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A non-jury trial commenced in this matter on July 28, 2003 and ended on December 9, 2004. During the course of 102 days of trial, 112 witnesses testified in person or by deposition, generating approximately 23,100 pages of transcript. Approximately 4,400 documents were received into evidence. This Court has carefully considered the testimony of the witnesses, all of the exhibits, and the proposed findings of fact and conclusions of law submitted by the parties. Generally, this Order does not formally distinguish between findings of fact and conclusions of law. Instead, this Order addresses the factual and legal issues as they arise in the context of this case. Part One of this Order considers the applicable legal standard and the measure of proof. Part Two examines the evidence in light of the legal standard to determine how the question presented must be answered.

The Court finds and concludes as follows:

PART ONE

I. INTRODUCTION

1. This case is before the Court upon remand from the South Carolina Supreme Court for further proceedings. The Plaintiffs in this action are school districts, students and taxpayers who individually and collectively challenge the State's funding of South Carolina's public schools. The school district Plaintiffs are as follows: Allendale County School District ("Allendale"); Dillon County School District 2 ("Dillon 2"); Florence County School District 4 ("Florence 4"); Hampton County School District 2 ("Hampton 2"); Jasper County School District ("Jasper"); Lee County School District ("Lee"); Marion County School District 7 ("Marion 7"); and Orangeburg County School District 3 ("Orangeburg 3"). In addition, 25 individually named parents and 26 students

from specified school districts joined as Plaintiffs. The Plaintiffs are represented by Carl B. Epps, Stephen G. Morrison, and Laura Callaway Hart, all of Nelson Mullins Riley & Scarborough, L.L.P.

2. The Defendants include The State of South Carolina; Mark C. Sanford, as Governor of the State of South Carolina; Warren K. Giese¹, as Chairman of the Senate Education Committee and Chairman of the Finance Committee, in his representative capacity as a properly designated representative of the South Carolina Senate; and David H. Wilkins, as Speaker of the House of Representatives and as a representative of the South Carolina House of Representatives. The Senate and the House are represented by Robert E. Stepp, Elizabeth Van Doren Gray, A. Jackson Barnes, and Roland M. Franklin, Jr. (on brief) of Sowell Gray Stepp & Laffitte, L.L.C. The State of South Carolina and the Governor are represented by Henry D. McMaster, Attorney General of the State of South Carolina, J. Emory Smith, Jr., Assistant Deputy Attorney General of the State of South Carolina, and Elizabeth R. McMahon, Assistant Attorney General of the State of South Carolina.

II. PROCEDURAL HISTORY

A. Prior Trial Court Proceedings

3. This case has been in litigation for more than ten years. On November 1, 1993, forty of the more than eighty school districts in the State of South Carolina, together with certain students and taxpayers, commenced a declaratory judgment action in the Court of Common Pleas for Lee County challenging the State's statutory scheme

¹ Senator Giese has retired from his service in the Senate and Senator John Courson now serves as Chairman of the Senate Education Committee. Senator Courson has not been formally substituted as a Defendant.

for funding its public schools. Thereafter, as a result of district consolidations², the number of Plaintiff Districts was reduced to thirty-six. Prior to trial, Plaintiffs' counsel selected eight school districts as trial plaintiffs for this proceeding. *See* Order dated June 20, 2003.

4. Plaintiffs' Second Amended Complaint filed July 20, 1995, alleged violations of the South Carolina Constitution's education clause, S.C. Const. art. XI, § 3, the equal protection clauses of the State and federal constitutions, and violation of the Education Finance Act of 1977 ("EFA"), S.C. Code §§ 59-20-10 to -80 (1990 & Supp. 1998). Specifically, Plaintiffs' Second Amended Complaint alleged that the State's statutory scheme of public funding for education (1) was under funded, lacked uniformity and imposed unlawful tax burdens on Plaintiffs; (2) was not serving the purposes for which it was enacted; (3) had resulted in a disparity in the educational opportunities for students throughout the State; and (4) was not being funded at the level mandated by the EFA and the Education Improvement Act ("EIA").

5. Plaintiffs sought a declaration that the EFA was unconstitutional as implemented, as well as a declaration that the level of education funding was inadequate. Plaintiffs further requested that the Court order the General Assembly to draft a new system for education funding in South Carolina and to appropriate funds alleged to be necessary to remedy past alleged inequities in funding.

² Marion 3 and Marion 4 were consolidated into Marion County School District 7. Orangeburg 3 was the product of a consolidation between Orangeburg 3 and Orangeburg 7. Both Marion 7 and Orangeburg 3 were trial plaintiffs.

6. Defendants³ filed motions to dismiss the Second Amended Complaint pursuant to Rules 12(b)(1) and (6), SCRCPP, which were heard by this Court on July 3, 1995. Defendants contended, among other things, that the facts as alleged did not constitute violations of the State or federal constitutions as a matter of law, and that no private right of action exists under the EFA. On September 20, 1996, this Court granted Defendants' motions to dismiss, and dismissed Plaintiffs' Second Amended Complaint with prejudice for failure to state facts sufficient to constitute a cause of action.

7. Specifically, this Court concluded as follows:

The very funding scheme at issue herein passed constitutional muster in Richland County v. Campbell [294 S.C. 346, 364 S.E.2d 470 (1988)] on equity grounds. The inclusion in this action of an adequacy claim does not prevent dismissal since the South Carolina Constitution is devoid of any standard upon which to adjudicate any such claim. There is no allegation that children are deprived of a meaningful education in this state. The Plaintiffs allege laudable goals for our educational system – ‘to meaningfully exercise the right of free speech, to participate meaningfully in government at all levels, to compete academically and in the job market and to make economic contributions to society’ – however, these goals, despite their merit, are not rights mandated by the constitution. While this Court is mindful of the importance of education to our society and our state and the futures of its children, these concerns cannot convert a non-justiciable

³ At the time of the filing of the Second Amended Complaint, the Defendants in this action were as follows: The State of South Carolina; the Honorable David M. Beasley, in his representative capacity as Governor; The Honorable Nikki G. Setzler, in his representative capacity as Chairman of the Senate Education Committee and Chairman of the Education Subcommittee and Chairman of the Education Subcommittee of the Senate Finance Committee, and as the agreed Representative of the South Carolina Senate; The Honorable David H. Wilkins, in his representative capacity as Speaker of the House of Representatives and as a Representative of the South Carolina House of Representatives; The Honorable Barbara S. Neilsen, in her representative capacity as State Superintendent of Education; and Ms. Celia Gettys, in her representative capacity as Chairman of the South Carolina State Board of Education. Following her election in 1998 as Superintendent of Education, Inez Tenenbaum was substituted for Barbara Neilson in her representative capacity. Both Tenenbaum and the South Carolina State Board of Education were voluntarily dismissed by Plaintiffs pursuant to Rule 41(a)(1)(A), South Carolina Rules of Civil Procedure as defendants on October 17, 2001.

controversy into a justiciable one. Further, if this court were to accept Plaintiffs' invitation to define the education clause as stated in ¶ 65 [of Plaintiffs' Complaint]; to declare the current system unconstitutional on the grounds [it] is underfunded, unequal, and inadequate; to be available to monitor the Legislature's reform efforts; and to require remedial funding, the courts would undeniably and irreversibly encroach on the functions given expressly to the legislative branch in the South Carolina Constitution. . . . This intervention would clearly violate the education clause and arguably the separation of powers clause. After reviewing the legislative efforts of the South Carolina General Assembly to provide funding for the public school system; after providing the necessary freedom to the legislature to meet changing needs; after giving every indulgence to constitutional validity; and after demanding clear and convincing proof that the current system is repugnant to the United States and South Carolina Constitutions, this court cannot find that a genuine issue of material fact exists based on the allegations of the Second Amended Complaint.

B. The Abbeville County Decision

8. Plaintiffs appealed the September 20, 1996 Order to the South Carolina Supreme Court, which affirmed dismissal of the action with the exception of the claim made pursuant to Article XI, Section 3 of the South Carolina Constitution. *See Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999).⁴ Specifically, the Supreme Court held that the Amended Complaint stated a claim for violation of the State Constitution's education clause, which provides as follows: "The General Assembly shall provide for the maintenance and support of a system of free public schools open to

⁴ The dismissal of Plaintiffs' claims under the equal protection clauses of the State and Federal constitutions was summarily affirmed under the strength of prior decisions of the Court. *Abbeville County*, 335 S.C. at 64-65, 515 S.E.2d at 538 (citing *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470 (1988)). Likewise, the Supreme Court affirmed the dismissal of Plaintiffs' claims brought under the EFA, finding that the EFA does not create a private right of action. *Abbeville County*, *supra* at 65, 515 S.E.2d at 539.

all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.” S.C. Const. art. XI, § 3.

9. In reaching that conclusion, the Supreme Court declared that it was its duty “to interpret and declare the meaning of the Constitution,” and, therefore, this Court “erred in using judicial restraint, separation of powers, and the political question doctrine as the basis for declining to decide the meaning of the education clause.” Abbeville County, 335 S.C. at 67, 515 S.E.2d at 539.

10. The Court noted that at the heart of the education clause controversy is the question of what duty the State Constitution imposes on the General Assembly by directing it to “provide for the maintenance and support of a system of free public schools open to all children.” *Id.* at 66, 515 S.E.2d at 539. The Supreme Court answered this question, holding that the education clause requires the General Assembly “to provide the opportunity for each child to receive a minimally adequate education.” *Id.* at 68, 515 S.E.2d at 540. The Court defined minimally adequate education

to include providing students adequate and safe facilities in which they have the opportunity to acquire:

- 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science;
- 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and
- 3) academic and vocational skills.

Id. The Supreme Court then remanded the case to this Court for a determination of whether the requisite opportunity is present in the Plaintiff Districts.

11. In defining what constitutes a minimally adequate education, the Supreme Court acknowledged that members of the judiciary “are not experts in education, and we

do not intend to dictate the programs utilized in our public schools.” *Id.* at 69, 515 S.E.2d at 540. Instead, the Court “defined, within deliberately broad parameters, the outlines of the constitution’s requirement of minimally adequate education.” *Id.*

12. The Court emphasized that “the constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government.” *Id.* at 69, 515 S.E.2d at 541. Thus, the Court concluded, “[w]e do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards.” *Id.* This declaration is in accord with the previous recognition by the Supreme Court that under Article XI, section 3, “the framers of the Constitution have left the legislature free to choose the means of funding the schools of this state to meet modern needs.” Richland County v. Campbell, 294 S.C. 346, 349, 364 S.E.2d 470, 472 (1988). *See also* Moseley v. Welch, 209 S.C. 19, 33-34, 39 S.E.2d 133, 140 (1946) (“The development of our school system in South Carolina has demonstrated the wisdom of the framers of the Constitution in leaving the General Assembly free to meet changing conditions.”).

C. Proceedings on Remand

13. In January of 2001, following remand, Plaintiffs again moved to amend their Complaint. The proposed Third Amended Complaint reiterated prior allegations, but also for the first time sought monetary damages and a jury trial. On June 1, 2001, this Court granted Plaintiffs’ motion to amend, but denied Plaintiffs’ request for a jury trial, finding that Plaintiffs had waived any right to trial by jury that may have attached to the

case. Additionally, this Court denied Plaintiffs' request for monetary damages, finding that the South Carolina Constitution's education clause is not self-executing and, as such, cannot serve as a basis for a cause of action for damages against the Defendants. *See* Order dated December 3, 2004.

14. The Third Amended Complaint also contained allegations regarding the racial characteristics of the Plaintiff Districts. On July 3, 2003, this Court granted Defendants' motion to strike the allegations regarding race contained in the Third Amended Complaint because it was too late to inject those issues into the case.⁵

III. QUESTION PRESENTED

15. Abbeville County creates but one issue for determination by this Court: Are the students in the Plaintiff Districts being provided the opportunity to acquire a minimally adequate education in adequate and safe facilities as defined by the South Carolina Supreme Court? Any attempt to answer this question must begin with consideration of the standard of proof.

A. Burden and Standard of Proof

16. The Plaintiffs contend that the appropriate standard of proof is the preponderance of evidence standard usually applied in civil cases. The Defendants urge the Court to adopt a standard of proof beyond a reasonable doubt which applies in

⁵ Throughout the trial, Plaintiffs continued to proffer evidence concerning the racial composition of the Plaintiff Districts and its alleged impact. While the Court allowed some evidence of the racial makeup of the Plaintiff Districts for limited purposes, the Court finds that student achievement is not a function of race, but rather of poverty. Moreover, Dr. Greg Hawkins, a Plaintiff's expert testified that in the Plaintiff Districts, race and poverty were collinear, i.e. essentially one and the same. Tr. Trans. (08/14/03), p. 38, ll. 4-7. Therefore, there is no need for the Court to consider race as a separate factor. Accordingly, the Court has considered only evidence relating to poverty as pertinent to this case.

criminal cases and in cases which seek to have legislative enactments declared unconstitutional.

17. The Plaintiffs ask this Court to declare both the funding and substantive components of South Carolina's educational system to be unconstitutional. *See* Fourth Amended Complaint at p. 21.

18. South Carolina's system of funding and supporting education is the result of various statutory enactments. It is well established that all statutes are presumed constitutional and will not be declared unconstitutional "unless [their] repugnance to the constitution is clear and beyond a reasonable doubt." Joytime Distribs. & Amusement Co., Inc. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (citing Westvaco Corp. v. South Carolina Dep't of Revenue, 321 S.C. 59, 467 S.E.2d 739 (1995)); Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 398, 596 S.E.2d 42, 47 (2004), *reh'ing denied* (May 25, 2004). "A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution." Joytime Distribs., *supra*. As our Supreme Court has explained,

[a]n adjudication that an act of the legislature is violative of the constitution, state or federal, and, therefore, invalid calls into play a delicate power of the courts and should be exercised with utmost caution and only in clear cases. It is a 'balance' of the government of checks and balances and constitutes a restraint upon the representatives of the people, whose the government is; and those representatives, constituting the legislature, are vested with plenary powers of government, limited only by the constitution, with which, it must be assumed, they consciously try to comply. In the interpretation and application of it, courts are and should be cognizant of a strong presumption in favor of the validity of legislation. It has often been said by this and

other courts that unconstitutionality is found only when it is seen beyond a reasonable doubt.

State ex rel. Edwards v. Query, 207 S.C. 500, 528, 37 S.E.2d 241, 252 (1946). *See also* State ex rel. Richards v. Moorer, 152 S.C. 455, 464, 150 S.E. 269, 272 (1929) (observing that “it is a grave matter to declare a solemn enactment of the legislature, a coordinate branch of the government, invalid, and . . . the court in its deliberations and conclusions should be guided by the well-settled principle that the unconstitutionality of an act must be shown beyond a reasonable doubt.”).

19. However the Plaintiffs do not claim that the statutes governing education in South Carolina are unconstitutional. They contend instead that the system of public schools in the Plaintiff Districts does not provide an opportunity for a minimally adequate education to each child and is, therefore, unconstitutional. The question therefore is not whether individual statutes affecting education in South Carolina are constitutional, but whether the educational opportunities presented by the interplay and implementation of the system of free public schools developed by the General Assembly meet the constitutional mandate of offering each child in the Plaintiff Districts the opportunity for a minimally adequate education. As the South Carolina Supreme Court stated clearly in the Abbeville opinion, “At the heart of this controversy is the question of the duty imposed upon the General Assembly by this constitutional provision.” Abbeville County Sch. Dist. v. State, 335 S.C. 58, 67, 515 S.E.2d 535, 539 (1999). The question to be decided by this Court then, stated another way: Is the State meeting its constitutional obligation of providing to each child an opportunity for a minimally adequate education, or is it not?

20. As emphasized in Abbeville, the “constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina” rests firmly on the State. *Id.* at 69, 515 S.E.2d at 541.). The means by which the State chooses to comply with this duty is left to the General Assembly, but it must comply. For example, the State may choose to employ a shared funding system, it may choose to require a certain number of school days or years, or it may choose to require certain characteristics of teachers or administrators. All of those matters are left to the General Assembly. It may choose to legislate in any fashion it desires, so long as it acts constitutionally and meets its mandate of providing each child the opportunity for a minimally adequate education. If the General Assembly were to enact a specific piece of legislation that was constitutionally impermissible because, for example, it violated equal protection or due process, the Defendants would be correct in arguing that a challenge to the legislation must be proven beyond a reasonable doubt. This is what occurred in Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988), when Richland County and some of its citizens unsuccessfully claimed that the shared funding plan in the Education Finance Act violated the equal protection guarantee of the South Carolina Constitution. This was also the allegation in Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946), when citizens of Williamsburg County successfully proved that a school funding statute was unconstitutional in that it denied them due process and equal protection of the law.

21. The State’s legislative enactments may carry a presumption of validity, and the General Assembly is, and should be, afforded great latitude in determining the means

and methods they employ to meet their constitutional mandate, but the ultimate question before the Court is whether they have done so.

22. Therefore, each statute enacted by the General Assembly that affects the system of public schools may be constitutionally valid and yet the system, as implemented, may be constitutionally insufficient. If the system of public schools resulting from the actions or inactions of the General Assembly does not provide the opportunity for a minimally adequate education to each student in South Carolina, the State has not fulfilled its mandatory duty under our constitution. This Court is not called upon to decide whether the statutes affecting public education violate some provision of the constitution because they exceeded the constitutional limitations on legislative power, as in Moseley or in Richland County v. Campbell, but whether the system of public schools meets the constitutional mandate of quality outlined in Abbeville. This is an important distinction. In each of the cases cited by Defendants to support their argument on the burden of proof, the constitutionality of a particular statute or ordinance was in question.

23. Giving deference and great weight to the Defendants does not require the Plaintiffs to prove their case beyond a reasonable doubt. While proof beyond a reasonable doubt may be required to establish the invalidity of particular legislative means chosen, it is not required to establish the failure to meet the constitutional ends. “Although. . . the judiciary will not encroach into the legislative field of policy making, as the final authority on constitutional questions the judiciary has the constitutional duty to declare unconstitutional that which transgresses the state constitution.” Campbell County Sch. Dist. v. State of Wyo., 907 P.2d 1238, 1264 (Wyo. 1995).

24. The Burden of Proof therefore is by a preponderance of the evidence. Stated succinctly for the purposes of this case, have the Plaintiffs introduced evidence that proves, more likely than not, that the Defendants have failed to provide an opportunity for a minimally adequate education to the children within the Plaintiff Districts?

B. The Abbeville County Standard

25. Plaintiffs first must prove by a preponderance of the evidence that students in the Plaintiff Districts do not have the opportunity to acquire a minimally adequate education as defined in Abbeville County. It is therefore important to examine that decision in detail, and to understand its context. All fifty state constitutions contain provisions that require the state to establish and maintain public school systems open to all children.⁶ To date, more than forty states have faced some form of school finance litigation. Larry J. Obhof, *Rethinking Judicial Activism and Restraint in State School Finance Litigation*, 27 Harv. J.L. & Pub. Pol'y 569, 575 (2004). Of these, approximately twenty-four state courts have upheld their education systems as constitutional, while another seventeen have relied on either their state's education clause or its equal protection clause to find the school finance system unconstitutional. *Id. See also Montoy v. State*, 2003 WL 22902963, *4 (Kan. Dist. Ct.) (summarizing cases).

⁶ See Ala. Const. art. XIV, § 256; Alaska Const. art. VII, § 1; Ariz. Const. art. XI, § 1; Ark. Const. art. XIV, § 1; Cal. Const. art. IX, § 1; Colo. Const. art. IX, § 2; Conn. Const. art. VIII, § 1; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1; Ga. Const. art. VIII, § 1; Haw. Const. art. X, § 1; Idaho Const. art. IX, § 1; Ill. Const. art. X, § 1; Ind. Const. art. VII, § 1; Iowa Const. art. IX, § 3; Kan. Const. art. VI, § 1; Ky. Const. § 183; La. Const. art. VIII, § 1; Me. Const. art. VIII, § 1; Md. Const. art. VIII, § 1; Mass. Const. pt. 2, ch. V, § 2; Mich. Const. art. VII, § 2; Minn. Const. art. XIII, § 1; Miss. Const. art. VIII, § 201; Mo. Const. art. IX, § 1, cl. a; Mont. Const. art. X, § 1; Neb. Const. art. VII, § 1; Nev. Const. art. XI, § 2; N.H. Const. pt. 2, art. 83; N.J. Const. art. VIII, § 4, para. 1; N.M. Const. art. XII, § 1; N.Y. Const. art. XI, § 1; N.C. Const. art. IX, § 2; N.D. Const. art. VIII, § 1; Ohio Const. art. VI, § 3; Okla. Const. art. XIII, § 1; Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; R.I. Const. art. XII, § 1; S.C. Const. art. XI, § 1; S.D. Const. art. VIII, § 1; Tenn. Const. art. XI, § 12; Tex. Const. art. VII, § 1; Utah Const. art. X, § 1; Vt. Const. ch. 2, § 68; Va. Const. art. VIII, § 1; Wash. Const. art. IX, § 1; W. Va. Const. art. XII, § 1; Wis. Const. art. X, § 3; Wyo. Const. art. VII, § 1.

26. As expressly held by our Supreme Court, the Abbeville County standard is one of opportunity. This standard is materially different from the requirements in other states, which tend to focus more on achievement than opportunity. *See e.g., Leandro v. State*, 488 S.E.2d 249 (N.C. 1997) (concluding that the North Carolina Constitution guarantees that each child of the state will receive a sound basic education); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989) (setting forth six goals of educational achievement); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997) (same).

27. The Court's initial task, therefore, is to clearly and intelligibly set forth a standard by which to determine whether the opportunity to acquire a minimally adequate education exists in the Plaintiff Districts or not – a task that is not without difficulty.

28. Abbeville, unlike some decisions from other jurisdictions, did not delineate the specific educational outcomes mandated by the constitution. For example, the first prong of Abbeville requires the State to offer children in the public schools the opportunity to acquire the ability to read, write, and speak the English language, but the Abbeville court did not specify the skill level necessary to fulfill the requirement. The same is true for the educational opportunities set out in the second and third prongs of the Abbeville definition. The Abbeville court did not declare the level of educational opportunities the State must offer, such as the specific grade level or reading level that the State has to provide, standard, although admittedly it would have made this court's task much easier. It would have been possible, for example, to hold that the first prong of Abbeville only requires the opportunity to learn to "read" at the most basic level. The equivalent of a first or second grade education might be sufficient to enable someone to

“read” by identifying words, if the media is simple enough. Similarly, knowing how much change one is owed after purchasing a soft drink at the local convenience store is, to some extent, “knowledge” of math.

29. It is more difficult, however, to assign skill levels to the second prong of the Abbeville definition, which requires the opportunity to acquire “a fundamental knowledge of economic, social and political systems, and history and governmental processes.” Is it sufficient to learn enough to run a household, to interact with a neighbor or employer, to intelligently cast a vote while participating in the political process, or to appreciate one’s place in our government, in history, and the greater society?

30. The court has given the educational opportunities offered to students in the Plaintiff Districts their plain and ordinary meaning, and considered the testimony and other evidence describing the opportunities, and lack of opportunities, offered these students. The court also considered evidence directed to Abbeville’s insightfully articulated language. The criterion, standing alone or together, leads to the same conclusion. The opportunities described in Abbeville are intended to give each child in South Carolina a chance at life: the opportunity to be a productive citizen, to engage meaningfully in the political process, to be adequately informed to serve intelligently on juries, to know his place in the world and how he can, through education, exercise choices in where to live and perhaps raise a family—in short, to receive the opportunity for an education sufficient to join with all South Carolinians as they progress through school and life with an appreciation of this great state and nation.

31. The court begins its examination of the standard set forth in Abbeville by giving the words their plain and ordinary meaning.

1. Opportunity

32. Perhaps the most important word in the Abbeville County opinion is “opportunity.” The education clause does not require the General Assembly to ensure that all children in South Carolina receive a minimally adequate education. Rather, the education clause requires the General Assembly to provide the *opportunity* for all children in South Carolina to acquire a minimally adequate education. Cf. Jackson v. Benson, 578 N.W.2d 602, 628 (Wis. 1998) (observing that the state’s uniformity clause, intended to ensure minimal educational opportunities, “does not require the legislature to ensure that all of the children in Wisconsin receive a free uniform basic education,” but rather it “requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education.”).

33. Opportunity connotes availability and occasion. It does not mean achievement or guaranteed success. The most consistent legal definition of opportunity appearing in the case law is “a fit or convenient time” or “a suitable occasion.” See In re House’s Guardianship, 19 N.W. 973 (Minn. 1884); In re Brown, 39 P. 469 (Okla. 1885); Lane v. Fid. Mut. Life Ins. Co., 54 S.E. 854 (N.C. 1906).

34. It hardly requires legal authority, however, to determine the plain and ordinary meaning of the term. Opportunity means the *chance* for progress or advancement to occur. *The American Heritage Dictionary of the English Language* (4th ed. 2000). Opportunity does not mean that progress, advancement or achievement will, in fact, occur.

35. However, opportunity cannot be measured by a purely objective standard. In determining whether opportunity actually accords “the chance for progress or

advancement to occur,” one must examine not only the means by which the opportunity is offered, but also the characteristics of the one to whom it is offered. The stairway that is one child’s avenue to achievement and success is simply an obstacle to one unable to climb. So it is with opportunity, which cannot be measured or evaluated in some abstract qualitative way without taking into account the characteristics of the ones to whom the opportunity is offered.

2. Minimally Adequate

36. The phrase “minimally adequate education” appears to be unique to the judicial lexicon of South Carolina. Any consideration of the evidence in this case must take into account the implications inherent in this description of what is constitutionally required in South Carolina. One commentator has undertaken to categorize the various constitutional standards that have been adopted by courts considering adequacy cases:

Several scholars, analyzing state education articles or clauses, have classified them into four categories based upon the level of duty imposed on the state legislature. These categories range from those which merely ‘provide for a system of free public schools,’ Category I, to those which make education an important or paramount duty of the state, Category IV. Included within that range are Category II clauses which impose some minimum standard of quality that the state education system must provide and Category III clauses with “stronger and more specific education mandates.

Staros, J., *School Finance Litigation in Florida*, 23 Stetson L.Rev. 497 (1994) at 498-99.

South Carolina’s constitutional provision on its face appears to belong in Category I, but as interpreted by the Supreme Court in Abbeville County, might now be considered as belonging in Category II. In either case, however, it does not install educational **achievement** as the paramount duty of the State.

37. “Minimally” is derived from “minimum”, which means “[t]he least quantity assignable, admissible or possible in [a] given case and is opposed to maximum.” Black’s Law Dictionary, 995 (6th ed. 1990). As one court observed, “the only way to logically discuss ‘reaching’ a ‘minimum’ is to ask whether any less can be provided, such that the least is finally attained.” Charlet v. Legislature of the State of Louisiana, 713 So.2d 1199, 1206 (La. App. 1998).

38. “Adequate” pertains to that which is “[s]ufficient . . . equal to what is required; suitable to the case or occasion.” Black’s Law Dictionary, *supra* at 39. Thus, “minimally adequate” refers to the least possible quantity of a thing that is suitable for the occasion. In the content of this litigation, minimally adequate refers to the existence of the least possible quantity of factors or conditions that are necessary to create the opportunity to acquire the fundamental skills outlined in Abbeville County.

39. In this regard, “minimal adequacy” is necessarily understood to mean something less than the most or best that could be done. Much testimony has been offered during the course of this trial for educators and experts about best practices obtaining optimum results. Those practices are laudable goals, but they do not define the constitutional standard outlined in Abbeville County. “Minimal adequacy” is a very low standard, which by definition does not require the best policies or practices. This is yet another distinction between South Carolina’s constitutional standard and standards employed in similar cases in other states.

40. It follows therefore that Article XI, section 3 requires not a ceiling, but rather a floor upon which the General Assembly can build additional opportunities for school children in South Carolina. *Compare* Robinson v. Cahill, 287 A.2d 187, 210-211

(N.J. 1972) (defining what a thorough and efficient education entails and noting that the word thorough in the state’s education clause “connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal.”).

3. Substantive Components of a Minimally Adequate Education

41. In holding that the education clause “requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education,” Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540, our Supreme Court declined to adopt *en bloc* any of the definitions pronounced by courts in other jurisdictions. The Court therefore excluded a plethora of factors deemed necessary to the provision of an “adequate education,” “sound basic education” or “efficient system of education” as adopted by courts in Kentucky⁷, North Carolina⁸, and Massachusetts⁹ – opinions the

⁷ See Rose v. Counsel for Better Educ., 790 S.W.2d 186 (Ky. 1989). In Rose, the Kentucky Supreme Court declared that “an efficient system of education must have as its goal to provide each and every child with at least the seven following capabilities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.” Rose, 790 S.W.2d at 212.

⁸ See Leandro v. State, 488 S.E.2d 249 (N.C. 1997). In Leandro, the North Carolina Supreme Court defined a “sound basic education” as “one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basis economic political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student’s community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage

South Carolina Supreme Court considered, but declined to adopt, when formulating its definition of minimally adequate education. Instead, the Supreme Court defined a minimally adequate education as 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills as the sole constitutional components of a minimally adequate education.

42. It is important, therefore, to note some things that are *not* part of a minimally adequate education as defined by our Supreme Court. A minimally adequate education does not require instruction in music, art, physical education, or foreign languages. Nor does it include extracurricular activities or sports. While we may value these things as a part of a rich educational experience, they are not constitutionally required by Abbeville County.

43. To be sure, it is desirable that the State provide more than whatever is deemed minimally adequate, and the evidence presented at trial establishes that the educational goals of the State extend far beyond minimal adequacy to the highest level of academic skills at each grade level. The constitutional question, however, is not whether additional funding by the State is necessary to reach this goal or whether more money could improve South Carolina's schools, but whether current funding and policies are

in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.” Leandro, 488 S.E.2d at 357 (citing Rose, *supra*).

⁹ Compare McDuffy v. Sec’y of Educ., 615 N.E.2d 516 (Mass. 1993). In McDuffy, the Massachusetts Supreme Court adopted verbatim the goals set forth by the Kentucky Supreme Court in Rose, *supra*.

sufficient to provide the opportunity for South Carolina students to acquire a minimally adequate education. Abbeville County sets a constitutional floor below which the General Assembly may not fall, but beyond which the General Assembly is not constitutionally required to advance. *See* Abbeville County, 335 S.C. at 69, 515 S.E.2d at 540.

