

**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' RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE CASE	3
III. STANDARD OF REVIEW	5
IV. SUMMARY OF ARGUMENT	7
A. The State’s Definition of Adequacy is Incorrect	7
(1) The State Applies the Wrong Standards	7
(2) The State Fails Even Under Its Own Standards	9
B. The State Seeks to Avoid its Responsibility for the Problem	11
V. SUMMARY OF FACTS	15
A. A Summary of Inadequate School Funding in Georgia	16
(1) Overview of the State’s Budgeting Process	16
(2) The State’s Failure to Adequately Fund the Required Foundation Costs	17
(a) Georgia Has Abandoned its own QBE Funding Formula	17
(b) “Austerity Reductions” and Budget Cuts Have Crippled Georgia’s Education System	19
B. Poor Student Achievement on All Measures of Performance Reveals Inadequacies in Georgia’s Education System	22
(1) Georgia Suffers From a Graduation Rate Crisis	22
(2) National Testing Illustrates the Severity of Georgia’s Situation	25
(3) Educational Inadequacies are Shown by the State’s Own Performance Standards	27
(a) State Tests Show Inadequacy: CRCT	28
(b) State Tests Show Inadequacy: EOCT	29
(c) State Tests Show Inadequacy: GHSGT	31

(4)	State Standards for NCLB Leave Most Georgia Students Behind	32
(5)	College-Going Rates Languish and College Preparedness is Lacking	34
C.	Lack of Adequate Educational Opportunities in Plaintiff and Sample Districts	36
(1)	Murray County Cannot Provide Its Students Adequate Educational Opportunities.....	36
(2)	Charlton County Cannot Provide its Students Adequate Educational Opportunities	46
(3)	Elbert County Cannot Provide its Students Adequate Educational Opportunities.....	53
(4)	Ben Hill County Cannot Provide its Students Adequate Educational Opportunities	60
(5)	Polk County Cannot Provide its Students Adequate Educational Opportunities.....	68
(6)	Wayne County Cannot Provide Its Students Adequate Educational Opportunities.....	74
VI.	ARGUMENT AND AUTHORITIES.....	80
A.	An Adequate Education Must Actually Prepare Students to Function in Society.....	81
B.	The State’s Education Funding System Does not Provide Adequate Education	88
C.	The State is Primarily Responsible for Assuring That the Children of Georgia Receive an Adequate Education	91
D.	The State Ignores the Ultimate Constitutional Standard of Whether the School Funding System is Designed to Prepare Students to Function in Society.....	93
E.	The State Suggests that an Adequate Education Can Ignore the Needs of Students Who are at Risk of Academic Failure and Dropping Out of School	94
F.	The State Seeks to Avoid its Constitutional Obligation for Adequate Education by Blaming the School Districts	100

G.	Seeking to Diminish its Constitutional Obligation to Ensure an Adequate Education, the State Erroneously Asserts that it has Only Limited Authority Over Local School Boards	103
H.	The State’s Assertion of Lack of Responsibility for Ensuring an Adequate Education is Mirrored in the Actual Conduct of the State of Georgia.....	106
I.	The State’s “Causation” Arguments Do Not Excuse Its Constitutional Failures.....	110
J.	Educational Adequacy Cases Such as This are Not Capable of Resolution Through Summary Judgment.....	112
VII.	CONCLUSION	113

TABLE OF AUTHORITIES

CASES

Abbeville County Sch. District v. State, 515 S.E.2d 535, 540 (S.C. 1999).....	82, 84
Amdahl Corp. v. Ga. Dep't of Admin. Servs, 260 Ga. 690, 398 S.E.2d 540 (1990)	6
Beaulieu of Am., Inc. v. L. T. Dennard & Co., 253 Ga. 21, 315 S.E.2d 889 (1984)	6
Campaign for Fiscal Equity v. State, 655 N.E. 2d 661, 666 (N.Y. 1995)	113
Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 328, 330-332 (N.Y. 2003)	passim
Campbell Cty. Sch. Dist. v. State, 907 P.2d 1238 (Wyo. 1995).....	93
Claremont Sch Dist. v. Governor, 703 A.2d 1353, 1361-62 (N.H. 1997)	84
Colquitt Co. Hosp. Auth. v. Health Star, Inc., 262 Ga. 285, 417 S.E.2d 147 (1992)	6
Deriso v. Cooper, 246 Ga. 540, 272 S.E.2d 274 (1980)	98
Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 398 (Texas 1989)	92, 94
Georgia Canoeing Ass'n v. Henry, 263 Ga. 77, 428 S.E.2d 336 (1993).....	passim
Hoke County Board of Education v. State, 599 S.E.2d 365, 381-383 (N.C. 2004).....	passim
Kristin Nat'l, Inc. v. Bd. of Educ. Of City of Marietta, 250 Ga. App. 488, 552 S.Ed2d 488 (2001).....	98
Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472, 484 (Ark. 2002)	82, 84, 92
Lau's Corp. v. Haskins, 261 Ga. 491, 493, 405 S.E.2d 474, 478 (1991)	5
Leandro v. State, 488 S.E.2d 249 (N.C. 1997)	83, 99, 112
McDaniel v. Thomas, 248 Ga. 632, 644, 285 S.E.2d 156, 165 (1981).....	81, 82, 84, 98
McDuffy v. Sec. of Exe. Office of Educ., 615 N.E.2d 516, 527 (Mass. 1993)	84
Montoy v. State, 102 P.3d 1160, 1164 (Kan. 2005)	92
Opinion of the Justices, 765 A.2d 673, 677 (N.H. 2000)	93
Pauley v. Kelly, 255 S.E.2d 859, 863-874, 884-886 (W.Va. 1979)	82, 84
Porter v. Felker, 261 Ga. 421, 421, 405 S.E.2d 31, 32 (1991)	5

Robinson v. Kroger Co., 268 Ga. 735, 747 (1997).....	5
Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806 (Ariz. 1994)	100
Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989).....	83, 84
Seymour v. Region One Bd. of Educ., 803 A.2d 318, 324, 326 (Conn. 2002)	99
State v. Campbell County Sch. Dist., 32 P.3d 325, 332 (Wyo. 2001).....	100, 102
Tennessee Small School Syst. v. McWhorter, 851 S.W.2d 139, 148 (Tenn. 1993).....	82

STATUTES

1983 Ga. Laws 599	18
1985 Ga. Laws 1657	17
1997 Georgia Laws 1231	86
20 U.S.C. § 6311(b)	32, 33
20 U.S.C. §§ 6301-8923	32
20 U.S.C. sec. 6321(a)	22
20 U.S.C. sec. 6321(b)	22
20 U.S.C. sec. 6383(i).....	22
20 U.S.C. sec. 6435(b)	22
20 U.S.C. sec. 6934(f).....	22
20 U.S.C. sec. 7355a.....	22
2008 Ga. Laws Act 440	passim
Ga. Code Ann. §32-669a	98
Georgia Constitution of 1983.....	81
O.C.G.A. § 20-14-41.....	105
O.C.G.A. § 20-2-131.....	86
O.C.G.A. § 20-2-131(1).....	18
O.C.G.A. § 20-2-131(20).....	17

O.C.G.A. § 20-2-140.....	105
O.C.G.A. § 20-2-151.....	86
O.C.G.A. § 20-2-161(f).....	107
O.C.G.A. § 20-2-161(f) (1985).....	18
O.C.G.A. § 20-2-240(a)	104
O.C.G.A. § 20-2-281.....	passim
O.C.G.A. § 20-2-286.....	108, 110, 111
O.C.G.A. § 20-3-601(1).....	86
O.C.G.A. § 9-11-56(c)	5
O.C.G.A. §§ 20-2-140.....	95
O.C.G.A. §§ 20-2-281.....	27, 95, 100
O.C.G.A. §§ 20-2-31.....	22
O.C.G.A. §20-2-281.....	29, 30
O.C.G.A. 20-2-151(b)(2)	87
O.C.G.A. 20-2-151(b)(3)	87, 89

REGULATIONS

Ga. Comp. R. & Regs. §§ 160-4-2-47	22, 24, 25
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I. INTRODUCTION

Georgia's educational system is failing its students. This action provides the best chance for the school children of Georgia to receive the educational rights guaranteed to them by our State's Constitution. But the State's response to this case shows clearly why the Georgia school system does not meet the needs of all its children. Instead of recognizing the fundamental deficiencies inherent in that system, the State continues to ignore the problem with the unrealistic hope that it will just go away.

The State argues that if any educational deficiencies exist, then they must be someone else's responsibility. In fact, the State makes little effort to define, discuss or even think about its primary constitutional obligation to provide adequate education in Georgia.¹ Instead, the State seeks to blame teachers, administrators, school board members, parents and students for the systemic problems evident in school systems throughout the State. Contrary to the clear mandate of the Georgia Constitution, the State continues to abdicate its responsibility to provide adequate educational opportunities for all children in Georgia.

Despite the dedicated efforts of parents, teachers and school leaders, there can be no reasonable dispute that the educational achievement levels of Georgia's students are inadequate under any appropriate measure. For example, Georgia consistently ranks 48 out of 50 states in its high school graduation rate. Almost one-half of the high school students in Georgia fail to meet the ultimate State standard of receiving a high school diploma. Independent test scores and other objective measures of student achievement demonstrate that the education provided to

¹ The State School Superintendent has never instructed anyone to "define" the constitutional obligation "for purposes of our work" (Deposition of Kathy Cox (Cox Dep.) 299); the State Board of Education has never discussed the constitutional obligation in any of its meetings over the past several years (Deposition of Wanda Barrs ("Barrs Dep.") 57); and the Director of the State's Division of Standards, Instruction and Assessment has never spent any time thinking about the meaning of "adequate public education" under the Constitution. (Deposition of Martha Reichrath ("Reichrath Dep.") 169.)

Georgia's school children does not sufficiently prepare them to function in society. Rather than addressing these disturbing facts, the State continues to ignore them.

Desperate to avoid a public trial that will lay bare the truth about Georgia's educational deficiencies, the State now asks this Court to throw the case out on summary judgment, without ever hearing directly from a single one of the scores of witnesses expected to testify on these issues. It would be impossible to enter summary judgment in this case without ignoring a mountain of evidence that could be found sufficient at trial to sustain the Plaintiffs' Complaint. Nevertheless, the State asks this Court to find that there are no material issues of disputed fact presented by any of the testimony of the 30 fact witnesses, 13 expert witnesses, and more than 750 documentary exhibits already contained in the record of this matter. It is difficult to imagine any case less well suited to disposition on summary judgment, particularly one of such paramount public importance.

In presenting its Motion for Summary Judgment, the State makes three fundamental errors: (1) it misapplies the simple procedural rule relating to contested issues of fact, which precludes any entry of summary judgment in this case; (2) it misstates and misunderstands the Court's prior rulings and the other governing law on the standards and proofs required; and (3) it avoids the mountain of evidence existing in the record, much of which is hotly disputed by the parties. Although the State points to some evidence it thinks will support its defenses, it ignores everything else that could be found sufficient to support the Plaintiffs' claims. But the purpose of trial is to allow the Court to weigh *all the evidence*, not just what the State thinks is

persuasive. The State has wasted the Court's time and the Plaintiffs' scarce resources with a futile procedural gambit designed merely to delay the inevitable trial of this case.²

At trial, the Plaintiffs will present substantial evidence showing where the deficiencies exist in Georgia's educational system. They will illustrate the effects of those deficiencies on students in Georgia and the tremendous future costs to the State and its citizens in failing to provide adequately for those needs. They will offer evidence of well-proven methods for addressing these problems and describing ways to meet the educational requirements of all Georgia's children. This is exactly the kind of analysis the State must undertake to meet its constitutional obligation to provide adequate education for our citizens. Yet, this is exactly the kind of analysis the State seems desperate to avoid.

II. SUMMARY OF THE CASE

In September 2004, the Plaintiffs initiated this action with their Complaint against the State of Georgia, the State Board of Education, the State School Superintendent, and the members of the Georgia State Board of Education.³ Plaintiffs seek declaratory relief stating that the State has failed to meet its primary constitutional obligation to provide an adequate public education for all citizens in Georgia, along with appropriate equitable relief.

The Plaintiffs in this case are a diverse group of school districts and individuals who share a common goal to ensure that all public school students in Georgia are prepared to function as productive members of society. The first named Plaintiff, the Consortium for Adequate School Funding in Georgia, Inc. (the "Consortium"), is a nonprofit corporation that was formed by several school district superintendents who recognized the State is not meeting its

² It will be no surprise if the State later requests certification for an interlocutory appeal from the Court's order denying summary judgment. Any such request would be frivolous, and would demonstrate the State's true motive in bringing this motion.

³ Plaintiffs refer to all the Defendants collectively as "the State" throughout this Memorandum.

responsibility for public education. (Deposition of Joseph Martin (“Martin Dep.”) 10-11.) Joining the Consortium as separately named Plaintiffs are three school districts (Ben Hill County, Elbert County and Murray County). In addition, there are 34 individual Plaintiffs who are public school students in Georgia and who personally have suffered as the result of the inadequate education provided by the State. Those minors are represented as Plaintiffs in this action by their parents, guardians, and next friends. Finally, Plaintiffs have designated three sample school systems, Charlton County, Polk County and Wayne County (“Plaintiff Sample Districts”) to help show the systemic educational deficiencies in Georgia.⁴

The Consortium members include approximately 50 school districts located throughout Georgia. (Affidavit of Joseph Martin (“Martin Aff.”) ¶ 4.) Each of those districts has chosen to participate in this case, notwithstanding the political risks inherent in taking such legal action against the State, because they believe it is the best way to serve the educational needs of their students. In fact, the Chair of the Georgia State Board of Education (now a Defendant by virtue of her position at the State), previously voted as a member of the Bleckley County School Board to join the Consortium. (Barrs Dep. at 72-73.) She joined in that decision (prior to being appointed by the Governor to the State Board of Education) because she believed, acting in the best interests of the students in her district, that it was important for the school system to participate in the Consortium. (Id.)

Almost one-third of the school districts in Georgia are so convinced that the public education provided by the State is inadequate, that they have chosen to join the Consortium in bringing this lawsuit against the State. Just since the filing of the State’s Motion for Summary Judgment, three more school districts (Jones County, Clarke County and Dodge County) have

⁴ The State also has designated five “Focus Districts,” Bleckley County, Commerce City, Dodge County, Fulton County, and Floyd County to help prove its defenses. None of those five school systems are discussed in the State’s Brief.

joined the Consortium.⁵ (Martin Aff. ¶4.) In addition, several other districts have recently approached the Consortium and expressed their interest in joining. (Id.)

While the State seeks to portray the Consortium as a handful of dissatisfied school systems, this action actually reflects the wide-ranging concerns expressed by school officials throughout the entire State regarding the systemic deficiencies in Georgia’s public education system. That is why the Plaintiffs ask this Court for declaratory and equitable relief to require the State to recognize the deficiencies inherent in the school funding system and to address them appropriately so that all children in Georgia will receive the adequate public education guaranteed to them by the Constitution. The relief sought by Plaintiffs in this case will benefit not only the Plaintiffs, but all the school systems in Georgia.

III. STANDARD OF REVIEW

The State misapplies the simple procedural standard necessary to grant summary judgment in this case. The State’s burden to win its Motion for Summary Judgment is a high one, which requires this Court to find there is “no genuine issue as to any material fact.” O.C.G.A. § 9-11-56(c). As the Supreme Court has made clear, this requires that “all the facts and reasonable inferences from those facts” must be viewed “in a light most favorable to the non-moving party.” Lau’s Corp. v. Haskins, 261 Ga. 491, 493, 405 S.E.2d 474, 478 (1991), abrogated in part on other grounds, Robinson v. Kroger Co., 268 Ga. 735, 747 (1997). Thus, the Supreme Court mandated that the non-moving party “*is to be given the benefit of all reasonable doubts and all favorable inferences that may be drawn from the evidence.*” Porter v. Felker, 261 Ga. 421, 421, 405 S.E.2d 31, 32 (1991) (emphasis added).

⁵ Dodge County is one of the five school districts chosen by the State as its “Focus Districts” to support its argument that the State is meeting its constitutional obligations.

Moreover, the Supreme Court repeatedly has held that trial courts should be especially wary of granting summary judgment in cases such as this, which involve bench trials on issues of equitable and injunctive relief. See, e.g., Georgia Canoeing Ass'n v. Henry, 263 Ga. 77, 428 S.E.2d 336 (1993); Colquitt Co. Hosp. Auth. v. Health Star, Inc., 262 Ga. 285, 417 S.E.2d 147 (1992); Amdahl Corp. v. Ga. Dep't of Admin. Servs., 260 Ga. 690, 398 S.E.2d 540 (1990); Beaulieu of Am., Inc. v. L. T. Dennard & Co., 253 Ga. 21, 315 S.E.2d 889 (1984). In those cases, the Court recognized that, where the trial court sits as the finder of fact, it is more efficient and appropriate for the court to deny summary judgment and enter full findings of fact after hearing all the evidence at trial. See id. Indeed, in Georgia Canoeing, the Supreme Court went even further by suggesting that counsel should forego making summary judgment motions in bench trial situations and save time and expense by “letting the trial court conduct the trial.” 263 Ga. at 78, 428 S.E.2d at 337.

There is no reason for this Court to pre-judge those issues now without having a full opportunity to evaluate all of that evidence at trial. The State may well believe that certain evidence in the record will support its defenses. But there is also plenty of evidence in the record, and more to be presented at trial, that is sufficient to sustain the Plaintiffs' Complaint. The State lists 209 separate statements of “fact” that it represents to this Court are both “material” and “undisputed.” Under the governing legal standard, the motion should be denied if the Court finds that *any one* of those statements is actually disputed by the parties. Plaintiffs have responded individually to every one of Defendants' material facts showing substantial disputes in the evidence regarding most of those statements. Under the well-established standards governing the summary judgment process in Georgia, the State's motion should be denied.

IV. SUMMARY OF ARGUMENT

The motion for summary judgment is based on two arguments. Both of them are wrong on the facts and the law. There is no possible basis to enter summary judgment for the State in this case.

A. The State's Definition of Adequacy is Incorrect

The State claims that so long as school districts meet the minimum requirements established by specific state laws and regulations, then the education they provide to their students must, by definition, be constitutionally adequate. In effect, the State relies on a tautologous statement that “adequacy is whatever we say it is.” Much of this argument seeks merely to recharacterize and reargue the State’s prior “non-justiceability” points, which were previously rejected by this Court.

(1) The State Applies the Wrong Standards

In its prior order, the Court expressed a willingness to consider state regulations and requirements as significant in evaluating the adequacy of education provided to Georgia students. But, nowhere has the Court said, nor could it, that mere compliance with the State’s minimum standards and regulations is constitutionally sufficient to achieve adequacy. Rather, this Court held that evidence showing “*how the State has actually performed*” in meeting its obligation to provide adequate education will be “*critical*” at the trial of this case. (Standards Order dated November 21, 2006 (“November 2006 Order”) at 3 (emphasis added.)) To evaluate that issue, the Court will need to examine the substantial body of evidence regarding the performance of Georgia’s students and determine whether the State has actually met its obligation.

The State claims that the Court should limit that inquiry simply to an assessment of whether the State’s policy choices are “rational.” It suggests that, in the absence of some

intentional or reckless irrationality apparent in those standards, the Court must simply rubber stamp the State's own assessment of what is required to meet its constitutional burden. But, if the State's theory were correct, then it would be virtually impossible for any plaintiff ever to establish a constitutional challenge to Georgia's education system, without evidence of some knowing violation of state law by local educators. That is not the standard contemplated by the Georgia Constitution or this Court's prior orders.

Plaintiffs do not seek to have this Court take over management of individual school systems or to second guess decisions of experienced, professional educators on how best to deliver educational services to the students. But, that does not mean (as the State argues), that this Court is prohibited from considering the question of whether the funding decisions, programs, achievement standards and other choices made by the State *actually are effective in providing an adequate education for all students*. (November 2006 Order at 3.) As acknowledged by the Chair of the State Board of Education, where the standards and policies implemented by the State are not successful to achieve an adequate education, the State has an obligation to take further steps. (Barrs Dep. 47-48.)⁶

Any reasonable consideration of the achievement levels of Georgia students (particularly the low-income and at risk populations) shows that the resources provided by the State are not sufficient to permit an adequate public education. Sworn testimony from professional educators, local officials working in the school districts, and Plaintiffs' experts establishes that Georgia schools cannot sufficiently meet the needs of all students.

⁶ The State's Director of Innovative Academic Programs agrees:

Q: "And you're not going to simply ignore a problem that you see and just say well, we gave them the curriculum, they'll have to fend for themselves, right?"

A: No, we would not ignore a problem that we see. We are here to serve the needs of our districts and help them solve problems."

(Deposition of Elizabeth Webb ("Webb Dep.") 277.)

Attempting to avoid this reality, the State argues that so long as the Plaintiff and Sample Districts generally do as well as the “average” district in Georgia, then they must be able to adequately educate their children. That misses the fundamental point: Plaintiffs seek the Constitution’s guarantee of adequacy, not “averageness,” especially when many school districts are suffering from the systemic deficiencies throughout Georgia. The constitutional relief sought by Plaintiffs will benefit their own schools, as well as all the other school systems in Georgia. In a state that ranks 48 out of 50 in the nation on graduation rates, the Court should reject the State’s suggestion that mere compliance with Georgia’s current minimum education standards is sufficient to prove adequacy.

(2) The State Fails Even Under Its Own Standards

Even if the Court could accept the State’s circular argument that compliance with State standards equals adequacy, the undisputed evidence shows that many school districts in Georgia (including the Plaintiff and Sample Districts), are failing to meet the State’s own minimum standards. For example, the State establishes specific standards and criteria in order for a student to receive a high school diploma. Almost one-half of the high school students in Georgia fail to meet those requirements. Indeed, as the State School Superintendent has admitted, she would not feel comfortable placing her own children in some of Georgia’s high schools. (Cox Dep. 304.)

Under the State’s own self-created student achievement tests, vast numbers of Georgia’s children fail to perform at an adequate level, even as that is defined by the State.⁷ For example,

⁷ The State creates and administers several tests designed to measure the adequacy of student achievement, including the Criterion-Referenced Competency Test (“CRCT”), the Georgia High School Graduation Test (“GHS GT”), and various subject-matter End of Course Tests (“EOCT”). Unlike standardized national tests such as the SAT, ACT and NAEP, these tests are created using Georgia’s own standards and administered only to Georgia students. In general, they are much less rigorous than comparable national assessment tests. (Deposition of Stephen Klein (“Klein Dep.”) 85-87.)

within the past few months, the State released results showing that in 2008, 38% of eighth grade students failed the math portion and 40% of eighth grade students failed the science portion of the State's own Criterion-Referenced Competency Test ("CRCT"). Similarly, in 2008, 72% of sixth grade students and 76% of seventh grade students failed the social studies portion of Georgia's CRCT.⁸ These results show that the students have not learned the content material required by the State in these subjects and failed to meet even the minimal performance standards set by the State.

Moreover, as stated by the Chair of the State Board of Education, the State measures whether it successfully provides adequate education through its Single Statewide Accountability System ("SSAS"). (Barrs Dep. 56.) According to the Director of that program, its primary function is to evaluate and track whether Georgia schools and districts comply with the Adequate Yearly Progress ("AYP") standards established by the State under the federal No Child Left Behind Act. (Leonard Dep. 35.) In the 2007 school year, for example, 118 school systems in Georgia (two-thirds) failed to meet these AYP standards. (*Id.* at 176-77, Pltf. Dep. Ex. 23.) Every one of the Plaintiff and Sample Districts (as well as two of the Defendants' own Focus Districts) failed to meet those requirements last year.⁹ (Garcia Aff., ¶ 21, Ex. 20 (AYP Charts); Pltf. Dep. Ex. 25.) Last year, there were 328 schools throughout Georgia that repeatedly had failed these standards and were placed in the "Needs Improvement" category by the State. (Leonard Dep., Pltf. Dep. Ex. 23.)

⁸ Rather than recognizing these deficiencies, however, the State's response was simply to throw out these disturbing test results, claiming they somehow must have been "flawed." (Affidavit of Robyn D. Garcia ("Garcia Aff.") ¶ 73, Ex. 72 (AJC Article: "State Throws Out CRCT Results," May 22, 2008.))

