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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY
STATE OF FLORIDA

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs. Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
ANDY GARDINER, in his official capacity as the
Florida Senate President;
STEVE CRISAFULLI, in his official capacity as
the Florida Speaker of the House of Representatives;
and PAM STEWART, in her official capacity
as Florida Commissioner of Education;

Defendants.

and

CELESTE JOHNSON; DEAUNDRICE KITCHEN;
KENIA PALACIOS; MARGOT LOGAN;
KAREN TOLBERT; and MARIAN KLINGER;

Intervenors/Defendants
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**APPENDIX FOR**
**FINDINGS OF FACT**

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## FINDINGS OF FACT[1]

### I. Findings Related to the Structure of Florida's System of Free Public Schools

1. Florida's K–12 system of free public schools is a large and complex system comprised of 67 locally-elected school boards that operate, control and supervise over 4,000 schools, and educate more than 2.7 million students as of the 2014–15 school year.[2]

2. The Florida student population is among the most diverse in the nation,[3] with a majority of students who are ethnic and racial minorities;[4] 58% of students who are eligible for free-and-reduced-price lunch (an indicator of poverty);[5] 13% of students who have disabilities and receive special education services;[6] and 10% of students who are English language learners ("ELLs").[7]

3. Students are educated in a wide variety of programs and settings, including traditional elementary, middle and high schools; charter schools; dual enrollment programs in which students attend part of their school day at a college or university; online education through multiple virtual school options; career and technical education with industry certifications; acceleration programs such as Advanced Placement, International Baccalaureate, Advanced International Certificate of Education; and schools of choice which specialize in particular

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[1] Any "finding of fact" that should more appropriately be characterized as a conclusion of law shall be considered a conclusion of law.

[2] Exs. 3350, 5330, 5342; Tr. Vol. 26 at 3956:15–23, 3948:15–19 (Test. of P. Stewart).

[3] Exs. 4058, 4059, 4060, 4061.

[4] Exs. 186, 3351, 3356.

[5] Ex. 3355.

[6] Ex. 3354.

[7] Ex. 3353.

subject areas or meet a need in the community, *e.g.*, performing arts or Science, Technology, Engineering and Mathematics ("STEM") magnet schools.[8]

4. Florida also provides a program to be used for private school tuition for students with disabilities through the McKay Scholarship Program as well as a scholarship program for students from low income families and children in the foster care system through the Florida Tax Credit Scholarship Program.

5. Education policies, programs, and funding decisions are developed and implemented throughout the State as the result of input and action of multiple stakeholders, including the Florida Legislature, the State Board of Education, the Commissioner of Education, the Florida Department of Education, locally-elected school boards, locally-elected or appointed school superintendents, as well as school district administrators, school principals, classroom teachers, and the public at large. In addition, education policies, programs, and funding in Florida are impacted by the requirements of federal law.[9]

6. Teachers, teachers' unions, parents, students, postsecondary education preparation and leadership programs, community groups, and advocacy groups are also key stakeholders who are actively involved in providing input and influencing education policies, programs, and funding decisions at both the state and local levels.[10]

7. The Florida Legislature has the exclusive constitutional authority to fix appropriations for the state budget. Art. VII, §1, Fla. Const. The Florida Legislature is authorized to appropriate state funds to school districts "upon such conditions as may be

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[8] Ex. 5342; Tr. Vol. 26 at 3948:12–3953:12 (Test. of P. Stewart).

[9] Exs. 5330, 5342; Ex. 3683 at 00103643; Tr. Vol. 26 at 3954:1–3958:2 (Test. of P. Stewart); Tr. Vol. 33 at 4944:21–4947:10 (Test. of L. Champion).

[10] Ex. 5330; Ex. 3683 at 00103643; Tr. Vol. 26 at 3954:1–3958:2 (Test. of P. Stewart); Tr. Vol. 33 at 4944:21–4947:10 (Test. of L. Champion).

provided by general law. These conditions may include the use of relative ad valorem assessment levels determined by a state agency designated by general law." Art. VII, §8, Fla. Const.

8. At the state level, the Florida Legislature establishes education policies through the passage of laws and the state budget. Each year, the Legislature as a whole, and specific education and appropriation committees, consider input from constituents and education stakeholders, including from the Department of Education, local school boards and officials, superintendents, and many other individuals, community groups, advocacy groups, and experts in educational matters. Education policy and funding levels are determined in the context of a constitutional requirement of a balanced budget, economic conditions, requirements of state and federal law as well as the priorities and needs of the State as expressed by the voters.[11]

9. The Executive Branch of the State of Florida is led by the Governor. The Governor's office includes staff assigned to education issues and an Office of Policy and Budget with an education unit. The Governor impacts education policy and funding in several ways, including by appointment of the State Board of Education, the exercise of authority to sign or veto legislation, and through the authority to propose an education budget and related policy initiatives.[12]

10. The State Board of Education is a seven-member board appointed by the Governor to staggered four-year terms, subject to confirmation by the Senate.[13] The State

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[11] Ex. 3436; Ex. 3683 at 00103643; Tr. Vol. 26 at 4050:20–4052:6 (Test. of P. Stewart); Tr. Vol. 33 at 4944:21–4947:10 (Test. of L. Champion). The budgeting process is described in detail in Section IV.C, below.

[12] §§ 1001.01–.03, Fla. Stat.; Ex. 3683 at 00103643; Ex. 5330; Tr. Vol. 26 at 3954:18–3955:5 (Test. of P. Stewart); Tr. Vol. 33 at 4944:21–4947:10 (Test. of L. Champion).

[13] Art. IX, § 2, Fla. Const.; § 1001.01, Fla. Stat.

Board's responsibilities include adopting education objectives and strategic plans for public education in Florida, supervising the Department of Education, submitting an annual Legislative Budget Request, adopting uniform student content standards, and implementing the state testing and accountability system. Standards, testing, and accountability are implemented through rules, which require public input.[14]

11. The State Board of Education appoints the Florida Commissioner of Education, who is the chief executive officer of the Department of Education. The Commissioner is responsible for supporting the State Board of Education in strategic planning, budget development, assessment and accountability, administration, and managing the day-to-day operations of the Department of Education.[15]

12. The Florida Department of Education has over 1,000 employees and is responsible for the enforcement of education law and regulations, and for promoting and implementing education policies and programs at the state level. This role includes development of student content standards, selection and implementation of state testing programs, implementation of school accountability and support for school improvement, certification of educators and approval of educator preparation programs, administration of the Florida Education Finance Program ("FEFP"), and administration and monitoring of federal education grants.[16]

13. The State Board of Education shall "have such supervision of the system of free public education as is provided by law." Art. IX, § 2, Fla. Const. The district school system

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[14] §§ 1001.01–.02, Fla. Stat.; Tr. Vol. 26 at 3958:16–3959:11 (Test. of P. Stewart).

[15] §§ 1001.10–.11, Fla. Stat.; Tr. Vol. 26 at 3932:1–19 (Test. of P. Stewart).

[16] §§ 1001.20–.29, Fla. Stat.; Tr. Vol. 26 at 3958:16–23, 3966:25–3967:10, 3970:1–4, 3970:9–3971:1 (Test. of P. Stewart); Tr. Vol. 33 at 4944:21–4947:10, 4934:16–24 (Test. of L. Champion).

"shall be considered as part of the state system of public education." § 1001.32, Fla. Stat. (2015). The State Board of Education "shall enforce compliance with law and state board rule by all school districts." § 1001.03(8), Fla. Stat. (2015).

14. The State Board of Education is required to adopt and submit to the Legislature a coordinated K-20 budget, as provided in § 216.023, Fla. Stat., which includes expenditure requirements of the State Board of Education, the Department of Education, and the Commissioner of Education. § 1001.02(2)(e), Fla. Stat. (2015). Florida Statute section 216.023 requires agencies to submit budget requests based on the agency's "independent judgment of its needs."

15. The State Board of Education is required to "perform such other duties as may be necessary for the enforcement of laws and rules relating to the state system of public education," § 1001.02(f); adopt rules within statutory authority, § 1001.02(n); "authorize the allocation of resources within law and rule," § 1001.02(o); "enforce system-wide education goals and policies except as otherwise provided by law," § 1001.02(r); and "establish accountability standards for existing legislative performance goals, standards, and measures, and order the development of mechanisms to implement new legislative goals, standards, and measures," § 1001.02(t).

16. The State Board of Education is responsible for developing and revising the public K-12 curricular standards, certification requirements for all K-12 personnel, identification of critical teacher shortage areas, and system-wide enforcement of law and state board of education rules. § 1001.03, Fla. Stat. (2015).

17. The Commissioner is required to "annually report the state's educational performance on state and national measures and shall recommend to the State Board of

Education performance goals addressing the educational needs of the state." § 1001.11(2), Fla. Stat. (2015).

18. The Department of Education is "an administrative and supervisory agency under the implementation direction of the State Board of Education." § 1001.20(1), Fla. Stat. (2015).

19. Under Article IX, Section 4(b) of the Florida Constitution, local boards of education are charged with the operation, control, and supervision of all free public schools within their respective school districts, as well as determining the rate of school district taxes within the limits prescribed by the Constitution.[17] School boards have a minimum of five members and are elected to four-year terms within their local communities.[18]

20. The Florida Legislature recognizes that "Public education is a cooperative function of the state and local educational authorities. The state retains responsibility for establishing a system of public education through laws, standards, and rules to assure efficient operation of a K-20 system of public education and adequate educational opportunities for all individuals. Local educational authorities have a duty to fully and faithfully comply with state laws, standards, and rules and to efficiently use the resources available to them to assist the state in allowing adequate educational opportunities." § 1000.03(3), Fla. Stat. (2015). School boards are responsible for implementing state requirements, but make many important decisions regarding the actual delivery of education and the operation of schools, such as establishing schools and attendance zones, enrollment, provision of instruction, curriculum, student progress and retention, and student discipline. School boards also are responsible for the recruiting,

[17] Art. IX, § 4(b), Fla. Const.; *see also* §§ 1001.30–.33, Fla. Stat.

[18] §§ 1001.34–.362, Fla. Stat.; Tr. Vol. 26 at 3956:18–23 (Test. of P. Stewart).

hiring, assignment, and evaluation of teachers and all other staff, the construction and maintenance of school facilities, budgeting and taxing, collective bargaining, and salaries.[19]

21. As of the 2015–16 school year, local school boards employed over 170,000 teachers and over 150,000 other staff, and managed budgets in excess of $26 billion.[20]

22. Florida school district superintendents are either appointed or elected.[21] In the 67 county school districts, 25 superintendents are appointed by their respective school boards, and 42 superintendents are elected by the voters. Superintendents are responsible for managing the day-to-day operations of a school district, and make decisions based on local needs and preferences, as well as input and direction from their school boards, educators, parents and community groups.[22]

23. The Court notes and emphasizes the extremely important role of local school boards and school district personnel within the constitutional structure of the education system in Florida, as summarized above and detailed in Section V of these findings. The decisions these boards and personnel make directly impact the quality of education that students experience. School boards and school district personnel make critical decisions about the management of schools and the allocation of resources that are consequential and do not involve Defendants in this case.

