: (1) To what extent Georgia's legislative and regulatory provisions that describe the elements of an adequate education have been fully implemented and funded; (2) How students in the Plaintiff Districts have fared under certain identified state standards; and (3) Whether the State's actions and funding enactments adequately ensure achievement of those educational standards.

In the past two decades, Georgia has adopted or implemented various educational standards through legislation as well as regulations and policies promulgated by Defendant State Board of Education that should serve as evidentiary referents as to the State's intent regarding an adequate education. They do not, however, necessarily define an adequate education, nor would conformity with the standards necessarily establish that the state has provided an adequate education. The General Assembly has articulated these standards in terms of educational programming and resources as well as broad standards for students' instructional achievement and in specific requirements that the State Board of Education establish competencies that each student is expected to master

prior to graduation through a sequenced core curriculum. See, e.g., O.C.G.A. §§ 20-2-140, 20-2-151 (sequenced curriculum); O.C.G.A. § 20-2-154 (remedial programs); O.C.G.A. §20-2-154.1 (alternative education programs). (Complaint, ¶¶ 14-21.)

**E. Evidence of Georgia Proficiency and Performance Standards as Referents for the Court.**

Georgia has required the State Board of Education to set minimum levels of student achievement or proficiency based on State academic performance standards and examinations such as the Georgia High School Graduation Test and other criterion referenced examinations.<sup>13</sup> O.C.G.A. §§ 20-2-281, 20-14-33, 20-14-41. (Complaint, ¶¶ 101-103.) Although Plaintiffs believe that the evidence will show that some of these standards have been intentionally set sufficiently low so as to generate a higher passing rate, the student failure rates on a variety of state measures remain substantial in the Plaintiff Districts, and particularly among “at-risk” low income and minority students. (Complaint, ¶¶ 109-118.)

Failure to meet proficiency standards can have serious consequences for students. Students who fail tests in third, fifth or eighth grades are presumptively retained in those grades. O.C.G.A. § 20-2-283. Georgia students must pass the Georgia High School Graduation Test in order to obtain a regular high school diploma. O.C.G.A. § 20-2-281. (Complaint, ¶ 104.) Students with low SAT/ACT scores are at an extreme disadvantage in securing admission to universities and colleges.<sup>14</sup>

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<sup>13</sup> For example, Georgia school systems administer Criterion-Referenced Competency Tests in reading, mathematics, and language arts to virtually all students in grades 1 through 8, and in science and social studies in grades 3 through 8. (Complaint, ¶ 103.)

<sup>14</sup> Plaintiffs have alleged that Georgia’s average SAT scores are among the lowest

**F. The Most Significant Measure of Educational Adequacy is High School Graduation Rates.**

The single most critical measure of whether a school funding system is designed to produce individuals who can function in society is whether students graduate from high school.<sup>15</sup> As specified by Georgia law, “the primary purpose of high school is *to prepare students for continuation of education beyond high school and for entry into chosen career fields as well as to prepare them to take their places in society as young adults.*” O.C.G.A. § 20-2-151 (*emphasis added*). Today a high school diploma constitutes the bare minimum gateway qualification for an individual’s ability to function in society in this state and in this country. This milestone is commonly accepted as a determinant of whether an individual has the opportunity for viable employment, higher education and the knowledgeable performance of civic responsibilities. High school graduation is truly the ultimate test for the constitutional adequacy of the Georgia school funding system.

Georgia statutes make this very clear. They require a uniformly sequenced core curriculum that is intended to lead to high school graduation. O.C.G.A. § 20-2-151. This statutory progression is very explicit in Georgia law: the primary purpose of kindergarten is to “to provide all children with an equal opportunity to become prepared for a successful first grade experience and to acquire the foundation for academic progress throughout the students’ educational careers.” The primary purpose of primary

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in the nation and students in Plaintiff Districts on average do even more poorly.  
(Complaint, ¶115.)