4. Issues Beyond Judicial Review

44. In setting out the question presented in this case, it is also necessary to note certain issues that are not before the Court for decision. Specifically, the role of this Court is restricted to one factual inquiry: whether the opportunity exists for each child in the Plaintiff Districts to acquire a minimally adequate education. In approaching this question, this Court is without mandate or authority to adjudicate what educational policies and programs would better serve the State, or to substitute the judgment of the Court for that of the General Assembly.

45. The Supreme Court has previously observed that our Constitution “places very few restrictions on the power of the General Assembly in the general field of public education” Richland County, 294 S.C. at 349, 364 S.E.2d at 472 (*quoting* Moseley, 209 S.C. at 33, 39 S.E.2d at 140). Moreover, it is well established that “[w]hen the Legislature has enacted a rule embodying a particular policy choice, the courts have no power to annul the Legislature’s judgment by substituting their own views of sound public policy. It is not the province of the courts to perform legislative functions.” Holman v. Bulldog Trucking Co., 331 S.C. 341, 348, 428 S.E.2d 889, 893 (Ct. App. 1993) (internal citation omitted) (citing Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977)). Stated differently, “the responsibility for the justice or wisdom of

legislation rests exclusively with the legislature, whether or not [a court] agree[s] with the laws it enacts.” Adkins v. Comcar Indus., Inc., 316 S.C. 149, 151, 447 S.E.2d 228, 230 (Ct. App. 1994), *aff’d* 323 S.C. 409, 475 S.E.2d 762 (1996). These fundamental principles were echoed by the Supreme Court in Abbeville County. See Abbeville County, 335 S.C. at 69, 515 S.E.2d at 541 (“We do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards.”).

46. Thus, this case is not about what the Court thinks is best for education in South Carolina or the Court’s view as to the best way to deliver educational services to students in South Carolina. Nor is the issue how the Plaintiff Districts are treated or perform compared to other districts in the State. See Abbeville County, 335 S.C. at 65, 515 S.E.2d at 538 (“Unlike similar suits brought in other states, [plaintiffs] do not seek ‘equal’ state funding since they already receive more than wealthier districts, but instead allege that the funding results in inadequate education.”). Nor is the issue the relative burden on taxpayers in the Plaintiff Districts compared with taxpayers elsewhere. The question presented is absolute, not comparative. Abbeville County does not require a system assuring substantially equal educational facilities and services throughout the State. As in New York, “[t]he Education Article does not by its express terms contain an egalitarian component.” Paynter v. State, 720 N.Y.S.2d 712, 716 (N.Y. 2000) (quoting Reform Educ. Fin. Inequities Today v. Cuomo, 655 N.E.2d 647, 648 (1995)).

47. Abbeville County constrains this Court not to engage in policy making for education in South Carolina. This case is not a forum about what ought to be or what

policy choices the Court would make if it were authorized to do so. Accordingly, this Court must decide this case not in terms of whether the Court believes that one policy is superior and another is wanting, but rather based on whether the system of education policies enacted by the General Assembly sufficiently provides the opportunity for students to acquire a minimally adequate education.

48. However, this Court would be remiss and would abdicate its responsibility under Abbeville County if, having found that the Defendants have failed to provide the opportunity for students to acquire a minimally adequate education, it did not point out where any such failure (s) might lie. Otherwise, the Defendants would be forced to flounder in a sea of uncertainty in trying to determine what system or policies would need to be modified or adopted in order to ensure the existence of an opportunity for a minimally adequate education. In spite of the limitations imposed upon this Court by Abbeville County, the Court is not constrained to avoid reference to specific policies or programs, or the lack thereof, which inhibit an opportunity to acquire a minimally adequate education.

IV. MEASURING THE OPPORTUNITY FOR A MINIMALLY ADEQUATE EDUCATION

A. Inputs versus Outputs

49. To answer the question whether each child in the Plaintiff Districts has the opportunity to acquire a minimally adequate education, it is necessary to determine how the presence or absence of such an opportunity can and should be measured. By expressly stating the requirements of the education clause in terms of an opportunity, the Supreme Court has clearly declined to require any particular set of “outcomes” as establishing the existence of a minimally adequate education. However, it is impossible

to measure the presence or absence of an opportunity to acquire a minimally adequate education without some examination of the outcomes of the educational process.

50. How is the presence or absence of the opportunity to learn to be determined? Many courts have struggled to establish judicially manageable standards upon which to adjudicate such a claim, given that this is an area “traditionally deferred to state legislatures.” San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 40 (1973). In the absence of a manageable standard against which the unconstitutionality of South Carolina’s system of funding education can be determined, any decision by this Court might appear to be “an unwise and unwarranted entry into the controversial area of public school financing, whereby this Court would convene as a ‘superlegislature,’ legislating in a turbulent field of social, economic and political policy.” McDaniel v. Thomas, 285 S.E.2d 156, 165 (Ga. 1981) (quoting Thompson v. Engelking, 537 P.2d 635 (1975)). With these competing considerations in mind, the Court must determine how the presence or absence of the opportunity to acquire a minimally adequate education can be measured.

51. Much of the evidence presented in this case can be loosely grouped into two categories: “Inputs” refers to the instrumentalities of learning that are provided to districts, schools and students. Inputs include money, curriculum, teachers, and programs. “Outcomes” on the other hand refer to the success of the students in those districts and schools, and include test scores, graduation rates, and other results of the educational process.

52. Overshadowing both “inputs and outcomes” hovers the dark specter of poverty. Poverty alone explains “well over 62% of the variation of PACT scores,” one of

the more significant “outcomes” of the educational process. See Tr. Trans. (8/14/03, p. 37 ll. 21-22). Moreover, poverty dramatically affects the efficacy of “in puts” offered by the process. Therefore, any analysis of the presence or absence of “opportunity” must be determined against the backdrop of poverty. (The affects of poverty on the educational process and on the constitutional obligations of the Defendants is discussed in greater detail below.)

53. The education clause of the Constitution does not require the State to ensure that all students acquire a minimally adequate education. However, it does require the State to provide to “each child”¹⁰ the “the opportunity to obtain a minimally adequate education.” Therefore, inputs, outcomes, and the impact of poverty¹¹ must be taken into account in determining whether or not the State has fulfilled its constitutional obligation.

54. Therefore, the Court finds that it cannot rely exclusively on evidence of inputs or exclusively on outputs in reaching a determination of whether a constitutional violation exists.

B. Funding for Education: State versus Federal Sources

55. One of the principal inputs into the education process is money. In considering whether funding is sufficient, the question of whether all sources of funding should be considered also arises.

56. In South Carolina, “public education is funded by the federal, state, and local governments.” Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538. In general,

¹⁰ The Court construes the constitutional requirement not to refer to individual students, but to groups of students who share similar characteristics. In this case, the evidence largely focused on students in poverty, referred to in the evidence as “at-risk” students. The Court does not construe Abbeville County’s reference to “each child” to include students in special education programs. Indeed, Plaintiffs’ evidence often referred to the problems associated with “aggregations” of students in poverty. See, e.g. Tr. Trans. (01/09/04), p. 36, ll. 16-18; (01/13/04), p. 183, ll. 14-15; (02/24/04), p. 47, ll. 24 – p. 48, l. 1.

¹¹ Throughout the trial of this case, all parties have conceded that eligibility for free and reduced lunches amounts to a proxy for poverty. See e.g. tr. trans. (8/14/03) p. 69 ll. 13-19.

federal revenue accounts for approximately 9% of funding for education in South Carolina, while local revenue accounts for approximately 40%, and State funding accounts for roughly 50% of the total revenue spent on education in South Carolina. *See* Plaintiffs' Exhibit 6010. This tripartite structure of funding has long been the means funding education in South Carolina. *See id.*

57. Plaintiffs maintained early on in this litigation that federal funding is irrelevant to the determination of whether the State meets the obligations imposed upon it by the education clause of the South Carolina Constitution. The Court finds this argument unpersuasive for several reasons.

58. First, Plaintiffs' argument rests on many federal statutes that expressly provide that federal aid may not be used to "supplant" state and local funds available for the education of a state's children. Deciding what constitutes a "supplementation" or "supplantation" is a complex question completely controlled by federal law, and which the federal statutory scheme places exclusively in the hands of the United States Secretary of Education. Hoke County Bd. of Educ. v. State, 599 S.E.2d 365, 396 (N.C. 2004). *See* 20 U.S.C. § 1234(a) (2002). There is no evidence in the record that the United States Secretary of Education has either refused or withdrawn federal funding from the State because such funds were being used in violation of Title I, 20 U.S.C. § 6321 (b)(1). The present case does not involve even an allegation that the State of South Carolina has supplanted State funds with federal aid. There is no basis to conclude that federal aid is supplanting education funds provided by the State. Thus, the Court finds that the provisions of the federal statutes cited by Plaintiffs have no application to this case.

59. Nor are federal funds always limited in their use, which enhances their relevance to the issue before the Court. For example, when a school's free and reduced lunch percentage is greater than 50%, the Title I funds become highly flexible, and those funds can be used for school-wide projects. The funds are basically treated as general funds by the district. Tr. Trans. (06/28/04), p. 82, l. 7 - p. 83, l. 7. It would therefore be inappropriate to ignore those funds in deciding this case.

60. Further, while the State has a duty to provide the opportunity for every child to acquire a minimally adequate education, the Court finds that no State statutory or constitutional provision obligates the State to be the exclusive source of the opportunity's funding. Certainly Abbeville County does not command that result. *See also Hoke County*, 599 S.E.2d at 395-396. The Court finds that in providing that South Carolina's education clause "requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education," Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540, the South Carolina Supreme Court did not set any limits by which the State must provide that opportunity. Instead, the Court left it up to the General Assembly of the State "to determine the way in which educational opportunities are delivered to the children of our State." *Id.* at 69, 515 S.E.2d at 541.

61. The question of whether federal funding is relevant to the proceedings before this Court is a novel one. Very little guidance on this question is available from other jurisdictions. This Court will attempt, therefore, to answer this question in a way that, in the Court's judgment, the South Carolina Supreme Court would answer the question. Examined in that light, the Court's conclusion that federal funds are relevant is strengthened. If Plaintiffs' position were adopted by the Court, then anything regarded as

necessary to create the opportunity for a minimally adequate education that is currently provided by federal dollars would have to be replicated by the State. It does not appear that our Supreme Court would regard such a redundant duplication of public resources as necessary to meet the constitutional requirements of Abbeville County.¹²

62. Irrespective of funding sources, this Court’s role is to determine that every child is receiving an opportunity to acquire a minimally adequate education as defined by our Supreme Court, and to determine that the State’s funding scheme adequately provides resources in compliance with that constitutional directive. For this purpose, federal funds are relevant and should be included in the Court’s analysis.

C. Funding for Education: State versus Local Sources

63. Plaintiffs also contend that “local” funds should be excluded from any determination of whether “the State” is providing the opportunity for a minimally adequate education.

64. The General Assembly of the State of South Carolina is entrusted with the taxing power “and except by express permission of the sovereign authority, this power cannot be delegated to any subordinate agency.” Crow v. McAlpine, 277 S.C. 240, 243, 285 S.E.2d 355, 357 (1981) (citing Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949)).¹³ The taxing power is “one of the highest prerogatives of the General Assembly.” Crow, 277 S.C. at 244, 285 S.E.2d at 358. Article X, section 6 of the South Carolina Constitution provides that “[t]he General Assembly may vest the power of

¹² Finally, Federal dollars are public moneys derived through the taxing of our State’s citizens. The fact that the money flows through the federal government back to the State does not distinguish its public character.

¹³ The General Assembly “is a body created by the state constitution under which all political power is vested in and derived from the people; it is a coordinate branch of the state government exercising part of the state’s sovereign powers.” 81A C.J.S. *States* § 40.

assessing and collecting taxes in all of the political subdivisions of the State.” S.C. CONST. art. X, § 6.

65. It is well established that “[s]chool districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State’s taxing power.” Crow, 277 S.C. at 243-44, 285 S.E.2d at 357 (citing cases). As a body politic, a school district is merely a creature of the State, Wright v. Colleton County Sch. Dist., 301 S.C. 282, 288, 391 S.E.2d 564, 568 (1990), performing State functions. Parker v. Bates, 216 S.C. 52, 60, 56 S.E.2d 723, 725 (1949) (quoting Chesterfield County v. State Hwy Dep’t., 191 S.C. 39, 46, 3 S.E.2d 686, 689 (1939)); Willis Constr. Co., Inc. v. Sumter Airport Comm’n, 308 S.C. 505, 509, 419 S.E.2d 240, 241 (Ct. App. 1992) (observing that a political subdivision “is a division or subdivision of the State invested with governmental functions.”). “Ordinarily, a political subdivision may exercise whatever portion of *state power* the State, under its own constitution and laws, chooses to delegate to the subdivision.” City of Columbus v. Ours Garage & Wrecker Serv., 536 U.S. 424, 428 (2002) (emphasis added).

66. Thus, while the State may have the constitutional duty to provide students of the State with the opportunity to acquire a minimally adequate education, local school districts and other political subdivisions may be authorized to levy taxes as a means to assist in achieving this end. Bowaters Carolina Corp. v. Smith, 257 S.C. 563, 570, 186 S.E.2d 761, 763 (1972); Hay v. Leonard, 212 S.C. 81, 97-98, 46 S.E.2d 653, 660 (1948) (observing that “Article XI, section 6, provides that any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.”). Because the power to tax is an exclusive prerogative of the General Assembly, once this

power is delegated to a political subdivision, the local revenue raised for education by that political subdivision is, in fact, State revenue procured by the State through the delegation of the power to tax. See City of Columbus, *supra* at 437 (“The principle is well settled that local governmental units are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion.”). Therefore, there is no distinction between State and local funding as a matter of law, and funding from “local” sources is relevant to determining whether resources are sufficient to create the opportunity for a minimally adequate education.

PART TWO

V. DESCRIPTION OF PRINCIPAL EDUCATION LEGISLATION

67. South Carolina’s system of educational policies and the funding thereof are embodied in many different legislative enactments. The discussion that follows is a general description of the principal legislative components of South Carolina’s education system.

A. The Education Finance Act of 1977 (“EFA”)

68. Historically, in South Carolina local governments provided the largest share of revenue allocated to the operations and maintenance of public schools. Jackson L. Flanigan & Michael D. Richardson, *South Carolina Educational Finance*, 5 (2d ed. 1993). Prior to the adoption of the EFA, the sales tax operated as the main source of revenue used to fund South Carolina’s public schools by the State, while the property tax operated as the main source of revenue used to fund South Carolina’s public schools by local governments. *Id.* at 5-7. However, as disparities in local capacity to finance public

schools became more obvious and problematic, the State began to take steps to address and ameliorate the problem of disparities in property wealth by enacting the EFA on June 10, 1977. The EFA was recognized as “the most comprehensive piece of legislation for public education to be enacted in South Carolina.” *Id* at 9. The EFA distributes funds using a wealth-sensitive formula, which results in districts with low property wealth, such as the Plaintiff Districts, receiving more money than wealthier districts. Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538; Richland County, 294 S.C. at 350, 364 S.E.2d at 472 (observing that “school districts which lack a sufficient tax base *receive proportionally more* state funds and are required to *pay proportionately less* local revenue for public school operation.” (emphasis in original)).

69. Presently codified at S.C. Code Ann. § 59-20-10, *et. seq.* (Rev. 2004), the purpose of the EFA is to provide to each student in South Carolina public schools the availability of minimum education programs and services appropriate to the student’s needs; to encourage school district initiative in seeking more effective means in achieving the goals of the various programs; to establish a procedure for the distribution of a specified portion of State education funds to ensure the funds are provided on the basis of need; to make it possible for each school district to provide a minimum program and to do so with equal local tax effort; to establish a reasonable balance between the portion of the funds to be paid by the State and the portion of the funds to be paid by the districts in support of education foundation programs; to require each local school district to contribute its fair share to the required local effort; and to ensure that tax dollars spent in South Carolina’s public schools are utilized effectively. S.C. Code Ann. § 59-20-30 (1) – (7). The goals of the EFA were to be accomplished “by providing each public school

student an equal education opportunity in terms of financial support, and requiring each school district to report how these financial resources are used in providing education programs.” Flanigan, *et al.*, *supra* at 9-10.

70. The EFA relates to South Carolina’s “foundation” program, which is defined in the Act as “programs for South Carolina’s public school students, regardless of their geographic location, after the students are transported to school and housed in school plants.” S.C. Code Ann. § 59-20-20(1). The basic component of funding under EFA is the Base Student Cost (“BSC”). S.C. Code Ann. § 59-20-40. The EFA includes “pupil weights,” which increase the amount of money that a district receives depending upon the characteristics of the district’s student population. S.C. Code Ann. § 59-20-40. The weight for each category is multiplied by the BSC and by the number of students in that category. The categories and weights for each under EFA are as follows:

Kindergarten Pupils 1.30	Primary Pupils (grades 1 - 3) 1.24
Elementary Pupils (grades 4 - 8) base students 1.00	High School Pupils (grades 9 – 12) 1.25 -Special programs for exceptional students weightings
Handicapped 1.74 -Educable mentally handicapped -Learning disabilities	Handicapped 2.04 -Trainable mentally handicapped -Emotionally handicapped -Orthopedically handicapped
Handicapped 2.57 -Visually handicapped -Hearing handicapped -Pupils with autism	Speech Handicapped Pupils 1.90
Homebound Pupils 2.80 -Pupils who are homebound -Pupils who reside in emergency shelters	Pre-Vocational 1.20 -Add-on weights for early childhood development and academic weightings assistance
Early Childhood Assistance 0.26	Grades 4-12 Academic Assistant 0.114
Adult Education 0.15	

71. Under the EFA's "weighted pupil" approach, a district receives the BSC multiplied by the factor listed above for each student in each category. S.C. Code Ann. § 59-20-40(d). Districts with large numbers of students in the weighted categories listed above obviously get much more total revenue under the EFA formula. Pupil weights are also assigned under Act 135, which is discussed below. Significantly "poverty" is not assigned a pupil weight.

72. EFA requires that at least 85% of the funds received in each classification be spent for direct or indirect aid for the children in that classification. S.C. Code Ann. § 59-20-50(3). The districts have flexibility to spend up to 15% of the weighted money outside of programs for the classifications that generated the funds, and may provide "indirect" aid for students in the classifications. As of 2002, however, districts have been given much greater flexibility by the General Assembly. *See infra* at section VI. (H).

73. Teacher salaries are paid through EFA, and each district is required to adhere to the State minimum salary schedule. S.C. Code Ann. § 59-20-50(4)(a). Additionally, no teacher or administrator's salary may be reduced from the prior year's salary for the same job. *Id.* EFA requires a district to conform to a maximum pupil/teacher ratio currently of 21:1 in reading and math for grades 1-3 in order to qualify for funds. S.C. Code Ann. § 59-20-40(5). Actual pupil/teacher ratios in the Plaintiff Districts are substantially lower than the maximum.

74. The EFA distributes funds based on a wealth sensitive formula, so that districts with lower tax bases receive more revenue per pupil than districts with higher property values. The EFA baseline is seventy (70%) percent, meaning that before wealth adjustments are made, the State provides 70% of the cost of the foundation program, with

the remaining 30% being paid with local revenues. Because of the wealth sensitivity of the EFA, however, the actual percentage varies “dramatically” from district to district. Tr. Trans. (08/16/04), p. 58 ll. 24 – p. 59 ll. 12. For example, the percentages of EFA State support to the Plaintiff Districts are as follows: Allendale (80%); Dillon 2 (84%); Florence 4 (83%); Hampton 2 (86%); Jasper (76%); Lee (85%); Marion 7 (87%); and Orangeburg 3 (82%). Defendants’ Exhibit 2913. By contrast, the percentages of EFA State support for selected other non-Plaintiff Districts are as follows: York 2 (16%); Beaufort (23%); Oconee (51%); and Spartanburg 5 (58%). *Id.*

75. A significant portion of Plaintiffs’ case was devoted to establishing that the EFA is underfunded. Plaintiffs presented evidence showing that while the level of funding the BSC has varied each year, beginning in 2000, the “required” BSC has been more than the BSC funded by the State. Plaintiffs’ Exhibits 6612PP and 6612QQ. Of course, the BSC is only one component of funding received by the districts from the State, as established below

B. The 1984 Education Improvement Act (“EIA”)

76. In 1984, the General Assembly enacted the EIA, which raised the State sales tax from 4% to 5% to provide additional revenue to fund education. S.C. Code Ann. § 59-20-10, *et seq.* (Rev. 2004). All money generated by the sales tax in South Carolina is used for education, with the 1% represented by the EIA being placed annually in a special account. *See* S.C. Code Ann. § 59-21-1010(B); 12-36-2620 (Supp. 2003). The other 4% is placed in the general fund, but is nonetheless required to be spent on education. *See* S.C. Code Ann. § 59-20-1010(A); 12-36-2620(1) (Rev. 2000). Unlike the EFA, the EIA primarily supports categorical programs, and distributes funds without

regard to a school district's tax base. Abbeville County, 335 S.C. at 64, 515 S.E.2d at 538. Most of these categorical programs are targeted to students who need extra academic assistance, and therefore districts with higher numbers of these students tend to receive higher funding under EIA. S.C. Code Ann. § 59-20-40 (Rev. 2004 & Supp. 2004).

77. The reforms incorporated into EIA were sweeping. EIA raised the academic requirements for a high school diploma in South Carolina; set minimum academic standards for participation in interscholastic activities; required almost all schools to offer a college preparatory curriculum; required schools to emphasize higher order thinking problem solving skills; required African–American history to be a part of the curriculum; imposed a minimum instruction time of six hours for each school day; established kindergarten programs for five year olds; established gifted and talented programs in each district; established the first high school exit exam; revised the promotion policy; provided funding for compensatory and remedial programs for failing students; created a student loan program for persons who want to become teachers, and for the cancellation of the debt for teachers who serve in critical needs areas; established the critical needs certification program; raised teacher salaries; established teacher incentive programs to provide extra compensation for good teachers; imposed a basic skills examination for new teachers; established a 180 day school year; and implemented measures to attract and retain better principals. Flanigan states that EIA “provided the greatest percentage increase of funding per-cent per-pupil in the nation.” Flanigan, *supra* p. 85.

C. The Early Childhood Development and Academic Assistance Act (“Act 135”)

78. In 1993, the General Assembly adopted the Early Childhood Development and Academic Assistance Act, which is generally known as Act 135. *See* S.C. Code Ann. § 59-139-05 *et seq.* (Rev. 2004). As set forth in S.C. Code Ann. § 59-139-05, the purposes of Act 135 are as follows:

- (1) to place an emphasis on early childhood education and prevention while promoting assistance for students at every grade level which is more flexible and tailored to individual needs and learning styles;
- (2) to focus the state's resources on academic success and prevention of academic problems;
- (3) to establish the expectation that by providing extra assistance and learning time that enables young students to attain essential skills and success all children will be prepared for the fourth grade and all students will graduate from high school with their peers;
- (4) to promote the advancement of developmentally appropriate curriculum and coordinated programs from preschool through grade three which are supportive of the curriculum for grades four through twelve; and
- (5) to allow districts and schools greater flexibility in providing targeted, coordinated programs of student assistance.

79. Act 135 provides funds for kindergarten through grade 3 programs, as well as providing funds for academic assistance for students in all grades. Act 135 provides interventions that are directly targeted to students who need academic assistance, many of whom are in the Plaintiff Districts. As implemented, Act 135 assigns pupil weights in addition to those assigned under EFA. S.C. Code Ann. § 59-139-20. The Act 135 weights for poverty are specifically for free and reduced lunch students in all grades as follows:

Grades 1-3 = 0.26; Grades 4-12 = 0.114. *Id.*

Because the Plaintiff Districts have high percentages of students on free and reduced lunch, these weights cause them to receive relatively more per pupil funding than districts with fewer students on the free and reduced lunch programs..

D. The South Carolina School-to-Work Transition Act of 1994

80. In 1994, the General Assembly found that “[e]ven though more than half of the state’s high school students do not go on to college but seek to enter the job market, South Carolina has no clear system for school-to work transition.” S.C. Code Ann. § 59-52-20(a) (Rev. 2004). Specifically, the General Assembly expressed concern that unlike other nations,

South Carolina’s secondary education system does not provide . . . steps in educating and preparing our youth for work. Our nation has traditionally divided students into college-bound and noncollege bound. While college-bound students are required to follow a challenging and clearly defined curriculum, the noncollege bound have entered the ‘general track’ which is less academically challenging and is often cited as preparing students for ‘nothing in particular.’ In South Carolina, fifty-two percent of our students are in the ‘general track’ while twenty-eight percent of the students are directed into the academic college-prep track, and the other twenty percent of the students are placed in the vocational track. ‘General track’ students receive little preparation for higher education and little guidance on how to move into a career that can support an acceptable quality of life. Their reading, writing, math, and communications skills are generally inadequate for the demands of today’s quality employers and for higher education.

S.C. Code Ann. § 59-52-20(c). Therefore, in 1994, the General Assembly enacted the South Carolina School-to-Work Transition Act, S.C. Code Ann. § 59-52-10, *et seq.*

81. Pursuant to the Act, as part of the school-to-work system, the State Board of Education was required to establish a structure to prepare students for employment and lifelong learning with four components: (1) quality schooling having a rigorous curriculum; (2) career counseling; (3) work exploration and experience; and (4) structured work-based learning. S.C. Code Ann. § 59-52-40(A). Moreover, pursuant to the Act, the State Board of Education, beginning with school year 1994-95, was required to adopt regulations regarding “quality schooling,” which at a minimum were to include (1) a rigorous, relevant academic curriculum to include rigorous applied academic methodologies in math, science and communications skills, with the goal of eliminating the “general track” for students enrolling in high school on or after the 1996-97 school year; and (2) changes in vocational educational programs to expend their content, relevancy and rigor. S.C. Code Ann. § 59-52-40(B)(1) (a)-(f); (B)(2) (a)-(b). Finally, under the Act, beginning in the 1996-97 school year, the State Board of Education was required to establish (1) regulations for career exploration and counseling, integrating career counseling activities into the kindergarten through twelfth grade curriculum; (2) a range of mentoring opportunities; (3) structured work-based opportunities, including the establishment of a youth apprenticeship. S.C. Code Ann. § 59-52-40(C)(1) – (3).

E. Educator Improvement Act of 1997

82. In 1997, the South Carolina General Assembly amended 1979 Act No. 187 to provide for “a fair, cohesive, and comprehensive system for the training, certification, initial employment, evaluation, and continuous professional development of public educators in this State.” S.C. Code Ann. § 59-26-10 (Rev. 2004). The General Assembly required that the State Board of Education (a) upgrade the standards for

educators in a fair, professional, and reasonable manner; (b) assure that prospective teachers have basic reading, mathematics, and writing skills; (c) improve the educator training programs and the evaluation procedures for those programs; (d) assure that prospective teachers know and understand their teaching areas; (e) assure that school districts implement a comprehensive system for assisting, developing, and evaluating teachers employed at all contract levels. S.C. Code Ann. § 59-26-10(a) – (e).

Specifically, the amendment required the State Board of Education to:

- (a) develop and implement a plan for the continuous evaluation and upgrading of standards for program approval of undergraduate and graduate education training programs of colleges and universities in this State;
- (b) adopt policies and procedures which result in visiting teams with a balanced composition of teachers, administrators, and higher education facilities;
- (c) establish program approval procedures which shall assure that all members of visiting teams review and approve undergraduate and graduate education programs have attended training programs in program approval procedures within two years prior to service on such teams;
- (d) render advice and aid to departments and colleges of education concerning their curricula, program approval standards, and results on the examinations provided for in this chapter; and
- (e) adopt program approval standards so that all colleges and universities in this State that offer undergraduate degrees in education shall require that students successfully complete the basic skills examination that is developed in compliance with this chapter before final admittance into the undergraduate teacher education program.

S.C. Code Ann. § 59-26-20 (a) – (e).

83. Moreover, the amendment provided that in the area of cognitive assessments for teachers and teacher certification, the State Board of Education must (1) adopt a basic skills examination in reading, writing, and mathematics that is suitable to determine whether students may be admitted into a teacher education program; (2) adopt nationally recognized teaching examinations that measure the cognitive teaching area competencies for initial job assignments in public schools of this State; (3) use nationally recognized specific teaching area examinations approved by the State Board of Education for certification purposes; (4) report the results of the teaching examinations to the student in written form that provides specific information about the student's strengths and weaknesses; (5) report to each teacher training institution in the State the performance of the institution's graduates on teaching examinations; (6) provide for the security and integrity of the tests that are administered under the certification program; (7) award a teaching certificate to a person who successfully completes the scholastic requirements for teaching at an approved college or university and the examination he or she is required to take for certification purposes; (8) award a conditional teaching certificate to a person eligible to hold a teaching certificate who does not qualify for full certification if the person has earned a bachelor's degree from an accredited college or university with a major in a certification area for which the board has determined there exists a critical shortage of teachers; and (9) promulgate regulations and procedures whereby course credits that may be applied to the recertification requirements of all public school teachers are earned in courses that are relevant to the area in which the teacher is recertified. S.C. Code Ann. § 59-26-30(1)-(9).

F. The Education Accountability Act ("EAA")

84. The EAA represents a fundamental reform of South Carolina's education program, including the now famous school and district report cards. *See* S.C. Code Ann. § 59-18-110 (2) (Rev. 2004). The purpose of the EAA is to establish "a performance based accountability system for public education which focuses on teaching and learning so that students are equipped with a strong academic foundation." S.C. Code Ann. § 59-18-100. Accountability is nationally recognized as improving student achievement for all students, including those in poverty. The adoption of the EAA in 1998 elevated South Carolina into the upper echelon of states that have adopted accountability programs. South Carolina's program is nationally recognized as one of the very best. Table 3, Defendants' Exhibit 2780, p. 2, is reprinted from a publication of the Brookings Institution in 2001, which shows South Carolina as an "Honor Roll" State.