24. Federal law and policies also impact the education system in Florida in many ways, including, for example, by imposing requirements for the education of students with

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[19] §§ 1001.41–.42, 1001.43, Fla. Stat.; Tr. Vol. 26 at 3973:7–17, 3974:23–3975:13, 3977:4–9, 3975:24–3976:6, 3977:15–17 (Test. of P. Stewart).

[20] Exs. 3481, 3482, 3483; Tr. Vol. 26 at 3953:8–12, 4058:8–14 (Test. of P. Stewart); Tr. Vol. 32 at 4855:3–7, 4861:4–7 (Test. of L. Champion).

[21] Art. IX, § 5, Fla. Const.

[22] §§ 1001.49–.51, Fla. Stat.; Tr. Vol. 26 at 3956:24–3957:2, 3973:7–17 (Test. of P. Stewart).

disabilities (Individuals with Disabilities Education Act ("IDEA")[23]) and Section 504 of the Rehabilitation Act of 1973[24]), ELLs (Title III of the Elementary and Secondary Education Act[25]), and homeless students (McKinney-Vento Homeless Assistance Act[26]), among other student groups and programs.[27] Compliance with federal law, however, does not equate with whether the State has fulfilled their duties under Florida's Constitution.

25. The federal government also imposes many requirements in exchange for federal grant dollars and other support.[28] Pursuant to the Elementary and Secondary Education Act of 1965 ("ESEA"), as reauthorized by the No Child Left Behind Act of 2002 ("NCLB"), federal law requires states to develop and implement academic standards, annually test students against such standards and have plans to hold schools accountable for meeting the standards over time.[29] NCLB also required that students be given the opportunity to transfer from schools that did not meet adequate yearly progress ("AYP") to schools that did meet AYP requirements.[30] In addition, all states must participate in a national testing program called the National Assessment of Educational Progress ("NAEP" or the "Nation's Report Card") in which many states, including Florida, have participated for many years.[31]

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[23] 20 U.S.C. §§ 1400–1482.

[24] 29 U.S.C. § 794.

[25] 20 U.S.C. §§ 6801–7014.

[26] 42 U.S.C. §§ 11431–11435.

[27] Tr. Vol. 26 at 3977:18–3978:8 (Test. of P. Stewart).

[28] Tr. Vol. 26 at 3957:3–14 (Test. of P. Stewart).

[29] 20 U.S.C. § 6311(b); Tr. Vol. 26 at 3978:22–3979:9 (Test. of P. Stewart); Tr. Vol. 29 at 4329:2–25 (Test. of J. Copa).

[30] 20 U.S.C. § 6316, *repealed by* Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814 (2015).

[31] 20 U.S.C. § 6311(a)(1)(b), (g)(2)(D); Exs. 1358, 1390, 1391; Tr. Vol. 26 at 3996:3–6 (Test. of P. Stewart); Tr. Vol. 29 at 4455:4–4456:1 (Test. of J. Copa).

26. Specifically as to statewide annual assessments, states must measure proficiency of students in, at a minimum, English language arts, math, and reading no less than once during each age band: grades 3-5, grades 6-9, and grades 10-12.[32]

27. In late 2015, NCLB was replaced by the Every Student Succeeds Act ("ESSA") and requires, among other things, the development of college and career readiness standards, annual statewide testing of all students, student performance targets and school ratings, accountability and interventions for low performing schools, evaluation of teachers based on student learning, and programs to replicate effective charter schools.[33]

28. It should be noted that many of the education policies and programs about which Plaintiffs complain in this case, including the assessment and accountability system, teacher evaluations tied to student performance, charter schools, and other choice programs, are either mandated or incentivized by federal policy and funding.[34]

29. The U.S. Department of Education monitors school district and states' compliance with federal educational requirements on a periodic basis.[35]

30. Pursuant to this federal monitoring, the record reflects that Florida is in compliance with federal requirements as related to the education services for students with disabilities, ELLs, and homeless students.[36]

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[32] No Child Left Behind Act, PL-107-110 (Jan. 8, 2002), (NCLB), Sec. 1111(b)(3).

[33] Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1814 (2015); Ex. 4048; Tr. Vol. 29 at 4328:10–4331:18 (Test. of J. Copa).

[34] Tr. Vol. 26 at 3978:22–3979:9 (Test. of P. Stewart); Tr. Vol. 29 at 4324:3–19, 4334:8–10, 4363:8–11, 4370:19–4371:8 (Test. of J. Copa); Tr. Vol. 31 at 4659:19–4660:11 (Test. of M. Tappen); Tr. Vol. 32 at 4758:11–22, 4763:22–4764:7 (Test. of K. Hebda); Tr. Vol. 36 at 5307:22–5310:5 (Test. of A. Miller).

[35] Exs. 1406, 1409, 1410, 1411, 1412, 1471, 1472.

31. The Court finds that there is a similar record of compliance for federally funded programs at the school district level.[37]

## II. Findings Related to the Conditions Necessary to Ensure that All Children are Allowed the Opportunity to Obtain High Quality Education

32. In order to provide educational opportunity to all children as the Florida Constitution requires, school districts need to respond to children's needs at whatever level they are to make that educational opportunity meaningful.[38]

33. A considerable number of children come to school not ready to learn, without having the background that more privileged children have.[39] There is a clear disparity in the performance of economically disadvantaged students versus those who are not economically disadvantaged.[40]

34. While not every student who comes from poverty household starts school behind their wealthier peers, significant numbers do. Students living in poverty require a variety of additional resources in order to succeed at school. They have not been exposed to the same vocabulary and background knowledge and have less parental involvement.[41] They need

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[36] Exs. 1409, 1410, 1411, 1412, 1471, 1472; Tr. Vol. 8 at 1220:25–1221:8, 1233:4–1235:4 (Test. of L. Allen); Tr. Vol. 31 at 4657:23–4658:3, 4687:2–3 (Test. of M. Tappen).

[37] Ex. 0338; Tr. Vol. 31 at 4657:23–4658:16, 4659:15–18 (Test. of M. Tappen); Tr. Vol. 5 at 719:7–20 (Test. of N. Vitti); Tr. Vol. 6 at 902:21–904:6, 906:11–907:4 (Test. of O. Roberts); Tr. Vol. 7 at 1015:7–1020:18 (Test. of G. Littleton); Tr. Vol. 8 at 1087:10–1088:17 (Test. of N. Marks); Tr. Vol. 11 at 1513:5–13 (Dep. Test. of M. Burke); Tr. Vol. 22 at 3280:19–3281:14 (Test. of D. Robinson); Tr. Vol. 23 at 3505:24–3506:2 (Dep. Test. of J. Hiltz); Tr. Vol. 24 at 3639:14–3670:10, 3563:2–8 (Dep. Test. of J. Marte).

[38] Rebell, v.2, 103:19-24.

[39] Bowles, v.19, 2773:23-2774:8; Cook, v.13, 1889:19-1890:8.

[40] Roberts, v.6, 761:4-25; *also see* Ex. 5343.

[41] Vitti, v.5, 596:21-25; 597:1-6

language development, hands-on opportunities, and opportunities to play[42] and access to experiences and activities as simple as being read fairy tales.[43]

35. Children from high poverty backgrounds are much less likely to experience supportive practices. Families often lack access to the social and political networks that allow them to be effective advocates for their children.[44] It is important to emphasize that poverty is not an excuse, children can achieve regardless of socio-economic background, but often this requires extra resources that the state funding formula does not provide.[45]

36. Former Commissioner Frank Brogan, a witness for the State, explained:

> … poverty is clearly a challenge, continues to be, for children all over the country, but at the end of the day, it's not a stop point. It is a challenge to be overcome, and that's why public education, in part, exists, is to help children of all color, all socioeconomics, all family structure, native tongue, socioeconomic levels, come together in a public education system and find ways to achieve at a level that will give them their opportunity to live, not just dream the great American dream.[46]

37. There are conditions that are necessary for school districts to establish in order to ensure that all children who are behind academically can "catch up," which may include smaller class sizes, additional time learning, and services to address academic, mental health and behavior issues.[47]

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[42] Roberts, v.6, 769:25-770:11; Bowles, v.19, 2774:9-19.

[43] Cook, v.13, 1892:15-1893:7.

[44] Hanushek, v.28, 4294:13-22.

[45] Vitti, v.5, 597:7-12.

[46] Brogan, v.37, 5551:10-20.

[47] Vitti, v.5, 597:16-25; 597:1-5.

**A. Personnel Needed**

38. In addition to effective teachers, there is a team of professionals who are necessary to support the needs of low performing students. For students to be able to achieve academically, behavioral supports and social-development tools are needed in school in order to help students achieve academically.[48]

39. Behavior specialists analyze students' misbehaviors in school, draft behavior intervention plans, assist teachers in redirecting the misbehaviors, and teach students to learn appropriate behaviors.[49] The importance of behavior specialists is recognized by the State as they are a required component of school district leadership teams for schools that are in district-managed turnaround status.[50]

40. Mental health counselors help students deal with anger and other issues that they bring to school[51] and school-related impacts of abuse, neglect and trauma.[52] The role of these counselors is not to substitute for other professionals who provide counseling outside of school, but to specifically address the barriers to focusing in class.[53]

41. Social workers assist in making home to school connections.[54] Supporting parents is part of the school's responsibility if schools are going to prepare students to be

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[48] Roberts, v.6, 763:3-25; 765:12-25; 766:1-25; 771:10-24. *also see* Ex. 5343.

[49] Roberts, v.6, 788:3-13; Roy, v.9, 1287:25-1288:12; Cook, v.13, 1891:10-14; 1896:6-1898:3; 1929:14-24.

[50] Ex. 1976, at 58806. *See also* section on turnaround schools.

[51] Vitti, v.6, 742:16-23; Roberts, v.6, 788:14-16; Marks, v.7, 1072:4-1073:6; Roy, v.9, 1291:9-24; Cook, v.13, 1893:21-1894:11; Romano, v.13, 2013:16-24.

[52] Roberts, v.6, 770:12-20; Cook, v.13, 1890:9-22.

[53] Robinson, v.22, 3235:19-21.