<sup>15</sup> Plaintiffs have alleged that Georgia’s graduation rate has been consistently among the worst in the nation and that graduation rates in Plaintiff Districts are worse yet. (Complaint ¶114.)

grades is “mastery of the essential basic skills and knowledge which will enable them to achieve more advanced skills and knowledge offered at the higher grade levels.” The primary purpose of middle grades (grades 4-8) is to prepare students academically and socially to enter high school. O.C.G.A. § 20-2-151.

As the New York Court of Appeals said in a similar context, “A sound basic education . . . means a meaningful high school education. Under that standard, it may, as a practical matter, be presumed that a dropout has not received a sound basic education.” *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 337 (N.Y. Ct. App. 2003). According to the North Carolina Supreme Court, leaving school without having obtained a sound basic education was evidence of “a systematic weakness . . . in meeting the needs of many students.” *Hoke County Board of Education v. State*, 599 S.E. 2d 365, 383-384 (N.C. 2004).

**G. Evaluating Adequacy Based on Measures of Educational Results (“Outputs”).**

Courts in other states have used a variety of standards, including high school graduation rates, for judging whether students are denied a constitutionally adequate education. For example, the North Carolina Supreme Court in similar litigation instructed the trial court to consider “the level of performance of the children on standard achievement tests.” *Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997). The court also instructed the trial court to consider “any educational goals and standards adopted by the legislature.” *Id.*

In reviewing the case after trial, the North Carolina Supreme Court held that a variety of educational results were relevant to the determination of whether students

were obtaining a constitutionally adequate education. These included graduation rates; end-of-grade and end-of-course tests, including state average and district comparisons; employment potential; post-secondary education success (and/or lack thereof), including the need for remedial work in college; and lack of participation in honors programs.

*Hoke County Board of Education v. State*, 599 S.E. 2d 365, 381-386 (N.C. 2004). The court also found that a proper standard for determining whether students were obtaining a “sound basic education” (the North Carolina educational adequacy standard) was grade level proficiency on state administered tests. The court found that an “inordinate” proportion of students were not at grade level in comparison to state norms. *Hoke County Board of Education v. State*, 599 S.E. 2d at 382-383. These findings, in combination with the Court’s determination that the State had failed to take sufficient pre-emptive action to address evidence of at-risk students’ failure to receive a “sound” education in the plaintiff districts, created the combined evidentiary and legal foundation for the Court’s adequacy analysis.

**H. Evaluating Educational Opportunities and Services (“Inputs”) to Determine Adequacy.**

The North Carolina Supreme Court in *Hoke* also recognized that a determination of whether the educational opportunities made available to students are “designed to produce” individuals who can function in society requires not only an evaluation of the educational results or “outputs” but also an evaluation of the “inputs;” i.e., the educational opportunities and services offered to students and any deficiencies in those opportunities. In conducting its evaluation, the Supreme Court of North Carolina reviewed “deficiencies pertaining to the educational offerings in Hoke County schools;

and . . . deficiencies pertaining to the educational administration of Hoke County schools”. *Hoke County Board of Education v. State*, 599 S.E. 2d at 381 (2004). In addressing the issue of the relationship between output deficiencies and lack of educational opportunities, the *Hoke* Court focused primarily on the opportunities available to students at-risk of academic failure. The Supreme Court cited with approval the trial court finding that

the State was failing both to identify ‘at-risk’ students and to address their needs with educational resources that would provide tutoring, extra class sessions, counseling, and other programs that target ‘at-risk’ students in an effort to enable them to compete among their non ‘at-risk’ counterparts and thus avail themselves of their right to the opportunity to obtain a sound basic education.

*Hoke County Board of Education*, 599 S.E. 2d at 389-390.