⁹ In the face of these facts, the State asserts proudly that "All Plaintiff Districts and Plaintiff Focus District Schools either made AYP *or have a plan to improve* school performance pursuant to Georgia's Consolidated State Accountability Workbook." (Defs' Br. at 38 (emphasis added.)) The results show clearly, however, that such "plans", even when well intended by the districts, cannot succeed without adequate resources from the State.

Even if mere compliance with the State’s own standards were sufficient to prove constitutional adequacy (and it is not), there are large numbers of children in Georgia who are not receiving an education that is sufficient to meet those minimal State standards. Accordingly, the State’s motion fails even under its own incorrect standard of adequacy.

B. The State Seeks to Avoid its Responsibility for the Problem

The State also claims that if the school children of Georgia are not receiving a constitutionally adequate education, then it is not the responsibility of the State. In effect, the State now seeks to blame the local school officials, teachers, parents and children for the poor level of student achievement in Georgia. The State argues that any such failures are not “caused by” the lack of adequate State funding or any other factors controlled by the State. Instead, the State contends that all those inadequacies result from matters under “local control.” Thus, according to the State, these educational deficiencies are not tied to any lack of funding or any other factors under the control of the State. The State claims it has no authority or obligation to address these educational deficiencies.¹⁰ But, this argument is contradicted directly by substantial evidence in the record. For example, the State’s own witnesses described various programs and initiatives that the State undertakes specifically for the stated purpose of addressing these problems. (See, e.g., Creel Dep. 62; Cox Dep. 140-43.)¹¹

The State also relies heavily on its argument that provisions in the Constitution vest “management and control” of education “completely” with local school boards. (Defendants’ Rule 6.5 Statement, ¶ 1.) While these provisions do permit local management and control over

¹⁰ Students’ graduation rates and test performance scores are relevant “if they can be tied to the absence of necessary funding or to some other factors under the control of the State.” (Order of November 21, 2006, p. 4.)

¹¹ The State claims: “We do something about it. We take a very, very proactive approach to – when we see that the school achievement is not where it needs to be.” (Webb Dep. 274.) The Chair of the State Board of Education agrees: “Q: Thank you, but with the greatest respect, that’s not the question that I asked you, ma’am. The question I asked you was, if the efforts you’re taking aren’t being successful to the extent that you would like, don’t you believe that the State has an obligation to take further steps? . . . Yes.” (Barrs Dep. 46-47.)

the *delivery* of some educational services to students, the State again misses the point. Under the Constitution, it remains the fundamental obligation of the State to *provide* for those services, i.e., to ensure the financial resources necessary to create and deliver them. As this Court directed: “The State must provide the balance of whatever is necessary to ensure that an ‘adequate education’ is provided.” (November 2006 Order at 3.) Moreover, the law specifically requires that the State shall take control of and “manage” schools that repeatedly fail to meet federal Adequate Yearly Progress requirements. (Creel Dep. 36.) The State’s attempt to suggest that any local “management and control” provisions of the Constitution insulate the State from responsibility for its primary funding obligation simply makes no sense.

The State also argues that the local school districts have “other resources” available to them and that the evident educational deficiencies in those districts are not “caused” by the State’s funding system. Essentially, the State asserts that the Plaintiff districts “are not doing their fair share” to fund education and that the State therefore is not obliged to take any further steps to provide education for the children in those communities. Under the State’s theory, no adequacy challenge could ever be brought for any school district that taxes at less than the twenty-mill maximum rate allowed under the Constitution. However, all children are entitled to an adequate public education, without regard to the personal wealth of their families, the district where they happen to reside, or the political decisions of their local governments.¹²

Moreover, it is the State itself that has created and now maintains the school funding system that produces the current inadequacies that the State seeks to defend. The Constitution

¹² The State seems to have forgotten that several of the Plaintiffs in this case are individual students who are suffering personally as a result of the inadequate school funding in their school districts. Any attempt to bar the claims of those individuals based on the taxing decisions of local school boards simply falls flat.

authorizes local districts to impose a school tax of “no more than twenty mills.”¹³ In addition, the State has constructed a secondary taxing requirement, which provides that school districts will not be eligible to receive QBE formula funds unless they impose a local school tax of at least five mills. Every Plaintiff and Sample District, along with virtually every other school district in Georgia, has imposed local school taxes meeting and exceeding the millage requirement established by the State. That five-mill minimum requirement lies solely within the discretion and control of the State. Yet, the State never has suggested (until now) it is constitutionally inadequate, and never has taken any steps to require any district to impose a school tax greater than five mills. If the State truly believed that local school districts’ decisions to impose tax rates less than twenty mills were causing these educational deficiencies, then the State has the authority, opportunity and obligation to take action to change that result. The State has done nothing of the kind.¹⁴ Instead, it simply makes legal arguments criticizing the local efforts of school districts whose tax contributions already far exceed what the State requires.

The State also claims that “there is no evidence that increases in funding increase student performance.” (Defs’ Br. at 58.) That is nonsense. Of course, additional financial resources, when professionally applied, have positive impacts on improving educational results. (See Cox Dep. 140; Barrs Dep. 152; Deposition of Jennifer Rippner (“Rippner Dep.”) 64-68.) (See also Augustine Aff. ¶¶ 5, 6, 9; Martin Aff ¶¶ 6, 9, 11, 12; J. Williams Aff. ¶¶ 17-19.) The record is full of testimony, press releases, and other statements from the State touting the positive impacts of various State-funded programs on student achievement. (See, e.g., Cox Dep. 242-43; Rippner

¹³ This maximum tax rate can be exceeded only under special circumstances, which require a local referendum and constitutional amendment.

¹⁴ (See Cox Dep. 132, “Q: Have you made any recommendations to the Governor or the Legislature to increase that required local minimum? A: Not during my tenure, no.”)

Dep. 72-73; Pltf. Dep. Ex. 175.)¹⁵ Apparently, the State’s view is that additional resources are effective in improving education, but only in those programs for which the State can take credit.

Plaintiffs never have argued that money alone guarantees success. As discussed at length later in the factual summaries for the Plaintiff and Sample Districts, the evidence shows that the State’s failure to adequately fund Georgia’s educational needs has made it impossible to properly educate its students. (See pp. 16-80, supra.) (See also Martin Aff ¶¶ 16, 22.) Even the State’s hired experts have acknowledged that a positive relationship does exist between increased spending and greater student achievement. (Deposition of Eric Hanushek (“Hanushek Dep.”) 64-65; Deposition of Benjamin Scafidi (“Scafidi Dep.”) 376-78.) Basically, the State complains that the Plaintiffs have not presented a mathematical regression analysis calculating a statistical correlation between increased spending and student achievement. But the State has presented no legal authority holding that such statistical evidence is required for the Plaintiffs to sustain their claims.¹⁶

Plaintiffs will present evidence from dedicated, professional educators with experience teaching children in Georgia, and from respected experts in the field, describing the variety of ways in which Georgia’s educational programs currently are deficient; the ways in which those deficiencies are caused by inadequate State funding; and the plethora of available programs and initiatives that are available to provide an adequate public education in Georgia. (See, e.g.,

¹⁵ “Q: In recommending that appropriation to the Legislature, you and the Governor believed that spending an additional \$21 Million in funding would have a positive effect on the dropout rate [and] student achievement, true? . . . A: Yes, the Governor talked to the high school graduation coaches and the number one thing said was that we need to start earlier in the middle school.” (Rippner Dep. 72-73.)

¹⁶ Rather, experts in the field agree that regression analyses are ill-suited to demonstrating these types of complex relationships and do not provide an appropriate tool to determine whether increased funding will lead to increases in school performance. (Deposition of Henry Levin (“Levin Dep.”) 252, “So it’s really both of these, its resources and making sure resources are used wisely. And I don’t think that that can be proven one way or the other by these very broad and crude statistical models.”); Klein Dep. 110, “You can’t really put a lot of confidence in that kind of a regression analysis.”)

Augustine Aff. ¶¶ 4-10; Peterson Dep. ¶¶ 103-105, 181-82, 204-05; Beck Dep. 167-72, 184-88.)

In contrast, the State will present the testimony of economists and academics, who, while admitting focused spending does help, claim their statistical research cannot calculate the numerical impact of such initiatives. Without statistical “proof” that providing additional resources will help improve education in Georgia, the State contends there is no reason the State should be obliged to make any such efforts. Fortunately for the school children of Georgia, this case is not about statistics. It’s about students who are suffering, and real efforts to meet their fundamental educational needs.

V. SUMMARY OF FACTS

There is a mountain of disputed evidence material to the central issues in this case. Any suggestion that those issues can be narrowly viewed, or appropriately resolved based on a minimal statement of facts, misunderstands the breadth of the disputed factual issues to be addressed. While Plaintiffs have attempted to set out below a summary of certain key facts, these are merely representative of the broad-based evidentiary presentation that will be made at trial. It would be impossible for Plaintiffs to describe in this Response all of the evidence available to support their claims at trial.

The State’s motion misses the fundamental point. The question is not whether there is any evidence that the State believes would support its defenses. The issue before this Court is whether there is a *complete absence of evidence* that could be found sufficient to support the Plaintiffs’ claims. The State avoids this dilemma simply by ignoring all the volumes of evidence in the record that are inconsistent with its defenses.

A. A Summary of Inadequate School Funding in Georgia

(1) Overview of the State’s Budgeting Process

The State education budget is recommended to the legislature through the Governor’s Office of Planning and Budget. (Deposition of Scott Austensen (“Austensen Dep.”) 33.) That process is not a “needs-based” analysis and is not constructed to determine the actual cost of providing an adequate education in Georgia. Instead, the State’s education budget is driven primarily by political decisions on how much money there is “available” to be spent for education.¹⁷ The education budget recommendation is then constructed within the pre-determined expenditure levels set by the Governor and his staff. (Cox Dep. 74-77.) In effect, the politicians tell the educators how much they can spend, without any real effort to discern what the educators think the school children actually need to receive an adequate education.¹⁸ There may be few examples where State education leaders have sought to introduce educational considerations into this process, but they are not the norm. (Deposition of Jeffery Williams (“J. Williams Dep.”), Ex. 3 at 9.)

For example, last year the State School Superintendent expressly objected to the proposed budget submitted by the Governor’s Office of Planning and Budget and personally asked the Governor to replace approximately \$143 million in funding cuts that had been levied on the education budget for that year. (Cox Dep. 103-04.) The Governor declined to reverse those funding cuts. (Id.) At least one member of the State Board of Education actually voted to reject the proposed education budget because it failed to restore the necessary funding represented by those cuts. (Id. at 114.) Notwithstanding this opposition from members of the

¹⁷ According to the Deputy Superintendent for Finance and Business Operations, the State’s educational budget is determined largely by the “revenue prognostication” established by the Governor. (Austensen Dep. 33.)

¹⁸ “We’ll get OPB’s instructions for the compilation of that budget sometime generally in July. And we will then follow those instructions in terms of an agency of the Governor to where we’re allowed to ask for enhancements, you know, if we ask for an enhancement, what do we have to do to show a cut and so forth.” (Cox Dep. 75.)

State Board of Education, the budget was presented to the Legislature without a request for the funding required to meet those educational needs.¹⁹

(2) The State’s Failure to Adequately Fund the Required Foundation Costs

For more than 35 years, public education in Georgia has been funded using a “foundation” concept. (Deposition of Jeffrey Williams (“J. Williams Dep.”), Ex. 3 at 2.)²⁰ This approach recognizes that public education is an essential and fundamental obligation of the State, which must be made available to all Georgia’s students, regardless of their family wealth or other circumstances. (Id. at 2-4.) Accordingly, the foundation concept provides that the essential costs of education shall be provided by the State through an appropriate funding formula designed to meet those needs. (Id.) If local Boards of Education have the capacity to supplement this foundation level, they can do so with additional local revenues. (Id.)

(a) Georgia Has Abandoned its own QBE Funding Formula

In 1985, the Georgia legislature enacted the Quality Basic Education Act (“QBE”) as the statutory mechanism for meeting the State’s obligations under Article VIII of the Constitution. (Id. at 5-6.) The Act was adopted in recognition of the need to provide “an 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 Ga. Laws 1657, 1660; O.C.G.A. § 20-2-131(20).²¹ The Act equates an “adequate” education with a “quality basic education” and identifies certain capacities needed for an individual to function in society to:

¹⁹ “Q: But I take it the State Board has not authorized its legislative representative to lobby in the Legislature against the Governor’s budget proposal to get more money for education? A: No.” (Austensen Dep. 80.)

²⁰ The Budget Director for the State Department of Education has testified that Plaintiffs’ expert witness, Dr. Jeffrey Williams, is one of the “most knowledgeable people in the State” on Georgia’s QBE formula. (Austensen Dep. 34.)

²¹ 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.” (J. Williams Dep., Ex. 3 at 8.) The Commission was charged with the duty to “analyze and assess public education in Georgia,

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).

Many elements of the QBE formula were inadequately funded from its inception. (J. Williams Dep., Ex. 3 at 6.) Moreover, the State has failed to ensure that the provisions of the QBE have kept pace with the rising costs of education. (J. Williams Dep. 257-59, Ex. 3 at 11.)²² For example, the QBE Act expressly recognized that “the relative cost of the various program components will change over time.” O.C.G.A. § 20-2-161(f) (1985), amended by 2008 Ga. Laws Act 440 (effective July 1, 2008). The QBE Act expressly authorized the Governor to appoint a task force “every three years for the purpose of reviewing the effectiveness of existing program weights and recommending to the General Assembly any changes needed.” (Id.; J. Williams Dep., Ex. 3 at 8.) This three-year review cycle was made mandatory in 2000, but still has never been met fully by the State. (Id. at 15.)

To this day, more than 22 years later, no sufficient adjustments to the QBE formula or to the funding of its cost components have been adopted through the recommendation of any task force or other review process envisioned by the original Act. Although several task forces have been initiated, none of them has ever come forth with a comprehensive plan to adjust the funding levels adopted by the legislature in the QBE formula in 1985. At no time during the past two decades has any government agency or task force seriously examined what it would actually

provide a definition of what constitutes an adequate education within the context of the State Constitution, and define what constitutes a basic education.” 1983 Ga. Laws 599, 600-01.

²² “Q: Has your office done any analysis of the impact of inflation on school budgets” A: No.” (Austensen Dep. 77.) As the State’s Education Budget Director makes clear, the D.O.E. has no role in any such effort because it is the Governor who is “setting the fiscal requirements for the State.” (Id. at 77-78.)

require to adequately fund the educational needs of all Georgia's students. (J. Williams Aff. ¶ 34.) (See also, Barrs Dep. 24-25.) Indeed, the latest task force (IE²) was formed in 2004 and charged specifically with performing a cost study and creating a model cost structure to meet the actual financial needs of Georgia education. (Barrs Dep. 223-24, Pltf. Dep. Ex. 137.) As of this date, almost four years later, the Task Force has failed to meet that obligation. (Austensen Dep. 215-16; Barrs Dep. 230-31.)

In addition, it was anticipated that the QBE Act would be adjusted annually to provide for inflation or other increases to the costs components of the formula that would be necessary to ensure that the formula provide for an adequate public education in future years. (J. Williams Dep., Ex. 3 at 10, 17.) Although there were some inflationary adjustments in the first years of the QBE formula, the practice of budgeting annual inflationary adjustments was ended by the State in 1991. (Id., Ex. 3 at 11.) It has never been resumed. (Id.) Thus, with the exception of teacher salary costs, most components in the 1985 QBE formula have been allowed to languish since 1991 with only infrequent inflationary adjustments, or none at all. (Id. at 12.) Indeed, many of the changes in QBE funding formula over the past twenty years have occurred simply by redirecting funds from one element in the formula to another. (Id. at 13.)

(b) “Austerity Reductions” and Budget Cuts Have Crippled Georgia’s Education System

The State has repeatedly applied across-the-board funding cuts to the QBE funding formula. Beginning in the early 1990's, the State implemented substantial funding cuts across all elements of the education budget. (Id., Ex. 3 at 13, 18, 20.) Then, again, beginning in 2001, the State imposed further across-the-board funding cuts labeled “Austerity Reductions”, in response to recessionary concerns. (Id. at 18.) Notwithstanding the assumption of strong State revenue growth (indeed, State revenue surpluses) in subsequent years, all or a large amount of the

Austerity Reductions applied in 2001 have *never been restored* to the State’s education budget. (Cox Dep. 99; Austensen Dep. 80-81; J. Williams Dep., Ex. 3 at 18.) Even in the most recent budget adopted for fiscal year 2009, the State has applied approximately another \$90 million of “Austerity Reductions” to reduce the QBE funding formula amounts originally developed in 1986.²³ (Garcia Aff. ¶ 5, Ex. 4, Georgia Budget and Policy Institute, “Analysis of Fiscal Impact of Tax Bills.”)²⁴

In total, between fiscal year 2003 and fiscal year 2008, the State of Georgia has imposed approximately \$1.4 billion in across the board funding reductions to the QBE formula. (J. Williams Dep., Ex. 3 at 20.) Among others, the following educational programs have experienced austerity reduction funding cuts over the past seven years: professional learning (staff development) \$115 million; reading materials \$75 million; instructional technology \$150 million. (*Id.*, Ex. 3 at 21, 22, 27.) By way of further example, QBE funds provided for text books were reduced substantially in fiscal year 1991 and have had only one increase (in fiscal year 1999) since then. (*Id.* at 30.) Today, the funding amount provided for textbooks (approximately \$40 per student per year at the high school level) is *lower in absolute dollars* than the amount provided by the State in the late-1980’s, despite the fact that the price of text books has risen substantially during that time. (*Id.*)

Similarly, the QBE formula provides only \$298 per student for facilities maintenance and operations. (*Id.* at 35.) In reality, the average cost per system of facilities, maintenance and operation expenses is more than \$600 per student, based on fiscal year 2007 data. (*Id.*)

Accordingly, local districts are forced to spend more than \$450 million per year in local funds to

²³ These across-the-board reductions are referred to euphemistically in the FY09 budget as an “Amended Formula Adjustment” for each system.

²⁴ These education cuts were made despite the fact that the State also passed \$165 million in tax cuts and also maintains a Revenue Shortfall Reserve of \$1.5 billion. (*Id.*)

make up the deficit in amounts provided under the QBE for facility maintenance and operations. (Id.) Likewise, due to the Austerity Reductions and other State funding cuts, the amounts provided by the OBE for teacher professional development services are but a small fraction of the amount needed to provide for adequate student education. (Id.) In both absolute and inflation-adjusted dollars, the State's contributions for professional development expense today are significantly less today than they were in 2001. (Deposition of Toni Strieker ("Strieker Dep."), Ex. 5.) On an inflation-adjusted basis, the State's budgeted expenditures on professional development per teacher are about one-half what they were in 2001. (Id.)

In addition, these across-the-board reductions have also cut State funding for a variety of necessary programs including school lunch programs; high school vocational programs; early intervention and at-risk children programs; central administrative staffing; reading and math programs; sparsity grant programs; pay for performance programs; and various other programs necessary to provide an adequate education in Georgia. (J. Williams Dep., Ex. 3 at 28.) Many of the State funding programs also include arbitrary limitations on the number of students who may participate or on the amount per student that can be funded, without regard to the particular needs in any district. (Id. at 39.)

Although the equalization grant program provides some modicum of support to narrow the gap among school systems in their ability to fund costs outside the State's foundation plan, the equalization grants were never intended to make up for inadequate State support of the essential costs included in the QBE formula. (Id. at 36.) Thus, those equalization grants are not nearly sufficient to allow financially struggling school districts to meet the needs required for adequate education. (Id.) Likewise, although Federal funding sources do provide some support for education with respect to specific programs, most of those dollars are targeted to specific

purposes and uses. (Id. at 37.) These federal grants provide additional sources of revenues in some limited and restricted ways, but they cannot be used generally to overcome the deficiencies in the State’s own funding formula. (Id.) Rather, the express purpose of these federal entitlements is to “supplement” not “supplant” the available State and local funds. (Id.)²⁵

B. Poor Student Achievement on All Measures of Performance Reveals Inadequacies in Georgia’s Education System

Improving student achievement is the stated goal of the State. (See, e.g., Reichrath Dep. 18.) But, Georgia’s academic performance as a whole is generally very poor. The Plaintiff and Sample Districts, in particular, are especially disturbing examples of the inadequate educational achievement of Georgia’s public school system. “The State has a very low graduation rate, very low SAT scores, very low NAEP scores,” and the plaintiff schools “generally are doing worse than the State average.” (Peterson Dep. 89.)

(1) Georgia Suffers From a Graduation Rate Crisis

The State sets the requirements for high school graduation. (Cf. Cox Dep. 171-73; O.C.G.A. §§ 20-2-31; 20-2-140; 20-2-142; 20-2-150(a); 20-2-151(a), (b); 20-2-154(a); 20-2-281(a), (c); Ga. Comp. R. & Regs. §§ 160-4-2-47; 160-4-2-48.) Indeed, according to the Chair of the State Board of Education, the State’s obligation to provide adequate education is: “That all students have an opportunity to work toward a high school diploma, which can assure them an opportunity for post-secondary options.” (Barrs Dep. 55.) Thus, the State’s “graduation rate is an important indicator” to determine an adequate level of success. (Id. at 62-63.) Similarly,

²⁵ See, e.g., 20 U.S.C. sec. 6321(a) (maintenance of effort); 20 U.S.C. sec. 6321(b) (general provision on federal funds to supplement no supplant); 20 U.S.C. sec. 7355a (supplement not supplant for rural education initiatives); 20 U.S.C. sec. 6934(f) (supplement not supplant for programs to educate limited English-proficient children); 20 U.S.C. sec. 6435(b) (supplement not supplant for prevention and intervention programs for youth who are delinquent or at-risk); 20 U.S.C. sec. 6383(i) (supplement not supplant for library technology and professional development programs).

under the No Child Left Behind Act, the State uses high school graduation rates as a measure of school and school district performance. (20 U.S.C. § 6311(b)(2)(C)(vi).) (See also, Leonard Dep. 52.) The graduation rate, together with various testing results, is a key academic indicator of the level and quality of student learning in Georgia. (Peterson Dep. 253; Reichrath Dep. 121; Deposition of Hobart Harmon (“Harmon Dep.”) 69-71.)

Despite the obvious importance of high school graduation as an indicator of educational success, there can be no dispute that Georgia’s high school graduation rates are among the worst in the nation. In fact, the U.S. Department of Education Data ranks Georgia’s graduation rate 48th out of 50 states. (Creel Dep. 113-14.) “The State of Georgia has extremely low graduation rates compared to the nation as a whole and to the other states.” (Peterson Dep. 9-12, 88-89.) (See also Swanson Dep. 43.)²⁶

Recent analysis (using nationally accepted graduation calculation methodologies) shows Georgia consistently near the very bottom among the United States in graduation rate, with only 56.1% of Georgia students in the class of 2007 graduating within four years of entering high school. (Swanson Dep., Ex. 12 at 28.) (See also, Levin Dep. 51, “There’s pretty much agreement, even with minor differences between the methods that I’ve mentioned . . . that Georgia is graduating about 56 percent.”) Georgia’s schools are even worse off when it comes to graduation for minorities and other subgroups. (See, e.g., Garcia Aff. ¶ 27, Ex. 266, State-Reported Subgroups Graduation Rate Charts.) Evidence shows that in the 2006-07 school year,

²⁶ Although some Georgia Department of Education (and other defendant) witnesses have quibbled with particular adjectives like “inadequate,” “insufficient,” and “unsatisfactory”, in their depositions, not even the Defendants’ witnesses claim that Georgia’s graduation rates are at an appropriate level. (See, e.g., Creel Dep. 108, “Q: Okay. And you would agree with me that 60 percent is not an acceptable graduation rate for Georgia. A: It’s not; Cox Dep. 250-51, “we know that our graduation rate is not where we want it to be”; Rippner Dep. 101-02, “Nothing about our graduation rate makes me proud to be honest.”)

only 47% of Black students and 42% of Hispanic 9th graders made it to graduation 4 years later. (Swanson Dep. 123-124, Ex. 12.)²⁷

Although Georgia’s statewide graduation data is disturbing, at best, and the results in the Plaintiff and Sample Districts are frequently worse:

Graduation Rate²⁸	
Elbert	48.3%
Wayne	50.3%
Murray	51.2%
Polk	53.2%
Ben Hill	60.9%
Charlton	63.6%

(Swanson Dep., Ex. 13, “CPI Graduation Rate Data.”)

