

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

WOONSOCKET SCHOOL COMMITTEE,
ROBERT GERARDI, in his official capacity as
Superintendent of the Woonsocket Public Schools,
PAWTUCKET SCHOOL COMMITTEE;
DEBORAH CYLKE, in her official capacity as
Superintendent of the Pawtucket Public Schools,
WOONSOCKET STUDENTS WS1 – WS3;
Woonsocket PARENTS WP1 – WP6, in their capacity
as next friends of Woonsocket– PS3; Students WS1 – WS3;
PAWTUCKET STUDENTS PS1
PAWTUCKET PARENTS PP1 – PP4, in their capacity as
next friends of Pawtucket Students PS1 – PS3,

Petitioners,

vs.

THE HONORABLE LINCOLN CHAFEE, in his
official capacity as the Governor of the State of Rhode
Island; THE HONORABLE M. TERESA PAIVA-WEED,
in her official capacity as President of the Rhode Island
Senate; THE HONORABLE GORDON D. FOX,
in his official capacity as Speaker of the Rhode Island
House of Representatives; RHODE ISLAND GENERAL
ASSEMBLY; and THE HONORABLE GINA M.
RAIMONDO, in her official capacity as Treasurer of the State
of Rhode Island,

Respondents.

PM No. 2010-946

SECOND AMENDED PETITION

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in today’s society. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Board of Education, 347 U.S 483, 493 (1954)

Introduction

1. This is an action brought to vindicate the rights of all Rhode Island children to an adequate public education, regardless of where in the State they live.
2. For more than two centuries, Rhode Island has recognized public education as being essential to the vitality of the “most flourishing civil state” of the lively experiment begun by Roger Williams.
3. Public education forms the foundation of the American Dream, which has inspired millions to leave behind the limited opportunities in other countries in pursuit of the hope of a better life in this one. Without access to an adequate education, the American Dream cannot be realized by Rhode Island’s children.
4. The American Dream supports the social value of meritocracy. In order for every Rhode Islander to have a meaningful and realizable opportunity to advance on the basis of merit, it is necessary for every Rhode Islander to have access to a meaningful and realizable opportunity to receive an adequate education.
5. The strength of our State’s democracy depends upon a citizenship that is informed and economically secure. If Rhode Island’s children lack access to a quality public education, the quality of democracy in Rhode Island will be severely eroded.
6. Many political leaders today refer to education as “the civil rights issue of the 21st century” because a quality public education provides the best long-term remedy for the historical social and economic disadvantages wrought upon various minority groups in this country.
7. Since its initial enactment in 1842, and in each enactment that has followed, the Rhode Island Constitution has contained language that recognizes the essential importance of an adequate education for all children and the General Assembly’s duty to promote public schools.
8. Over the past two centuries, the Rhode Island General Assembly has required local communities to provide free public schools to all children of Rhode Island, and has defined and mandated the content of a minimally adequate education.
9. If all children in Rhode Island actually received the minimally adequate education defined by the General Assembly and the Board of Regents for Elementary and Secondary Education, they would have a fair opportunity to develop the skills needed to succeed in the 21st Century.
10. Unfortunately, the State of Rhode Island, acting through the General Assembly, has persistently failed to provide the resources necessary to provide the minimally adequate education it has defined and mandated.
11. The current scheme for funding education in the State of Rhode Island utterly fails to allocate sufficient financial resources to provide an adequate education for *all* children of the State of Rhode Island. Also, the current scheme for funding schools lacks any rational relationship to student or community need.

12. As a result of this irrational, inequitable, and inadequate scheme for school funding, there has developed a pattern of persistent underfunding of the schools that many of Rhode Island's children attend.

13. Because of the State's failure to fund public education adequately, many of Rhode Island's public schools (particularly those located in the State's urban core) lack sufficient resources to provide children with a minimally adequate education.

14. As a result, many of Rhode Island's children have been deprived of an essential tool they need to live as a full citizen in today's society. Through no fault of their own, many of these children cannot overcome this disadvantage, which can amount to a life sentence to a socioeconomic and political underclass, and even dependency.

15. In the past 15 years, the Rhode Island General Assembly has issued multiple statements that recognize the manifest flaws of the current scheme for educational financing, and it has identified viable alternatives that would remedy those flaws.

16. Unfortunately, these statements have never resulted in the enactment of any meaningful legislative remedy.

17. The Plaintiffs in this action are thus forced to turn to the courts to vindicate the Constitutional right to an adequate education.

I. Parties

A. Petitioners

18. The Woonsocket School Committee is the public body charged with the “. . . care, control and custody . . .” of the public schools in Woonsocket. R.I.G.L. § 16-2-9.

19. Robert Gerardi is the duly appointed Superintendent of the Woonsocket Education Department. He is charged with the care and supervision of Woonsocket public schools pursuant to R.I.G.L. § 16-2-11.

20. The Pawtucket School Committee is the public body charged with the “. . . care, control, and custody . . .” of the public schools in Pawtucket. R.I.G.L. § 16-2-9.

21. Deborah Cylke is the duly appointed Superintendent of the Pawtucket School Department. She is charged with the care and supervision of Woonsocket and Pawtucket public schools pursuant to R.I.G.L. § 16-2-11.

22. Plaintiffs WS1 – WS3 are residents of the City of Woonsocket, and are students in the Woonsocket Public Schools. Each of the Plaintiffs WS1 – WS3, brings this action by and through his or her parents and next friends, referred to collectively as WP1 – WP4.

23. Plaintiffs PS1 – PS3 are residents of the City of Pawtucket, and are students in the Pawtucket Public Schools. Each of the Plaintiffs PS1 – PS3, brings this action by and through his or her parents and next friends, referred to collectively as PP1 – PP5.
24. Plaintiffs WS1 – WS3 and Plaintiffs PS1 – PS3 will be referred to below, collectively as “Individual Plaintiffs.”
25. The Individual Plaintiffs, pursuant to the Rhode Island Constitution and the Rhode Island General Laws, are entitled to an adequate education as that term is defined under Rhode Island law.
26. The Woonsocket School Committee is unable to provide all of its children, including Plaintiffs WS1 – WS3 with that adequate education, because they have not been provided with sufficient funding from the State, they lack the capacity to raise it through property taxes, and even if the taxpayers could afford the requisite tax increases, State law prohibits Woonsocket from implementing them.
27. The Pawtucket School Committee is unable to provide all of its children, including Plaintiffs PS1 – PS3, with that adequate education, because it has not been provided with sufficient funding from the State, the City lacks the capacity to raise it through property taxes, and even if the taxpayers could afford the requisite tax increases, State law prohibits Pawtucket from implementing them.
28. As a result of this lack of funding, the Individual Plaintiffs are being deprived of their right to an adequate education.

B. Respondents

29. The Honorable Lincoln Chafee is the Governor of the State of Rhode Island, duly selected pursuant to Art. IV of the State of Rhode Island, duly elected pursuant to Art. IV of the Rhode Island Constitution.
30. Pursuant to Art IX, § 2 of the Rhode Island Constitution, the Governor has the responsibility to “take care that the laws be faithfully executed.” This responsibility includes submitting a budget to the general assembly every year, which determines state aid for education to the cities and towns within the state. *Id.* at Art. IX, § 15.
31. He is further responsible for receiving detailed accounts of how much the State is spending on education relative to the individual cities and towns, along with detailed written reports from the Board that assesses the true condition, progress and needs of public education. *Id.* §§ 16-69-3, 16-60-4 and 16-2-9.3.
32. The Honorable M. Teresa Paiva-Weed is President of the Rhode Island Senate. She is duly elected pursuant to Art. IV and Art. VI of the Rhode Island Constitution.
33. The Honorable Gordon D. Fox is the Speaker of the State of Rhode Island House of Representatives. He is duly elected pursuant to Art. IV and Art. VI of the Rhode Island Constitution.

34. According to Art. XII § 1 of the Rhode Island Constitution, the General Assembly is responsible for “adopt all means necessary and proper to secure to the people the advantages and opportunities of education. . . .”

35. The Honorable Gina M. Raimondo is the General Treasurer of the State of Rhode Island duly elected pursuant to Art. IV of the Rhode Island Constitution.

36. The general treasurer is responsible for collection and disbursement of all monies by the state. She is also responsible for the custody and safekeeping of the certain funds that support public schools. Rhode Island Constitution, Art. IX § 12; and R.I.G.L. §§ 35-4-4, 42-10-1, and § 35-3-1.

37. All of the above defendants are being sued in their official capacities.

II. Jurisdiction

38. This Court has jurisdiction pursuant to R.I.G.L. §§8-2-13, 8-2-14, 9-30-1 and 42-112-1.

III. Factual allegations

A. Origins of public education in Rhode Island

39. One can describe the history of public education in Rhode Island as progressing steadily forward on two related fronts. First, as American social and economic life has advanced over the past 300 years, so has our concept of the minimum basic education that children require to be productive citizens. Second, as our public education system has become more advanced, the General Assembly’s role and responsibility to define and provide public education has steadily increased.

1. The first public schools

40. Free public education was not a prominent feature in colonial Rhode Island or elsewhere in colonial America. At first, some colonies (such as Massachusetts in 1647) required cities and towns to establish tuition-charging public schools.

41. In Rhode Island, each city and town had at least one public school by the end of the 18th century. This service was provided by municipalities, which often supported buildings and schoolmasters. However, the students were charged fees.

42. In 1828, the General Assembly enacted An Act to Establish Public Schools (“the 1828 Act”).

43. The 1828 Act provided an annual appropriation of \$10,000 to be distributed to the

municipalities “. . . in proportion to their respective population under the age of sixteen years . . . “ for the purposes of maintaining public schools. The Act also appropriated \$5,000 for the establishment of a permanent fund for support of the public schools.

44. Rhode Island adopted its first constitution in 1842 after the Dorr Rebellion of 1841-42. Included in the State’s Constitution was an education clause that read as follows:

Section 1. The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education.

2. The General Assembly’s establishment of universal, free public education

45. In the wake of the new Constitution, the General Assembly created a formal State role in the supervision of public schools. In the decades that followed, the General Assembly established, as a matter of state law, that public schools would be available to all at no charge.

46. 1845, the General Assembly enacted the “Barnard School Act.” The Barnard Act established a line of reporting authority from local schools, through school districts, to the State Commissioner of Education (referred to below as “the Commissioner”). The Barnard Act required school districts to provide local funds at a level of at least one-third (1/3) of that provided by the State. The Barnard Act created a minimum school year length of four months, and a maximum class size of 50. The Barnard Act assigned school districts the responsibility of certifying teachers. The Barnard Act conferred upon the Commissioner the authority to hear and resolve disputes on appeal from school committees. *Appeal of Cottrell*, 10 R.I. 615 (1874).

47. In 1868, the General Assembly enacted a ban on public school tuition, ensuring a right to free education in those districts that provided public schools.

48. In 1882, the General Assembly mandated that local communities provide schools to all children.

49. In 1893, the General Assembly mandated the provision of free textbooks.

3. Compulsory Education

50. For more than 100 years, the General Assembly has required that public schools be made available to all children, and that all children attend those schools. In these ways, the Rhode Island General Assembly has demonstrated its “recognition of the importance of education in today’s society.” *Brown v. Board of Education*, p. 1, *supra*.

51. The General Assembly’s enactment of mandatory school attendance laws has its origin in the growth of child labor during the Industrial Revolution

52. By 1830, Rhode Island’s children comprised about 55% of the factory workforce. These children tended to serve as the unskilled labor for the factories, and were paid only a fraction of

adult wages.

53. In 1840, the General Assembly passed an act forbidding children under the age of twelve from employment in factories unless during the twelve preceding months he had attended school for three months.

54. In 1854, the General Assembly extended the policy of its 1840 act, passing legislation prohibiting children under 15 from being employed in factories for more than nine months in a year unless the child had attended school three months in the preceding year.

55. Beginning in 1893, the General Assembly enacted compulsory school attendance laws for all Rhode Island children. The 1893 law, P.L. ch. 1213, §1, required all Rhode Island children between the ages of 7 and 15 to attend school for a minimum of 80 days.

56. In 1914, the General Assembly enacted P.L. ch. 1097, under which it extended the minimum school year to 36 weeks.

57. In 1923, the General Assembly enacted G.L. ch. 76, §1, under which it extended the compulsory school attendance age to 16 for those children who, at age 15, had not yet completed the eighth grade and/or were not employed.

58. In 1927, the General Assembly enacted P.L. §970, which extended the minimum length of the school year to 180 days.

59. In 2007, the General Assembly enacted the Rhode Island High School Dropout Prevention Act of 2007, R.I.G.L. §16-67.1-3, extending the reach of compulsory education to children between the ages of 16 and 18 in certain circumstances.

60. Under the 2007 Dropout Prevention Act, every child between the ages of 16 to 18 are required to attend school unless he or she (1) demonstrates financial hardship, illness and/or a court order requiring withdrawal from school, and (2) attends an exit interview with his or her parents describing the likely economic harm that withdrawal will have on the student's future earnings and (3) signs with his or her parents a written statement that acknowledges that withdrawal from school is likely to harm the student's economic prospects.

B. The General Assembly's role in defining the content of public education

1. Early regulation

61. Following the enactment of the Barnard School Act (Paragraph 46, *supra*), the General Assembly expanded the State's regulatory role in public education.

62. In 1870, the General Assembly enacted legislation creating a State Board of Education. At first, its role was largely advisory.

63. In 1871, the General Assembly mandated the employment of school superintendents.

64. In 1896, the General Assembly enacted a requirement that all state-funded schools report annually to the Board of Education. 1896 P.L. ch. 51. The General Assembly based this requirement upon the policy of ensuring a uniformly high quality of public education, stating the following:

Whereas, The opportunities afforded for education should be uniform throughout the state; and

Whereas, Owing to the inability of some of the towns to raise by taxation a sufficient amount of money to provide, with the assistance of the present state appropriations, public schools equal to those provided by the more populous and wealthy towns, the school facilities are not uniformly of the highest grade; therefore

Resolved, That the State Board of Education be requested to prepare and report to the General Assembly measures by which the state shall still further supplement the revenues and efforts of the towns, to the end that the system of public schools throughout the state shall be uniformly of the highest attainable standard.

P.L. 1896, ch. 51.

65. In 1898, the General Assembly provided supplemental funding to establish high schools, provided that they offered a course of study approved by the Board of Education. 1898 P.L. ch. 544.

66. In 1909, the General Assembly passed legislation requiring all public school teachers to obtain a certificate of qualification from the State's Board of Education. 1909 P.L. ch. 68. Prior to this, certificates had been handled at the local level, and created unevenness in teacher quality.

67. In 1909, the General Assembly also passed legislation requiring municipalities that did not offer public education at the high school level to provide its children the opportunity to receive that education for free from another provider.

2. Establishing a basic education program

68. During the past century in general, and especially in the past twelve years, the General Assembly has established program requirements for the public education of Rhode Island's children.

69. In 1960, the General Assembly sought to systematically define all of the elements of an appropriate education. With the passage of 1960 P.L. ch. 27, § 10, codified as R.I.G.L. § 16-7-23, school districts were required to ensure that its budget from all sources was "sufficient to support the basic program and all other approved programs shared by the state."

70. The "basic program" was defined as ". . . the cost of education of resident pupils in grades twelve (12) and below in average daily membership for the reference year as determined by the mandated minimum program level . . ." P.L. 1960, ch. 27, § 2, codified at R.I.G.L. § 16-7-16(3).

71. The General Assembly delegated to the Board of Regents for Elementary and Secondary Education (referred to below as the "Board of Regents"), upon recommendation of the Commissioner of Education, the responsibility of determining the mandated minimum program level. P.L. 1960, ch. 27, § 4, codified as R.I.G.L. § 16-7-18.

72. In 1983, the General Assembly directed the Board of Regents for Elementary and Secondary Education to ". . . adopt regulations for determining the basic education program and the maintenance of local appropriation to support the basic education program [referred to below as the 'BEP'])." P.L. 1983, ch. 200, § 1, codified as R.I.G.L. § 16-7-24.

73. Pursuant to the General Assembly's mandate, the Board of Regents directed the Rhode Island Department of Education (RIDE) to prepare a volume called the Basic Education Program Manual ("BEP Manual"). A true and accurate copy of current BEP Manual is attached as Exhibit 1.

74. In the introduction to the BEP Manual, RIDE states that the intent of the General Assembly's mandate ". . . is to ensure that a basic educational program will be available to all students, regardless of where they reside or which school they attend. . . . While districts may offer additional options to their students, each student should have access to at least the services which are described in this document." Exhibit 1, p. I.

75. The BEP Manual sets forth a series of "standards" and "indicators." The BEP Manual defines the terms as follows:

The standards are requirements. They are specific statements about programs, services, conditions, etc., which must be present. The indicators are examples of ways the presence of the standard can be documented. As such, they are not requirements, but they do offer guidelines.

Exhibit 1, p. i (emphasis in original)

76. As a result, the BEP represents a State-mandated guaranteed minimum education program to which every child in Rhode Island is entitled.

3. Extending program standards to disadvantaged groups

77. As the General Assembly developed a statewide academic program, it also supported the development of supplemental academic programs to address the needs of certain disadvantaged groups, including children with disabilities and children who are not native English language speakers.

78. In 1952, the General Assembly enacted its first program requiring the provision of special education to children with disabilities. P.L. 1952, ch. 2905, §1, codified at R.I.G.L. §§16-24-1 *et seq.* In the years that have followed, this program has been revised and expanded. *Id.*

79. In 1970, Congress enacted the Education of the Handicapped Act, Title VI of Pub.L. 91-230, which in 1990 was renamed as the Individuals with Disabilities Education Act, or “IDEA.” As with the Rhode Island statute, the IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

80. The General Assembly also turned its attention to those children learning English. In 1982, the General Assembly enacted 1982 P.L. ch. 286, § 1, in which it declared the following policy:

§ 16-54-1 Declaration of policy. – The Rhode Island Constitution recognizes the diffusion of knowledge as essential to the preservation of the rights and liberties of all the people and places the responsibility on the general assembly to promote public schools and to adopt all means deemed necessary and proper to secure to the people the advantages and opportunities of education. As this responsibility relates to limited English proficient students, the state asserts that these students shall be provided with appropriate programs and services which will make their educational opportunities equal to their English dominant peers. Programs or services developed by local schools must, at the very least, provide for the attainment of English language proficiency and academic achievement.

81. In these ways, the General Assembly established that a child’s right to education is not subject to diminution due to the child’s disabilities or lack of English knowledge; instead, the General Assembly accepted, as part of its duty “to promote public schools,” the responsibility to provide the additional resources necessary to guarantee an equal opportunity to these disadvantaged children.

4. Development of minimum education content standards

a. Legislative framework of minimum content standards

82. In the past 12 years, the General Assembly, both on its own initiative and in coordination with the federal No Child Left Behind Law, has not only mandated the content of an educational program, but has also codified a series of minimum mandatory performance standards in core subjects that each child in Rhode Island must attain.

83. The General Assembly's initiative to develop statewide minimum content standards for public schools reflects contemporary economic reality. In the past, Rhode Island's strong manufacturing sector created a large market for unskilled and uneducated labor. In today's employment market, Rhode Island's citizens need, at a minimum, a rigorous and meaningful high school education.

84. In 1997, the General Assembly enacted an education program as part of Article 31 of the budget, P.L. 1997, ch. 30, Art. 31 § § 1 *et seq.* (codified at R.I.G.L. § § 16-7.1-1 *et seq.*) This legislation directed the Board of Regents to "adopt and publish statewide standards of performance and performance benchmarks in core subject areas to include writing and mathematics (grades four (4), eight (8), and ten (10))." R.I.G.L. § 16-7.1-2.