**I. Evidence of the Treatment and Outcomes for At-Risk Students.**

Plaintiffs submit that this Court, like the North Carolina Supreme Court in *Hoke*, should conclude that a primary measuring stick for determining if the State’s school funding system is meeting its obligation to provide an adequate education to its children is whether sufficient educational resources are *in reality* made available to provide the large number of students most at-risk of academic failure with the opportunity to achieve an educational level that will allow them to function successfully in modern society. This adequacy measure is critical given the large proportion of “at-risk” low-income disadvantaged students in the Plaintiff Districts. (Complaint, ¶ 67)

The New York Court of Appeals also considered a variety of “input” (resources<sup>16</sup>) and student “output” standards in determining that New York City children were not obtaining a constitutionally adequate education. *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326 (N.Y. Ct. App. 2003). “Output” standards included school completion rates that were lower than the rest of the state and the nation and statewide tests of whether students were on grade-level in reading and math, on which tests 30 to 35% of the plaintiff children in New York City had scored below the standard reference point for minimal proficiency. *Id.* at 336-340. The results on other high school tests, on the other hand, were given no weight both because of their low substantive level and the fact that pass rates were artificially inflated as a result of “the alarming number of students who fall behind or drop out and so do not take the exam.” *Id.* at 339. The Court thus employed both a fact-intensive analysis and a review of state regulatory standards in assessing whether the totality of evidence established that the students’ constitutional right to an adequate education had been fulfilled.

**J. Evaluations of Adequacy Based Upon the Totality of Education Results and Funding and Resource Evidence in Light of State Standards.**

In affirming the trial court’s determination that the Arkansas school funding system was constitutionally inadequate, the Arkansas Supreme Court pointed to student deficiencies, including low student proficiency in math, reading, science and writing, poor student performance on ACT college entrance exams and the substantial number of high school graduates needing remediation when entering state universities. In

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<sup>16</sup> These resources included the availability of qualified teachers, library books per students, computers, textbooks, and other instrumentalities of learning.

Arkansas, the legacy of historical educational inadequacy was reflected in the low proportion of the adult population with high school or college degrees. *Lakeview School District No. 25 v. Huckabee*, 91 S.W.3d 472, 488-489 (Ark. 2002). These findings in conjunction with specific school district “resource” evidence, such as districts’ inability to offer anything beyond a basic curriculum (with no advanced placement classes<sup>17</sup>) and the State’s long-term refusal to conduct a cost based adequacy study as a foundation for the school funding system,<sup>18</sup> constituted the legal and evidentiary foundation for the Court’s conclusion that the State had failed to provide a constitutionally adequate education. *Id.* at 489-490, 495. As in similar school funding cases, the Arkansas Supreme Court evaluated adequacy based upon the totality of education results and funding and resource evidence in light of state standards, to the extent such existed.

**IV. THE STATE HAS FAILED TO RESPOND TO EVIDENCE OF SUBSTANTIAL EDUCATIONAL FAILURE WITH ACTIONS THAT ARE DIRECTLY RELATED TO PRODUCING INDIVIDUALS WHO CAN FUNCTION IN SOCIETY.**

**A. The Court Should Consider What Actions the State Has Taken in Implementing the School Funding System to Respond to Evidence of Substantial Educational Failure.**

In 1985 the State of Georgia adopted the Quality Basic Education Act (O.C.G.A. § 20-2-130, et seq.) as its chosen statutory mechanism for implementing the State’s Article VIII obligations. The Act was adopted in recognition of the need to provide “an

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<sup>17</sup> Plaintiffs similarly allege that many of the Plaintiff Districts lack the resources to offer any advanced curriculum. (See, e.g., Complaint ¶¶68, 77.)

<sup>18</sup> The State of Georgia similarly has consistently refused to conduct such a study as well, despite convening multiple education task forces and despite the recommendations of such task forces. (Complaint ¶¶ 44-64.)

opportunity for a quality basic education to the citizens of the state and to discharge the responsibilities and obligations of the State to ensure a literate and informed society . . .”