[54] Roberts, v.6, 771:10-772:18; 787:15-788:2; Vitti, v.6, 742:16-23, 771:10; Littleton, v.7, 984:23; Roy, v.9, 1288:21-1289:11; Cook, v.13, 1900:5-14; Robinson, v.22, 3234:16-3235:18,

productive citizens.[55] Social workers can assist those children who are moved from relative to relative and do not have someone equipped to help with a student's education.[56]

42. Guidance counselors should assist with academic goal setting[57] and be career counselors for graduation.[58] Guidance counselors at times are required to focus on testing and proctoring.[59]

43. Academic coaches assist teachers of low performing students and interventionists assist the students in remediation.[60]

44. Class aides or paraprofessionals enable teachers to provide small group or individualized instruction.[61]

45. Nurses are needed to attend to a myriad of medical issues.[62]

46. Tutors provide individualized homework help.[63]

47. Media specialists help students in computer labs. They also are needed after school for students who need to take online courses but do not have computers at home.[64]

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[55] Roberts, v.6, 771:19-773:5.

[56] Roy, v.9, 1256:3-15.

[57] Roberts, v.6, 788:25-789:25; Roy, v.9, 1287:13-15.

[58] Marks, v.7, 1076:9-23.

[59] Cook, v.13, 1915:10-18; Guerrieri, v.20, 2991:1-12.

[60] Vitti, v.5, 632:22-633:5, v.6, 742:5-15; 790:16-791:17; Marks, v.7, 1073:7-21; Roy, v.9, 1288:13-20.

[61] Roberts, v.6, 790:1-15; Roy, v.9, 1287:20-24; Cook, v.13, 1898:9-1899:25.

[62] Vitti, v.6, 742:16-23: Littleton, v.7, 984:23-985:11.

[63] Marks, v.7, 1074:7-16.

[64] Boyd, v.16, 2425:9-17; 2465:16-23.

**B. Instructional Time**

48. School district witnesses agree that smaller class sizes, small group instruction, and individualized instruction are vital for providing the intensive instruction that is necessary for students who are under-performing.[65]

49. Schools on the State's 300 Lowest Performing List benefit from an extra hour, but there are low performing students who would benefit who are not at a school on the list.[66] Sufficient instructional time, extended day (before and after school) and extended school year (summer) are strategies that would benefit low performing students.[67] Summer programs are important for children in poverty because they tend to regress even if they made progress during the school year.[68]

50. Teachers need time and professional development to learn new standards.[69] Understandably, teachers complain that constant changes to standards impede their ability to learn and teach the new standards.[70]

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[65] Roberts, v.6, 773:23-774:6, 786:23-787:11, 790:1-15; Marks, v.7, 1059:11-24; Vitti, v.5, 597:13-20, 632:22-633:5, v.6, 742:5-15; Robinson, v.22, 3241:21-3242:14, Cook, v.13, 1899:2-25, 1903:21-1904:23; Guerrieri, v.20, 3010:21-3011:8; Flynt, v.21, 3151:3-7; Yariv, v.18, 2726:16-2727:25.

[66] Roy, v.9, 1280:15-1281:9; Roberts, v.6, 796:25-797:9.

[67] Rebell, v.2, 105:1-7; Vitti, v.6, 742:5-15; Roy, v.9, 1284:20-24; Cook, v.13, 1892:9-14; Boyd, v.16, 2455:9-25; Roberts, v.6, 780:13-781:22, 815:7-11; Marks, v.7, 1060:14-1061:3; Robinson, v.22, 3234:16-20.

[68] Hanushek, v.28, 4294:23-4295:5.

[69] Roberts, v.6, 775:3-776:11, 816:8-817:22, 879:22-880:10; Roy, v.9, 1284:24-1285:2; Robinson, v.22, 3234:16-23.

[70] Roy, v.9, 1278:22-1280:3.

### C. Resources Are Necessary to Provide a High Quality Education

Clearly, some amount of resources are necessary for school districts to fulfill their constitutional duty to operate a high quality system of public education. Time costs money.[71] People cost money.[72] The education of Florida's children is very important.

## III. Findings Related to Florida's K–12 Education Policies and Programs

51. Plaintiffs' challenges to various aspects of Florida's assessment and accountability system are many. Florida has been a national leader in educational reform. Florida was early in the assignment of "A"–"F" letter grades to schools as part of its accountability system and these policies have spread throughout the nation.[73] Federal law and policies now require all states to adopt state content standards and assess their students annually in English language arts and mathematics in all grades between 3 and 8 and once in high school.[74] The No Child Left Behind Act ("NCLB") also required that students be assessed in science at least once in elementary, once in middle, and once in high school.[75] The federal Race to the Top program focused on moving to more rigorous college and career ready standards, assessment, school improvement, and linking student performance and growth to teacher evaluations.[76] High standards, assessment, and accountability have been a nationwide movement, not policies unique to Florida, although Florida was a leader in adopting such

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[71] Roy, v.9, 1285:12-17.

[72] Roberts, v.6, 791:18-793:4; Marks, v.8, 1076:24-1077:1; Yariv, v.18, 2723:18-2724:9; Hanushek, v.28, 4282:19-25; Vitti, v.5, 597:21-598:8.

[73] Tr. Vol. 37 at 5580:13–5582:6 (Dep. Test. of F. Brogan); Ex. 3505.

[74] 20 U.S.C. § 6311(b)(1), (b)(3)(B)(vii); Tr. Vol. 26 at 3978:22–3979:9 (Test. of P. Stewart); Tr. Vol. 29 at 4329:2–25 (Test. of J. Copa).

[75] 20 U.S.C. § 6311(b)(3)(B)(v)(II).

[76] Exs. 1413, 3782, 3366, 3781, 3774.

policies.[77] (The improvements in student achievement in Florida provide additional support for the reasonableness of Florida's education policies, including its assessment and accountability system.)

52. Florida requires more testing than federal law requires. In December 2015, the Every Student Succeeds Act (ESSA) modified the testing standards for students. ESSA required, "Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality student academic assessments in mathematics, reading or language arts, and science. The State retains the right to implement such assessments in any other subject chosen by the State. S-1177-2, Sec. 1111(b)(2)(A). Assessments are required for mathematics and reading or language arts, and that they are administered in each of grades 3 through 8, and at least once in grades 9 through 12. In the case of science, is to be administered not less than one time during grades 3 through 5, grades 6 through 9; and grades 10 through 12. *Id.* at (b)(2)(v)(I). For any other subject chosen by the State, the assessment will be administered at the discretion of the State. *Id.* at (b)(2)(v)(III).[78]

**A. Content Standards**

53. The Florida Legislature and the State Board of Education have provided specific substantive content to the term "education" in Article IX of the Florida Constitution by specifying the "core content knowledge and skills that K-12 public school students are expected to acquire." The Legislature directs that the standards "must be rigorous and relevant" and "[c]urricular content for all subjects must integrate critical-thinking, problem-solving, and workforce-literacy skills; communication, reading, and writing skills; mathematics skills;

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[77] Tr. Vol. 37 at 5580:13–5582:6 (Dep. Test. of F. Brogan); Tr. Vol. 26 at 3978:22–3979:9 (Test. of P. Stewart); Tr. Vol. 29 at 4329:2–25 (Test. of J. Copa).

[78] Stewart, v.26, 4085:18-4086:3.

collaboration skills; contextual and applied-learning skills; technology-literacy skills; information and media-literacy skills; and civic-engagement skills." The State Board of Education adopted the content standards consistent with this direction.[79]

54. The Commissioner of Education explained that the importance of having content standards is that the State has a standard by which it can measure whether or not education is appropriate, whether the education that is occurring is standard across the state, and how students are performing.[80]

55. Content standards define what children should be taught at each grade level for each subject area and what children should know and understand by the end of the year.[81]

56. The purpose and importance of uniform statewide standards is to ensure all students are being taught the same content (due to consistent standards and course instruction) and to measure whether children are learning or not through the accountability system.[82]

57. Florida has been a leading state in the development and implementation of standards for all students. Florida was an early implementer of standards-based education, which has since become a national movement and part of federal law and policy. As detailed below, Florida's standards are , research-based and provide equitable access to rigorous content to all students, including low-income students, minority students, students with disabilities, and English language learners ("ELLs").[83]

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[79] § 1003.41(1), Fla. Stat. (2015); *see also* Fla. Admin. Code Rule 6A-1.09401; Stewart, v.26, 3958:16-3959:12; Ex. 3343-2.

[80] Stewart, v.26, 3969:6-13; Brogan, v.37, 5507:20-5508:21.

[81] Vitti, v.5, 653:20-654:10.

[82] Tappen, v.30, 4622:5-19.

[83] Tr. Vol. 26 at 3960:4–7 (Test. of P. Stewart); Tr. Vol. 30 at 4621:19–4623:1 (Test. of M. Tappen); Tr. Vol. 37 at 5541:2–5543:12 (Dep. Test. of F. Brogan).

58. Standards are the center of an accountability system. They define what students should know and be able to do in each content area and at each grade level. Standards describe the "what" that students need to learn (*e.g.*, "Tell and write time to the nearest minute and measure time intervals in minutes."), but standards do not define "how" a teacher must instruct to teach the standard or what materials ("curriculum") must be used.[84] Florida law requires the State Board of Education to establish the standards that specify the core content, knowledge, and skills that K–12 public school students are expected to acquire, and each local school board is required to provide the courses, the instruction, and the curriculum for students to master these standards.[85]

59. Florida's standards encompass not only the core subject areas of science, social studies, mathematics, and English language arts, but also visual and performing arts, physical and health education, and foreign languages, as well as career and technical education.[86] Moreover, high-school graduates must earn credits in science, social studies, mathematics, and English language arts, as well as in fine or performing arts, speech and debate, or practical arts; physical education; and eight credits in electives as offered by the school district.[87] Florida's implementation of an accountability system has not resulted in a "narrow[ing of] the curriculum" as alleged by Plaintiffs[88]—there are over 13,500 courses offered to Florida students, including college-level and other advanced courses, career and technical courses, STEM courses, and

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[84] Tr. Vol. 22 at 3338:25–3339:9 (Test. of M. Tappen); Exs. 3342, 3343, 3344, 3345, 3362, 1802, 1803, 1804.

[85] §§ 1003.41, 1003.42, Fla. Stat.; Tr. Vol. 26 at 3973:7–21 (Test. of P. Stewart); Exs. 3342, 3343, 3343-2, 3344, 3345, 3362, 1802, 1803, 1804.

[86] § 1003.41, Fla. Stat; Exs. 3342, 3343.

[87] § 1003.4282(3), Fla. Stat.

[88] 2d Am. Compl. ¶ 116.

many electives ranging from dance and theater to world languages.[89] All school districts provide the courses required by Florida law and for students to receive a high-school diploma.[90]

60. Each district school board is required to "provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts." § 1003.42(1), Fla. Stat. (2015).