States Classified by Quality of Standards and Accountability			
Accountability/ Standards	Solid Standards A or B	Mediocre Standards C	Inferior Standards D or F
Strong Accountability	<i>The Honor Roll:</i> Alabama, California, North Carolina, South Carolina , Texas	<i>Shaky Foundations</i> Florida, Illinois, Indiana, Kansas, Maryland, Nevada, New York, Oklahoma, Virginia, West Virginia	<i>Trouble Ahead:</i> Kentucky, New Mexico
Weak Accountability	<i>Unrealized Potential:</i> Arizona, Massachusetts, South Dakota	<i>Going through the Motions:</i> Delaware, Georgia, Louisiana, Mississippi, Nebraska, New Hampshire, Ohio, Utah, Wisconsin	<i>Irresponsible States:</i> Alaska, Arkansas, Colorado, Connecticut, Hawaii, Idaho, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, Wyoming
Source: Finn and Kanstoroom, <i>Brookings Papers on Education Policy, 2001</i> (Washington, DC.: Brookings Institution Press, 2001). Note: Strong accountability means the state employs report cards and ratings of schools, rewards successful schools, has authority to reconstitute or make major changes to failing schools, and exercises such authority. Solid standards are clear, measurable, comprehensive, and rigorous.			

85. The objectives of the EAA are as follows:

- (1) [to] use academic achievement standards to push schools and students toward higher performance by aligning the state assessment to those standards and linking policies and criteria for performance standards, accreditation, reporting, school rewards, and targeted assistance;
- (2) [to] provide an annual report card with a performance indicator system that is logical, reasonable, fair, challenging, and technically defensible which furnishes clear and specific information about school and district academic performance and other performance to parents and the public;

- (3) [to] require all districts to establish local accountability systems to stimulate quality teaching and learning practices and target assistance to low performing schools;
- (4) [to] provide resources to strengthen the process of teaching and learning in the classroom to improve student performance and reduce gaps in performance;
- (5) [to] support professional development as integral to improvement and to the actual work of teachers and school staff; and
- (6) [to] expand the ability to evaluate the system and to conduct in-depth studies on implementation, efficiency, and the effectiveness of academic improvement efforts.

S.C. Code Ann. § 59-18-110.

86. The EAA directs the State Board of Education “to adopt grade specific performance-oriented educational standards in the core academic areas of mathematics, English/language arts, social studies (history, government, economics and geography), and science for kindergarten through twelfth grade and for grades nine through twelve adopt specific academic standards for benchmark courses in mathematics, English/language arts, social studies and science.” S.C. Code Ann. § 59-18-300. The purpose of the standards are to promote the goals of providing every student with the following competencies: (1) reading, viewing and listening to complex information in the English language; (2) reading and speaking effectively in the English language; (3) solving problems by applying mathematics; (4) conducting research and communicating findings; (5) understanding and applying specific concepts; (6) obtaining a working knowledge of the world, United States, and South Carolina history, government, economics and geography; and (7) using information to make decisions. *Id.* The EAA

requires that the standards “be reflective of the highest level of academic skills with the rigor necessary to improve the curriculum and instruction in South Carolina’s schools” *Id.*

87. Under the EAA, the State Board of Education must “develop, select or adopt a first grade readiness test which is linked to the adopted grade one academic standards and a second grade readiness test which is linked to the adopted grade two academic standards.” S.C. Code Ann. 59-18-330. The purpose of the tests is to measure individual student readiness. *Id.* The State Board of Education is also required to select a norm referenced test “to obtain an indication of student and school performance relative to national performance levels.” S.C. Code Ann. § 59-18-340. The norm referenced test is to be administered annually “to a statistically valid random sample of students in at least three grades from grades three to eleven.” *Id.* In addition, high schools must offer PSAT tests to tenth grade students “in order to assess and identify curricular areas that need to be strengthened and reinforced.” S.C. Code Ann. §59-18-350. The results of the PSAT are to be used as diagnostic tools “to provide academic assistance to students whose scores reflect the need for such assistance.” *Id.*

88. The EAA provides technical assistance for schools and districts in which large numbers of students are performing below expectations. The EAA requires that at the beginning of each school year, a school must notify parents of a need for a conference for each student in grades three through twelve who is lacking in the skills necessary to perform at his or her current grade level based on assessment results, school work, or teacher judgment. S.C. Code Ann. § 59-18-500 (A). At the conference, the student, parent and appropriate school personnel will discuss steps needed to assure student

success at the next grade level, and an academic plan will be developed to outline the actions the student and parents will undertake to further student success. *Id.* At the end of the school year, if the student's performance has not improved or if the terms of the academic plan have not been met, the student "may be retained, . . . required to attend summer school, or . . . required to attend a comprehensive remediation program the following year designed to address objectives outlined in the academic plan for promotion." S.C. Code Ann. § 59-18-500 (C).

89. The State standards and assessments are subject to cyclical review by the State Board of Education and the Education Oversight Committee "to ensure that standards and assessments are maintaining high expectations for learning and teaching." S.C. Code Ann. § 59-18-360 (Supp. 2004). As part of the review, a task force consisting of parents, business and industry leaders, community leaders, and educators "must examine the standards and assessment system to determine rigor and relevancy." *Id.* The SDE is required to provide assessment results annually on individuals and students in a manner easily understood by the public. S.C. Code Ann. § 59-18-370 (Rev. 2004).

90. In addition to requiring the State Board of Education to adopt a state-wide assessment program to measure student performance, S.C. Code Ann. § 59-18-310, the EAA requires school districts to establish and annually review a performance based accountability system to reinforce the State accountability system. S.C. Code Ann. § 59-18-1300.

91. Pursuant to the EAA, the Education Oversight Committee, along with the State Board of Education, must establish annual report cards on the performance for the elementary, middle, high schools and school districts of the State. S.C. Code Ann. § 59-

18-900 (A). The report cards serve four purposes: “(1) inform parents and the public about the school’s performance; (2) assist in addressing the strengths and weaknesses within a particular school; (3) recognize schools with high performance; and (4) evaluate and focus resources on schools with low performance.” *Id.* at (1) – (4).

92. The report cards have five academic performance ratings of Excellent, Good, Average, Below Average, and Unsatisfactory.¹⁴ S.C. Code Ann. § 59-18-900 (B). Schools in the State receive grades for absolute and improvement performance. *Id.* The report cards include “a comprehensive set of performance indicators with information on comparisons, trends, needs, and performance over time,” and include information in such areas as programs and curriculum, school leadership, community and parent support, faculty qualifications, information on promotion and retention ratios, dropout ratios, student and teacher ratios, and attendance data. S.C. Code Ann. § 59-18-900 (D). The report cards must be made available to the schools and the public no later than November first of each year. S.C. Code Ann. § 59-18-930.

93. The EAA also provides for technical assistance for school districts that receive a rating of unsatisfactory or below average on their report card. Under the EAA, when a school is rated below average or unsatisfactory, the faculty of the school along with the district superintendent and board of trustees must review the school’s improvement plan and revise it, looking at “every aspect of schooling, and must outline activities that, when implemented, can reasonably be expected to improve student performance and increase the rate of student progress.” S.C. Code Ann. § 59-18-1500

¹⁴ There was some discussion during the course of the case as to the basis for rating schools and districts as Excellent, Good, Average, Below Average, or Unsatisfactory. These ratings are a function of how the students in a particular school or district perform on the PACT. *See* Tr. Trans. (01/08/04), p. 183, l. 16 – p. 185, l. 4; [Defendants’ Exhibit 804](#).

(A)(1). Upon review of the revised plan, the South Carolina Department of Education (“SDE”) “is to delineate the activities, support, services, and technical assistance it will make available to support the school’s plan and sustain improvement over time.” S.C. Code Ann. § 59-18-1500 (A)(5). If the recommendations approved by the State Board of Education are not satisfactorily implemented by the school rated unsatisfactory according to the time line developed by the State Board of Education, or if student performance has not met expected progress, the state superintendent may either “(1) furnish continuing advice and technical assistance in implementing the recommendations of the State Board of Education; (2) declare a state of emergency in the school and replace the school’s principal; or (3) declare a state of emergency in the school and assume management of the school.” S.C. Code Ann. § 59-18-1520 (1)-(3).

94. Dr. John Suber is the Director of the Office of School Quality at the South Carolina Department of Education (“SDE”). That office has responsibility for providing technical assistance to schools under the EAA. Dr. Suber described that technical assistance to include (1) external review teams; (2) principal specialists and principal mentors; (3) curriculum specialists; (4) teacher specialists; (5) curriculum instruction facilitators; (6) homework centers; (7) extra funds for materials and supplies; (8) extra funds for principal specialists to be used in the schools to which they are assigned; and (9) retraining grants, which are additional funds for professional development of teachers in unsatisfactory and below average schools. *See* Tr. Trans. (01/15/04), p. 46, l. 14 – p. 49, l. 4. *See also* S.C. Code Ann. §§ 59-18-1510 (assignment of external review committees); 59-18-1530 (teacher and principal specialists); 59-18-40 (mentoring for

principals); 59-18-1560 (grant programs for schools designated as below average); 59-18-1910 (homework centers).

95. Dr. Suber categorized the technical assistance provided to each Plaintiff District. Defendants' Exhibit 3131. SDE has developed a priority system under which the assistance is allocated to the schools and districts. Tr. Trans. (01/15/04), p. 148, ll. 10-25. Although not all districts that qualify for assistance under the statute receive all types of technical assistance, the Plaintiff Districts have received a full complement of such assistance with only limited exceptions.¹⁵ See Discussion below at Section VIII.

G. Legislative Interventions for “At-Risk” Students

96. In addition to the separately codified education legislation described above, the General Assembly has also enacted many statutory provisions that are intended to enhance educational achievement, especially for at-risk children. In her testimony, Sandy Smith, Director of Research for the House Education and Public Works Committee, identified those programs. They are: (1) four-year-old kindergarten, S.C. Code Ann. § 59-5-65(8); (2) full day five-year-old kindergarten, S.C. Code Ann. § 59-35-10; (3) class size reduction, S.C. Code Ann. § 59-63-65; (4) alternative schools, S.C. Code Ann. § 59-63-1300; (5) First Steps to School Readiness, S.C. Code Ann. § 59-152-10; (6) Early Childhood Development and Academic Assistance Act, S.C. Code Ann. § 59-139-10; (7) homework centers, S.C. Code Ann. § 59-18-1910; (8) summer school, S.C. Reg. 43-240; (9) extended school year, S.C. Code § 59-18-1920; (10) exemption for regulations and statutes, S.C. Code § 49-18-1120; (11) reading recovery, 1004 Proviso

¹⁵ Dr. Suber testified that many of the vacant teacher specialist positions in the 2003-04 school year were for special education positions which according to his testimony were not authorized until late in the education year, making the identification and placement of teacher specialists in the special education area difficult. Tr. Trans. (01/16/04) pp. 237, ll. 2-9.

1A.11; (12) Governor’s Institute for Reading, S.C. Code § 59-5-135; (13) school technology (14) Parent Involvement in Education Act, S.C. Code Ann. § 59-28-100, *et seq.*; (15) parent/family literacy programs, S.C. Code Ann. § 59-1-450. *See* Defendants’ Exhibit 3297; Tr. Trans. (06/17/04), pp. 39 – 61.

H. Flexible Spending Provisions

97. Each year, for the past two years, the General Assembly of the State has enacted a proviso allowing all school districts in the State to “transfer up to one hundred percent of funds between programs to any instructional program provided the funds are utilized for direct classroom instruction.” Defendants’ Exhibit 3297, tab 32, section 1.61. Pursuant to the provisos, school districts may carry forward unexpended funds from the prior fiscal year into the current fiscal year for the same purpose. *Id.* The proviso allows school districts the flexibility and discretion to transfer funds from categories where there is a surplus of funding and expend funds in areas where there is a critical need.

I. Assisting, Developing and Evaluating Professional Teaching (“ADEPT”)

98. Codified at section 59-26-30(B) (Rev. 2004), Assisting, Developing and Evaluating Professional Teaching (“ADEPT”) requires the State Board of Education, operating through the SDE, *inter alia*, to adopt certain standards for teaching effectiveness which shall serve as a foundation for all processes used for assisting, developing, and evaluating teachers throughout the State. S.C. Code Ann. § 59-26-30 (B) (1) – (11). South Carolina is one of only eight states that have adopted this four-step teacher approval process. Tr. Trans. (06/14/04), p. 214, ll. 2-13.

99. The purpose of ADEPT is “to provide for a fair, cohesive, and comprehensive system for the training, certification, initial employment, evaluation, and

continuous professional development of public educators in [the] State.” S.C. Code Ann.

§ 59-26-10. For the purposes of assisting, developing, and evaluating professional teaching, the General Assembly has required the State Board of Education, acting through the SDE, to adopt and promulgate the following policies and standards:

- (1) standards for teaching effectiveness that serve as a foundation for the processes used for assisting, developing, and evaluating teacher candidates, as well as teachers employed under induction, annual, or continuing contracts;
- (2) regulations to be used by colleges and universities for evaluating and assisting teacher candidates;
- (3) regulations to be used by local school districts for providing formalized induction programs for teachers employed under induction contracts;
- (4) regulations to be used by local school districts for evaluating and assisting teachers employed under annual contracts;
- (5) regulations to be used by local school districts for conducting evaluations of teachers employed under continuing contracts;
- (6) regulations so that college, university, and school district strategies, programs, and processes for ADEPT are approved by the State Board of Education. . . ;
- (7) regulations that establish procedures for the State department of Education to provide colleges, universities, and school districts with ongoing technical assistance for ADEPT; and
- (8) regulations and procedures so that school districts shall report to the State Department of Education teacher evaluation results and teacher contract decisions on an annual basis.

S.C. Code Ann. § 59-26-30 (B) (Supp. 2004).

100. A person who receives a teaching contract pursuant to § 59-26-30 (B) may be employed by a school district under a nonrenewable induction contract. S.C. Code Ann. § 59-26-40 (A) (Supp. 2004). At the end of the one year induction contract period, a teacher shall become eligible for employment at the annual contract level. S.C. Code Ann. § 59-26-40 (B). Teachers employed under an annual contract must complete an individualized professional growth plan established by the school or district. S.C. Code Ann. § 59-26-40(D). During the first annual contract year, the annual contract teacher must either complete the formal evaluation process or be provided diagnostic assistance. S.C. Code Ann. § 59-26-40(E). During the evaluation process, a determination is made as to whether a teacher has met “those minimal performance standards of actually being able to apply theory into practice in their classroom.” Tr. Trans. (09/23/03), p. 96, ll. 9-12. Once the formal evaluation process is completed, and the teacher has satisfied the requirements established by the State Department of Education for the professional teaching certificate, the teacher becomes eligible for employment at the continuing contract level. S.C. Code Ann. § 59-26-40 (F).

101. The Court finds that the General Assembly, in enacting EAA and the other statutory provisions herein described, has demonstrated a strong commitment to educating the children of this State.

VI. SOUTH CAROLINA CURRICULUM STANDARDS

102. A central feature of the EAA is the development of grade specific curriculum standards for each subject taught in South Carolina’s public schools. As noted above, the General Assembly has directed that the curriculum standards “be reflective of the highest level of academic skills.” S.C. Code Ann. § 59-18-300. Because

those standards identify both the substantive knowledge and thinking skills that students in South Carolina are expected to learn, they play a key role in the determination of whether or not the opportunity to acquire the knowledge and skills required by Abbeville County is present. To understand whether a curriculum consistent with Abbeville County's requirements is being offered to students in South Carolina, it is important to understand the curriculum standards in greater depth.

103. The curriculum standards outline what a child should be able to know and do in each subject at each grade level. There are now uniform curriculum standards for all courses taught in each grade in South Carolina's public schools, including but not limited to English, language arts, math, social studies, science, physical education, the arts and foreign language. Tr. Trans. (10/06/03), p. 87, ll. 24-25; ll. 1-25; p. 89, ll. 1; Defendants' Exhibit 2575; Plaintiffs' 5024. *See also* Plaintiffs' Exhibits 6207, 6208, 6209, 6214, 6215, 6216, 6217; Defendants' Exhibit 3336. The first year South Carolina had such uniform grade level curriculum standards in place throughout the State was in 1998. Tr. Trans. (06/17/04), p. 6-7. It is expected that these curriculum standards and guides form the framework for instruction in all South Carolina public schools. Trial Trans. (06/17/04), p. 7, l. 24 – p. 8, l. 1; (08/16/04), p. 188, l. 17 – p. 189, l. 11; (10/07/03), p. 75, l. 12 – p. 77, l. 20. The PACT tests are designed to measure student mastery of curriculum standards.

104. The purpose of the standards, as set forth by the Education Oversight Committee, are (1) to set clear, high expectations for student achievement; (2) to guide efforts to measure student achievement; (3) to promote educational equity for all; (4) to help parents in South Carolina determine whether their children are being taught the same

subject content as children across the nation; (5) to inform parents of the academic expectations of their child; (6) to enable parents to participate actively in parent/teacher conferences; and (7) to assist parents in determining how the current grade level expectations are related to successive years' expectations. Defendants' Exhibit 3317. Obviously, the effectiveness of the standards established by the EAA depends, in large measure, upon active and informed parental involvement.

105. The South Carolina Curriculum Standards have been described by educators and others as "rigorous." Tr. Trans. (10/07/03), p. 136, ll. 10-14; (02/09/04), p. 149, ll. 2-4; (02/12/04), p. 125, ll. 19-24; (03/04/04), p. 230, ll. 5-8; (06/09/04), p. 90, ll. 7-15; (08/17/04), p. 201, ll. 5-11. For example, the curriculum standards pertaining to mathematics for eighth graders provide that an eighth grade student should have the ability to use fractions, decimals and integers to solve real-world problems; use proportions to solve practical problems; find the values of algebraic expressions by substituting numbers for variables and using the order of operations; simplify a variety of algebraic expressions; use the Pythagorean Theorem to find the missing length of a side of a right triangle; determine the changes in volume and surface area of three-dimensional figures when one or more measurements is changed; find the area of irregular shapes; identify patterns in graphs to determine whether a relationship exists between two sets of data; and compute the probability of two dependent events. Defendants' Exhibit 2754; Plaintiffs' Exhibit 6207.

106. In English and language arts, an eighth grade student is expected to have mastered a variety of skills including: applying knowledge of the elements of various literary forms to evaluate them; analyzing main ideas and themes in literature that are not

actually stated in the reading; reading all types of print materials including technical and career manuals; summarizing what is read; determining when statements of fact and statement of opinion are not adequately supported in the text; comparing and contrasting themes in what is read; identifying elements of poetry such as rhyme scheme, stanza and refrain; describing how an author uses imagery and symbolism; drawing conclusions and making inferences; using knowledge of roots and affixes to analyze the meaning of complex words; making simple and complex analogies; using listening skills to gain information in interviews; increasing vocabulary through listening experiences; using visual aids, props and technology to support meaning and enhance oral presentations; presenting dramatic readings of literary selections; using techniques to develop and organize ideas before and during writing; writing for extended periods of time; writing multiple-paragraph compositions; writing business letters; and conducting research.

Defendants' Exhibit 2752; Plaintiffs' Exhibit 5024.

107. In science, the curriculum standards expect an eighth grade student to be able to: make observations of objects and events; distinguish between qualitative and quantitative observations; select appropriate tools and technology to collect data; make inferences and predictions based on prior knowledge and observable patterns, and discriminate between observations, inferences and predictions; use mathematical thinking during investigations; identify and implement the four stages of problem solving; investigate the diversity and adaptations of organisms over time; examine how natural selection increases population variability; investigate, describe and compare the components of the solar system and the effect of gravity on orbits; compare and contrast the contributions of Copernicus and Galileo; investigate and explain the theory of plate

tectonics; investigate the motion of objects; and investigate Newton's Laws of Motion. Defendants' Exhibit 2756; Plaintiffs' Exhibit 6208.

108. In social studies, the curriculum standards expect an eighth grade student to: discuss the nature, challenges and contributions of ethnic and religious groups, including African-American and Native American cultures and women; compare and contrast how Europeans developed political, economic and social institutions in South Carolina and other colonies; describe issues related to the ratification of the Constitution; identify major domestic and foreign issues and key figures of early presidencies through the Antebellum Period; describe the causes, sequence and key figures of the Civil War and Reconstruction Era, and their effects on South Carolina and the nation; examine the rise of the women's suffrage movement; compare and contrast the South Carolina and United States constitutional governments; describe how public policy is formed and carried out at all levels of government; explain how one becomes a citizen of the United States; make and use maps, globes, graphs, charts and models to analyze and illustrate physical and cultural features in South Carolina and the United States; describe division of labor and how free enterprise provides goods and services; provide examples of private property, free enterprise, competition and profit; explain collective bargaining; and describe the effect of fiscal policy on the economy. Defendants' Exhibit 2757; Plaintiffs' Exhibit 6209.

109. The Court finds that the curriculum standards, as promulgated and adopted by SDE, the South Carolina Education Oversight Committee, and the State Board of Education comply with the EAA's mandate that South Carolina's curriculum standards be "reflective of the highest level of academic skills with the rigor necessary to improve

the curriculum and instruction in South Carolina’s schools” S.C. Code Ann. § 59-18-300. More importantly, the Court finds that the substantive knowledge and skills reflected in the curriculum standards go far beyond the knowledge and skills comprising a minimally adequate education as defined in Abbeville County. Thus, the curriculum standards encompass more than “the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and academic and vocational skills.” Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540.

VII. DESCRIPTION OF THE PLAINTIFF DISTRICTS

110. Three of the Plaintiff Districts, Allendale, Jasper and Lee, are county-wide school districts, and five of the Plaintiff Districts are in a county with multiple school districts. Florence County has a total of five districts; Hampton County has two school districts (Nos. 1 and 2); Marion County has three school districts (Nos. 1, 2 and 7)¹⁶; Orangeburg has three school districts (Nos. 3, 4, and 5); and Dillon County has three school districts (Nos. 1, 2, and 3).

111. Each Plaintiff District has its own administrative staff, including a superintendent, a business manager and other district staff. The number of schools within the districts varies between three and seven.

112. The Plaintiff Districts vary widely in enrollment, from the smallest, Marion 7, with 905 students, (Defendants’ Exhibit 3004; Plaintiffs’ Exhibit 6264) to the

¹⁶ Marion 7 is the product of a merger of School Districts 3 and 4. There were never more than four districts in Marion County.

largest district, Dillon 2, which has a total of 3,681 pupils according to the 2003 District Report Card. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

113. These school districts are, for the most part, located along the I-95 corridor in South Carolina running between the North Carolina state line (Dillon 2) to the Georgia border (Jasper and Hampton counties), and are largely rural in nature. The eight Plaintiff Districts also share the common characteristic of having high percentages of students who qualify for free and reduced lunch under the federal guidelines. This "free and reduced lunch" percentage is frequently used as a proxy for poverty.¹⁷ For purposes of this case, students in poverty were described as "at-risk". Tr. Trans. (8/14/03) at p. 36, ll. 15-18. Other characteristics of the Plaintiff Districts vary substantially. For this reason, the Court will address each Plaintiff District separately, and will describe the relevant characteristics of each Plaintiff District.

A. Allendale County School District

114. Allendale is the most unusual district among the trial plaintiffs. In 1999, the State Superintendent of Education took over control of Allendale from the Allendale County School Board under her statutory authority because Allendale was consistently performing below State minimum standards, and had significant financial, discipline, and student and teacher attendance problems which had not been resolved. Defendants' Exhibit 1326. Tr. Trans. (05/04/04), p. 179, l. 8 – p. 180, l. 22. SDE manages Allendale County School District and appoints its Superintendent, who, at the time of trial, was Dr. Paula Harris. Since SDE acts as the School Board, Dr. Harris reports to and confers with

¹⁷ There was testimony that this indicator was not as accurate at the high school level, when the stigma associated with free and reduced lunch discourages teenagers from taking advantage of the eligibility. Tr. Trans. (01/06/03) p.108, ll.17-24. Also, many witnesses indicated that free and reduced lunch status does not reflect relative levels of poverty for those who are participating in the program. Tr. Trans. (09/23/04), p. 20, l. 23 – p. 21, l. 12.

SDE on issues relating to Allendale County School District. Tr. Trans. (05/05/04), p. 22, ll. 4-19; (05/04/04), p. 180, ll. 19-22.

1. Student Demographics

115. Allendale has two elementary schools, Allendale Elementary School and Fairfax Elementary School; one middle school, Allendale-Fairfax Middle School; and one high school, Allendale-Fairfax High School. In 2003, Allendale had 1,815 pupils enrolled, and employed approximately 153 teachers. *See* Defendants' Exhibit 2971; Plaintiffs' Exhibit 6231 .

116. Of Allendale's students, 87.3% qualified for free and reduced lunch in school year 2001-02. Defendants' Exhibit 3225. The State average for free and reduced lunch students is 48.5%. *Id.* Allendale ranks fourth highest in the State for school districts with children in poverty in *Ranking of Counties and School Districts in South Carolina* ("Rankings Report"). Defendants' Exhibit 3225. Tr. Trans. (09/30/03), p. 99, ll. 4-8.

117. In 2003, Allendale had a 96.1% student attendance rate, which was above the State average of 95.4%. The student-teacher ratio for Allendale in 2003 was 15 to 1, which was significantly below the State district median of 20.6 to 1, and lower than its ratio from the previous year of 16.7 to 1. Defendants' Exhibit 233; Plaintiffs' Exhibit 1321.

2. Curriculum and Instruction

118. Allendale has certified annually to the SDE and the Office of School Quality that the district and its schools have educational standards in place that are consistent with the requirements of the EAA. *See, e.g.* Defendants' Exhibits 2832 and

2833. Dr. Suber testified that his office relies upon the representations made by the superintendents in their certification to the SDE of the conditions and conduct of the schools in the district.

119. Additionally, each principal of a school in Allendale was deposed and portions of their deposition testimony were offered as evidence at trial. Each of those principals testified that for the most part, the teachers in their schools were teaching the curriculum standards in their classrooms and were offering the standard academic courses enumerated within SDE's regulations. *See* Deposition of Judy Franchini, p. 59, ll. 19-21; Deposition of Buren Martin, p. 64, ll. 304; Deposition of Alexia Clamp, p. 33, ll. 23-25; Deposition of Alfonso Lamback, p. 57, ll. 12-14. Moreover, these principals testified that in general, the curriculum being taught in their schools was aligned to the State uniform curriculum standards. Deposition of Judy Franchini, p. 59, ll. 16-17; Deposition of Martin Buren, p. 64, ll. 3-4; Deposition of Alexia Clamp, p. 33, ll. 3-25; Deposition of Alfonso Lamback, p. 57, ll. 12-14.

3. PACT Scores

120. In 2004, 49.5% of Allendale students scored Basic¹⁸ or above on English Language Arts ("ELA") PACT tests, and 52.9% scored Basic or above on Math PACT tests. Defendants' Exhibit 2971; Plaintiffs' 6231. The percentage of students scoring at Basic or above on PACT between 2000 and 2004 are as follows:

Allendale PACT Scores Percent Basic and Above

¹⁸ Definitions of critical terms from annual school report cards:

ADVANCED- student performance exceeded expectations.

PROFICIENT – student performance met expectations.

BASIC – student performance met minimum performance expectations.

BELOW BASIC – student performance did not meet minimum requirements expectations.

	2000	2001	2002	2003	2004
ELA	36.3%	48.0%	49.3%	42.9% ¹⁹	49.5%
Math	32.9%	45.0%	40.5%	50.5%	52.9%

Defendants' Exhibits 0233 (Plaintiffs' 1321), 2971 (Plaintiffs' 6231), 3318; Plaintiffs' Exhibit 6446.

121. Despite gains in the PACT results, Allendale was rated "Unsatisfactory" in 2003 on the annually issued District Report Card²⁰, and its schools are ranked as follows:

Allendale Primary School	Unsatisfactory
Fairfax Elementary School	Average
Allendale-Fairfax Middle School	Unsatisfactory
Allendale-Fairfax High School	Unsatisfactory

Defendants' Exhibits 2972, 2973, 2974, 2975; Plaintiffs' Exhibits 6232, 6233, 6234, 6235.

122. The 2003 District Report Card reports that 39% of tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for Spring 2003 for all seniors was 83.0%. Defendants' 2971; Plaintiffs' 6231.

4. Per Pupil Spending

¹⁹ As will be seen, there was a uniform "dip" throughout the Plaintiff Districts, and indeed state-wide, of PACT ELA scores in 2003. This phenomenon was attributed by State Superintendent of Education Inez Tenenbaum to test fatigue in 2003 when the ELA test was the last test given at the end of two weeks of testing. Tr. Trans. (05/04/04), p. 184, ll. 5-9.

²⁰ The Court takes judicial notice that Allendale's ranking was "Below Average" on the Report Cards released in November of 2004 and "unsatisfactory" on the Report Cards released in November of 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 53.8%; Math 53.7%; Science (first year tested) 22.5%; Social Studies (first year tested) 29%.

123. Allendale has the second highest per pupil expenditure in the State, and the highest among the Plaintiff Districts. Defendants' Exhibit 3225. For the 2002-2003 Fiscal Year, Allendale spent \$10,946 per pupil from all sources, (Defendants' Exhibit 3328), compared to the State average of \$7,232. Defendants' Exhibits 3326, 3328. Per pupil spending in Allendale has increased over time:

Fiscal Year	Per Pupil Expenditures (In\$ite)
2002-2003	\$10,946
2001-2002	\$10,404
2000-2001	\$10,526
1999-2000	\$8,753

Defendants' Exhibits 3153, 2800, 3326, 3305.

124. When the revenues per pupil from State sources only are analyzed, the State revenues per pupil in Allendale have increased 206%, from \$2,514.50 in 1991-92 to \$5,182.00 in 2001-02. Defendants' Exhibit 2880. This is the time period roughly commensurate with the pendency of this suit.

5. Interventions and Technical Assistance

125. As noted above, the EAA provides for technical assistance for school districts that receive a rating of unsatisfactory or below average. During the 2003-04 school year, Allendale had three principal specialists, seventeen full-time teacher specialists, one part-time teacher specialist, and one curriculum specialist. The district also received \$265,000 in direct additional funds for materials and supplies, retraining grants and homework centers for that year alone. Defendants' Exhibit 3131; Tr. Trans. (03/31/04) pp. 79-90. The total value to the District of these interventions for the 2003-04 school year is as follows:

Unit Value	Total Value
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Principal Specialists	3	\$159,810	\$479,430
Teacher Specialists	17 1 part-time	\$100,183	\$1,703,111
Curriculum Specialists	1	\$108,985	\$108,985
Additional Materials			\$265,000
Total			\$2,556,526

This amounts to \$1,361 per pupil in addition to the funding provided under EFA and EIA.