Underlying these poor graduation rates is the equally distressing fact that the State intentionally uses, for its official reporting purposes, a method of calculating graduation that is widely agreed to inflate the actual results. (Swanson Dep. 44; Levin Dep. 51.) In effect, the State’s reported graduation rate figures “sugar-coat” the severity of the dropout crisis in Georgia. (Swanson Dep. 44.) The State calculates graduation rate by only counting those students who are “known” to have dropped out of high school. (*Id.*) In many cases, students who never come back to school simply are ignored as “transfers,” not drop outs. In contrast, the methods relied on by Plaintiffs actually calculate the difference between the number of incoming 9th grade students and the number who actually meet the State’s requirements to graduate four years later. (Swanson Dep. 49-50; Levin Dep. 50-51.) The State’s practice of reporting graduation rates

²⁷ (See also Peterson Dep. 78-79, “The state as a whole has a graduation rate -- I know the State says 70-some percent, but others who compare it in a metric that’s similar across the states indicate it’s more like 56 percent. And in these districts, the percentage of students not graduating, using the national metric, would be probably even worse than the 56 percent, meaning that almost half the students, or more than half the students, are not graduating from even high school. And the rates for economically disadvantaged students and African-American and Hispanic students is even worse.”)

²⁸ Graduation rates calculated using the Cumulative Promotion Index (CPI) method used by the EPE Research Center. (Swanson Dep. 108-09).

under its method overstates the number of students meeting its graduation requirements by approximately 14%. (*Id.*)²⁹ (See also Garcia Aff. ¶ 23, Ex. 22 (2003-12005 Percent of 9th Grade Students Who Reach 12th Grade Charts.))

(2) **National Testing Illustrates the Severity of Georgia’s Situation**

When compared with the rest of the United States, Georgia demonstrates serious inadequacies though its students’ achievement on national, standardized tests. For example, the well-known SAT exam is administered nationwide and required by many colleges and universities for admission. (See <http://www.collegeboard.com/student/testing/sat/about.html>.) “Nearly every college in America accepts the SAT ... as a part of its admissions process. That’s why more than two million students take the SAT every year.” (*Id.*) SAT scores, like other standardized tests, are an important indicator of student achievement. (Barrs Dep. 37-38; Reichrath Dep. 19-20). But these results also place Georgia’s students near the bottom of the nation, year after year. (Barrs Dep. 39-42, 45; Cox Dep. 261; Leonard Dep. 138-39). Astonishingly, the Governor’s former Education Policy Advisor, who now directs the Governor’s Office of Student Achievement, *is “proud” that Georgia’s SAT scores place it 46th in the nation.*³⁰

In 2007, Georgia students scored an average composite SAT score of only 1,472 (out of 2,400), which ranked Georgia at 46 of the 50 states. (Webb Dep. 393-94; Cox Dep. 253; Barrs Dep. 39, Pltf. Dep. Ex. 40; Cox Dep. 253, Plaintiffs’ Ex. 192, “Georgia Holds Ground on SAT”.) The year before, Georgia similarly landed in 46th place. (Rippner Dep. 99.) In 2005, Georgia fell

²⁹ The State School Superintendent testified that supposedly does not know whether the State’s graduation rate will go up or down as the result of using a cohort analysis. (Cox Dep. 248.) But unbiased data shows the State’s self-reported graduation rate likely will drop by approximately 16.4% if and when it ever implements these changes. (Swanson Dep. 107-08, Ex. 12 at 26.)

³⁰ “A: Actually I’m proud of our growth moving up from dead last [in SAT scores], I believe we’ve more farther. But I’m very proud of our growth. Q: But the question I asked you, ma’am, was whether you were proud to be 46th. A: Yes.” (Rippner Dep. 99.)

to dead-last among the 50 states on SAT scores. (Cox. Dep. 260-61.)³¹ (Garcia Aff. ¶ 32, Ex. 31, “Georgia Makes Historic Gains on SAT,” http://www.gadoe.org/pea_communications.aspx?ViewMode=1&obj=1231.)

Even among high participation states, Georgia’s SAT results are poor. (Reichrath Dep. 149-52 (admitting that 10 of the 12 states with higher SAT participation rates than Georgia scored higher than Georgia and that 1 of the remaining 2 states “was Maine where 100 percent of students now take the SAT.”) (See also, Cox Dep. 258.) As acknowledged by various State witnesses, including the Director of School Improvement, Georgia’s SAT scores are “unacceptable” and demonstrate that our students are not sufficiently prepared for post-secondary education. (Creel Dep. 148-49, “It is unacceptable. We want to have higher scores.”) (See also, Cox Dep. 261-61. “Q: And I assume that you are not satisfied with the fact that Georgia’s math SAT score in 2006 was the lowest among the states, correct? A: Correct.”)

The SAT is not the only national test that reveals Georgia’s serious educational achievement problems. The National Assessment of Educational Progress (NAEP) is an important national test given to a sample of students throughout the country.³² Georgia’s students consistently score below the national average. (Creel Dep. 140, “Q: And in looking at this chart, it appeared to me that for every single score, for every single year in every single subject, Georgia’s average [NAEP] score was below the national average score; is that right? A:

³¹ Although there is no escaping the inadequacy of Georgia students’ performance on the SAT, the State is prone to “sugar-coat” Georgia’s dismal results in artfully-worded press releases. For example, in 2007, when Georgia students again demonstrated poor performance on the SAT, placing Georgia 46th in the nation, the State described this continued failure as “Georgia Holds Ground on SAT.” (Cox Dep. 252, Pltf. Dep., Ex. 192.) Apparently, although once again near the bottom of the nation, Georgia’s 5 point drop (on a 2400 point scale) was sufficiently “better” than the average national point drop that year (of 7 points) to be described publicly as a Georgia “success”. Thus, despite landing again in 46th place, the State claimed, “Georgia’s high school seniors kept pace with the nation on the SAT last year, which is good news.” (Cox Dep. 252, Pltf. Dep. Ex. 192.) (Compare, Webb Dep. 396, “I would not agree that is good news.”)

³² The NAEP tests are generally recognized as the “gold standard” for test score comparisons because of the technical quality of the procedures that are used to develop, administer and score these exams, and that the specifications for the NAEP exams are based on a consensus of the national panel of experts. (Klein Dep. 34.)

That's correct.") (See also, Peterson Dep. 79, "The achievement scores on NAEP, which is given statewide, would indicate that the achievement in the state statewide, and particularly for low income kids and African-American and Hispanic kids, is extremely low.") (See also, Snow Dep. 46-47; Barrs Dep. 198-99; Cox Dep. 277; Reichrath Dep. 133-36; Klein Dep. 49.)

For example, the 2005 NAEP test revealed that only 26% of Georgia's fourth graders scored as proficient in reading and only 30% were found proficient in math. (Leonard Dep. 140-41; Snow Dep. 47.) In that same year, only 25% of Georgia's tested eighth graders were found to be proficient in reading and only 23% were proficient in math on the NAEP Tests. (Leonard Dep. 141-42; Domaleski Dep. 105-06, Pltf. Dep. Ex. 310.) The results from 2007 were not much better. Only 32% and 25% of 4th and 8th graders, respectively, were proficient at math, and merely 28% and 26% of 4th and 8th graders, respectively, were proficient in reading. (Reichrath Dep. 135-36; Creel Dep. 140-42; Barrs Dep. 203-04; Cox Dep. 275-78.) Even the State's hired witness, Dr. Murphy, agreed that Georgia students' poor achievement rates on the NAEP test are not "acceptable for any organization." (Murphy Dep. 220-21.)

(3) Educational Inadequacies are Shown by the State's Own Performance Standards

Georgia students are tested on a regular basis at different grade levels for the purpose of assessing whether students are meeting certain State academic performance standards. School districts and schools in Georgia are supposed to be held accountable for whether students are meeting minimum levels of competency based on State standards. O.C.G.A. §§ 20-2-281, 20-14-33, 20-14-41. State law mandates that Georgia students be assessed in a number of ways, including, among others, the Georgia Criterion-Referenced Competency Tests ("CRCT") for grades 1 through 8 and the Georgia High School Graduation Test ("GHSGT"). O.C.G.A. § 20-2-281. Georgia's state-created tests are less rigorous than similar nationwide tests and are not

sufficient to indicate appropriate levels of academic achievement. (Klein Dep. 84-85; Reschly Dep. 55-56.) But the results of Georgia’s own CRCT, End of Course Tests, and the GHSGT show that the students are not receiving the education necessary to meet even these minimal State Standards.

(a) **State Tests Show Inadequacy: CRCT**

The State’s CRCT testing shows large numbers of students throughout Georgia are academically deficient and fail to meet even the minimum State standards. For example, the State recently released results showing that in 2008, 38% of eighth grade students failed to meet State standards on the math portion and 40% of eighth grade students failed the science portion of the CRCT. (Garcia Aff. ¶ 30, Ex. 29 (AJC article by Christopher Domelski, “Test – Some Good News You May Have Missed.”)) Similarly, in 2008, 72% of sixth grade students and 76% of seventh grade students could not meet State standards on the social studies portion of Georgia’s CRCT. (Garcia Aff. ¶ 30, Ex. 29.) In response to recent public outcry concerning the very low student achievement reflected by these measures, the State’s response was to simply throw out the social studies test results, claiming they must somehow have been “flawed.” (Garcia Aff. ¶ 33, Ex. 32.)

But poor CRCT test results are nothing unusual in Georgia, especially in the Plaintiff and Sample Districts. In 2007, approximately 53% of Charlton County students in grade 6 failed to meet the State’s standard on the Georgia CRCT in Science. (Snow Dep. 172-81, Pltf. Dep. Ex. 76.) In the same year, 42% of students in grade 6 in Elbert County failed to meet the State’s standard on the Georgia CRCT in Mathematics. (*Id.*) In grade 6, during the 2006-2007 school year, 47% of the student body in Ben Hill County could not reach the State-set standard on the Georgia CRCT in Mathematics; 24% of students did not meet this cutoff in Social Studies; and 57% did not meet this standard in Science. (*Id.*)

The results are even worse for students with additional needs. In Murray County, 62% of Limited English Proficient Students did not meet the State standard in reading; 77% did not reach this level in English and Language Arts; 86% failed to meet this mark in Mathematics; 77% could not meet this cutoff in Social Studies; and 92% were not reaching this level in Science in 2007. (Webb Dep. 353-56, Pltf. Dep. Ex. 109.)

Similarly, in 2006, 54% of the students with disabilities in Polk County did not meet the State's standard on the CRCT in Social Studies, and 61% could not meet this objective on the English Language Arts CRCT. (Id. at 376-77, Pltf. Dep. Ex. 114.) For the 2004-2005 school year, 29% of all economically disadvantaged students in the State of Georgia failed to meet the State's standard for competency on the Georgia CRCT in English and Language Arts. (Id. at 337-41, Pltf. Dep. Ex. 105.)

These frighteningly high failure rates throughout Georgia, and particularly in the Plaintiff and Sample Districts, show systemic inability to provide adequate education to all students in the State.³³

(b) State Tests Show Inadequacy: EOCT

Results on End-of-Course Tests (EOCTs) also paint a bleak picture of the adequacy of the education provided to Georgia students. (See, e.g., Garcia Aff. ¶ 24-25, 28, Exs. 23-24, 27 (EOCT Failure Rates Plaintiffs and Plaintiff Sample Districts, EOCT Data for Certain Plaintiffs' Subgroups, EOCT Failure Rates for Various Subgroups.)) The A+ Educational Reform Act of 2000 mandated that the State Board of Education adopt end-of-course assessments in grades nine through twelve for core subjects to be determined by the State Board of Education. O.C.G.A. §20-2-281. But, as the State School Superintendent has stated, “[i]n 221 of our high schools, at

³³ “Q: Would you find a failure rate of 53 percent in science or 38 percent in mathematics to be adequate? A: 53 percent is unsatisfactory for science. Q: How about 38 percent for math? A: That is also unsatisfactory.” (Snow Dep. 174-75.)

least half of the students failed one of our EOCT's.”³⁴ (Cox Dep. 262, Pltf. Dep. Ex. 37. (See also, Barrs Dep. 43.) Superintendent Cox has also acknowledged that “47 percent of the schools that offered the biology EOCT had more than half their kids fail the exam.” (Pltf. Dep. Ex. 37; Barrs Dep. 44.)

Looking particularly at the Plaintiff and Sample Districts, there is a disturbing pattern of students failing to meet even the State's own defined standards (and through end-of-course tests), particularly students that may have additional needs.³⁵ For instance, 50% and 54% of economically disadvantaged and Black students respectively in Ben Hill County failed the Algebra I end-of-course test in 2006-07. (Garcia Aff. ¶ 24, eRH 1469.) Those failure rates were even worse the prior school year, at 57% and 64%, respectively. (Id.) On the same EOCT in Charlton County, 43% of all students failed, with 56% of Black students failing the test. (Id. at ¶ 24, eRH 1469.001.) Overall, about one half of Charlton County's students failed to meet the State's minimal standards in subjects such as economics, U.S. History, biology, algebra, geometry, and literature and composition. (Snow Dep. 175-76.) Students at Elbert County also failed to meet the State's standards at an alarming rate. (Id. at 176-78.) The results were no better in Murray County (id. at 178-79), Polk County (id. at 183-84), and many other districts throughout Georgia.

There can be no reasonable dispute that these results show Georgia's students are at a level of education that is “unsatisfactory” to meet the State's own standards. (Id. at 175-184.) The various EOCT results demonstrate that even the State's minimal curriculum standards are not being effectively provided to Georgia's students. (Barrs Dep. 44-45.) As the State School

³⁴ Georgia has approximately 370 high schools. (Leonard Dep. 180, Pltf. Dep. Ex. 23.) This means that according to the State, almost 60% of Georgia's high schools had more than one-half their students fail an EOCT.

³⁵ See generally, Garcia Aff. ¶ 24, eRH 1469-1469.023.

Superintendent has acknowledged, this poor level of performance throughout Georgia on the State's own EOCT's has put the State fully on notice that it is not successfully providing an education sufficient for the students to master the elements of the required curriculum:

Q: But the bottom line is, as reflected by these data that you were sharing with the Georgia School Board Association, the EOCT test data reflects a level of student achievement that you don't believe to be satisfactory, correct?

COUNSEL: Objection as to what you mean by satisfactory. In what respect?

Q: Satisfactory to her as Superintendent of Schools of the State of Georgia

A: I think the word would be it's alarming to me.

...

A: But from that perspective of using End-of-Course assessment as a judgment of whether or not our state standards are being grasped by our students, I have great cause for concern that that's happening in our high schools when those results come back.

(Cox Dep. 267-68.)

(c) **State Tests Show Inadequacy: GHSGT**

Another one of the State's own competency standards, the Georgia High School Graduation Test, is administered to students as part of the State's graduation requirements. O.C.G.A. § 20-2-281 (See also, Leonard Dep. 61.) This test also reveals unacceptable levels of student achievement in Georgia and shows that the students simply have not been provided a sufficient enough education to receive a diploma. (See, e.g., Garcia Aff. ¶ 29, Ex. 28 (GHSGT for Students with Disabilities in Plaintiffs' Districts.)) For example, in 2007, 24.1% of all students in Georgia taking the Enhanced GHSGT (EGHSGT) in mathematics did not meet the

required standard to pass the test.³⁶ (Webb Dep. 330-32, Pltf. Dep. Ex. 31.) Likewise, on the EGHS GT in English language arts, 43.4% of English language learners did not pass the test. (Webb Dep. 322-23, Pltf. Dep. Ex. 30.) For that same test, 37.6% of students with disabilities failed to meet the requirements. (Id.) Overall, Black students in Georgia taking the mathematics portion of the EGHS GT fared poorly also, with 38.9% failing to meet the State’s standards. (Webb Dep. 330-32, Pltf. Dep. Ex. 31.)

In Murray County, 42% of all students failed the science portion of the GHS GT. (Snow Dep., Pltf. Dep. Ex. 76 at 6.) On the same test in Ben Hill County, 40% of all students failed to meet the State’s minimal standards in 2006-2007. (Snow Dep. 172-81, Pltf. Dep. Ex. 76, at 7.)

(4) State Standards for NCLB Leave Most Georgia Students Behind

As a condition on receipt of federal funds under the Elementary and Secondary Education Act of 1965, Title I, Part A, 20 U.S.C. §§ 6301-8923; 6311(a)(1), the State of Georgia has established State standards for “adequate yearly progress” (AYP) toward reaching proficiency on certain State academic measures, including reading and math assessments, for schools and school districts receiving Title I funds. 20 U.S.C. § 6311(b), (h)(4) (See also, Leonard Dep. 82, 103, 206.) Individual schools and districts “make” AYP or not, depending on whether enough students satisfy the State’s defined, annual progress objectives.³⁷ AYP compliance, therefore, is yet another measure of whether student achievement in Georgia is sufficient to meet appropriate standards. (Reichrath Dep. 21). According to the Chair of the State Board of Education, the State measures whether it is providing an adequate education through its “state-wide

³⁶ Georgia actually has two High School Graduation Tests. The test originally created by the State was rejected as insufficient for NCLB purposes by the U.S. Department of Education. As a result, the State was forced to create a new “Enhanced” version of the test for AYP purposes. But the State continues to use the original test rejected by the U.S. Department of Education for Georgia’s own graduation standard. (Leonard Dep. 87-88.)

³⁷ Until very recently, the State defined such acceptable progress essentially as “any progress,” no matter how small, from prior years. In some cases, even if an insufficient number of students meet the required standard, through various mechanisms, the school can still “make” AYP. (Leonard Dep. 70-76, 106-07.)

accountability system.” (Barrs Dep. 56.) That system principally monitors AYP compliance and results. (Leonard Dep. 18-19.)

For a variety of reasons, AYP standards are a minimal test, at best, of necessary educational achievement. (Leonard Dep. 53-56.) Indeed, the State’s own Director of Accountability acknowledged that these standards only seek to evaluate student achievement in certain limited areas, such as math and reading/English language and make no effort at all to measure achievement in other content areas, such as science or social studies. (Id., 53-54, “Q: In other words, you could do horribly. Everybody could fail science in every school in Georgia, and we could still meet AYP? A: correct.”)

Apparently satisfied with such a limited curriculum, the State Director of Accountability has also stated: “*I think you can do without science.*” (Leonard Dep. 55); “*I think [Georgia students] can succeed in the world without social studies.*” (Id. at 57-58.) Unfortunately, the actual results in Georgia show a consistent lack of success across the State in meeting even these minimal standards, especially in the Plaintiff and Sample Districts. (See generally, Garcia Aff., Ex. 20.) In Georgia last year, almost two-thirds of all school systems failed to meet AYP requirements. (Cox Dep. 278; Creel Dep. 171-72; Pltf. Dep. Ex. 23.) In total, over 450 schools in Georgia failed to meet these State-defined objectives. (Creel Dep. 36.) When a school fails for two years in a row to make AYP, it is placed in the “Needs Improvement” category by the State. (Leonard Dep. 184.) In Georgia, there were 323 schools in this “Needs Improvement” category in 2007. (Creel Dep. 34, Pltf. Dep. Ex. 23.) Some schools fail to meet AYP over and over again. In 2007, there were 76 schools (up from 68 in 2006) that were in Needs Improvement status 4 or more consecutive years. (Garcia Aff., Ex. 20, 1466.) (See also, Leonard Dep. 187.) As the State is *well* aware, there are 10 Georgia schools that have been in

“Needs Improvement” status under AYP for *eight consecutive years*. (Leonard Dep. 185, Pltf. Dep. Ex. 23.)

The State claims that it provides “additional intensive support” for schools in “Needs Improvement” status. (Defs’ Br. at 38.) But these results show that whatever support the State claims to provide simply is not enough to allow these schools to succeed in meeting the State’s requirements. Georgia’s School Improvement Division has an annual budget of \$11.2 million. (Creel Dep. 26.) None of that money is paid directly to schools or school districts that might need additional funds to meet the AYP objections set by the State, or to remove themselves from Needs Improvement status. (Creel Dep. 34.)

The State’s Director of Accountability concedes that these AYP results do not reflect an adequate educational system. (Leonard Dep. 180, “Q: [I]s the fact that almost half of Georgia’s high schools failed to meet AYP requirements indicative of an adequate educational system? A: No.”) The State School Superintendent also is “not satisfied” with the level of AYP performance of Georgia’s schools. (Cox Dep. 280.) Moreover, even though Georgia has consistently failed to make Adequate Yearly Progress, the requirements for meeting AYP are increasing annually and meeting those measures of achievement will become even more difficult for Georgia’s schools. (Reichrath Dep. 160, AYP requirements are “[c]ertainly” increasing and “if schools [do] not improve from their current position, they would certainly not make AYP in [the] future.”)

(5) College-Going Rates Languish and College Preparedness is Lacking

Even the students who meet all the State’s standards for graduation are not sufficiently prepared to succeed in later life. One study shows that only about 35% of Georgia’s Ninth Grade students will enroll in college four years later. (Garcia Aff. ¶¶ 22, 21.) Further, even those students who are able to progress to college are often inadequately prepared for post-secondary

study and require remedial coursework before engaging in normal, college-level study. (Leonard Dep. 172-73; Creel Dep. 162-64; Barrs Dep. 196-97.)

For example, the State's own data shows that 27% of students from Elbert County schools had not completed the college preparatory curriculum, and 35% were required to take remedial courses in either English, reading or mathematics upon entering the Georgia university system. (Creel Dep. 162, Pltf. Dep. Ex. 44.) Of students entering college from Wayne County, 20% were required to take remedial classes and 12% were found not to have completed the required college preparatory curriculum. (*Id.* at 163.) In Ben Hill County, approximately 38.6% of students who entered a Georgia public college in 2003-2004 required additional learning support. (Garcia Aff. ¶ 9, Ex. 8.) For the same year, Charlton County had 17.2% of its students entering a Georgia public college who required learning support classes. (Garcia Aff. ¶ 8, Ex. 7.) In 2003, almost half of Murray County students (44.2%) were required to take remedial classes upon entering a Georgia public college. (Garcia Aff. ¶ 10, Ex. 9.) Likewise, 21% of Polk County's students found it necessary to take these remedial classes, when they entered public Georgia colleges in 2003. (Garcia Aff. ¶ 11, Ex. 10.)³⁸

The State receives similar data showing college remediation needs and related information for every school system in Georgia. (Leonard Dep. 173.) It is well aware of this problem. The fact that students need remedial work upon entering college shows they did not receive an education sufficient to prepare them for post-secondary study. (Deposition of Vicki Reed ("Reed Dep.") 117-18.) The State knows it is not providing enough to prepare Georgia's students for college, but has abdicated its responsibility to properly address that problem.

³⁸ In comparison, the State percentage for students that graduated from a Georgia high school that also required this type of remedial instruction when they entered a Georgia public college was 18.1% for 2003-2004. (Garcia Aff. ¶ 11, Ex. 10.)

C. Lack of Adequate Educational Opportunities in Plaintiff and Sample Districts

The extremely poor performance of Georgia's schools, as described in part above, results from systemic deficiencies throughout Georgia and a pervasive lack of funds necessary to accomplish that which is required to properly educate Georgia's students. Evidence has consistently shown a lack of educational opportunities in Georgia, and in the Plaintiff and Sample Districts in particular. (See, e.g., Deposition of Samuel Light ("Light Dep.") 161.) Unfortunately, the opportunities required to provide for a diverse group of students require substantial financial resources, which many school districts simply do not have. (See generally, Peterson Dep. 17-19.) The following are summaries of the situations in six school systems in Georgia, which lack the funds required to provide sufficient educational opportunities for their students. These summaries are representative of the systemic problems adversely affecting education throughout many of Georgia's school districts.

(1) Murray County Cannot Provide Its Students Adequate Educational Opportunities

The Murray County School System ("Murray") is not providing all its students with the basic educational opportunities they need to be productive in society. (Reed Dep. 115-16, 119.)³⁹ The Superintendent in Murray has discussed this lack of basic adequate education with its School Board, and has expressed the concerns she has with the curriculum being provided for Murray's students. (Id. at 119-20.) Although she consults with the principals of the schools hoping to see how they can improve the curriculum and education provided to students, she finds that the district simply does not have the resources necessary to make the necessary improvements to provide an adequate education in her district. (Id. at 121.) The educational opportunities that are

³⁹ The Superintendent of Murray testified that her own three children, who attended Murray schools, did not receive the basic educational opportunities "to sufficiently prepare them for life beyond high school." (Reed Dep. 116.)

essential in this low-wealth community (especially for at-risk students), to be successful in education and, as a result, be better prepared for college and employment and to participate in the democratic life of the community, are not adequately available to the students who need them in Murray's schools. (Peterson Dep., Ex. 8 at 4.)