61. Federal law requires that states apply the same challenging academic content and achievement standards to all students, including students with disabilities, and also that each State adopt English language acquisition standards for ELLs.[91] For Florida students with significant cognitive disabilities, experts in exceptional student education draft "access points" aligned to the state standards that are reviewed and then also approved and adopted by the State Board. Districts hire teachers to teach the access points to these students.[92] For Florida's ELLs, the State adopts English language acquisition standards, aligned to the State Board-adopted English language arts standards. This ensures that ELLs attain English proficiency and meet the same content area standards that all students are expected to meet.[93]

62. There is a lengthy process that the Department of Education engages in associated with establishing standards that includes convening content experts and drafting the standards.

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[89] Tr. Vol. 31 at 4677:1–4682:6 (Test. of M. Tappen); Ex. 3380.

[90] Tr. Vol. 26 at 3973:22–3974:18 (Test. of P. Stewart).

[91] 20 U.S.C. § 3611(b)(1); Tr. Vol. 31 at 4655:2–4656.17, 4659:19–4660:11, 4668:3–25 (Test. of M. Tappen).

[92] Tr. Vol. 20 at 2980:2–22 (Test. of C. Guerrieri); Exs. 3343-2, 3393, 3395.

[93] Tr. Vol. 31 at 4655:2–4656:17, 4659:19–4660:11, 4665:6–4665:22 (Test. of M. Tappen).

The State Board of Education then goes through the rulemaking process which includes a public notice and comments period.[94]

63. Florida began the development of its first set of "Sunshine State Standards" in 1991 as part of the Education Reform and Accountability Act: Blueprint 2000.[95] Under the leadership of Education Commissioner Frank Brogan, the first set of standards, the Sunshine State Standards grades K–12, were adopted in seven content areas (language arts, mathematics, science, social studies, foreign languages, the arts, and health & physical education) in 1996.[96] This first set of Florida content standards were developed by teachers from around the state who were brought together to identify the content to be taught at each grade level or for each high school course.[97] Professional development and technical assistance specific to implementation of the Sunshine State Standards was provided to district content-area leaders by the Florida Department of Education, six regional Area Centers for Educational Enhancement and state university staff.[98]

64. The Next Generation Sunshine State Standards ("NGSSS") were adopted in 2007 and 2008, depending on content area (in same 7 subjects as the Sunshine State Standards). The purpose of changing was that the Sunshine State Standards were "a mile wide and an inch deep". They were also not internationally benchmarked, but based on what Florida educators thought

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[94] Stewart, v.26, 3958:16-3959:11.

[95] Ex. 3520; Tr. Vol. 22 at 3324:9–3326:4 (Test. of M. Tappen).

[96] Exs. 3345, 5344; Tr. Vol. 37 at 5541:2–5543:12 (Dep. Test. of F. Brogan).

[97] Tr. Vol. 26 at 3959:19–3960.3 (Test. of P. Stewart); Tr. Vol. 30 at 4617:20–4618:3 (Test. of M. Tappen); Tr. Vol. 37 at 5541:2–5543:12 (Dep. Test. of F. Brogan).

[98] Tr. Vol. 30 at 4579:17–4584:24 (Test. of M. Tappen).

should be taught. The new standards were shifted to have fewer standards at each grade level, but with more depth.[99]

65. NGSSS were instrumental in development of the Common Core standards and depending on the grade level, up to 85% of the NGSS were used in the Common Core Standards.[100]

66. In 2010, the State Board of Education adopted the Common Core standards. The Board developed a timeline for implementation, and it was to be phased in starting with kindergarten and then it moved up each year until they were to have it as a blended model of NGSSS and Common Core in all of the grades.[101]

67. Due to public criticism of the Common Core standards, the State reviewed public input and convened a panel of experts to make some changes to the Common Core standards and in February 2014, the State Board adopted the Florida Standards.[102]

68. One of the primary differences between NGSS and Common Core, and then the Florida Standards, was higher order thinking. In the past, students would read a passage and would be asked the question "What color was Sara's dress?" And in the Common Core (and now the Florida Standards), students would read the same passage but they would be asked, "Why, on this particular day, did Sara choose to wear a yellow dress?"[103]

69. The development of the NGSSS, Common Core, and now the Florida Standards was done by internationally benchmarking what the top content in the top-performing nations

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[99] Stewart, v.26, 3960:10-3961:5; Tappen, v.30, 4617:5-4618:3.

[100] Stewart, v.26, 3962:24-3963:13.

[101] Stewart, v.26, 3961:10-3962:14.

[102] Stewart, v.26, 3962:1-14.

[103] Stewart, v.26, 3963:19-3964:5.

are, and then identifying what should be in the standards. The purpose of this was to raise the bar for the content standards to address the fact that the United States had fallen behind other nations in the world regarding student performance.[104]

70. The NGSSS for all content areas other than English Language Arts and Math have remained in place since 2009.

71. When standards change, it is important to ensure there is a period of time for professional development prior to full implementation of the standards. The State works to develop professional development tools. Because of the size of the State, the Department typically uses a "train-the trainer" model or identifies a district lead.[105]

72. Beginning in 2007, in line with research indicating, among other things, that other countries were outperforming the U.S. on international assessments and that top-performing countries have higher standards and fewer standards per grade level, Florida began development of a new set of more rigorous state content standards, the "Next Generation Sunshine State Standards."[106]

73. The Florida Legislature adopted a comprehensive standards-development process to include the following: research on other states' and nations' standards, particularly those considered to be exceptionally rigorous and to result in high student achievement; a process by which renowned experts in the content area advised the state on the process and reviewed the product; writers to include postsecondary content experts, experts in the field and educators; and

[104] Tappen, v.30, 4617:5-19., 4618:20-4619:3.

[105] Tappen, v.30, 4604:18-20, 4608:24-4610:24.

[106] Exs. 3346, 5344; Tr. Vol. 22 at 3326:13–23, 3342:21–3343:25 (Test. of M. Tappen); Tr. Vol. 26 at 3960:9–3961:2 (Test. of P. Stewart); Tr. Vol. 30 at 4617:5–19 (Test. of M. Tappen).

review and comment from educators at all levels, leaders in business and industry, and the public.[107]

74. The Next Generation Sunshine State Standards in English language arts and mathematics, adopted in 2010, incorporated the nationally developed Common Core State Standards and were rated as "too close to call" when compared with the rigor of Common Core State Standards.[108]

75. In 2014, Governor Rick Scott requested a public and expert review of the English language arts and mathematics standards, which incorporated the Common Core State Standards.[109] Four public hearings took place and a web-based review system was provided for public comment. Based on the comments collected at the hearings, provided in emails and provided in the web-based review system, experts in the content areas made recommendations to strengthen the standards. Prior to formal adoption by the State Board of Education in February 2014, an additional public hearing took place to provide the public an opportunity to review the ninety-nine improvements to the standards.[110] These standards were referred to as the "Florida Standards" in English language arts and mathematics.[111]

76. In addition to the implementation of a more rigorous standards-development process, in 2009, the Florida Department of Education aligned other requirements of the K–12 system.[112] When new standards are adopted, course descriptions that include the new standards

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[107] § 1003.41, Fla. Stat.; Tr. Vol. 30 at 4606:4–4611:12 (Test. of M. Tappen); Ex. 3346.

[108] Exs. 3344, 5344; Tr. Vol. 22 at 3345:19–3346:12 (Test. of M. Tappen).

[109] Tr. Vol. 26 at 3962:1–23 (Test. of P. Stewart); Tr. Vol. 22 at 3347:3–20 (Test. of M. Tappen).

[110] Tr. Vol. 26 at 3962:1–23 (Test. of P. Stewart); Tr. Vol. 22 at 3347:3–20 (Test. of M. Tappen).

[111] Exs. 3342, 3343.

[112] Tr. Vol. 30 at 4606.4–4611.12 (Test. of M. Tappen); Ex. 3346.

must be approved the year prior to the year teachers are required to teach from those course descriptions.[113] Teacher certification exams also must be reviewed and revised to reflect the needs of teacher preparation and expectations to teach the new more rigorous content.[114] Florida's statewide instructional materials schedule was revised so that state funding dedicated to instructional materials would match the year the school districts are required to implement new standards.[115]

77. In addition, the Department increased available professional development directly related to implementation of the standards.[116] As much as possible, Department staff provided support upon request to local school districts, although districts are not required to participate in professional development opportunities offered by the State.[117] All school districts were provided services by the Just Read, Florida! Office, with over half the districts being visited more than once by staff members to support implementation of research-based reading instruction.[118] With the implementation of the new more rigorous standards in 2010, the Department provided summer professional development to all districts and all schools in the state.[119] Professional development activities were offered the summers of 2011, 2012, and 2013, and school districts applied for additional Race to the Top funds to supplement their professional

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[113] § 1003.42., Fla. Stat.

[114] § 1012.56(4), Fla. Stat.

[115] Tr. Vol. 30 at 4604:2–17 (Test. of M. Tappen); Exs. 3346, 3477.

[116] Tr. Vol. 30 at 4604:18–4605:2, 4608:24–4609:24 (Test. of M. Tappen); Tr. Vol. 32 at 4785:22–4786:1 (Test. of K. Hebda).

[117] Tr. Vol. 30 at 4604:18–4605:2, 4608:24–4609:24, 4619:10–4621:18 (Test. of M. Tappen); Tr. Vol. 32 at 4783:7–4785:21 (Test. of K. Hebda).

[118] Ex. 3400; *see* § 1001.215, Fla. Stat.; Tr. Vol. 32 at 4785:2–10 (Test. of K. Hebda).

[119] Tr. Vol. 30 at 4619:10–4621:18 (Test. of M. Tappen).

development programs in the summer of 2014.[120] All of these activities took place prior to full implementation of the new standards and aligned assessment.[121]

78. After standards are adopted, the Department of Education builds course descriptions. In Florida, there is an instructional materials adoption process and the State works to match the timing of the new materials with the cycle for instructional materials (there is an appropriation annually by the Legislature to purchase instructional materials on a cycle because districts do not buy all new materials annually).[122]

79. Florida also assures that districts have access to instructional materials aligned to the standards.[123] Florida has had an instructional materials review process for over 30 years.[124] Under the current process, materials to teach a content area with new standards are reviewed and then placed on a State list of adopted materials the year prior to the school districts' requirement to teach the standards.[125] Districts are authorized to create their own process for approval of materials, but Florida law requires that the instructional materials be aligned to the standards, either through a State process or a local school district process.[126]

*Arts, Music and PE Instruction*

80. The Department of Education interprets Fla. Stat. § 1003.42 to mean that subjects listed in the statute such as art, music, and PE are not required to be taught (unless required for

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[120] *Id*.

[121] *Id*.

[122] Tappen, v.30, 4603:19-4604:17, 4606:19-4607:5.

[123] Tr. Vol. 30 at 4607:14–22 (Test. of M. Tappen).

[124] §§ 1006.28–.31, Fla. Stat.; Tr. Vol. 30 at 4607:23–4608:23 (Test. of M. Tappen).