B. Dillon County School District 2

126. Dillon 2 is one of three school districts in Dillon County. At the time of his testimony, Ray Rogers had been the Superintendent for Dillon 2 for twelve years. Dillon 2 is located in the town of Dillon and has four elementary schools: South Elementary, East Elementary, Stewart Heights Elementary and Gordon Elementary. Dillon 2 has one junior high school, J.V. Martin, and one high school, Dillon High School. Dillon 2 had 3,681 students enrolled in 2003 and employed approximately 223 teachers. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

127. Almost 80% of the students enrolled in Dillon 2 were eligible for free and reduced lunch during the 2001-02 school year, which ranks Dillon 2 eleventh in the State for children in poverty. Defendants' Exhibit 3225. The poverty levels for Dillon 2 are substantially above the State average of 48.5% for free and reduced lunch students.

128. In 2003, Dillon 2 had a 95% attendance rate for its students, slightly below the State average of 95.4%. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. The

student-teacher ratio for Dillon 2 in 2003 was 20.7 to 1, which was just above the State district median student-teacher ratio. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. Dillon 2 is the largest Plaintiff District in terms of enrollment.

1. Curriculum and Instruction

129. Dillon 2 has certified to SDE that it is following the required instructional programs and is offering the courses mandated by SDE. Defendants' Exhibits 2832, 2833. There was no deficiency noted by Dillon 2 in the accreditation classification for 2001-2002. Defendants' Exhibit 2834.

130. Additionally, each principal of a school in Dillon 2 was deposed and portions of their deposition testimony were offered as evidence at trial. Dillon 2 principals testified that the teachers in their schools were for the most part teaching the State adopted curriculum standards in their classrooms and were offering the standard academic courses enumerated within SDE's regulations. Moreover, these principals testified that the curriculum being taught in their schools was aligned to the State uniform curriculum standards. Deposition of Polly Elkins, p. 99, ll. 8-13; Deposition of Ja-Novice Green Richardson, pp. 33-34 ll. 23-1; Deposition of Peggy Stafford, p. 34, ll. 6-9; Deposition of Larry Monahan, p. 76, ll. 14-17.

2. PACT Scores

131. In 2004, 59.9% of students in Dillon 2 scored Basic or above on PACT ELA and 62.5% students scored Basic or above on the PACT Math.

Dillon 2 PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	70.4%	56.0%	68.5%	47.8%	59.9%
Math	66.9%	47.0%	54.7%	61.7%	62.5%

Defendants' Exhibits 1117, 0327, 2976 (Plaintiffs' Exhibit 6236), and 3310.

132. Dillon 2 was rated Below Average on the 2003 District Report Card²¹.

Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. However, the ratings for the Elementary Schools in Dillon 2 were much better than the junior high school and high school:

East Elementary	Excellent
South Elementary	Excellent
Stewart Heights Elementary	Good
Gordon Elementary	Average
J.V. Martin Junior High	Below Average
Dillon High School	Below Average

Defendants' Exhibits 2977-2982; Plaintiffs' Exhibits 6237 – 6242).

133. The 2003 District Report Card reports that 56.0% of the tenth graders at Dillon High School passed all three subject tests on the exit exam after their first attempt. The Exit Exam passage rate for spring of 2003 was 84.5%. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236. The student attendance rate for Dillon 2 was 95.2%, almost the State average. *Id.*

3. Per Pupil Spending

134. Dillon 2 has the lowest per pupil expenditure among the Plaintiff Districts. In 2002-2003, Dillon 2 spent \$6,255 per pupil compared to the State average of \$7,232.

²¹ The Court takes judicial notice that Dillon 2 raised its absolute rating to "Average" on the 2004 Report Cards released in November of 2004, and maintained at that rating on the 2005 Report Cards. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 60.6%; Math 59.6%; Science (first year tested) 40.8%; Social Studies (first year tested) 50.1%.

Defendants' Exhibit 3329, 3326. According to In\$ite, Dillon 2's revenues have increased between 1999 and 2002 as follows:

Fiscal Year	Per Pupil Expenditures
2002-2003	\$6,255
2001-2002	\$6,473
2000-2001	\$6,088
1999-2000	\$5,624

Defendants' Exhibits 3153, 2800, 3305, 3329.

135. The testimony revealed that revenue per pupil in Dillon 2 from State sources alone has increased during the pendency of this suit from \$2,481.31 during 1991-92 school year, to \$4,342.00 during the 2001/2002 school year, or an increase of 174%. Defendants' Exhibit 2880.

4. Interventions and Technical Assistance

136. Dillon 2 has also received technical assistance under the EAA. For the 2003-04 school year, Dillon 2 had one principal specialist, one curriculum specialist and three full time teacher specialists. The District received \$155,000 in additional funds for materials and supplies, retraining grants and homework centers for that year alone. Defendants' Exhibit 3131; Tr. Trans. (03/31/04) pp. 79-90. The value to the district to the State of these resources is as follows:

		Unit Value	Total Value
Principal Specialist	1	\$159,810	\$159,810
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	3 1 part-time	\$100,183	\$300,549

Additional Materials			\$155,000
Total			\$724,344

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

C. Florence County School District 4

137. Florence 4 is one of five school districts located within Florence County. Florence 4 educates all of its students in three schools (Brockington Elementary, Johnson Middle School and Timmonsville High School) housed in one building on a campus located in Timmonsville, South Carolina. The K-12 school facility was virtually new at the time of the trial. Tr. Trans. (02/09/04), p. 127, ll. 11-16.

1. Student Demographics

138. Florence 4 has 1,065 students and in 2003 employed approximately ninety-two teachers. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. In the 2001-02 school year, 77.3% of the students in Florence 4 were eligible for free or reduced lunch and it was ranked sixteenth highest in this category among South Carolina schools districts. Defendants' Exhibit 3225. In 2003, Florence 4 had a 94.4% student attendance rate, which was below the State average of 95.4%. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. In Florence 4 the student teacher ratio in the 2002-2003 school year was 14.2 to 1, which was below the State average of 20.6 to 1. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243.

2. Curriculum and Instruction

139. Florence 4 began implementing the curriculum standards in its schools following their adoption in 1998. The principal of each school in Florence 4 was deposed and portions of those depositions were offered into testimony by the Defendants. Each of those principals testified that for the most part, teachers in their schools were teaching the curriculum standards in their classrooms and were offering the standard academic courses enumerated within the SDE’s regulations. These principals also testified that the curriculum being taught in their schools was aligned to the State curriculum standards. *See* Deposition of Leon McCray, p. 23, ll. 4-16; Deposition of Gerard Edwards, p. 20, ll. 11-25; Deposition of Alice Johnson, p. 24, ll. 14-22.

3. PACT Scores

140. In 2004, 59.0% of the students in Florence 4 scored Basic or above on ELA and 58.75% scored basic or above on the Math PACT tests. Defendants’ Exhibit 2983; Plaintiffs’ Exhibit 6243. These scores have trended upward overtime:

Florence 4 PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	49.4%	43.0%	49.8%	49.6%	59.0%
Math	46.6%	37.0%	47.9%	51.5%	58.7%

Defendants’ Exhibits 1117 (Plaintiffs’ Exhibit 1346), 1290 (Plaintiffs’ Exhibit 1347), 2983 (Plaintiffs’ Exhibit 6243), 3127, 3320.

141. Based on these PACT scores, Florence 4 was rated “Below Average”²² on the annually issued District Report Card for 2003, and its schools were ranked as follows:

Brockington Elementary School Below Average

²² The Court takes judicial notice that Florence 4’s 2004 District report card was unchanged from the previous year, but declined to “unsatisfactory” in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 45.6%; Math 50.0%; Science (first year tested) 32.5%; Social Studies (first year tested) 42.4%.

Johnson Middle School	Unsatisfactory
Timmons ville High School	Below Average

Defendants’ Exhibits 2984, 2985, 2986; Plaintiffs’ Exhibits 6244, 6245, 6246.

142. On the 2003 Report Card it was reported that 32.8% of tenth graders passed all three subject tests on the Exit Exam on their first attempt. The Exit Exam passage rate for spring 2003 for all seniors was 92.9%. Defendants’ Exhibit 2983; Plaintiffs’ Exhibit 6243.

4. Per Pupil Spending

143. Florence 4 spent \$8,964 per pupil in Fiscal Year 2002-2003, higher than the State average of \$7,232 expenditures per pupil. Defendants’ Exhibit 3330. The historical per pupil expenditures for Florence 4 as reflected on In\$ite data are reflected below:

Fiscal Year	Per Pupil Expenditures (In\$ite)
2002-2003	\$8,694
2001-2002	\$9,788
2000-2001	\$8,216
1999-2000	\$7,279

Defendants’ Exhibits 3330, 3153, 2800, 3305.

144. Additionally, district revenue per pupil from State sources has increased from \$2,598.13 during the 1991-1992 school year to \$4,961.00 during the 2001-2002 school year, an increase of 191%. Defendants’ Exhibit 2880.

5. Interventions and Technical Assistance

145. Florence 4 qualified for the technical assistance under EAA in the form of two curriculum specialists, two full time teacher specialists, and a part-time teacher specialist. Florence 4 also received an additional \$160,000 in 2003-2004 for additional

materials and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The value to the district of these interventions was as follows:

		Unit Value	Total Value
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	2 1 part-time	\$100,183	\$200,366
Additional Materials			\$160,000
Total			\$578,336

This amounts to \$520 per pupil in addition to funds received by Florence 4 under EFA and EIA.

D. Hampton County School District 2

146. Hampton County School District 2 is one of two school districts located in Hampton County. This school district's schools are in Estill, South Carolina, and the district boundary lines are contiguous with the South Carolina-Georgia line.

1. Student Demographics

147. Hampton 2 provides PK-12 education for students in three school facilities, Estill Elementary School, Estill Middle School and Estill High School. In 2003, Hampton 2's enrollment was 1,427. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247. Of those students, 83.9% were eligible for free and reduced lunch, and therefore the school district consists of mostly poor students. Defendants' Exhibit 3225. Hampton 2 employs 105 teachers. *Id.*

2. Curriculum and Instruction

148. As with the other Plaintiff Districts, Hampton 2 began to align its curriculum with the curriculum standards in 1998. The principals of each school in Hampton 2 were deposed and portions of those depositions were offered into testimony by Defendants. Each of those Hampton 2 principals testified that the teachers in their schools were teaching the curriculum standards in their classrooms and were offering the academic courses required by regulation. *See* Deposition of Daisy Orr, p. 54, ll. 8-20; Deposition of Joyce Colter, p. 57, ll. 2-15; Deposition of Archie Franchini, p. 11, ll. 18-23.

3. PACT Scores

149. In 2004, 62.5 % of Hampton 2 students scored at Basic or above on ELA and 56.6% of Hampton 2 students scored at Basic or above on Math. Defendants' Exhibit 3321. These PACT scores have been trending upward since the inception of PACT, and the district showed significant improvement in PACT scores in 2004:

Hampton 2 PACT Scores Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	42.9%	45.0%	43.1%	45.7%	62.5%
Math	30.1%	32.0%	29.7%	40.6%	56.6%

Defendants' Exhibits 1117, 1388, 2987 (Plaintiffs' Exhibit 6247), 3127, 3321.

150. The 2003 Report Card for Hampton 2 evidences a 95.2% student attendance rate, slightly below the State average of 95.4%. The pupil teacher ratio in Hampton 2 is 17.8 to 1 for Hampton 2, significantly smaller than the average State pupil teacher ratio of 20.6 to 1. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

151. The 2003 District Report Card for Hampton 2 reports that 29.3% of tenth graders passed all three subject tests on the exit exam on their first attempt. The Exit

Exam passage rate for Spring 2003 for all seniors was 89.4%. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

152. Hampton County School District 2 was rated "Unsatisfactory"²³ on the 2003 District Report Card and the ratings for the individual schools are as follows:

Estill Elementary School	Below Average
Estill Middle School	Unsatisfactory
Estill High School	Unsatisfactory

Defendants' Exhibits 2988-2990; Plaintiffs' Exhibits 6248-6250.

4. Per Pupil Spending

153. According to the In\$ite data, in fiscal year 2002-2003 Hampton 2 spent \$8,437 per pupil, compared to the State average of \$7,232. Defendants' Exhibits 3326 and 3331. Based upon the annual Rankings Report, the expenditures per pupil from all sources have increased in Hampton since 1999:

Fiscal Year	Per Pupil Expenditures (In\$ite)
2002-2003	\$8,437
2001-2002	\$8,645
2000-2001	\$8,407
1999-2000	\$7,180

Defendants' Exhibits 3153, 2800, 3305, 3326.

154. Hampton 2 revenue per pupil from State sources only has increased from \$2,896.17 in the 1991-92 school year to \$5,321.00 during the 2001-2002 school year, an increase of 184%. Defendants' Exhibit 2880.

²³ The Court takes judicial notice that Hampton 2 increased its absolute rating to "Below Average" on its 2004 Report Card released in November 2004, but fell to "unsatisfactory" in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 52.7%; Math 50.2%; Science (first year tested) 26.8 %; Social Studies (first year tested) 38.8 %.

5. Interventions and Technical Assistance

155. Hampton 2 received significant technical assistance during the 2003-04 school year. Hampton 2 had one principal specialist, two full-time curriculum specialists, eight full time teacher specialists, and one part-time teacher specialist. Hampton County School District 2 also received an additional \$235,000 for materials and supplies, retraining grants, and homework centers, as part of the intervention plan. Defendants’ Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value to the district of the technical assistance provided to Hampton 2 for the 2003-04 school year is as follows:

		Unit Value	Total Value
Principal Specialist	1	\$159,810	\$159,810
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	8 1 part-time	\$100,183	\$801,464
Additional Materials			\$235,000
Total			\$1,414,254

This amounts to \$944 per pupil in addition to funding received under EFA and EIA.

E. Jasper County School District

156. Jasper is a county-wide school district. The county itself is largely rural and the schools in that district are centered in the two principal communities in that county, West Hardeeville, and Ridgeland. While Jasper is in the process of building two brand new PK-12 facilities that will ultimately house all of its students, Jasper currently has four schools: Ridgeland Elementary, Ridgeland Middle, West Hardeeville Elementary (which houses PK-8 grades) and Jasper High School.

1. Student Demographics

157. Jasper is one of the larger Plaintiff Districts with approximately 3,154 students and 201 teachers. Defendants’ Exhibit 2991; Plaintiffs’ Exhibit 6251. According to the 2001-02 Rankings Report, 68% of the students in Jasper are eligible for free or reduced lunch, causing it to be ranked 26th in the State in this measure of poverty. Defendants’ Exhibit 3225.

2. Curriculum and Instruction

158. Jasper reports annually to SDE that its curriculum is in compliance with State regulations. Defendants’ Exhibit 2833. Additionally, the principals of its five schools testified that the courses being taught in their schools were aligned to the State uniform curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Michael Bull, p. 81, ll. 6-8; Deposition of Kenneth Jenkins, p. 55, ll. 7-10; Deposition of Naomi Reed, p. 54, ll. 3-7; Deposition of Edmond Burnes, p. 63, ll. 8-13.

3. PACT Scores

159. On the 2004 District PACT scores, 49.8% of students in Jasper scored at Basic or above on ELA and 47.5% scored Basic or above on math. Defendants’ Exhibit 3322. PACT scores in Jasper were somewhat higher in 2000 than in 2004, but following a precipitous decline in 2001, have been slowly rising:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	48.3%	45.0%	46.1%	46.8%	49.8%
Math	56.5%	32.0%	35.4%	45.5%	47.1%

Defendants' Exhibits 1117, 1542 (Plaintiffs' Exhibit 1368), 2991 (Plaintiffs' Exhibit 6251), and 3322.

160. Jasper was rated Unsatisfactory on the 2003 District Report Card²⁴ (Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251), and its schools were rated as follows:

Ridgeland Elementary	Average
West Hardeeville Elementary (PK-3)	Below Average
Ridgeland Middle	Unsatisfactory
West Hardeeville Elementary (4-8)	Below Average
Jasper High School	Unsatisfactory

Defendants' Exhibits 2992 – 2996; Plaintiffs' Exhibits 6252 – 6256.

161. The 2003 District Report Card also reveals that 36.3% of tenth graders passed all three subject tests on the exit exam after their first attempt, and the overall exit exam passage rate for Spring 2003, was 84.8%. Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251. Jasper had a 94.7% student attendance rate, which was slightly below the State average of 95.4%, and the student teacher ratio in the District was 18.2 to 1, which was below the State district median of 20.6 to 1. *Id.* As reported on the 2003 District Report Card, the District had an average of 11.4 professional development days per teacher in 2003, up from 5.2 days the previous year. *Id.*

4. Per Pupil Spending

²⁴ The Court takes judicial notice that Jasper increased its absolute rating to "Below Average" on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 55.2%; Math 48.2%; Science (first year tested) 33.0 %; Social Studies (first year tested) 43.1 %.

162. As reported in the State Department In\$ite Data, Jasper spent \$8,058 per pupil in school year 2002-2003. Defendants' Exhibit 3326. The Court finds that this amount has been increasing over time.

Fiscal Year	Per Pupil Expenditures (In\$ite)
2002-2003	\$8,058
2001-2002	\$7,822
2000-2001	\$7,358
1999-2000	\$6,821

Defendants' Exhibits 3326, 3305, 2800, 3153. Jasper District revenue per pupil for State sources only has increased from \$2,342.24 during the 1991-1992 school year, to \$4,540.00 during the 2001-02 school year, an increase over 193%. Defendants' Exhibit 2880.

163. Dr. William Singleton, the superintendent of Jasper County School District testified that the science classes in Jasper had to use "road kill" for its science experiments because the district did not have the money available to buy laboratory frogs. Tr. Trans. (04/02/04), p. 40, ll. 13-20. According to In\$ite for 2002-2003, Jasper actually spent \$938,620 for materials and supplies in that year, or more than \$300 per pupil. Defendants' Exhibit 3332. In addition, Susan Cleveland, a seventh grade math teacher at West Hardeeville Elementary School in Jasper County, testified at trial that Jasper had received a \$10 million technology grant that provided significant technology to the district. In fact, Ms. Cleveland testified that the school district had purchased a \$2,000 wide-screen television for her classroom, which apparently had never worked properly and, despite being under warranty, had not been fixed despite her request. Tr. Trans. (04/21/04), pp. 191-192. Additionally, as will be seen below, Jasper receives additional

funding for materials and supplies as part of the interventions provided by the State under EAA.

5. Interventions and Technical Assistance

164. Because Jasper and its schools have been rated Unsatisfactory and Below Average, they have received technical assistance and interventions from SDE. Jasper received a variety of significant technical assistance for the school year 2003-2004: three full-time principal specialists, one curriculum specialist, twelve full-time teacher specialists, and two curriculum instruction facilitators. Additionally, Jasper received and extra \$335,000 from the State for additional material and supplies, retraining grants and homework centers. Defendants’ Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value of the technical assistance provided to Jasper for the 2003-04 school year was as follows:

		Unit Value	Total Value
Principal Specialists	3	\$159,810	\$479,430
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	12	\$100,183	\$1,202,196
Curriculum Instruction Facilitator	2	\$6,000	\$12,000
Additional Materials			\$335,000
Total			\$2,137,521

This amounts to \$704 per pupil in addition to funding received under EFA and EIA.

E. Lee County School District

165. Lee County School District is a county-wide school district with four elementary schools (Bishopville Primary, Dennis Intermediate, Lower Lee, and West Lee), one middle school, (Mount Pleasant), and one new high school (Lee Central High School). Tr. Trans. (03/05/04), p. 25 ll. 2-4.

1. Student Demographics

166. Lee has approximately 2,675 students and 232 teachers. Defendants' Exhibit 2997; Plaintiffs' Exhibit 6257. According to the 2001-02 Rankings Report, 81% of the students in Lee County are eligible for free or reduced lunch, causing it to be ranked eighth in the State in terms of the percentage of students in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

167. Lee reports annually to SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its six schools testified that the courses being taught in their schools were aligned to the State uniform curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Sharon Askins; Deposition of Betty Burgess, p. 50, ll. 5-7; Deposition of May Ceasar, p. 73, ll. 16-22; Deposition of Vickie Edwards, p. 67, ll. 10-12; Deposition of Sharon Griggs, p. 45, ll. 5-12; Deposition of Vickie Kirby, p. 58, ll. 15-25; Deposition of Earline McClary, p. 50, ll. 22-25; Deposition of Janice Rivers.

3. PACT Scores

168. Lee County PACT scores for 2004 continued the trend of steady improvement in PACT scores in Lee. Over 55% of all students scored at Basic or above

on ELA PACT tests, and 51.7% of all students in Lee scored at Basic or above on Math PACT tests. Defendants’ Exhibit 3323. While Lee’s PACT scores in 2001 went down from 2000, since that time, the PACT scores have trended upward. The previous years’ PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	58.9%	42.0%	48.5%	48.5%	55.4%
Math	43.9%	31.0%	39.5%	49.0%	51.7%

Defendants’ Exhibits 1117, 1719 (Plaintiffs’ Exhibit 1378), 2997 (Plaintiffs’ Exhibit 6257), 3323.

169. The 2003 District Report Card reported that 32.9% of all tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for the Spring of 2003 was 86.7%. Defendants’ Exhibit 2997 (Plaintiffs’ Exhibit 6257).

170. According to the 2003 Report Card, the District had a 92.7% student attendance rate, which was below the State average of 95.4%. Defendants’ Exhibit 2997; Plaintiffs’ Exhibit 6257. The student-teacher ratio for Lee in 2003 was 18.7 to 1, which lower is than the State district median of 20.6 to 1.

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

Bishopville Primary School	Average
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²⁵ The Court takes judicial notice that Lee increased its absolute rating to “Below Average” on the 2004 Report Card released in November, 2004, but fell to “unsatisfactory” in 2005.. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 51.0%; Math 50.9; Science (first year tested) 31.9 %; Social Studies (first year tested) 38.9 %.

Dennis Intermediate	Below Average
Lower Lee Elementary School	Unsatisfactory
West Lee Elementary School	Average
Mt. Pleasant Middle School	Unsatisfactory
Lee Central High School	Unsatisfactory

Defendants’ Exhibits 2998 – 3003; Plaintiffs’ Exhibits 6258 – 6263.

4. Per Pupil Spending

172. As reported in the State Department In\$ite Data, Lee County School District spent \$8,650 per pupil in school year 2002-2003. Defendants’ Exhibit 3333. The Court finds that this amount has been increasing over time. As with other Plaintiff Districts, this amount exceeds the State average of \$7,232. Defendants’ Exhibit 3326.

Fiscal Year	Per Pupil Expenditures
2002-2003	\$8,650
2001-2002	\$8,903
2000-2001	\$8,038
1999-2000	\$6,922

Defendants’ Exhibits 3305, 2800, 3153, 3333.

173. Lee District revenue per pupil from State sources only has increased from \$2,575.92 during the 1991-1992 school year, to \$4,774 during the 2001-02 school year, an increase of 185%. Defendants’ Exhibit 2880.

5. Interventions and Technical Assistance

174. Lee received the following significant technical assistance under EAA for the school year 2003-2004: two curriculum specialists, eleven full-time teacher specialists, and two curriculum instruction facilitators. Additionally, Lee received

\$310,000 from the State for additional material and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), pp. 79-80. The total value to the district of the technical assistance provided to Lee for the 2003-04 school year was as follows:

		Unit Value	Total Value
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	11	\$100,183	\$1,102,013
Curriculum Instruction Facilitators	2	\$6,000	\$12,000
Additional Materials			\$310,000
Total			\$1,641,983

This amounts to \$567 per pupil in addition to the funds received under EFA and EIA.

G. Marion County School District 7

175. Marion 7 is the product of a recent consolidation of Marion County School District 3 and Marion County School District 4.²⁶ Its enrollment is by far the smallest of the Plaintiff Districts. During the course of the litigation, Marion 7 built and opened a new high school, combined other schools, and closed and renovated others. As of the close of the evidence in the case, the following were the currently open and active schools in Marion 7: Britton's Neck Elementary School, Rains Centenary Elementary School, and Creek Bridge Middle / High School.

²⁶ Some of the data for Marion 7 is unavailable for purposes of comparison to the other Plaintiff Districts and both parties during trial averaged certain data for Marion 3 and Marion 4, to permit a reasonable comparison to other districts to be made for years prior to the consolidation.

1. Student Demographics

176. Marion 7 has approximately 905 students and sixty-eight teachers. Defendants' Exhibit 3004. According to the 2001-02 Rankings Report, 91.7% of the students in Marion 7 are eligible for free or reduced lunch, causing it to be ranked 3rd among all the school districts in the State in terms of the percentage of students in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

177. Marion 7 reports annually to the SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its schools testified that the courses being taught in their schools were aligned to the State curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Burnie Bell, p. 71, ll. 19-24; Deposition of Frances Baker, pp. 30 – 31, ll. 25 - 14; Deposition of Jean Pearson, p. 34, ll. 7-14; and Deposition of Rex Whitcomb, p. 57, ll. 14-17.

3. PACT Scores

178. Almost 55% of all Marion 7 students scored at Basic or above on ELA PACT tests, and 49.1% of all students in Marion 7 scored at Basic or above on Math PACT tests. Defendants' Exhibit 3324. The previous years' PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	66.0%	39.6%	54.8%	45.3%	54.8%
Math	65.6%	55.0%	48.9%	47.7%	49.1%

Defendants' Exhibits 1117, 2855, 3004 (Plaintiffs' Exhibit 6364), 3324.

179. The 2003 District Report Card reported that 57.9% of all Marion 7 tenth graders passed all three subtests on the Exit Exam on their first attempt. The Exit Exam passage rate for the Spring of 2003 for Marion 7 was 95.4%. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264.

180. According to the 2003 Report Card, Marion 7 had a 94.7% student attendance rate, slightly below the State average of 95.4%. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264. The student-teacher ratio for Marion 7 in 2003 was 20.6 to 1, which identical to the State district median of 20.6 to 1. *Id.*

181. Marion 7 was rated Unsatisfactory on the 2003 Report Card²⁷ (Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264) and its schools were rated as follows:

Britton's Neck Elementary School	Below Average
Rains Centenary Elementary School	Below Average
Creek Bridge Middle School	Unsatisfactory
Creek Bridge High School	not rated ²⁸

Defendants' Exhibit 3005-3008; Plaintiffs' Exhibits 6265 - 6268.

4. Per Pupil Spending

²⁷ The Court takes judicial notice that Marion 7 increased its absolute rating to "Below Average" on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 47.4%; Math 48.9; Science (first year tested) 34.3%; Social Studies (first year tested) 37.7%.

²⁸ Creek Bridge High School was a new high school and was not rated by the State Department in 2003.,or in 2004. In 2005, the first year for which such ratings were available, Creek Bridge High School received an absolute rating of "below average." (Tr. Trans. (08/01/03), p. 23 ll. 6-9.)

182. As reported on SDE In\$ite data, Marion 7 spent \$9,213 per pupil in school year 2002-2003. Defendants' Exhibit 3334. This amount has been increasing over time.

Fiscal Year	Per Pupil Expenditures In\$ite
2002-2003	\$9,213
2001-2002	\$9,738
2000-2001	\$9,107 (Average)
1999-2000	\$8,054.50 (Average)

Defendants' Exhibits 3305, 2800, 3147, 3153, 3334.

183. Marion 7 District revenue per pupil from State sources only has increased from \$2,967.97 during the 1991-1992 school year (average of Marion 3 and Marion 4), to \$6,600 during the 2001-02 school year, an increase of 224%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

184. In the 2003-2004 school year, Marion 7 received technical assistance in the form of one curriculum specialist, three full-time teacher specialists, one part-time teacher specialist, and four part time curriculum instruction facilitators. Additionally, Marion 7 received an additional \$255,000 for materials and supplies, retraining grants and homework centers. The total value to the district of the technical assistance provided to Marion 7 for the 2003-04 school year was as follows:

		Unit Value	Total Value
Curriculum Specialists	1	\$108,985	\$108,985
Teacher Specialists	3 1 part-time	\$100,183	\$300,549
Curriculum Instruction Facilitator	4	\$6,000	\$24,000
Additional Material			\$255,000

Total			\$688,534
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This amounts to \$717 per pupil in addition to funds received under EFA and EIA.

H. Orangeburg County School District 3

185. Orangeburg 3 is the product of a consolidation in 1997 of three school districts in Orangeburg. Most of the data utilized in this trial is from the post-consolidation period, so no data adjustments were needed for comparison purposes.

186. Orangeburg 3 has schools in Elloree, South Carolina, Holly Hill, South Carolina and two other small communities. It has four elementary schools: Elloree Elementary, Holly Hill Elementary, St. James-Gaillard Elementary, and Vance-Providence Elementary Schools. Additionally, Orangeburg 3 has two middle schools, Holly Hill Middle School and Elloree Middle School, and one high school, Holly Hill-Roberts High School.

1. Student Demographics

187. Orangeburg 3 had 3,572 students enrolled in school year 2002-2003, and employed 269 teachers. Defendants' Exhibit 3009. Of these students, 84.4% were eligible for free and reduced lunch during the 2001-2002 school year, resulting in it being ranked sixth in South Carolina among school districts with the highest percentage of children in poverty. Defendants' Exhibit 3225.

2. Curriculum and Instruction

188. Orangeburg 3 reports annually to SDE that its curriculum is in compliance with the State regulations. Defendants' Exhibit 2833. Additionally, the principals of its seven schools testified that the courses being taught in their schools were aligned to the

State curriculum standards and that the students in their schools were being instructed pursuant to that curriculum. *See* Deposition of Carol Szorosy, p. 61, ll. 3-17; James Myers, p. 89, ll. 23-25; Patricia Lott, p. 118, ll. 4-8; Janie Dease, p. 62, ll. 12-16; Joanne Lawton, p. 49, ll. 7-10; Michelle Wilson, p. 42, ll. 20-25.