The budget at Murray is tight, to say the least. (Reed Dep. 175, 254, 262, 374; Peterson Dep., Ex. 8 at 4.) In creating the proposed budget for Murray, the Finance Director must consider funding requests from the Personnel Department, principals, and the Curriculum Director. (Deposition of Stephen Loughridge ("Loughridge Dep.") 22-23, 29.) The school principals consider the effectiveness of programs in raising student performance when deciding whether to seek funding for the program the following year. (Loughridge Dep. 28-29.) The Finance Director/Central office reaches a consensus with principals and department heads about what will be in the budget. (Id. at 35-36.) The proposed budget is then reviewed by the Finance Committee of the Board and the Superintendent is involved in the process the entire time. (Id. at 22-23.) But there is no room in the budget to include the many necessary items that the district simply cannot afford to provide. (Id. at 36.) It would be pointless to include in a proposed budget, programs or initiatives that the district leaders already know they have no funds to provide. (Peterson Dep. 261-62.)

Murray student performance is not meeting the State's standards, much less what is required for an adequate education. Murray did not make AYP in the 2006-2007 school year. (Leonard Dep. 193, Ex. 25 at 4.) The high school failed to meet AYP particularly because of its very poor graduation rate and because of the inadequate math test scores of socioeconomically disadvantaged students. (Id. at 107-08.)

Murray has relied on grant funding for programs and services its students need, like technology, instructional coaches, math labs, and additional services for students with disabilities. (Id. at 48, 102, 105, 107, 307, 310, 312, 361.) In an effort to remedy serious deficiencies in mathematics, and without additional support from the State, the district relies on grant money from the local Regional Educational Service Agency (“RESA”) to offer a special mathematics lab to address that critical area in the middle school. (Id. at 107.) Although that program has had some positive effects, it is not sufficient to address all the students’ needs. (Beck Dep. 188-89, 242-43, 249, 277.) Typically, when such a grant run out, the district has to cut or eliminate the opportunities that had been provided under the grant and loses the benefit of that program. (Peterson Dep., Ex. 8 at 4.)

The district does not have a sufficient budget to cover all the students’ needs. It attempts to do the most with what it has. (Reed Dep. 176, “It is a budget that is meeting some of our needs. It is not enough money in any of the areas to provide us with the services that we need in any of the areas, but it’s the best we have and the best that we can do at this point.”) Murray had recently been forced to increase local taxation to cover deficiencies and budget cuts from the state. (Loughridge Dep. 53, “[O]ur fund balance was low at that time . . . and to meet our minimum class size requirements . . . and then we had had one year of austerity cuts, . . . to meet our demands, we had to raise the millage rate.”) Raising the millage rate any further in order to raise additional funds is not a viable option for Murray, as it puts a large burden on a very small group of the population. (Reed Dep. 56.) Although the district has additional needs, the Superintendent knows that requests for additional money from the School Board are futile, given the district’s dire financial situation. (Id. at 374-75.)

Some of Murray's biggest school issues relate to staffing. The district spends the majority of its budget on personnel, largely due to the state-required salary schedule. (Id. at 59-60.) The district's budget is based on teacher/pupil ratios required by the State's maximum class size standards, but the State does not provide enough funding for the salaries of all the required teachers. (Id. at 52.) (See also, Peterson Dep., Ex. 8 at 6.) The district's most recent unsatisfied need was for additional staff to maintain the computer labs in the elementary schools. (Loughridge Dep. 30.) That program had to be eliminated because it was funded with federal monies, which needed to be redirected to another source to cover other deficiencies. (Id.)

Further, because of funding restrictions, Murray had to eliminate all paraprofessionals in first grade classes. (Id. at 26.) The district could only afford to have two paraprofessionals per school, as opposed to the one per class they previously had used. (Id.) These lost positions have not been refilled. (Id. at 48-49.) Evidence shows that the paraprofessional positions are important for student achievement because their presence lowers the class pupil ratio and assists the teachers to effectively deliver instruction to each student especially in areas like reading. (Reed Dep. 58-59, "especially at the lower levels, when you're trying to do reading instruction . . . it's always better to have two people in a classroom meeting the needs than one.")

The supplement previously given by Murray for principals by the State was discontinued in 2007, and Murray was forced to fund it locally in order to prevent pay cuts for its principals. (Reed Dep. 351-52; Loughridge Dep. 95.) Because of Murray's limited ability to attract qualified personnel (through salary supplements or otherwise), student instruction is not as effective as it needs to be. (Strieker Dep. 318.)

The Southern Association of Colleges and Schools (SACS) requires a full-time counselor and a full-time media specialist at the alternative school, but Murray cannot afford to provide

either position at the alternative school. (Reed Dep. 191-92.) The alternative school only has a part-time counselor and does not have any media specialist at all. (Reed Dep. 142-43.) That one counselor who serves the alternative school also serves the 9th Grade Academy. (Id.) The students at the alternative school have access to media via the internet only and the school is borrowing books from the high school to meet the number-of-books-per-student requirement. (Reed Dep. 192.)

The Early Intervention Program, through testing and cut-off scores, identifies students who are at-risk of not reaching or maintaining academic grade levels and provides additional instructional or remedial resources to help these students perform at or above their grade level. (Brown Dep. 42-44.) Murray provides this program, but does not have the resources to implement the program in an effective manner for all of its students. (Reed Dep. 226-27.) Murray offers only minimal remedial services to its students, and can only afford to offer them to the elementary school students. (Id. at 227-28.) Specifically, the district cannot afford to offer the pull-out method of instruction for EIP students. (Id. at 149.) The district also cannot afford the expense involved in hiring teachers to pull students out of class and work with them in a smaller setting. (Id.) Instead, the EIP teachers are placed in the classroom and offer EIP in a self-contained setting, a program that is far less effective. (Id. at 226-27.) Like the computer lab teachers discussed above, the EIP teachers were enhancing classroom instruction by offering intervention and remediation strategies. (Id. at 153.) Those students no longer have access to that type of individualized support because the district cannot afford to hire teachers for these positions. (Id. at 149.)

When the State instituted a program of graduation coaches, the State provided some funding for a coach, but only enough to hire a paraprofessional, not a certified staff member for

the position. (Id. at 140-41.) Similarly, a deficiency in State funding for school nurses has caused problems at Murray, since the State only provides a fraction of the cost required to staff all of the schools with nurses. (Id.) Nurses are essential for schools to identify the medical needs of students and ultimately keep the students in school. (Id.) The State provides Murray approximately \$147,000 for nurses, but the district’s actual cost is “over half a million dollars in nurses.” (Id.)

Murray lacks the funds necessary to decrease class sizes at the elementary and middle schools. (Loughridge Dep. 105-06, 108.) These measures are necessary to identify and provide individualized assistance to students at risk of dropping out of school. (Id.) Because of Murray’s low graduation rate, this effort is critical to the district. They simply cannot afford to meet this need on their own. (Id.)

The State’s funding scheme also hurts Murray’s students by providing insufficient funds for textbooks. The money the State provides “doesn’t cover near what textbooks cost.” (Reed Dep. 124.) The district must pay for textbooks from its own budget, and cannot afford books for all the children. (Id. at 124-25.) Even after expending local funds on science textbooks, there were not enough textbooks for each student to be able to take the textbooks home with them to study or do homework. (Id.)

Transportation for Murray, like many other districts, is a challenging problem. For instance, in FY 2008, Murray simply did not have enough money to meet its transportation requirements. (Loughridge Dep. 32.) The district must cover 55% of its transportation budget out of local funds. (Reed Dep. 221.) The district cannot afford to offer transportation to dual

enrollment students because the funding is not available.⁴⁰ (Id. at 220-21.) As a result, the dual enrollment participation is low. (Id. at 220.) Increasing fuel costs are greatly affecting Murray's already underfunded transportation budget and causing problems in its transportation services. (Loughridge Dep. 45.)

Funding-related problems also plague Murray's facilities. The district implemented several SPLOSTS,⁴¹ but due to the number of facilities repairs necessary throughout the district, Murray cannot afford to make all necessary facilities repairs. (Loughridge Dep. 109.) (See also, Reed Dep. 338 ("We don't have enough money in our district to cover all facility needs.")) For instance, Murray can't afford the needed refurbishment of the gymnasium at Spring Place Elementary School, or the repair of the collapsed auditorium floor at the alternative school. (Loughridge Dep. 82-83; Reed Dep. 334-35.) The district has a list of facility needs two pages long and must prioritize the projects based on safety. (Reed Dep. 336.) There are several facilities that do not meet State Fire Marshall Standards, so they currently cannot be used by the district. (Id. at 340.)

Murray cannot meet the demand of its residents for pre-kindergarten programs. There is a waiting list for each school, with some children not able to find private providers for this service. (Id. at 281-82.) Physical education programs in Murray also suffer from inadequate funding and cannot be offered daily. (Id. at 303.) There is no additional funding available to improve these programs. (Id. at 303-04.)

⁴⁰ Students enrolled in high school may be dual enrolled at a local institution such as a community college or university; these students may earn credit towards their high school diploma as well as college credit. (Harmon Dep. 311.)

⁴¹ The ballot for voting on a SPLOST must include a general overview of how the SPLOST money will be spent by the school district. (Reed Dep. 71.) SPLOSTS can only be used for specific things, like transportation, facilities and technology and cannot be used generally for instructional needs. (Light Dep. 88-89.)

Although the district receives some, so-called, 20-day instructional extended day money from the State based on FTE numbers, the amount is not enough to last all year. (Id. at 224-25.) So, Murray's schools must hold the funds until January and then use them for after-school programs to help students with the CRCT, hoping the money will last until the test. (Id. at 224.) Even though all "bubble students"⁴² are allowed the option of going to after-school tutoring, many students cannot attend because the State's money may not be used for transportation, a requirement for participation by many students. (Id. at 224-25.) As a consequence of insufficient funding and the restrictions on use of the funds, not all of the students who need help can get it. (Id. at 225.) Murray needs to hire a consultant to review the district's programs and the curriculum's effectiveness, but Murray cannot afford to hire this type of outside assistance. (Id. at 252-54.)

Murray had been providing a specific type of professional development program funded by the State, but the State took the funding away. (Id. at 257.) Now the district must pay for it locally. (Id.) The district also has insufficient instructional coaches to provide in-house professional development. (Id. at 255-56.) Murray, like other districts, lacks funding for appropriate training on the new GPS curriculum and the district cannot afford to hire substitute teachers for all its teachers to go to the training. (Id.)

Due to inadequate funding received from the State, Murray is unable to provide adequate educational opportunities for its ELL students. (Lozano Aff. ¶ 3.) Approximately twenty percent (20%) of Murray's K-12 student population is Hispanic. (Lozano Aff. ¶ 2.) In the 2006-2007 school year, only approximately 4.3% of its student population (326 students) were served in the district's ELL program.

⁴² "Bubble Students" are those students who are near the passing score on a test, but have not passed. (Wiley Dep. 57.) These are students who, based on their classroom performance and scores on the CRCT are "on the bubble" to be promoted to the next grade level. (Key Dep. 258-61.)

There are only six (6) full-time ELL teachers in the district to meet the needs of more than 300 ELL students, and only one ELL teacher serving grades ten through twelve. (Lozano Aff. ¶ 3.) Murray cannot afford to hire more ELL/ESOL teachers and the lack of sufficient funding for these programs and the scarcity of ELL teachers causes substantial harm to the ELL students in Murray. (Lozano Aff. ¶ 3.) Until the 2007-2008 school year, the district did not have textbooks to teach ESOL. (Lozano Aff. ¶ 4.) No one in the ELL/ESOL department had previously attempted to adopt textbooks because they knew there was no way to do so. (Lozano Aff. ¶ 4.) Instead, the ELL teachers used regular English textbooks which was inadequate for the ELL students because many of these students have little to no understanding of the English language and were expected to use textbooks that were used by native English speakers. (Lozano Aff. ¶ 4.)

Because the State provided a total of only \$500 worth of funding for resources for all of the ELL students, there was not enough money to provide these necessary materials. (Lozano Aff. ¶ 4.) In fact, a set of textbooks for the ELL program actually costs approximately \$5,000. (Lozano Aff. ¶ 4.) Finally, in 2007-2008, the district was able to provide the additional funds needed for the ELL textbooks by diverting resources from other areas of need. However, it does not appear that the district will have sufficient resources to fund supplemental or updated textbooks in the upcoming years or to replace these textbooks when needed. (Lozano Aff. ¶ 4.)

The school district needs, but cannot afford, to hire a translator or a bilingual Parental Involvement Coordinator. (Lozano Aff. ¶ 5.) Students who are enrolled in the ELL program, including those who also have disabilities, need parents to communicate with their teachers regarding paperwork or meetings for the programs. (Lozano Aff. ¶ 5.) Due to a gap in communication and understanding, many of these deadlines are missed and students either do not

get the services they need or they get them several years delayed. (Lozano Aff. ¶5.) Due to the lack of sufficient resources provided by the State, the district is not able to provide these needed services for its students. (Lozano Aff. ¶ 5.)

The school district needs, but cannot afford, to offer sheltered English classes for ELL and low socioeconomic status students. (Lozano Aff. ¶ 6.) This type of class is necessary for students who do not qualify for special education individualized instruction, but require individualized instruction in English and Reading. (Lozano Aff. ¶ 6.) It is critical that students who need this individualized English instruction receive it because their opportunity to graduate is limited by their proficiency in English. (Lozano Aff. ¶ 6.) Students who do not pass the test to exit the ELL program before the 11th grade must take the ESOL class and 11th grade and 12th grade language arts classes. (Lozano Aff. ¶ 6.) If they do not take and pass 11th and 12th grade language arts classes before they graduate, they do not receive the requisite academic credit and do not graduate. (Lozano Aff. ¶ 6.) The district does not have sufficient resources to fund the sheltered English program and the State fails to provide adequate resources to support such a program in Murray. (Lozano Aff. ¶ 6.)

Murray needs, but cannot afford, to offer more foreign language classes. (Lozano Aff. ¶ 7.) The district currently only offers Spanish. But the students in the ELL program already speak Spanish and therefore have no opportunity to learn another foreign language. (Lozano Aff. ¶ 7.) To be competitive in post-secondary careers, these students need to have the opportunity to learn more than the language they already speak and English. (Lozano Aff. ¶ 7.) However, the district does not have the financial resources to offer these courses and the funds provided by the State are insufficient to provide these important educational opportunities. (Lozano Aff. ¶ 7.)

The district is not able to provide an adequate education for its students with disabilities. (Strieker Dep. 71.) Murray has had limited success in closing the achievement gap for special education students. (Strieker Dep. 318.) Due to lack of funding, Murray cannot recruit enough certified teachers to help close the achievement gap because they are unable to provide incentives to hire an adequate teacher force that is able to teach students with disabilities. (Id.) So half of the students with disabilities are taught by paraprofessionals. (Id.) This is problematic because the certified teachers have to supervise the paraprofessionals, thereby creating a trickle down effect that basically decreases the district's ability to increase the achievement of their students. (Id.)

It is inappropriate for paraprofessionals to provide instruction to special education students in an academic subject area, even under the supervision of highly qualified special education staff. (Reschly Dep. 195-96.) Even though these classrooms have certified teachers in them, the teachers are general education teachers, not special education teachers. (Strieker Dep. 319.) The general education teachers teach the content and the paraprofessionals assist the students with disabilities; however, this does not provide special education students with certified teachers who have any expertise in special education. (Id.) Closing the achievement gap is likelier to occur when the classes are co-taught by two certified teachers than by one teacher and one paraprofessional. (Id. at 323.)

(2) Charlton County Cannot Provide its Students Adequate Educational Opportunities

The Superintendent for the Charlton County School District (“Charlton”) does not believe that the district is offering students basic educational opportunities. (McQueen Dep. 134.) Plaintiffs’ expert Dr. Terry Peterson⁴³ visited Charlton and agrees that the district does not

⁴³ Peterson Dep., Ex. 1.

have the resources to provide an adequate education for all of its students. (Peterson Dep., Ex. 12 at 14.)

In the past 4 years, Charlton's high school has only made AYP one time. (McQueen Dep. 108-09.) The other three years the high school was listed as "Needs Improvement." (Id.) At the high school, 60.4% of the African-American students and 47% of the Economically Disadvantaged students failed to meet the minimum mathematics GHSGT requirements. (Plaintiffs' Ex. 25 at 1.) In 2006-2007, just 63.6% of Charlton's high school students met the State's graduation requirements. (Swanson Dep., Ex. 13 at 1.)

The school district is faced with tremendous challenges because of the lack of resources. The system has a low median household income. (McQueen Dep. 62.) In 2006-2007, over 60% of Charlton's students were eligible for free or reduced-price meals. (Id. at 96) Given the small size of the community and the fact that personal income has remained relatively flat in Charlton, tax increases would not be a viable means to cure its funding deficiencies. (Id. at 53-54.)

Many of Charlton's "students are not prepared for gainful employment, [or] an opportunity for post-secondary education." (Id. at 120.) According to the Superintendent, only 1 out of every 3 students enters post-secondary education, "With roughly 30 percent of our students going on to post-secondary, that's too few." (Id.) Students fail to go on to gainful employment or post-secondary education because the school district is "unable to provide everything they need." (Id. at 121.) For the 70% of students who do not enter post-secondary education, the competition for jobs is "stringent" and, as they "struggle" to become employed, many are forced to move to neighboring Camden County and compete with students who are better-prepared. (Id. at 130-31.)

According to a correctional officer in Charlton, there are two ways to get into the local correctional facility. “[T]hose who don’t have a diploma tend to drop out and get into trouble and come in as prisoners, and those who work in the facility have to have a high school diploma or a GED to be employed there.” (Peterson Dep. 206.)

Not even all of the 30% of graduates in Charlton who were able to move on to college in 2007 received a basic or adequate education. (McQueen Dep. 232.) Evidencing that fact is that some fail out of college and many others require learning support. (Garcia Aff. ¶ 7, Id. at Ex. 6 (“2006-2007 Georgia Report Card: Charlton County School System: Post Secondary Data.”)) Of the 35 Charlton students that went to Georgia public colleges last year, 37.1% required learning support. (Id.) This means that even of those who graduated from high school in Charlton, more than one third were deemed unprepared for normal college coursework. (Id.)

The district needs many things in order to improve the education provided, including “additional instructional staff, professional development, academic coaches, lab equipment, math equipment, math manipulatives, training for advanced placement teachers, smaller class sizes, money with which to recruit and retain instructional staff[,] . . . [s]chool nurses, school counselors, additional transportation resources, paraprofessionals for special education and regular education, professional development for school improvement[,] . . . [a]dditional credit recovery materials, tutoring, both after school and Saturday, [and] summer school.” (McQueen Dep. 12-14.) The Georgia Department of Education also has identified professional development needs for science in grades 9 through 12 in Charlton. (Id. at 196.) The district lacks the financial resources to make meaningful progress in meeting these substantial needs. (Id. at 12.)

Although the district has a myriad of additional needs, the Superintendent knows that requests for additional local money from the already stretched budget are futile. (McQueen Dep. 66-69.) “The only way that they are going to get the resources to provide the Reading Recovery teachers they need, the literacy coaches they need, the benchmarking testing they need, the tutoring and transportation they need is from State funding.” (Peterson Dep. 204-05.)

For example, Charlton is unable to institute a 7th and 8th grade lab or refurbish the inadequate 9-12th grade labs. (McQueen Dep. 23.) The 7th and 8th graders need to be in a separate building from 9-12th graders, but there is no funding for a middle school. (Id. at 105-06.) Charlton’s high school houses grades 7 through 12, and there are only two science labs for the whole school of 900 students. The labs are “terribly out of date” by around 30 years. (Peterson Dep. 207-08.) Dr. Peterson testified that “it almost reminded me when I taught chemistry 40 years ago at a school about that age. . . . [I]t’s really tough to teach a subject like chemistry or science or physics or biology without the tools of the trade” (Id. at 208.) Dr. Peterson saw that “they didn’t have the tools of the trade to deliver the kind of program they need to deliver.” (Id.) The inadequate science materials in Charlton contribute “to the district’s poor results on standardized science tests and prevents students from being adequately prepared for post-secondary science education or careers.” (Peterson Dep., Ex. 12.)

The Superintendent also testified that the district needs to offer more than one AP course, but cannot afford the cost of AP training, despite the student demand for such classes. (McQueen Dep. 72.) The district also tried to offer an automotive technology course, but there is no funding available. (Id. at 127-28.) Furthermore, the Superintendent asked personnel from Okefenokee Technical College to help with an automotive technology course, but “they did a

survey that indicated that we might not have enough students . . . prepared enough in math specifically to warrant such a program.” (Id. at 231.)

Charlton’s schools also lack adequate management support services necessary for educational adequacy. (Harmon Dep., Ex. 3, “Rural Context and Funding Inadequacy of Career, Technical and Agricultural Education in Georgia” at 14). The district is served by a Special Education Director who also serves as the Coordinator for Title I. (Id.) The principal of the high school is also the Curriculum Director, Professional Development Coordinator, and Coordinator for the Consolidated Grant Application, Title II, Part A and Title VI, Part B. (Id.) The Superintendent serves as the district Assessment Coordinator, Personnel Recruitment Coordinator, and Title IV Coordinator. (Id.) Charlton’s students are highly unlikely to have access to quality, modern Career Technical and Agricultural Education (“CTAE”) programs because of the numerous indicators of weakness in institutional capacity and the need of the district to “do more with less.” (Id. at 33).

Modern CTAE programs are critical to future economic prosperity for Georgia students and communities. (Id.) Charlton’s implementation of career pathways are limited in virtually all courses of study. (Harmon Dep., Ex. 5, “Assessment of School District Institutional Capacity for Implementing School Improvement Process” for Charlton County School District at 4.) Indeed, the State concluded, in its own “Five-Year Review” of the district’s CTAE program, that there is a need to expand the CTAE program in the areas of Nursing and Agriculture Education. (Id.) These needs were identified based on the increased number of students entering nursing, and students awaiting agriculture classes. (Id.) However, the district lacks the resources necessary for the software, books, equipment, personnel, and licensing agreements that are required to expand these programs. (Id.) The State review also indicated that the district needs to expand its

Consumer Science program. (Id.) However, in order to do that, the district needs funds to renovate the facilities for the Consumer Science program and hire additional personnel. (Id.) Further, the district is limited in technical teachers and “state of the art” equipment needed to make this education relevant to actual employment opportunities. (Id.)

Effective programs that can significantly improve educational opportunities have been eliminated because the funding is no longer available. For example, Reading Recovery is a highly effective program that was cut for the 2007-2008 school year because of a lack of funding. (McQueen Dep. 40-41.) The program was successful and the district wanted to expand it, but had to cut the program when the funding for it was required elsewhere in the district’s tight budget. Now, as a result of the program’s elimination, students are already falling behind in reading by the first grade. (Peterson Dep., Ex. 12 at 14.)

In 2007, Charlton was unable to provide summer school to students because of a lack of funding. (McQueen Dep. 34-35.) The district is only able to offer 2 years of Spanish and in 2005-2006, the district was unable to offer students foreign language classes because there was no funding for additional language teachers. (Id. at 193-94.) The district also suffers a lack of up-to-date textbooks. (Id. at 211-12.) Charlton also needs funding to update its badly out-of-date computer labs (Peterson Dep. 207-08) and its science labs. (Id. at 209-10, the science labs are “very inadequate” and are “really unfair to the students”.)

Charlton is only able to offer teachers a \$550 annual supplement to the minimum State salary schedule. (Id. at 119.) Because the surrounding counties, including Camden, are able to offer teachers a significantly higher salary, Charlton has difficulty recruiting and retaining effective teachers. (Id. at 201-02.) This has led to a decline in the quality of teachers, resulting in poorer educational opportunities for students. For example, although the qualifications are

minimal, Charlton cannot comply with the highly-qualified teacher standard under State and federal law. (McQueen Dep. 197-98.) In order to improve the quality of instruction, the Superintendent discussed with the Board the need for increased professional development, but there was no funding available to meet this need. (Id. at 69-71.) Because of its tight budget, the district cannot even afford a curriculum director. (Id. at 136-37.)