1985 Georgia Laws, 1660; O.C.G.A. § 20-2-131 (20).<sup>19</sup> The Act equates an “adequate” education with a “quality basic education” and identifies certain capacities needed for an individual to function in society to:

ensure that each student is provided ample opportunity to develop competencies necessary for lifelong learning as well as the competencies needed to maintain good physical and mental health, to participate actively in the governing process and community activities, to protect the environment and conserve public and private resources, and to be an effective worker and responsible citizen of high character.

O.C.G.A. § 20-2-131(1).

In structure, the QBE Act was intended to identify the components for the public education programs and resources deemed essential for an adequate education, determine the cost necessary to provide each component, and provide the method of implementing the State’s constitutional obligation to provide an adequate education to the children of Georgia. (Complaint, ¶ 25.)

The Complaint alleges that this funding system, while purporting to fund a quality basic education, fails to do so, and the resources it provides to Plaintiff Districts and others bear little or no relation to the resources needed to provide an adequate

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<sup>19</sup> The Resolution establishing the Governor’s Education Review Commission that recommended the QBE expressly called upon that Commission “to review the present education that our children receive and to ensure that they receive a basic, quality education that teaches the basic skills to cope with our complex society.” The Commission was charged with the duty to “analyze and assess public education in Georgia, provide a definition of what constitutes an adequate education within the context of the State Constitution, and define what constitutes a basic education.” 1983 Georgia Laws, 599-601.

education to their students. (Complaint, ¶¶ 23, 43.) The Complaint also alleges that components of the QBE have been eroded by persistent failures to provide the needed comprehensive review, revision, and funding of this formula. (Complaint, ¶¶ 48-64.) Plaintiffs further alleges that over the two decades that QBE has been in operation the State has never sought to determine the *actual costs of providing an adequate education* and has ignored reports provided by studies it commissioned that the school funding system was failing to provide educational opportunities needed for students to succeed in school and to graduate.<sup>20</sup> (Complaint ¶ 30.)

As a result, poorer school districts have been left with substantial shortfalls in funding for their most basic educational programs, services, equipment, supplies and operational costs in the face of the need for more intensive educational programs and services for these districts' high concentrations of at-risk children.<sup>21</sup> (Complaint ¶¶ 32-34, 51-54.) In the face of the vast failings of Georgia's schools to produce individuals who can function in society, decision after decision has been made by the State that has undermined whatever mechanism the school funding system had to address these

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<sup>20</sup> Reasons alleged for the failure of the QBE formula to recognize the actual costs of an adequate education include, among others, the use of arbitrary cost allocations or schedules that bear no relation to actual costs, the failure to include certain cost components of an adequate education, the imposition of arbitrary funding cuts to various formula components, the imposition of caps which are not based on educational considerations, and the failure to undertake periodic reviews for the purpose of making needed adjustments over time. (Complaint ¶ 30.)

<sup>21</sup> The Complaint also alleges that the school funding system has required school districts to rely on local funding sources, primarily property taxes, regardless of the fact that Plaintiff Districts and others have low property tax bases that, even with equalization aid, yield insufficient resources to provide an adequate education. (Complaint ¶¶ 32-37.)

failings.<sup>22</sup>

As stated most eloquently in the December 1998 Report on Funding of the QBE Act released by a State Blue Ribbon Study Committee, “. . . the very foundation of public education in Georgia . . . may be cracking under the stress of a shift in the way the weight of the school finance burden is distributed . . . As more and more of the actual and necessary cost of providing a Quality Basic Education for all of Georgia’s students has shifted to the local level, there have been steadily increasing problems in both adequacy and equity in the financing of public education in Georgia.” (Complaint, ¶54.) (See also, 1998 Georgia Laws at 960-963 (resolution creating a Blue Ribbon Study Committee to address increasing non-funded operational costs of education which have been shifted to local school boards. No action was taken on the Committee’s findings.))