3. PACT Scores

189. PACT scores for 2004 continued a general trend of improvement. Over 65% of all of the students in the district scored at Basic or above on ELA PACT tests, and 61.4% of all students in Orangeburg 3 scored at Basic or above on Math PACT tests. Defendants' Exhibit 3325. The previous years PACT scores are as follows:

PACT Scores: Percent Basic and Above

	2000	2001	2002	2003	2004
ELA	62.6%	57.0%	59.9%	55.3%	65.3%
Math	53.8%	47.0%	47.7%	55.5%	61.4%

Defendants' Exhibits 1117, 2784, 3009 (Plaintiffs' Exhibit 6269), and 3325.

190. The 2003 Report Card for Orangeburg 3 reported that 51.2% of tenth graders passed all three subject tests on the exit exam on their first attempt. The Exit Exam overall passage rate for seniors in the Spring 2003, was 86.4%. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

191. Orangeburg 3 had a 93.9% student attendance rate in the 2002-2003 school year, below the State average of 95.4% (Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269), and the student teacher ratio for the District is 17.1 to 1, which was better than the State district median of 20.6. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

192. The District was rated Unsatisfactory on its 2003 Report Card²⁹ and its schools received the following individual ratings:

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

Defendants’ Exhibits 3010 – 3017; Plaintiffs’ Exhibits 6270 – 6277.

4. Per Pupil Spending

193. As reported in In\$ite, Orangeburg 3 spent \$8,298 per pupil in school year 2002-2003, as compared to the State average of \$7,232. Defendants’ Exhibit 3335 and 3326. This amount has been increasing over time:

Fiscal Year	Per Pupil Expenditures
2002-2003	\$8,298
2001-2002	\$8,450
2000-2001	\$7,895
1999-2000	\$7,099

Defendants’ Exhibits 3335, 3305, 2800, 3153.

²⁹ The Court takes judicial notice that Orangeburg 3 increased its absolute rating to “Below Average” on the 2004 Report Card released in November of 2004, and maintained that rating in 2005. . The 2005 Report Cards reflected PACT scores percent at basic and above as follows: ELA 60.3%; Math 60.1; Science (first year tested) 43.2%; Social Studies (first year tested) 55.9 %.

194. District revenue per pupil from State sources has risen from \$2,452.51 during the 1991-1992 school year to \$4,661.00 during the 2001/2002 school year, representing an increase of 190%. Defendants' Exhibit 2880.

5. Interventions and Technical Assistance

195. For the 2003-04 school year, Orangeburg 3 received technical assistance in the form of one principal leader, two curriculum specialists, nine full-time teacher specialists, one part-time teacher specialist, and seven part-time curriculum instruction facilitators. Additionally, Orangeburg 3 received \$485,000 for additional materials and supplies, retraining grants and homework centers. Defendants' Exhibit 3131; Tr. Trans. (03/31/04), p. 79-80. The total value to the district of the technical assistance provided to Orangeburg 3 for the 2003-04 school year was as follows:

		Unit Value	Total Value
Principal Leader	1	\$159,810	\$159,810
Curriculum Specialists	2	\$108,985	\$217,970
Teacher Specialists	9 1 part-time	\$100,183	\$901,647
Curriculum Instruction Facilitator	7	\$6,000	\$42,000
Additional Material			\$485,000
Total			\$1,806,427

This amounts to \$483 per pupil in addition to funds received under EFA and EIA.

VIII. TEACHER ISSUES

196. A great deal of evidence was introduced by Plaintiffs concerning the quality of the teachers in the Plaintiff Districts. This evidence focused primarily on the characteristics of those teachers – e.g., the nature of their teaching certificates, their education level, average salary, and experience. Plaintiffs also introduced evidence of the teacher turnover rate for the Plaintiff Districts. These data were generally contrasted with the state-wide average and median district for each category. The record also contains testimony from each principal within the Plaintiff Districts concerning teacher quality in that principal’s school. Defendants also introduced evidence comparing teacher characteristics in Plaintiff Districts as a group with the characteristics of non-Plaintiff Districts. These issues are addressed in this portion of this Order.

A. Teacher Licensing

197. The procedures and requirements for teacher licensure were discussed by several witnesses³⁰. Plaintiffs suggest that these requirements are inadequate to insure a level of teacher quality commensurate with the opportunity for each child to acquire a minimally adequate education. The Court, however, finds that the system of teacher licensure in South Carolina is more than adequate for this purpose.

198. South Carolina employs a multi-step process to license teachers. *See* Defendants’ Exhibit 671, p. 1. The first step begins before a prospective teacher is even admitted into a teacher education program at the undergraduate level. Prior to admission to such a program, a candidate must take the Praxis I exam, which tests basic skills in reading, writing and math. Most, but not all, states require Praxis I or an equivalent exam as a part of the admissions procedure to a college of education. A minimum score on

³⁰ Plaintiffs called Dr. Janice Poda, Senior Director of the Division of Teacher Quality at SDE, as an expert witness. Dr. Poda’s Division is responsible for all aspects of teacher certification and teacher education in South Carolina.

Praxis I, known in the vernacular as a “cut score,” is required for admission. The cut score for Praxis I is set by the State Board of Education upon the recommendation of SDE. For 1999-00, the reading test cut score for South Carolina was 175, which is about in the middle of the range of cut scores established by the states that use this test, which range from 170 to a high of 178. Defendants’ Exhibit 672. Similarly, South Carolina’s cut score of 172 for the math test is in the middle of the range of scores established by other states for that test. *Id.*

199. While in undergraduate school, a candidate for a teaching certificate must also successfully complete a student teaching experience of at least 60 days. Tr. Trans. (09/22/03), p. 81, ll. 20-24.

200. The candidate for a teaching certificate must, of course, then graduate from an approved institution having completed the required education curriculum along with the other requirements for receipt of an undergraduate degree. The education school approval process is again controlled by SDE, which has adopted the standards for accreditation published by the National Council for the Accreditation of Teacher Education (“NCATE”). *See* Tr. Trans. (09/22/03), pp. 84-85. To be accredited in South Carolina, the school must either have expressly adopted the NCATE standards or have curricula and programs that meet those standards. Tr. Trans. (09/24/03), p. 14, ll. 11-16.

201. Prior to certification, a candidate must take a Praxis II examination in the subject area in which certification is sought. Praxis II tests both subject matter mastery and pedagogy. Tr. Trans. (09/24/03), p. 72, ll. 17-20. There are many different Praxis II tests, and the ones required in South Carolina are determined by SDE, along with the required cut score for each. The cut scores for the Praxis II test are determined by a panel

composed of representatives from SDE and representatives of Educational Testing Service, which publishes and administers the Praxis tests. Tr. Trans. (09/23/03), p. 179, ll. 1-25. They are ultimately approved by the State Board of Education upon the recommendation of Dr. Poda and her staff. Tr. Trans. (09/22/03), p. 122, ll. 6-13. The cut scores are set at levels that are intended to exclude “demonstrably incompetent” persons from becoming teachers. Tr. Trans. (06/14/04), p. 221, ll. 5-10. The Praxis II cut scores established by South Carolina are similar to the cut scores established in other states. Defendants’ Exhibits 675 - 679. Although Plaintiffs introduced rebuttal evidence showing that in some tests, South Carolina’s cut scores are below the cut scores in other states for the same test, in many instances the South Carolina scores are higher than in other states. *Id.*

202. Plaintiffs contend that the cut scores are set too low, and that passage of the Praxis II does not guarantee a quality teacher. The Court finds, however, that the level at which the cut scores are set is the responsibility of the State Board of Education and SDE. Those agencies have been directed by the General Assembly to “adopt nationally recognized teacher examinations that measure the cognitive teaching area competencies desired for initial job assignments in typical elementary and secondary schools in this State,” S.C. Code Ann. § 59-26-30 (A)(2), and to “use nationally recognized specific teaching area examinations approved by the State Board of Education for certification purposes.” S.C. Code Ann. § 59-26-30 (A)(3). The cut scores are subject to periodic review by SDE, which is in the process of changing some of the scores at this time. Interestingly, some of the scores will be raised, while others will be lowered. Tr. Trans. (09/22/03), pp. 130 – 131; (11/04/04), p. 97, l. 18 – p. 98, l. 16. In

any event, the Court finds that the responsibility for establishing appropriate cut scores should remain with the State Board of Education and SDE without interference from the Court. The Court also finds that the current scores are not set at a level that constitutes a constitutional violation.

203. In addition to Praxis II, a teacher in South Carolina must also take and pass an additional test called the Principles of Learning and Teaching within three years after he or she begins to teach. Tr. Trans. (09/22/03), p. 103, l. 16 – 104, l. 5. Finally, a teacher must progress through the ADEPT performance evaluation process. Tr. Trans. (09/22/03)p. 134, ll. 12-16.

204. This process is more than sufficient to ensure that teachers who are certified in South Carolina are at least minimally competent to deliver instruction compatible with the constitutional requirements. There are also alternative routes to certification, including somewhat less rigorous requirements for persons who wish to teach in a subject matter for which there is a critical need. Tr. Trans. (09/22/03), p. 182, ll. 9-18. These alternative routes and the requirements thereof have been prescribed by SDE, and the Court necessarily defers to SDE as to the efficacy of those procedures. To the extent that SDE considers them to be insufficiently rigorous to ensure at least minimal teacher competency, the Court assumes that SDE, consistent with its statutory mandate, will take steps on its own to adjust those procedures accordingly.

B. Teacher Salaries

205. Plaintiffs also contend that teacher salaries are inadequate to permit the Plaintiff Districts to attract and retain qualified teachers. When compared with the entry level salaries and average salaries paid by other southeastern states however, South

Carolina compares quite favorably. Defendants' Exhibit 688 shows the beginning and average salaries for teachers in twelve such states. For the 2000-01 academic year, South Carolina's beginning salary was seventh best, and its average salary was eighth best of the twelve states. *Id.*

206. Defendants also introduced evidence concerning teacher compensation compared with compensation for other occupations. Part of the difficulty in analyzing teacher compensation in comparison to other occupations is the fact that teachers typically work on a 190 day contract, Tr. Trans. (08/13/03), p. 103, ll. 24-25, which is substantially shorter than most "full time" workers. The United States Department of Labor tracks compensation information for various labor markets (as defined by the Department of Labor) based on hourly as opposed to annual earnings. These data permit a direct hourly and/or weekly wage comparison of teachers in certain geographic areas compared with other kinds of workers in the same area. Defendants' Exhibits 690, 691, 692, 3261, 3263, 3264, 3265, and 3267 show that teachers in the respective markets analyzed in each exhibit are paid on an hourly and/or weekly basis at a rate that is more than the average for all white collar workers, and more than registered nurses. *Id.* In the Plaintiff Districts, the average teacher pay exceeds the average pay for all workers in the county in which the district is situate by a ratio of 1.51 to 1, which is higher in the Plaintiff Districts than in the non-Plaintiff Districts. Defendants' Exhibit 3269. Given that teachers may be able to earn additional compensation during the summer months if they choose to do so, the Court cannot conclude that teacher compensation in South Carolina represents a constitutionally defective barrier to the attraction of qualified teachers into the profession.

207. Nor does compensation appear to be the principal reason that teachers leave the profession. As analyzed by Dr. Michael Wolkoff, in both Plaintiff and non-Plaintiff Districts, teachers who left teaching on average made less money in their post-teaching employment than they had made as teachers. Defendants’ Exhibit 3195; Tr. Trans. (06/21/04), pp. 120 – 122. This suggests that issues other than compensation affect the decision to leave teaching for other employment.

208. Although average teacher salaries in the Plaintiff Districts are generally less than the average salaries in other districts, a comparison of the averages does not reveal how compensation compares for any given teacher. Thus, while the Court acknowledges that the average teacher salary is somewhat lower in the Plaintiff Districts than elsewhere, this fact alone does not support a conclusion that an individual teacher is paid less in a Plaintiff District than he or she would be in another district. For example, the relative experience level of teachers impacts average teacher’s salary in a school district.

C. Teacher Turnover

209. Another issue that received considerable attention during the trial is the level of teacher turnover in the Plaintiff Districts. “Turnover” refers to the percentage of new teachers employed at a school or district each academic year. Plaintiffs introduced evidence of the three year average turnover rate for each of the Plaintiff Districts:

District	Teacher Turnover Rate
Allendale	24.4%
Dillon 2	11.73%
Florence 4	20.57%

Hampton 2	25.27%
Jasper	23.73%
Lee	22.77%
Marion 7	22.83%
Orangeburg 3	11.50%

See Plaintiffs' Exhibit 6152C.

210. The three year average turnover rate experienced by the Plaintiff Districts considerably exceeds the average turnover rate for districts across the State, which is 9.4%. See Plaintiffs' Exhibit 6152C; Tr. Trans. (04/02/04), p. 81, ll. 2-3.

211. Plaintiffs contend that the rate of turnover itself denies students in the Plaintiff Districts the opportunity to acquire a minimally adequate education, and that the higher turnover rates in their districts are caused by lower salaries relative to other districts in the State, particularly salaries provided in adjoining districts. The superintendents of the Plaintiff Districts all testified that they are unable to pay salary supplements at a level consistent with other districts because they have fewer local dollars available for that purpose. Tr. Trans. (07/30/03), pp. 161-164. Thus, Plaintiffs argue that they are constantly losing their best teachers to other districts in the State.

212. The influx of new teachers every year is also ascribed as the reason that professional development programs are deemed by the Plaintiff Districts to be ineffective. Tr. Trans. (01/15/04), p. 232. According to the superintendents, "sustained" professional development is not possible because of the number of new teachers. Tr. Trans. (08/01/03), p. 179, l. 23 - p. 180, l. 25.

213. Although the rate of turnover is higher in the Plaintiff Districts than the non-Plaintiff Districts, all districts in South Carolina experience some degree of teacher turnover. As analyzed by Dr. Wolkoff, a little more than 80% of the teachers in the Plaintiff Districts who were employed in the prior academic year returned to the Plaintiff Districts to teach for the 2002-03 academic year. Defendants' Exhibit 3179. In the non-Plaintiff Districts, almost 90% of the teachers returned. *Id.* Thus, the raw differences in turnover rates between Plaintiff and non-Plaintiff Districts is less than ten (10%) percent. It is interesting to note however that of the teachers who did not return to the same type district, many left teaching altogether. *Id.* The actual percentage of teachers who switched from Plaintiff to non-Plaintiff Districts is only slightly higher than the percentage of teachers who switched from non-Plaintiff to Plaintiff Districts. *Id.* Over time, the relative number of teachers who have switched from one district type to another has evened out, so that by 2002, there was very little difference in the numbers. Defendants' Exhibits 3185 and 3186. This suggests that compensation disparities are not the only determining factor in teacher mobility. If they were, the percentage of teachers leaving the Plaintiff Districts would surely exceed the percentage of teachers coming into the Plaintiff Districts. Thus, either the pay differences are not as great as perceived by the Plaintiff superintendents, or the pay differences do not explain the migration of teachers between district types.

214. Turnover is certainly a problem in the Plaintiff Districts, but the fact that the percentages of returning teachers are lower in the Plaintiff Districts than in other districts is not itself a violation of the State Constitution, and does not mean that students who are taught by teachers who are new to a school or district do not receive the

opportunity to acquire a minimally adequate education. As discussed below, even brand new teachers without prior teaching experience who have fulfilled the requirements for certification and who are participating in the ADEPT program must be regarded as sufficiently competent to create the opportunity for their students to acquire a minimally adequate education.

215. It is not the case, however, that all teachers who are new to a Plaintiff District are less experienced or less educated than those who left. While such a conclusion is suggested by the anecdotal evidence offered by the superintendents, a more in depth statistical analysis fails to support the point. Defendants offered such an analysis by Dr. Wolkoff, who pointed out that the percentage of new teachers in the Plaintiff Districts with either advanced degrees or education beyond their bachelor's degree was higher than the percentage of the teachers who left. Defendants' Exhibits 3187 and 3188. This was true in both academic year 2002 and 2003. *Id.* Likewise, in many instances, the teachers who come into the Plaintiff Districts to replace those who left are more experienced than those who departed. Defendants' Exhibit 3189.

216. There are factors other than money that affect the ability of any district to attract and retain teachers. As many witnesses testified, the Plaintiff Districts lack housing, shopping, entertainment, and other amenities that would make them more attractive to teachers. Tr. Trans. (09/23/03), p. 25 – p. 27. No doubt at least some of the turnover problem is the result of factors outside of the salary schedule and the local supplements paid by the Plaintiff Districts.

217. Thus, while teacher turnover may present something of a management and planning problem for the Plaintiff Districts, the Court cannot and does not conclude that

the quality of instruction necessarily suffers as a result, or that turnover itself creates the absence of the opportunity for each child to receive a minimally adequate education.

D. Teacher Experience

218. Plaintiffs complain of the relatively lower experience levels of their teachers when compared to teachers in non-Plaintiff Districts. Plaintiffs' Exhibit 6152H. In fact, for the 2000-2001 school year, however, the average experience of teachers in the Plaintiff Districts was over 13.1 years, compared with 13.6 years in the non-Plaintiff Districts. Defendants' Exhibit 697.

219. Beyond the fact that Plaintiffs' intuitive conclusions regarding teacher experience is not borne out by the data, the Court would be hard pressed to find that even brand new teachers are necessarily inadequate to create the opportunity to acquire a minimally adequate education. Given the requirements for teacher licensure, and the support and evaluative programs of ADEPT, new teachers are provided a solid foundation to begin their careers. It would also be anomalous to find both that current teachers are inadequate, and that new teachers would also be inadequate. If new teachers cannot begin to teach without creating a constitutional violation, how could the teacher population in South Carolina be maintained? Plaintiffs' assertions regarding teacher experience are not supported by the evidence, and the Court declines to find that any particular level of teacher experience is constitutionally necessary.

E. Professional Development

220. Teacher quality in South Carolina, however, is not simply a matter of how well teachers are prepared on the day they enter the profession. A minimum of five days of professional development time is provided for each teacher each year. S.C. Code Ann.

§ 59-1-420 (Supp. 2004). In many districts, including the Plaintiff Districts, the actual number of days devoted to teacher professional development is substantially higher. *See* discussion at Section VIII. The purpose of professional development is to improve the competency of all teachers at all experience levels. South Carolina has adopted standards for professional development, to which all such programs should adhere. Plaintiffs' Exhibit 6149. These standards have been described as "extremely comprehensive" and "broad." Tr.Trans. (09/23/03) p. 162, l. 8; l. 11. Additionally, South Carolina rewards teachers with additional pay as their education increases beyond a bachelor's degree. Tr. Trans. (06/17/04) p. 101, ll. 12-13; Plaintiffs' Exhibit 6021. Thus, teachers can and should continually improve their content knowledge and pedagogical skills throughout their careers.

221. Plaintiffs assert that unless such programs were "sustained," (Tr.Trans. (01/14/04), p. 164, ll. 14-17; (07/30/03), p. 110, ll. 15-19; (08/1/03) p. 180, ll. 1-3; p. 190, ll. 19-20; (09/26/03), p. 185, ll. 20-21; (08/11/03), p. 93, ll. 1-6) as opposed to "spray and pray" programs, (Tr.Trans. (08/1/03), p. 84, ll. 2-3; p. 86, l.9; (09/21/04), p. 156, ll. 17-20), they were of no value. Many superintendents testified that the professional development programs that they employed in the Plaintiff Districts were indeed "spray and pray," and therefore could not improve the quality of their teaching forces. *See, e.g.*, Tr. Trans. (07/30/03), p. 110, ll. 15-18; (08/7/03), p. 98, l. 9 – p. 99, l. 25; (09/30/03), p. 18, ll. 3-16. Plaintiffs have not established, however, that there is any impediment that prevents the Plaintiff Districts from providing higher quality, "sustained" professional development for their teachers. There is no evidence that high quality programs are more expensive, or more difficult to obtain. All of the Plaintiff Districts have received

Retraining Grants under the EAA, which are intended to provide even more professional development. To the extent that the professional development that is being provided is not helpful, the Plaintiff Districts can and should focus their efforts on programs that are calculated to meet the needs of their teachers.

222. Overall, the Court finds that South Carolina has an appropriate system to license and compensate teachers. South Carolina has received national recognition for its efforts to improve teacher quality generally, Defendants' Exhibit 3052, and specifically in hard to staff schools. Defendants' Exhibit 3310. Under these circumstances, the Court declines to find that teacher quality in South Carolina is so low that a constitutional violation exists.³¹ With these general findings in mind, it is appropriate to consider more specific facts regarding the characteristics of teachers in the Plaintiff Districts.

F. District Analysis of Teacher Issues

1. Allendale

223. Superintendent Paula Harris testified concerning the characteristics of the teachers in Allendale. According to Dr. Harris, in the 2003-04 school year, of the 140 teachers present in Allendale, seventeen were induction, or new teachers, five of whom were Program for Alternative Certification for Educators ("PACE") teachers.³² Tr.

³¹ To the extent that Plaintiffs' complaint is based on the presence of uncertified teachers in the Plaintiff Districts, the Court finds that Plaintiffs have not proven that the absence of certified teachers is the result of a failure of South Carolina's system of teacher licensure or other State policies.

³² PACE allows the awarding of a conditional teaching certificate to a person eligible to hold a teaching certificate who does not qualify for full certification "provided the person has earned a bachelors degree from an accredited college or university with a major in a certification area for which the [State Board of Education] has determined there exists a critical shortage of teachers, and the person has passed the appropriate teaching examination." S.C. Code Ann. § 59-26-30 (A)(8) (Rev. 2004). The State Board of Education may renew a conditional teaching certificate annually for a maximum of three years "if the holder of the certificate shows satisfactory progress toward completion of a teacher certification program prescribed by the board." *Id.*

Trans. (09/30/03) p. 216, ll. 13-17. Allendale also had five long term substitutes, although two spots were later filled with permanent teachers. Tr. Trans. (09/30/03), p. 94, ll. 21-25.

224. According to the testimony of Dr. Janice Poda, Allendale had a 24.4% three year average teacher turnover rate, 49.6% of its teachers who graduated from non-competitive colleges³³, 20% with “substandard certificates” or out-of-field permits³⁴, and 32.70% with less than five years experience. Tr. Trans. (09/22/03), pp. 100, 151, 175; (09/23/03) p. 21; Plaintiffs’ Exhibits 6152C, 6152E, 6152F, 6152G, 6152H, 6152I. Allendale had 7.3 professional development days per teacher in 2003. Defendants’ Exhibit 2971; Plaintiffs’ Exhibit 6231.

225. While providing this statistical description of Allendale’s teachers, Dr. Poda admitted that she had not been present in the classrooms of Allendale or any other Plaintiff District to observe the quality of instruction provided by any individual teachers in that district. Tr. Trans. (09/22/03), p. 61 ll. 13-25. The principals of the Allendale

³³ These colleges in South Carolina were identified by Dr. Poda as Allen University, Benedict College, Columbia College, Lander College, Morris College, Newberry College, South Carolina State University and USC Aiken. Tr. Trans. (09/23/03), p. 185-87. Dr. Poda also expressed concerns about the quality of the teacher education programs at Claflin College, Wofford College, Erskine College and Limestone College. Tr. Trans. (09/23/03), p. 183.

³⁴ The term “substandard certificates” was used by Dr. Poda to describe certificates issued by the SDE to teachers that might not meet the “highly qualified teacher” requirement under the federal No Child Left Behind legislation. SDE does not characterize any certificates it issues as substandard, and the term includes certificates which have been issued by SDE for many years to teachers it determined to be qualified to teach in South Carolina. Tr. Trans. (09/23/03), p. 197, ll. 15-21. Even according to Dr. Poda, only 1.1% of all teachers in South Carolina hold a substandard certificate as defined by Dr. Poda. Tr. Trans. (11/04/05), p. 205, l. 24 – p. 206, l. 1. Out-of-field permits are issued to teachers who are fully certified in another teaching field, and who have at least twelve hours of academic training in the out of field subject. Tr. Trans. (09/22/03), p. 136, l. 23 to p. 137, l. 5. This permit is often utilized in the area of Special Education where the teacher is certified in the substantive field, but is working toward receiving full certification in Special Education.

schools, however, when questioned about the quality of their teachers, only identified three teachers who were either not offered a contract to return or did not meet ADEPT requirements. The other teachers mentioned by the principals were included in a group they believed would be capable of correction and corrective action was underway for those few teachers identified. Franchini Deposition, p. 36, ll. 18-21; Deposition of Alexia Clamp, p. 66, ll. 7-12; Deposition of Alfonso Lamback, p. 68, ll. 1-4.

2. Dillon 2

226. While Superintendent Ray Rogers complained that he has lost qualified teachers to surrounding counties, including some in North Carolina, that paid higher salaries, Dillon also employs teachers from Florence, Marion, Marlboro, Conway and adjacent North Carolina counties as well. *See* Deposition of Thomas Monahan, p. 86, l. 6 – p. 87, l. 6; Deposition of Derrick Weatherford, p. 62, l. 15 – p. 63, l. 20; Deposition of Polly Elkins, p. 77, l. 23 – p. 78, l. 13; Deposition of Peggy Stafford, p. 50, l. 16 – p. 51, l. 22; Deposition of Jayne Lee, p. 61, l. 20 – p. 62, l. 21; Deposition of Ja-Novice Richardson, p. 55, l. 18 – p. 57, l. 5. Mr. Rogers was not critical of the quality of the teachers in his district. This evaluation was affirmed by the testimony of the principals in Dillon 2 who were largely satisfied with the quality of their teachers, or who were working, as would be expected, to improve any problems of teachers within the ADEPT system.

227. Dillon 2's three year average teacher turnover rate is 11.73%, only slightly higher than the State average. Plaintiffs' Exhibit 6152C. It has the lowest percentage (15.7%) of teachers graduating from non-competitive colleges of any Plaintiff District, (Plaintiffs' Exhibit 6152E) and has the second highest percentage (86.4%) among the

Plaintiff Districts on continuing contracts. Only Marion 7 is higher than Dillon 2, and both are higher than the State average of 84.4%. Plaintiffs' Exhibit 6152F.

228. Dillon 2 has fewer teachers with substandard certificates and out-of-field permits (6.3%) than the other Plaintiff Districts, and also fewer than the State average. Plaintiffs' Exhibit 6152G. Dillon 2 also has a lower percentage of teachers with less than five years experience (14.60%) than all the other Plaintiff Districts and the average district in the State. Plaintiffs' Exhibit 6152H. Dillon 2 is also below the State average for induction contract teachers and has the lowest percentage in that category (2.2%) of the Plaintiff Districts. Plaintiffs' Exhibit 6152I. Dillon 2 ties Orangeburg 3 for the lowest percentage of new teachers hired, both of which are lower than the State average. Dillon 2 had 19.1 professional development days per teacher in 2003. Defendants' Exhibit 2976; Plaintiffs' Exhibit 6236.

229. These data for Dillon 2 are very enlightening given that Dillon 2 is the lowest spending Plaintiff District. Despite revenues and expenditures that are well below the State averages, Dillon 2 has more teachers that fit Plaintiffs' definition of a quality teacher than any other Plaintiff District. This suggests on its face that money and teacher quality are not directly related.

3. Florence 4

230. Dr. Valerie Harrison offered testimony that twenty-seven of the eighty-seven³⁵ teachers in Florence 4 had less than five years experience. Eight teachers were induction contract teachers, and some of the twenty-seven were under full evaluation. Only one teacher in ADEPT failed to meet the goals established for that teacher. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243. Dr. Poda's analysis of Florence 4

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

teachers (Plaintiffs' Exhibit 6152A-J) shows that Florence 4 has a three year average teacher turnover rate of 20.57%; 41.1% of its teachers graduated from non-competitive colleges; 53.6% are on continuing contract; and 11.1% have "substandard" certificates or out-of-field permits, which is less than all Plaintiffs Districts except Dillon 2. Dr. Poda testified that 26.2% of Florence 4's teachers have less than five years experience, and 7.4% of its teachers were on induction contracts.

231. At their depositions, however, the principals in the schools in Florence 4 only identified five teachers who were placed on ADEPT improvement plans. Middle School Principal Gerard Edwards reported that the only teacher that had been placed on an ADEPT improvement plan in his school subsequently improved her teaching skills. Deposition of Gerard Edwards, p. 31, l. 8 – p. 32, ll. 15. The remaining two principals in Florence 4 identified two teachers who were either on full evaluations or were not offered contracts for the following school year. Depositions of Alice Johnson, p. 29, ll. 5-16; Deposition of Leon McCrary. The principal of the elementary school refused to identify the two teachers who had been put on ADEPT, and the high school principal reported that the ADEPT plan had not been met by one teacher, but that teacher would be managed according to the ADEPT process. Deposition of Leon McCray, p. 26, ll. 1-11. Additionally, Florence 4 had five professional development days per teacher in 2003. Defendants' Exhibit 2983; Plaintiffs' Exhibit 6243.

4. Hampton 2

232. Hampton 2 has approximately 105 teachers. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247. According to Dennis Thompson, Superintendent for Hampton District 2, twenty-three of 103 teachers in Hampton 2 are inexperienced, induction

teachers, or annual contract teachers on full evaluation. Tr. Trans. (10/09/03), p. 30, ll. 1-12. Dr. Poda testified that Hampton 2 had a higher three year average teacher turnover rate (25.27%) than the State average, a higher percentage of teachers who graduated from non-competitive colleges (46.5%), a higher percentage of teachers with substandard or out-of-field certificates (17.7%), a higher percentage of teachers with 0-5 years experience (38.9%), a higher percentage of induction contract teachers (10%), and a higher percentage of new teachers hired (21.5%). At the same time, 80% of Hampton 2's teacher are continuing contract teachers. Plaintiffs' Exhibit 6152 C-J.

233. The Hampton 2 principals' testimony, however, indicates that they did not view the teachers under their direct supervision as inadequate. The principals themselves only identified one teacher at the high school (who was not offered a returning contract), and one at the elementary school (who was not recommended to return for the following year), as inadequate. *See* Deposition of Archie Franchini, p. 85, ll. 4-11; Deposition of Daisy Orr, p. 63, ll. 8-12. Joyce Colter, the principal of Estill Middle School, did not identify any inadequate teachers. Deposition of Joyce Colter, p. 62, ll. 23 – p. 63, ll. 2.