The State has mandated new policies and regulations that require additional funding, but neglected to provide additional resources for such changes. The new math GPS curriculum requires materials and professional development that will “certainly be a burden for a system such as ours.” (McQueen Dep. 14.) The instructional costs for Charlton increased by \$900,000 between FY06 and FY07 primarily because of mandated State teacher salary raises. (Id. at 46-47.) The next year’s budget increased again by nearly \$1 million, again mostly because of State-mandated pay raises. (Id. at 48.) As a result of the State’s maximum class size requirements, Charlton had to hire a substantial number of additional teachers, but the district lacks the funds to hire any more teachers to reduce class sizes further or to meet other requirements for additional staff. (Id. at 73-74.)

The median household income in Charlton is around \$18,000. (Id. at 54-55.) Although Charlton’s millage rate decreased from 16.62 to 14.192 mills in the 2007-2008 school year, the tax digest grew by \$500,000. (Id. at 52-53.) The community could not afford to maintain the prior millage rate against the increased tax digest value when personal incomes did not increase. (Id. at 53.) Charlton’s funding deficiencies cannot be cured merely by raising the district’s millage rate. (Peterson Dep. 206, “[T]he type of improvements and opportunities that are described just here for that one school would take a substantial amount of money.”) Although

Charlton is taking advantage of SPLOST funding, it still lacks sufficient funds to meet the educational needs. (McQueen Dep. 163-64.)

Charlton is a geographically large district and because the State only pays for 40% of Charlton's transportation costs, the district must spend a significant amount of its scarce local funds on transportation, instead of in the classroom or on teacher professional development. Transportation is the third largest cost for the district. (McQueen Dep. 38.) The district needs more money for buses, drivers, and fuel. (Id. at 27-28.) Charlton has had to reduce its fund balance in FY07 to help cover transportation costs. (Id. at 68.)

(3) Elbert County Cannot Provide its Students Adequate Educational Opportunities

The Elbert County School District ("Elbert") does not have the resources it needs to provide all of its students with the basic educational opportunities they need to become productive members of society. (Light Dep. 58-59, 134-36, 141.) According to the Superintendent, "we are so underfunded and trying to acquire enough funds for us to survive or we're not able to offer what our kids need." (Id. at 58.) "I don't think we offer our kids enough support to be able to be successful. I don't think we offer our kids enough flexibility in what's available for them to be successful." (Id. at 135.) The district does the best it can to offer its students the opportunities they need given its resources. (Id. at 134.) But, it cannot provide a basic education so every child can graduate and "be able to have the ability to make a decision to what they want to do at the next level that they are capable of doing." (Id. at 161.)

Additional resources are needed to be able to implement specific educational programs and services that could improve the educational opportunities available in the district and thereby improve academic performance and graduation rates. (Id. at 58-59; 70-72, discussing "crucial" positions that the county cannot afford.) Because those additional resources are not available,

many of these much needed programs and services are not available to provide students in Elbert the opportunity to be successful. (Id. at 250.)

Elbert struggles to offer the level and amount of professional development that is necessary for the teachers in the district to offer students the services and instruction they need. The district implemented the direct instruction delivery model at Blackwell Elementary School and that delivery method proved to be successful at that school. (Id. at 33-34.) The professional development that was required to implement that new delivery model was funded by Title I federal money because that school was a “Needs Improvement” school. (Id. at 34.) The district would like to implement this successful delivery model at all of its schools, but does not have funds to provide the professional development needed to expand the program. (Id. at 33.)⁴⁴

The district also needs professional development funding to be able to adequately train all of its teachers in the Georgia Performance Standards. (Light Dep. 242-43.) The Superintendent requested funding to pay teachers a stipend to attend Saturday GPS training, but, lacking funds, the Board of Education did not approve that funding request. (Id. at 243.) The Board indicated that Charlton does not have “money for those kinds of things.” (Id.) The district’s teachers are not teaching the curriculum correctly because the district has not been able to offer enough professional development for the teachers to be fully trained in the new Georgia Performance Standards. (Id. at 207-08.) Student performance has declined due to this lack of training and professional development. (Id. at 208.) The district sends one teacher per grade level to the GPS training offered by the State and then that teacher is supposed to train the other teachers. (Id. at 232.) That method is ineffective. (Id.)

⁴⁴ According to Dr. Terry Peterson, Direct Instruction is one of the two most effective comprehensive school reform models, having the most positive effect on reading, math, science and social studies. (Peterson Dep. 279-80.)

Elbert needs to hire a full-time math coach and full-time academic coach at the high school. (See Id. at 70.) Those coaches would be responsible for teaching teachers and ensuring that the teachers at the schools are able to individualize their instruction for students who are at different levels of ability within the classroom. (Id. at 154-55.) Funding was requested for math academic coaches at the high school, but the Board did not have the funds. (Id. at 70.)

In terms of teaching staff, the district's teaching salary supplement is very low. (Light Dep. 260.) The Superintendent requested funding to raise the supplement, but the Board did not approve that request because it did not have the money. (Id.) The district lost eighteen (18) teachers at the end of the 2006-2007 school year. (Id.) The majority of the teachers who left the district at the end of the 2006-2007 school year left either to be closer to home or because of money. (Id. at 257.) During 2006-2007, four teachers were either terminated for poor performance, non-renewed, or resigned in lieu of non-renewal due to poor performance. (Id. at 50.)

Elbert cannot afford to hire enough staff to support the students to help them be successful. (Id. at 141-42.) The district's elementary schools do not have any Assistant Principals or guidance counselors, as the district had to cut these positions approximately three or four years ago. (Id. at 142, 146.) Such positions are necessary to help students learn how to deal with problems at such an early age – problems that, if not dealt with, can foster much larger issues later in life. (Id. at 142.) There is no one providing counseling services at the elementary schools – services that students need to address behavioral concerns. (Id. at 145-46.) Further, an Assistant Principal is necessary at the elementary schools because, without one, there is an additional strain on the principal, the families and students. (Id. at 148.) The district's elementary schools cannot be accredited by SACS because those schools do not have required

Assistant Principals and Guidance Counselors. (Id. at 169-70.) Similarly, the district does not employ a reading specialist at the elementary school level. (Id. at 142, 148.)

The local board could not provide funding for a freshman focus teacher at the high school, a position that would have helped ninth grade students who were labeled as at-risk based on the CRCT scores and classroom performance. (Id. at 70-71.) The purpose of the freshman focus position is to provide these at-risk ninth graders with a 9th-Grade-Academy-type experience. (Id.) Students would stay with the same four teachers throughout the day and these teachers would give them, in addition to direct instruction, remediation support and help these students with their non-academic needs, including self-esteem and family support, to better prepare them for tenth grade. (Id.) Creation of this freshman focus team was not possible because the district did not have funding. (Id. at 71-72.)

The cost of textbooks is a huge financial burden on the district. (Id. at 90, the cost of “textbooks [is] outrageous and killing us financially”.) The district has to rely partly on SPLOST money to purchase textbooks and the district cannot afford to follow the State’s recommended replacement cycle in math and social studies. (Id. at 90, 302-03.) Further, the district’s reading textbooks have not been updated in ten years and do not conform to the State’s recommendations for alignment with the new GPS standards. (Id. at 303.) Frequently, the textbooks must be shared by the entire class, and the students do not have any textbooks to take home with them to study or do homework. (Id. at 211.)

Because the district attempts, but cannot afford, to provide sufficient funds to the schools to purchase supplemental materials, the district’s teachers often buy these materials with their personal funds. (Id. at 143-44, 304, “[O]ur teachers spend a lot of their own money. . . . I’ve heard them say that many, many times because they want things in their classroom to give their

kids as much as they can give them, so they will just buy it on their own” Similarly, the district relies on parents of the students to purchase normal supplies for classrooms, such as bathroom tissue, antibacterial soaps, pencils, notebook paper, because the district cannot. (Id. at 132-33.)

Elbert offers an Early Intervention Program (EIP) to some students in grades 1-8. (Id. at 212.) But, students who improve enough to leave the EIP program cease to receive that extra support tend often to slip back in their performance once that extra support is gone. (Id. at 213-14; Wiley Dep. 68.) The district can only afford to offer extra support to those students falling below the state-mandated cutoffs. (Light Dep. 213-14.)

The district can afford to offer only very limited summer school opportunities to students who fail to meet proficiency standards on the CRCT in “Gatekeeper Grades” (grades 3, 5 and 8). (Id. at 214-15.) (Id.) The only remedial support offered to middle school students is through the EIP program and in reading and math in summer school. (Id.) Summer school is also available to students who fail third grade math and fifth grade reading and math. (Id. at 214.) “[T]hat[‘s] where we offer summer school. No, it’s not enough. We need a whole lot more than that, but that’s all we can afford to offer.” (Id. at 214-15.) At the high school level, the district’s only summer school remediation opportunity is through NovaNET Credit Remedial Program. (Id. at 201.) This is a computer based software credit recovery option that is available only to students who fail one of their core classes. (Id.)

The district can only afford to offer very limited after-school opportunities to students. (Wiley Dep. 66.) The district offers an after-school tutorial program 2 days a week at the Middle School in math. (Id.) However, the program does not accommodate all of the students who need it because the district cannot afford to hire more teachers and there is no money for

transportation. (Id.) High school students only have the option of credit recovery after school. (Id.)

The district offers minimal special education services to students who meet the requirements of the IDEA. (Id. at 217-18.) The district has received a number of verbal complaints regarding special education services needed for students. (Id. at 218.) Although the district has not been sued recently for violation of rights under the IDEA, there have been complaints voiced to the district regarding the quality of its services. (Id. at 218-19.)

The district's Advanced Placement (AP) program has been reduced. (Id. at 39.) Due to lack of funding, the district was forced to eliminate its AP English/Language Arts, AP Spanish classes, AP Calculus, AP Biology, and AP Chemistry. (Wiley Dep. 76.) AP classes are important for those who want to go to college because more colleges are looking for AP courses over Honors courses. (Id. at 200-01.) The district also cannot afford to offer auto shop class for those students who are interested in automotive care and who want to be certified in automotive care when they graduate. (Id. at 197-98.) The district previously offered the class and it was very popular. (Id.) But, the district could not afford the upgrade costs to keep the class. (Id. at 198.)

The district had to eliminate its Environmental Forest Program and cannot afford to replace it. (Id. at 319.) This program was in high demand and provide the students with additional support in applied science and science experiments. (Id. at 322-23.) The course took place off-campus at an environmental forest which had animals and a building with a classroom and a lab for lab projects and lectures. (Id. at 323-24.) To offer the course, the district would need funds to lease the property for the class, transportation to and from the class, and for supplies for the labs. (Id.)

The district recognizes the long term effects of dropping out and the value of a high school diploma on the larger economy of the district. (Id. at 30, discussing the local Elbert County economy and the prospects for a high-school dropout). As granite is the county's primary industry, the county faces the challenges of competing in a globalized economy. (Id. at 136, "[W]e deal every day in Elbert County with China as a direct competitor in the granite industry.") However, the district cannot afford to offer foreign languages that will help the students function in today's global economy. (Id.)

The district struggles financially to keep its bus fleet up-to-date and relies on SPLOST money to do the best it can. (Id. at 90.) Existing SPLOST money goes toward paying off existing bus leases, but the debt returns as soon as the district needs to lease more buses (when the older ones are paid off). (Id. at 105-06.) A large number of the district's buses are over ten years old. (Id. at 106.) Under the best-practices guidelines, they should not be over ten years old or have more than a certain number of miles on them. (Id.) A number of the district's buses exceed the mileage or years requirements, but the district cannot afford to replace them. (Id.) Part of the district's bus fleet maybe unsafe, but the district does not have money to replace them so it does its best to make them as safe as possible. (Id. at 107.)

The district has a process in place for creating its budget. (Id. at 63.) Before the budget process even starts, the district analyzes and benchmarks the test scores and performance of its students to determine the effectiveness of programs offered the prior years and whether to provide funds for those programs in the upcoming year. (Id. at 75-76.)

The district lacks the resources necessary to provide a basic adequate education to all of its students. During the 2006-2007 school year, the school district did not meet AYP.

(Plaintiffs' Ex. 25 at 2.) In 2006-2007, the high school was a "Needs Improvement" school. (Light Dep. 227.)

Elbert County is a small and rural district with a large number of socioeconomically deprived students. (Wiley Dep. 11.) As of June 2007, the district's enrollment had decreased by approximately thirty-four (34) children per year for the previous five years. (Light Dep. 114.)

In 2006-2007, the district's general fund was in a deficit by approximately \$238,000 due to \$3,000,000 in austerity cuts from the State, a loss of FTE, and lack of sufficient State funding for mandated services, like transportation, which must be funded locally. (Id. at 34-35.) The Superintendent proposed an increase in the millage rate during the 2005-2006 and 2006-2007 school years to raise additional revenue to provide more support for the students and implement new programs. (Id. at 60, 68-70, 72.) The Elbert County Board of Education did not accept those proposals. (Id. at 60.) The Board also asked the Superintendent to reduce the proposed budget by \$750,000 during the 2006-2007 school year. (Id. at 68-69.) For FY07, the Board voted and approved an increase in the millage rate. (Wiley Dep. 59.) Even though the superintendent had proposed a bare bones budget, the district had to increase the millage rate to raise the sufficient local revenue required for even that minimal budget. (Id.)

(4) **Ben Hill County Cannot Provide its Students Adequate Educational Opportunities**

The Ben Hill County school district does not have enough resources to permit students "to acquire the knowledge and skills necessary to function in society." (Key Dep. 189-90.) (See also, Peterson Dep., Ex 12 at 8.) With the level of funding available to it, Ben Hill cannot meet the educational needs of a large number of its students, particularly the at-risk and gifted students, who require extra services to meet their individual needs. (Key Dep. 84-85, 186-90.) Ben Hill County schools do the best they can with the resources they have to provide a minimal

basic education for some. (Id. at 100.) “Our graduation rate has been hovering around 50 percent graduation rate. And so the numbers themselves speak from where we need to improve.” (Deposition of Nancy Whidden (“Whidden Dep.”) 16.) The failure by the district to prepare students to function in society is also made apparent from the criminal arrest records in the county. (Key Dep. 222-23.)

The district cannot raise the millage rate to the maximum. (Id. at 191.) According to the Superintendent, “[I]f we had to increase the local millage to the maximum, you would be changing board members every time.” (Id. at 314, 191 (“Q. Why haven’t you recommended that the district raise it’s millage rate to 20? A. [T]he political reality is that if you had a board that kept going up like that, they would probably not get reelected and you’d have people running on the basis that they were going to go in and lower the taxes.”).) Also, because of the “socioeconomic status of the average person” in Ben Hill, the citizens are already paying “above their ability to pay” in sales tax and millage rate. (Id. at 88-89.) Approximately 70% of the district’s students qualify for free and reduced lunch. (Id. at 53.)

The level of funding from the State is inadequate. According to the Superintendent: “[W]e’ve never been funded at the level that the State promises to pay us anyway. With austerity cuts and, in fact, the amount that we have been cut would pretty much take care of any deficit spending that we’ve had.” (Id. at 191-92.) These budget cuts from the State have forced the district to reduce or eliminate opportunities that instead need to be expanded. (Peterson Dep., Ex. 12 at 4.) Due to budget cuts, the district has had to cut field trips, foreign languages, a “wonderful arts program,” career connections, and other programs that the district feels it needs to offer. (Id.; see also, Key Dep. 135.)

The badly out-of-date and inadequate learning opportunities, courses, programs, training, and support generally found in Ben Hill do not permit the modern learning environment needed to adequately educate today's children or prepare them for tomorrow's jobs. (Peterson Dep., Ex. 12 at 2.) Ben Hill's schools cannot afford to provide all of the programs and services its students require. (Key Dep. 190.) According to the Superintendent, "[w]e do the best we can with what we have." (Id.) Due to the high expense, the district had to eliminate its alternative school in order to save on costs. (Id. at 56-57.)

The district only offers a few AP classes. (Key Dep. 200-01.) Student demand partially determines the AP course offerings because if the district does not have the FTE count for a course, it must fund the staffing and local costs for that course without any State support. (Id. at 201.) This directly impacts those students who want to go on to college and take higher level courses. (Key Dep. 200-01.)

To compensate for the lack of AP courses, the district tried to implement a distance learning lab for those students who needed more of a challenge. (Id. at 201-02.) The district could not afford to offer this either because of its outdated technology, the cost of such a program, and the lack of resources available in the district. (Id.) Therefore, the district began offering AP courses through the Virtual School. (Id. at 201-02.) However, the Virtual School rules out the possibility of a student-teacher relationship in which the teacher can support the student in understanding, and supplement what the student is learning from the computer. (Id. at 202.) Students who take courses through the Virtual School do not do as well in the course as students who took it with a teacher live in the classroom. (Id. at 203.)

The district also had to eliminate its drivers' education course due to cost. (Id. at 135, 237.) This course is an unfunded state mandate, meaning that the State requires drivers'

education, but does not provide any funds for it. (Id. at 135-36.)⁴⁵ Ben Hill cannot offer the course anymore, so students must take the course through the district's agreement with East Central Technical College. (Id.) The Board members have considered offering the course again, but have not been able to find funding for the course. (Id. at 237.)

In terms of remediation at the high school level, the district does not currently offer remedial courses during school, a summer school program with live teachers, or formal after school remedial assistance for the high school. (Id. at 227-29.) Any remedial assistance students receive after school is informal and in the form of volunteer tutoring or help provided by coaches and teachers. (Id. at 228-29.) For summer, the district offers credit recovery for students who have not met proficiency at a certain level. (Id. at 228.) This is not offered to every student, however. (Id.) If a child at the high school is behind, "we are not able to target that particular child . . . , particularly if they are so far behind that they are in danger of failing . . .," (Id. at 227.)

The high school principal needs funding to offer evening classes to reach those students who dropped out of high school and are working or those who are about to drop out because they need to work. (Peterson Dep., Ex. 12 at 8.) The district would like to offer Saturday school for high school that would function as a remedial program and a discipline program simultaneously for those students who need the extra assistance. (Key Dep. 232.) This program currently exists at the middle school and is very successful, however, the middle school teachers are participating only on a volunteer basis because the district cannot afford to pay them. (Id.)

The district offers summer school only to select students who are in mandated promotion grades (3, 5, and 8). (Id. at 257-58.) The district cannot afford after-school programming to all students who need it because it cannot afford to pay the teachers' salaries for the additional time

⁴⁵ Drivers' education is a State mandate in the sense that, by law, a student must take drivers' education, either privately or at school, in order to receive insurance. (Light Dep. 205-06.)

and cannot afford to pay the costs for additional transportation. (Whidden Dep. 100.) The summer-school program is offered only to certain third, fifth and eighth graders because the district has to provide extra assistance to those students who are at risk of not being promoted to a higher grade, but are seen as capable of moving forward with some extra attention. (Key Dep. 258-59.) The district cannot offer summer school to students who have not met the 70% level because “there’s too far to make up with the limited resources we have.” (Id. at 258.) These other students, those who are so far behind that six weeks of summer instruction would not likely be enough to help them be promoted, are only offered help if there is room after the students are placed in the summer program. (Id. at 259.)

The district struggles to recruit teachers and cannot afford to provide needed professional development for its teachers. (Peterson Dep., Ex. 12 at 8.) The district cannot attract highly effective teachers because it cannot pay competitive supplements. (Whidden Dep. 40.) Several of the district’s teachers have not met standards that they were required for certification. (Id.) The district has teachers who have not passed the basic skills test. (Id.) The district has had to request waivers from the State for these teachers who have not met the certification requirements. (Id. at 98.) These waivers allow the teachers to teach for one more year, even though they did not pass the basic skills test necessary for certification to be a teacher. (Id.) The district would prefer to terminate the teachers who cannot pass the basic skills test, but it cannot terminate these teachers because it cannot replace them. (Id.) Therefore, the district requests a waiver and hopes the teachers pass the next year. (Id.)

When filling positions, the district merely shuffles its existing teachers around if they cannot hire a new one. (Id. at 46.) When the middle school needed a certified teacher to teach science, the district had to move a teacher who was certified in science from the high school.

(Id.) That teacher was running an intervention program for at-risk students and teaching math at the high school. (Id.) The move left an opening for a math teacher at the high school, which is a critical needs area according to the school's test scores. (Id.) To fill that open position, the district was forced to hire a math teacher who had received a negative performance evaluation from a former school district. (Id. at 46-47.) That teacher was the only person who applied that was certified. (Id. at 47.)

To fill math and science positions, the district must hire teachers through the Global Teachers Research & Resources Company (GTRR). (Id. at 45-46, 97-98.) Participation with this company costs the district a fee of \$10,000 per teacher. (Id. at 97-98.) The district pays the teachers' salaries to GTRR and GTRR pays the teachers. But the district does not have to pay the teachers' benefits. (Id. at 97.) One teacher who was hired through this company was not renewed because of his inability to speak sufficient English or manage the classroom. (Id. at 97.) The district has also had difficulty hiring African-American teachers. (Key Dep. 44.)

The district relies on grant money, but is unable to maintain the programs beyond the initial helpful infusions of resources. (Peterson Dep., Ex. 12 at 9.) The district needs to hire a health educator, but will not be able to hire one without grant money. (Whidden Dep. 47-48.) The health educator position is crucial because the teen pregnancy rate in the district ultimately impacts the graduation rate. (Id. at 48.) A Title II grant in math helped Ben Hill to model a 21st Century Classroom at the elementary school, but the school and district are unable to keep up with the cost of supplies, repairs of equipment, and ongoing professional development. (Peterson Dep., Ex. 12 at 9.) At the high school, a National Science Foundation grant with the University of Georgia provided needed science equipment, films and consumables, but the district cannot afford to maintain them. (Id.)

Ben Hill does not have family-community coordinators, comprehensive college or career pathway programs for almost all students, or universally available mentoring programs. (Id. at 7.) The district's graduation coach bears an unrealistic caseload. (Id. at 7.) There are no career connections or introductory awareness courses offered in K-5 or the middle school. (Key Dep. 242.)

Due to lack of resources for adequate staffing, the district was forced to eliminate parallel block scheduling at the primary and elementary schools. (Whidden Dep. 90-91.) An expert who was consulted by the district advised the district how to implement the parallel block scheduling; however, the parallel block scheduling model, which is ideal for lowering class size, was too expensive for the district to maintain. (Id. at 90-91.) Funding for parallel block scheduling was requested and was not available. (Id. at 91.)

The Performance Learning Center in Ben Hill shows that academic success can be achieved, when targeted infusions of resources provide for well-designed educational opportunities. (Peterson Dep., Ex. 12 at 11.) The Performance Learning Center is a small high school for students who are struggling. (Id.) The district cannot afford to implement class sizes at the ideal 14:1 or less ratio for primary and elementary school students and class sizes at the ideal 15:1 or less ratio for older grades. (Whidden Dep. 91-92.) But the district's own Performance Learning Center has shown that lower class size—at approximately 15:1 for high school—helps to increase the graduation rate. (Id. at 91-93) The district cannot, however, afford to implement such low student-to-teacher ratios outside of the Performance Learning Center. (Id. at 93.)

All of the students in the Center receive practical career-focused instruction and have opportunities to participate in job shadowing and internships. (Peterson Dep., Ex. 12 at 12.)

Every student at the Center has access to a computer, extra tutoring services are available before and after school, and ongoing professional development is provided for the teachers at the Center. (Id. at 12-13.) The Center's programs are aligned and receive more funding than those at the high school. (Id. at 13.) The district is spending approximately \$500,000 to maintain the class size ratio of 15:1 at the Learning Center. (Whidden Dep. 93.) Even though it is expensive and stretching the scarce resources of the district, it is worth the high cost, "[W]e're saving some kids. We had some kids come back that had dropped out of school. They came back into the PLC. They regained their credits and graduated last year." (Id.) But, Ben Hill needs to expand its Performance Learning Center beyond what local and third-party resources can provide in order to reach the many more students who are at-risk of failure in the district. (Peterson Dep., Ex. 12 at 13.)

In terms of foreign language offerings, the high school students only have access to Spanish. (Key Dep. 205) The district cannot afford to offer other languages. (Id. at 210.) There is no foreign language program at all offered at the middle school. (Id. at 241.)

Ben Hill does not have the financial ability to expand its curriculum. (Peterson Dep., Ex. 12 at 5.) The district wants to provide additional CTAE courses, like Construction and Technology Education, but cannot because these courses would be a local expense that the district cannot afford. (Key Dep. 231.) The district would also like to offer Speech and Creative Writing, but cannot do so. (Id. at 230-31.) There are currently no science labs, and therefore no science lab experiences, at the middle school. (Id. at 243.) The district is not financially able to offer Health Education. (Id.) This is a problem because there is a high incidence rate of juvenile diabetes and adult diabetes in Ben Hill County residents. (Id. at 243-44.)