85. As part of Article 31, the General Assembly directed the Board of Regents to develop an assessment program, through which the education of all students is measured against a standard of "proficiency," with the goal of providing all children with the opportunity to attain this standard. R.I.G.L. §16-7.1-13.

86. In 2001, Congress enacted the No Child Left Behind Act (NCLB), 20 U.S.C. §§ 6301-7941.

87. NCLB requires states to develop official plans that incorporate challenging academic standards into the content of each student's education. 20 U.S.C. § 6311(b)(1)(A). NCLB also requires the development of an assessment program, and report those results both on an absolute scale and in terms of the gap between advantaged and disadvantaged students. 20 U.S.C. § 6311(b)(2)(A); 34 C.F.R. § 200.20(a)(1).

88. Failure to meet the standards, or to make adequate yearly progress in meeting them, subjects states and local districts to "corrective action," including staffing changes, reopening the school as a charter school, or directing the state to operate the school.

89. To implement the mandates of Article 31 and NCLB, the General Assembly delegated to the Board of Regents the responsibility to develop an accountability program that defines, grade by grade, expectations for all Rhode Island students in the following subject matter areas: Reading, Written and Oral Communication, Mathematics, Science and Civics. Exhibit 2 is a true and accurate copy of the current standards the Board of Regents has developed in each of these subjects.

90. To measure each student's proficiency in core subjects, Rhode Island joined New Hampshire and Vermont to develop a standardized test called the New England Common Assessment Program, or NECAP. The three states designed the grade-level expectations to align with the NECAP, so that the questions on the test measure students' knowledge of the subjects listed in the expectations.

91. Rhode Island administers the NECAP test each October. The test is designed to assess each student's understanding of the subjects studied during the previous academic year. As a result, the NECAP test administered to third grade students in October tests them on the material they learned in second grade in the previous school year.

92. Under the NECAP tests, all Rhode Island public school students are assessed in reading, mathematics and writing. In addition, children from selected grades are assessed in science.

93. The NECAP test measures children's content knowledge against a set of standards RIDE has developed for what each student should know. Based on those standards, children's scores are classified into four levels that are described as follows:

Proficient with Distinction (Level 4) – Students performing at this level demonstrate the knowledge and skills as described in the content standards for this grade span. Errors made by these students are few and minor and do not reflect gaps in knowledge and skills.

Proficient (Level 3) – Students performing at this level demonstrate the knowledge and skills as described in the content standards for this grade span with only minor gaps. It is likely that any gaps in knowledge and skills demonstrated by these students can be addressed by the classroom teacher during the course of classroom instruction.

Partially Proficient (Level 2) – Students performing at this level demonstrate gaps in knowledge and skills as described in the content standards for this grade span. Additional instructional support may be necessary for these students to achieve proficiency on the content standards.

Substantially Below Proficient (Level 1) – Student performing at this level demonstrate extensive and significant gaps in knowledge and skills as described in the content standards for this grade span. Additional instructional support is necessary for these students to achieve proficiency on the content standards.

b. Literacy Regulations

94. Pursuant to the mandate of the Rhode Island Literacy and Dropout Prevention Act, R.I.G.L. § § 16-67-1 *et seq*, the Board of Regents, in January, 2003, issued regulations regarding literacy in middle schools and high schools ("the 2003 Literacy Regulations"). Exhibit 3 is a true and accurate copy of the 2003 Literacy Regulations.

95. The 2003 Regulations require schools to identify all students in Grades 5, 9, and 11 who failed to achieve proficiency in reading the previous Spring in English Language Arts. The 2003 Regulations require school districts to assess each of these students and report to RIDE their reading levels by December of that year. *Id.* The 2003 Regulations required school districts to provide literacy instruction and support for all children reading at below grade level. The 2003 Regulations require all high schools to have “specific programs in place to provide such programming to all entering ninth graders who are assessed as having reading levels below grade level.” *Id.*

96. The 2003 Regulations require school districts to develop high school graduation requirements “that include demonstration of proficiency and apply to all students within the district.” The 2003 Regulations require school districts to use state assessments as part of the total assessment of students. Such assessments “shall not represent more than 10 percent of all the weighted factors contributing to promotion or graduation. *Id.*

97. In 2004, the Board of Regents issued a memorandum (“the 2004 Memorandum”) that provides guidance to compliance with the 2003 Regulations’ requirements concerning proficiency-based graduation. Exhibit 4 is a true and accurate copy of the 2004 Memorandum.

c. Statewide Curriculum

98. In 2004, the General Assembly enacted P.L. 2004, ch. 345, in which it directed the Board of Regents to select and/or develop a statewide curriculum in Mathematics and English Language Arts for students in grade kindergarten through twelve by August 31, 2006. This law was codified at R.I.G.L. §16-22-23.

99. In 2006, the General Assembly enacted P.L. 2006, ch. 246, Article 19, Section 4, in which it amended R.I.G.L. §16-22-23 to require the development of a Science curriculum for grades kindergarten (K) through twelve (12) by August 31, 2008.

d. English language learner regulations

100. Pursuant to legislative mandate of R.I.G.L. § 16-54-2, in 2008, the Board of Regents issued regulations to govern educational programs for English language learners enrolled in the public schools of Rhode Island (“the ELL Regulations”). Exhibit 7 is a true and accurate copy of the ELL Regulations.

101. The Board of Regents stated several purposes for these regulations, including that they are intended to:

Ensure that English Language Learners meet Rhode Island’s Grade Level Expectations (GLE’s) and Grade Span Expectations (GSE’s) in all subject areas.

Exhibit 7, p. 3.

102. Through the ELL Regulations, the Board of Regents promulgated a series of twelve program standards, including the following:

7. Ensure equitable access to all services, and materials that are provided to all other students.
8. Include sufficient personnel and resources to effectively implement the program.

Exhibit 7, p. 8.

e. Reducing High School Dropouts

103. In 2007 the General Assembly enacted the Rhode Island High School Dropout Prevention Act of 2007 (the “2007 Act”), P.L. 2007, ch. 226, § 1, codified at R.I.G.L. §§16-67.1-1 *et seq.*

104. The 2007 Act promoted the education of children up to the age of 18 by restricting the conditions under which they would have permission to leave high school without a diploma. *See* ¶60, *supra*.

105. This Act also directed the Rhode Island Department of Education (“RIDE”) to develop methods to provide extra support to children in schools and districts with a dropout rate in excess of 15%. R.I.G.L. § 16-67.1-2(b) directed RIDE to develop strategies to assist schools with dropout rates exceeding 15% which may include the following components:

- (1) Early intervention for students who fail Algebra I or any ninth grade math class and have insufficient credits to be promoted;
- (2) Alternative programs designed to reengage dropouts including dual enrollment courses at the community college level;
- (3) Increased availability of advanced placement courses;
- (4) Offering full course fee waivers for students eligible for free and reduced lunches, when enrolled in dual credit courses;
- (5) Flexible programs for older students who are currently not enrolled;
- (6) Comprehensive supplemental education programs for middle school students who are below grade level in reading and math;
- (7) Teacher advisories and other supports that are designed to specifically address the needs of youth most at risk of dropping out of school;
- (8) Strategies that are specifically designed to improve high school graduation rate of teens at highest risk for dropping out, including youth in the foster care system, pregnant and parenting youth, English as a second language learners, and teens with special education needs; and
- (9) Communicating with parents and students about the availability of local after school programs and the academic enrichment and other activities the programs offer.

106. Unfortunately, the General Assembly did not provide RIDE or local school districts with additional resources with which to support these strategies for needy schools.

f. High School Regulations

107. In 2008, the Board of Regents published regulations concerning literacy, middle and high school restructuring and proficiency based graduation requirements (“the 2008 Literacy Regulations”). Exhibit 5 is a true and accurate copy of the 2008 Literacy Regulations.

108. In the Preamble to the 2008 Literacy Regulations, the Board of Regents stated, among other things:

Specifically, it is the intent of the Board of Regents that each Rhode Island secondary school offer every one of its students a meaningful opportunity to achieve proficiency in six (6) core academic areas, and that sufficient student supports and personalization of instruction be offered to ensure that said opportunity to achieve proficiency is meaningful and realizable.

Exhibit 5, p. 2.

109. Through this Preamble, and through authority delegated to it by the General Assembly, the Board of Regents articulated the content of a minimum basic education to which every Rhode Island child has a right. In Rhode Island, the General Assembly has declared every child has a right to a meaningful and realizable opportunity to achieve proficiency in six (6) core academic areas.

110. Section L-6-2.2 of the 2008 Regulations require school districts to provide specialized assistance to all students who fail to read at grade level, providing as follows:

L-6-2.2 Improving literacy for students reading below grade level.

Local educational agencies shall have the obligation to initiate reading interventions for each student who is not reading at grade level based on the assessments required under section 2.1 of these regulations. Any student who continues to fall below grade level in reading and/or fails to attain proficiency in subsequent years on the state assessments designated by the Commissioner shall continue to receive specialized assistance.

Exhibit 5, p. 5.

111. The 2008 Literacy Regulations also obliged school districts to intervene to support children lacking in “numeracy”, or mathematical proficiency, stating as follows:

L-6-2.3 Improving numeracy for all students.

. . . All Rhode Island local educational agencies shall have mechanisms in place that: 1) identify and support students who are not making progress in mathematics as measured by local and state assessment data; 2) provide universal student access to course work aligned to state mathematics grade level/span expectations; and 3) ensure that schools at all levels work collaboratively to successfully transition those students into new schools within and across local educational agencies.

Exhibit 5, p. 6.

112. The 2008 Literacy Regulations also defined new high school graduation requirements as follows:

L-6-3.3. Use of proficiency measures for high school graduation.

Each local educational agency shall create a composite measure of each student's overall proficiency for graduation in the six core academic areas. This composite measure will be developed using individual student results on state assessments in mathematics and English language arts, and, when so designated by the Board of Regents, science, combined with measures of successful course completion and at least two additional performance-based diploma assessments, as set forth in sections 3.1 and 3.2 of these regulations. In areas where the Board of Regents has not approved a state assessment for the purpose of determining student proficiency for graduation, the local educational agency shall use successful course completion and at least two additional performance-based diploma assessments to determine student proficiency for graduation in those areas of study. While state assessments shall not be the sole grounds to prohibit graduation from high school, local educational agencies shall use individual student results on Board of Regents' designated statewide assessments as one-third (33 1/3%) of the components of their total assessment of student proficiency for graduation in said designated areas of study.

Exhibit 5, p. 6.

113. Section L-6-3.4 of the 2008 Literacy Regulations provides as follows:

L-6-3.4. Regents' approved diploma system.

The Commissioner shall review all local educational agency high school diploma systems to ensure that they are in compliance with these regulations. The Commissioner shall set the schedule and protocols for accountability to ensure that local educational agencies' High School diploma systems continue to be in compliance with applicable Regents' Regulations beginning in January 2008. In order to grant the Regents' approved diploma, a local educational agency must demonstrate, through the Commissioner's review and approval process, that all students have been provided appropriate supports and opportunities to learn in an approved curriculum. The local educational agency-approved core academic curriculum shall be aligned, at a minimum, with the grade 9-10 grade span expectations (GSEs) and other appropriate standards and be otherwise compliant with these regulations.

Exhibit 5, pp. 8-9.

114. In October, 2008, RIDE published a document to provide “guidance” in interpreting the 2008 Literacy Regulations. In the Guidance document, RIDE stated the following:

Use of state assessments

State assessments are administered in English language arts (reading, writing), mathematics, and science. At this time, the Regents have designated that beginning with the class of 2012 the state assessments in English language arts and mathematics must be one of three components used in evaluating a student’s level of proficiency in those content areas. . . . The state assessments, alone, do not provide sufficient evidence to determine student proficiency in a content area. As stated above, the three components of the proficiency profile must be used in evaluating a student’s level of proficiency in a content area.

The Regents have designated *Partially Proficient* as the minimum achievement level on the statewide assessments for the purposes of this section. When student performance does not meet or exceed this level on the state assessments, the local educational agency must take appropriate steps to evaluate the student’s level of proficiency in that core academic area.

115. The Regents’ designation, in the Guidance Document, of “Partially Proficient” as the standard for Rhode Island’s children appears to set the bar below the standard of proficiency. More specifically, the NECAP materials describe the “Partially Proficient” level of achievement as follows:

Partially Proficient (Level 2) – Students performing at this level demonstrate gaps in knowledge and skills as described in the content standards for this grade span. Additional instructional support may be necessary for these students to achieve proficiency on the content standards.

See ¶93, *supra*.

116. If a student has “gaps in knowledge and skills” against the grade span expectations, and the student may require “additional instructional support . . . to achieve proficiency on the content standards” the student has not achieved proficiency.

117. The Guidance Document’s “partially proficient” requirement for NECAP tests is therefore inadequate when measured against the “meaningful and realizable” opportunity to achieve proficiency set forth in the 2003 Regulations.

118. With that said, the Guidance Document is still significant because it articulates an objective standard as part of the minimum mandatory education that every Rhode Island child must receive.

119. Through these statutes and regulations, the General Assembly has defined a standard for schools, whereby each secondary school must offer every one of its students “a meaningful opportunity to achieve proficiency in six (6) core academic areas, and that sufficient student supports and personalization instruction be offered to ensure that said opportunity to achieve proficiency is meaningful and realizable” and a minimum achievement standard of “partially proficient” on the NECAP assessments.

120. Through these statutes and regulations, the General Assembly has defined a right for every Rhode Island child to be taught at a school that provides him or her with a meaningful and realizable opportunity to achieve proficiency in six (6) core subjects based upon the State’s 10th grade level standard and a minimum achievement standard of “partial proficiency” on the NECAP assessments.

g. The New Basic Education Program

121. In June, 2009, the Board of Regents promulgated revisions to the BEP. The New BEP will take effect in July, 2010. Exhibit 6 is a true and accurate copy of the New BEP.

122. The Board of Regents defines the purpose of the New BEP as follows:

G-12-1. AUTHORITY, SCOPE AND PURPOSE OF THE BASIC EDUCATION PROGRAM.

– (a) The Basic Education Program (BEP) is a set of regulations promulgated by the Board of Regents pursuant to its delegated statutory authority to determine standards for the Rhode Island public education system and the maintenance of local appropriation to support its implementation. The BEP must be read in concert with all other applicable legal mandates, under both federal and state law, in order to ascertain the full rights afforded to every student in the Rhode Island public education system. The BEP, along with the other applicable regulations and standards promulgated and adopted by the Board of Regents, is designed to ensure that high quality education is available to all public students, regardless of where they reside or which school they attend. The standards set forth in this title are designed to be measurable in order to determine compliance with the law, and, more generally, to determine whether equality of educational opportunity is being provided at the local level.

Exhibit 6, p. 3.

123. Section G-13-1.3 of the New BEP requires local districts to “provide a comprehensive program of study in English language arts, mathematics, social studies, the sciences, visual arts & design and the performing arts, engineering and technology, comprehensive health, and world language throughout the PK-12 system.”

124. With regard to English language arts, mathematics and science, the New BEP states that the grade-level expectations and the grade-span expectations that RIDE has developed “specify the standards for all students.” The New BEP also defines content standards with regard to the other five core subjects identified in Section G-13-1.3.

125. Through the promulgation of the New BEP, RIDE has defined the mandatory minimum education program required by the General Assembly to provide all children with a reasonable opportunity for an education that meets the standards set forth in RIDE's grade-level expectations and grade-span expectations, as measured by, among other things, performance on the NECAP standardized test.

126. The General Assembly's initiative, through the Board of Regents, to establish minimum educational standards for all of Rhode Island's children are to be commended, and are fully supported by the Plaintiffs.

h. The 2011 High School Regulations

127. In January, 2011, RIDE promulgated a draft set of proposed revisions to the 2008 High School Regulations. A copy of the draft 2011 High School Regulations is attached as Exhibit 16. In addition, RIDE published a set of Frequently Asked Questions ["FAQ"] regarding the 2011 revisions. A copy of the FAQ is attached as Exhibit 17.

128. Section L-6.3-3 of the January, 2011 High School Regulations articulate specific requirements for students graduating from high school, beginning with the Class of 2012. In relevant part, those requirements are as follows:

L-6.3-3. Use of proficiency measures for high school graduation.

Commencing with the graduating class of 2012, students shall be required to reach a minimum achievement level on the state assessments in reading and mathematics, and when so designated by the Regents, additional content areas to earn a diploma. The Board of Regents shall determine the minimum achievement level on the designated statewide assessments for the purposes of this section. . . . Students reaching the minimum level of performance on the state assessment set forth in these regulations must also fulfill coursework and diploma assessment requirements to earn a diploma. . . . Commencing with the graduating class of 2012, state assessment results shall be included on each student's permanent high school transcript.

Exhibit 16, p. 9.

129. As of 2011, the Regents set "partially proficient" as the minimum score on the NECAP that would allow a student to earn a diploma. The Regents articulated this standard in their answer to the first FAQ as follows:

Under these regulations, what do students in the class of 2012 have to do to graduate?

There are no new graduation requirements. Students will have to meet all of the requirements from the 2008 regulations. They will have to get a score of partially proficient on the NECAP tests, proficient work in their courses, and proficient demonstration on their performance-based assessments (portfolios and exhibitions).

Exhibit 17, p. 1.

130. In January, 2011, the Board of Regents conducted hearings to solicit feedback concerning the 2011 High School Regulations. Many teachers and students who attended these hearings expressed their concern that the new diploma requirements would have harm the future of children not able to attain a sufficiently high score on the NECAP assessments.

131. In March, 2011, the Board of Regents approved a revised version of the January, 2011 Regulations. Exhibit 18. The March, 2011 Regulations postponed the NECAP assessment requirement for high school diplomas be postponed until the graduating class of 2014.

132. The March, 2011 Regulations recognized the additional challenges that students learning the English language face in achieving proficiency as measured by the State standards. As a result, Section L-6.38(e) of the March, 2011 Regulations permits school districts to bypass traditional assessments (such as the NECAP) in favor of alternative assessments for certain students learning the English language. Exhibit 18, p. 10.

C. The disconnect between programs and funding

1. The tradition of local control and local funding

133. While Plaintiffs support the policies of RIDE the Board of Regents, as the General Assembly's agents, to enact minimum education program standards for all of Rhode Island's children, Plaintiffs now seek judicial relief because of the General Assembly's failure to allocate adequate resources to permit the realization of those standards. As described in further detail below, the problem results from the General Assembly's failure to match Statewide program initiatives with State revenues to support them.

134. As noted above, public education in Rhode Island, as was true for its sister colonies, began as a local initiative, with governance at the local level.

135. Beginning with the enactment of the Barnard School Act in 1845, the General Assembly created a governance framework by which school committees reported to the State for the management of educational affairs, rather than to municipal government.

136. In 1909, with the passage of 1909 P.L. ch. 66, § 1, later amended by 1914 P.L. ch. 1097, the entire care, control, and custody of school matters were placed under the jurisdiction of town school committees, where they remain to this day, with the exception of some regionalized school districts which are in themselves a body politic.

137. Through this process, the General Assembly has assigned to local school committees the task of managing public schools, to a large degree independently of municipal authorities. *See, e.g., Bailey v. Duffy*, 45 R.I. 304, 121 A. 304 (1923); *Dawson v. Clark*, 93 R.I. 457, 176 A.2d 732, 734 (R.I. 1962); *Royal v. Barry*, 91 R.I. 24, 160 A.2d 572 (R.I. 1960).

138. Unfortunately, however, the State has not provided resources to local school communities to comply with the new mandates. Instead, the State has left local school districts with the ultimate responsibility to find the necessary resources. *Exeter-West Greenwich Reg'l Sch. Dist. v. Exeter-West Greenwich Teachers' Assoc.*, 489 A.2d 1010 (1985).