234. The 2003 Report card reported that Hampton 2 had 11.9 professional development days per teacher in the district. Defendants' Exhibit 2987; Plaintiffs' Exhibit 6247.

5. Jasper County

235. According to Dr. Singleton, 40.8% of the teachers in Jasper County are unqualified. Plaintiffs' Exhibit 6457K; Tr. Trans. (04/04/04), pp. 85-89. He testified that approximately twenty-two induction teachers were hired for the 2003-2004 school year.

236. Dr. Poda provided statistics for Jasper County teachers that were somewhat different than Dr. Singleton's. She reported: three year turnover rate (23.73%); teachers graduating from non-competitive colleges (45.8%); continuing contract teachers (74.4%); substandard certificates and out-of-field permits (19.8%); teachers with 0-5 years experience (28.5%); induction contract teachers (8.5%); and percentage of new teachers hired (16.9%). Plaintiffs' Exhibit 6152C-J.

237. When the principals testified concerning the quality of their teachers, they could only identify approximately thirty-two teachers who had any problems at all, and many of those were either placed on ADEPT evaluation, or were not invited to return as a teacher in the district the following year. *See* Deposition Transcripts of Michael Bull, Kenneth Jenkins, Naomi Reed, and Edmond Burnes.

238. The 2003 Report Card shows that Jasper County School District has 11.4 days of professional development per teacher, up from 5.4 in the previous year. Defendants' Exhibit 2991; Plaintiffs' Exhibit 6251.

6. Lee County

239. Dr. Willie Townes, Superintendent of Lee County School District, described his teaching staff as "inexperienced," noting that 27% of his teachers had fewer than five years experience. Tr. Trans. (03/04/04), p. 238, l. 17-25; Plaintiffs' Exhibit 6439AI. Dr. Townes complained about FACES³⁶ teachers, teachers with out-of-field permits, and PACE teachers. He further reported that four of his teachers taught under a

³⁶ FACES is a program in which foreign nationals teach certain subject matters in South Carolina's public schools. FACES was adopted in an effort to alleviate teacher shortages in certain subject matters in South Carolina's public schools. *See* Tr. Trans. (09/22/03), p. 224, l. 12 – p. 226, l. 14.

warrant certificate³⁷ and twelve held out-of-field permits. Plaintiffs' Exhibit 6439AH. Dr. Poda provided her statistics on Lee teachers as well, showing the three year average teacher turnover rate (22.77%); teachers graduating from non-competitive colleges (48.9%); continuing contract teachers (66.5%); teachers with substandard certificates and out-of-field permits (18.5%); induction contract teachers (10.4%); and percentage of new teachers hired (19.3%). Plaintiffs' Exhibit 6152 C-J. Lee had 10.4 professional development days per teacher in 2003. Defendants' Exhibit 2997; Plaintiffs' Exhibit 6257.

240. Dr. Poda admitted that she had not observed any particular teacher in Lee teaching an academic class. Tr. Trans. (09/22/03), p. 61, ll. 20-25. When the principals in Lee were deposed, no principal was able to identify an inadequate teacher. *See* Depositions of Sharon Askins, Betty Burgess, Vickie Edwards, Sharon Griggs, Vickie Kirby, Earline McClary, and Janice Rivers. The principal at the Career and Tech Center described, but did not name, one business education teacher who was going to be placed on an improvement plan. *See* Deposition of Bernice Wright, p. 38, ll. 1-3.

7. Marion 7

241. Dr. Everett Dean testified that he had a large number (23) of inexperienced teachers in his district. This inexperience, according to Dr. Dean, prevented these teachers from effectively instructing the students in his district. Tr. Trans. (10/09/03), p. 87.

³⁷ Warrant certificates were issued in the past by SDE to teachers who had not passed the required teaching exams or who do not have the required professional education courses. *See* Plaintiffs' Exhibit 6134. These certificates have not been issued by SDE for some time, and when the No Child Left Behind Act is finally implemented, will no longer be accepted for teachers regardless of when they were first certified.

242. Dr. Poda's data however, tended to contradict some of Dr. Dean's testimony. Dr. Poda's data reveal that only 2.4% of Marion 7's teachers are induction contract teachers, which is actually one-half of the State average of 4.9%, and second only to Dillon 2 among the Plaintiff Districts. Plaintiffs' Exhibits 6152 C-J. According to Dr. Poda, Marion 7 has a three year average teacher turnover rate of 22.77%. The percentage of teachers in Marion 7 who graduated from non-competitive colleges is 27.4%, which is less than all other Plaintiff Districts with the exception of Dillon 2. Over 86% of Marion 7 teachers are on continuing contract, which is higher than all other Plaintiffs and higher than the State average. Just under 16% of Marion 7's teachers have substandard certificates and out-of-field permits, and 30.2% of teachers in Marion 7 have 0-5 years experience.

243. Marion 7 had 12.8 professional development days per teacher in 2003. Defendants' Exhibit 3004; Plaintiffs' Exhibit 6264.

244. The individual principals in the schools in Marion 7, however, when asked to identify any incompetent or inadequate teachers under their supervision, identified but one. That teacher was not offered a contract for the following year. The principals identified only five teachers throughout the district whom they believed needed to be placed on improvement plans. *See* Deposition of Jean Pearson, p. 27, ll. 4-8, p. 24, ll. 4-11; Deposition of Bernie Bell, p. 23, ll. 6-14; and Deposition of Frances Baker, p. 43, ll. 5-7.

245. Rex Whitcomb, the principal of Creek Bridge Middle School, testified in his deposition that there were no teachers he considered to be inadequate or incompetent in his school. He contradicted his own deposition testimony at trial by identifying three

teachers from the middle school and four from the high school whom he considered to be incompetent. Tr. Trans. (08/01/03), p. 202, ll. 19-23; Court's Exhibit 2. A review of those teachers' personnel files shows that of these seven teachers, three of them held master's degrees, five of them were on continuing contracts, one of them was an induction teacher, the average experience level of the seven teachers is in excess of six years, six of them held at least one certification from the SDE, and five of them attended competitive colleges as Plaintiffs defined this factor. At the time of trial, only one of the seven was still teaching in a Plaintiff District. Defendants' Exhibits 2861, 2862, 2863, 2864, 2865, 2866, 2868.

246. Finally, Dr. Terry Peterson's research revealed that Marion 7 has teachers specially trained in reading in every K-3 classroom to provide remedial reading instruction for the district. Tr. Trans. (06/09/04) p. 174, ll. 10-16.

8. Orangeburg Consolidated District 3

247. Orangeburg 3 is increasing its efforts to improve its teaching quality, and is utilizing retraining grants for this purpose. Tr. Trans. (01/15/04), p. 117, l. 24 – p. 118, l. 4; p. 141, l. 20 – p. 143, l. 23; (01/16/04) pp. 137-141; (02/25/04) p. 13, l. 21 - p. 14, l. 25. According to the 2003 Report Cards, Orangeburg 3 had an average of 11.6 professional development days for teachers, up from the 9.5 days of professional development time for the previous year. Defendants' Exhibit 3009; Plaintiffs' Exhibit 6269.

248. As with the other superintendents in the Plaintiff Districts, Dr. David Longshore complained of inexperienced teachers in Orangeburg 3. He testified regarding the number of induction teachers hired at Ellore High and Ellore Middle School. He

complained of teachers who were not returning teachers, and the need to hire new teachers annually. Jackie Shuler, Principal of Ellore High School, testified that twenty of the thirty-eight had less than five years experience and were therefore “inexperienced.” Plaintiffs’ Exhibit 6342F; Tr. Trans. (01/16/04), p. 62.

249. Dr. Poda’s data for Orangeburg 3 did not confirm the testimony of Ms. Shuler or Dr. Longshore. Dr. Poda’s data shows that only 20.8% of Orangeburg 3’s teachers have between 0-5 years experience, which is better than the State average of 24.7% in the 0-5 years experience range. Dr. Poda’s data also showed an 11.5% three year average teacher turnover rate for Orangeburg 3, and that 61.0% of Orangeburg’s teacher graduated from non-competitive colleges.³⁸ Orangeburg 3 has 81.9% of its teachers on continuing contracts, and only 11.1% with substandard certificates and out of field permits, which is second lowest among the Plaintiff Districts.

250. Orangeburg 3’s induction contract teachers made up 5.4% of its work force, slightly higher than the State average, but generally lower than all of the Plaintiff Districts except Dillon and Marion 7. The data offered by Dr. Poda showed that 10.4% of Orangeburg 3’s teachers are “new teachers,” Plaintiffs’ Exhibits 6152 C-J, which is consistent with the three year average turnover of 11.5%.

251. The testimony of the principals of schools in Orangeburg 3 confirmed that the district is not overly burdened with bad teachers. Three of seven principals in Orangeburg 3 had no complaints at all concerning the teacher quality in their respective schools. *See* Deposition of Jane Dease, p. 77, l. 104; Deposition of Carol Szorosy, p. 83, ll. 13-21; and Deposition of Michelle Wilson, p. 63, ll. 9-12. The remaining four

³⁸ This is not surprising as Orangeburg County is the home of two non-competitive colleges on Dr. Poda’s list: South Carolina State University and Claflin College.

principals identified fourteen teachers throughout the district who were not performing up to their expectations. *See* Deposition of Jacqueline Shuler, p. 106, ll. 19-21; Deposition of James Myers, p. 86, ll. 8-14; Deposition of Joann Lawton, p. 69, ll. 10-22; p. 83, ll. 1-9; Deposition of Patricia Lott, p. 116, ll. 15-18. Even Ms. Shuler, who testified at trial and complained about the quality of her teaching staff, only identified four teachers she believed to be “incompetent”. Deposition of Jacqueline Shuler, p. 105, ll. 21 – 106, ll. 25.

252. Based on this evidence, the Court cannot and does not accept the assertion that large percentages of the teachers in the Plaintiff Districts are incompetent. The Court understands the subjectivity of teacher evaluation and the understandable reluctance of principals and superintendents to be overly critical of the members of their teaching staff. On the other hand, no superintendent may ever be completely satisfied that each teacher is the best, but a desire to improve teacher quality in a district does not mean that the current teachers cannot provide instruction at a level sufficient to create the opportunity for each child to acquire a minimally adequate education.

IX. TEACHER CHARACTERISTICS AND TEACHER QUALITY

253. Those differences do not explain the differences in student achievement between those districts. Tr. Trans. (06/21/04), p. 64, ll. 18 – p. 65, l. 2. This is because there is no empirical evidence of a direct relationship between teacher characteristics and student achievement. *See* Defendants’ Exhibits 3163, 3204, 3166, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3194, 3193, 3212, 3213, 3214, 3215, 3283, 3284, 3285, 3285, 3191, and 3192.

254. This conclusion is supported by the statistical analyses offered by both sides concerning the relationship between teacher characteristics and student achievement. *See e.g.*, Defendants' Exhibits 675-679, 681-684, 693-715, 3342; Plaintiffs' Exhibits 6835 A – I. Dr. Armor and Dr. Podgursky each analyzed teacher characteristics such as education and experience, and compared those characteristics to student achievement. Although employing different methodologies, each arrived at the same conclusion: there is no consistently significant, positive relationship between teacher characteristics and student achievement.

255. These analyses are important. The Court does not doubt the sincerity of the beliefs expressed by many of the Plaintiff witnesses who attributed poor student achievement to lower levels of teacher characteristics that are generally considered to be important in the educational community. If this perception is correct, however, it would be revealed in a properly done statistical analysis. This is an important role that statistics serves in analyzing the massive amounts of data that are generated by educational systems. Where perception is not corroborated statistically, however, it is necessary to look deeper to find answers.

256. In rebuttal, Plaintiffs attempted to cast doubt upon the statistical methodology employed by Defendants' experts. Dr. Lorin Anderson used his own database to run correlation and regression analyses similar to those done by Drs. Armor and Podgursky. Dr. Anderson's computations, however, generally agreed with the results reached by the defense witnesses. In some instances, Dr. Anderson's work revealed even less of a relationship between teacher factors and achievement. For example, Dr. Anderson found a .000 relationship between advanced degrees and PACT scores. *See*

Plaintiffs' Exhibit 6835B. Taking the record as whole, therefore, the Court finds that teacher characteristics in the Plaintiffs Districts do not explain any deficits in student achievement in any significant and predictable way.

257. This however does not mean that teachers are not important. It remains possible under the evidence presented to reconcile the view that teachers are an important element in the educational experience of a student with the absence of a meaningful relationship between student achievement and teacher characteristics. Dr. Lorin Anderson's statement that "what you do is more important than who you are" is a conveniently concise way to express the idea introduced into the case by Dr. Walberg that specific teaching practices can make a dramatic difference in student achievement. Tr. Trans. (09/28/04), p. 82, ll. 11-21; Defendants' Exhibit 3307. Most experts from both sides opined that the teacher was the greatest single educational influence on the child's academic development within the school itself. Thus, teachers do matter, but it is good teaching that makes a good teacher, not a particular set of credentials or level of experience.

258. Many witnesses offered their personal definitions of a quality teacher. For example, Dr. Townes testified that

[a] highly qualified teacher is one that's very personable, that's one, that teaches, that touches, one that shows love to the children. A highly qualified teacher is one who is committed and dedicated to the teaching profession and receives every child as that child is when that child comes to them and tries to take that child or takes that child and carries that child as far as that child can go and as much as that child's potential will allow. That's a highly qualified teacher to me.

See Tr. Trans. (Townes) (03/03/04), p. 229, ll. 16-24.

259. Very few of the qualities valued by Dr. Townes and other witnesses are measurable in terms of credentials, because “[w]hat you do is more important than who you are.” Tr. Trans. (11/29/04), p. 64, ll. 24 – p. 65, ll. 1.

260. In summary, while there are differences in the average values for certain teacher characteristics between Plaintiff and non-Plaintiff Districts, these differences (a) mask considerably smaller differences in the actual distribution of teachers with these characteristics in the two groups of districts; (b) do not account for the differences in achievement among districts; and (c) would therefore not greatly affect student achievement in the Plaintiff Districts were they to be equalized.

261. Student achievement might be greatly enhanced if all existing teachers in the Plaintiff Districts, and indeed all districts, employed the teaching techniques referenced by Dr. Herb Walberg and Dr. Anderson, if they are not already doing so. There is no evidence, however, that any systemic impediment exists that would prevent the implementation of these practices.

X. FACILITIES IN THE PLAINTIFF DISTRICTS

262. Abbeville County holds, in part, that the education clause requires the General Assembly to provide safe and adequate facilities. Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540. It is therefore necessary for the Court to determine whether the facilities in the Plaintiff Districts are in fact adequate and safe. It is also necessary to address the question whether the constitutional duty requires that the cost of facilities be paid exclusively by funds appropriated by the General Assembly for that purpose.

263. Plaintiffs contend that local revenue should not be considered when determining whether the General Assembly has provided adequate and safe facilities to

the Plaintiff Districts. As previously discussed above at Section IV(C), however, “local” money is in reality “State” money because the power of school districts in South Carolina to tax flows from the plenary powers of the General Assembly. Bowaters Carolina Corp. v. Smith, 257 S.C. 563, 570, 186 S.E.2d 761, 763 (1972); Hay v. Leonard, 212 S.C. 81, 97-98, 46 S.E.2d 653, 660 (1948) (observing that “Article XI, section 6, provides that any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.”). Because the power to tax, unless delegated, is an exclusive prerogative of the General Assembly (i.e., a coordinate branch of state government), once this power is delegated to a political subdivision or locality, the local revenue raised for education by a political subdivision or locality is, in fact, State revenue procured by the State through the delegation of the power to tax. *See City of Columbus, supra* at 437 (“The principle is well settled that local governmental units are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion.”). Therefore, there is no distinction between State and local funding as a matter of law, and funding from “local” sources is relevant to determining whether resources are sufficient to create the opportunity for a minimally adequate education. The Court is aware of the fiscal limitations on the Plaintiffs’ districts which directly impacts the amount of funding available from “local” sources.

264. The South Carolina Constitution also specifically empowers school districts to issue bonds for the capital expenditures. S.C. CONST. art. X. § 15. Because the Constitution specifically authorizes this source of local revenue for school facilities, the Court cannot conclude that the Constitution requires the entire cost of school buildings to be paid from funds appropriated by the General Assembly for that purpose.

265. Not all funding for facilities in South Carolina derives from local tax revenues, however. The General Assembly approved a \$750,000,000 State Bond Bill, the proceeds of which were distributed to school districts for facilities. Tr. Trans. (08/17/04), p. 148, ll. 2-6; (09/19/03), p. 63, l. 20 – p. 64, l. 8; (09/11/03), p. 101, l. 24 – p. 102, l. 5; p. 106, ll. 1-10. The total dollars attributable to the Plaintiff Districts from the State Bond varies from district to district, with a high of \$5,950,452 for Orangeburg 3 to a low of \$1,500,252 for Florence 4. Plaintiffs' Exhibit 733; Defendants' Exhibit 1423. Between July 1999 and July 2001, \$1,766,134,316 of combined State and local building funds were spent on all South Carolina school buildings. Plaintiffs' Exhibit 306.

266. The eight Plaintiff Districts utilize facilities of various types, sizes and ages, ranging from a single PK-12 complex in Florence 4 to seven facilities in Lee County.

267. To support their case as to facilities, Plaintiffs offered the testimony of both superintendents and principals, as well as photographs of the various buildings, including photographs of non-education areas. Teachers offered anecdotal information about the facilities in which they taught. Of the approximately 1,351 pictures offered into evidence by the Plaintiffs, only 113 depict educational spaces. Nine hundred six of the photographs depict non-educational spaces, including, but not limited to, cafeterias, restrooms, and athletic facilities. The location of 339 of the photographs cannot be identified. A substantial number of photographs offered by the Plaintiffs showed damaged ceiling tiles caused by leaking roofs, worn floor tiles or carpet, restroom facilities that were not properly maintained and tangled, and/or loose computer wires

which needed to be maintained in a more orderly fashion. The photographs of each facility are discussed in more detail below.

268. The actual evidence in this case does not bear out a connection between facilities and educational outcomes. For example, South and East Elementary Schools in Dillon 2 are two of the oldest schools of all of the Plaintiff Districts, yet they have some of the best overall achievement of all of the schools in the Plaintiff Districts. Nor does the work of the Education Oversight Committee support the conclusion that there is a correlation between facilities and academic achievement. Defendants' Exhibit 894, The Relationship of School Facilities Conditions to Selected Student Academic Outcomes, despite a very concerted effort to draw such a correlation, fails to do so. There is no empirical evidence that would support a finding that achievement is related to the condition of facilities.

269. In response to the testimony from Plaintiffs' witnesses, Defendants established that for the academic year 2002-2003, each of the eight Plaintiff Districts certified to the SDE that their facilities: (1) are maintained in accordance with standard requirements established by the South Carolina Department of Health and Environmental Control; (2) are adequate in size and arrangement to accommodate the programs offered; (3) comply with safety regulations compiled by the State's Fire Marshal; (4) have safe and adequately maintained playground, physical education and play equipment; (5) have sufficient fire extinguishers, which are inspected annually and are clearly designated in all buildings; (6) are designed and equipped to serve the specific purpose for which each classroom is used; (7) have adequate light, ventilation, heating in all utilized areas; (8) have properly maintained, safe and attractive facilities and grounds; and (9) comply with

all OSHA standards in all educational laboratories and facilities. The Plaintiff Districts also certified that they have fire drills at least once a month; have plans to provide for the protection and welfare of students in the event of any disaster, tornado, hurricane, fire, and the like; conduct at least one emergency disaster drill within the first month of school; are in compliance with minimum building codes; and have met minimum requirements in all new facilities. Tr. Trans. (07/31/03), p. 83, ll. 1 – p. 84, l. 4; (08/12/03), p. 9, l. 15 – p. 15, l. 1; Defendants’ Exhibits 2832, 2833 and 2835; Plaintiffs’ Exhibits 6312, 6313 and 6314. Dr. John Suber testified that his department relies on the accuracy of these certifications from each district. Tr. Trans. (01/16/04), p. 188 – p. 190, l. 18. These reports are filed annually. *Id.*

270. To counter the photographic evidence offered by the Plaintiffs, the Defendants offered videotapes of all of the facilities in Dillon 2, Florence 4, Hampton 2, Lee, and Orangeburg 3. *See* Defendants’ Exhibits 2827, 2828, 2829, 2829, 2830, and 2852. The photographic videotape evidence of each side selectively depicts only the very worst and best conditions in each school.

271. Defendants also offered the testimony of Dr. James R. Smith who visited each facility in the Plaintiff Districts with the exception of Hardeeville Elementary. Dr. Smith observed that the facilities he visited were adequate for instructional purposes, meaning that they were sufficient to permit learning to occur. Tr. Trans. (06/28/04); Tr. Trans. (06/29/04). This does not mean that all of the facilities in the Plaintiff Districts are new, or modern, or well maintained, however. “Adequate” facilities are those that are sufficient to permit students to acquire the knowledge and skills set out in Abbeville County. They need not be new or modern to satisfy that requirement.

272. Indeed, there are issues and problems with regard to many of the facilities in the Plaintiff Districts. Many of these problems appear be related to maintenance. Tr. Trans. (06/28/04), pp. 191, 194, 196, 201, 209, 210; (06/29/04), pp. 8, 22, 23, 35, 47. Other problems were related to the age of the facilities. Failure of a district to properly maintain its facilities does not, by itself, require the General Assembly to replace them. Further, as several witnesses testified, the conditions shown in the photographs had been corrected since the photographs were taken. Tr. Trans. (04/02/04), p. 32, ll. 1-8; (01/06/04), p. 85, ll. 1-25; (07/31/03), p. 97, ll. 17-25; (07/31/03), p. 99 ll. 16-19; (10/9/03), p. 114, ll. 19 – p. 115, l. 2.

273. As to safety issues, Defendants introduced inspection reports from the State Fire Marshall for each school. *See* specific citations set forth below. Those reports reflect that when unsafe conditions were found at any school by the South Carolina Fire Marshal, those conditions were promptly corrected. No facility was required to close due to its failure to correct citations shown in the Fire Marshal records offered into evidence by the Defendants. *See* Defendants' Exhibits 2117 – 2435; Tr. Trans. (07/31/04), p. 102, ll. 105; (08/7/04), p. 25, ll. 20-25.

274. Based on all of the evidence, the Court finds that the facilities in the Plaintiff Districts are now adequate and safe, although at the time this litigation began (but before trial) at least one facility, East Elementary School in Dillon No. 2, was clearly unsafe. However, as discussed more fully below, the safety problems with that building have now been corrected. Obviously, many of the facilities, because of age and maintenance problems, were certainly not optimum nor ideal. However, that is not the standard of Abbeville County and the facilities in the Plaintiff Districts meet the

Abbeville standard. Further specific consideration of the facilities in each Plaintiff District follows.

A. Allendale

275. Allendale consists of the following facilities: Fairfax Elementary; Allendale Elementary (Primary); Allendale-Fairfax Middle; and Allendale-Fairfax High School. Some photographs of storage buildings were admitted into evidence for this district. *See* Plaintiffs' Exhibits 1563BJ – 1563BP. As previously noted, Allendale County is the one Plaintiff District that is currently run by the SDE.

1. Fairfax Elementary School

276. Fairfax Elementary School was constructed in the 1950's. Since its construction, there has been an addition of a new wing in 1970. Tr. Trans. (10/01/03), p. 35, l. 17 – p. 36, l. 2. The photographs related to this school are Plaintiffs' Exhibits 1563AK – BI.

277. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2143 – 2151. These reports do not show any uncorrected fire safety issues at Fairfax Elementary.

278. Although Dr. Smith found peeling paint on the exterior of Fairfax Elementary School and worn tile on the gym floor was worn, he found that there was adequate space for the number of students and that there were no impediments to providing the opportunity to acquire a minimally adequate education and that the facilities at Fairfax Elementary were sufficient to do so. Tr. Trans., (06/29/04), p. 45, l. 25 – p. 46, l. 23.

279. While there is evidence of lack of maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Allendale Elementary School

280. Allendale Elementary School (formerly Allendale Primary School) was constructed in different years beginning in the 1950's. The photographs related to this school are Plaintiffs' Exhibits 1570 DQ – FD.

281. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2152, and 2154 – 2164. These reports do not show any uncorrected fire safety issues at Allendale Elementary.

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

283. While this school is older and there is evidence that it is nearing the end of its usefulness as a school facility, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Allendale-Fairfax Middle School

284. Allendale-Fairfax Middle School was originally constructed in 1956. The school was renovated in 1970 to include the addition of two classrooms and a shop/music building was added in 1983. Major renovations to add a new wing, computer rooms,

science labs, other classrooms, bathrooms and new lighting were underway in 2003. Tr. Trans. (10/01/03), p. 42, l. 1 – p. 43, l. 11. The photographs related to this school are Plaintiffs’ Exhibits 1570AQ – BL and 1570BN – DP; Plaintiffs’ Exhibit 1563L – N; 1563P – AJ. The photographs did not reflect recent renovations to the school building.

285. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants’ Exhibit Nos. 2117-2129. These reports do not show any uncorrected fire safety issues at Allendale-Fairfax Middle School.

286. Dr. Smith testified that maintenance was an overt problem at Allendale-Fairfax Middle School³⁹. Notwithstanding those problems, Dr. Smith testified that the school facilities were adequate and safe and sufficient to provide students the opportunity to acquire a minimally adequate education. Tr. Trans., (06/29/04), p. 47, l. 2 – p. 48, l. 3.

287. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Allendale-Fairfax High School

288. With one exception, the present facilities at Allendale-Fairfax High School were constructed in the 1990s. The vocation building, the only building still in use from the previous high school campus, was originally constructed in 1969. It recently underwent major renovations. The photographs related to this school are Plaintiffs’ Exhibits 1563A – 1563K; Plaintiffs’ Exhibits 1570A – AP.

289. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School which are Defendants’ Exhibits 2130 – 2142.

³⁹ Dr. Smith’s visit to Allendale-Fairfax Middle School occurred prior to the renovations. Tr. Trans. (06/29/04), p. 47, l. 24 – p. 48, l. 3.

These reports do not show any uncorrected fire safety issues at Allendale-Fairfax High School.

290. Dr. Smith described Allendale-Fairfax High School as a modern brick structure that was attractive and with a lot of unused space. It was Dr. Smith's opinion that the facilities at Allendale-Fairfax High School were sufficient to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 48, l. 7 – p. 49, l. 6.

291. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

B. Dillon County School District No. 2

292. Dillon 2 consists of the following facilities: J.V. Martin Junior High; East Elementary School; South Elementary School; Gordon Elementary School; Stewart Heights Elementary School; and Dillon High School. While Dillon 2 has some of the older facilities of the Plaintiff Districts, Dillon 2 also has some schools with very high student achievement on PACT.

293. Additionally, as more fully discussed below, Dillon No. 2 has, in some instances, made district-wide decisions to enhance its athletic facilities as opposed to its classroom space. Defendants' Exhibits 2830 and 3309. Tr. Trans. (08/12/03), p. 82, l. 10 – p. 89, l. 6. Dillon No. 2 received \$4,379,781 under the State Bond Act and raised additional capital money locally that resulted in approximately \$6 million being available for capital needs in Dillon No. 2. Tr. Trans. (08/12/03), p. 16, l. 10 – p. 17, l. 13. That amount was largely spent on Dillon High School. Tr. Trans. (08/12/03), p. 17, l. 14 – p. 18, l. 4.

1. J.V. Martin Junior High School

294. J.V. Martin consists of several different buildings. One historical building on the campus was initially constructed in 1896 as a high school. In 1981, following a fire that destroyed the building which housed a major portion of the classrooms used at this facility, a new building was erected. Tr. Trans. (08/06/03), p. 187, l. 21 – p. 189, l. 7. The photographs related to this school are Plaintiffs’ Exhibits 1564D – T; 1564V – 1564X; 1571R, 1571T, 1571V – Z; 1571A – AK; 1571N – AR; 1571AT – BP. At the time of trial, Dillon 2 had received a renovation grant for J.V. Martin in the amount of \$164,300. Tr. Trans. (08/12/03), p. 20, ll. 13-19.

295. Defendants offered copies of South Carolina Fire Marshal inspection reports for J.V. Martin, which are Defendants’ Exhibits 2190 through 2193. These reports do not show any uncorrected fire safety issues at J.V. Martin.

296. Dr. Smith testified that the layout of J.V. Martin was problematical for student management issues. He also testified, however, that the school could function adequately with some adjustments. Tr. Trans. (06/28/04), p. 192, l. 15 – p. 194, l. 12; Tr. Trans. (06/29/04), p. 12, l. 21 – p. 14, l. 13.

297. While the Court finds that the layout of J.V. Martin is not optimal, the Constitution does not require the General Assembly to appropriate money to remedy this problem. Dillon 2 has elected to renovate facilities other than J.V. Martin, while leaving it unchanged. Tr. Trans. (08/07/03), p. 78, l. 24 – p. 89, l. 6; Defendants’ Exhibit 2830.

298. The Court finds that, although there are problems with certain buildings on this campus, this facility as a whole is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. East Elementary School

299. East Elementary School was originally constructed in 1926. There have been subsequent additions of a cafeteria in 1957, and a kindergarten wing and a new library in 1985 and 1997. Tr. Trans. (08/06/03), p. 191, ll. 11-15. The photographs related to this school are Plaintiffs' Exhibits 1564AJ; 1571 BW – CJ.

300. Defendants offered copies of South Carolina Fire Marshal inspection reports for East Elementary School, which are Defendants' Exhibits 2212 – 2219. These reports do not show any uncorrected fire safety issues at East Elementary.

301. Dr. Smith testified that East Elementary is adequate for instructional purposes. Tr. Trans. (06/28/04), p. 187, ll. 13-15. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

302. Plaintiffs offered testimony regarding a ceiling falling in a classroom in 2001. Tr. Trans (08/07/03), p. 60, l. 23 – p. 61, l. 13. Further testimony established that the ceiling was repaired and found to be structurally safe by an engineer following those repairs and before students were allowed back in the classroom. Tr. Trans. (08/12/03), p. 150, l. 10 – p. 151, l. 16 ; *see also* Plaintiffs' Exhibits 5026 and 5027.