The money generated from the district's SPLOST is not enough to cover all of the items on the list of priority needs for the SPLOST. (Id. at 170-72.) Funds have been used for technology and will need to be spent on the elementary school. (Id. at 171.) The Ben Hill Elementary facility is badly out of date. (Peterson Dep., Ex. 12 at 8.) If money remains after those projects, the district will need to add classrooms at the primary school. (Key Dep. 171.) The money will also have to be spent to replace a track that no longer exists. (Id. at 66.) The building that houses the Pre-K and PLC programs needs outdoor lighting. (Id. at 283.) The district needs to build a hallway that connects the main building to another building at the high school. (Id.) The middle school has carpet that is over ten-years old. (Id. at 284.) This is a hazard because as it ages, it frays and becomes dangerous. (Id.) Generally, there are computers in the schools and the students technically have "access" to computers. (Id. at 240.) But, there are not enough computers for the students. (Id. at 240, 296.) "They have access. They may not see it but once every week or two." (Id. at 240.)

(5) **Polk County Cannot Provide its Students Adequate Educational Opportunities**

The Polk County School district does not provide all of its students with the opportunity to attain a level of education that would allow them to function in society. (Wingfield Dep. 88, "Q: During your tenure [with the Polk County School Board], has any school in Polk County offered an adequate education to all of its students? A: No.") The district needs to have access to the tools necessary to provide an adequate education to all of its students. (Id. at 88-89.) Only approximately fifty percent (50%) of the Polk County Schools' ninth graders graduate from high school. (Id. at 119.) According to School Board Member, Dr. Harold Wingfield, "We have a responsibility to help them get prepared, to provide them with an education that will allow them to function in the world which they can't even see around the corner yet." (Id. at 119-20.) The

district is simply not meeting the needs of these students, who drop out of school, work at minimum wage jobs, live in housing projects, or end up in jail. (Atkins Dep. 221.)

“[W]e’re emphasizing test scores so much, we are forcing almost everybody to point in the direction to teaching to the task rather than . . . educating the student and providing that student with that education that would allow them to function in their world.” (Wingfield Dep. 123.) The HOPE scholarship emphasizes math, science, and language arts, but the real focus is on test scores. (Id. at 122-23.) Many of the students who qualify for the HOPE scholarship upon graduation lose their eligibility for the scholarship by the end of their first semester in college. (Id. at 118.) “[J]ust because someone is a four point student in high school doesn’t mean they’ve learned anything. It means they’ve passed the test.” (Id. at 123.)

Polk County’s population is predominantly white (approximately 70-80%), with a large percentage of African-American (approximately 15-17%) and an increasingly large Hispanic population. (Id. at 22; Atkins Dep. 80.) There is a high population of students who qualify for free and reduced lunch, with schools ranging from 30% free and reduced to approximately 60-70%. (Atkins Dep. 80.) All of the district’s elementary schools are Title I schools. (Id. at 61.)

The district has a process for formulating its budget. (Wingfield Dep. 24.) The Superintendent, Finance Director, the Finance Committee, and the Chair of the Board all work together to formulate the district’s budget. (Id. at 24.) When discussing programs and expenses, the Board takes into consideration the programs’ effectiveness, the cost associated with the program, and the source of funds for the program. (Id. at 31-32; Atkins Dep. 134-35.) The district considers whether the program produced results, whether it increased or stimulated academic achievement, and whether the program is fiscally sound. (Atkins Dep. 135.) The Board also takes into consideration whether a particular program is going to be funded by a

short-term grant and whether the district will be able to afford to fund that program locally when the grant is exhausted. (Id. at 135; Wingfield Dep. 32.) The district has had to cut programs due to lack of funding, regardless of whether they were effective, and so that those funds could be redirected toward hiring teachers. (Atkins Dep. 138-39.)

The district cannot raise the millage rate because it is a low wealth district with a considerable number of its residents living on a fixed income. (Id. at 93.) Dr. Wingfield of the Polk County Board of Education has personal knowledge of the financial constraints faced by members of the district and knows that there are residents of the district who risk losing their property for failure to pay taxes. (Id. at 93-94. (See also, Atkins Dep. 146.) Even though property taxes are rising and property values are rising, personal income is not. (Atkins Dep. 146.) Even if the district increased its millage rate, the funds generated would not be sufficient to provide an adequate education in Polk County. (Wingfield Dep. 99.)

The district has passed several SPLOSTs, each of which lasts five years. (Id. at 46.) The SPLOST funds have been used for projects like building a new middle school, renovation of the existing buildings and improvements to the sports facilities at the high school. (Id. 48.) There are several projects that remain to be completed, but will require the passage of a new SPLOST. (Id. at 48-49.) The district had to reallocate a large amount of the SPLOST money that was to be used to build a new elementary school (Van Wert Elementary) to rebuild an elementary school that was destroyed in a fire (Westside Elementary). (Id. at 49; Atkins Dep. 64-65.)

While the schools in the district are accredited by the Georgia Accrediting Commission, these standards are minimal requirements set forth by the Commission. (Atkins Dep. 163-64.) The district has two schools that are in “Needs Improvement” status—Cedartown Middle School and Cedartown High School. (Id. at 15.) The middle school also is in Needs Improvement status

because of poor math performance and the high school is in Needs Improvement status. (Id. at 16-19.) As part of the improvement plans for these schools, the district locally funded an attendance clerk who would ensure students are attending school (at the high school) and budgeted for lower class sizes at the middle school. (Id. at 21.) A large portion of its federal funds must be used by the district for school improvement needs. (Id. at 27-28.)

The district also eliminated its separate alternative school due to cost. (Id. at 77.) The district could not afford to run the alternative school as a stand alone facility. (Id.) The building is in poor condition and it was an “extraordinary cost” in terms of local funding. (Id.) The district is doing everything it can with its current level of resources, but its teachers need help. (Wingfield Dep. 120.) The teachers purchase their own supplies—they need higher salaries, they need release from the oversized classrooms, they need the flexibility to acquire whatever programs their individual students need. (Id. at 120-21.)

The district’s enrollment has been increasing, and gained by approximately 150 students in the 2006-2007 school year. (Atkins Dep. 81.) This exceeded the district’s projected enrollment for that year by two to three classrooms. (Id. at 82.) As a result, the district had to request maximum class size waivers when classes exceed the maximum class size requirements. (M. Williams Dep. 12; Wingfield Dep. 54-55.) When the district’s enrollment exceeded the projected increase, the district had no choice but to seek these waivers because the district does not have the facilities to accommodate more classrooms. (Atkins Dep. 81-83.)

The district’s staff is selected and added based on the class size requirements. (M. Williams Dep. 73-74.) To that end, the district’s staffing is sufficient only to avoid violating the State’s mandated class size rules. (Id. at 74.) The district does not have enough teachers to be able to offer classes below the state maximum class size limits. (Id.) The level of staffing in

Polk County is all they can do to “get by,” but it is not adequate. (Id. at 73-74.) Polk does not have adequate staffing to serve at-risk students. (Id. at 74-75.) Low class sizes are more effective for identifying students who need extra assistance and for providing those students with more individualized support. (Id. at 75-76.) It is very difficult, with classes at the class size maximums, to reach all of the students who have diverse needs. (Id.)

The district offers limited remediation opportunities. It only offers remedial courses at the middle school level and only offers them in math, reading, and language arts. (Atkins Dep. 185.) These remedial courses take place during the day as connections classes, not in the form of an after-school remedial program. (Id.) At the high school level, the district offers remediation only through NovaNET credit recovery and before and after school remediation for the Georgia High School Graduation Test. (Id. at 186.)

Polk County struggles to attract and retain teachers. (Wingfield Dep. 126.) The district needs ESOL teachers to support the students who are coming to Polk County and do not speak English. (Id. at 91-92.) The Board was unable to fund a Personnel Director position when it was requested because of cost. (Id. at 28-29.) The district previously had a Personnel Director, but that position was eliminated. (Id. at 34.) Polk also had to freeze the rate of the local salary supplement. (Atkins Dep. 202.) According to the district’s Curriculum Director, it is apparent from the district’s graduation rate that the staff is inadequately trained to serve the students. (Atkins Dep. 125.)

The district employs academic/instructional coaches, but will have to eliminate those positions because they are funded locally and the Board determined that the district needs that money to hire more classroom teachers to lower the student to teacher ratio. (Id. at 53-54, 61.) These coaches are responsible for helping teachers implement the GPS standards and

professional learning and conduct model teaching for teachers who may be struggling in a particular area. (Id. at 52.) The district initially received funding for these positions through a CAPS grant, but had to fund the coaches locally when the grant was exhausted. (Id. at 54.) The Board and the Superintendent agree that the instructional/academic coaches are beneficial, but that there are not sufficient funds to provide them.

Polk County schools had to eliminate two of its Advanced Placement (AP) courses due to cost and enrollment growth. (Id. at 99.) The district eliminated its AP Chemistry and AP Government classes. (Id.) The district would like to replace those courses, but cannot do so because it does not have enough teachers. (Id. at 99-100.) The district must provide coverage for the core classes first—and any additional revenue must go towards putting teachers in the classrooms that are added due to enrollment growth. (Id. at 100.)

Prior to 2005-2006, the district had not been able to offer more than three AP courses and the gifted program at the middle school was not very strong because of a lack of funds and ability to extend the gifted program beyond reading/language arts. (Id. at 113-14.) Because the students did not have the foundation from middle school to do well in AP Calculus and History, enrollment in those courses was relatively low once these courses were offered. (Id.) The district has invested local money into the AP and middle school gifted programs. (Id. at 114.) The district would like to offer more in terms of gifted programming, but cannot afford to do so. (Id. at 115.) The district offers the Virtual School, but it is apparent from the students who have used it that they had difficulty retaining information or understanding the content of what they were learning because there was no teacher in person to help them. (Id. at 119.) It costs students \$600 to take Virtual School courses during the summer, which is not economically possible for many students in Polk County. (Id. at 117-18.)

Polk offers a pre-K program, but there is a lengthy waiting list at each school and many of the children do not get served. (Id. at 203-04.) The district receives only a fraction of the money it needs for textbooks from the State. (Id. at 205-06.) In terms of transportation, the district offers all of its students bus transportation to and from school, but the bus drivers must do double loads⁴⁶ to cover all of the children. (Id. at 206-07.) Cedartown Middle School and Cedartown High School had to stop their participation in the school reform programs entitled “High Schools That Work” and “Middle Schools That Work” because it was too expensive. (Id. at 209-10.)

The district’s stated student to computer ratio of 4.25:1 is an overall average. (Id. at 210-11.) Some schools have more technology than others and that average is not reflective of conditions at all of the schools. (Id.) Eastside Elementary School, which was a Title I school, received a Title 2-D grant, which funded much of the technology at that school. (Id. at 211.) As a result, Eastside Elementary School has more technology than the other schools. (Id.) Other schools, such as Cedartown, applied for the grants for technology, but did not receive them. (Id. at 211-12.)

According to the district’s Curriculum Director, it is not possible to offer an adequate education to the students in Polk County with the level of funding available to the district.

(6) Wayne County Cannot Provide Its Students Adequate Educational Opportunities

Wayne County school system cannot offer a basic or adequate education to all its students. (K. Keith Dep. 269-70; Peterson Dep. 219; Peterson Dep., Ex. 12 at 16.) In terms of providing an adequate education, one “that allows a student to function within society at a

⁴⁶ “A school bus will go make a portion of the route and load up the bus. Go deliver to a school, and then run a whole other route, to pick up another group of children to deliver to the school.” (Id. at 207.) Of course, this dramatically extends the time that students spend on (or waiting for) the bus.

responsible level with the skills and knowledge that they possess to either enter the world of work beyond high school or pursue further educational opportunities[.]” Wayne County has a “problem.” (K. Keith Dep. 266.) The district also has an obligation to local employers “to try to reduce that learning curve when [students] step in that job, and most importantly to reduce the amount of training opportunities that employers have to provide to those students.” (Id.)

The Wayne County Superintendent believes that the district provides some basic educational opportunities in some areas, but does not succeed in meeting the needs of its students. (Id. at 269.) “I just don’t think we have the resources and the opportunities that we need to have to do a better job.” (Id.) The Superintendent has never believed during his time in Wayne County that the district had sufficient funding to provide an adequate education. (Id. at 279-80.) Simply put, Wayne is “not challenging students like we need to be challenging.” (Id. at 128.)

Based on graduation rates, test scores and accountability data from the State, it is clear that Wayne County has “issues” in a number of its schools. (Id. at 129.) The schools are working as hard as they can with the resources available. (Id. at 129-30.) The free and reduced price lunch program is used by about 52% of the Wayne County student population. (Id. at 98.) This number has been increasing over the last few years. (Id.) There are not many job opportunities in Wayne County and the county is small. (Id. at 296.)

For the most part, Wayne County students who drop out of school only have opportunities to work at fast food restaurants, landscaping businesses or some type of service business. (Id.) But, preparing a student for a job at a fast food restaurant or a landscaping business does not reflect an adequate education. (Id. at 296-97.) The students often are not sufficiently prepared to work at Rayonier, which is the largest employer in Wayne County. (Id.

at 145.) Rayonier has expressed displeasure to the school district that Wayne County graduates are not well prepared in terms of interpersonal skills, work ethic and basic math skills. (Id. at 270-71.) The Wayne County school system is “missing the boat” on the 56%-60% of students who are a “neglected majority.” (K. Keith Dep. 268.) These students are not being “prepared to enter the world of work or pursue post-secondary education.” (Id.)

Wayne County did a study analyzing college attendance and completion rates of its graduates. (Id. at 295.) Only one-fourth of the Wayne County graduating class participated in either a two-year or four-year college. (Id.) According to the study, only one-third of the 25% of graduates who entered college ended up graduating with a degree. (Id. at 295-96.) This means that only around 1/12 (8.25%) of the students who graduated from Wayne County High School entered post-secondary education and graduated with a college degree. (Id.) In 2006-2007, Wayne County’s graduation rate was only 50.32%. (Swanson Dep., Ex. 13 at 2.) Thus, more than 95% of Wayne County’s high school students are likely not to achieve a college degree.

Wayne County High School is in Needs Improvement Year 4 (NI-4). (Id. at 122.) The high school has consistently failed AYP due to the “high school graduation test with regards to economically disadvantaged, which is a large subgroup at the high school, and also African-American population subgroup.” (Id. at 124-25.)

Dr. Peterson visited the Wayne County school system and observed its conditions and programs. He testified that Jesup Elementary was “woefully inadequate” and a “dismal” place. (Peterson Dep. 170, 178.) “For a teacher to be able to teach effectively, you have to have some of the basics, such as a classroom that is conducive to learning. . . . [B]ecause the facilities are so inadequate, the school day gets chopped up.” (Id. at 170.) Some students at Jesup Elementary

must start their lunch around 10:30 a.m. (Id.) The school cannot afford needed technology to provide a modern education. (Peterson Dep. Ex. 12 at 17.) In the science classroom, so many computers were broken down that the mobile labs were ineffective. (Id. at 170-71.) Wayne County schools do not have sufficient technology. (K. Keith Dep. 186-87.) Jesup Elementary has a critical need for a “teacher coach to help teachers teach more effectively,” and summer and after-school programs, but there is no funding available for those things. (Peterson Dep. 171.)

Dr. Peterson also visited Arthur Williams Middle School, where the teachers are lacking training, technology, and resources to do a better job. (Peterson Dep. 172-73.) State budget cuts caused one middle school to eliminate art and another to cut music. (Id., Ex. 12 at 17.) The Pre-K building is terribly out of date (Peterson Dep. 174), and Wayne County is unable to sufficiently provide needed Pre-K services in the district. (Peterson Dep., Ex. 12 at 17). The high school does not offer the range of courses that should be offered to students to prepare them to go on to college and higher degrees. (K. Keith Dep. 268.) The principals and teachers at Wayne County High School “raised the issue that they wanted to offer many more courses, including another period,” but “they don’t have the resources to do that.” (Peterson Dep. 176; Peterson Dep., Ex. 12 at 16.) The high school also needs adolescent reading specialists to help students handle high school level coursework. (Id.) It is critical to improve instruction through creating vertical teams, professional development, and expanded learning times. (Peterson Dep. 177.) The central office applied for a federal grant to fund such programs, but did not receive the funding. (Peterson Dep. 177.) The 20 extra day funding is insufficient, and the district needs to offer more, quality after-school and summer learning programs to reach students. (Peterson Dep. 177-78.)

Wayne County needs a plethora of additional programs in order to provide an adequate education. These programs include a more comprehensive reading program, a performance learning center, assistive technology with regards to special needs, remedial education at the high school with regards to a teaching staff addressed to identify the needs of students, an expansion of the early intervention programs at the elementary schools and the flexibility of having more funding or at least adequate funding with regards to graduation coaches. (K. Keith Dep. 275-77.)

The district no longer has a graduation coach because the position was dropped due to the cost involved with the program. (Id. at 65.) The graduation coach program was not funded sufficiently by the State, and the district could not afford to hire a qualified person for the position. Because Wayne County could not bear the additional salary costs and benefits necessary to staff the position, it was not able to participate in the program. (Id.)

The district does not have enough money to refurbish the track surrounding the football field and is considering ending the high school track program entirely due to the potential liability associated with a student getting hurt. (Id. at 104.) Students have had minor injuries while using the track. (Id. at 104-05.) The tennis courts at the school cannot be used. (Id. at 104.) There has been a serious injury (that required surgery) on the tennis courts due to the poor condition of the court. (Id. at 105.) The district is behind schedule in its bus replacement because of “fiscal constraints.” (Id. at 251.) The district hopes to catch up on the bus replacement cycle as part of a SPLOST effort, but that is a “gamble” because the SPLOST might not pass. (Id. at 251.)

Wayne County teacher supplements are only \$1,500.00 per year. (Id. at 218.) The First District RESA survey (done in 2005 -2006) compared this supplement amount to surrounding

counties. (Id. at 219.) The survey showed that Wayne County teacher supplements compare very poorly to those of surrounding counties. (Id.)

The district relies heavily on Teach Georgia as far as the submission of applications. (Id. at 213-14.) Teach Georgia is a PSC-operated website that posts school district's employment needs. (Id. at 215.) The district also offers electronic applications online. (Id.) Wayne County does participate in teacher recruiting fairs, but the Superintendent says: "When we start going into Atlanta or go to Athens, for instance, it's hard to convince a young person to come to Wayne County simply because it's a small community, good atmosphere, a number of good churches and -- because we cannot be as competitive as some of the other school systems, even those around us, with regards to supplements and those kinds of thing." (Id.) Professional development is a "costly endeavor...from a local perspective" for Wayne County. (Id. at 132.) The district cannot afford to provide needed professional development for its teachers. (Peterson Dep., Ex. 12 at 16.)

For the past two years, the school system has levied the maximum 20 mills in local taxes. (Id. at 140.) There has been a decline in the tax digest in Wayne County. (Id. at 145.) The decline resulted from a reassessment of property, when Rayonier's property value dropped from \$425 million to around \$186 or \$187 million. (Id.) The decline translated into nearly \$60,000 per mill, or \$1.2 million in lost tax revenue. (Id. at 147.)

From July 1, 2006 to July 1, 2007 there was a substantial decrease in the districts' fund balance. (Id. at 288.) The district is also projecting a further decrease in the fund balance for 2008. (Id.) The fund balance is declining because more reserves are being used for addressing the needs of unfunded State mandates to the local district. (Id. at 288-89.) The district is burdened with these costs because State funding levels do not adequately compensate local

systems for the needed programs. (Id. at 288-89.) Because Wayne levies the maximum 20 mills, it “becomes just a waste of effort to pursue planning and developing and organizing if there is not going to be any real consideration for expanding educational opportunities by the board of education.” (Id. at 274-75.) The district works hard and is doing the best it can to help students reach a level of adequate education, but, it is falling far short of what is needed to meet the needs of its students. (Id. at 267-68.)

VI. ARGUMENT AND AUTHORITIES

The State of Georgia has abdicated its responsibility to fund the costs necessary to provide an adequate public education to its citizens. Instead, the task of funding the adequate education needed to prepare students to function in society has been left largely to the divergent financial abilities of the individual school systems. The necessary costs of funding an adequate education program today are greater than ever before, and undoubtedly far beyond what they were in 1985, when the QBE was adopted. Yet, the State continues to ignore these growing needs and insists on holding fast to outdated and insufficient funding formulas. The State has stubbornly avoided making any reasonable assessment of the actual costs needed to provide adequate education to all Georgia students. Simply put, it appears the State really does not want to know what actually would be required for it to fulfill its primary constitutional obligation for public education. This approach of “Don’t Ask, Don’t Tell” has caused Georgia to fall woefully behind in providing the resources needed to ensure an adequate education in today’s society.

Some of the students lucky enough to be born in districts with sufficient resources to make up the gaps in the State funding formula may well receive an education sufficient to prepare them for later life. But most of the students living in one of the many school districts without those resources – and those at-risk or disadvantaged students who have additional needs

– essentially have been abandoned by the State and deprived of their Constitutional right to an adequate education. The relief sought by the Plaintiffs’ Complaint will ensure that *all students in Georgia* will receive the educational resources required to prepare them to function well in society.

The State seeks summary judgment to avoid that relief – and the evidentiary trial on which it should be based. First, the State misinterprets the standards that govern its obligation to provide adequate education for all Georgia students. In any event, as the extensive factual summary provided by Plaintiffs shows, the State is failing to meet its own minimal standards, which are not nearly sufficient to achieve constitutional adequacy. Second, the State seeks to duck its constitutional responsibilities by arguing that Plaintiffs cannot provide evidence linking the clear deficiencies in Georgia student achievement to the clear deficiencies in the State funding programs. Neither of those arguments provides any basis to dispose of Plaintiffs’ Complaint.

A. An Adequate Education Must Actually Prepare Students to Function in Society

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

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 Constitution includes the most forceful and explicit language on educational adequacy of any state constitution. As the Supreme Court pointed out in McDaniel v. Thomas, 248 Ga. 632, 644, 285 S.E.2d 156, 165 (1981), “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).” In contrast, other state courts relied on much less specific language in the education clauses of their state constitutions to find a right to an “adequate” education.⁴⁷

In McDaniel, the Supreme Court held that an “adequate education includes basic educational opportunities for its students.” (November 2006 Order at 3.) The constitutionally required “basic educational opportunities” are those “designed to produce individuals who can function in society.” McDaniel, 248 Ga. at 644, 285 S.E.2d at 165. Plaintiffs will sustain their constitutional claims by presenting evidence showing “that existing state funding for public education deprives students *in any particular school district* of basic educational opportunities” that are “designed to produce individuals who can function in society.” (November 2006 Order at 3, emphasis added). The Supreme Court 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, 248 Ga. at 644, 285 S.E.2d at 165 (citation omitted). As already recognized 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 a full evidentiary record. (Order dated October 28, 2005 (the “October 2005 Order”) at 8.)

⁴⁷ State constitutions in other states use a variety of terms in referencing this obligation to provide an enforceable and substantive “adequate” education consistent with constitutional standards, including: *North Carolina*: right to “privilege of education” deemed to give rise to right to “sound basic” education with qualitative standards. Leandro v. State, 488 S.E.2d 249 (N.C. 1997). *New York*: constitutional mandate of a school system “wherein all the children of this state may be educated,” creates state obligation to ensure “sound basic education” for all children. Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 328 (N.Y. 2003). *Arkansas*: “a general, suitable, and efficient system of free public schools.” Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472, 484 (Ark. 2002). *Kansas*: “the legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools.” Montoy v. State, 2005 Kan. LEXIS 2 (Jan. 3, 2005). *South Carolina*: requirement 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. Abbeville County Sch. District v. State, 515 S.E.2d 535, 540 (S.C. 1999). *Tennessee*: requirement “for the maintenance, support and eligibility standards of a system of free public schools.” Tennessee Small School Syst. v. McWhorter, 851 S.W.2d 139, 148 (Tenn. 1993). *Kentucky*: requirement for “efficient” system of common schools. Rose v. Council for Better Educ., 790 S.W.2d at 186, 210 *et. seq.* (Ky. 1989).

The McDaniel decision is consistent with decisions of the highest courts of other states, which have held that education provisions in state constitutions impose a duty to provide an adequate education. Like McDaniel, these courts have determined that a constitutionally adequate education is one that properly prepares students to function in society. This is essential to allow students to function in society including as civic participants and as competitors in the job market.