139. Local communities fund education through property taxes.
140. The tax capacity of Rhode Island municipalities for public education varies widely.
141. Urban districts such as Woonsocket and Pawtucket tend to have a smaller property tax base to support public education, as measured by property value per student. These communities also tend to have larger populations of children who are more educationally needy. Children who are still English learners tend to concentrate into the urban centers. Impoverished children similarly concentrate in the urban districts.
142. As explained in further detail below, the General Assembly had a program during 1960-90 that adjusted well for the disparities, Statewide, in local resources and student need. Unfortunately, the General abandoned this program in 1991. The changes since that time lack a rational relationship to community need, and have increased the burdens on urban communities to an unsustainable level, depriving them of the resources needed to educate their children to the minimum level mandated by the State.

2. The 1960 funding formula

143. In 1960, the General Assembly enacted P.L. 1960, ch. 27 § 1. (“the 1960 formula”). This act provided a foundation level of support of state aid for local school operations (“operations aid”). Under the “operations aid” program, school districts set their own budgets (subject to the minimum requirements of the basic education program) and the state paid for a proportion of the budget (called the “share ratio”) that was computed based on the district’s relative property tax wealth per student. The program also contained adjustments for a minimum share of 25%. The original 1960 formula was codified at R.I.G.L. § 16-7-20.
144. The original 1960 formula, as amended, was fair and equitable, in that it included a State share ratio that acknowledged sufficiently the differing wealth of the State’s communities.
145. In 1967, the General Assembly amended its computation of the State’s share by (1) including an adjustment for each district’s per capita income, and (2) raising the State’s overall commitment to 35% of the total cost of education statewide. This adjustment made the 1960 Formula even more equitable, because it recognized that families in poverty are less able to pay property tax. The 1967 amendments also increased the total amount of State aid available, which again served to ameliorate the wealth difference present in Rhode Island’s various communities.
146. The 35% overall State share proved to be inadequate. Accordingly, in 1988, with the passage of R.I.G.L. § 16-69-1 *et seq*, the “60/40 Funding of Public Schools Act,” the General Assembly set a goal of funding 60% of the cost of public education at the State level, and 40% at the local level. The Act charged the Board of Regents to provide an annual report to the Governor and the General Assembly that includes “recommended steps for the governor and general assembly to meet spending target to achieve or maintain 60/40 state-local funding.” R.I.G.L. § 16-69-3.

147. In fiscal year 1989-90, excluding federal school aid, 43% of the cost of public education in Rhode Island was paid for by the State, and 57% was paid for by school districts. Nationally, on average, states shared educational expenses equally with local communities. Rhode Island's state share was thus was of the lowest in the country.

148. By the year 1989-90, it had become apparent to many that there were wide disparities between districts in terms of available financial resources for education, and that these disparities were causing urban students to be deprived of the educational level that they needed to attain.

3. Collapse of the Foundation Aid Formula System

149. In 1991, the General Assembly did not provide full funding to the operations aid program, instead imposing a reduction of \$26.3 million, or 9.4%.

150. The General Assembly imposed this funding cut on an across-the-board, *pro rata* basis. As a result, poorer communities with the smallest relative property tax base, which had been receiving a larger proportion of state aid relative to their local expenditure, felt the harshest impact from these reductions.

151. In response, the municipalities of Pawtucket, Woonsocket, and West Warwick brought a lawsuit against the State of Rhode Island to remedy the disparities in the school funding scheme.

152. In 1993, while the lawsuit was pending, the General Assembly enacted the Guaranteed Student Entitlement law, P.L. 1993, ch. 239, § 1. With this legislation, the General Assembly directed the Commissioner to "present a new state aid education formula referred to as the 'guaranteed student entitlement program.'" The Guaranteed Student Entitlement law set forth several standards to be incorporated into the new formula.

153. In this enactment, the General Assembly stated, "The current system of education financing does not provide for absolute equity, does not account completely for individual student needs, and relies too heavily on the property tax . . ." R.I.G.L. § 16-74-1(a). R.I.G.L. § 16-74-1(b) further defined "equity" as:

. . . equal treatment of students and taxpayers. It means that a sufficient amount of money is allocated to enable all students to achieve learner outcomes, and tax burdens shall be based on ability to pay. It means that money spent for a child's education shall not be a function of district wealth, and that all students shall have the same educational opportunities. The quality of education provided must be a function of statewide wealth.

154. In the months that followed, the Commissioner convened four working groups with a total of more than 60 members drawn from the General Assembly, the Board of Regents, and the broader community.

155. The Commissioner submitted a report on January 31, 1994. A true and accurate copy of the 1994 Report is attached as Exhibit 8. At pages 12-13, the 1994 report describes the elements of the proposed funding formula. The major proposed elements were the following:

- * The State would determine a baseline annual cost per pupil based on successful programs.
- * The cost to educate individual students with special needs would be increased by weighting factors, as follows:
 - + 50% for vocational education students;
 - + 20% for limited English proficient students;
 - +100% for special education students;
 - +6% for gifted/talented students;
- * Local contribution set by uniform statewide tax rate based on equalized property values for each community;
- * Other, specific adjustments.

Exhibit 8, pp. 12-13.

156. The Rhode Island Department of Education drafted legislation entitled “The Education Reform Act of 1994: A Guaranteed Student Entitlement” to implement the Report’s findings.

157. In 1994, the Superior Court entered judgment in favor of the Plaintiffs in *Pawtucket v. Sundlun*.

158. The General Assembly failed to enact the legislation or taken any other action that was consistent with the recommendations of the 1994 Report. Instead, the Rhode Island Senate appealed the Superior Court’s judgment of the Superior Court.

159. On July 20, 1995, the Rhode Island Supreme Court, in *City of Pawtucket v. Sundlun*, 662 A.2d 40 (1995), overturned the Superior Court’s ruling.

160. Although the *Sundlun* Court acknowledged that education was a right guaranteed under the State Constitution, the *Sundlun* Court ruled that Constitution precluded judicial review of education funding decisions, stating:

The ratification of article 6, section 10, of the Rhode Island Constitution of 1986 represented a knowing and an express endorsement of the Legislature’s primacy over education. Article 6, section 10, “must be construed to constitute a reaffirmation of the powers historically exercised by the Legislature under the prior constitution.” *Kass*, 567 A.2d at 361. It is thus clear that the General Assembly’s plenary and exclusive power over public education in Rhode Island has not changed since the adoption of the State Constitution in 1842.

Pawtucket v. Sundlun, *supra*, 662 A.2d at 50.

161. The Supreme Court also based its dismissal upon the fact that it appeared to the Court that the Plaintiffs were receiving a minimum basic education in core subjects based on the State's then-existing program requirements, stating:

It is, however, the academic achievement in basic core subjects – reading, mathematics, and writing – that represents the key challenge in education. Because these subjects are required components of the state's basic-education program, these subjects are taught in all schools irrespective of district wealth.

Pawtucket v. Sundlun, supra, 662 A.2d at 63.

4. The Caruolo Act

162. In 1995, the General Assembly enacted the Caruolo Act, R.I.G.L. § 16-2-21.4. The Caruolo Act created a remedy in Superior Court for school districts to sue municipal governments when the schools lacked adequate resources to provide the minimum education required under the Basic Education Program.

163. The Caruolo Act codifies the notion that children in public schools have a right to adequate resources to ensure the provision of education that meets the requirements of the State's basic education program.

164. Unfortunately, the Caruolo Act cannot achieve this goal when the community in question, such as Woonsocket and Pawtucket, simply lacks the capacity to raise sufficient local funds to provide a quality education program for its children.

5. The General Assembly's Awareness of the Problem of a Lack of an Adequate and Equitable Funding System.

165. As of 1995, the General Assembly had before it two alternative methodologies for the fair, adequate and equitable apportionment of State aid to local school districts. It had the 1960 Formula, which had been steadily improved until 1990-91, when it was abandoned as a result of the credit union crisis. It also had the 1994 Report, which provided a commonly used methodology to develop a foundation education aid program per capita, with adjustments made to address high-need students.

166. When it enacted Article 31 in 1997, (*see* Paragraph 84, *supra*), the General Assembly returned to the issue of fair and equitable State aid to education. As part of Article 31, the General Assembly enacted the "Student Investment Initiative Act," R.I.G.L. §§ 16-7.1 *et seq.* In that Act, the General Assembly indicated its commitment to the following four "fundamental principles":

- (i) Closing the inequitable resource gaps among school districts and schools;
- (ii) Closing inequitable gaps in performance and achievement among different groups of students, especially those correlated with poverty, gender, and language background;
- (iii) Targeting investments to improve student and school performance

- (iv) Establish a predictable method of distributing state education aid in a manner that addresses the over-reliance on property tax to finance education.

167. The Student Investment Initiative Act contains a statement by the General Assembly that recognizes the critical role State funding plays when urban communities, such as Pawtucket and Woonsocket, are simply unable to raise sufficient revenues to support public education, stating:

The general assembly recognizes that Rhode Island cities and towns primarily rely on the local property tax to finance education programs, and that the state's highest effective property tax rates are concentrated in the state's urban communities. Therefore, certain communities, because of low tax capacity and high tax effort, are unable to appropriate sufficient funds for the support of core instructional programs. The general assembly also recognizes the need to reduce inequities in resource distribution among the state's cities and towns as well as among the state's districts and schools.

168. Because of their explicit reliance upon student need and community wealth, both the 1960 formula and the 1994 formula provided models of how to accomplish these legislative goals. Unfortunately, the Student Investment Act did not adopt either of these models.

169. Instead, the Student Investment Act called for several funding streams, only one of which took community wealth (or poverty) into account. The other funding programs were a series of categorical grants that distributed aid to qualifying children on a per capita basis without regard to community wealth. In this way, the Student Investment Act distributed millions of dollars to wealthy communities with tax bases far in excess of those available in urban communities such as Pawtucket and Woonsocket. Conversely, the distribution of State aid in this inefficient manner reduced the amount available to disadvantaged children in the State's less affluent communities.

170. During 1997-2005, the General Assembly enacted "operations aid" for districts through across-the-board adjustments to the previous year's aid retaining, on a going-forward basis, the relative levels of aid established in 1997, adding along the way additional, scatter-shot, inadequately funded categorical grants.

171. As a result, operations aid during 1997-2005 was not proportionate to a district's student population, relative wealth, or any measurable criterion. Instead, the inequities of previous years only compounded, as each district's relative wealth and/or student population diverged from where it has been previously.

172. By 2004-5, the state share for education remained at 43%, one of the seven lowest in the country. At the same time, the national average has risen to 53%, up from 50% in 1990-91.

6. The 2007 Proposed Formula

173. In 2004, the General Assembly enacted P.L. 393, §§ 1 *et seq.*, the Education Equity and Property Tax Relief Act, R.I.G.L. §§16-7.2-1 *et seq.*

174. In passing the Educational Equity and Property Tax Relief Act, the General Assembly explicitly acknowledged the failures of the existing funding program, making the following findings:

16-7.2-1 Legislative findings. – (a) The general assembly recognizes the need for an equitable distribution of resources among the state's school districts, property tax relief and a predicable method of distributing education aid. The general assembly finds that there is a need to reform the way public education is financed because:

- (1) All children should have access to an adequate and meaningful education regardless of their residence or economic means;
 - (2) A school funding system should treat property taxpayers equably, limit the portion of school budgets financed by property taxes, and establish sufficient cost controls on school spending;
 - (3) The state should ensure that its school funding structure adequately reflects the different needs of students, and closes the educational inequities among the state's school districts; and
 - (4) The state education funding system should provide a predicable amount and source of funding to ensure stability in the funding of schools.
- (b) The intent of this chapter is to promote a school finance system in Rhode Island that is predicated on student need and taxpayer ability to pay. A new school funding system in the state should promote educational equity for all students and reduce the reliance on the property tax to fund public education. This legislation is intended to ensure educational opportunity to each pupil in each city or town on substantially equal terms. Adequate per pupil support will be provided through a combination of state school aid and local education property tax levies.

175. As part of its enactment, the General Assembly convened a joint legislative committee to establish a permanent education foundation aid formula aimed at reforming the identified deficiencies in the educational financing system for the State, providing the following parameters:

- (1) A state education funding formula that is student population and needs driven. Student counts should include enrollments, students eligible for free and reduced lunch, those participating in language assistance programs, and special education. Provisions should be made for those school districts that experience declining enrollments.
- (2) The accounting for "extraordinary special education expenditures" in special education spending for one child in a given fiscal year.
- (3) A per pupil foundation amount to be used in the calculation of school funding. The per pupil foundation amount should be based on what the cost is to provide an equitable and adequate education, and consider various cost factors, such as

pupil-teacher ratios, teacher and staff compensation, technology investments, educational supplies, teacher training and professional development, student performance assessments, curriculum offerings and support services and other costs associated with the delivery of educational services.

- (4) Per pupil cost, based on a least cost option plan to provide purchase of service contracts in areas such as equipment, repair, benefits, transportation, general purchasing, capital construction, data processing and health and other insurance programs. In addition, the department of education should assist regional collaboratives in identifying opportunities to maximize multiple school district participation for "high cost" programs.
- (5) Various methods of funding the system.
- (6) A transition education funding plan.

R.I.G.L. §16-7.2-2.

176. The General Assembly also called for the formation of a technical advisory group to prepare a set of options and the impact of replacing existing local property tax levies that support the funding of elementary and secondary education with other resources. *Id.*

177. As described in further detail below, the 2004 Education Equity and Property Tax Relief Act ultimately became another missed opportunity for the General Assembly to resolve the inequities in school funding that had plagued Rhode Island since 1991.

178. In the meantime, however, the General Assembly's 2004 session included another initiative that provided children with more hope for a judicial remedy to the failures of public school finance in the face of continued legislative gridlock. More specifically, the General Assembly resolved in 2004 to place a question on the ballot to amend several provisions of the Rhode Island Constitution, including Article 6, Section 10, which had been a basis for the Supreme Court's *Pawtucket v. Sundlun* decision.

179. On November 2, 2004, Rhode Island's voters approved, by a majority exceeding 70%, the ballot question calling for the amendment of the Rhode Island Constitution, including the repeal of Article 6, Section 10.

180. In 2006, the joint legislative committee engaged a consultant, R.C. Wood & Associates, to prepare a report on a funding formula for Rhode Island school aid.

181. In the meantime, however, in 2006, the General Assembly enacted P.L. 2006, ch. 253, § 3, the so-called "Paiva-Weed Act."

182. The Paiva-Weed act placed limits on annual increases in municipal taxes, beginning with a 5.5% cap in 2006, with scheduled in the cap down to 4% in 2012-13.

183. The Paiva-Weed Act was particularly draconian where school departments were concerned. School departments were singled out for a “gag order” with respect to their budget requests. Under R.I.G.L. § 16-2-21, as amended by the Paiva-Weed Act, school departments are forbidden even to request from their municipalities any local contributions in the excess of a specified percentage increase.

184. The Paiva-Weed Act also compromised school districts’ rights under the Caruolo Act. The Paiva-Weed Act required courts to “consider the percentage caps on school district budgets set forth in subsection (d) of this section” when issuing a decree granting relief under the Caruolo Act.

185. In enacting the Paiva-Weed Act, the General Assembly made the following legislative findings:

- (4) The state educational operations aid formula should be gradually increased until the state and municipalities equally share the cost of providing local education. The general assembly remains committed to that objective and intends to pursue that objective aggressively upon receipt and consideration of the final report of the joint legislative committee to establish a permanent education foundation aid formula in accordance with § 16-7.2-2 of the general laws.
- (5) The state should also share a greater portion of its economically sensitive growth taxes with its cities and towns in order to further shift the burden of funding essential municipal services from the property tax.
- (6) The growth in property tax levies should be capped in accordance with § 44-5-2 of the general laws as a quid pro quo for receiving increased state aid to reduce reliance on the property tax.

186. The General Assembly failed to support its expression of concern for educational funding with actual money.

187. In March, 2007, the General Assembly’s consultant produced a report (“the Wood Report”). Exhibit 9 is a true and accurate copy of the Wood Report.

188. The Wood Report recommended that the Rhode Island adopt a funding formula that included a basic foundation amount per student, with scaling factors for each student who either (a) received special education services; (b) lived in poverty, and/or (c) was an English language learner. The Wood Report recommended a foundation amount of \$9,500-\$10,000 per pupil for 2006.

189. The Wood Report’s basic recommendations were quite similar to those the Commissioner presented to the General Assembly as part of the 1994 Guaranteed Student Entitlement report, Exhibit 8, *supra*. In this way, the Wood Report reaffirmed the conclusions the General Assembly had reached during 1960-91 and again in 1994 concerning the structure of a fair and adequate school funding program.

190. The Technical Advisory Group reviewed the findings of the Wood Report, and published its own report in 2007 (“the Technical Advisory Group Report”). A true and accurate copy of the Technical Advisory Group Report is attached as Exhibit 10. The Technical Advisory Group Report developed a school aid funding formula for Rhode Island, which will be referred to below as the “2007 Proposed Funding Formula.”

191. The 2007 Proposed Funding Formula called for a foundation per student amount of \$10,607 for 2008/09. Exhibit 10, p. 11.

192. The 2007 Proposed Funding Formula called for adjustment factors of +50% for special education students, +25% or +50% for children living in poverty (depending on severity), and +20% for English language learners. *Id.*, p. 9. Like the authors of the Wood Report, the Technical Advisory Group understood that special needs, poverty and lack of English proficiency affected a student’s ability to learn in different ways. As a result the Technical Advisory Group established that the weighting factors should be combined additively.

193. The 2007 Proposed Funding Formula’s use of additive weights ensured additional aid to pockets of urban communities that combined all three of the factors (special education, poverty and limited English proficiency) identified in the Wood Report. For example, in Pawtucket and Woonsocket, the 2007 Proposed Funding Formula calculated the weighted foundation amount as follows:

District	Enrollment	Weighted Enrollment	Weighted Foundation Cost per student	Increase due to Weights
Pawtucket	9,215	13,110	\$15,090	\$4,483 (+42.3%)
Woonsocket	6,377	9,157	\$15,231	\$4,624 (+43.6%)

Exhibit 10, pp. 14-15.

194. The authors of the Wood Report and the 2007 Proposed Funding Formula both understood that

195. The Technical Advisory Group Report allocated these costs between state and local governments in proportion to each district’s relative wealth per student, subject to two global constraints, namely (1) the average State share was 44%, and (2) the minimum share per district as 25%. *Id.*, p. 11.

196. The 2007 Proposed Funding Formula called for the State assume direct responsibility for \$40.8 million of expenses that previously were charged to local school districts. *Id.*, Chart 1. These expenses include high cost special needs students (\$8.3 million), group home aid (\$14.4 million) and out-of-district transportation (\$14.7 million). *Id.*

197. The essential elements of the 2007 Proposed Funding Formula are closely similar to the 1994 Report, which the General Assembly received with legislation it failed to implement. In this way, the 2007 Proposed Funding Formula did not represent a new solution, but rather a reaffirmation of the General Assembly's prior knowledge, dating back at least 13 years, concerning the structure of a solution that it had repeatedly failed to implement.

198. The 2007 Proposed Funding Formula prescribed significant changes for education finance in Rhode Island. The following table describes the Technical Advisory Group's recommendation for appropriations per student:

District	Local	State	Total
Pawtucket	\$2,449	\$12,641	\$15,090
Woonsocket	\$1,722	\$13,509	\$15,231

199. The General Assembly received and reviewed the Technical Advisory Group Report, but did not act upon any of its recommendations. The 2007 Proposed Funding Formula never became anything more than a proposal.

200. Instead, the General Assembly froze state educational aid to local communities at the same level as it had been in 2006/2007. As a result, the State's share of the local budget fell to 37.2%, representing the sixth lowest level in the country.

201. As a further constraint on adequately funded public education, the Paiva-Weed Act reduced the permitted annual growth in local taxation to 5.25%. The Paiva-Weed Act similarly reduced the permitted annual growth in local contributions to 5.25%.