Similarly, the State ultimately refused to assume direct responsibility for addressing the identified significant achievement and school completion challenges faced by students the State recognized as at extreme educational risk, including groups of students disaggregated by ethnicity, sex, disability, language proficiency, and socioeconomic status. (See Complaint ¶ 61, regarding the effective disbandment of The Georgia Closing the Achievement Gap Commission required by O.C.G.A. § 20-2-286, after only four meetings.) Instead, the State proceeded with a series of “austerity”

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<sup>22</sup> For example, the Complaint alleges that inadequate funding of aid cuts to non-instructional line items of the QBE formula have required poor school districts to reduce critical instructional resources to make up the shortfalls. (Complaint ¶ 30.) Plaintiffs are prepared to show that myriad decisions such as these have been made in derogation or disregard of their consequences for educational adequacy statewide and in particular districts.

budget cuts that further undermined school districts' capacity to address the educational needs of students. (Complaint ¶ 63.)

Thus, a major issue the Court will face in reviewing Plaintiffs' constitutional adequacy challenge is whether the State of Georgia has taken sufficient action, whether through revision and updating of its funding system or otherwise, to respond to evidence that large numbers of students, particularly in poorer school districts, are not being prepared to function in society. Can the State ignore the reports of official commissions that the school funding system is failing to implement its constitutional purpose? Can it ignore these failures in decisions made about school funding? Can it simply relegate this responsibility to local school districts without assuring that they have the wherewithal to provide appropriate educational opportunities?

Other courts considering similar issues have answered these questions in the negative.<sup>23</sup> See, e.g., *Lake View v. Huckabee*, 91 S.W.3d at 487-496 (Ark. 2002).

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<sup>23</sup> In determining whether Georgia's education funding system is "designed" to produce individuals who can function in society and whether the system's failures can be ignored, judicial decisions interpreting the duties of school districts and states under federal laws dealing with education of students with disabilities may provide an instructive analytic analogy. The Supreme Court has interpreted the Individuals with Disabilities Education Act ("IDEA," 20 U.S.C. § 1401 et seq.) as requiring for each eligible student an individualized education plan ("IEP") which must be "reasonably calculated" to provide "educational benefit." *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176, 207 (1982). The term "reasonably calculated" is similar in meaning to the word "designed" used in *McDaniel*, *supra*. Federal appellate courts interpreting IDEA have held that a student's past educational experience, and the effectiveness of past educational services in providing educational benefit, are relevant in determining whether the currently recommended program is "reasonably calculated" to provide educational benefit under IDEA. See, e.g., *Adam J. ex rel. Robert J. v. Keller Independent School District*, 328 F.3d 804, 810 (5th Cir. 2003) (evidence of actual positive academic and non-academic benefits is one of four factors considered in determining if IEP is reasonably calculated to provide educational benefit); *Fuhrmann on Behalf of Fuhrmann v. East Hanover Board of Education*, 993, F.2d 1031,

(Because the Department of Education had neither defined an adequate education nor determined its actual cost, and because educational deficiencies persisted, the court found that the system continued to be inadequate. The funding system was found still to be based on availability of money rather than need, which would require a definition of adequacy).<sup>24</sup>

**B. The School Funding System Must be Based on Factors Directly Related to Accomplishing the Constitutional Result.**

The highest courts of states interpreting similar constitutional mandates for educational adequacy have required that school funding systems be based on factors that are directly related to accomplishing the constitutional result, particularly when presented with factual situations similar to those alleged in the Complaint.<sup>25</sup> Because of the importance of this constitutional obligation, courts have found such a requirement even under state constitutional provisions that lack Georgia's strong language of "primary obligation." They have required that in structuring and implementing school funding systems, states use relevant education need and cost factors focused on assuring that a constitutionally adequate education is available to all children in the state. These

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1041 (3rd Cir. 1993) (although "reasonably calculated" is a prospective determination, evidence of past educational experience may be relevant to determining future IEP's appropriateness). If a school district is proposing an IEP that contains virtually the same services that have been previously provided to the student, evidence that those services had not been effective would justify a holding that the new IEP was not reasonably calculated to provide educational benefit. *Hall v. Vance County Board of Education*, 774 F.2d at 629, 631, 635 (4th Cir. 1985).