For example, the North Carolina Supreme Court held that the “right to the privilege of education” gives 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, 254 (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.” Id. at 255.

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 found the state’s school funding system constitutionally inadequate and in violation of the requirement for an “efficient” system of public schools. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989). It described 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.⁴⁸ The Kentucky standards were based on earlier standards applied by the West Virginia Supreme Court and were subsequently adopted by the Supreme Courts of Arkansas, South Carolina, Massachusetts and New Hampshire for testing the constitutional adequacy of their school funding systems.⁴⁹

As McDaniel noted, “it is primarily the legislative branch of government which must give content to the term ‘adequate’” 248 Ga. at 644, 285 S.E.2d at 165. Accordingly, this Court has recognized it should “look to the State statutes to see what the legislative branch has done *to give meaning and content* to the words ‘adequate education.’” (November 2006 Order 2, (emphasis added).) The Court further held that “evidence that shows how the State *has actually performed* in relation to the constitutionally mandated ‘adequate education,’ as that phrase has been given meaning and content by the actual sovereign legislative actions of the General Assembly and the regulations of the State Board of Education, will be *critical*.” (Id. at 3) (emphasis added.) Thus, the Court found that the State laws and regulations are relevant and instructive in helping the Court to determine whether the State actually is providing an adequate education in Georgia.

Nowhere, however, has this Court ever indicated that such state laws and regulations are alone sufficient to determine adequacy. The State’s argument that State regulations effectively

⁴⁸ These standards require that to receive an adequate education, a 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).

⁴⁹ Pauley v. Kelly, 255 S.E.2d at 877 (W.Va. 1979); Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472, 487-88 (Ark. 2002); Abbeville County Sch. Dist. v. State, 515 S.E.2d 535, 539-40 (S.C. 1999); McDuffy v. Sec. of Exe. Office of Educ., 615 N.E.2d 516, 527 (Mass. 1993); Claremont Sch Dist. v. Governor, 703 A.2d 1353, 1361-62 (N.H. 1997).

preempt any further review by this Court of whether adequate education actually is provided in Georgia simply is inconsistent with this Court's prior rulings. The Court further explained its findings on this important issue, as follows:

Whether these basic educational opportunities do, in fact, exist and, if not, whether the absence is due to a lack of necessary State funding or some other State deficiency will be relevant. Additionally, students' graduation rates and test performance scores will be considered to the extent they reflect a lack of necessary funding or other deficiencies of the State. But again, as indicated above, these rates and scores will be persuasive only if they can be tied to the absence of necessary funding or to some other factors under the control of the State.

(Id. at 4.) This analysis requires an evaluation of the myriad factual issues created by 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.) and whether adequate resources are available in the Plaintiff districts and sample districts to establish and maintain needed programs and services in the schools to address significant student deficiencies. This analysis also includes an evaluation of the relationship between inadequate resources and the State's consistent non-funding and under-funding of QBE. See, e.g., Hoke County Board of Education v. State, 599 S.E.2d 365, 381-383 (N.C. 2004).

To function in a democratic society an individual must be prepared for civic participation, including voting and jury service⁵⁰ He or she must also be prepared for productive employment or further education, and must have an understanding of how our increasingly complex and technological society works. The Georgia General Assembly has recognized these principles in

⁵⁰ 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 331-32 (N.Y. 2003).

general statements of policy and legislative findings of the Georgia legislature.⁵¹ For example, the Georgia General 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 state wide 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 legislative pronouncements constitute additional standards for the Court's assessment of the adequacy of the education provided by the State.

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.⁵² Georgia statutes make this clear. They require a uniformly sequenced core curriculum that is intended to lead to high school graduation. See O.C.G.A. § 20-2-151. This statutory progression

⁵¹ See also, O.C.G.A. § 20-3-601(1) ("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 Constitution . . ."); 1997 Georgia Laws 1231 ("Whereas, well educated Georgians are necessary for the continued economic growth and prosperity of this state...").

⁵² 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. 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 Bd. of Educ. v. State, 599 S.E. 2d 365, 383-84 (N.C. 2004).

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.” O.C.G.A. 20-2-151(b)(1)(B). The primary purpose of primary 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.” O.C.G.A. 20-2-151(b)(2). 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(b)(3). As specified by Georgia law, ***“the primary purposes of high school programs shall be to prepare students for continuation of their 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(b)(4)(A) (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. (Peterson Dep. 77-78; Deposition of Scott Beck (“Beck Dep.”) 87.) 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. In today’s world, education is essential for responsible citizenship, Georgia’s economic success and the future of each individual. Unlike a generation ago, the consequences of failing to complete high school today are potentially disastrous, both for individual students, and for the State of Georgia. High school graduation is a key substantive standard to measure the constitutional adequacy of the Georgia school funding system. (Barrs Dep. 55, stating that State’s obligation for adequate education means “an opportunity to work towards a high school diploma.”)

***“Nothing about our graduation rate makes me proud, to be honest.”
(Rippner Dep. 101-02.)***

It is beyond any reasonable dispute that Georgia’s students fail to graduate high school at an alarming rate. In Georgia, almost one-half of the high school students fail to receive a diploma. The State seeks to minimize these terrible facts with its own self-serving calculations of graduation rates, which show “only” about 30% of students fail to graduate. But whether graduation rates are measured by the nationally accepted standards or by the Georgia Department of Education’s inaccurate method, the result is the same: Far too many students are failing to graduate from high school in Georgia. (Augustine Aff. ¶ 10.) For those students, who fail even to meet the State’s minimal graduation standards, there is no question the State is not providing an adequate education.

B. The State’s Education Funding System Does not Provide Adequate Education

An important issue in this case is whether the State’s funding system assures adequate educational opportunities designed to prepare students to function in society. A major part of Georgia’s educational funding system is the Quality Basic Education (QBE) Act. O.C.G.A. §§ 20-2-130-20-2-294. Accordingly, this Court should consider, 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, whether the State’s current education and funding system actually is “designed to produce” students who are prepared to function in our society.

In its motion papers, the State repeatedly points to the large amount of money spent on education in Georgia. But those numbers are meaningless without any analysis of what the financial needs of the education system actually are. Although there is no question that Georgia spends a large amount, and a large portion of its State budget, on education, the evidence shows that those expenditures are not nearly sufficient or appropriately targeted to provide an adequate education for all the children of this State. It simply is not persuasive for the State to say “we

spend a lot,” in the face of substantial evidence showing that the amount of resources provided by the State is insufficient to achieve the adequate education required by the Constitution.⁵³

The central principle of the QBE is that the minimum foundation level of funding must be provided by the State to ensure that all students in Georgia have a sufficient opportunity to receive an adequate public education. (J. Williams Dep., Ex. 3 at 2-4.) Otherwise, the provision of educational services to any student in Georgia becomes arbitrarily dependent on the particular financial abilities or political climate of the community in which he or she happens to reside. For this reason, Georgia law has long recognized that the needs of an adequate education must be met within the foundation of support provided by the State government. (*Id.*) However, the amount of resources provided by Georgia’s school funding system bears little or no relation to the actual costs required to provide an adequate education to the students. (Austensen Dep. ¶¶ 77-78.)

The evidence shows that the State has completely failed to maintain a foundation level of funding sufficient to provide adequate education for all students in Georgia. Indeed, over time, the contributions of the State have been reduced further and further putting ever greater burdens on local resources. Although some communities are able to make up the difference, many communities in Georgia are not. Because the State has abdicated its responsibility to provide sufficient levels of funding for adequate public education, many school children in Georgia will never be prepared to function sufficiently in society. Those failures ultimately will cost the State far more in lost tax revenue, increased welfare and prison populations, and lost business opportunities than the cost of an appropriate effort to ensure adequate education for all its citizens. (Deposition of Phyllis Isley (“Isley Dep.”) 24-26.)

⁵³ This is especially true considering the approximately \$165 million in tax cuts recently adopted by the Georgia General Assembly and the \$1.5 billion reserve at the State’s disposal. (Garcia Aff., Ex. 4.)

Moreover, the QBE formula has been eroded by persistent failures to provide the needed comprehensive review, revision, and funding of this formula. (J. Williams Aff. ¶¶ 24-42; Martin Aff. ¶ 16.) 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 repeatedly ignored reports provided by various studies it commissioned, which showed that the school funding system was failing to provide educational opportunities needed for students to succeed in school and to graduate. (See generally, J. Williams Aff. ¶¶ 24-42.) The reasons for this failure 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.

As a result, many 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. (Atkins Dep. 17; Key Dep. 190-92; M. Williams Dep. 60-62; McQueen Dep. 225.) The Georgia school funding system has increasingly required school districts to rely on local funding sources, primarily property taxes, regardless of the fact that Plaintiff and Sample Districts (and many others in Georgia) have low property tax bases that, even with equalization aid, yield insufficient resources to provide an adequate education. (Loughridge Dep. 33-34, 52-53; Reed Dep. 256-57; Atkins Dep. 237-38; Light Dep. 34-35, 38-39; K. Keith Dep. 143-44, 264-65.)

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 failings. For example, inadequate funding of and 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. (Toth Dep. 164-66; Atkins Dep. 210-13; Reed Dep. 59-61, 191-92, 253-54; Loughridge Dep. 98-99; K. Keith Dep. 61.) Myriad decisions such as these have been made in derogation or disregard of their consequences for educational adequacy statewide and in particular districts. (Martin Aff. ¶ 40; J. Williams Dep., Ex. 3.) At this point, the QBE has no mechanism for identifying and funding the “balance” the State must provide of “whatever is necessary to ensure that an ‘adequate education’ is provided.”

As a result, Georgia’s state-wide funding system for education is constitutionally deficient. This has been true, even as the costs required to deliver adequate educational services to students have increased at a steady rate. Simply put, the State has provided less and less money for school districts to meet educational needs that cost more and more over time. These systemic deficiencies are widespread throughout Georgia, and the least fortunate districts suffer more than most, as they tend to have greater concentrations of high-need students, but fewer local resources to make up the gaps in State funding.

C. The State is Primarily Responsible for Assuring That the Children of Georgia Receive an Adequate Education

Article VIII, Section I, Paragraph I of the Georgia Constitution is unambiguously clear that the State of Georgia has the primary responsibility for assuring that the children of Georgia receive an adequate education: “The provision of an adequate education for the citizens shall be a *primary obligation of the State of Georgia.*” This Court has found that “the State has made

policy decisions that recognize its responsibility to provide the citizens with an adequate education.” (November 2006 Order 2) Although the State need not provide all the funding for an adequate education by itself, the State must “provide the balance of whatever is necessary to ensure that an ‘adequate education’ is provided.” (November 2006 Order, p. 3.)

Although the State may be able to delegate aspects of its duties under appropriate circumstances, the State ultimately remains obligated to ensure that an adequate education is provided to all students throughout the State. As the Texas Supreme Court held in finding the Texas school funding system unconstitutional: “Whether the legislature acts directly or enlists local government to help meet its obligation, the end product must still be what the constitution commands—i.e., an efficient system of public free schools throughout the state.” Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 398 (Texas 1989). Nevertheless, the State argues that the responsibility for providing adequate education lies “completely” under local control. This simply is wrong as a matter of law. It also is contrary to the evidence presented by the State’s own witnesses. (See, e.g., Barrs. Dep. 46-27; Creel Dep. 62; Cox Dep. 140-43; Webb Dep. 274.)

For the State to provide the needed balance of funding necessary to ensure that an adequate education is provided, the State must establish an appropriate mechanism to ensure that the funding system is geared to fulfilling its constitutional obligation. Accordingly, the highest courts of states interpreting similar constitutional mandates for educational adequacy have required that school funding systems must be based on factors that are directly related to accomplishing the constitutional result, particularly when presented with factual situations similar to those in Georgia.⁵⁴ Because of the importance of this constitutional obligation, courts

⁵⁴ 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); Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 486 (Ark. 2002) see also, Campbell

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 must use relevant education need and cost factors focused on assuring that a constitutionally adequate education is available to all children in the state. These factors are necessary to ensure that resources are *actually available* for students with varying needs who require varying educational programs and services – in other words, to ensure that the State provides the balance of whatever is necessary to ensure that an adequate education is provided.

D. The State Ignores the Ultimate Constitutional Standard of Whether the School Funding System is Designed to Prepare Students to Function in Society

The State’s motion totally ignores the fact that the purpose of a constitutionally adequate education is to prepare students to function in society. The motion papers contain no reference at all to this central issue. For the State, a constitutionally adequate education is whatever the State says it is. Presumably, according to the State, there is no need to consider whether educational opportunities provided by the school funding system and available to students are “designed to produce individuals who can function in society.” Rather, the State’s accountability standards are determined merely by the minimum requirements of meeting AYP. (Barrs Dep. 56.) These standards are not nearly enough: *“I think you can do without science.” . . . “I think that they can succeed in the world without social studies.”* (Leonard Dep. 55, 59.)

The State appears to base this “anything we do is by definition constitutional” approach to this case on a view that its actions are beyond review, echoing similar arguments made in their motion to dismiss and in prior legal briefs. It appears to read all this into the Court’s November

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 each educable child”).

2006 Order at page 3, which indicated that the Court would consider how the “constitutionally mandated ‘adequate education’” had been given “meaning and content by the actual sovereign legislative actions of the General Assembly and the regulations of the State Board of Education.” The State ignores, however, the language that immediately precedes and follows the language on which they rely: “evidence that shows how the State has *actually performed* in relation to the constitutionally mandated ‘adequate education’ . . . *will be critical.*” (November 2006 Order 3 (emphasis added).)⁵⁵ Nowhere in the motion papers is there any acknowledgment of the key evidence in this case showing how the State *actually has performed in carrying out its constitutional obligation*. The performance evidence in this case overwhelmingly shows that Georgia’s education system is failing its students under any reasonable measure. (See discussion at pp. 16-80, supra.)

E. The State Suggests that an Adequate Education Can Ignore the Needs of Students Who are at Risk of Academic Failure and Dropping Out of School

The State apparently believes the position that a constitutionally adequate education can simply ignore Georgia’s greatest educational problems: the tragically large proportion of Georgia’s school children who are at risk of academic failure and ultimately fail to graduate from high school. The State argues that its obligation is met by the creation of a “one-size fits all” education that ignores the needs of actual children in any particular school districts. Thus, it claims, as long as a district is able to offer the required “Core Curriculum” designated by the State, there is no further obligation to those students who likely will fail or drop out of school. The State has rendered meaningless the requirement that public education be designed to prepare individuals to function in society.

⁵⁵ The relevant language, in its entirety, is as follows: “[E]vidence that shows how the State has actually performed in relation to the constitutionally mandated ‘adequate education’, as that phrase has been given meaning and content by the actual sovereign legislative actions of the General Assembly and the regulations of the State Board of Education, will be critical.”

This argument is a familiar one. It is merely a renewal of the State's contention (previously rejected by the Court in the standards hearing) that so long as the State can show that students are offered a "traditional high school education," the fact that a large proportion of students are unprepared to function in society is irrelevant. (Def. Br. Addressing the Adequacy Standard, pp. 2, 11-13, 30-31.) It is only slightly better than the original premise for their motion to dismiss that an adequate education requires only "the minimal level of schools being open, teachers teaching, and children in general learning the basics as reading, writing and arithmetic." (Defendants' Reply to Plaintiffs' Brief in Opposition to the Dismissal of Their Complaint 4.) According to the State, a constitutionally adequate education is simply a theoretical construct that can be met by designing an educational program for a hypothetical average student. In the State's view, whatever actually happens to the real students in any particular school districts is irrelevant to its constitutional obligation.

The State relies extensively on the Core Curriculum adopted by the State Board of Education in claiming it has met its constitutional obligation. But it ignores the fact that the State has established standards of proficiency at every level of that same Core Curriculum. For example, the General Assembly has articulated educational standards both in terms of broad standards for students' instructional achievement, as well as 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. O.C.G.A. §§ 20-2-140, 20-2-151. Georgia school districts, schools, and students are held accountable for students' achievement of minimum levels of proficiency based on State standards and examinations such as the Georgia High School Graduation Test and other criterion referenced examinations, as well as graduation rates. O.C.G.A. §§ 20-2-281, 20-14-33, 20-2-41, 20-2-281.

The State finds it irrelevant that large numbers of students in Georgia districts fail to meet these standards. For example, the evidence shows that throughout Georgia and in the Plaintiff and Sample Districts, in particular, there are substantial numbers of students who are “at risk” – e.g., low-income, English learner, special education, or ethnic minorities – and are not able to meet these basic academic standards without substantial, properly funded educational interventions on the part of school districts. (Cox Dep. 84-86; Bryar Dep. 98-100, 104-05; McQueen Dep. 109-10; Whidden Dep. 93-96.) (See also, Peterson Dep., Ex. 12 at 11.) But according to the State, if a school district is able to offer the minimum Core Curriculum, then it makes no difference whether at-risk students require more intensive programs and services. The State asks this Court simply to ignore the circumstances of the real students living in Georgia and avoid any inquiry of whether the programs and resources provided actually are effective in meeting the educational needs of those students in any particular school system.⁵⁶

The State attempts to justify its inability or unwillingness to address the difficult educational circumstances of at-risk students by arguing that socioeconomic status and other student characteristics are irrevocable determinants of a student’s destiny. It says that Georgia has relatively high proportions of minority and low-income students and suggests that this should reduce the standard of an adequate education applied to those students. (Def. Brief at pp. 64-65.) But the fact that socioeconomic status and other student characteristics may have some impact on student achievement and high school completion does not excuse high student failure rates. Instead, the presence of these characteristics presents additional challenges that the State has an

⁵⁶ If the offering of the Core Curriculum by a school district is the touchstone of a constitutionally adequate education, no challenge to educational inadequacy could ever be brought since the Core Curriculum is such a minimal standard that it would appear a school district could not operate at all in Georgia without offering the Core Curriculum. See O.C.G.A. § 20-2-140.

obligation to recognize and address. (Martin Aff. ¶ 18.) After all, the Constitution requires that these students also receive an adequate education.⁵⁷

This Court should reject the State's claim that there is nothing it can do to help these students. The evidence shows there are many education programs and services that improve the educational chances of at-risk students. (Augustine Aff. at ¶¶ 4-10; Peterson Dep. 18-19, 33-34, 181-82; Strieker Dep. 103; Levin Dep. 241.) (See also Cox 84-86; Bryar 171-72; 273-75; Whidden 93-96.) The issue as to at-risk children is not whether these students are capable of succeeding, but whether the State has provided sufficient resources to ensure educational opportunities reasonably calculated to allow them to succeed. We simply cannot believe the State actually would say that additional programs and resources have no positive impact on the life chances of these at-risk students.

The convergence of significant concentrations of at-risk students, with substantial resource deficiencies and a much neglected QBE funding system, have caused the Plaintiff and Sample Districts (and many other districts throughout Georgia) to have insufficient trained staff, educational programs, services, instructional materials, equipment and facilities, and intervention programs to provide an adequate education to all their students. (Strieker Dep. 218-19, 224-28, 232-33; Keith Dep. 65-67; McQueen Dep. 73-74; Key Dep. 190.) Without some remedy to address those systemic funding deficiencies, these students will never enjoy the educational rights guaranteed to them by our Constitution.

The North Carolina courts have provided a template for consideration of the needs of at-risk students. Hoke County Bd. of Educ. v. State, 599 S.E. 2d 365, 381-86 (N.C. 2004). They hold that the proper measure of whether the North Carolina school funding system was meeting

⁵⁷ Although the State relies on national averages for minority and at-risk student populations, it makes no effort to explain why Georgia's student achievement consistently lags behind that of neighboring or similar states with like demographic challenges.

its obligation to provide an adequate education was whether sufficient educational resources were *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.⁵⁸ Like the plaintiff districts in North Carolina, the Plaintiffs and sample districts here have a significant proportion of “at-risk”, low-income disadvantaged students.

Virtually every other court in the nation that has considered the constitutional merits of educational adequacy issues has recognized that the heart of the issue of educational adequacy, particularly for at-risk students, is whether the school funding system provides resources to at-risk students in particular districts for educational programs and services needed to prepare those students to function in society.⁵⁹ A determination of whether such programs and services can be

⁵⁸ The North Carolina Supreme Court cited with approval the trial court finding that

[T]he 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 390.

⁵⁹ Deriso v. Cooper, 246 Ga. 540, 272 S.E.2d 274 (1980), cited in Defendants’ brief (at pp. iii, 53, 56, 58-60, 74), does not undercut McDaniel. The Court in McDaniel cited Deriso for the proposition that it is primarily the legislative branch that must give content to the term “adequate”. McDaniel, 248 Ga. at 644, 285 S.E.2d at 165. Nothing in McDaniel indicates that the Court viewed Deriso as interfering with the inquiry it specified concerning whether students in a particular district are denied basic educational opportunities – those designed to prepare them to function in society. Moreover, Defendants take Deriso out of context. Deriso held as a matter of both policy and law that plaintiffs’ claims regarding the defendant local school board for alleged negligent and racially discriminatory management of the district (and the resulting inadequate education of students) could not be considered in equity as the plaintiffs had not exhausted their statutory remedies. The Court therefore held that the plaintiffs’ claims were not properly before the Court as they had not been raised pursuant to the local educational controversy dispute procedure set forth in Ga. Code Ann. §32-669a (the predecessor to O.C.G.A. 20-2-1160). 246 Ga. at 542, 272 S.E.2d at 277-78. Additionally, the Court rejected the plaintiffs’ attempt to sidestep the established administrative review process for disputes regarding the construction of local school law based upon the Court’s concern that plaintiffs were seeking the Court’s *ongoing direct supervision and management* of the school district and appointment of a receiver in place of the board. There was also a pending racial discrimination claim against the school district in federal court and the Court considered it inappropriate for both a federal and state court to be involved in the same matter. 246 Ga. at 542-44, 272 S.E.2d at 277-78. Similarly, Kristin Nat’l, Inc. v. Bd. of Educ. Of City of Marietta, 250 Ga. App. 488, 552 S.Ed2d 488 (2001), addresses a plaintiff’s request for the Court’s engagement in the internal affairs of the school district – overriding the school board’s determination that drivers’ education would be provided in free after-school programs.

provided does not require the Court to specify the details of a constitutionally adequate education or act as a “super-legislature.” Rather, it merely requires a review of the evidence to determine whether those students actually are receiving an education adequate to prepare them for later life. When lack of resources leaves at-risk students languishing without sufficient educational opportunities, the courts repeatedly have found constitutional deficiencies in the school funding system, without any need to mandate the best forms of required educational interventions. See Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 336-340 (N.Y. 2003); Hoke County Bd. of Educ. v. State, 599 S.E. 2d 365, 381-386 (N.C. 2004); Leandro v. State, 488 S.E.2d 249, 259 (N.C. 1997). As in other declarations of unconstitutionality, the details of compliance with constitutional standards remain with other branches of government. Such a declaration of unconstitutionality does not entail any judicial intrusion into the plaintiff school districts’ actual management of their daily affairs as threatened by Defendants. (Def. Brief at 3-4, 46-52.)⁶⁰

A determination that the State’s school funding system violates constitutional standards entails no greater “usurpation” of the authority of the coordinate branches of government than any other constitutional determination. Courts accord proper respect to the other branches by providing the political branches the first opportunity to correct constitutional deficiencies after issuing such a determination and by taking more direct remedial actions only if and when the executive and legislative branches fail to correct identified violations. See, e.g., Seymour v. Region One Bd. of Educ., 803 A.2d 318, 324, 326 (Conn. 2002); Hoke County Bd. of Educ. v. State, 599 S.E.2d 365, 390-91, 393-94 (N.C. 2004); Campaign for Fiscal Equity v. State, 801

⁶⁰ Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 328, 330-332 (N.Y. 2003); Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1361-1362 (N.H. 1997); Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472, 487-488 (Ark. 2002); Abbeville County Sch. Dist. v. State, 515 S.E.2d 535, 539-540 (S.C. 1999); Leandro v. State, 488 S.E.2d 249, 255 (N.C. 1997); McDuffy v. Secretary of Executive Office of Education, 615 N.E.2d 516, 527 (Mass. 1993); Abbott v. Burke, 575 A.2d 359, 402-403, 407 (N.J. 1990); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989); Pauley v. Kelly, 255 S.E.2d 859, 877 (W.V. 1979).

N.E.2d 326, 345 (N.Y. 2003); Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806 (Ariz. 1994); State v. Campbell County Sch. Dist., 32 P.3d 325, 332 (Wyo. 2001). Such a constitutional failure clearly exists in Georgia.