202. With respect to the Pawtucket and Woonsocket, the actual appropriations that the General Assembly approved for 2007-2008 diverged from the Technical Advisory Group Report’s recommendations as follows:

District	Funding Source	Proposed Formula	Actual Allocation	Difference
Pawtucket	Local	\$2,449	\$3,120	+\$671
	State	\$12,641	\$7,561	-\$5,080
	Combined	\$15,090	\$10,681	-\$4,409
Woonsocket	Local	\$1,722	\$2,284	+\$562
	State	\$13,509	\$7,682	-\$5,827
	Combined	\$15,231	\$9,966	-\$5,265

Source: Rhode Island Department of Education, Information Works! 2009 data for 2007-08 school year. Does not include Federal funds, “Other Commitments,” or private grants.

203. In other words, the actual school aid that the General Assembly appropriated in 2007 for the 2007-08 school year for Pawtucket and Woonsocket was approximately \$5,000 per student less than the Technical Advisory Group Report’s recommendations. As a result, schools in these communities were required to provide education programming for their children on a budget that more than one-third less than the General Assembly’s consultant and commission deemed to be appropriate.

204. In January, 2008, the General Assembly returned to work. For the year 2008-2009, the Paiva-Weed act now imposed a 5% cap on permitted local tax increases, and a similar cap on increases in local contributions to schools. It did not, however, implement a single recommendation of the Wood Report or Technical Advisory Group Report. Instead, it froze the state education aid to the local communities at the same level as it had been in 2006-2007.

205. During the 2008 session, Representative Edith Ajello of Providence, a member of the General Assembly’s Joint Legislative Committee, undertook a study of school financing from the perspective of the chronic fiscal constraints that the State faced that year and could face in future years. She engaged a consultant named Steven Smith, who contributed to the 2006 Wood Report. He prepared a report (“the Smith Report”), a true and accurate copy of which is attached as Exhibit 11.

206. The Smith Report was not intended to provide adequate resources to all communities. Instead, the Smith Report was designed to allocate admittedly inadequate State resources in a manner that responded more accurately to the funding needs of children across the State of

Rhode Island. Specifically, the Smith Report assumed that overall State aid was fixed, and that it should be re-allocated based on the funding principles developed in the Wood Report.

207. The Smith Report demonstrated that the current distribution of aid diverges significantly from the “funding formula” principles adopted by the General Assembly.

208. Presently, some communities receive school aid under the current “non-formula” that amounts to more than \$5,000 per student in excess of what would be distributed if Rhode Island had a funding formula and the *same* global budget for State aid to education.

209. Conversely, the Smith Report also indicated that if the General Assembly adopted a funding formula without increasing the overall amount of aid, some communities would receive increased aid exceeding \$1,900 per student.

210. Representative Ajello introduced a bill that sought to implement the funding formula calculated in the Smith Report. The General Assembly did not even schedule a hearing for the bill, much less vote on it.

211. In the meantime, the disparities that had been building since 1991 reached new extremes, especially when compared against the baseline of the 1960 Formula and its amendments.

212. In 1999, the General Assembly, with the passage of R.I.G.L. § 16-77.1-2, required local school districts and the state to share in the operating costs of charter schools. The statute prescribes a share ratio by which costs are allocated between local and state authorities. The charter school share ratio is calculated on the same principles as the 1960 formula as it was applied in 1990. It is thus possible to determine what school districts would receive from the State had the 1960 formula been adhered to. Those calculations are as follows:

District	Actual 2007/08 Municipal Contribution to School Budget (\$ million)	Actual 2007/08 State Aid (\$ million)	Actual Total State + Local Expenditure (\$ million)	State Aid Share Ratio of Actual Total Spent	Charter School State Share Ratio	Funding Gap (\$ million)*
Pawtucket	27.7	67.5	95.2	0.709	0.786	44.2
Woonsocket	14.2	48.0	62.2	0.771	0.855	35.7

* Additional State funds the district would have received based on the actual municipal contribution and application of charter school state share ratio.

213. In other words, had the General Assembly followed the 1960 formula (in its 1989/90 format), and if the local contributions in 2007/08 remained constant, the General Assembly would have provided additional State funds to Woonsocket in an amount that would have

increased the overall school budget by more than 55%, and additional funds to Pawtucket in an amount that would have increased the overall school budget by more than 45%.

214. In January, 2009, the General Assembly returned to work. For the year 2009-2010, the Paiva-Weed Act now imposed a 4.5% cap on permitted local tax increases, and a similar cap on increases in local contributions to schools. The General Assembly still did not implement a single recommendation of the Wood report or Technical Advisory Group Report. The General Assembly did not freeze state education aid to local communities at the same inadequate level that had prevailed in 2006-2007, 2007-2008, and 2008-2009. Instead, it enacted a 3% across-the-board school aid reduction from the 2008-09 level.

7. The 2010 Formula and the 2010-11 Aid Allocation

215. In May, 2010, the General Assembly enacted a funding formula for the allocation of state aid to local school districts (“the 2010 formula”). A review of the 2010 formula reveals that it fails to provide adequate resources to allow children, especially in poor, urban communities, to obtain a quality education that provides a reasonable opportunity for each child to meet the academic standards established by RIDE.

216. The 2010 formula contains four basic components:

- a. A “core instruction” amount;
- b. A “student success factor”;
- c. A share ratio calculation;
- d. Additional categorical aid.

a. Core Instruction Amount

217. The 2010 formula’s “core instruction amount” is presented as a baseline cost per student of providing a “market basket” of instructional services. For 2010-11, RIDE calculated the “core instruction amount” to equal \$8,333. *See* Exhibit 19 (RIDE computation of 2010 Formula).

218. The 2010 formula’s “core instructional” amount of \$8,333, less than 79% of the foundation amount of \$10,607 calculated in the 2007 Proposed Formula.

219. The cost of public education did not decline by 21% between 2008-09 (the baseline date of the 2007 Proposed Formula) and 2010. Instead, it increased.

220. According to RIDE’s In\$ite cost data, in 2008-09, the average cost per student statewide was \$14,471. *See* Exhibit 21 (In\$ite report).

221. There are three principal reasons for this discrepancy. The first is that “core instruction amount” includes some services in the “market basket” while excluding others. The second is that the 2010 formula’s projected statewide average cost is increased after applying the “student success factor”. The third is that the General Assembly made the political decision to enact a

funding formula that is essentially “basically revenue neutral,” *see* Exhibit 23, p.1. In other words, the General Assembly constrained its calculation of students’ needs by precluding the appropriation of significant additional state education aid funds. This way, the General Assembly explicitly injected a political consideration into its calculation of students’ needs.

222. The “market basket” of “core instruction” expenses, by design, excludes several categories of expenses that school districts must incur, including but not limited to the bulk of the categories of “operating expenses” and “other expenses.” *See* Exhibit 22. Operating expenses include such items as utilities, building maintenance and transportation. During 2008-09, the State’s districts spent an average of \$2,249 per pupil on operations. “Other expenses” include such items as debt service, capital projects and pass-throughs. On the average, school districts spent \$1,403 per student on “other” expenses.

223. The 2010 Formula provides zero dollars (\$0) of State aid for utilities and building maintenance, and no “core instruction” aid for transportation.

224. Across the country, 48 states out of the other 49 states have a stream of State aid funds for transportation costs.

225. With regard to transportation, the 2010 Formula allocates aid from a categorical pool of \$10.9 million, or less than \$80 per student. *See* Exhibit 19, p. 1. Of that overall amount, the 2010 Formula does not allocate any money at all for the transportation of children in Pawtucket. Of that overall amount, the 2010 Formula allocates \$1,800 to Woonsocket for transportation, or approximately \$0.31 per student.

b. Student Success Factor

226. The 2010 Formula includes an adjustment called the “student success factor” that increases the “core instruction amount” for a given student by 40% (or approximately if that student qualifies (based on income guidelines) for the free and reduced price lunch program (referred to below as “FRPL”). *See* Exhibit 20, p.1.

227. The 2010 Formula fails to make any separate adjustment for children who are English language learners (“ELL”). In failing to make such an adjustment, the 2010 Formula lies outside the mainstream of funding formulas nationally. According to a survey published in the Winter 2009 issue of the *Journal of Education Finance* (Vol. 34, No. 3, pp. 213-30), 37 states fund English language learner and/or bilingual programs at the State level.

228. To explain this anomaly, RIDE notes that the “student success factor” helps support ELL programs because the population of children in poverty overlaps with the population of children needing ELL programs. Exhibit 23, p. 4. In fact, however, there is not a neat overlap between the two populations. For example, Burrillville has a substantial population of children in poverty (25%), but almost no Latino students (1%) and no children in ELL programs. Newport, with 50% of its children in poverty, has only 16% Latino children, and only 3% of its children are in

ELL programs. In contrast, the overwhelming bulk of the State’s Latino children and ELL or bilingual programs are concentrated in four urban core communities: Central Falls, Pawtucket, Providence and Woonsocket. The RIDE formula freezes state education aid for Central Falls, despite its population of 75% of children in poverty, 70% Latino children and 22% of children in ELL or bilingual programs.

229. In presenting the 2010 Formula, RIDE performed a sample calculation of the impact of “student success factor.” In this sample calculation, RIDE applied a statewide enrollment of 141,502 and a population of students in poverty of 58,125. Based on the foundation amount of \$8,295 per student, the foundation budgets for Pawtucket and Woonsocket were as follows:

District	Enrollment	Foundation Budget (\$ million)	Student Success Factor Increase (\$ million)	Total Foundation Cost per student	Increase per student due to Student Success Factor
Pawtucket	8,534	\$70.79	\$21.12	\$10,770	\$2,475 (+23.0%)
Woonsocket	5,912	\$49.04	\$13.47	\$10,574	\$2,279 (+21.6%)

Estimates based on Exhibit 21, p. 4. (RIDE originally proposed a core instruction amount per student of \$8,295 in February, 2010; however, the final enacted version increased the figure to \$8,333.)

230. The 2010 Formula slashed the projected budget for all communities substantially, including but not limited to Pawtucket and Woonsocket from the amounts calculated in the 2007 Proposed Formula. More specifically, the 2010 Formula’s impact on these two districts was the following:

District	2007 Proposed Formula Budget (\$/student, <i>see</i> ¶198)	2010 Formula Budget (\$/student, <i>see</i> ¶229)	Difference
Pawtucket	\$15,090	\$10,770	\$4,320 (-28.6%)
Woonsocket	\$15,231	\$10,574	\$4,659 (-30.6%)

231. In other words, the General Assembly determined, in constructing the 2010 Formula, that the cost of education per student was approximately 30% less than its consultant and its Technical Advisory Group calculated the cost to be in 2007. In contrast, the actual cost of living (as measured by the United States Consumer Price Index) increased by more than 5% during the same period. RIDE did not present any information to indicate that the cost of education per student declined during 2007-10.

232. The 2010 Formula's failure to fund ELL programs is particularly unfortunate in light of the State's overall failure to provide a quality education to its new American children, including Hispanics. In 2009, Rhode Island's Hispanic students had the lowest achievement levels nationally in fourth-grade mathematics, eighth grade reading and eighth grade mathematics. They also had the seventh-lowest score in fourth grade reading.

233. In 2007, Rhode Island's English language learner students had the lowest achievement levels nationally in reading, at both the fourth and eighth grade.

c. State share ratio

234. The 2010 Formula allocates the cost of providing the "core instruction" education between the local community and the State based on a "share ratio". The Rhode Island Department of Education prepared a issue brief to describe the calculation of the state share ratio, excerpts from which are attached as Exhibit 25.

235. The "share ratio" has two components, EWAV and children in poverty, which components are combined through a calculation called the "quadratic mean."

236. EWAV, or "equalized weighted assessed valuation" is a concept that the State has used, with variations, in different components of state aid over time. It allocates a school budget between each community and the State based on the community's relative share of property value per pupil, with an adjustment for median family income. The State used the EWAV principle in the 1960 Formula, the 2007 Formula, the formula for construction aid and the previous formula for charter school aid.

237. For example, the General Assembly used the concept of EWAV to calculate the share ratio for charter school aid in the following manner:

- A. . . . The total assessed local property value of a community is adjusted for differences in local assessment rates to allow the reporting of figures comparable on a statewide basis, resulting in the Equalized Weighted Assessed Valuation (EWAV).

The valuations are then adjusted by the ratio that the community's median family income bears to the statewide family income, as reported in the most recent federal census data. Use of both the property value and the median family income is an attempt to compensate for districts that have significant disparity

between median family income and the full value of property. Once community wealth is determined, it is divided by pupil counts to calculate the per pupil wealth for each community compared to the per pupil wealth for the state as a whole.

- B. . . . Average daily membership calculates an average of the number of days all students are formally members of a district and/or a school per year.
- C. The resulting relative per pupil community wealth is then multiplied by 50.0 percent, the mean state reimbursement, and subtracted from 1.0, yielding the district's share ratio.
- D. Column D shows the final share ratios with each community receiving at least a 30 percent share ratio. . . .

Exhibit 15, p. 103.

238. Another way of expressing the concept of EWAV with regard to the charter aid formula, is that it assumes that State aid will fund 50% of the aggregate cost of public education, and local governments, charging a uniform tax rate will fund the remaining 50%. The State aid is then apportioned to each community to fill the gap left in its local budget when its taxpayers pay the uniform state rate.

239. If the mean state reimbursement rate is 50%, and a community's property tax base per student (after adjusting for median family income) is more than double the statewide average, then its EWAV base share ratio becomes a negative number. (Communities with base share ratios of less than 30% are eligible for the minimum state aid of 30%.)

240. In the RIDE's calculation of EWAV for the 2010 Funding Formula, there were six communities with negative base share ratios. These communities are Charlestown, Jamestown, Little Compton, Narragansett, New Shoreham and Newport. Exhibit 24, p.3. Their base share ratios were as follows:

Community	Base Share Ratio
Charlestown	-23.58%
Jamestown	-125.57%
Little Compton	-143.78%
Narragansett	-94.01%
New Shoreham	-863.79%
Newport	-36.56%

241. The 2010 Formula resets each of these values to zero for the five super-wealthy communities.

242. Because of their small property base and low median family income, the communities of Pawtucket and Woonsocket qualify for high base share ratios as follows:

Community	Base Share Ratio
Pawtucket	79.3%
Woonsocket	85.5%

243. In addition to EWAV, the 2010 Formula adjusts the State share ratio based on each community’s proportion of children in poverty, as measured by the number for children eligible for FRPL.

244. The 2010 Formula then calculates a State share ratio by calculating the “quadratic mean” or “Pythagorean mean” of the EWAV share ratio and FRPL. Because each of the five extra-wealthy communities have populations of children in poverty, they qualify for state aid even though their local property base is adequate to pay the increased costs. The total State aid going to the five extra-wealthy communities is more than \$11 million.

245. In the meantime, Pawtucket and Woonsocket lose State aid because of the “quadratic mean” modification to EWAV. More specifically, each of these communities has a poverty rate that is smaller than its EWAV base share ratio as follows:

Community	Base Share Ratio	Poverty Rate (FRPL)	Final (Quadratic Mean) Share Ratio	Quadratic Mean Impact (\$ Million)
Pawtucket	79.3%	76%	77.7%	\$1.47 Million
Woonsocket	85.5%	74%	79.9%	\$3.50 Million

246.

The impact of the quadratic mean on the 2010 Formula's ultimate State aid per student for Pawtucket and Woonsocket can be calculated as follows:

Community	Base Share Ratio	Base State aid per student	Final (Quadratic Mean) Share Ratio	Quadratic Mean State Aid per Student	Impact
Pawtucket	79.3%	\$8,538	77.7%	\$8,366	\$-172
Woonsocket	85.5%	\$9,046	79.9%	\$8,453	\$-593

(Estimates)

247. In other words, the “quadratic mean” adjustment to the state share ratio creates a class of winners and losers. The winners are the six wealthiest communities in the State, who harvest an additional \$11 million in State aid from the “quadratic mean” calculation that they would not receive otherwise. The losers include Pawtucket and Woonsocket, whose State aid reductions fund almost half of the windfall awarded to the “winners.”

248. The reason Pawtucket and Woonsocket are harmed in this way is because their property tax bases are exceedingly weak. In this way, the “quadratic mean” feature of the 2010 Formula redirects funds from some of the poorest communities to some of the wealthiest, precisely the opposite of what a rational formula would do.

d. Other categorical aid

249. The 2010 Formula also provides four other pools of categorical aid. Exhibit 19, p. 2. As mentioned above, the 2010 Formula provides approximately \$10.9 million in transportation aid. The 2010 Formula provides \$8.5 million in aid for “high need” special education students, whose cost per pupil exceeds five times the baseline, or “foundation” amount. The 2010 Formula also provides approximately \$9.3 million in additional aid to the Central Falls school district. Finally, the 2010 Formula provides an additional \$1.6 million in aid to the Davies Career and Technical vocational school. These allocations amount to a total of approximately \$30 million, or approximately \$215 for each student in Rhode Island. Of these four pools, approximately \$442,000, or \$42 per student, goes to the children of Pawtucket, and approximately \$846,000, or \$141 per student to the children of Woonsocket.

e. Timing and the 2010/11 aid allocation

250. Because of its decision not to allocate significant additional State funds to public education, the General Assembly decided to implement the 2010 Funding Formula over a period of years. With regard to Pawtucket and Woonsocket, the General Assembly adopted a seven-year phase in period. Also, the General Assembly elected not to begin implementing the funding formula until the 2011/12 school year at the earliest.

251. Notwithstanding the enactment of the 2010 Formula, the General Assembly elected to distribute state aid to local education for the 2010/11 fiscal year based upon the allocations made in 2009/10, reduced by an across-the-board cut of 3.8%. In other words, the 2010 allocation of State Aid was inadequate even by the impoverished measure of adequacy defined by the General Assembly in the 2010 Formula.

252. As a result, it will be a long time before underfunded communities, including Pawtucket and Woonsocket, receive State aid that is adequate even under the General Assembly's flawed methodology. More specifically, even if the General Assembly honors completely the promises it made in enacting the 2010 Formula, Pawtucket and Woonsocket will not achieve "adequacy" until 2016-17, as described in the following chart:

Community	2008/09 State Aid per student	2009/10 State Aid per student	2010/11 State Aid per student	2011/12 State Aid per student (promised)	2016-17 Formula Aid per Student (promised)
Pawtucket	\$7,742	\$7,510	\$7,225	\$7,444	\$8,366
Woonsocket	\$7,931	\$7,693	\$7,401	\$7,587	\$8,453

(Estimates)

253. In other words, if one uses the benchmark of adequacy the General Assembly adopted in enacting the 2010 Formula, the General Assembly is underfunding the students of Pawtucket and Woonsocket by more than \$1,000 per student for 2010/11. What is worse, the 2010 Formula will not completely "phase in" and bring these communities up to that standard until seven years hence, at which time the cost of living likely will push the benchmark even further out of reach.

D. The educational consequences of the General Assembly's inadequate funding.

254. Local school committees across the State, such as those in Woonsocket and Pawtucket, have been placed in a virtually impossible position. As a result of the General Assembly's commendable action to establish minimum standards, the Woonsocket and Pawtucket school committees are faced with increasing funding requirements.

255. On the other hand, the Woonsocket and Pawtucket School Committees lack the resources to meet these standards. The Paiva-Weed Act effectively prohibits either the Woonsocket School Committee or the Pawtucket School Committee from requesting the necessary additional funds from their municipal governments. Even if they were allowed to make such a request, the Cities of Woonsocket and Pawtucket lack the taxing capacity to meet those standards.

256. Urban communities such as Woonsocket and Pawtucket face a particular challenge in educating their children. Urban communities have a far higher concentration of English language learners. Their children are poorer.