[125] Tr. Vol. 30 at 4607:14–4608:23 (Test. of M. Tappen).

[126] § 1006.283, Fla. Stat.

middle grades promotion or high school graduation), but when a school district chooses to teach them, they are required to teach to the standards.[127]

81. There are specific requirements for physical education set forth in Fla. Stat. § 1003.455.

82. Florida has standards in each grade for dance, health education, music, physical education, theater, and visual arts. These standards "specify the core content knowledge and skills that K-12 public school students are expected to acquire." The Legislature specifically set out requirements for content standards in these areas as follows:

> Visual and performing arts, physical education, health, and foreign language standards must establish specific curricular content and include distinct grade level expectations for the core content knowledge and skills that a student is expected to have acquired by each individual grade level from kindergarten through grade 5. The standards for grades 6 through 12 may be organized by grade clusters of more than one grade level.[128]

83. The Florida Legislature requires that the Commissioner of Education prepare an annual report that includes a description of student access to and participation in fine arts courses (visual arts, music, dance, and theatre), including information about facilities and certifications of educators providing instruction. The Commissioner is also required to report the manner in which schools are providing "the core curricular content for fine arts established in the Next Generation Sunshine State Standards."[129]

84. Even though the State has established content standards for arts education, there are disparities in how arts education is provided by local districts across the State. As discussed

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[127] Stewart, v.26, 3973:7-3974:18, 4082:1-4085:13.

[128] Stewart, v.26, 4083:20-24; Roberts, v.6, 926:7-9; § 1003.41(1) & (2)(e), Fla. Stat. (2015).

[129] § 1003.4995, Fla. Stat. (2015).

below, due to funding issues, some school districts raise private grants or money through voter-approved referenda to levy additional property millages to fund arts programs. Other districts do not fund arts and music in all of their schools.

85. The Duval School District found that, because of the emphasis on standardized testing, funding for arts and music has declined as a focus for school districts including Duval. As part of a new "Develop the Whole Child" initiative, Duval funded a music and art teacher at every elementary school. The District rebuilt an art and/or music program at each of the middle schools. The "Develop the Whole Child" initiative recognizes that the school experience in child development goes beyond standardized testing and often, if provided, students will do better as far as standardized tests are concerned with additional supports in place.[130]

86. Other school districts do not have the financial resources for arts education, particularly at the elementary school level. In Franklin School District, to address critical financial issues, the district discontinued elementary art.[131] Hernando School District is not able to offer arts and music in all of the schools.[132]

87. Some school districts have levied additional funds through voter-approved referenda specifically to fund arts and music: Alachua, Marion, Orange, Palm Beach, and Pinellas. Three school districts tried to pass a voter referendum to raise money to pay for arts and music instruction, but the referenda failed (Flagler, Lafayette, and Volusia).[133]

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[130] Vitti, v.5, 630:12-631:14, 690:21-691:7.

[131] Marks, v.7, 1052:5-14, 1054:12-20.

[132] Romano, v.13, 1995:16-25, 2016:22-2017:19.

[133] Ex. 1204, at 29062-65, 29068, 29430-33, 29524-25, 29532-39, 29567-68, 29206-07, 29385-92, 29731-33.

88. Alachua School District levied the 1 mill for art, music, PE, magnet programs, and technology. Prior to the referendum passing, the district had cut back these programs drastically and would have phased them out the following year had the referendum not passed.[134]

89. Palm Beach School District also uses its voter approved millage to fund arts, music, and PE in all of the elementary schools. The millage also supports its choice programs (formerly known as magnet schools) which includes two elementary schools of the arts, a middle school of the arts, and a high school of the arts. The high school of the arts has a private foundation, and in the past year had more than $1 million pass through the internal school operating budget that was not funded by the district.[135]

90. Sarasota School District, which funds its art, music and drama programs through funds generated by a voter-approved millage, is nationally recognized for the quality of their visual and performing arts programs. The Kennedy Center for Performing Arts has recognized Sarasota's arts education as one of the best in America.[136]

*Impact of Changing Standards*

91. In a Florida Association of District School Superintendents ("FADSS") letter to Commissioner Stewart in February 2015 about the upcoming FSA administration, FADSS specifically raised concerns about the changing standards, noting that since 2011, school districts have implemented three different sets of education standards: (1) Next Generation Sunshine State Standards, (2) Common Core Standards, and (3) the recently adopted Florida Standards.

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[134] Roy, v.9, 1260:17-1261:3, 1262:8-13, 1266:13-1267:1; Boyd, v.16, 2430:18-2433:8; McGriff, v.20, 2941:1-14, 2941:24-2942:6.

[135] Robinson, v.22, 3221:13-3223:17.

[136] Weidner, v.25, 3775:3-3776:17; Ex. 1129.

FADSS expressed that it had repeatedly voiced concerns that teachers did not have enough time to teach the standards being assessed in 2015. FADSS stated that:

> Full implementation of the standards throughout all grades requires a multi-year effort of intense teacher professional development, coupled with the adoption of curriculum and instructional materials that are accurately aligned with the new state standards. The lack of a systematic and realistic timeline for all grades to fully implement the Florida State Standards has been a source of the conflict and struggle faced by teachers today. These standards are not the same as the former standards. The previous standards emphasized the "what" and not the "why." The new standards require a whole new way of delivering instruction. Teachers have not had adequate time or professional development to ensure student's success.[137]

92. Changing standards is difficult for a school district to fully implement. The process includes aligning the new standards with curriculum materials and with teacher training, and preparing students to ensure they are successful on new assessments. Former Alachua Superintendent Boyd testified that having four sets of standards over the past 15 years is "like turning a battleship with a paddle. Trying to get things moved in another direction when you've got your resources lined up, your teacher staff development moving in one direction, and then you have to stop and do something else."[138]

93. As it relates to changing standards, the most important thing that districts, schools and students need is time. The teachers need time to learn the standards and how to teach the standards to the students with new curriculum that is aligned to the new standards. With the implementation of the Florida Standards, teachers did not have adequate preparation for professional development to be able to teach the standards. Before students can be expected to

[137] Ex. 1876; Roberts, v.6, 814:3-815:18.

[138] Boyd, v.16, 2433:21-2435:20, 2436:15-20; *see also* Littleton, v.7, 945:14-947:18.

master the content of the standards, the teachers have to master the standards to a degree of depth that allows them to teach effectively. Because the standards are more rigorous, teachers need time to build their expertise so they are ready to deliver the curriculum at the depth and scope required; otherwise, the students will not benefit from the instruction.[139]

94. Alachua Superintendent Owen Roberts described the challenges with failing to give teachers enough time to learn the new standards before teaching them as "asking them to ride a bicycle while they're building it. And, basically, that never works because the kids are the ones who suffer as a result of that."[140]

95. The students who are primarily affected are the ones in poverty because they do not have the same support systems in place. Other children will be able to adapt more easily to the challenges and not be as impacted by the changes.[141]

96. The changes in the standards, particularly by increasing the rigor of the standards, impacts struggling learners. Students who previously received a Level 1 or Level 2 all have to take the new assessment. They were already struggling, and need more support to ensure that they do not fall farther behind when the bar is raised and the curriculum and assessments become more challenging. Bay School Board Member Ginger Littleton described the challenge this way, "If you've got a journey of 5 miles, you do it one way. If you do a journey of 500 miles, you prepare differently. So that's one of the issues. What we have seen is that the students who are struggling have more and more difficulty. As they climb up that wall, clawing their way to the

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[139] Marks, v.7, 1061:24-1062:21; Roy, v.9, 1278:22-1290:3; Roberts, v.6, 816:8-818:15; Boyd, v.16, 2442:2-23; Hiltz, v.23, 3536:4-3537:16; Thompson (Ella), v.15, 2243:10-2247:5, 2250:12-23, 2256:3-8; Ex. 2013, at 59247.

[140] Roberts, v.6, 775:3-776:11.

[141] Roberts, v,6, 816:8-818:15.

grade level, it gets … when you make the wall thornier, it simply gets harder to get up the wall.[142]

97. Raising proficiency benchmarks requires providing students with necessary supports to get them to achieve at those levels. Raising benchmarks and not doing anything differently just means more children will fail.[143] Not doing anything different is largely and primarily a local School District responsibility.

**B. Aligned Assessments and Accountability System**

98. The Commissioner of Education is required to "design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools … in accordance with the requirements of chapter 1008." [144]

99. The content standards adopted by the State Board of Education are the basis for the statewide assessments. The purpose of the assessments is to test the child's understanding of content standards at the end of the year based on the grade level or subject area.[145]

100. Florida's statewide assessment and accountability system is research-based and the result of thorough consideration and stakeholder input, including from Florida educators. As discussed below, not only are many aspects of the system required by federal law, but Florida's early adoption of an assessment and accountability system was used to shape federal law and national policy in this area. There is no persuasive evidence that Florida's assessment and accountability system is arbitrary or capricious or in any way prevents students from obtaining a

[142] Littleton, v.7, 947:19-24, 949:2-14; Vitti, v.5, 654:14-19, 655:24-656:10.

[143] Tobin, v.2, 201:16-24.

[144] § 1001.11(5), Fla. Stat. (2015); Stewart, v.26, 3966:25-3967:10.

[145] Fla. Admin. Code R. 6A-1.09401; Vitti, v.5, 654:11-13; Tappen, v.30, 4610:12-20.

high-quality education; instead, it has been a key aspect of Florida's system of continuous improvement, as detailed below.

101. Various state policies, discussed in this Section and throughout these findings, rely upon the use of statewide, standardized assessments. The purpose of an assessment aligned to the content standards is to ensure that uniform standards are being taught across the state by measuring how well students are mastering those standards, what progress has been made and what additional progress needs to be made. The assessment is an extension of the instruction of the standards, designed to ensure that students are mastering the content defined in the State's content standards and to give the State and local school districts the necessary information to determine if students have mastered the content and skills necessary for success at the next level of education, into college and career.[146] It is the opportunity for students to demonstrate what they have learned, and for schools, districts, and teachers to ascertain how well they, as instructional leaders, have provided students with the necessary instruction aligned to the standards.[147]

102. The purpose of the performance accountability system is to "assess the effectiveness" of Florida's education system by providing answers to the following questions related to its mission and goals: "(1) What is the public receiving in return for funds it invests in education? (2) How effectively is Florida's K-20 education system educating its students? (3) How effectively are the major delivery sectors promoting student achievement? (4) How are individual schools and postsecondary education institutions performing their responsibility to

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[146] Ex. 1875 at 5–6; Tr. Vol. 26 at 3968:17–25 (Test. of P. Stewart); Tr. Vol. 29 at 4327:24–4329:1 (Test. of J. Copa).