<sup>24</sup> See note 25.

<sup>25</sup> See, e.g., *Campaign for Fiscal Equity Inc.*, 801 N.E.2d at 345, 348 (N.Y., 2003); *Montoy v. State*, 102 P.3d 1160, 1164 (Kan. 2005); *Lakeview Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 486 (Ark. 2002) see also *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995); *Opinion of the Justices*, 765 A.2d 673, 677 (N.H. 2000) (State must define the content of and "underwrite the cost of an adequate education for

factors are necessary to ensure that resources are *actually available* for students with varying needs who require varying educational programs and services.

Nonetheless, it is true that the most well thought-out school funding system, containing appropriate education need and cost factors, by itself, provides no assurance that students will actually receive the education programs, services, equipment, instructional materials and facilities they need. The reason is that even a well-designed school funding system can be woefully under-funded. This is why these courts have held that the school funding system, including its level of funding, must be based on appropriate analyses of educational costs to provide a constitutionally adequate education.<sup>26</sup>

A definition of the constitutional obligation is the starting point for an analysis of the educational needs and costs. As noted by the Montana Supreme Court in a similar case:

Without an assessment of what constitutes a "quality" education, the Legislature has no reference point from which to relate funding to relevant educational needs. In the absence of a threshold definition of quality, we cannot conclude that the system is adequately funded as required by *Article X, Section 1(3)*.

*Columbia Falls Elementary School Dist. No. 6 v. State*, 109 P.3d 257, 262 (Mont. 2005).

The Kansas Supreme Court in a similar education adequacy case relied on the absence of a cost study to establish the reasonableness of certain cost factors in the Kansas school funding system as a basis for determining that the Legislature had failed

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each educable child").

<sup>26</sup>

See note 25.

to comply with the constitutional mandate to “make suitable provision” for public education:

[T]he district court found that the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise. This failure to do any cost analysis distorted the low enrollment, special education, vocational, bilingual education, and the at-risk student weighting factors.

*Montoy v. State*, 102 P.3d 1160,1164 (Kan. 2005).

The courts have recognized that a study of relevant educational needs and costs is important for assuring that the constitutional mandate will be met, and provides a basis for considering whether and how education factors have figured in decisions concerning school funding. Although studies of educational costs and needs do not guarantee that the constitutional mandate will be met, they do ensure a rational *education-focused* foundation and referent for analysis. The requirement that the State, in implementing its constitutional obligation, use factors that relate directly to the accomplishment of this obligation is an essential initial step in ensuring that the school funding system is actually designed to prepare individuals to function in society.

Comprehensive cost studies have been undertaken in many states, sometimes as a result of adequacy lawsuits and sometimes wholly apart from litigation. These studies use a variety of methodologies and have produced conclusions regarding the level of resources necessary to meet constitutional and/or statutory educational standards.

A recently published paper from the Andrew Young School of Policy Studies at Georgia State University (AYSPS) entitled *Adequate Funding of Education in Georgia: What Does It Mean, What Might It Cost, How Could It Be Implemented?* (Sjoquist and Khan; May 2006) (hereinafter referred to as AYSPS paper) examines how a

determination could be made regarding the actual cost of delivering an adequate education in Georgia and what these costs might be. (A copy of the AYSPS paper is attached as Exhibit A to this Memorandum.) After noting that the State of Georgia has never commissioned or conducted any meaningful cost study, the AYSPS paper draws certain inferences from cost studies conducted in other states. (It should be noted that the State of Georgia has not only failed to conduct any cost study, but that Georgia's Governors have not appointed a task force every three years to review the "program weights" used in the QBE formula and to recommend changes to the General Assembly, as specifically authorized by statute. O.C.G.A. § 20-2-161 (f).)