1. Woonsocket

a. Financial constraints

257. Each year, the State's Office of Municipal Finance calculates the relative property wealth of each community based on the full valuation of property and an equalized property tax rate in order to calculate certain components of State aid to local school districts. R.I.G.L. §§16-7.1-1 *et seq.* Exhibit 14 is a true and accurate copy of the calculations used to determine school aid for the 2009/10 school year.

258. In order to develop a common measurement, the Office of Municipal Finance calculates the full value of all of the taxable property in Rhode Island. It then treats the entire State as if were a single municipality, and calculates what single property tax rate would be required to collect the total amount of property tax revenue generated statewide. It then measures each community's relative tax capacity by calculating how much revenue the community would generate under this standard, equalized tax program on an aggregate basis and a per capita basis.

259. Taken as a whole, a uniform statewide property tax would generate \$1,940 per capita across the State of Rhode Island. Exhibit 14. With that said, however, individual communities diverge from that average along a wide range. In property-rich communities such as New Shoreham and Jamestown, for example, the uniform statewide property tax rate would yield \$34,428 per capita and \$8,275 per capita, respectively, more than enough money to fund a public school system. Exhibit 14.

260. Woonsocket is the second poorest community in the State of Rhode Island. The same tax rate that would yield \$34,428 per capita in New Shoreham yields only \$587 per capita in Woonsocket. Put another way, the Office of Municipal Finance's data calculates that Woonsocket's "relative capacity" is 30, which means that its ability to raise property taxes to fund its public schools is only 30% of the State average.

261. In 2007-08, Woonsocket appropriated \$14.2 million in municipal funds to support public education. *See* Paragraph 199. Woonsocket's per student local contribution was \$2,284. *See* Paragraph 189.

262. Over the past three years, the General Assembly has reduced Woonsocket's state education aid by more than \$500 per student.

263. According to the Office of Municipal Finance, Woonsocket's equalized tax base for December 31, 2005 was \$2.681 billion at full valuation. Exhibit 14. In other words, at full valuation, Woonsocket's citizens paid property taxes equal to approximately 5.30 mills (\$5.30 per \$1,000 of full valuation) to fund public education at the level of \$2,284 per student enrolled in the Woonsocket public schools.

264. In contrast, according to the same data, Narragansett's citizens paid lower property taxes (approximately 4.69 mills, or \$4.69 per \$1,000 of valuation) to generate \$15,142 in municipal education funds for each Narragansett child receiving a public education. *See* 2009 Information Works! (per pupil data, municipal appropriation) *and* Exhibit 14 (tax base). Little Compton's citizens paid significantly lower property taxes (approximately 3.42 mills, or \$3.42 per \$1,000 of full valuation) to generate \$14,059 in municipal education funds for each Little Compton child receiving a public education. *Id.*

265. According to Information Works!, in 2008-09, Woonsocket had the State's third lowest median family income at \$38,353. During the same time, the median family income in Narragansett was \$65,571 and in Little Compton it was \$62,750.

266. As note in Paragraph 189, *supra*, the General Assembly's 2007 Technical Advisory Group Report concluded that an adequate school budget in Woonsocket would amount to \$15,231 per student, of which \$13,509 would be paid for by the State and \$1,722 by the City of Woonsocket. Woonsocket exceeded its obligation, providing \$2,284 per student of municipal funds. Unfortunately, the State provided far less than its share, allocating only \$7,682 per student. As a result, Woonsocket's total local and state education budget was \$9,966 per student, falling short of the adequacy level described by the Technical Advisory Group Report by more than one third.

267. Woonsocket's municipal finances are currently under significant stress; therefore, it is unlikely that Woonsocket will be able to budget more than a token amount of additional local funds to fund public education in the foreseeable future.

268. According to the Smith Report, the current allocation of State aid is not equitable to Woonsocket. Even if the General Assembly were not to increase the overall State amount, the Smith Report concludes that Woonsocket should receive an additional \$13.16 million, or approximately \$1,990 per student. Exhibit 11. Those funds would re-allocated from other communities that receive State aid far in excess of their students' needs, when measured, in a uniform manner, against the community's local resources available to fund public education.

269. The General Assembly enacted across-the-board funding reductions in local education aid for the 2010-11 academic year, with a promise to begin implementation of the 2010 Funding formula in the following year (2011-12). The formula will phase in over seven years. For Pawtucket and Woonsocket, state aid per student will increase as follows: chart:

Community	2008/09 State Aid per student	2009/10 State Aid per student	2010/11 State Aid per student	2011/12 State Aid per student (promised)	2016-17 Formula Aid per Student (promised)
Pawtucket	\$7,742	\$7,510	\$7,225	\$7,444	\$8,366
Woonsocket	\$7,931	\$7,693	\$7,401	\$7,587	\$8,453

(Estimates)

270. In other words, the first year of the implementation of the 2010 Funding formula does not take place until 2011-12, and it will not even restore the inadequate non-formula funding of 2008-09.

b. Overall assessments

271. For the 2007-08 school year, Woonsocket had 6,248 students. 64% of Woonsocket's students were eligible for free or reduced-price lunch due to low income. 10% of Woonsocket's students were African-American. 7% of Woonsocket's students were Asian. 24% of Woonsocket's students were Hispanic. 4% of Woonsocket's students received English as a second language services.

272. Through the Preamble to the 2008 Regulations, and through authority delegated to it by the General Assembly, the Board of Regents articulated the content of a minimum basic education to which every Rhode Island child has a right. In Rhode Island, the General Assembly has declared every child has a right to a meaningful and realizable opportunity to achieve proficiency in six (6) core academic areas at the ninth or tenth grade level, as measured by the NECAP assessments administered in the fall of the 11th grade.

273. Students in Woonsocket do not have a meaningful and realizable opportunity to achieve proficiency in six (6) core academic areas.

274. The lack of adequate opportunities for Woonsocket's school children is reflected in the NECAP assessments for children in the eleventh grade. Overall, for the year 2008-2009, only 50% of Woonsocket 11th graders scored at proficient or better in reading. Only 16% scored at proficient or better in mathematics. Only 30% scored at proficient or better in writing. Only 11% scored at proficient or better in science.

275. For African-American children in Woonsocket, the picture was even more dismal, with only 39% scoring at proficient or better in reading, and only 14% scoring at proficient or better in mathematics.

276. The picture for English language learners in Woonsocket is similarly bleak, with only 6% scoring at proficient or better in reading, and only 3% scoring at proficient or better in Mathematics.

277. While, for the reasons just stated, a Woonsocket high school diploma does not guarantee a minimally basic education under State standards, the sad truth is that many Woonsocket children do not even attain this milestone. Of the Woonsocket children who enrolled in the 9th grade in 2004-05, only 60% of them graduated four years later.

278. Woonsocket's high school students could benefit significantly from the dropout prevention strategies articulated by the General Assembly in the Rhode Island High School Dropout Prevention Act of 2007, P.L. 2007, ch. 226, § 1, codified at R.I.G.L. §§16-67.1-1 *et seq.* Unfortunately, the General Assembly has failed to provide Woonsocket with the resources to carry out these interventions.

279. While Woonsocket's high school program is compromised due to a lack of resources, the deficiencies in high school accumulate over time. For example, as assessed in the fall of 2008, the ability of Woonsocket students to achieve the State's minimum proficiency standards for mathematics erodes over time at the following rate:

Grade	% Proficient
6	34%
7	35%
8	30%
11	16%

280. In addition to all of the programs and interventions articulated by the General Assembly and the Board of Regents which cannot be implemented in Woonsocket due to a lack of State funds, there are several programs that would improve academic performance for children in Woonsocket. Among these possibilities are:

- Universal pre-kindergarten instruction;
- Reducing kindergarten class size to 15;
- Providing a separate teacher per grade level for English as a second language classrooms.

281. The lack of funding, however, makes these programs impossible to implement.

282. In addition to the above-noted program deficits, Woonsocket's public schools are burdened with a physical plant that is, in many instances, inadequate to the needs of students. Many of Woonsocket's school buildings and classrooms are burdened by deferred maintenance, inappropriate facilities and other problems due to the lack of an adequately funded capital budget.

c. Citizens Memorial Elementary School

283. Citizens Memorial Elementary School in Woonsocket lacks the resources to provide adequate instruction and facilities for its children.

284. During the 2008-09 school year, there were 281 students enrolled at Citizens Memorial Elementary School. 87% of the children are eligible for subsidized lunches, based on low family income. 35% of the children are from Hispanic families, to go with 13% from African-American families and 9% from Asian families. 19% of the children receive instruction in English as a second language.

285. In 2009, the Rhode Island Department of Education classified Citizens Memorial School as making "insufficient progress." Because this was the second year that Citizens Memorial School received this classification, it is now a "choice school" under Title I. As a result, children attending Citizens Memorial School have a right to request a transfer to other elementary schools within their attendance zone.

286. In the Fall of 2009, the students in Grades 3, 4 and 5 at Citizens Memorial School took the NECAP assessment to measure their achievement during the previous year. Also, children at Woonsocket Middle School in the sixth grade who attended Citizens Memorial School in the fifth grade took the NECAP assessment. In comparison with the State averages, the children achieved proficiency at the following rates:

Citizens Memorial School 2009 Fall NECAP Assessments Percentage of Children Meeting the Standard		
	Reading	Mathematics
School	47.3	33.7
State of R.I.	69.6	60.5

287. While the chances of success for children at the Citizens Memorial School is substantially smaller than other schools in Rhode Island, the prospects for children at the school from disadvantaged populations is even weaker. More specifically, there is an “achievement gap” for the school’s Black, Hispanic and Limited English Proficiency (LEP) students as follows:

Citizens Memorial School 2009 Fall NECAP Assessments Percentage of Children Meeting the Standard		
	Reading	Mathematics
White	55.2	41.4
Black	43.9	29.7
Hispanic	40.4	27.9
LEP	15.2	11.6
State of R.I.	69.6	60.5

288. In other words, there is an “achievement gap” of approximately 12 percentage points between the school’s black children and white non-Hispanic children, and an “achievement gap” of approximately 14 percentage points between the school’s Hispanic children and white, non-Hispanic children. Furthermore, the academic achievement of the school’s children in the Limited English Proficiency program against the State’s standards is particularly inadequate.

289. Pursuant to legislative mandate of R.I.G.L. § 16-54-2, in 2008, the Board of Regents

issued regulations to govern educational programs for English language learners enrolled in the public schools of Rhode Island (“the ELL Regulations”). Exhibit 7 is a true and accurate copy of the ELL Regulations.

290. The Board of Regents stated several purposes for these regulations, including that they are intended to:

Ensure that English Language Learners meet Rhode Island’s Grade Level Expectations (GLE’s) and Grade Span Expectations (GSE’s) in all subject areas.

Exhibit 7, p. 3.

291. Through the ELL Regulations, the Board of Regents promulgated a series of twelve program standards, including the following:

7. Ensure equitable access to all services, and materials that are provided to all other students.
8. Include sufficient personnel and resources to effectively implement the program.
Exhibit 7, p. 8.

292. The children who attend Citizens Memorial School include a broad range of new Americans, who do not speak English at home. Instead, many children attending the school do not speak English as their primary language, instead relying upon Arabic, Chinese, French, Lao, Polish, Senegalese, Serbo-Croatian and/or Spanish.

293. These children normally lack support at home for their studies the English language. Instead, they depend upon specialized English as a Second Language (ESL) instruction to help them overcome the language barrier while trying to learn the standard amount of academic content mandated by the Board of Regents.

294. Unfortunately, the school lacks the resources to provide these children with the education they deserve and need. Children from different language backgrounds are not assigned to teachers with specialized knowledge of their native tongue. Instead, most children who have not mastered English from multiple nationalities and heritages are combined in a single classroom without access to teachers who can help them in their native language.

295. While placing children who speak multiple languages into a single ESL classroom is a challenge at Citizens Memorial School, it actually is only half of the challenge those children face. Due to lack of resources, Citizens makes use of “split classrooms” in which ESL children from two different grades are taught by a single teacher in a single classroom. More specifically, a single teacher in a single classroom is responsible for all ESL children in Grades Two and Three, while a second teacher in a single classroom is responsible for all ESL children in Grades

Four and Five.

296. Some ESL children have greater needs, as they also qualify for “special education” programs. While these children would benefit from greater teacher time and attention, there is a “split classroom” that combines instruction for fourth and fifth grade children whose numbers include regular education, special education and special education English as a second language students.

297. The Board of Regents, through the New BEP, mandates that school districts obtain appropriate educational materials in sufficient quantities. More specifically, Section G-13-2.2 of the New BEP provides as follows:

G-13-2.2. Resources and Materials Aligned to Curriculum. – (a) Each LEA [local educational authority] shall provide the necessary programs, texts, and materials that ensure that students are supported fully in acquiring the knowledge and skills specified in a comprehensive program of study. Programs, texts, and materials shall be in sufficient quantity to ensure that students can engage in and complete all curriculum activities. (b) Each LEA shall ensure that the selection of programs, texts, and materials are:

1. Aligned to the GLEs and GSEs [grade level expectations and grade span expectations] and LEA curriculum design;
2. Research based and current;
3. Selected with input from educators representing all grade levels and courses; and
4. Universally designed to ensure access for all students.

Exhibit 5, pp. 17-18.

298. Citizens Memorial School lacks the resources for a standard curriculum and class materials for the ESL programs. Instead, the school uses a hodgepodge of materials from different sources, the most current of which date back seven years.

299. Instead of using a customized ESL curriculum, teachers at Citizens Memorial School assemble their own curriculum from a diverse collection of supplemental materials accumulated over the years.

300. Successful ESL programs are taught by instructors with specialized training. The Woonsocket School Department lacks the funds to provide any of its teachers, including those at Citizens Memorial School, with professional development in the field of ESL education.

301. The 2008 ELL Regulations require, at Section L-4-11(a), that each district designate an administrator responsible for the program. The same regulations requires, at Section L-4-11(c), that each high-incidence ELL district have at least one School/Community Liaison to effectively

support the district's ELL program. According to the regulations:

The liaison shall familiarize all English Language Learners and their families with their new community and assist families to participate in family engagement activities. The liaison shall also help insure that English Language Learners receive those programs and services that are required by these regulations.

302. The Woonsocket School Department cannot afford to employ any parent liaisons for Citizens Memorial School or any other school. As a result, the District's ESL coordinator must assess children at each school at the beginning of each school year. This reduces the time that the coordinator has to support the ESL teachers in the district. The District's ESL Coordinator is not able to perform the other liaison tasks identified in the 2008 ELL Regulations.

303. Because of the lack of funds dedicated to the needs of ESL students, the teachers at Citizens Memorial School and the educators in the Woonsocket School Department try their best to obtain grants for these materials. This effort is a diversion of time and energy which prevents teachers and educators from spending extra time to address each child's learning needs.

304. The lack of resources at Citizens Memorial School is not limited to the ESL program. The school has not purchased any new textbooks in any subject for seven years. These books were acquired before the publication of RIDE's grade span expectations and grade level expectations, and therefore are not designed to teach the minimum standard education prescribed by the Board of Regents.

305. The children at Citizens Memorial School also face the challenge of discontinuous education. Each year, approximately 30% of the children who begin their year at the school, move to another school by the end of the year. Their seats, in turn, are filled by children who begin the year at other schools, but become the responsibility of Citizens Memorial School in the middle of the school year.

306. The State has classified the Citizens Memorial School as making "insufficient progress," failing to meet its targets in mathematics for all students, Hispanic students, students with disabilities and economically disadvantaged students.

307. At Citizens Memorial School, there were 119 Hispanic students in grades 3-6 who took NECAP in the fall of 2008. In reading, 31% achieved a "proficient" score while 69% did not, including 40% who achieved "substantially below proficient." In mathematics, 25% achieved a score of "Proficient" while 75% did not, including 50% who achieved "substantially below proficient."

308. Also at Citizens Memorial School, there were 47 students in Grades 3, 5 and 6 who received English as a Second Language instruction and took the NECAP tests in the fall of 2008.

(There also were 6 such students in grade 4; however, the State did not disaggregate their test scores due to the small number involved.) In reading, 2% achieved a “proficient” score while 98% did not, including 68% who achieved substantially below proficient. In mathematics, 4% achieved proficiency, while 96% did not, including 68% who achieved substantially below proficient.

309. At Citizens Memorial School, there were 34 Hispanic students in the fourth grade who took the NECAP science test in the fall of 2008. Two achieved a “proficient” score, while 32 did not, including 19 who achieved substantially below proficient.

310. Due to financial constraints, Citizens Memorial School cannot afford to hire a teacher for each grade of students who need instruction in English as a second language (“ESL”). Instead, the school combines two grades’ worth of ESL students per classroom with a single teacher. As a result, the teachers must divide their time among the two grade levels of children in the room, essentially devoting half of their time to each grade.

311. Lack of adequate resources depresses academic performance at Citizens Memorial School. If resources were adequate, the school would offer the following programs:

- Universal pre-kindergarten instruction;
- Reducing kindergarten class size to 15;
- Providing a separate teacher per grade level for English as a second language classrooms.

d. Woonsocket Middle School

312. Woonsocket Middle School lacks the resources to provide adequate instruction and facilities for its children.

313. During the 2008-09 school year, there were 1,334 students enrolled at Woonsocket Middle School. 70% of the children are eligible for subsidized lunches, based on low family income. 25% of the children are from Hispanic families, to go with 10% from African-American families and 7% from Asian families. 4% of the children receive instruction in English as a second language.

1. Low proficiency rates that decline over time

314. In 2008, Woonsocket Middle School was classified as making “insufficient progress.” This was the fifth consecutive year that the school has been placed in this category.

315. In October, 2009, there were 515 students enrolled in the 6th grade at Woonsocket Middle

School, of whom approximately 98% took the various components of the State’s New England Common Assessment Program (NECAP) tests. In reading, 55% of the students achieved a “proficient” score, while 45% did not, including 19% who scored “substantially below proficient”. In mathematics, 41% achieved a “proficient” score, while 59% did not, including 37% who were substantially below proficient. As a result, Woonsocket Middle School has a substantial task of bringing most of its children up to grade level in addition to educating all children to meet each set of grade level standards by the end of the school year.

316. While the needs of the general population of students entering Woonsocket Middle School are great, the needs of its Hispanic students are especially severe. Among the sixth grade population at Woonsocket Middle School, there is an “achievement gap” in academic proficiency between Hispanic students and the white, non-Hispanic students as follows:

		Proficient	Not Proficient
Reading	Hispanic	44%	56%
	White	62%	38%
Mathematics	Hispanic	27%	73%
	White	47%	53%

317. In other words, the proficiency rate (Level 3 or Level 4) in reading for non-Hispanic whites is 62%, while the Hispanic proficiency rate is 44%, resulting in an “achievement gap” of 18%. Similar, the proficiency rate for whites in mathematics is 47%, while the Hispanic proficiency rate is 27%, again resulting in an “achievement gap” of 20%.

318. Woonsocket Middle School also has difficulty meeting the academic needs of its children who are limited in their English proficiency. In October 2009, 35 LEP students in the 6th grade took the reading test. Three students (9%) gained a score of “proficiency,” while 32 did not, including 18 (81%) who scored “substantially below” proficient. At that time, 37 LEP students in the 6th grade took the mathematics test. Only one student (3%) gained a score of “proficiency,” while 36 did not, including 30 (81%) who scored “substantially below” proficient.

319. Because the children enter Woonsocket Middle School with such great needs, there is an opportunity to make great increases in the proficiency rates during the course of their education at the school. Unfortunately, a lack of adequate resources leads to declines, rather than gains.