[147] *Id.*

educate their students as measured by how students are performing and how much they are learning?"[148]

103. The accountability system is designed to be "a single, unified system with multiple components including, but not limited to, student performance in public schools and school and district grades."[149]

104. The accountability system is required to measure student progress towards the following goals:

a. Highest student achievement, as indicated by evidence of student learning gains at all levels;

b. Seamless articulation and maximum access, as measured by evidence of progression, readiness, and access by targeted groups of students identified by the Commissioner of Education;

c. Skilled workforce and economic development, as measured by evidence of employment and earnings;

d. Quality efficient services, as measured by evidence of return on investment; and

e. Other goals as identified by law or rule."[150]

105. In order for an assessment to be a valid measure of student mastery or progress on those content standards, it must be aligned to those standards.[151]

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[148] § 1008.31(1)(a), Fla. Stat. (2015).

[149] § 1008.31(1)(b), Fla. Stat. (2015).

[150] § 1008.31(2)(c), Fla. Stat. (2015).

[151] Copa, v.29, 4340:2-12.

106. The test changes along with the change in standards because the Department of Education has "a moral, ethical and legal obligation to make sure that the assessment is aligned to the standards."[152]

107. The Florida Standards Assessment ("FSA") was first administered in the Spring of 2015. That assessment is aligned to the Florida Standards. Prior to the FSA, there was the FCAT 2.0. That test was aligned to the NGSSS. And prior to that was the FCAT, which was aligned to the Sunshine State Standards.[153]

108. The state accountability system is one way to measure whether the State is allowing all students to obtain a high quality education. It is a State requirement that students should perform adequately on the state assessments, which are used to determine school grades, teacher evaluation, district performance, and student level decisions. Because the State has designed the content standards, the scores for passing, and the assessments themselves to measure how students are performing and how much they are learning, then these assessments should be used to determine whether or not there is evidence that the State is providing a high quality education.[154]

*History of Statewide Assessments*

109. With the goal of ensuring continuous improvement, Florida policymakers have reformed the criteria used to evaluate students and schools over time. [155] Raising standards and

[152] Stewart, v.26, 3968:8-16.

[153] Stewart, v.26, 3967:11-3968:7; Tappen, v.22, 3346:16-3347:2.

[154] Roberts, v.6, 764:1-19.

[155] Tr. Vol. 26 at 3984:11–3986:6 (Test. of P. Stewart); Tr. Vol. 29 at 4331:19–4338:23, 4388:14–4389:24 (Test. of J. Copa).

expectations for students and schools has resulted in improved performance of Florida's schools and students.[156]

110. Although Florida has used statewide assessments since the 1970s, the current standards-based assessments began in 1998 with the Florida Comprehensive Assessment Test ("FCAT").[157] The FCAT was first administered in 1998 in reading (grades 4, 8 and 10) and mathematics (grades 5, 8 and 10), and tested mastery of the Sunshine State Standards.[158] FCAT reading and mathematics assessments were expanded to grades 3–10 in 2001, which allowed for the calculation of student learning gains from year to year.[159] Florida's policy was a forerunner of federal law, as the 2002 No Child Left Behind Act ("NCLB") required all states to annually assess students in reading/language arts and mathematics in grades 3–8 and at least once in high school.[160] Florida introduced a science FCAT in 2003, also in compliance with NCLB.[161]

111. In 2011, after the transition to the Next Generation Sunshine State Standards, the state transitioned to FCAT 2.0, which was developed to assess student mastery of the new

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[156] Tr. Vol. 26 at 3986:7–18 (Test. of P. Stewart); Tr. Vol. 29 at 4444:14–4454:19 (Test. of J. Copa); Tr. Vol. 35 at 5212:14–5213:6, 5270:13–5271:1 (Test. of J. Greene); Ex. 1813 at DOE03179, DOE03181–87; Ex. 1875 at 9–11; Exs. 133, 134, 135, 136, 137, 138, 1807, 1808, 1809, 1810, 1811, 1812, 1829, 1830, 1831, 1832, 1833, 1834, 3186, 3187, 4050, 5292, 5328.

[157] Ex. 5344; Ex. 1875 at 8; Ex. 4047 at 00122081–83; Tr. Vol. 29 at 4331:19–4338.23 (Test. of J. Copa).

[158] Ex. 5344; Ex. 1875 at 8; Ex. 4047at 00122081–83; Tr. Vol. 22 at 3341:14–3342:9, 3343:9–25 (Test. of M. Tappen); Tr. Vol. 29 at 4331:19–4338.23 (Test. of J. Copa); Tr. Vol. 26 at 3968:2–7 (Test. of P. Stewart).

[159] Ex. 4047 at 00122081–83; Tr. Vol. 29 at 4331:19–4338.23 (Test. of J. Copa).

[160] *Id.*; 20 U.S.C. § 6311 (b)(3)(B).

[161] *Id.*

standards.[162] At the same time, Florida also began implementing End-of-Course assessments ("EOCs") to measure student mastery of content in select middle- and high-school courses.[163] The Algebra I EOC began in 2011, with EOCs in Geometry and Biology added in 2012, U.S. History in 2013, and Civics in 2014.[164]

112. In 2014–15, the state transitioned to the Florida Standards Assessment ("FSA"), which was developed to assess mastery of the Florida Standards in grades 3–11 for English language arts and grades 3–8 for mathematics, with EOCs for Algebra I, Algebra II, and Geometry.[165] With respect to the FSA, sample items were made available on the Department's website almost one year before the administration of the test in the spring of 2015.[166]

*Validity, Reliability and Development of Assessments*

113. The statewide, standardized assessments in Florida have been developed, administered, scored and reported using industry-standard best practices in large-scale assessment, meeting all professional standards of psychometric quality traditionally associated with standardized achievement tests.[167] Florida employs an inclusive process involving Florida educators all along the way in areas such as content review, bias and sensitivity review, and

[162] Exs. 5344, 4047 at 00122081–83; Tr. Vol. 29 at 4334:13–23 (Test. of J. Copa); Tr. Vol. 22 at 3346:16–3347:2 (Test. of M. Tappen); Tr. Vol. 26 at 3967:24–3968:1 (Test. of P. Stewart); Exs. 4047, 5344.

[163] Exs. 5344, 4047 at 00122081–83; Tr. Vol. 29 at 4331:19–4338.23 (Test. of J. Copa).

[164] *Id*.

[165] *Id*.

[166] Ex. 1813at DOE03195–200; Tr. Vol. 26 at 4035:6–4039:5 (Test. of P. Stewart).

[167] Tr. Vol. 29 at 4340:13–4349:17 (Test. of J. Copa); Exs 112, 113, 1819 at 00052222–25.

performance standard setting.[168] This inclusive process of involvement substantiates the content validity of the assessments.[169]

114. Plaintiffs have not presented persuasive evidence that Florida's statewide assessments are invalid or unreliable. Indeed, psychometric analyses of Florida's statewide, standardized assessments, including the FCAT, FCAT 2.0, and FSA, have consistently demonstrated that the assessments are reliable. Third-party reports from the American Institutes for Research ("AIR") and Alpine Testing Solutions, Inc., have concluded that these assessments are technically sound and meet or exceed professional standards for standardized achievement tests.[170]

115. In an effort to assure content validity of the assessments, the Florida Department of Education has implemented the following steps for items included on its assessments:

a. educators and citizens judge the standards and skills acceptable;

b. item specifications are written;

c. test items are written according to the guidelines provided by the item specification;

d. the items are pilot tested using randomly selected groups of students at appropriate grade levels;

e. all items are reviewed for cultural, ethnic, language, and gender bias and for issues of general concern to Florida citizens;

f. instructional specialists and practicing teachers review the items;

g. the items are field tested to determine their psychometric properties;

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[168] *Id*.

[169] *Id*.

[170] Tr. Vol. 29 at 4347:17–4349:17 (Test. of J. Copa); Exs. 2152, 1819, 1820.

h. the tests are carefully constructed with items that met specific psychometric standards; and

i. the constructed tests are equated to the base test to match both content coverage and test statistics.[171]

116. The Department employs various committees of practicing Florida classroom teachers and curriculum staff to review test items and committees of educational leaders and citizens to make recommendations.[172] These committees are diverse in terms of ethnicity, gender, geographic region, county size, and county type. For the FSA specifically, the development of the first-year administration in 2014–15 relied upon a bank of items that were field tested and then reviewed by Florida content experts to ensure that the items aligned to Florida standards and were appropriate for Florida students. Work continued with the various committees of Florida educators to develop assessment items aligned to the Florida Standards for the 2015–16 and future administrations of the FSA.[173]

117. Once tests are administered, they are subject to a lengthy and rigorous scoring process. The scoring is performed by an outside test-scoring company, using the same process used across the nation by states with large-scale testing programs. Before results are released, student and school scores are reviewed for anomalous data that would indicate testing irregularities.[174] Although actual test items cannot be released because they may be used in

[171] Tr. Vol. 29 at 4342:4–4347:9 (Test. of J. Copa); Ex. 1819 at 00052224– 42.

[172] Tr. Vol. 29 at 4340:2–4347:9 (Test. of J. Copa); Exs. 112, 113, 1819 at 00052222–23.

[173] *Id*.

[174] Tr. Vol. 29 at 4356:18–4360:23 (Test. of J. Copa).

future years, sample test items are made public to provide students and parents with examples of the type of questions on the statewide assessments. [175]

*Administration of Assessments*

118. Florida began moving to computer-based testing in the 2010–11 school year.[176] Some assessments are administered by computer and some on paper, depending on the grade and subject, with additional grade levels and subjects transitioning to computer-based testing each year.[177] For the 2014–15 FSA , each local school district submitted certifications, signed by the district superintendent, certifying that the district was ready for computer-based administration of the FSA.[178]

119. Plaintiffs' contention that students are spending "too much time" testing is not supported by evidence. The Department sets large spans of dates (testing windows) in which districts can locally manage the timing of test administration, in order to accommodate districts with additional time to complete assessments for all students in the district, but these windows do not indicate the amount of time individual students are actually sitting for tests.[179] Plaintiffs have not presented any evidence of the "correct" amount of time that should be used for student assessment. Moreover, local districts and schools, and the teachers they hire, are responsible for

[175] Tr. Vol. 29 at 4350:22–4351:6 (Test. of J. Copa); Tr. Vol. 26 at 4036:8–14 (Test. of P. Stewart); Ex. 1813 at DOE03196–96.

[176] Tr. Vol. 26 at 4033:25–4034:3 (Test. of P .Stewart); Tr. Vol. 29 at 4355:13–4356:17 (Test. of J. Copa); Ex. 5344.

[177] Tr. Vol. 26 at 4033:25–4034:11 (Test. of P. Stewart); Ex. 5344.

[178] Exs. 1716, 1851.