The AYSPS paper summarizes the methodologies and results of 16 cost studies from other states. In several of those states, the results of the cost studies have been informed by, or have themselves informed, the outcomes of constitutional adequacy litigation.<sup>27</sup>

Plaintiffs submit that it will not be necessary for this Court to address, much less to make a factual finding as to, a precise dollar amount of funding that would be required to enable all Georgia students (or all students in the Plaintiff or Consortium Districts) to receive a constitutionally adequate education. Rather, Plaintiffs seek a determination and declaration in this action only that the current system, as funded and implemented, is

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<sup>27</sup> The AYSPS authors note: "Because Georgia has not completed an adequacy study, we use some of the studies from [other states] to develop an estimate of the magnitude of the increase in education funding that might be required in Georgia." (AYSPS paper, at 26.) The authors conclude that the mean average minimum expenditure per student recommended by those 16 state cost studies is \$7,600 and the median is \$7,561 (in FY 2004 dollars); both of these figures are approximately \$800-900 more than the total *average* per student expenditure for all Georgia students (\$6,728) in FY 2004. AYSPS paper, at 26-28.

not designed to provide an adequate education to students in the Plaintiff or Consortium Districts. Plaintiffs submit that the evidence at trial will mandate such a conclusion.

Evidence that large numbers of students leave public schools without obtaining an education that prepares them to function in society will shed important light on whether the school funding system and the decisions creating and implementing this system have been based on relevant education need and cost factors. A school funding system that couples a high student failure rate with a disregard for appropriate educational considerations in its structure and implementation cannot be said to be designed to produce individuals who can function in society. Moreover, for there to be an assurance that the Georgia school funding system is designed to accomplish its intended result, that system must be based on relevant education need and cost factors, funded on the basis of studies of the cost of providing a constitutionally adequate education, and periodically reviewed to ensure that when a compliant design is implemented it is maintained and cost factors updated as necessary.

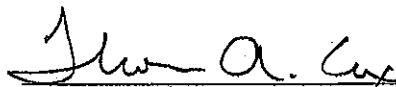
## **V. CONCLUSION**

Inasmuch as an "adequate public education" is a "primary obligation" of the State of Georgia, the provision of an adequate public education must be assured. It cannot be left entirely to chance or largess. In order to pass constitutional muster, the Georgia school funding system must be based on educational and cost factors "designed to" implement this constitutional duty, rather than politics as usual that fails to take into account the educational needs of Georgia's children. This requirement has been specified by the highest courts of other states in similar cases -- often interpreting much

weaker constitutional language -- as a standard for determining whether the State's constitutional obligation has been fulfilled. Moreover, if the evidence and data show (as Plaintiffs submit they will) that large numbers of students are failing to receive an adequate education and appropriate educational opportunities to address this failure are lacking, a compelling case will be made that the State's is failing in its constitutional obligation to assure that needed educational programs, services, equipment and facilities are made available.

In other words, the State's fulfillment of its primary constitutional obligation must also be assessed based upon whether the State has addressed on an ongoing and meaningful basis the adequacy and effectiveness of its education programs and funding system. The State cannot meet its constitutional obligation by putting in place a school funding system and then ignore evidence of its striking deficiencies and failures in actual educational results for children.

Respectfully submitted, this 22nd day of August, 2006.



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**CERTIFICATE OF SERVICE**

This is to certify that I have this day served on the counsel or parties listed below a copy of the foregoing **PLAINTIFFS' MEMORANDUM ADDRESSING STANDARDS FOR COURT REVIEW OF WHETHER STUDENTS ARE DENIED CONSTITUTIONALLY ADEQUATE EDUCATION OPPORTUNITIES** by United States mail, first class postage prepaid, addressed to:

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This 22<sup>nd</sup> day of August, 2006.

John A. Cox