320. In October, 2009, there were 437 students enrolled in the eighth grade at Woonsocket Middle School, of whom approximately 95% took the various components of the State’s New England Common Assessment Program (NECAP) tests. In reading, 52% of the students

achieved a “proficient” score, while 48% did not, including 19% who scored “substantially below proficient”. In mathematics, 30% achieved a “proficient” score, while 70% did not, including 37% who were substantially below proficient. In other words, children at Woonsocket Middle School appear to be losing ground, in that 3% fewer eighth grade students achieve proficiency in reading than 6th grade students, and the corresponding decline in mathematics is 11%.

321. The “achievement gap” also remains a problem for the eighth grade students at Woonsocket Middle School. Among those students, the gap in academic proficiency between Hispanic students and the white, non-Hispanic students as follows:

		Proficient	Not Proficient
Reading	Hispanic	34%	66%
	White	57%	43%
Mathematics	Hispanic	22%	78%
	White	34%	66%

322. In other words, the proficiency rate (Level 3 or Level 4) in reading for non-Hispanic whites is 57%, while the Hispanic proficiency rate is 34%, resulting in an “achievement gap” of 23%. Similar, the proficiency rate for whites in mathematics is 34%, while the Hispanic proficiency rate is 22%, again resulting in an “achievement gap” of 12%.

323. Unfortunately, the performance of LEP students at Woonsocket Middle School does not improve over time, either. In October, 2009, 18 Woonsocket Middle School students with “limited English proficiency” status took the NECAP exam. None of the students achieved proficiency in reading, while 13 of them (72%) scored “substantially below” proficient. 23 children took the mathematics test. Again, none of them achieved proficiency, while 15 (or 65%) scored “substantially below” proficient.

324. In the Spring of 2009, 417 children in the 8th grade at Woonsocket Middle School took the NECAP science test. 6% of the children achieved a “proficient” score, while 94% did not, including 63% of the children achieved a score substantially below proficient. The proficiency rate for Hispanic children was 3%. The proficiency rate for children with “limited English proficiency” status was 0%.

2. How inadequate resources hold children back

325. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Woonsocket Middle School, to provide extra support to children reading at

below grade level. More specifically, Section L-6-2.2 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.2 Improving literacy for students reading below grade level. Local educational agencies shall have the obligation to initiate reading interventions for each student who is not reading at grade level based on the assessments required under section 2.1 of these regulations. Any student who continues to fall below grade level in reading and/or fails to attain proficiency in subsequent years on the state assessments designated by the Commissioner shall continue to receive specialized assistance.

326. In the Fall of 2009, 229 students in the sixth grade class at Woonsocket Middle School were in need of extra help in reading and language arts, based on the State's proficiency assessment that October. Of that group, 96 students had particularly extreme needs, as they were assessed as reading at a level "substantially below" proficient.

327. Unfortunately, the General Assembly has not appropriated adequate funds to maintain the previously existing program at Woonsocket Middle School, never mind the additional funds needed to conduct meaningful reading interventions for students who need the help. As a result, the 2008 Regulations amount to an unfunded mandate that creates an expectation of help on paper that is impossible for the school to achieve in reality.

328. With the limited resources available, Woonsocket Middle School offers reading interventions on a "triage" system to the students most in need of additional support. For a limited number of students, the school provides extra reading instruction and support through a class that last for two periods each day instead of the normal single period. This extra instruction can allow children to "make up" an additional year of reading knowledge, so that children who begin the sixth grade reading at the fifth grade level can finish the year ready to enter seventh-grade English at the appropriate level of proficiency. Unfortunately, a lack of resources prevents the school from providing enough "slots" in this program to meet the needs of students.

329. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Woonsocket Middle School, to provide extra support to children whose mathematics proficiency is below grade level. More specifically, Section L-6-2.3 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.3 Improving numeracy for all students. . . . All Rhode Island local educational agencies shall have mechanisms in place that: 1) identify and support students who are not making progress in mathematics as measured by local and state assessment data; 2) provide universal student access to course work aligned to state mathematics grade level/span expectations; and 3) ensure that schools at all levels work collaboratively to successfully transition those students into new schools within and across local educational agencies.

Exhibit 5, p.6.

330. In the fall of 2009, 301 students in the sixth grade at Woonsocket Middle School were in need of intervention in mathematics, because they had failed to achieve at the level of “proficiency” on the October, 2009 NECAP mathematics assessment.

331. Unfortunately, Woonsocket Middle School lacks the resources to provide any mathematics intervention program for its students, despite the fact that the majority of its students are achieving at below the level of proficiency, and despite the requirements of the 2008 Regulations.

332. Even if Woonsocket had the resources to provide additional mathematics instruction to the students who need it, there would be a scheduling problem. More specifically, of the 229 students reading below grade level, almost every one of them (209 in total) also was performing mathematics at below grade level. In fact, the sixth grade class contained 87 students whose needs in both areas were extreme, performing at Level 1, or “substantially below” proficiency in both English *and* Mathematics.

333. If Woonsocket Middle School were to try to comply with these regulations, it would need to schedule double-period classes for these 209 children in both English and in mathematics. However, if those students had two periods of each subject, they would only have two remaining periods each day in which to take required courses in Science, Social Studies and Health/Physical Education. In other words, the current class day at Woonsocket Middle School prevents the school from scheduling supplementary courses required under State mandates.

334. In a similar way, in the fall of 2009, there were 187 children in the 8th grade at Woonsocket School whose academic achievement (as measured by the October, 2009 NECAP test) was below “proficient” in both English *and* Mathematics (*i.e.*, at Level 1 or Level 2 in each subject). Of these children, there were 71 children who were “significantly below” proficient (Level 1) in both subjects.

335. Woonsocket Middle School requires a longer class day to provide extra instruction to students who are not performing at grade level in reading, mathematics, or both subjects simultaneously. Unfortunately, the school lacks sufficient resources to provide an extended day program for those students.

336. Without the additional resources needed to bring children up to the State’s academic standards, it is no surprise that the proportion of children who are reading at grade level does not improve during their stay at Woonsocket Middle School. In fact, sadly, the movement is towards less proficiency rather than more proficiency.

e. Woonsocket High School

337. Woonsocket High School lacks the resources to provide adequate instruction and facilities for its children.

338. During the 2007-08 school year, there were 1,895 students enrolled at Woonsocket High School. 52% of the children were eligible for subsidized lunches, based on low family income. 22% of the children were from Hispanic families, to go with 10% from African-American families and 8% from Asian families. 2% of the children received instruction in English as a second language.

1. Low proficiency rates

339. In 2008, Woonsocket High School was classified as making “insufficient progress.” This was the third consecutive year the school has been placed in this classification.

340. In October, 2009, there were 379 students enrolled in the 11th grade at Woonsocket High School, of whom approximately 95% took the various components of the State’s New England Common Assessment Program (NECAP) tests. In reading, 61% of the students achieved a “proficient” score, while 39% did not, including 13% who scored “substantially below proficient”. In mathematics, 12% achieved a “proficient” score, while 88% did not, including 61% who were “substantially below” proficient.

341. In 2012, the Board of Regents’ High School regulations will come into effect, requiring that all high school students achieve certain state requirements in addition to local requirements to qualify for a diploma. One of those requirements is to score at least at the level of “partially proficient” on the state assessments. As a result, at least 88% of today’s students at Woonsocket High School would not qualify for a diploma under the 2012 requirements.

342. The “achievement gap” also remains a problem for the 11th grade students at Woonsocket High School. Among the eleventh grade population at Woonsocket High School, there is an “achievement gap” in academic proficiency between Hispanic students and the white, non-Hispanic students as follows:

		Proficient	Not Proficient
Reading	Hispanic	54%	46%
	White	66%	34%
Mathematics	Hispanic	6%	94%
	White	15%	85%

343. In other words, the proficiency rate (Level 3 or Level 4) in reading for non-Hispanic whites is 66%, while the Hispanic proficiency rate is 54%, resulting in an “achievement gap” of 12%. Similar, the proficiency rate for whites in mathematics is 15%, while the Hispanic proficiency rate is 6%, resulting in an “achievement gap” of 9%.

344. In the Spring of 2009, there were 370 students enrolled in the 11th Grade at Woonsocket High School, of whom 341 (or 92%) took the NECAP Science exam. 12% of the students achieved a score of “proficient” while 88% did not, including 48% who achieved at “substantially below” proficient.

345. There was a substantial “achievement gap” between non-Hispanic white students and Hispanic students. The former group achieved “proficiency” at a rate of 14%. In contrast, none of the Hispanic students were able to achieve a score of “proficiency” on the Science examination.

2. How inadequate resources hold children back

346. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Woonsocket High School, to provide extra support to children reading at below grade level. More specifically, Section L-6-2.2 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.2 Improving literacy for students reading below grade level.

Local educational agencies shall have the obligation to initiate reading interventions for each student who is not reading at grade level based on the assessments required under section 2.1 of these regulations. Any student who continues to fall below grade level in reading and/or fails to attain proficiency in subsequent years on the state assessments designated by the Commissioner shall continue to receive specialized assistance.

347. Unfortunately, the General Assembly has not appropriated adequate funds to maintain the previously existing program at Woonsocket High School, never mind the additional funds needed to conduct meaningful reading interventions for students who need the help. As a result, the 2008 Regulations amount to an unfunded mandate that creates an expectation of help on paper that is impossible for the school to achieve in reality.

348. Woonsocket High School lacks the resources to assess the literacy of its children. Instead, Woonsocket High School uses as a proxy the children’s scores on the NECAP reading test administered in the fall of their eighth grade year. This proxy is flawed for two reasons. First, the NECAP test for 8th grade students does not measure their ability to read at the 9th grade level. Second, the test results are one year old, and therefore do not include any information about how each student progressed during their time in the eighth grade.

349. In assessing the needs of the ninth grade class enrolled at Woonsocket High School in the Fall of 2010, the school will refer to the NECAP test scores those students attained while enrolled in the eighth grade at Woonsocket Middle School in the Fall of 2009.

350. With the limited resources available, Woonsocket High School offers reading interventions on a “triage” system to the students most in need of additional support. For a limited number of students, the school provides extra reading instruction and support through a class that last for two periods each day instead of the normal single period. This extra instruction can allow children to “make up” an additional year of reading knowledge, so that children who begin the sixth grade reading at the fifth grade level can finish the year ready to enter seventh-grade English at the appropriate level of proficiency. Unfortunately, a lack of resources prevents the school from providing enough “slots” in this program to meet the needs of students.

351. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Woonsocket High School, to provide extra support to children whose mathematics proficiency is below grade level. More specifically, Section L-6-2.3 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.3 Improving numeracy for all students. . . . All Rhode Island local educational agencies shall have mechanisms in place that: 1) identify and support students who are not making progress in mathematics as measured by local and state assessment data; 2) provide universal student access to course work aligned to state mathematics grade level/span expectations; and 3) ensure that schools at all levels work collaboratively to successfully transition those students into new schools within and across local educational agencies.

Exhibit 5, p.6.

352. Woonsocket High School lacks the resources to assess the mathematics skills of its children. Instead, Woonsocket High School uses as a proxy the children’s scores on the NECAP mathematics test administered in the fall of their eighth grade year. This proxy is flawed for two reasons. First, the NECAP test for 8th grade students does not measure their mathematics ability at the 9th grade level. Second, the test results are one year old, and therefore do not include any information about how each student progressed during their time in the eighth grade.

353. Using this proxy, Woonsocket High School provides its most intensive mathematics intervention program to students in the ninth grade who, when they took the NECAP mathematics test the previous year, scored “substantially below” proficient. Thus, for example, the population of children in the 9th grade at Woonsocket High School who enrolled in the Fall of 2009 likely included the majority of the 175 students who, when they took the 8th grade NECAP mathematics examination in the fall of 2008, scored “substantially below” proficient.

354. Woonsocket High School has a class called “Algebra 1A” for its students with the greatest needs in that subject. The course covers pre-algebra as well as algebra. Students who complete the course successfully advance their knowledge level so that by the end of the year they are proficient in Algebra I.

355. The students in Algebra 1A have exceptional needs. They would benefit from greater interaction with the teacher and from teachers with specialized training. Unfortunately, Woonsocket High School lacks the resources to provide either of these opportunities. The typical class size for Algebra 1A is 30 students, and the teachers do not have specialized training for the course.

356. Even if Woonsocket High School had the resources to provide additional mathematics instruction to the students who need it, there would be a scheduling problem. The proficiency data indicates that there is a substantial population of children in each grade, including but not limited to the ninth grade, who require supplementary instruction in both English and mathematics. However, if those students had two periods of each subject, they would only have two remaining periods each day in which to take required courses in Science, Social Studies and Health/Physical Education. In other words, the current class day at Woonsocket High School prevents the school from scheduling supplementary courses required under State mandates.

357. Woonsocket High School requires a longer class day to provide extra instruction to students who are not performing at grade level in reading, mathematics, or both subjects simultaneously. Unfortunately, the school lacks sufficient resources to provide an extended day program for those students.

358. Without the additional resources needed to bring children up to the State’s academic standards, it is no surprise that the proportion of children who are reading at grade level does not improve during their stay at Woonsocket High School. In fact, sadly, the movement is towards less proficiency rather than more proficiency.

2. Pawtucket

a. Financial Limitations

359. Each year, the State’s Office of Municipal Finance calculates the relative property wealth of each community based on the full valuation of property and an equalized property tax rate in order to calculate certain components of State aid to local school districts. R.I.G.L. §§16-7.1-1 *et seq.* Exhibit 14 is a true and accurate copy of the calculations used to determine school aid for the 2009/10 school year.

360. In order to develop a common measurement, the Office of Municipal Finance calculates the full value of all of the taxable property in Rhode Island. It then treats the entire State as if were a single municipality, and calculates what single property tax rate would be required to

collect the total amount of property tax revenue generated statewide. It then measures each community's relative tax capacity by calculating how much revenue the community would generate under this standard, equalized tax program on an aggregate basis and a per capita basis.

361. Taken as a whole, a uniform statewide property tax would generate \$1,940 per capita across the State of Rhode Island. Exhibit 14. With that said, however, individual communities diverge from that average along a wide range. In property-rich communities such as New Shoreham and Jamestown, for example, the uniform statewide property tax rate would yield \$34,428 per capita and \$8,275 per capita, respectively, more than enough money to fund a public school system. Exhibit 14.

362. Pawtucket is the fourth poorest community in the State of Rhode Island. The same tax rate that would yield \$34,428 per capita in New Shoreham yields only \$733 per capita in Pawtucket. Put another way, the Office of Municipal Finance's data calculates that Pawtucket's "relative capacity" is 38, which means that its ability to raise property taxes to fund its public schools is only 38% of the State average.

363. In 2007-08, Pawtucket appropriated \$27.7 million in municipal funds to support public education. See Paragraph 199. Pawtucket's per student local contribution was \$3,120. See Paragraph 189.

364. According to the Office of Municipal Finance, Pawtucket's equalized tax base for December 31, 2005 was \$5.545 billion at full valuation. Exhibit 14. In other words, at full valuation, Pawtucket's citizens paid property taxes equal to approximately 5.00 mills (\$5.00 per \$1,000 of full valuation) to fund public education at the level of \$3,120 per Pawtucket student enrolled in public school.

365. In contrast, according to the same data, Narragansett's citizens paid lower property taxes (approximately 4.69 mills, or \$4.69 per \$1,000 of valuation) to generate \$15,142 in municipal education funds for each Narragansett child receiving a public education. See 2009 Information Works! (per pupil data, municipal appropriation) and Exhibit 14 (tax base). Little Compton's citizens paid significantly lower property (approximately 3.42 mills, or \$3.42 per \$1,000 of full valuation) to generate \$14,059 in municipal education funds for each Little Compton child receiving a public education. *Id.*

366. Another factor in measuring the ability of a town's citizens to pay taxes for public education is median family income. According to Information Works!, Pawtucket's median family income in 2008-09 was fourth lowest in the State, at \$39,038. In contrast, for the same year, Narragansett's median family income was \$67,571 and Little Compton's was \$62,750.

367. As noted in Paragraph 186, *supra*, the General Assembly's 2007 Technical Advisory Group Report concluded that an adequately funded school budget in Pawtucket would amount to \$15,090 per student, of which \$12,641 would be paid for by the State and \$2,449 by the City of

Pawtucket. Pawtucket exceeded its obligation, providing \$2,786 per student of municipal funds. Unfortunately, the State provided far less than its share, allocating only \$7,687 per student. As a result, Pawtucket’s total local and state education budget was \$10,842 per student, falling short of the adequate level described by the Technical Advisory Group Report by more than 25%.

368. According to the Smith Report, the current allocation of State aid is not equitable to Pawtucket. Even if the General Assembly were not to increase the overall State amount, the Smith Report concludes that Pawtucket should receive an additional \$10.77 million, or approximately \$1,160 per student. Those funds would re-allocated from other communities that receive State aid far in excess of their students’ needs, when measured, in a uniform manner, against the community’s local resources available to fund public education.

369. The General Assembly enacted across-the-board funding reductions in local education aid for the 2010-11 academic year, with a promise to begin implementation of the 2010 Funding formula in the following year (2011-12).

370. Over the past three years, the General Assembly has reduced Pawtucket’s state education aid by more than \$500 per student.

371. The formula will phase in over seven years. The formula will phase in over seven years. For Pawtucket and Woonsocket, state aid per student will increase as follows: chart:

Community	2008/09 State Aid per student	2009/10 State Aid per student	2010/11 State Aid per student	2011/12 State Aid per student (promised)	2016-17 Formula Aid per Student (promised)
Pawtucket	\$7,742	\$7,510	\$7,225	\$7,444	\$8,366
Woonsocket	\$7,931	\$7,693	\$7,401	\$7,587	\$8,453

372. In other words, the first year of the implementation of the 2010 Funding formula does not take place until 2011-12, and it will not even restore the inadequate non-formula funding of 2008-09.

b. Overall Assessments

373. For the 2007-08 school year, Pawtucket had 8,781 students. 67% of Pawtucket’s students were eligible for free or reduced-price lunch due to low income. 24% of Pawtucket’s students were African-American. 2% of Pawtucket’s students were Asian. 30% of Pawtucket’s students were Hispanic. 10% of Pawtucket’s students received English as a second language services.

374. Through the Preamble to the 2008 Regulations, and through authority delegated to it by the General Assembly, the Board of Regents articulated the content of a minimum basic education to which every Rhode Island child has a right. In Rhode Island, the General Assembly has declared every child has a right to a meaningful and realizable opportunity to achieve proficiency in six (6) core academic areas.

375. Students in Pawtucket do not have a meaningful and realizable opportunity to achieve proficiency in six (6) core academic areas.

376. The NECAP test scores for Pawtucket's eleventh grade students highlight their inability to gain an education that meets minimum State standards. In the tests administered in the fall of 2008, 54% of Pawtucket 11th graders scored at proficient or better in reading. Only 14% scored at proficient or better in mathematics. 33% scored at proficient or better in writing. In the Spring, 2009 science test for 11th grade students, only 11% scored at proficient or better.

377. While Pawtucket's overall results are inadequate, the "achievement gaps" for minority children are even more distressing. In the 2008 tests, only 45% of Pawtucket's 11th grade African-American children demonstrated proficiency in the reading assessment. In writing, the proficiency rate was 25%, and only 7% scored at proficient or better in mathematics. In the Spring, 2009 science test, the proficiency rate for Pawtucket's 11th grade African-American children was 6%.

378. In the 2008 tests, only 49% of Pawtucket's 11th grade Hispanic children demonstrated proficiency in the reading assessment. In writing, the proficiency rate was 33%, and only 12% scored at proficient or better in mathematics. In the Spring, 2009 science test, the proficiency rate for Pawtucket's 11th grade Hispanic children was 8%.

379. In the 2008 tests, only 16% of Pawtucket's 11th grade children in English language learner programs scored at proficient or better in reading. In writing, the proficiency rate was 3%, and none of them scored at proficient or better in mathematics. Similarly, none of Pawtucket's 11th grade children in English language learner programs achieved at the proficiency level in the Spring, 2009 science assessment.