[179] Tr. Vol. 29 at 4351:7–4355:3 (Test. of J. Copa); Exs. 114, 115, 116; Ex. 1875 at 00055511, 00055521–23; Ex. 5289.

allocating how much classroom time is spent on "test preparation" activities and how staff and facilities are utilized for the administration of the test during the testing window.[180]

120. Nevertheless, the Legislature and the Department have shown that the political process has been responsive to public concern about "high-stakes testing." In early 2015, the Department conducted an investigation into the amount of testing in Florida schools, including statewide assessments as well as district-, school-, and teacher-developed assessments.[181] And legislation was passed during the 2015 legislative session, and implemented by the Department, that reduced that amount of assessment required and the impact of the assessments on various aspects of the accountability system, including teacher evaluation.[182]

121. As detailed in the report of the Department's investigation, much testing in Florida's schools is determined and required locally by the district or school and not required by the State.[183]

*Performance-Level Standard Setting (Cut Scores)*

122. Florida law provides for a rigorous and thorough public process for setting performance standards, with stakeholder input at multiple levels meant to ensure that expectations are set at the appropriate level to gauge improvement.[184]

123. Because the statewide assessments are "criterion-referenced," rather than "norm-referenced" assessments, performance-level standard setting is an important process each time a new test, new standards, or achievement-level descriptions change. Florida uses five

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[180] *Id.*

[181] Ex. 1875.

[182] Ch. 2015-6, Fla. Laws.

[183] Ex. 1875 at 00055529–32.

[184] Tr. Vol. 29 at 4356:18–4360:23 (Test. of J. Copa); Ex. 117; Ex. 4047 at 00122085–98.

achievement levels (Levels 1, 2, 3, 4, and 5) to categorize student performance on the statewide assessments.[185] The cut point between Levels 2 and 3 is used to determine "satisfactory" mastery of the standards. Achieving a Level 2 on the FCAT 2.0, for example, indicates that a student demonstrated "a below satisfactory level of success with the challenging content of the Next Generation Sunshine State Standards," while a Level 1 demonstrates "an inadequate level of success with the challenging content of the Next Generation Sunshine State Standards." Earning a Level 1 or 2 in reading on the Florida state assessment therefore is not an indication that a student "can't read" or is illiterate.[186]

124. Pursuant to § 1008.22, Fla. Stat., the Department has established a multi-step standard-setting process to recommend achievement levels for the assessments, with multiple avenues for input and participation. This process occurs after students have sat for the first administration of any new assessment. For each subject area, the process involves content experts; an "educator panel" of Florida educators nominated by their superintendents; a "reactor panel" of Florida education leaders, postsecondary faculty, and business/community leaders; and public input workshops, all of which are considered by the Commissioner in making recommended cut points.[187] The recommendations are then presented to the Legislature for a 90-day public review period, at the end of which the State Board of Education may make the final decision to authorize the cut points.[188]

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[185] Tr. Vol. 29 at 4356:18–4360:23 (Test. of J. Copa); Ex. 4047 at 00122085–88.

[186] Tr. Vol. 26 at 4054:21–4055:11 (Test. of P .Stewart); Tr. Vol. 29 at 4360:24–4361:21 (Test. of J. Copa); Ex. 4047 at 0122088.

[187] Tr. Vol. 29 at 4356:18–4360:23 (Test. of J. Copa); Ex. 117; Ex. 4047 at 00122089, 00122091–98.

[188] Tr. Vol. 26 at 3979:10–3982:3 (Test. of P .Stewart); Tr. Vol. 29 at 4356:18–4360:23 (Test. of J. Copa); Ex. 4047 at 00122098, 00122105.

125. The current FSA cut scores were set after the 2014–15 administration of the FSA, with approval of many district superintendents and other stakeholder groups.[189] These cut scores represent a policy choice about performance level standards. The State could have chosen to set the scores so that more students would be performing at the satisfactory level, but Florida has made a policy choice to have high performance standards, which have led to improvement over time, even if the initial cut scores placed the majority of students below the satisfactory level.[190]

*Use of Assessments in the Accountability System*

126. As described above, various State policies rely on the use of statewide, standardized assessments. The impacts of the assessments on students, schools, districts, and teachers are summarized below:[191]

a. Subject to a number of good-cause exemptions, a student must earn a Level 2 or above on the grade 3 English language arts (ELA) assessment to be promoted to grade 4;[192]

b. A student must pass the grade 10 ELA assessment, or earn a concordant score on the SAT or ACT, to graduate from high school;[193]

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[189] Tr. Vol. 29 at 4360:14–23 (Test. of J. Copa); Ex. 2158.

[190] Tr. Vol. 26 at 3984:11–3986:18 (Test. of P. Stewart); Tr. Vol. 29 at 4331:19–4338:23, 4388:14–4389:24, 4444:14–4454:19 (Test. of J. Copa); Tr. Vol. 35 at 5212:14–5213:6, 5270:13–5271:1 (Test. of J. Greene); Ex. 1813 at DOE03179, DOE03181–87; Ex. 1875 at 9–11;Ex. 4047 at 00122107–08.

[191] Ex. 1875 at 00055518–19.

[192] Tr. Vol. 27 at 4092:20–4093:7 (Test. of P. Stewart); Tr. Vol. 31 at 4633:8–4636:2 (Test. of M. Tappen); Tr. Vol. 30 at 4481:4–4483:7 (Test. of J. Copa).

[193] Tr. Vol. 26 at 3990:24–3991:3 (Test. of P. Stewart); Tr. Vol. 30 at 4481:4–4483:7 (Test. of J. Copa).

c. A student must pass the Algebra I EOC, or earn a comparative score on the Postsecondary Education Readiness Test ("PERT"), to graduate from high school;[194]

d. A student enrolled in a course with a statewide EOC must take the assessment, and the results count as 30% of the student's course grade;[195]

e. A student who does not meet the specific levels of performance on the assessment must be provided with additional diagnostic assessments and remediation;[196]

f. The achievement and learning gains of students are used to determine school grades, district grades, and school improvement ratings for alternative schools;[197]

g. Schools identified as in need of improvement based on student performance must provide progress monitoring and receive supports and intervention;[198] and

h. For teachers teaching courses associated with the statewide assessment, the results are used to measure student learning growth and included in the "performance of students" portion of the teacher's evaluation.[199]

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[194] Tr. Vol. 26 at 3994:24–3995:4 (Test. of P. Stewart); Tr. Vol. 30 at 4481:4–4483:7 (Test. of J. Copa).

[195] Tr. Vol. 26 at 3991:4–8 (Test. of P. Stewart).

[196] Ex. 1875 at 00055519.

[197] Ex. 1875 at 00055519

[198] Ex. 1875 at 00055519; Tr. Vol. 30 at 4596:20–4597:15 (Test. of M. Tappen).

[199] Ex. 1875 at 00055519.

### C. School Grading and Accountability

127. Florida's statewide assessment results are used to implement Florida's accountability system, with the purpose of ensuring that the State, school districts, schools and teachers are held accountable for improving student achievement. A primary aspect of accountability is Florida's "school grading" system, by which districts and schools receive an A–F letter grade. The purpose of Florida's school grading system is to promote improvement in student outcomes by communicating the performance of schools in a format consumable by the public. Through the administration of assessments and the reporting of results through school accountability, parents, the public and educators are able to identify the areas in which students are excelling and the areas in which students are struggling.[200]

128. An examination of the history of the accountability system reveals that all of the changes made were rationally based on consideration of many factors, including the previous results of the system, public input through the political process, and federal law. Indeed, the history of the State's accountability system provides support for the policy of continuous improvement, as student achievement has increased with the raising of standards and expectations for students and schools.[201]

129. As early as 1995, Florida began identifying "critically low performing schools," based on the results of norm-referenced tests, the state writing assessment, and the High School Competency Test.[202] Identifying these schools resulted in a commitment to improving student

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[200] Tr. Vol. 37 at 5580:13–5582:6 (Dep. Test. of F. Brogan); Tr. Vol. 26 at 3978:22–3979:9 (Test. of P. Stewart); Tr. Vol. 29 at 4329:2–25, 4362:18–4363:7 (Test. of J. Copa).

[201] Tr. Vol. 26 at 3991:19–3992:3 (Test. of P. Stewart); Ex. 5344.

[202] Tr. Vol. 29 at 4363:12–4364:19 (Test. of J. Copa); Ex. 4047 at 00122081.

achievement for all schools and students, as the number of lowest-performing schools dropped from 158 in the first year of the program to 4 in the fourth and final year of the program.[203]

130. School grades based on the statewide standards assessment, then the FCAT, were first issued in 1999, as part of the A+ Plan for Education.[204] While this change to the accountability system initially resulted in more schools earning a low grade (76 "F" schools in 1999 versus 4 "critically low performing" schools in 1998), the number of "F" schools dropped to zero by 2001.[205]

131. In 2001, the FCAT was first administered to all grades from 3–10, allowing the school-grades formula to incorporate student progress from year-to-year, known as "learning gains."[206] The 2002 school grades were the first year in which half the school grade was based on that year's student assessment scores and half on learning gains, focusing on the lowest-performing students, not simply static performance in a given year.[207] With this change to the school grading formula, the number of schools earning an "F" again increased in 2002, although it again decreased over the following years.[208]

132. Additional changes were made in 2005 and 2007, including fully incorporating the learning gains of ELLs and students with disabilities into the school-grades calculation, with

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[203] Tr. Vol. 29 at 4382:10–23 (Test. of J. Copa); Ex. 1829.

[204] Tr. Vol. 30 at 4573:12–22 (Test. of M. Tappen); Tr. Vol. 29 at 4363:12–4364:19 (Test. of J. Copa); Ex. 4047 at 00122082.

[205] Tr. Vol. 30 at 4584:19–23 (Test. of M. Tappen); Tr. Vol. 29 at 4386:24–4389:24 (Test. of J. Copa); Exs. 1829, 1830.

[206] Tr. Vol. 29 at 4363:12–4364:19 (Test. of J. Copa); Ex. 4047 at 00122082.

[207] *Id*.

[208] Tr. Vol. 29 at 4386:24–4389:24 (Test. of J. Copa); Tr. Vol. 30 at 4584:24–4585:17 (Test. of M. Tappen); Exs. 1829,1830.

the purpose of renewing the focus on these student populations.[209] Again, the number of "F" schools initially increased after each change but lowered in successive years.[210]

133. In 2010, high-school grade calculations were changed to include the high-school graduation rate as well as student participation and performance in accelerated coursework and industry certifications.[211] Florida's graduation rate has maintained a level of improvement over the past several years as the school accountability system began to include the graduation rate as a component to evaluate high school performance. With the incentive of measurement in place, schools across the State have responded favorably, graduating more students, including minority students.[212]

134. A confluence of events in the 2010–11 school year resulted in a number of changes to the school grading system.[213] Not only had the State transitioned to the FCAT 2.0, aligned with the Next Generation Sunshine State Standards, but in order to comply with federal law, the state was required to include more students with disabilities and recently-arrived ELLs in the student achievement (as opposed to the "learning gain") component of its school-grades calculation.[214] In response to these changes, there was a groundswell of public support for modification to the school grading system to mitigate the impacts. District superintendents

[209] Tr. Vol. 29 at 4370:4–4371:2 (Test. of J. Copa); Ex. 4047 at 00122082.