3. South Elementary School

303. South Elementary School was constructed in the 1950s. Tr. Trans. (08/06/03), p. 190, ll. 24-25. The photographs related to this school are Plaintiffs' Exhibits 1564BH, 1571BJ, 1571EU, 1571EW, 1571EY; 1571FC, FF, FK, FL, FP, FR, FV, FY, 5033A-C, 5033F-G; 5033I & J.

304. Defendants offered copies of South Carolina Fire Marshal inspection reports for South Elementary School, which are Defendants' Exhibits 2203-2211. These reports do not show any uncorrected fire safety issues at South Elementary.

305. In Dr. Smith's opinion, the facilities at South Elementary School are adequate for the instructional purposes for which they are being used. Tr. Trans., (06/28/04), p. 189, l. 2. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

306. South Elementary was held up as a model school by several witnesses. Although Dillon 2's superintendent and South's principal complained of the school's condition, the accolades given South Elementary and its principal, Peggy Stafford, *see, e.g.*, Tr. Trans. (09/26/03), p. 18, l. 4. – p. 21, l. 18, and the success of its students, would seem to negate any attempt to establish a correlation between facilities and student achievement.

307. While this school is not new and there is evidence of stained ceiling tiles, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Gordon Elementary School

308. Gordon Elementary School was constructed in 1954. Since its construction, there have been additions to the school, the most recent being a \$1.4 million new wing housing sixth grade students. In addition, there is also a new media center space, new cafeteria space, new guidance and administrative space, as well as updated restrooms. Tr. Trans. (08/06/03), p. 189, l. 24 – p. 190, l. 10. The photographs related to this school are Plaintiffs' Exhibits 1564J, 1564Z, 1564AA – BA; 1571BV, 1571CK – EG.

309. Defendants offered copies of South Carolina Fire Marshal inspection reports for Gordon Elementary School, which are Defendants' Exhibits 2220-2228. These reports do not show any uncorrected fire safety issues at Gordon Elementary.

310. Dr. Smith testified that although the gym floor needed resurfacing and maintenance was poor at this school, Gordon Elementary's facilities were adequate for instructional purposes. It is also noted by the Court that Dr. Smith inspected the facilities at Gordon prior to the construction of the new wing. Tr. Trans. (06/28/04), p. 190, l. 24 – p. 192, l. 12. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830. Further, Gordon was renovated again during trial and photographs of the renovations were offered by Defendants at the end of the trial. Defendants' Exhibit 3078.

311. While a portion of this school's facilities is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

5. Stewart Heights Elementary School

312. Stewart Heights Elementary School was constructed in 1956. Tr. Trans. (08/06/03), p. 190, ll. 19-25. Since its construction, there have been renovations to Stewart Heights, Tr. Trans. (08/12/03), p. 19, ll. 3-7, and further renovations are anticipated at a value of \$101,230. Tr. Trans. (08/12/03), p. 20, ll. 13-15. The photographs related to this school are Plaintiffs' Exhibits 1564Y; 1571BQ-BU.

313. Defendants offered copies of South Carolina Fire Marshal inspection reports for Stewart Heights Elementary School, which are Defendants' Exhibits 2186

through 2189. These reports do not show any uncorrected fire safety issues at Stewart Heights Elementary.

314. Dr. Smith's opinion of this facility is that it is adequate for the instructional purposes for which it is being used. Tr. Trans. (06/28/04), p. 190, ll. 18-21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2830.

315. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

6. Dillon High School

316. Dillon High School was constructed in 1970. Since its construction, there have been significant (\$4.5 million) renovations to classrooms in 2000, as well as additions to the cafeteria. A state-of-the-art weight training facility was constructed in 2000. Tr. Trans. (08/06/03), p. 187, ll. 14-21; (08/12/03), p. 82, l. 6 – p. 85, l. 16. The photographs related to this school are Plaintiffs' Exhibits 1564B&C; 1571A-Q.

317. Defendants offered copies of South Carolina Fire Marshal inspection reports for Dillon High School, which are Defendants' Exhibits 2194 through 2202. These reports do not show any uncorrected fire safety issues at Dillon High School.

318. Dr. Smith testified extensively about the facilities he found at Dillon High School. His testimony was that the common areas of the facility, such as the hallways, were poorly maintained and, although the design of the building was unusual, it was, "without a doubt," adequate. Tr. Trans. (06/28/04), p. 198, l. 25. Dr. Smith testified that the cafeteria, library and weight room, and athletics' director's office were impressive.

Tr. Trans. (06/28/04), p. 194, l. 17 – p. 198, l. 25. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants’ Exhibits 2830 and 3309.

319. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

C. Florence County School District Four

320. Florence 4, located in Timmonsville, South Carolina, has a new PK – 12 facility, as well as a separate career and technology center currently in use in the district. Tr. Trans. (02/09/04), p. 38, l. 13 – p. 39, l. 13. The school superintendent at trial, while indicating a few minor problems, did not claim any conditions in the facilities which are unsafe or inadequate. Tr. Trans. (02/19/04), p. 127, l. 11 – p. 128, l. 3.

321. The Timmonsville Education Complex, which is comprised of Brockington Elementary, Johnson Middle School and Timmonsville High School, was constructed in 2000. Tr. Trans. (02/09/04), p. 127, ll. 11-16. Since its construction, there have been further additions to the elementary school wing of two classrooms. Deposition of Alice Johnson, p. 9, ll. 3-6. No photographs of this facility were offered by the Plaintiffs; however, Defendants offered a videotape showing the facility. *See* Defendants’ Exhibit 2831.

322. Although Defendants offered South Carolina Fire Marshal documents relative to Florence 4, they related to the former facilities used by the district and bear no information with regard to the facility presently being used by the district. There was no testimony by Plaintiffs of any fire code related problems. There was no testimony from any witness regarding safety issues at this school.

323. Dr. Smith testified that this is a beautiful, modern facility that showed pride in ownership. He did not go into every classroom in this facility because it is a brand new school. Tr. Trans. (06/29/04), p. 49, l. 50 – p. 52, l. 21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

324. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

D. Hampton School District Two

325. Hampton 2 consists of three buildings: Estill Elementary; Estill Middle School; and Estill High School. Defendants offered into evidence a videotape of the facilities as proof of their adequacy. *See* Defendants' Exhibit 2852. Substantial renovations to the schools took place prior to trial. Tr. Trans. (10/09/03), p. 113, l. 12 – p. 114, l. 18. According to the testimony of Dennis Thompson, Superintendent of Hampton 2, the photographs introduced by the Plaintiffs did not reflect \$1.7 million in renovation work to Hampton 2 schools, or \$300,000 in additional anticipated work. Tr. Trans. (10/09/03), p. 114, l. 19 – p. 115, l. 2. Superintendent Thompson acknowledged that prior to trial, Hampton 2 had also received a \$745,000 grant from the State to be used in further renovations. Tr. Trans. (10/09/03), p. 115, l. 19-25.

1. Estill Elementary School

326. Estill Elementary School was originally constructed in 1939. Since its construction, there have been additions in 1962 and 1981. Tr. Trans. (10/08/03), p. 192, ll. 1-5. The photographs related to this school are Plaintiffs' Exhibits 1565A – H; 1572A

– BD. Estill Elementary received three grants totaling \$700,000 for renovations in December of 2002. Defendants’ Exhibit 2629.

327. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill Elementary School, which are Defendants’ Exhibits 2165 – 2179 and 2181. These reports do not show any uncorrected fire safety issues at Estill Elementary.

328. Although Dr. Smith expressed concerns about the public street that divides the campus, he testified that the facility is adequate to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 14, l. 21 – p. 17, l. 5. There was testimony that the students going and coming across the street was kept to a minimum, and that the street was barricaded to traffic during the school day. Tr. Trans. (10/08/03), p. 191, l. 11. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants’ Exhibits 2852, 3309.

329. While this school is not new and there are concerns with the campus being divided by a public street, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Estill Middle School

330. Estill Middle School was constructed in 1954. Since its construction, additions were made in 1960, 1961, 2000 and 2001. The photographs related to this school are Plaintiffs’ Exhibits 1572BZ – DD.

331. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill Middle School, which are Defendants’ Exhibits 2277 through 2287. These reports do not show any uncorrected fire safety issues at Estill Middle.

332. Dr. Smith testified that the school-wide facilities, such as the gym and cafeteria, were not well maintained, and there were missing ceiling and floor tiles throughout the facility. Dr. Smith testified that the facilities were sufficient to provide an adequate educational opportunity. Tr. Trans. (06/29/04), p. 17, l. 6 – p. 18, l. 3. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

333. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Estill High School

334. Estill High School was constructed in 1984. Since its construction, there have been additions in 1991 and 1994 of a music/gymnasium complex. Tr. Trans. (10/09/03), p. 111, ll. 6-13. The photographs related to this school are Plaintiffs' Exhibits 1572BE – BY.

335. Defendants offered copies of South Carolina Fire Marshal inspection reports for Estill High School, which are Defendants' Exhibits 2262 – 2276. These reports do not show any uncorrected fire safety issues at Estill High.

336. Dr. Smith testified that Estill High School is an attractive, modern facility that has generally not been well maintained. At the time of Dr. Smith's visit, there were places where the facility needed to be repainted and floors that needed to be cleaned and waxed. Dr. Smith further testified that an entire wing appeared to be used by the school for storage space. Dr. Smith testified that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/28/04), p. 18, l. 8 – p. 20, l. 9. The videotape offered

into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2852.

337. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

E. Jasper County School District

338. Jasper County is building two new PK-12 complexes, one in the southern part of the county in Hardeeville and one in the northern part of the county in Ridgeland, to replace all existing schools in Jasper County. At trial, District Superintendent William Singleton testified that following completion of the two new facilities, all of the facilities issues for Jasper would be remedied. Tr. Trans. (04/20/04), p. 191, l. 2 – p. 197, l. 9.

339. Although the district is in the process of building two new facilities, evidence regarding the present facilities was offered by both the Plaintiffs and Defendants.

1. Ridgeland Middle School

340. The photographs related to this school are Plaintiffs' Exhibits 1573CA – DJ and 1566AM – AR.

341. Defendants offered copies of South Carolina Fire Marshal inspection reports for Ridgeland Middle School, which are Defendants' Exhibits 2288 through 2300. These reports do not show any uncorrected fire safety issues at Ridgeland Middle.

342. Dr. Smith testified that although Ridgeland Middle School is an older, poorly maintained facility, with paint peeling from the walls and dirty floors, these factors are not an impediment to providing adequate instruction. Dr. Smith found the

facility to be sufficient to provide the opportunity for students to acquire an adequate education. Tr. Trans. (06/28/04), p. 21, l. 20 – p. 22, l. 16.

343. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Jasper County High School

344. The photographs related to this school are Plaintiffs' Exhibits 1573A through Z and 1566A through Q.

345. Defendants offered copies of South Carolina Fire Marshal inspection reports for Jasper County High School, which are Defendants' Exhibits 2301 – 2326. These reports do not show any uncorrected fire safety issues at Jasper County High.

346. Dr. Smith testified that although the restrooms at Jasper County High School were clean, the general maintenance of the facility was substandard. Notwithstanding those findings, Dr. Smith's opinion is that this facility was sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 22, l. 17 – p. 23, l. 16.

347. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. West Hardeeville School

348. The photographs related to this school are Plaintiffs' Exhibits 1573DK through GC and 1566AT through AX.

349. Defendants offered copies of South Carolina Fire Marshal inspection reports for Fairfax Elementary School, which are Defendants' Exhibits 2327 – 2330. These reports do not show any uncorrected fire safety issues at West Hardeeville School.

350. Dr. Smith did not visit the school because he was advised that West Hardeeville Elementary was identical to Ridgeland Elementary which he did visit. Tr. Trans. (06/30/04), p. 178, l. 23 – p. 179, l. 5.

351. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. Ridgeland Elementary

352. The photographs related to this school are Plaintiffs' Exhibits 1573AA – BZ and 1566R – AL.

353. Defendants offered copies of South Carolina Fire Marshal inspection reports for Ridgeland Elementary School, which are Defendants' Exhibits 2331 – 2345. These reports do not show any uncorrected fire safety issues at Ridgeland Elementary.

354. Dr. Smith testified that he witnessed substandard maintenance at Ridgeland Elementary, and that many of the classrooms were cluttered. He observed a large library and playground area. However, Dr. Smith found the facilities to be sufficient to provide an adequate education opportunity. Tr. Trans. (06/29/04), p. 20, l. 19 – p. 21, l. 16..

355. While this school is not new and there is evidence of poor maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

F. Lee County School District

356. Lee County School District consists of Dennis Intermediate School, Bishopville Primary School, Lee County Career and Technology Center, Lower Lee Primary, West Lee, Mt. Pleasant Middle, and Lee Central High School. Defendants offered a video of the district facilities to evidence their adequacy. *See* Defendants' Exhibit 2839.

357. The Court finds that the facilities in Lee County are safe and adequate.

1. Dennis Intermediate School

358. Substantial additions were made to the facility in 1985 and 1988. The photographs related to this school are Plaintiffs' Exhibits 1567K through AO and 1574 BD through CD. Lee County was able to do substantial wiring and lighting work with an E-Rate Grant. Tr. Trans. (03/05/04), p. 32, ll. 10-14.

359. Defendants offered copies of South Carolina Fire Marshal inspection reports for Dennis Intermediate School (noted on those reports as Bishopville Junior High School), which are Defendants' Exhibits 2363 – 2370. These reports do not show any uncorrected fire safety issues at Dennis Intermediate School.

360. Dr. Smith testified that the facilities were sufficient to provide a minimally adequate education. Tr. Trans., (06/29/04), p. 28, ll. 1-25. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

361. While this school is not new, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Bishopville Primary School

362. The photographs related to this school are Plaintiffs' Exhibits 1567A – J; 1574F – BC.

363. Defendants offered copies of South Carolina Fire Marshal inspection reports for Bishopville Primary School, which are Defendants' Exhibits 2395 – 2397 and 2399 – 2408. These reports do not show any uncorrected fire safety issues at Bishopville Primary.

364. Dr. Smith testified that the facility was attractive and that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 23, l. 25 – p. 24, l. 22. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

365. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Lower Lee Elementary

366. Lower Lee Elementary School was constructed in 1986. Since its construction, there have been additions of new classroom wings. The photographs related to this school are Plaintiffs' Exhibits 1567BZ – CZ; 1574EA – EH. In 1999, Lee County received \$3.9 million in State bond money, and a portion of those funds were used to renovate Lower Lee. Tr. Trans. (03/05/04), p. 31, ll. 5-8.

367. Dr. Smith testified that at the time he visited the school, there was construction work underway on the playground. Dr. Smith concluded that the facilities were sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 24, l. 25 – p. 25, l. 22. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

368. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

4. West Lee Elementary

369. West Lee Elementary School was constructed in the 1960s. Since its construction, there have been several additions (1966 and 1983), including the recent addition of a kindergarten wing in 2004 paid for with State bond money. Tr. Trans. (03/05/04), p. 31, ll. 5-8. The photographs related to this school are Plaintiffs' Exhibits 1567EN – FM; 1574FS – GT.

370. Defendants offered copies of South Carolina Fire Marshal inspection reports for West Lee Elementary School, which are Defendants' Exhibits 2380 – 2394. These reports do not show any uncorrected fire safety issues at West Lee Elementary.

371. Dr. Smith testified that this was an older facility with worn floor tiles and the restrooms were in disrepair. Dr. Smith was also concerned that he witnessed a physical education class being held in a portable classroom, although he found that there were other areas on the campus (such as the multi-purpose room) where this class could have been held. Notwithstanding these findings, Dr. Smith found the facility to be sufficient to provide an adequate education. Tr. Trans. (06/29/04), p. 26, l. 1 – p. 27, l. 17. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

372. While this school is not new and there is evidence of poor maintenance and past moisture problems, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

5. Mount Pleasant Middle School

373. The photographs related to this school are Plaintiffs' Exhibits 1567DB – EM; 1574EI – FS.

374. Defendants offered copies of South Carolina Fire Marshal inspection reports for Mount Pleasant Middle School, which are Defendants' Exhibits 2371 – 2398. These reports do not show any uncorrected fire safety issues at Mount Pleasant Middle.

375. Dr. Smith testified that this is a modern structure, with classrooms that ran the gamut of clean and neatly maintained to messy and dirty. He testified that the facilities were sufficient to provide a minimally adequate education. Tr. Trans. (06/29/04), p. 29, l. 3 – p. 30, l. 17. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

376. While this school is not new and there some is evidence of a lack of maintenance, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

6. Lee Central High School

377. Lee Central High School is a state-of-the-art facility, newly constructed and opened in 2001. Although there was some testimony regarding roof leaks at this facility, those issues are related to construction problems that should be corrected by the contractor. Tr. Trans. (03/05/04), p. 31, ll. 20-25.

378. Dr. Smith testified that Lee Central High School is a beautiful facility and is one of the nicest schools he has seen in the country. Dr. Smith commented that the school appeared to have been built for a larger student body than it presently accommodates. He observed a lot of empty or unused space at the facility. Dr. Smith testified that the facilities at Lee Central High School were “absolutely” sufficient to

provide the opportunity for a minimally adequate education. Tr. Trans. (06/29/04), p. 30, l. 25 – p. 33, l. 7. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2829.

379. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

G. Marion School District 7

380. Marion 7 has recently experienced a complete restructuring and the District now has three facilities: Brittons Neck Elementary; Rains-Centenary Elementary; and Creek Bridge Middle/High School. Tr. Trans. (07/30/03), p. 142, l. 11 – P. 144, l. 19. The photographs for the district are Plaintiffs' Exhibits 1568A; 1575A – AZ. Many of these photographs, however, predate the significant renovations that have taken place in Marion 7 facilities.

1. Brittons Neck Elementary

381. Brittons Neck Elementary (formerly known as Brittons Neck High School) was constructed in the 1950s, with renovations and additions in 1985. (Tr. Trans. (08/04/03), p. 194, l. 25 – p. 195, l. 10. This facility has undergone substantial renovations and retrofitting to transform it from a high school to an elementary school. Tr. Trans. (07/31/03), p. 96, l. 17 – pg. 97, l. 9. The photographs related to this school are Plaintiffs' Exhibits 1575A – 1575U.

382. At the time Dr. Smith visited this campus, it was temporarily being used as a middle school during the construction of the new middle/high school (Creek Bridge High School). Dr. Smith found that it was adequate for instructional purposes. Tr. Trans.

(06/28/04), p. 203, ll. 7 – 21. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2828.

383. During trial, there was testimony by the school district that Britton's Neck Elementary school was to undergo a complete renovation to transform this facility from a high school to a PK – 6 grade school and that such renovation would likely remedy all facilities problems for that school. Tr. Trans. (08/01/03), p. 24, ll. 2-13.

384. The Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

2. Rains-Centenary Elementary

385. Rains-Centenary Elementary was original constructed in 1938. A wing housing a media center, cafeteria and additional classrooms was added in 1986. Tr. Trans. (08/01/03), p. 20, ll. 4-12. Likewise, this facility is scheduled to be renovated and there is testimony that such renovations would remedy almost all existing facilities issues. Tr. Trans. (07/31/03), p. 100, l. 7 – p. 101., l. 15.

386. Defendants offered copies of South Carolina Fire Marshal inspection reports for Rains-Centenary Elementary School, which are Defendants' Exhibits 2409 – 2412. These reports do not show any uncorrected fire safety issues at Rains-Centenary Elementary.

387. Dr. Smith testified that Rains-Centenary Elementary Schools is an example of an older school that had been well maintained and that the administration or faculty had attractively decorated. Tr. Trans., (06/28/04), p. 204, l. 8 – p. 208, l. 4. The videotape offered into evidence by Defendants supports the testimony of Dr. Smith. Defendants' Exhibit 2828.

388. While this school is an older school, the Court finds that this facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

3. Creek Bridge Middle/High School

389. Dr. Dean, superintendent for Marion 7, testified that the new Middle / High School facility would remedy the facilities issues at the old Brittons Neck High School and Terrells Bay High School. According to trial testimony, this facility opened in the 2003-2004 school year. Tr. Trans. (07/30/03), p. 142 – 144.

390. The Court finds that this new facility is safe and adequate and is sufficient to provide students the opportunity to acquire a minimally adequate education.

H. Orangeburg School District Three

391. At the time of trial, the facilities in Orangeburg 3 were in transition. The District was in the process of building a consolidated, district-wide high school (Lake Marion High School) to replace the two existing high schools. Likewise, Holly Hill Middle School would be moving into the former Holly Hill-Roberts High School facility, a building that was substantially renovated in 1992. The principal for the middle school testified that such a move would remedy the facilities problems at the current Holly Hill Middle School. *See* Deposition of JoAnn Lawton, p. 14, l. 10 – p. 15, l. 10. Dr. David Longshore, the Superintendent of Orangeburg Consolidated District 3, testified that upon completion of the construction and consolidation of the schools in his district in 2005, all facilities in Orangeburg 3 would be safe and adequate. Tr. Trans. (01/06/04), p. 140, l. 15 – p. 143, l. 16.

392. Dr. Smith testified that the other two facilities in the District, Vance-Providence Elementary and St. James-Gaillard Elementary, were both adequate facilities that provided their students with the opportunity for a minimally adequate education. *See* Tr. Trans. (06/29/04), p. 36, ll. 2-15; p. 39, l. 22 – p. 40, l. 11. In fact, Dr. Smith testified that all of the current facilities in Orangeburg 3 were adequate and safe in their current conditions. *See* Tr. Trans. (06/29/04), p. 34, l. 8 – p. 44, l. 10.

393. Accordingly, this Court finds that any deficiencies in the facilities are currently being remedied by the school district and those not being replaced or repaired are safe and adequate and are sufficient to provide students the opportunity to acquire a minimally adequate education.

XI. REVENUE AND SPENDING ANALYSIS FOR PLAINTIFF DISTRICTS

394. Specific revenue and spending information for each Plaintiff District is discussed above at Section VIII. As set out there, the Plaintiff Districts' per pupil expenditures and revenues tend to be among the highest in the State, and have been increasing over time. *See* Tr. Trans. (08/16/04), p. 65, ll. 1 – 10.

395. Since this lawsuit was filed in 1993, State revenues in the Plaintiff Districts have more than doubled. *See* Defendants' Exhibit 2880. Thus, whatever the situation that was present in those districts when this case began, substantial increases in funding have occurred in the intervening decade. Tr. Trans. (08/16/04), p. 38, l. 20 – p. 40, l. 6. Representative Harrell, Chairman of the House Ways and Means Committee, testified that education is a top priority in the budgeting process. Tr. Trans. (08/16/04), p. 24, ll. 10-12. In 1994, Chairman Harrell's Committee purposefully amended its rules and "move[d] education to the front of the budget bill so that it would be the first item

that was taken up in the State budget every year.” Tr. Trans. (08/16/04), p. 47, ll. 10-25; p. 48, ll. 1-8. Thus, since 1994, as a result of the General Assembly designating education as the number one budgeting priority, appropriations to education have substantially increased over time. Between 1994 and 2004, funding to education has increased from 33% of the general fund to 36% of the general fund. Tr. Trans. (08/16/04), p. 23, ll. 24-25; p. 24, ll. 1-4; p. 38, ll. 20-25; p. 49, ll. 3-15; p. 50, ll. 1-25. Notwithstanding budget cuts that began in fiscal year 2000, education has remained the number one priority of the State and, in fact, State appropriations to education between fiscal year 2000 and fiscal year 2001 “increased dramatically.” Tr. Trans. (08/16/04), p. 39, ll. 1-25; p. 40, ll. 1-6.

396. Beginning in 2002, budget difficulties resulted in across the board cuts for all agencies and programs, including education. Some of the cuts impacted adversely on critical areas of need such as early childhood education, kindergarten and pre-kindergarten programs, and homework centers.

397. Based on the testimony of the superintendents of the Plaintiff Districts, however, all of the additional revenue has been insufficient to create the opportunity for students in the Plaintiff Districts to acquire a minimally adequate education. This raises the central question as to a relationship between spending and achievement. Unless such a relationship can be demonstrated, the Court cannot conclude that the relatively poorer achievement of students in the Plaintiff Districts results from lack of money, or that increasing revenues will increase achievement.

398. Plaintiff District revenues from all sources exceed the State median, in most cases by a substantial amount. The exact amounts for FY 2001 - 2002, the most recent year for which the information was available during the trial are as follows:

Revenue Per Pupil from Federal, Local, and State sources

Allendale 4 \$10,360	Dillon 2 \$6,734
Florence 4 \$8,004	Hampton 2 \$8,908
Jasper \$7,857	Lee \$7,619
Marion 7 \$10,034	Orangeburg 3 \$8,012
District Median \$7,357	

Defendants' Exhibit 3225. As noted earlier, these revenues have been increasing over time.

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

400. Additionally, per pupil expenditures are less in the "Above 75th Percentile Schools," which were referred to in the testimony as "gap closing schools." Plaintiffs' Exhibit 251, pp. 26 – 28. The mean per pupil expenditure for the gap closing schools, as reflected in Plaintiffs' Exhibit 251B is \$5,545. By contrast, the mean per pupil expenditure for schools in the Plaintiff Districts is shown in Plaintiffs' Exhibit 251B as \$5,664. The fact that the Plaintiff school mean exceeds the gap closing school mean is

consistent with the higher per pupil expenditures as the district level for the Plaintiff Districts.

401. Plaintiffs disputed the conclusions to be drawn from the information on their per pupil expenditures. According to Plaintiffs, their per pupil figures are exaggerated because of certain diseconomies of scale. It is certainly true, for example, that the per pupil expenditure of Marion 7 for district leadership will be higher than districts with more students. When the actual expenditures of the Plaintiff Districts for instruction are examined, however, it is clear that Plaintiffs are in fact spending more per pupil than other districts. *See* Defendants' Exhibits 3327 – 3335. Spending in this general category would not be unduly affected by diseconomies of scale that pertain to small districts. As noted by Dr. Miley in his report on school district size and efficiency, “the higher correlations are in the functional areas that have the least cost per pupil. The largest expense category, Instructional, which is over half the cost of services, has the smallest correlations.” Plaintiffs' Exhibit 191, p. 49. This means that while diseconomies of scale may exist in certain expenditure categories, those categories make up only a small percentage of overall expenditures. Thus, the fact that small districts, which include some, but not all, of the Plaintiff Districts, spend more per pupil in fixed cost categories does not mean that all of their per pupil expenditures are affected by diseconomies of scale such that that their spending cannot fairly be compared to other districts.

402. It is clear that there is little, if any, relationship between spending and achievement. The Plaintiff Districts tend to be the highest spending districts in the State, yet their achievement is lower. Dillon 2 presents a powerful illustration of the absence of

any direct relationship between money and achievement. As noted above, Dillon 2 is the lowest spending of the Plaintiff Districts, and in fact spends less than the State average. Notwithstanding this relatively low level of spending, student achievement in Dillon 2 is among the highest of all of the Plaintiff Districts, with over 59.9% (ELA) and 62.5% (Math) of its students scoring at Basic or above on PACT for the 2004 school year. *See* Defendants' Exhibit 3319. At certain schools in Dillon 2, the students exhibit excellent performance. *See* Defendants' Exhibit 3339. The per pupil expenditures at East and South elementary schools are far below the average for Plaintiff District elementary schools. *Id.*

403. The absence of any meaningful connection between spending and achievement is not something that is unique to South Carolina. Nationally, per pupil expenditures have increased by 800% from the early 1970's until the present. *See* Defendants' Exhibit 627. Over that same period of time, student achievement as measured by the nationally administered National Assessment of Educational Progress ("NAEP") test has remained flat. *See* Defendants' Exhibit 626.

404. A similar longitudinal analysis is not possible in South Carolina because until the PACT test was begun in 1999, there was no consistent way to measure educational achievement in South Carolina. Since 1999, achievement on the PACT test has shown sporadic improvement in South Carolina in general and also in the Plaintiff Districts. The time period from 1999 through 2004 has been marked both by increases and decreases in spending in the Plaintiff Districts. *See* Defendants' Exhibit 3304M .

405. Plaintiffs offered testimony from Dr. Terry Peterson, who to presented the revenue and spending data for the Plaintiff Districts in a way different from the manner in

which it is kept and presented in the ordinary course by SDE. For purposes of his testimony, Dr. Peterson included capital expenditures, but excluded federal funds and revenues generated by extra local effort.⁴⁰ See Tr. Trans. (06/07/04), p. 223, l. 21 – p. 224, l. 3; p. 240, ll. 2-10; (06/08/04), p. 40, ll. 7-19; (06/10/04), p. 106, l. 17 – p. 106, l. 19. Dr. Peterson then compared the relative percentage of expenditures by Plaintiff Districts with non-Plaintiff Districts. Tr. Trans. (06/07/04), p. 170, ll. 12-22. Using this methodology, it appears that Plaintiff Districts actually spend less than non-Plaintiff Districts. See e.g., Plaintiffs’ Exhibit 6633. But this method of organizing and presenting the figures is unique to Dr. Peterson, and is inconsistent with the manner by which spending data is presented by SDE and EOC. Beyond this inconsistency, however, the Court finds that grouping capital expenditures with operating expenditures, and then removing federal and certain local revenues does not fairly reflect the actual money that is being spent to educate the children in a district. As Dr. Miley noted, because capital expenditures are “time related,” including them in a cost analysis would “skew the data.” Plaintiffs’ Exhibit 191, p. 48. For purposes of the Court’s analysis, the figures published by SDE in the In\$ight data, and as reported by EOC on the report cards, will be used. Those sources of information make it clear that the Plaintiff Districts, with the exception of Dillon 2, have higher levels of per pupil expenditures and revenues than the average and median districts.