F. The State Seeks to Avoid its Constitutional Obligation for Adequate Education by Blaming the School Districts

The State seeks to avoid its obligation to ensure that students in the Plaintiff and Sample Districts receive an adequate education by blaming the school districts for not raising their discretionary property tax millage to 20 mills, the maximum permitted by law. The State ignores the fact that it is ultimately responsible for ensuring that the resources needed for an adequate education are made available to students in Georgia and that the State itself created and controls the funding system that the State now criticizes school districts for using in the way that the State intended. The State never has suggested that the tax contributions in any school district are insufficient, except in the context of this motion. (Cox. Dep. 132.)

Moreover, Plaintiffs and the sample district tax themselves at millage rates that are relatively high compared to other districts in Georgia. (J. Williams Aff. ¶ 6.) The fact is that only a handful of Georgia districts levy rates at 20 mills or above – *including the Wayne County School District, one of the Plaintiffs' Sample Districts*. (Id. at ¶ 11) Thus, although the State argues improperly that no district below 20 mills could make a claim for inadequate funding, it ignores the fact that one of the Sample Districts at issue meets that very requirement.

Essentially, the State argues that by creating a school funding system, which leaves 15 of 20 mills of local property taxes outside the QBE Foundation, it can abdicate all its constitutional responsibility for assuring an adequate education to local schools districts. Astoundingly, the State now refuses to take responsibility for the predictable consequences of the school funding system it created and controls.

The State's local school tax argument also is a repeat of arguments it made in the Motion to Dismiss and in the standards hearing. Originally, it claimed that the authorization of a local school tax meant that only school districts, and not the State, had any constitutional obligation to provide an adequate education. When that argument failed, it then claimed in the standards hearing that the authority of school boards to levy a property tax millage somehow relieved the State of its constitutional obligation. Although the Court previously rejected that theory, they rely heavily on it again now in making the Motion for Summary Judgment.

The history of this constitutional provision authorizing a local school tax demonstrates that it has always been intended to be a *limited* local school tax.⁶¹ Beginning in 1920, this provision required a minimum local contribution to the total expense of the school system.⁶² The minimum levy requirement was eliminated in the 1983 Constitution and the limit of a maximum 20 mills of ad valorem taxation was maintained. Art. VIII, § VI, ¶ I. Consequently, today the

⁶¹ As originally adopted, the Constitution of 1877 merely authorized the use of local taxation for school purposes. (Article VIII, Section IV). (The 1877 Constitution also established a State school fund for public school purposes funded from certain dedicated revenue sources.) This constitutional history of the local school tax was discussed at length in Plaintiffs' Brief in Opposition to Defendants' Motions to Dismiss Plaintiffs' Complaint (pp. 39-41).

⁶² The 1920 Constitutional Amendment first established the requirement that a local county make a minimum contribution toward the overall expense of funding the public school system. The 1920 Amendment required that each local school board levy a local tax of at least one mill. That Amendment also placed a constitutional limitation of five mills on the maximum amount of local financial contribution a county could make toward the total expense of the county school system. At the same time, the General Assembly enacted a statute, in 1919, supplementing the Constitution's common school fund, that directed one half of the State's revenues be spent for school purposes:

Fifty per cent of all revenues received by the State from all sources of income or taxation shall be used and expended for the support and maintenance of the common schools for the year in which said income or taxes are due and payable.

(Former Ga. Code Ann. 32-935.)

Implicit in this law was the understanding that primary responsibility rested with the State rather than the local counties whose contribution was constitutionally limited. Subsequent constitutional amendments governing local school taxation confirm this understanding. The 1945 Constitution, for example, raised the minimum required contribution from one mill to five mills and increased the constitutional maximum limit on the amount a county could contribute locally to its school system from five mills to fifteen mills. A 1954 Amendment authorized counties, by local referendum, to increase their local contributions beyond the maximum limitation of 15 mills. In 1960, the maximum allowed contribution was increased from 15 mills to 20 mills and a minimum five-mill levy requirement was maintained for each local system. The current 1983 Constitution maintains the 20-mill limit without requiring any minimum levy for public education. Art. VIII, § VI, ¶ 1.

constitutional provision on which Defendants rely does not require school boards to levy any minimum tax for public education. It is and has always been intended as a limited authority – but not a requirement – to levy local taxes for school purposes.

When the State created the QBE in 1985 the QBE Foundation mechanism was intended to fund an adequate education throughout the state. Then and now, the State required districts to include only a minimum of 5 mills as the local share of the QBE Foundation calculation. The State could have included greater millage within the foundation to increase funding for an adequate education, but chose not to do so. Nor has it taken steps in the past 23 years to change that request. The State has authorized and encouraged the very conduct which the State now criticizes and which the State has the ultimate authority and ability to control.

The State also ignores the fact that Plaintiffs and their sample districts make a greater tax effort than most other districts in Georgia. (J. Williams Aff. ¶¶ 6-16.) Each of Plaintiffs' Sample Districts levies a property tax higher than most other districts in Georgia. (Id.) The State has never sought to raise the low millage requirement. (Cox Dep. 132.) Nor has it monitored the effects of various millages on whether students receive an adequate education in any particular district. Indeed, there are some school districts in Georgia that levy almost no millage above the 5 mill local share required for the QBE Foundation. But now the State claims that by creating a school funding system with local discretionary millage, the State can eliminate any obligation to ensure an adequate education in the typical Georgia school district that levies a property tax of less than 20 mills. This makes no sense at all.

The State further argues that it has no obligation to assure students an adequate education if a local school board chooses to devote resources to extracurricular activities such as debate, band or athletics. In fact, extracurricular activities, including athletics, play an important role for

the development of students, including motivating them to stay in school and not drop out. (Affidavit of Richard McWhorter (“McWhorter Aff.”) ¶¶ 3, 5, 9.) As the State’s own witnesses have testified, these extracurricular activities, including debate, band and athletics, play an important role in increasing community support of public education in many school districts in Georgia; have significant academic benefits; and help keep students from dropping out. (Toth Dep. 89, “I think, yes, I think it – I think that builds pride. I think even more than that, it helps the graduation rate of high schools.”) Once again, the State claims that its obligation to ensure an adequate education does not run to typical Georgia districts. It appears to view the constitutional obligation as purely hypothetical, rather than pertaining to the real world in which Georgia school districts actually operate.

G. Seeking to Diminish its Constitutional Obligation to Ensure an Adequate Education, the State Erroneously Asserts that it has Only Limited Authority Over Local School Boards

The motion repeats the State’s earlier arguments that the constitutional provision relating to local school board “management and control” makes school boards exclusively sovereign in their districts and “that very few State laws and regulations concerning K-12 education are mandatory.” (Def. Brief at 7-9.)⁶³ The State tries to analogize its relationship to school districts to the federal government’s relationship to the states respecting education. But the federal government has absolutely no constitutional obligation for public education in the states unlike the “primary obligation” for an adequate education imposed on the State of Georgia. This argument also is merely a repeat of earlier arguments rejected by this Court in the Motion to Dismiss and in the standards hearing.

⁶³ This assertion would come as a great surprise to Georgia school district officials who devote most of their budgets to “state mandates.”

Contrary to this argument, the State regulates all aspects of public education in Georgia. The State Board of Education, an entity vested with constitutional authority under Article VIII, Section II, is specifically required by law to “establish and enforce standards for operation of all public elementary and secondary schools and local units of administration in this state so as to assure, to the greatest extent possible, equal and quality educational programs, curricula, offerings, opportunities, and facilities for all of Georgia’s children and youth. . . .” (O.C.G.A. § 20-2-240(a); Complaint, ¶ 5.) The constitutional provision concerning management and control by local school boards never has – and never could – trump the State’s ultimate authority over all aspects of the provision of public education.

Local school districts’ “management and control” power and the local taxation powers have always been grants of limited powers and have never conferred unfettered authority or discretion as now asserted by the State.⁶⁴ Outside the legal briefs filed in this lawsuit, the State never has taken such a position. Rather, local board “management and control” operates within the parameters established under State law. Both the history of the local school system “management and control” provision (Art. VIII, Sec. V, Par. I) and its interpretation by the General Assembly establish that this provision is subject to the over-riding authority of the State, as evidenced by the numerous State school laws enacted by the General Assembly and the rules and regulations of the State Board of Education. By way of example, the General Assembly has authorized (and in fact mandated) that the State Board of Education impose potentially extreme sanctions on local schools and school districts that fail to meet certain student and school performance standards, including ordering the removal of all school personnel or a complete

⁶⁴ See generally, Plaintiffs’ Brief in Opposition to Defendants’ Motions to Dismiss Plaintiffs’ Complaint 34-41, and 36-37, 39-41 with respect to constitutional history.

restructuring of the school's governance. O.C.G.A. § 20-14-41.⁶⁵ Such a broad and sweeping state authority to control the very governance of local schools belies any contention that the State lacks constitutional authority relating to the delivery of adequate educational services.

The vesting of “management and control” in local boards at the county level was intended to eliminate an existing proliferation of local districts and their Trustees and to consolidate the management and control of a county's school system in a single entity, the county board of education. (This was fully discussed in Plaintiffs' Brief in Opposition to Defendants' Motions to Dismiss Plaintiffs' Complaint 36- 37.) This provision has never insulated local school systems from the General Assembly's pervasive control and regulation of public education. Nor has it ever been suggested (before this case) that such a provision insulates the State from its “primary” obligation to provide and adequate education.

State statutes directly govern local boards of education in almost every basic aspect of the provision of education to their students. State law mandates the curriculum local school boards must follow as set forth in O.C.G.A. § 20-2-140. That statute directs the State Board of Education to establish competencies which each student is expected to master prior to completion of the student's public school education, directs the State Board of Education to adopt a uniformly sequenced core curriculum for grades kindergarten through 12, and commands that local school districts employ that curriculum.⁶⁶ The local board's “management and control”

⁶⁵ The State Board of Education also has authority to determine on an appeal from a determination by a local school district any matters of local controversy relating to the construction or administration of school law. OCGA § 20-2-1160. State Board decisions are binding unless set aside as void by a court. Maxey v. DeKalb County Bd. of Educ., 220 Ga. 158, 137 S.E.2d 657 (Ga. 1964); Boone v. Atlanta Indep. Sch. Sys., 275 Ga. App. 131, 619 S.E.2d 708 (2005); see also, Hall v. Nelson, 282 Ga. 441, 651 S.E.2d 72 (2007).

⁶⁶ The State Board of Education's “core curriculum and student competencies” are set forth in Rule 160-4-2-.01 [?] of the Rules and Regulations of the State Board of Education. Other examples of State authority over local education abound. For example, the State Board of Education has imposed requirements on each county board of education with respect to student promotions and retention. (See State Board of Education Rule 160-4-2-.111, which mandates that students shall not be promoted to sixth or ninth grade if they do not pass the State's Criterion-Referenced Competency Test in reading and mathematics.)

of its teaching staff is subject to State mandates in every basic element of the employment relationship.⁶⁷

The local board's relationship to the State (General Assembly and State Board of Education) has always been one of ultimate State authority taking precedence over local school board "autonomy."⁶⁸ The General Assembly has exercised the State's plenary power over local boards of education since the public school system was established in 1870. This legislative control at the State level over local boards of education continues unabated today. Consequently, the State's assertion that it is virtually powerless to actually ensure that a constitutionally adequate is provided to school children throughout Georgia is without merit.

H. The State's Assertion of Lack of Responsibility for Ensuring an Adequate Education is Mirrored in the Actual Conduct of the State of Georgia

Throughout this litigation, the State has disclaimed any responsibility for ensuring that school children in Georgia actually are provided an adequate education by any meaningful definition of this term. Unfortunately, this disclaimer of responsibility is mirrored in a pattern repeated over many years. The State repeatedly has abdicated its responsibility to design and maintain an educational funding system that properly addresses the widespread educational failures of many Georgia students. Essentially, the State's education leaders operate without any

⁶⁷ For example, minimum teacher salaries are mandated by the State. O.C.G.A. § 20-2-212(a). The State requires local boards of education: to evaluate their teachers and other personnel annually (O.C.G.A. § 20-2-210); to comply with minimum qualifications as the State Board of Education may prescribe for employment of personnel (O.C.G.A. § 20-2-211(a)); to comply with State timelines regarding the tendering of teacher employment contracts (O.C.G.A. § 20-2-211(b)); and to refrain from hiring any person dishonorably discharged for desertion from the Armed Services (O.C.G.A. § 20-2-211(c)). The State also restricts a local board of education's authority to demote or fail to renew the contract of a teacher for a fourth or subsequent consecutive school year (O.C.G.A. § 20-2-942).

⁶⁸ The Supreme Court has struck down school board action not grounded in a specific legislative authorization. Irwin v. Crawford, 210 Ga. 222, 226, 78 S.E.2d 609, 612 (1953) (consolidation of high school grades in a single school found unlawful in the absence of authorizing legislation); see also, Crawford v. Irwin, 211 Ga. 241, 245, 85 S.E.2d 8, 11 (1954) (after adoption of statute permitting consolidation of high school grades, the Court declared: "The General Assembly has the power to confer on county boards of education the right to consolidate schools, in whole or in part, in the exercise of the discretion of such board."); Bedingfield v. Parkerson, 212 Ga. 654, 657, 94 S.E.2d 714, 717 (1956).

regard for the specific requirements of their constitution obligation. (Cox Dep. 299; Barrs Dep. 57; Reichrath Dep. 169.)

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. (J. Williams Aff. ¶ 22.) This intention was not realized at QBE's inception and the gap between intention and reality has widened ever since. The components of the QBE have been eroded by persistent failures to provide the needed comprehensive review, revision, and funding of this formula. (J. Williams Aff. ¶ 22; Martin Aff. ¶ 16.) Task forces have not been appointed every three years to review the "program weights" used in the QBE Act formula and to recommend changes to the General Assembly, as specifically authorized by statute. O.C.G.A. § 20-2-161(f.) Over the more than 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.⁶⁹ (J. Williams Aff. ¶ 24-42; Martin Aff. ¶ 24.)

As a result, many 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

⁶⁹ Reasons 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. (Affidavit of Jeffrey Williams ("J. Williams Aff.") ¶¶ 24-42, J. Williams Dep. Ex. 3; Martin Aff. ¶¶ 16, 22.)

concentrations of at-risk children.⁷⁰ Ignoring the tragic 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 failings.⁷¹

The December 1998 Report on Funding of the QBE Act released by a State Blue Ribbon Study Committee stated “. . . the very foundation of public education funding 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.” (Garcia Aff. ¶ 37, Ex. 36, December 1998 SBRSC Report at OPB 171-762). (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.)) (J. Williams Aff. ¶ 27-28.)

Similarly, the State has refused to assume direct responsibility for addressing the 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. For example, the Georgia Closing the Achievement Gap Commission required by O.C.G.A. § 20-2-286, was effectively disbanded after only four meetings. (J. Williams Aff. ¶ 40; Martin Aff. ¶ 37.) Instead, the State proceeded

⁷⁰ 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.

⁷¹ For example, inadequate funding of and 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.

with a series of “austerity” budget cuts that further undermined school districts’ capacity to address the educational needs of students. (J. Williams Dep. Ex. 3.)

The State Board of Education and the State Department of Education are similarly disengaged from any focus on ensuring adequate educational opportunities throughout Georgia. In depositions, officials from the Georgia State Board of Education and GDOE admitted that the question of whether children actually are receiving a constitutionally adequate education has not been part of their work, and they have never even discussed what an adequate education means or requires of the State. (Leonard Dep. 31, 151-52; Creel Dep. 87-88; Snow Dep. 213-14; Deposition of James Woodard (“Woodard Dep.”) 113, 166; Deposition of Clara Keith (“C. Keith Dep.”) 153-54.) The head of the Georgia student testing program testified that in creating student tests, no consideration was given to measurement of whether students are prepared to function in society. (Deposition of Chris Domaleski (“Domaleski Dep.”) 127-28.) It is as if the constitutional obligation does not exist for the State agencies who should be leading the charge in ensuring adequate educational opportunities for all students in Georgia.

The State of Georgia has failed, 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. The State has repeatedly ignored the reports of official commissions and committees that the school funding system is failing to implement its constitutional purpose. The State has relegated this responsibility to ensure an adequate education by casting it off to local school districts, without making any effort to ensure that the resources or programs exist to provide appropriate educational opportunities for the students in those districts.

**I. The State’s “Causation” Arguments
Do Not Excuse Its Constitutional Failures**

The State asserts that “There is no evidence that increases in funding increase student performance” and, therefore, that Plaintiffs cannot prove that the widespread educational deficiencies in Georgia are “caused” by the inadequacies of State funding. (Def. Brief at 58.) This argument is directly contrary to the huge weight of the evidence, including the testimony of the State’s own witnesses and hired experts. (Cox Dep. 140; Barrs Dep. 152; Rippner Dep. 64-68, 72-73; Hanushek Dep. 64-65, 242-431; Scafidi Dep. 376-78.) There simply is no question that additional resources generally have a positive impact on improving educational results. (Augustine Aff. ¶¶ 4-10; Peterson Dep. 95-96, 181-82, 103-05, 204-05; Levin Dep. 246-52; Beck Dep. 167-72, 184-88.) (See also Martin Aff. ¶¶ 6, 9.) “I think anyone who runs a household or a school or business or a law firm knows that resources do make a difference.” (Levin Dep. 249.)

For example, the experiences of the Atlanta Public School System (“Atlanta”) show that targeted financial resources do indeed cause increases in student achievement. (Augustine Aff. ¶¶ 5, 9.) Atlanta faces “tremendous challenges” due to the widespread poverty of its residents.” (Id. at ¶ 2.) Approximately three-fourths of Atlanta’s student population qualify for the free lunch program. (Id.) Despite these challenges, Atlanta has made significant progress in student achievement in certain areas where it can provide targeted initiatives and program. (Id. at ¶ 5.) Nevertheless, the State’s failure to adequately fund education also has caused Atlanta to be unable to meet the needs of all its students. (Id. at ¶ 8.)

Those programs require funding “far beyond what the State provides.” (Id. at ¶ 6.) In fact, Atlanta experienced approximately \$52 million in austerity cuts for the State between 2003 and 2008. (Id.) Today, Atlanta receives less money from the State than it received in FY04. (Id.) Thus, as the result of inadequate funding from the State, Atlanta seeks grants and other

funds to target specific initiatives in certain areas. But Atlanta remains unable to meet the educational needs of all its students, even with its access to local funding and third-party sources. (Id. at ¶ 8.)

Despite all of Atlanta’s best efforts, more than 30% of its students fail to graduate high school. (Id. at ¶ 10.) Although the targeted initiatives have had some success in certain areas, and show that significant improvement is possible with additional targeted resources, Atlanta remains unable to provide adequate education to meet the needs of all its students. (Id.) “In today’s society, where a high school degree is almost a requirement, this graduation rate [67%] indicates that we are not sufficiently meeting the needs of our students.” (Id.)

Essentially, the State complains that the Plaintiffs have not presented a mathematical regression analysis calculating a statistical correlation between increased spending and student achievement. The State presents no authority at all suggesting that such evidence is required for Plaintiffs to prove causation to sustain their claims. Indeed, the State’s argument is internally incongruous because it is well recognized that statistical regression analyses are not capable of determining “causal” relationships. (Klein Dep. 60, “Regression analysis doesn’t tell you about cause.”) Thus, the State criticizes the Plaintiffs for failing to provide “causal” evidence of a statistical type that can never be used to establish cause and effect. (Levin Dep. 252; Klein Dep. 110.)⁷²

Plaintiffs have presented evidence (and will present more at trial) from dedicated, professional educators with experience teaching children in Georgia and from respected experts, showing the substantial educational deficiencies in Georgia and the ways in which those

⁷² The State relies heavily on its criticisms that statistical calculations done by Plaintiffs’ witnesses did not “prove” such a causal relationship. That is no surprise at all, given the inherent limitations of those models. (J. Williams Aff. ¶ 18-20; Martin Aff. ¶¶ 5-10.) None of those analyses evidence the fundamental principal that the State’s failure to adequately fund education has caused substantial deficiencies in the Plaintiff and Sample Districts and in many other Georgia school systems. (Id.)

deficiencies result directly from the State's failure to provide adequate educational funding. (Augustine Aff. ¶¶ 4-10; Peterson Dep. ¶¶ 95-96, 103-05, 181-82, 204-05; Levin Dep. 246-52; Beck Dep. 167-72, 184-88; Strieker dep. Ex. 10-13.) In the face of that real evidence, the State's statistical games get nowhere. At the trial the Court will have a full opportunity to hear evidence on the various ways that Georgia's school funding system causes harm to its students and schools.

J. Educational Adequacy Cases Such as This are Not Capable of Resolution Through Summary Judgment

This is clearly not a case amenable to resolution through summary judgment. For a case of this complexity and importance there is simply no substitute for the Court considering evidence at a trial. This has been recognized by several state supreme courts in remanding similar cases for trial. The North Carolina Supreme Court, in sustaining a complaint that the school finance system provided constitutionally inadequate educational opportunities, remanded the case to the trial court with instructions to consider a variety of specific factors but made it clear that it did not want to foreclose any reasonable avenue of proof prior to the trial but rather wanted the trial court to creatively pursue the issues at trial:

Other factors may be relevant for consideration in appropriate circumstances when determining educational adequacy issues under the North Carolina Constitution. The fact that we have mentioned only a few factors here does not indicate our opinion that only those factors mentioned may properly be considered or even that those mentioned will be relevant in every case.

Leandro v. State, 488 S.E.2d 249, 260 (N.C. 1997).

Likewise, New York's highest court in remanding a similar case for trial refrained from fully delineating the parameters of a "sound basic education" (the New York Court's term for a constitutionally adequate education) and asked the trial court to consider the precise definition of a sound basic education *based on the evidence at trial*:

We do not attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails. Given the procedural posture of this case, an exhaustive discussion and consideration of the meaning of a “sound basic education” is premature. *Only after discovery and the development of a factual record can this issue be fully evaluated and resolved.*

Campaign for Fiscal Equity v. State, 655 N.E. 2d 661, 666 (N.Y. 1995) (emphasis added).

As these courts have recognized, development of a factual record where the issues in this case can be fully evaluated and resolved requires a trial. And as in other states, the Court should examine the totality of the evidence presented at trial before determining whether the State has met its constitutional obligation.⁷³

VII. CONCLUSION

It is now clear that the State wishes to avoid taking responsibility for its primary obligation to provide adequate public education for the children of Georgia. Knowing full well that the system is failing to properly educate many of its students, the State hides behind a litany of excuses and obfuscations. It denies that any deficiencies exist, but asserts that, even if they do, there is nothing the State is obliged to do about it. This kind of “not my problem” approach shows why Georgia’s public education system ranks among the worst in the nation. This Court now has the opportunity to help change that result.

⁷³ In a similar case, the Arkansas Supreme Court evaluated adequacy based upon the totality of evidence related to educational resources, funding and education results in light of state standards, to the extent such existed. It affirmed the trial court’s finding that the Arkansas school funding system was constitutionally inadequate, pointing to student deficiencies, including low student proficiency in math, reading, science and writing, poor student performance on ACT college entrance exams, the substantial number of high school graduates needing remediation when entering state universities and the legacy of historical educational inadequacy reflected in the low proportion of the adult population with high school or college degrees. Lake View School District No. 25 v. Huckabee, 91 S.W.3d 472, 488-89 (Ark. 2002). These findings in conjunction with evidence of school district resource deficiencies, such as districts’ inability to offer anything beyond a minimal curriculum, and the State’s long-term refusal to study the costs of providing an adequate education as a foundation for the school funding system, constituted the legal and evidentiary foundation for the Court’s conclusion that the State had failed to provide a constitutionally adequate education. *Id.* at 489-90, 495.

The parties have been engaged, at tremendous effort and expense, in the legal and factual development of this case for more than three years. This Court also has dedicated substantial time and energy to considering these issues of paramount public importance. The trial is now less than four months away. This Court will have the opportunity to hear and weigh all the evidence directly from the witnesses and to make a fully informed decision on the merits of this case. None of the State's narrowly focused arguments are sufficient to deprive Georgia's school children of the opportunity to present the full evidentiary case seeking to enforce their constitutional right to an adequate public education.

This 30th day of June, 2008.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served upon counsel of record in this matter a true and correct copy of the PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT by causing same to be delivered by courier to the following:

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