380. While, for the reasons just stated, a Pawtucket high school diploma does not guarantee a minimally basic education under State standards, the sad truth is that many Pawtucket children do not even attain this milestone. Of the Pawtucket children who enrolled in the 9th grade in 2004-05, only 56.9% of them graduated four years later.

381. Pawtucket's high school students could benefit significantly from the dropout prevention strategies articulated by the General Assembly in the Rhode Island High School Dropout Prevention Act of 2007, P.L. 2007, ch. 226, § 1, codified at R.I.G.L. §§16-67.1-1 *et seq.* Unfortunately, the General Assembly has failed to provide Pawtucket with the resources to carry out these interventions.

382. While Pawtucket’s high school program is compromised due to a lack of resources, assessments of the 11th grade students just noted have their origins in elementary school and middle school. For example, as assessed in the fall of 2008, the ability of Pawtucket students to achieve the State’s minimum proficiency standards for mathematics eroded over time at the following rate:

Grade	% Proficient
6	46%
7	34%
8	35%
11	14%

383. In addition to all of the programs and interventions articulated by the General Assembly and the Board of Regents which cannot be implemented in Pawtucket due to a lack of State funds, there are several programs that would improve academic performance for children in Pawtucket. Among these possibilities are:

- Universal pre-kindergarten instruction;
- Reducing kindergarten class size to 15;
- Providing a separate teacher per grade level for English as a second language classrooms.

384. The lack of funding, however, makes these programs impossible to implement.

385. In addition to the above-noted program deficits, Pawtucket’s public schools are burdened with a physical plant that is, in many instances, inadequate to the needs of students. Many of Pawtucket’s school buildings and classrooms are burdened by deferred maintenance, inappropriate facilities and other problems due to the lack of an adequately funded capital budget.

c. Elizabeth Baldwin Elementary School

386. The Elizabeth Baldwin Elementary School in Pawtucket lacks the resources to provide adequate instruction and facilities for its children.

387. The Elizabeth Baldwin Elementary School teaches children from grades kindergarten through 6. It has five classes of each grade, for a total of approximately 740 children. The lower grades (K-3) have 23 to 25 children per class. The upper grades have 28-30 children. There is not sufficient space in the building to support 740 children.

388. In the Fall of 2009, the students in Grades 3, 4 and 5 and 6 at Baldwin Elementary School took the NECAP assessment to measure their achievement during the previous year. Also, children at Pawtucket junior high schools who attended the Baldwin Elementary School in the sixth grade took the NECAP assessment. In comparison with the State averages, the children achieved proficiency at the following rates:

Baldwin Elementary School 2009 Fall NECAP Assessments Percentage of Children Meeting the Standard		
	Reading	Mathematics
School	51.1%	37.1%
State of R.I.	67.8%	59.2%

389. While the chances of success for children at the Baldwin Elementary School is substantially smaller than other schools in Rhode Island, the prospects for children at the school from disadvantaged populations is even weaker. More specifically, there is an “achievement gap” for the school’s Black, Hispanic and Limited English Proficiency (LEP) students as follows:

Baldwin Elementary School 2009 Fall NECAP Assessments Percentage of Children Meeting the Standard		
	Reading	Mathematics
White	52.6%	51.6%
Black	53.1%	35.0%
Hispanic	47.5%	32.9%
LEP	21.3%	12.1%

State of R.I.	67.8%	59.2%
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390. In other words, there is an “achievement gap” of more than 16 percentage points between the school’s black children and white non-Hispanic children in mathematics proficiency, and an “achievement gap” of more than 18 percentage points between the school’s Hispanic children and white, non-Hispanic children in mathematics proficiency. Furthermore, the academic achievement of the school’s children in the Limited English Proficiency program against the State’s standards is particularly inadequate.

391. Pursuant to legislative mandate of R.I.G.L. § 16-54-2, in 2008, the Board of Regents issued regulations to govern educational programs for English language learners enrolled in the public schools of Rhode Island (“the ELL Regulations”). Exhibit 7 is a true and accurate copy of the ELL Regulations.

392. The Board of Regents stated several purposes for these regulations, including that they are intended to:

Ensure that English Language Learners meet Rhode Island’s Grade Level Expectations (GLE’s) and Grade Span Expectations (GSE’s) in all subject areas.

Exhibit 7, p. 3.

393. Through the ELL Regulations, the Board of Regents promulgated a series of twelve program standards, including the following:

7. Ensure equitable access to all services, and materials that are provided to all other students.

8. Include sufficient personnel and resources to effectively implement the program.

Exhibit 7, p. 8.

394. In recent years, budget limitations have led to personnel reductions at the Elizabeth Baldwin Elementary School. The hours of the social worker had been reduced from full time to 60%. The psychologist’s time was reduced this year to 45%. This year it was necessary to lay off a literacy coach and a reading teacher.

395. Elizabeth Baldwin Elementary School officials estimate that approximately 30% of the children are in classes for English as a second language. This figure does not include the number of children who have successfully graduated out of the program into mainstream classrooms. For many of these children, their schooling is made more difficult by the fact that their parents do not speak English. As a result, it is important to have translators in the school. At this point, there

are no longer any translators on staff. Instead, the principal relies on the assistance of one of the school's janitors. This can create issues because there is sometimes discussions that the janitors should really not listen to, but he needs to because of the lack of a real translator.

396. The Elizabeth Baldwin Elementary School's supply of secretaries has been cut back with budgetary contractions. This has created record keeping issues for the school. On days when the teachers are engaged in professional development, the secretaries are no longer in the building, bringing the administrative work of the school to a standstill.

397. The children who attend Elizabeth Baldwin Elementary School include a broad range of new Americans, who do not speak English at home.

398. These children normally lack support at home for their studies the English language. Instead, they depend upon specialized English as a Second Language (ESL) instruction to help them overcome the language barrier while trying to learn the standard amount of academic content mandated by the Board of Regents.

399. Unfortunately, the school lacks the resources to provide these children with the education they deserve and need. Children from different language backgrounds are not assigned to teachers with specialized knowledge of their native tongue. Instead, most children who have not mastered English from multiple nationalities and heritages are combined in a single classroom without access to teachers who can help them in their native language.

400. While placing children who speak multiple languages into a single ESL classroom is a challenge at Elizabeth Baldwin Elementary School, it actually is only half of the challenge those children face. Due to lack of resources, the school makes use of "split classrooms" in which ESL children from two different grades are taught by a single teacher in a single classroom. More specifically, a single teacher in a single classroom is responsible for all ESL children in Grades Three and Four, while a second teacher in a single classroom is responsible for all ESL children in Grades Five and Six.

401. Recently, the Elizabeth Baldwin Elementary School has had difficulties implementing the State-required science program. The school has a number of science kids; however, the teachers do not have adequate science training. As of now, there is no funding in the budget to provide the necessary professional development for science. Instead, there have been steady reductions in the school personnel, at a time when standards are rising.

402. The neighborhood in which the school resides has a large number of "challenging kids," and it is not enough just to put them in a classroom with a teacher and 24 other children. These children often suffer through family crises and have personal needs that must be addressed if they are to have a productive day at school.

403. The school's large size, along with the demands of modern standards-based education for

additional support, have created major space issues in the building. Children are in corridors for a number of their supplemental classes. The cafeteria also doubles as a gym at certain times, though how the transition is made is far from clear. There is a room off the Principal's office that was a combination conference room, ESL room, storage room and art card area. The closet to Room 32 has been converted into a special education room. The library is the site for offices for the social worker and various resource teams. There is a special education resource area that may present fire code issues.

404. This year's budget problems are creating supply issues. The school needs 300 cases of paper each year. This year they only received 150. The school likely will run out of paper sometime early in 2010. There are no funds available to pay for substitutes to sustain the school's teacher mentoring program.

405. With the cutbacks in faculty, the school has had to reduce services for children. There is no extra reading instruction for students. The hours for the special education speech teacher have been reduced to 80%. One special education reading teacher has been laid off. In recent years, teacher assistants have been laid off.

406. Without these supports, the teachers at the Elizabeth Baldwin Elementary School lack the resources to provide a minimally adequate education the school's children. Instead of planning improvements to the academic program, the school's educators struggle to minimize losses.

d. Joseph Jenks Junior High School

407. Joseph Jenks Junior High School lacks the resources to provide adequate instruction and facilities for its children.

408. During the 2007/08 school year, the Joseph Jenks Junior High School had 477 students. 82% of the children were eligible for subsidized lunches, based on low family income. 39% of the children were from Hispanic families, and 24% were from African-American families. 24% of the children received English as a second language (ESL) instruction.

1. Achievement levels

409. In October, 2009, there were 196 children enrolled in the eighth grade at Jenks Junior High School. Of that group, 182 children took the NECAP reading assessment, while 186 took the NECAP mathematics assessment. 57% of the children tested scored "proficient" in the reading test, while 43% did not, including 16% who scored "substantially below" proficient. 36% of the children scored "proficient" on the mathematics test, while 64% did not, including 38% who scored "substantially below" proficient.

410. There is a achievement gap at the school between the achievement levels of the White

students and the African-American students, as revealed in the following table:

		Proficient	Not Proficient
Reading	African-American	45%	55%
	White	66%	34%
Mathematics	African-American	26%	74%
	White	42%	58%

411. In other words, the school’s African-American students had an “achievement gap” of 21% in reading, and 16% in mathematics, when compared to their non-Hispanic White classmates.

412. In October, 2009, there were 18 students at Jenks Junior High School’s eighth grade class who were classified as “limited English proficiency” students. Of that group, 15 took the NECAP assessments in reading and all 18 took the assessment in mathematics. 27% of the students tested achieved proficiency in reading while 73% did not, including 47% who scored “substantially below” proficient. One student (or 6%) scored proficient in mathematics, while 94% did not, including 67% who scored “substantially below” proficient.

413. In March, 2009, there were 210 students enrolled in the eighth grade at Jenks Junior High School. 193 of them took the NECAP Science assessment. Nine of the students tested (5%) achieved a “proficient” score, while 184 (95%) did not, including 120 (62%) who achieved “substantially below” proficient. Of the school’s 52 African-American students, only one (2%) achieved a “proficient” score, while 51 (98%) did not, including 32 (63%) who scored “substantially below” proficient.

414. In March, 2009, there were 23 students in the eighth grade at Jenks Junior High School who were receiving “limited English proficiency” instruction. All of them took the NECAP Science assessment. None of them (0%) achieved a “proficient” score. All but one of them (96%) scored “substantially below” proficient.

2. Insufficient funding for intervention

415. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Jenks Junior High School, to provide extra support to children reading at below grade level. More specifically, Section L-6-2.2 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.2 Improving literacy for students reading below grade level. Local educational agencies shall have the obligation to initiate reading interventions for each student who is not reading at grade level based on the assessments required under section 2.1 of these regulations. Any student who continues to fall below grade level in reading and/or fails to attain proficiency in subsequent years on the state assessments designated by the Commissioner shall continue to receive specialized assistance.

416. In the fall of each year, the staff at the Jenks Junior High School assess the reading skills of its students. Based on that assessment, there were a substantial number of children requiring intervention and assistance in reading.

417. The staff's assessment of a substantial population of students with need for intervention in reading was confirmed by the results of the October, 2009 NECAP test, the results of which were reported in February, 2010. Those results indicated that 85 students in the seventh grade class at Jenks Junior High School during 2009-10 were in need of extra help in reading and language arts, based on the State's proficiency assessment that October. Of that group, 31 students had particularly extreme needs, as they were assessed as reading at a level "substantially below" proficient.

418. Unfortunately, the General Assembly has not appropriated adequate funds to maintain the previously existing program at Jenks Junior High School, never mind the additional funds needed to conduct meaningful reading interventions for students who need the help. As a result, the 2008 Regulations amount to an unfunded mandate that creates an expectation of help on paper that is impossible for the school to achieve in reality.

419. Jenks Junior High School offers an "enrichment period" during the day to provide children with the extra instruction they need.

420. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Woonsocket Middle School, to provide extra support to children whose mathematics proficiency is below grade level. More specifically, Section L-6-2.3 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.3 Improving numeracy for all students. . . . All Rhode Island local educational agencies shall have mechanisms in place that: 1) identify and support students who are not making progress in mathematics as measured by local and state assessment data; 2) provide universal student access to course work aligned to state mathematics grade level/span expectations; and 3) ensure that schools at all levels work collaboratively to successfully transition those students into new schools within and across local educational agencies.

Exhibit 5, p.6.

421. Jenks Junior High School lacks the resources to identify students who need additional support in mathematics. Instead, the school relies on the assessments made the previous October when children took the NECAP mathematics assessment.

422. Though the Jenks Junior High School staff lacked the resources either to assess the mathematics ability of children, that information became available in February when the results of the October, 2009 NECAP test were reported by the State. Those results indicated that 112 students in the seventh grade at Jenks Junior High School were in need of intervention in mathematics, because they had failed to achieve at the level of “proficiency” on the October, 2009 NECAP mathematics assessment. Of this group, 64 students achieved “substantially below” proficient.

423. While Jenks Junior High School can offer a mathematics intervention program to these students during the “enrichment period,” there is a problem – 70 of the children in seventh grade are achieving below the “proficiency” level in *both subjects at the same time*. Of these 70 students with needs in both subjects, 52 were achieving “substantially below” proficient in one or both of the subjects.

424. To identify eighth grade students in need of support in mathematics, the Jenks High School staff referred to the seventh grade NECAP test scores from 2008, which indicated that there were 112 students who failed to achieve at the level of “proficiency.” Of this group, 64 students achieved at a level “substantially below” proficient.

425. In February, 2010, the Jenks Junior High School received more current information about the need for interventions to support eighth grade children in mathematics, as the Fall, 2009 NECAP test results were provided by the State. In the fall of 2009, 119 students in the eighth grade at Jenks Junior High School were in need of intervention in mathematics, because they had failed to achieve at the level of “proficiency” on the October, 2009 NECAP mathematics assessment. Of this group, 71 students achieved at a level “substantially below” proficient.

426. While Jenks Junior High School can offer a mathematics intervention program to these students during the “enrichment period,” there is a problem – 70 of the children in the eighth grade are achieving below the “proficiency” level in *both subjects at the same time*. Of these 70 students with needs in both subjects, 55 are achieving “substantially below” proficient in one or both of the subjects.

427. If Jenks Junior High School were to try to comply with these regulations, it would need to schedule a second enrichment period for these 141 students. However, if those students had an enrichment period of each subject, they would only have two remaining periods each day in which to take required courses in Science, Social Studies and Health/Physical Education. In other words, the current class day at Jenks Junior High School prevents the school from scheduling

supplementary courses required under State mandates. The school does provide additional instruction after school hours; however, this instruction is less intense, and many children are unable to stay after school.

428. For children with needs in both subjects, the educators at Jenks Junior High School made the difficult choice to provide enrichment in English and literacy first. As a result, in the 2009/10 school year, there were 70 children in the seventh grade and 71 children in the eighth grade who were achieving in mathematics below the level of proficiency without the chance to receive the intervention and support prescribed in the 2008 Regulations.

429. Jenks Junior High School requires a longer class day to provide extra instruction to students who are not performing at grade level in reading, mathematics, or both subjects simultaneously. Unfortunately, the school lacks sufficient resources to provide an extended day program for those students.

430. The teachers at Jenks Junior High School would benefit from additional training and professional development in the education of at-risk children. Unfortunately, the Pawtucket School Department lacks sufficient resources to fund this instruction.

431. Without the additional resources needed to bring children up to the State's academic standards, it is no surprise that the proportion of children who are reading at grade level does not improve during their stay at Jenks Junior High School. In fact, sadly, the movement is towards less proficiency rather than more proficiency.

3. Lack of support staff

432. The children at Jenks Junior High School come, to a large degree, from disadvantaged backgrounds. As a result, these children face challenges at home that intrude on their ability to focus on their education at school.

433. Many of these children rely upon the teachers and staff at Jenks Junior High School to help them cope with life crises. Also, many of the children come to school lacking in social skills and knowledge that educators at other schools take for granted; for example, many of the children at Jenks Junior High School require help and support to learn conversation skills, manners, communications, learning to take turns, and so on.

434. Other at-risk students at Jenks Junior High School face challenges, such as lack of sleep or food, that make it more difficult to devote their full attention to their academics.

435. To address these needs, the school employs a single a part-time behavioral counselor. This person is overwhelmed. The school nurse is completely busy. The school has a part-time school psychologist who divides her time with an elementary school. She is completely

overwhelmed. There are two part-time social workers, who also need to engage in continual crisis management.

436. The school's guidance counselors often spend large portions of each day assisting students with crisis management. This prevents the guidance counselors from providing advice and support to the other students in the school.

437. Even the principal and vice-principal at Jenks Junior High School find it necessary to devote a large portion of each day to managing individual students' crises. These personal counseling obligations pre-empt the time the principal and vice-principal otherwise would use as instructional leaders to improve the quality of the education received by students who are not facing a crisis.

4. Other resource constraints

438. The school does not hand out textbooks for the children to take home. Instead, there is a single set of textbooks that remain in the classroom. Then children are given worksheets to study at home without the benefit of a textbook.

439. The school's laboratories are quite sparse. There are no microscopes, lab equipment or science kits.

e. Shea High School

440. Shea High School lacks the resources to provide adequate instruction and facilities for its children.

441. During the 2007-08 school year, there were 1,106 students enrolled at Shea High School. 84% of the children were eligible for subsidized lunches, based on low family income. 34% of the children were from Hispanic families, to go with 34% from African-American families and 1% from Asian families. 14% of the children received instruction in English as a second language.

1. Low proficiency rates

442. In 2008, Shea High School was classified as making "insufficient progress." This was the fifth consecutive year the State identified Shea High School as belonging in this category.

443. In October, 2009, there were 256 students enrolled in the 11th grade at Shea High School, of whom approximately 94% took the various components of the State's New England Common Assessment Program (NECAP) tests. In reading, 62% of the students achieved a "proficient"

score, while 38% did not, including 12% who scored “substantially below proficient”. In mathematics, 9% achieved a “proficient” score, while 91% did not, including 64% who were “substantially below” proficient.

444. In 2012, the Board of Regents’ High School regulations will come into effect, requiring that all high school students achieve certain state requirements in addition to local requirements to qualify for a diploma. One of those requirements is to score at least at the level of “partially proficient” on the state assessments. As a result, at least 64% of today’s students at Shea High School would not qualify for a diploma under the 2012 requirements.

445. There was an “achievement gap” for the 11th grade students at Shea High School between African-American students and the white, non-Hispanic students as follows:

		Proficient	Not Proficient
Reading	African-American	51%	49%
	White	72%	28%
Mathematics	African-American	3%	97%
	White	16%	84%

446. These data indicate that the proficiency rate (Level 3 or Level 4) in reading for non-Hispanic whites is 72%, while the African-American proficiency rate is 51%, resulting in an “achievement gap” of 21%. Similar, the proficiency rate for whites in mathematics is 16%, while the African-American proficiency rate is 3%, resulting in an “achievement gap” of 13%.

447. In the Spring of 2009, there were 193 students enrolled in the 11th grade at Shea High School, of whom 187 (or 97%) took the NECAP Science exam. 10% of the students achieved a score of “proficient” while 90% did not, including 53% who achieved at “substantially below” proficient.

448. There was an “achievement gap” between non-Hispanic white students and African-American students. The former group achieved “proficiency” at a rate of 14%. In contrast, 7% of the African-American students achieved a score of “proficiency” on the Science examination.

2. How inadequate resources hold children back

449. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for

all schools, including Shea High School, to provide extra support to children reading at below grade level. More specifically, Section L-6-2.2 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.2 Improving literacy for students reading below grade level.