406. Defendants introduced the result of four “professional judgment panels” conducted by Dr. Smith. The purpose of these panels was to determine whether experienced educators and educational administrators could develop educational

⁴⁰ Dr. Peterson excluded local funds to the extent they represented “extra effort” at the local level beyond the average State local effort. Tr. Trans. (06/08/04), p. 38, l. 6 – p. 40, l. 21.

programs calculated to achieve the elements of a minimally adequate education as defined by the Supreme Court in Abbeville County at given expenditure levels. Tr. Trans. (06/18/04), p. 75, l. 4 – p. 78, l. 4. Each panel was asked to perform the task using the lowest amount of money spent by any of the Plaintiff Districts in 2000, the average amount spent by all districts in South Carolina in 2000, and the amount then spent by the Plaintiff District with the highest percentage of students on free and reduced lunch in 2000. At the time these exercises were performed, Dillon 2 was the lowest spending Plaintiff District at \$5,623 per pupil, Clarendon 1 was the Plaintiff District with the highest percentage of students on free and reduced lunch and spent \$7,826 in 2000, and the average spent by all districts in South Carolina in 2000 was \$6,373. Tr. Trans. (06/28/04), p. 103, l. 24 – p. 104, l. 24. Three of the panels were composed of educators and administrators from outside South Carolina, while one panel was composed of professionals from South Carolina. All four panels concluded that they could construct educational programs sufficient to meet the definition of a minimally adequate education as defined in Abbeville County for the amounts of money they were given to work with. Each panel was “very confident” of the result of their work, although the confidence level tended to go up as the amount of money increased. *See* Defendants’ Exhibit 2772, p. 21; Defendants’ Exhibit 2773, p. 19; Defendants’ Exhibit 2774, p. 16; Defendants’ Exhibit 2775 p. 18.

407. Plaintiffs attacked the results of this exercise on the basis that the assumptions given to the panel members were inconsistent with the legal and educational realities in South Carolina. Tr. Trans. (09/29/04), p. 15, ll. 8-18. One of the chief criticisms leveled by Plaintiffs is that the panels were told to assume that teacher salaries

were adequate to attract and retain competent personnel, which is, of course, vigorously disputed by the Plaintiffs in this case.

408. These criticisms by Plaintiff are shared to some extent by the Court but they bear on the weight that the Court gives to the professional judgment panels' work, it does not render them inadmissible, or require the Court completely to disregard the panels' findings. *See Small v. Pioneer Mach., Inc.*, 316 S.C. 479, 489, 450 S.E.2d 609, 616 (Ct. App. 1994). To the Court, the most important conclusion that could be drawn from the panels' reports is that **generally** there is sufficient money available to achieve the educational outcomes identified in Abbeville County.

409. Opposing the hypothetical conclusions drawn by the professional judgment panels is the overwhelming body of testimony from the Plaintiffs' witnesses, most of whom uniformly contended that the Plaintiff schools were under funded in almost every area. The Plaintiffs' contention is not that their schools are under funded in relation to other schools in the State, but that they are under funded in relation to the specific needs imposed upon them by the economic conditions of their districts, and the socioeconomic status of their students.

410. Based on this evidence, this Court cannot conclude what particular level of spending in excess of what of Plaintiff Districts are currently spending is necessary to satisfy the constitutional obligation to provide the opportunity for students to acquire a minimally adequate education. Indeed, even the Plaintiffs' witnesses had difficulty placing a dollar amount on what was needed to provide an opportunity for a minimally adequate education, although they contended it that it was much higher than the amounts currently being provided. This Court cannot conclude that the mere allocation of

additional funds, without directing those funds to specific programs to meet various specific needs would lead to higher achievement in the Plaintiff Districts or elsewhere for that matter.⁴¹

411. However, as discussed below, this Court does believe that certain program funding which has been cut in the past, and the failure to fund other programs which have been adopted to deal with the specific needs of children in poverty in their early childhood years deprives those children of the opportunity to obtain a minimally adequate education. That is not to say that the allocation of additional funds, without directing those funds toward specific needs, will cure the constitutional deficit. Prior history has taught us that the allocation of funds alone (e.g. a 800% increase in per people funding as referred to above) is no assurance that educational levels of achievement will be raised.

XII. THE RELATIONSHIP BETWEEN OTHER INPUTS AND ACHIEVEMENT

412. Defendants introduced considerable evidence concerning the relationship, or lack of relationship, between other school inputs⁴² and student achievement. This evidence bears on the issue raised by Plaintiffs concerning whether the relatively poor achievement of students in the Plaintiff Districts is the result of the relatively lower levels of these inputs in those districts. If such a relationship exists, it would be possible to conclude that increasing the level of these other inputs in the Plaintiff Districts would have the effect of improving student achievement. This evidence also bears on the extent

⁴¹ Dr. Darling-Hammond testified that “money makes a difference only when spent well”, and further injected that the Plaintiff Districts cannot obviously spend what they don’t have. Tr. Trans. (8/11/03), p. 208, ll. 24- p. 209 ll. 2.

⁴² See [Defendants’ Exhibit 251](#). These inputs include the following: dollars per student, student-teacher ratio, student attendance, teacher attendance, student retention, days of professional development allotted, percentage of teachers with advanced degrees, percentage of contract teachers, percentage of teachers with out-of-field certification, teacher retention rate, average teacher salary, percent of budget spent on teacher salaries principal tenure, and the like.

to which the State has the capacity to improve student achievement through school based policies. While neither of the questions is the precise legal issue presented in this case, this evidence clarifies and puts in context the many variables that affect student achievement, and therefore is pertinent to the Court's decision.

413. Many of these variables are identified in Plaintiffs' Exhibit 251, Table 8. This exhibit captures most, if not all of the input issues raised by Plaintiffs in their case, and provides a convenient way to compare the inputs present in schools with different levels of achievement.

414. Plaintiffs' Exhibit 251 shows the mean values for all schools in the State. Comparing these "average" values to the gap closing schools is particularly instructive. The difference between the gap closing schools and the average of all schools is virtually indistinguishable in most categories.

415. Yet the gap closing schools are clearly accomplishing results that are highly desirable and are much better than average. These results do not appear to be correlated in any significant way with the input values for the gap closing schools. Whatever is driving the better achievement in these schools is not attributable to superior resources.

416. When the mean input values for the schools in the Plaintiff Districts are compared to the mean values in the gap closing schools, *see* Plaintiff's Exhibit 251B, the fact that the Plaintiff school values are somewhat lower (with the exception of per pupil expenditures) does not explain the relatively poorer performance of the schools in those districts. This is but further corroboration of the analyses done by Dr. Podgursky, Dr.

Armor, and others that demonstrate the absence of any direct relationship between these inputs and student achievement.

XIII. THE RELATIONSHIP BETWEEN POVERTY AND ACHIEVEMENT

417. This analysis raises the obvious question: If student achievement is not significantly related to money, teacher characteristics, or other school inputs, what accounts for the fact that students in some districts perform better than students in others?

The most recent administration of the Pact test yielded the following results:

Percent of Students Scoring Basic or Above on 2005 PACT		
District	ELA	Math
Allendale	53.8%	53.1%
Dillon 2	60.6%	59.6%
Florence 4	45.6%	50.0%
Hampton 2	52.7%	50.2%
Jasper	55.2%	48.2%
Lee	51.0%	50.9%
Marion 7	47.4%	48.9%
Orangeburg 3	60.3%	60.1%

418. The Defendants contend that since large percentages of students in the Plaintiff Districts have scored at least the basic on the test indicates that all students in those districts have the opportunity to obtain a minimally adequate education. The Defendants describe to the theory that the cup is “half full”. However, the converse of that belief is that 40 to 60 % of the students in the Plaintiff Districts are scoring at below

basic. According to the testimony offered by Suzette Lee, a student scoring below basic has not met minimum standards for student performance based on the approved curriculum standards. That student is not prepared for the next grade and must have an academic assistance plan. Tr. Trans. (8/12/03) p. 176 ll. 22 – p. 177 ll. 3. The Defendants are correct in saying that bad outcomes alone do not mean that opportunity is not present and it is not possible to say that all students who fail to achieve were deprived of the opportunity to success.

419. The Defendants offered the analysis of Dr. Walberg and others which, in effect, “factored out” the characteristics of poverty from other inputs in the educational process. The results of those analyses would lead to the conclusion that, except for the factor of poverty, there is little difference between schools in the Plaintiff Districts, and other schools in the State. While factoring out poverty is possible in a statistical analysis, poverty is a reality in the lives of the students in the Plaintiff Districts which can not be factored out. It is the most pervasive influence in their lives and in their educational abilities and achievement. Indeed the record in this case makes it clear that the principal factor that is directly associated with different levels of student performance is poverty.

420. This relationship was introduced into the case early on by Plaintiffs through the testimony of Dr. Greg Hawkins. Dr. Hawkins presented the first of many statistical analyses of information contained in the school report cards received by the Court. *See* Plaintiffs’ Exhibit 5051. According to Dr. Hawkins’ analysis, two-thirds of the differences in PACT scores at the district level are accounted for by differing percentages of students on free and reduced lunch. Tr. Trans. (08/14/03), p. 102, ll. 15-19. Stated another way, if all of the districts in South Carolina had the same percentage

of students on free and reduced lunch, the range of average PACT scores would only be one-third as great as it currently is. Tr. Trans. (08/14/03), p. 103, ll. 12-23. This would be true without changing any other variables, such as teacher characteristics, funding, professional development days, or teacher turnover.

421. Similar results were obtained by every other researcher who looked at this relationship, including Dr. Anderson, who also testified for the Plaintiffs. *See* Plaintiffs' Exhibit 6835C.

422. Moreover, the relationship between poverty and achievement would appear to be greater in the very young. Dr. Walberg testified that "the first four to six years of life can be very decisive in a child's development. They are the formative years where they are exposed mainly to the parents ... Tr. Trans. (7/1/04) p. 176 ll. 21-24. Dr. Walberg further testified that "...before schooling really begins, children are behind in the abilities that they need to succeed in school." Dr. Walberg further concluded that the child's ability affects achievement, but all the other factors (socioeconomic factors related to poverty) have a continuing impact. Tr. Trans. (7/1/04) p.. 177 ll. 7-14.

423. Taking all of this evidence together, it is apparent that poverty is directly related to achievement, and explains most of the variation in achievement between districts and schools.

424. There was considerable debate in the case about whether poverty "causes" poor achievement. Dr. Lorin Anderson's path analysis is said by him to reveal causation. Tr. Trans. (11/05/04), p. 19, ll. 24 – p. 20, ll. 6. That analysis demonstrates a direct effect of poverty on PACT scores of minus .765, Plaintiffs' Exhibit 6835C, meaning that for

every 1% increase in the poverty level, there will be a reduction in PACT scores of three-quarters of one percent. Tr. Trans. (11/29/04), p. 22, ll. 14-20.⁴³

425. Dr. Hawkins' scattergraph/scatterplot analysis reached a similar result. According to Dr. Hawkins, the relationship between free and reduced lunches (a proxy for poverty) and student achievement as determined PACT scores, is a profound negative relationship. The correlation coefficient, according to Dr. Hawkins, is minus 0.789. Dr. Hawkins explained that statisticians spend their careers trying to get to the point where they can explain that level of variation. He characterized it as a "very, very strong, and extremely strong correlation." Tr. Trans. (8/14/03) p. 70 ll. 1-15.

426. The statistical analysis of the experts, as well as anecdotal evidence, indicates that poverty is, in turn, both the parent and the child of poor academic achievement. Each follows the other in a debilitating and destructive cycle until some outside agency or force interrupts the sequence.

427. Whether regarded as causative (as this Court concludes) or not, the relationship between poverty and achievement is not accidental, as explained by Dr. Hawkins and Dr. Walberg. Poverty itself is associated with conditions that Dr. Hawkins called "risk factors," which themselves are associated with poor academic performance. Plaintiffs' Exhibit 5051. Similarly, Dr. Walberg charted relationships between poverty and intervening conditions that themselves affect achievement. Defendants' Exhibits 628 and 630. It is important to note that both the risk factors identified by Dr. Hawkins and

⁴³ The powerful nature of this relationship should be contrasted with the much weaker relationship between teacher variables and achievement, again as revealed by Dr. Anderson's path analysis: For every 1% increase in the composite "teacher quality" variable, there will only be a .1% increase in PACT scores, a 10 to 1 ratio. *Id.* Thus, if one attempts to raise PACT scores by 25% by improving teacher quality alone, a 250% improvement in those characteristics would be necessary.

the conditions identified by Dr. Walberg are factors that are present in society as a whole, and are not directly related to school programs. Ameliorating these factors would have a positive effect on achievement, (Tr. Trans. (11/05/04), p. 21, ll. 9-19), but these issues lie outside the traditionally accepted scope of education policy, and require interventions beyond those traditionally produced by schools.

428. **This brings the Court to the question that lies at the heart of this case.** Although schools cannot reasonably be expected to eliminate poverty, can schools address in specific ways the effects of poverty on achievement, and if so, must they do so as a matter of constitutional obligation? The Abbeville Court provides the answer. “We hold today that the South Carolina constitution’s education clause requires the General Assembly to provide the opportunity for **each** child to receive a minimally adequate education. Abbeville County, 335 S.C. at 68, 515 S.E.2d at 540 (emphasis added). The modifier “each” is dispositive of the question. “Each child” refers to children born to poverty as surely it does to those born to affluence.⁴⁴ The State’s obligation to provide an opportunity for a minimally adequate education is, in no way, reduced to children born to poverty. It is, in fact, enhanced for such children. The indisputable relationship between poverty and academic achievement and the magnified impact of poverty on the abilities of the very youngest, the most vulnerable, form the basis of the obligation. Should the impact of poverty not be addressed, at an early age, in the educational process, there would be no constitutionally mandated “opportunity” as defined above. The Court

⁴⁴ The superintendents referred collectively to their at-risk students when describing the difficulties faced by the Plaintiff Districts. Tr. Trans. (01/06/04), p. 125, ll. 1-8; (03/05/04), p. 48, ll. 8-9; (04/01/04), p. 141, l. 20; p. 142, ll. 10-18; (10/08/03), p. 117, ll. 2-21; (02/09/04), p. 32, ll. 5-9. Data generated, collected, and published by SDE breaks student populations down into groups of students, including students on free and reduced lunch and students who pay for lunch. Most, if not all of the expert witnesses called by both sides referred collectively to at-risk students as sharing common characteristics that create challenges for educational policy. It is therefore appropriate under the evidence to consider such students collectively.

therefore finds that the education clause of the South Carolina Constitution as defined in Abbeville County, imposes an obligation upon the General Assembly and the State of South Carolina to create an educational system that overcomes, to the extent that is educationally possible, the effects of poverty on the very young, to the pre-kindergarten and kindergarten, to enable them to begin the educational process in a more equal fashion to those born outside of poverty.

429. This Court further finds that in spite of the educational improvements enacted by the Defendants in recent years and the funding offered in support of those programs, the Defendants have failed in their constitutional responsibility to provide an opportunity for minimally adequate education to the very youngest and, in doing so, have failed to address the very reality testified to by their own expert Dr. Walberg, that before school really begins with children of poverty, they are already behind in the abilities that they need to succeed in school.

430. One factor that limits the ability of schools to overcome the effect of poverty on achievement is the limited amount of time that children are in at school relative to the time that they are in a different environment. Dr. Walberg illustrated this disparity in Defendants' Exhibit 3307, page 5. As calculated by him, a child spends approximately 12,960 hours in school during the first 18 years of his or her life. That must be compared with the approximately 144,720 hours that the same child would spend outside of school during the same period. Even if the school day or year were substantially extended, the relative time out of school would still far exceed the time in school. The challenges that schools face in trying to alter environmental factors that affect achievement are therefore apparent.

431. The difficulty for schools to ameliorate the effects of poverty on achievement is acknowledged by Plaintiffs' expert Dr. Lorin Anderson. When discussing the factors associated with poverty that intervene to impede achievement, such as prenatal factors, family status, divorce, frequent moving, and child rearing, *see* Defendants' Exhibit 3307, p. 3, Dr. Anderson noted that "if they can be altered, there's hope for minimizing or decreasing the effect of poverty on achievement." Tr. Trans. (11/05/04), p. 21, ll. 9-19. The above factors explain in part the ineffectiveness of remedial efforts mandated by the EEA on Plaintiff Districts. While the millions of dollars spent each year on the Plaintiff Districts no doubt have resulted in isolated incidences of improvement, there is no empirical or statistical evidence to suggest that those monies had any appreciable impact on improving student achievement. Since so much of a child's intellectual capacity and ability is formulated during within the first four to six years of life, as testified to by Dr. Walberg, and since poverty, especially at a young age, accounts for more than 2/3's of the difference in academic achievement, as measured by test scores, as testified to by Dr. Hawkins, the overlay of poverty on the very young appears to create a template for poor academic achievement and intellectual ability that is very difficult to break. That is why it is essential to address the impact of poverty as early as possible in the lives of the children affected by it.

432. While Dr. Guthrie opined that the educational community has not "constructed a series of strategies and activities that would enable me or any other reasonable person . . . to assert that schools can overcome the effects of poverty in order to elevate achievement." Tr. Trans. (09/21/04), p. 58, ll. 7 – 14, that does not mean that

others have not developed specific programs and strategies⁴⁵ that, appropriately funded show considerable promise in ameliorating at least the effect of poverty on achievement.

**XIV. THE OPPORTUNITY TO ACQUIRE A MINIMALLY ADEQUATE
EDUCATION DOES NOT EXIST FOR EVERY STUDENT IN
THE PLAINTIFF DISTRICTS**

433. The foregoing factual findings provide an appropriate and necessary context for resolution of the ultimate issue in this case: Have the Defendants provided the children in the Plaintiff Districts the opportunity to acquire a minimally adequate education? I find they have not.

XV. SUMMARY

As it is been stated throughout this Order, the distinction between opportunity and achievement has been contested by the parties since the trial began. The Plaintiffs have taken the position that: (1) All children can learn at high levels; (2) Large percentages of children in the Plaintiff Districts fail the PACT test, and other measures of educational achievement; therefore, the opportunity for those students to learn must be absent.

The Defendants take the position that bad outcomes alone do not mean that opportunity is not present and, further, that the Court cannot conclude that all students who fail to achieve were deprived of the opportunity to success. The Defendants further argue that the results of the PACT test should not be used as a basis for making cause and effect statements about the effectiveness of the instruction offered to different groups.

This Court does not find that poor PACT test results alone are evidence of a lack of an opportunity to receive a minimally adequate education. Neither does it hold that a high incidence of poverty (as reflected by the percentage of students on free and reduced lunch) is evidence of a lack of an opportunity to receive a minimally adequate education.

⁴⁵ See Appendix.

However, when those two factors come together so dramatically as they do in the case of the Plaintiff Districts, this Court is led to the conclusion that the children of the Plaintiff Districts are not receiving the opportunity to obtain a minimally adequate education. Here there is evidence that the Plaintiff Districts have from 68% to 91.7% of students on free and reduced lunch. PACT scores for the Plaintiff Districts for the year 2002 indicate that 31.5% to 56.9% are scoring at below basic in ELA and 45.3% to 80.3% are scoring at below basic in math.

The impact of poverty on achievement is not questioned and the statistics cited above are irrefutable evidence of that impact. There is testimony from experts and educators alike that effective early childhood intervention, especially to children who are born into poverty, can make a difference in educational abilities and achievements. In our State, as in most states, statistical evidence leading to that conclusion is somewhat lacking or inconclusive, because effective pre-kindergarten programs and four-year-old kindergarten programs are non-existence or unavailable to the masses. Moreover, early childhood intervention from pre-kindergarten to grade three has not received the priority needed to be an effective force in minimizing the impact of poverty on educational abilities and achievement throughout the educational process.

The Plaintiff Districts have received substantial amounts of monies under the EAA and similar programs in remediation as a response to the poor academic performance of certain schools and school districts. The expenditure of those monies has been largely ineffective because they come too late.

The child born to poverty whose cognitive abilities have been largely formed by the age of six in a setting largely devoid of the printed word, the life blood of literacy,

and other stabilizing influences necessary for normal development, is already behind, before he or she receives the first word of instruction in a formal educational setting. It is for that reason that early childhood intervention at the pre-kindergarten level and continuing through at least grade three is necessary to minimize, to the extent possible, the impact and the effect of poverty on the educational abilities and achievements of those children.

Such early intervention not only makes educational and humanitarian sense, it also makes economic sense. The testimony in this record of experts, educators, and legislators alike is that the dollars spent in early childhood intervention are the most effective expenditures in the educational process.

XVI. CONCLUSIONS

The Court concludes that the instructional facilities in the Plaintiff Districts are safe and adequate to provide the opportunity for a minimally adequate education as defined in Abbeville County.

The Court concludes that the South Carolina Curriculum Standards at the minimum encompass the knowledge and skills necessary to satisfy the definition for a minimally adequate education as set out in Abbeville County.

The Court further concludes that the South Carolina system of teacher licensure, including the minimum passing scores on Praxis I and the different Praxis II tests, is sufficient to ensure at least minimally competent teachers to provide instruction consistent with the curriculum standards.

APPENDIX

Early childhood intervention

The importance of early childhood intervention, especially for at-risk children, is virtually undisputed by any of the expert witnesses or educators who testified in the trial.

At-risk students benefit the most when additional time is provided early in their lives in the form of early childhood intervention.

Q: What would it take to close that gap . . . that coming out of poverty brings with the child?

A: High quality, high quality early childhood programs. The sooner, the earlier, the better.

(Harris, Trial Tr. (9/30/03) 107:24-108:2, Harris 107.24 - 108.2.)

Students entering school from low-income families consistently demonstrate fewer cognitive, language, and social skills than children from non-poverty families. Many students from the Plaintiff Districts lack prior exposure to print rich environments, standard English or experiences beyond their front yard. This lack of exposure detracts from their ability to relate to, or comprehend and learn what is expected in their initial years of schooling. The at-risk five-year-old is behind his or her counterparts from the first day that child enters kindergarten. Pre-kindergarten programs are critical in preparing at-risk students for school. Dr. William Singleton, Superintendent of the Jasper County testified about the lack of exposure to reading materials experienced by the at-risk children in his district. "...Many of those students come from a home that does not have reading material. You will never see a newspaper on the lawn. So reading material is very important." Tr. Trans. (4/01/04) p. 146 ll. 13 – 16.

The evidence shows that when a child reaches third grade (the first year that PACT tests are given) and is performing below grade level that child is at-risk of academic failure. The same evidence also shows that the educational system has failed to provide too many at-risk children with an opportunity to acquire a minimally adequate education in their first 4 years of school. Examination results of third graders are disturbing in terms of the actual numbers of children failing to perform at grade level or above by the end of the third grade, a point in which point they have been in school for four years. This trend only continues as at-risk children move from grade to grade and their scores and performance continues to decline.

The South Carolina General Assembly has been well aware of the importance of early childhood development for many years. Senator John Matthews has been actively involved in the improvement of education within the State for more than two decades of legislative service. He testified that the Southern Regional Educational Board developed studies indicating that the earlier the intervention in the learning process of a child, the easier it is to bring the child up to standards and, from an investment standpoint, the State

receives a bigger return on the investment. Tr. Trans. (8/15/03) p. 180 ll. 11-15. Senator Matthews further acknowledged the legislative recognition that the years from birth through five years of age are critical to a child's ability to learn. Tr. Trans. (8/15/03) p. 221 ll. 8-18; p. 222 ll. 1-5.

The South Carolina General Assembly has incorporated provisions for early childhood education for at least 20 years. Indeed, it recognized in the initial 1984 version of the EIA that unless appropriate interventions are provided, early deficiencies in a child's skills and knowledge presage an unsuccessful school experience.

Compensatory education students are those who enter school with severe deficiencies in skills, knowledge, motivation, and other requisite traits which are necessary for building successful school experiences. These students have not formed the appropriate basis for learning as a result of having inadequate language development experiences, insufficient opportunities to experience success, and inadequate developmental opportunities. Therefore, such students can be expected to perform poorly, and will continue to perform poorly, on tests such as the CSAB, BSAP, and CTBS unless appropriate intervention is provided.

(Plaintiffs' Exhibit 5035 at 12).⁴⁶

The EFA included a weight in the basic funding formula for five-year-old kindergarten students who attended a half-day program. S.C. Code Ann. §§ 59-20-40(c), 59-20-40(c) and 59-35-10 (West Supp. 2004). The EIA added a voluntary half-day program for four-year-olds with predicted significant readiness deficiencies, *Id.* §59-5-65(8), but funded that program with an "add-on weight" meaning that each district received the same amount of funding for each four-year-old student regardless of the districts' respective taxpaying abilities. The General Assembly expanded the half-day program for five-year-olds to a full-day program in 1998. *Id.* § 59-35-10. Sandy Smith of the House Education and Public Works Committee testified that these provisions evidenced the State's policy to reach young children in the preschool years and provide for their educational needs. (S. Smith, Trial Tr. (6/17/04) at 232:15-233:5).

Through the EIA, the General Assembly also imposed a requirement on the Governor to develop a state plan on early childhood development and education "to assist the state in providing appropriate services for preschool children." (Plaintiffs' Exhibit 5035 (EIA) at 12) Ms. Smith confirmed that this provision was further evidence of South Carolina's public policy regarding early childhood intervention. (S. Smith, Trial Tr. (6/17/04) at 240:9-24).

In 1993, the General Assembly reinforced its belief in the necessity and efficacy of early childhood education through Act 135. Among the stated purposes of Act 135 were to emphasize early childhood education and prevention of future education

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

problems, to provide extra assistance and learning time so that young students will be prepared for fourth grade and eventually graduate with their peers, and to promote advancement of curriculum and programs beginning in the preschool years and extending through grade three to support the students' future success in grades four through twelve. S.C. Code Ann. § 59-139-05 (West 2004).

The National Education Goals adopted by the South Carolina General Assembly in 1993 specifically referenced the policy of the State that all children in South Carolina would start school ready to learn. S.C. Code Ann. § 59-141-10(A)(1) (West 2004). This state policy was confirmed by Sandy Smith at trial. (S. Smith, Trial Tr. (6/17/04) at 147:10-22).

Finally and perhaps most significantly, the General Assembly made explicit findings of fact regarding the importance and necessity of early childhood education and interventions in the First Steps to School Readiness Act of 1999. The preamble reads as follows:

Whereas, recent research has shown that children's brains develop more rapidly and earlier than previously understood and that early stimulation of the brain increases the learning ability of a child; and

Whereas, recent research in neuroscience supports the critical importance of the early childhood years and its life-long effects on a child's development; and

Whereas, the General Assembly realizes that without proper care, nurturing, and support during the early years of life, children have difficulty learning when they enter school; and

Whereas, parents have the primary role and duty to raise, educate, and transmit values to their children, while communities can support parents as the primary caregivers and educators of their young children; and

Whereas, the members of the General Assembly recognize that improving results for children and their families can best be accomplished when state government works in partnership with communities and families to define common goals, expected results, and benchmarks for services to children and families; joins with communities and families in building the capacity to accomplish shared results; and supports local efforts through more efficient state accountability, data collection, and administrative systems.

(Plaintiffs' Exhibit 5040 (First Steps) at 3-4).

The legislation itself included provisions for high quality early childhood development and education services as well as provisions for parental involvement and education efforts, and for health care and nutrition services for young children. All First

Steps activities and services must focus on lifelong learning through school readiness, parenting skills, family literacy, and adult and continuing education; health care and nutrition of young children; quality child care; and transportation for those services. S.C. Code Ann. § 59-152-100 (West 2004). In the words of Marie-Louise Ramsdale, the first Director of the South Carolina First Steps program, the overriding purpose of this legislation was “[t]o ensure that each South Carolina child could arrive at first grade healthy and ready to succeed in school and in life.” (Ramsdale, Trial Tr. (8/15/03) at 12:20-24.) Sandy Smith confirmed that the State’s policy was to prepare a child to learn for a lifetime. (S. Smith, Trial Tr. (6/18/04) at 96:12-17.)

Senator John C. Land, III, a thirty year legislator and the third most senior member of the South Carolina Senate, testified that the First Steps program was one of the best programs ever developed by the General Assembly, but its effectiveness was thwarted because it was never fully funded. Tr. Trans. (1/05/04) p. 17 ll. 17-22.

Sandy Smith agreed that the many statutes enacted by the General Assembly that provide early childhood development and educational services, including First Steps and Act 135, generally embodied the policy of the State of South Carolina “to reach children as much as possible before kindergarten so that they’re ready when they start school.” (S. Smith, Trial Tr. (6/17/04) at 231:9-15.)

Despite its recognition of the importance of early childhood education, the State continues to cut funding for these programs. Ramsdale Tr. Trans. (8/15/03) p. 72 ll. 2-13. As a result of decreased funding, the Plaintiff Districts are only able to offer a limited number of early childhood classes. These classes fail to accommodate more than half of the children in need. Dr. Singleton of Jasper testified that his district is only able to serve approximately half of the four-year-olds in the early childhood education program. See, e.g., Singleton, Trial Tr. (4/1/04) at 167:19-168:4. He stated, “We’d love to serve all of the four year olds, but right now we do not have those revenues to do that.” Id. at 168:14-15. Dr. Longshore testified that Orangeburg 3’s early childhood program is currently serving approximately 100 of the 240-260 children that enter school each year in that district. (Longshore, Trial Tr. (1/6/04) at 151:9-152:3.) Other districts also offered similar testimony. Consequently, many children in the Plaintiff Districts start school unprepared and continue to fall further and further behind.

Based on the evidence presented, effective and appropriate pre-school programs can materially assist at-risk children to be able to go to kindergarten and have an opportunity to acquire a minimally adequate education from the start. The absence of such pre-school intervention for at-risk children materially affects their ability to acquire this opportunity from the start of their academic ladder. For instance, Valerie Harrison testified: “[I]t is essential to get these kids on, on track early so that as they move through the grades they will have less problems.” (Harrison, Trial Tr. (2/9/04) at 45:1-3.)

Defendants question this expenditure as having no proven long-term effect or advantage for the children. Yet the Defendants’ own experts agree that early childhood

education is critical for at-risk students: “High quality preschool for students from lower income backgrounds has significant long-term impacts . . . on student academic achievement, as well as other desired social and community outcomes . . . Full-day kindergarten for students from low income backgrounds also has significant positive impacts on student learning in the early elementary grades.” (Guthrie, Trial Tr. (9/21/04) at 152:3-13.)

The goal of pre-kindergarten is to prepare students to come to kindergarten with the skills and knowledge to be able to obtain the benefits of a kindergarten and early elementary education. For children at-risk, effective early children intervention from pre-kindergarten through grade 3 is essential to ensure such children the opportunity to receive a minimally adequate education.