Local educational agencies shall have the obligation to initiate reading interventions for each student who is not reading at grade level based on the assessments required under section 2.1 of these regulations. Any student who continues to fall below grade level in reading and/or fails to attain proficiency in subsequent years on the state assessments designated by the Commissioner shall continue to receive specialized assistance.

450. Unfortunately, the General Assembly has not appropriated adequate funds to maintain the previously existing program at Shea High School, never mind the additional funds needed to conduct meaningful reading interventions for students who need the help. As a result, the 2008 Regulations amount to an unfunded mandate that creates an expectation of help on paper that is impossible for the school to achieve in reality

451. With the limited resources available, Shea High School offers reading interventions on a “triage” system to the students most in need of additional support. For a limited number of students, the school provides extra reading instruction and support through a class that last for two periods each day instead of the normal single period. This extra instruction can allow children to “make up” an additional year of reading knowledge, so that children who begin the sixth grade reading at the fifth grade level can finish the year ready to enter seventh-grade English at the appropriate level of proficiency. Unfortunately, a lack of resources prevents the school from providing enough “slots” in this program to meet the needs of students.

452. The 2008 K-12 Literacy Regulations (Exhibit 5, *supra*) provide a series of mandates for all schools, including Shea High School, to provide extra support to children whose mathematics proficiency is below grade level. More specifically, Section L-6-2.3 of the 2008 Literacy regulations require schools to provide the following extra support:

L-6-2.3 Improving numeracy for all students. . . . All Rhode Island local educational agencies shall have mechanisms in place that: 1) identify and support students who are not making progress in mathematics as measured by local and state assessment data; 2) provide universal student access to course work aligned to state mathematics grade level/span expectations; and 3) ensure that schools at all levels work collaboratively to successfully transition those students into new schools within and across local educational agencies.

Exhibit 5, p.6.

453. Even if Shea High School had the resources to provide additional mathematics instruction

to the students who need it, there would be a scheduling problem. The proficiency data indicates that there is a substantial population of children in the sixth grade who require supplementary instruction in both English and mathematics. However, if those students had two periods of each subject, they would only have two remaining periods each day in which to take required courses in Science, Social Studies and Health/Physical Education. In other words, the current class day at Woonsocket Middle School prevents the school from scheduling supplementary courses required under State mandates.

454. Shea High School requires a longer class day to provide extra instruction to students who are not performing at grade level in reading, mathematics, or both subjects simultaneously. Unfortunately, the school lacks sufficient resources to provide an extended day program for those students.

3. Facilities and materials Issues

455. Due to a lack of resources and deferred maintenance, the Shea High School building presents extensive challenges to the quality of the education that children can receive at the school.

456. Shea was constructed in 1944 for 750 elementary and high school students. It now houses approximately 1,100 high school students exclusively. As a result, there is not enough room in several of the classrooms, especially in the science laboratories.

457. Many of the classrooms are in need of repair or maintenance, including the following:

- a. In six rooms, the heat cannot be managed;
- b. Many rooms need plaster repairs;
- c. The science wing has a mold problem;
- d. There are five leaks that go from the third floor to the basement due to a hole in the roof;
- e. Windows throughout the building are inoperable and broken;
- f. Several toilets leak, creating poor sanitary conditions;
- g. Many science labs do not have running water or gas;
- h. Many rooms are lacking insufficient electrical outlets;
- I. The telephone system is inadequate.

458. Due to a lack of resources, Shea High School has made staff reductions that have affected its ability to educate its children, including the following:

- a. There is no in-house learning center staffing to reduce the suspension rate;
- b. Average class sizes for the English as a Second Language program is at ___, as the cost of additional teachers and classrooms is beyond the school's means.
- c. As two staff have been laid off, there is no longer a basic writing class;
- d. The school psychologist's time has been reduced to three days;
- e. The school has children from 50 countries who speak 25 languages. Until recently, the school had four staff members who could assist in translating communications for these children. Now the school has only one translator, limiting the reach of this program.
- f. The technology staff is inadequate to support the computers.

459. Shea High School lacks sufficient resources to provide necessary equipment and materials for its students.

460. On average, 80% of the library non-fiction collection is beyond the acceptable date range and in need of replacement according to industry standards.

461. In several key subjects (mathematics, geometry, science, biology and U.S. History), the school cannot afford to issue textbooks to the students. Instead, each classroom has a single set of books that students can read during class but are not allowed to take home. As a result, textbook homework is rarely given.

462. The social studies textbooks end with the Clinton presidency.

463. The school runs out of paper during the year.

464. The school's overall budget for materials is \$1,000 per year. As a result, most teachers spend hundreds of dollars from their personal funds each year to support instruction.

465. The school does not have any research software. There is no technology budget.

466. The school lacks resources to leave the library open after school for the children to use.

467. Many of the children cannot afford their own computer for school projects or college applications. Unfortunately, they are unable to use the school's computers after school hours because the school cannot afford staff to supervise.

468. The Read 180 computers are often out of commission. The materials have not been upgraded in three years. Currently there are 60 students who are reading at the pre-primer level.

469. There are 60 children who entered the school as new Americans. Most of them lack any formal education at all. The social studies class for English language learners has 30 children and 28 desks. The three teaching assistants for English language learners are no longer funded.

470. Without the additional resources needed to bring children up to the State's academic standards, it is no surprise that the proportion of children who are reading at grade level does not improve during their stay at Shea High School. In fact, sadly, the movement is towards less proficiency rather than more proficiency.

3. Rhode Island's Low Achievement

471. The General Assembly's failure to provide resources to public schools in Woonsocket and Pawtucket causes the greatest harm to the disadvantaged students in those two communities. The resulting harm to their education is reflected in Rhode Island's low standing in interstate comparisons of education quality.

472. The United States Department of Education assesses the academic performance of all children on a national basis through the administration of the National Assessment of Educational Progress (referred to below as the "NAEP Test") that is administered to all children in the fourth and eighth grades.

473. The lack of educational opportunities available to children in Rhode Island's urban communities, including Woonsocket and Pawtucket, contribute significantly to the State's position of having some of the lowest performing public schools in the country. In the most recent year of data available (2007), over several sub-populations, Rhode Island's public schools achieved the lowest score of any of the six New England states in every single category described below.

474. Over the same period, Rhode Island's students were at best in the bottom one-third (1/3) of the country. Most of the scores were among the nation's ten lowest, and in several instances Rhode Island's students achieved at the lowest level in the country. The data is summarized in the following table:

NAEP Data - Rhode Island 2007 (R.I.'s rank nationally 1=highest)											
Grade	Subject	Overall		Afr. American		Hispanic		Free/Red. Lunch		Eng. Learner	
		# States	Rank	# States	Rank	# States	Rank	# States	Rank	# States	Rank
4	Reading	50	35T	43	34	44	38	50	40	41	40T
	Math	50	32T	44	28T	45	43T	50	38T	41	37T
8	Reading	50	40T	41	36	41	41	50	45T	27	27
	Math	50	37T	42	32	44	44	50	44T	34	28T

Notes: 1. Rank is among states with a significant population in that category.
2. T denotes a tie with one or more other states.
3. Shaded background denotes lowest performance in the country.

475. In 2009, Rhode Island’s Hispanic students had the lowest achievement levels nationally in fourth-grade mathematics, eighth grade reading and eighth grade mathematics. They also had the seventh-lowest score in fourth grade reading.

476. In 2007, Rhode Island’s English language learner students had the lowest achievement levels nationally in reading, at both the fourth and eighth grade.

Conclusion

477. The failure to achieve high educational standards has a profound effect upon the life prospects of the Individual Plaintiffs.

478. In particular, the failure to achieve educationally will drastically affect the Individual Plaintiffs’ ability to support themselves and their families. In an earlier time, Woonsocket and Pawtucket (and other Rhode Island communities) housed factories that sustained a market for unskilled and uneducated labor. Those manufacturing jobs and that labor market no longer exist, and will not return anytime soon.

479. Today, it is fully appreciated that most children will need higher-level skills in order to succeed in today’s workplace.

480. The Plaintiffs, and others similarly situated, are not being prepared for today’s workplace. Instead, the Plaintiffs, and thousands of other Rhode Island children like them, are losing out on an education that could free them from the risk of a life of poverty and dependency.

481. As a small state, Rhode Island simply cannot absorb a large pool of dependent citizens. The harm being done by depriving the Plaintiffs of their education is thus not only harmful on an individual level, but destructive of the prosperity of the State as a whole.

IV. Causes of Action

Count I: Education Clause

482. Plaintiffs re-allege those allegations contained in the paragraphs above as if fully restated herein.

483. Art. XII, Sec. 1 of the Rhode Island Constitution provides:

Section 1. Duty of general assembly to promote schools and libraries. -- The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

484. The General Assembly has a Constitutional responsibility to “promote public schools.”

485. Pursuant to that responsibility, the General Assembly has (through the Board of Regents) enacted minimum academic standards that apply to all children in Rhode Island.

486. Unfortunately, the General Assembly has repeatedly failed to provide adequate resources to implement those standards, even while recognizing this inadequacy and articulating many viable solutions.

487. Through the passage of the Paiva-Weed Act, P.L. 2006, ch. 253, § 3, the General Assembly has enacted statutory prohibitions that prevent municipal governments from providing sufficient local resources.

488. Also through the passage of the Paiva-Weed Act, the General Assembly enacted language directing a court to “consider” the Act’s tax caps when fashioning a remedy to an action brought under the Caruolo Act.

489. The Paiva-Weed Acts limitations on Caruolo Act cases may compromise the ability of school districts to ensure a proper allocation of local resources to educate children, especially in a time of inadequate State resources.

490. By devising standards and assessments that cannot be met, the General Assembly has exposed its own failure to promote the public schools of Rhode Island.

Count II: Substantive Due Process

491. Plaintiffs re-allege those allegations contained in the paragraphs above as if fully restated

herein.

492. Art. I, Sec. 2 of the Rhode Island Constitution provides, in pertinent part:

Section 2. Laws for good of whole -- Burdens to be equally distributed -- Due process -- Equal protection -- Discrimination -- No right to abortion granted. -- All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. . . .

493. The right to public education is objectively, deeply rooted in this State's history and tradition.

494. Plaintiffs have a substantive due process right to public education.

495. Plaintiffs have been denied their right due to the General Assembly's failure to provide adequate school aid.

496. Art. I, Sec. 5 of the Rhode Island Constitution provides:

Section 5. Entitlement to remedies for injuries and wrongs -- Right to justice. -- Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

Count III: Civil rights statute

497. Plaintiffs re-allege those allegations contained in the paragraphs above as if fully restated herein.

498. R.I.G.L. § 42-112-1 provides:

(a) All persons within the state, regardless of race, color, religion, sex, disability, age, or country of ancestral origin, have, except as is otherwise provided or permitted by law, the same rights to make and enforce contracts, to inherit, purchase, to lease, sell, hold, and convey real and personal property, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property, and are subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind,

and to no other.

499. Due to the State's failure to provide adequate funding to the public schools in Woonsocket and Pawtucket, the Plaintiffs Woonsocket School Committee and Pawtucket School Committee are unable to fulfill their statutory responsibilities to provide for the education of its children.

500. Due to the State's failure to provide adequate funding to the public schools in Woonsocket and Pawtucket, the Individual Plaintiffs are being systematically deprived of their constitutional right to an education, as provided under Art. XII of the Rhode Island Constitution.

501. Due to the State's failure to provide adequate funding to the public schools in Woonsocket and Pawtucket, the Individual Plaintiffs, are being systematically deprived of their statutory rights to an education.

502. The State's failure to provide adequate educational funding for *all* children violates Article I, Sec. 2, which provides that laws are to be made for the good of the whole, and that burdens of government are to be borne equally, as well as R.I.G.L. § 42-112-1's guarantee of equal treatment of all citizens.

503. For all of its legislative pronouncements on the palpable inadequacies of the current scheme for educational financing during the late 1990s through the early years of this decade, the General Assembly has steadfastly and repeatedly failed to provide any meaningful remedy.

504. Over fifteen years has lapsed since the *Sundlun* Court ruled that a child's right to public education is ultimately a legislative responsibility.

505. Over that span of years, another generation of urban children have been lost to an inadequate K-12 educational system.

506. Enough time has elapsed since *Sundlun* for some of that generation to start having their own children -- who will repeat this dismal cycle of broken promises from the State, inadequate education, poverty, and lost hopes.

507. If anything, over the past several years, the General Assembly has even acted to limit the funding available to the school districts, thus aggravating an already intolerable deprivation of rights.

508. Since the Supreme Court's decision in *Sundlun*, the General Assembly and the Board of Regents have redefined the Basic Education Plan, adding substantive content and assessments to each child's right to a minimum adequate education in core subjects.

509. With more than 80% of the children in Woonsocket and Pawtucket unable to achieve the

minimum the proficiency-based education defined by the General Assembly and Board of Regents, it is no longer possible for a Court to say, as did the Supreme Court in *Sundlun*, that the public schools provide an education in core subjects that complies with Basic Education Plan.

510. Since the Supreme Court's decision in *Sundlun*, the voters have repealed Article 6, Section 10 of the Rhode Island Constitution, upon which the Supreme Court based its decision.

511. With the amendments to the Rhode Island Constitution, the General Assembly no longer has plenary authority, and Rhode Island judiciary therefore no longer need accept the proposition that the General Assembly has *carte blanche* to ignore the constitutional and statutory rights of its children.

512. Indeed, to declare that the Rhode Island judiciary lacks the authority to enforce the Plaintiffs' statutory and constitutional rights is to ignore Article I, Sec. 5, which provides a remedy for all wrongs.

513. For these reasons, Plaintiffs request a declaration from this Court that the General Assembly's current education funding program fails to meet the standards of the Rhode Island Constitution.

Count IV: Injunctive Relief

514. Plaintiffs re-allege those allegations contained in the paragraphs above as if fully restated herein.

515. The Plaintiffs Woonsocket School Committee, Superintendent Gerardi, the Pawtucket School Committee, and Superintendent Cylke are suffering immediate and irreparable harm in that they are unable to fulfill their statutory responsibilities to provide for the education of their children.

516. The Individual Plaintiffs are suffering immediate and irreparable harm in that they are being systematically deprived of their constitutional and statutory right to an adequate education.

517. The Individual Plaintiffs are suffering immediate and irreparable harm in that they are being systematically deprived of their constitutional right to equal treatment, and to benefit from laws made for the good of the whole, and as well as R.I.G.L. § 42-112-1's guarantee of equal treatment of all citizens.

518. As outlined above, the General Assembly is fully aware of the deprivations wrought upon the Plaintiffs, but has persistently failed to redress them.

519. Accordingly, there is no adequate remedy available to these Plaintiffs absent this Court's exercise of its injunctive powers.

520. The balance of the equities clearly favors the Plaintiffs.

Count V: 2010 Funding Formula

521. Plaintiffs re-allege those allegations contained in the paragraphs above as if fully restated herein.

522. In May-June, 2010, the General Assembly enacted and the Governor signed into law the 2010 Funding Formula.

523. For the reasons set forth above, Plaintiffs claim that the 2010 Funding Formula is inadequate to meet the needs of the children of Pawtucket and Woonsocket.

524. Despite the Plaintiffs' disagreement, the 2010 Funding Formula provides a baseline indication of what the General Assembly itself considers to be adequate State aid for education.

525. According to the definition of adequacy adopted by the General Assembly in enacting 2010 Funding Formula, the children of Pawtucket require \$8,366 per child in State education aid in order to fund adequately a school system that can comply with the New BEP.

526. In 2010, the General Assembly allocated approximately \$7,225 per child of State education aid for the children of Pawtucket for the 2010/11 school year.

527. This amount is approximately \$1,100 per student less than the definition of adequacy adopted by the General Assembly in enacting the 2010 Funding Formula.

528. If the 2010 Funding Formula is fully implemented, the General Assembly will allocate approximately \$7,444 per child of State education aid for the children of Pawtucket for the 2011/12 school year.

529. This amount is approximately \$900 per student less than the definition of adequacy adopted by the General Assembly in enacting the 2010 Funding Formula.

530. According to the definition of adequacy adopted by the General Assembly in enacting 2010 Funding Formula, the children of Woonsocket require \$8,453 per child in State education aid in order to fund adequately a school system that can comply with the New BEP.

531. In 2010, the General Assembly allocated approximately \$7,401 per child of State education aid for the children of Woonsocket for the 2010/11 school year.

532. This amount is approximately \$1,000 per student less than the definition of adequacy

adopted by the General Assembly in enacting the 2010 Funding Formula.

533. If the 2010 Funding Formula is fully implemented, the General Assembly will allocate approximately \$7,587 per child of State education aid for the children of Woonsocket for the 2011/12 school year.

534. This amount is approximately \$800 per student less than the definition of adequacy adopted by the General Assembly in enacting the 2010 Funding Formula.

535. According to the definition of adequacy adopted by the General Assembly in enacting 2010 Funding Formula, a number of other Rhode Island school districts are receiving State aid in excess of the adequacy level for the 2010/11 school year, in some cases exceeding \$1,000 per student per year.

536. According to the definition of adequacy adopted by the General Assembly in enacting the 2010 Funding Formula, a number of other Rhode Island school districts are receiving State aid in excess of the adequacy level for the 2011/12 school year, in some cases exceeding \$1,000 per student per year.

537. According to the definition of adequacy adopted by the General Assembly in enacting the 2010 Funding Formula, the General Assembly's overall allocation of funds to all school districts provides sufficient funds to provide adequate education aid to the children of Pawtucket and Woonsocket; however, it has chosen instead to withhold adequate funds to the children of Pawtucket and Woonsocket while at the same time providing excessive funds to other Rhode Island communities.

V. Prayer for relief

Wherefore, the above Plaintiffs pray that this Honorable Court award relief as follows:

- i. That this Court declare that the minor Plaintiffs have a right to receive an adequate education pursuant to Art. XII of the Rhode Island Constitution and the Rhode Island General Laws;
- ii. That this Court find that the present system of educational financing deprives Plaintiffs their right to an adequate education pursuant to Art. XII of the Rhode Island Constitution and the Rhode Island General laws;
- iii. That this Court find that the present system of educational financing systematically deprives Plaintiffs of their right to equal treatment under the law, in violation of Art. I, Sec. 2 as well as R.I.G.L. § 42-112-1's guarantee of equal treatment of all citizens;

- iv. That this Court find that the State of Rhode Island has persistently violated Plaintiffs' rights to an adequate education pursuant to Art. XII and Art. I, Sec. 2 of the Rhode Island Constitution, and the Rhode Island General Laws;
- v. That this Court find that the restrictions placed by the Paiva-Weed Act upon the ability of communities to raise local taxes for public education is unconstitutional in violation of Article XII of the Rhode Island General Constitution;
- vi. That this Court declare the 2010/11 allocation of education aid to Pawtucket and Woonsocket to be inadequate as measured by the standard of adequacy defined by the 2010 Funding Formula;
- vii. That this Court declare the current projected allocations of school aid for the years 2011/12 through 2016/17 to be inadequate as measured by the 2017/18 standard of adequacy defined by the 2010 Funding Formula.
- viii. That this Court enjoin the Defendants from further Constitutional violations;
- ix. That this Court issue an injunction directing the Defendants to devise and implement a funding program that complies with Constitutional standards;
- x. That this Court award Plaintiffs their attorneys fees and costs;
- xi. The Court retain jurisdiction for whatever period is necessary; and
- xii. The Court provide such other and further relief, legal or equitable, as the Court may deem just and proper.

Petitioners,
By their attorneys,

Stephen M. Robinson #2103
Robinson & Clapham
155 South Main Street, Suite 402
Providence, RI 02903
(401) 331-6565
(fax) 331-7888

March __, 2011

Samuel D. Zurier (#3576)
55 Dorrance Street, Suite 400
Providence, RI 02903
(401) 861-2900 (telephone)
(401) 861-2922 (fax)

March __, 2011