[210] Tr. Vol. 29 at 4386:24–4389:24 (Test. of J. Copa); Exs. 1829, 1830.

[211] Tr. Vol. 29 at 4363:12–4364:19 (Test. of J. Copa); Ex. 4047 at 00122083.

[212] Tr. Vol. 26 at 3991:19–3992:3 (Test. of P. Stewart); Exs. 5328, 5329.

[213] Tr. Vol. 29 at 4363:12–4364:19 (Test. of J. Copa); Ex. 4047 at 00122083.

[214] Tr. Vol. 29 at 4370:4–4371:12 (Test. of J. Copa).

widely supported various mitigation policies, most notably a "hold harmless" policy whereby a school's grade could not drop lower than one grade in a given year.[215]

135. Again in response to concerns about these changes and mitigation policies in the formula and the effect on schools and students, Governor Scott convened a summit in 2013, resulting in an executive order seeking to ensure that the State's accountability system remains fair and transparent.[216] The Legislature subsequently revised § 1008.34, Fla. Stat., to return the school-grading formula to its more transparent form, with the goal of it yielding more actionable information to drive improved student outcomes.[217]

136. The changes to the school-grading formula, are understandable when considered in a full context. It is clear that the evolution of the formula was brought about by a variety of complex factors—including the continuous improvement theory, the input of stakeholders and district superintendents, and necessities of federal law—all of which led to reasoned decisions made by Florida's educational policymakers with the goal of improving student performance.[218]

**D. Retention and Promotion**

137. Although Florida has implemented laws and regulations with regard to retention and promotion in limited areas, the vast majority of student requirements for promotion from one grade level to the next are defined by local school districts in their student progression plans. [219] The only three state-level requirements for promotion are the following:

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[215] Tr. Vol. 29 at 4371:13–4374.2 (Test. of J. Copa); Tr. Vol. 26 at 4041:5–12 (Test. of P. Stewart).

[216] Tr. Vol. 29 at 4375:6–4378:4 (Test. of J. Copa); Ex. 4047 at 00122109–16.

[217] Tr. Vol. 26 at 4051:20–4052:6 (Test. of P. Stewart); Ex. 1813 at DOE03204–06.

[218] Tr. Vol. 29 at 4375:6–4378:4 (Test. of J. Copa); Ex. 4047.

[219] § 1008.25(2), Fla. Stat.

a. Subject to a number of good-cause exemptions, promotion from 3rd grade requires that students score a Level 2 or above on the state English language arts assessment aligned to the 3rd grade standards;[220]

b. Promotion from middle grades requires students to successfully complete three middle-grades or high-school courses in English language arts, mathematics, social studies, science and one career and education planning course;[221] and

c. As explained in more detail in Section III.E, graduation from high school requires students to pass a grade 10 English language arts assessment and an Algebra I EOC or earn a concordant score on the ACT, SAT, or PERT, and students must earn the minimum high school credit requirements.[222]

138. Districts have flexibility in implementing these requirements, in, for example, setting courses and curriculum to earn credit.[223] Florida requires each school district to establish a comprehensive plan for student progression that provides specific levels of performance for each grade below which a student must receive remediation or be retained within an intensive program that is different from the previous year's program and that takes into account the student's learning style.[224] The law also requires that, for students who do not obtain a Level 3 on the statewide, standardized reading or mathematics assessment, there must be a determination of the nature of the student's difficulty, the areas of academic need, and strategies for providing

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[220] Tr. Vol. 27 at 4092:20–25 (Test. of P. Stewart); Tr. Vol. 31 at 4633:8–4636:2 (Test. of M. Tappen); Tr. Vol. 30 at 4481:4–4483:7 (Test. of J. Copa); § 1008.25(4), Fla. Stat.

[221] § 1003.4156, Fla. Stat.

[222] Tr. Vol. 26 at 3990:24–3991:3 (Test. of P. Stewart); § 1003.4282(3), Fla. Stat.

[223] § 1003.42, Fla. Stat.

[224] § 1008.25(2), Fla. Stat.

academic support to improve the student's performance.[225] This statute was recently revised to provide local school districts with more flexibility in addressing the needs of these students.[226]

139. Students scoring a Level 1 on the grade 3 reading assessment are not automatically retained in 3rd grade. Florida law outlines good cause exemptions that may be provided to students to be promoted to 4th grade despite scoring a Level l on the statewide assessment, including for students with disabilities; ELLs; and students who show, through classroom-level portfolio assessments, that they can read at the level required by the standards. Data indicate that less than half of all students who score a Level l on the 3rd grade reading assessment are retained.[227]

140. Florida's third-grade reading policy is research-based and has been effective in improving student achievement.[228] The policy is in place to ensure that Florida's most struggling readers receive the additional support and intervention so that they are equipped to succeed in their future schooling and beyond. It is not a punitive policy, but one that has served to be beneficial, evidenced by Florida's improvement for over a decade.[229]

141. The third-grade retention policy goes hand-in-hand with other reading supports required by State policy. Any student who exhibits a substantial deficiency in reading in kindergarten, grade 1, grade 2, or grade 3 must be given intensive reading instruction immediately and continue to be provided such instruction until the reading deficiency is

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[225] § 1008.25(4), Fla. Stat.

[226] Tr. Vol. 26 at 3973:7–21 (Test. of P. Stewart); Tr. Vol. 31 at 4630:3–4631:17, 4636:3–4637:2 (Test. of M. Tappen).

[227] Tr. Vol. 31 at 4634:11–4636:2 (Test. of M. Tappen); Tr. Vol. 30 at 448622–23 (Test. of J. Copa); Ex. 1836.

[228] Tr. Vol. 35 at 5232:11–5235:19 (Test. of J. Greene); Exs. 270, 1835, 1836.

[229] Tr. Vol. 31 at 4637:5–4638:14 (Test. of M. Tappen); Tr. Vol. 30 at 4487:1–4488:22 (Test. of J. Copa); Tr. Vol. 35 at 5232:11–5235:19 (Test. of J. Greene); Exs. 270, 1835, 1836.

remediated.[230] A 3rd grade student who is retained must be provided intensive interventions in reading, including effective instructional strategies, participation in a summer reading camp, and appropriate teaching methodologies.[231] School districts must provide these students during the school day with 90 minutes of uninterrupted, scientifically research-based reading instruction that includes reduced teacher-student ratios and is taught by a "highly effective" reading teacher.[232]

142. The Legislature supports school districts with an annual reading appropriation that is provided once the school district submits a research-based district-wide reading plan to support student performance in reading. The Department has a dedicated Just Read, Florida! Office that provides technical assistance to districts as they implement their reading plans. The Just Read, Florida! Office also provides professional development on the English language arts standards and has adopted in rule the criteria for the 3rd grade student portfolios that can be used to promote for good cause 3rd grade students who would otherwise be subject to retention based on failing to score a Level 2 or higher on the statewide, standardized assessment in English language arts.[233] Students who fail to score a Level 2 are provided summer reading instruction and have the opportunity to retake the assessment before being retained in the fall.[234]

143. Students retained in 3rd grade receive additional instruction to better prepare them for promotion to 4th grade, and success beyond that.[235] Florida data show that struggling

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[230] § 1008.25(5)(a), (6)(b), Fla. Stat.

[231] Tr. Vol. 31 at 4633:8–4636:2 (Test. of M. Tappen); Exs. 2003, 3400, 3401.

[232] Tr. Vol. 31 at 4636:3–4637:2 (Test. of M. Tappen); § 1008.25(7)(b), Fla. Stat.

[233] Exs. 3400, 3401; § 1001.215, Fla. Stat.

[234] Tr. Vol. 31 at 4633:8–4636:2 (Test. of M. Tappen).

[235] Tr. Vol. 31 at 4636:3–4637:2 (Test. of M. Tappen).

students afforded the extra year in 3rd grade outperformed their struggling counterparts who were immediately promoted into 4th grade: Of students who scored a Level l in 3rd grade (*i.e.*, were potentially subject to in-grade retention), students who were retained in 3rd grade performed better on the grade 4 reading assessment in 4th grade than those who were promoted directly from 3rd to 4th grade despite having scored a Level l in 3rd grade (*i.e.*, were promoted under a good cause exemption).[236] Moreover, at least 70% of Florida's 4th graders have scored at or above Basic on NAEP Reading since 2007.[237] (*See* Section IV.A below for a detailed discussion of Florida's NAEP performance.) These 4th grade samples of students have included Florida's most struggling students who have benefitted greatly from an extra year of instruction in 3rd grade.[238]

144. Florida's third-grade retention policy also is supported by academic research. Dr. Jay Greene, a professor of education and head of the Department of Education Reform at the University of Arkansas, has extensively studied the effect of Florida's policy. Dr. Greene's studies, which are published in a peer-reviewed journal, concluded that Florida's test-based retention policy significantly improves the academic achievement of students who are retained.[239] Plaintiffs did not present any evidence countering Dr. Greene's findings.

145. At least a dozen other states have implemented a policy regarding the retention of third-grade students who do not meet grade-level reading requirements.[240] This is further

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[236] Ex. 1835; Tr. Vol. 30 at 4487:1–4488:22 (Test. of J. Copa).

[237] Ex. 1358.

[238] Tr. Vol. 30 at 4487:1–4488:22 (Test. of J. Copa).

[239] Tr. Vol. 35 at 5232:11–5235:19 (Test. of J. Greene); Ex. 270.

[240] Tr. Vol. 35 at 5234:2–4 (Test. of J. Greene).

evidence that Florida's policy of ensuring that students are reading on grade level before moving on to grade 4 is rationally based on sound educational policy.

### E. Graduation Requirements

146. Over the past twenty years, Florida legislation has increased high school graduation requirements for the purpose of ensuring all students are college and career ready upon graduation.[241] This increased rigor is supported by research on job growth and education requirements in today's economy.[242] Florida is a leader in emphasizing both the academic core content requirements and improving its career and technical programs to ensure both result in high school graduates prepared for college and careers.[243]

147. Florida's increased graduation requirements include required student credit in the core content areas of mathematics, science, social studies and English language arts and also credits in the arts, physical education and a minimum of eight courses that can be dedicated to areas of student interest or career programs.[244] The chart below summarizes the changes in graduation requirements, based on the 9th grade cohort for each year:[245]

[241] Tr. Vol. 31 at 4640:2–4642:3 (Test. of M. Tappen).

[242] *Id*.

[243] Tr. Vol. 31 at 4640:2–4642:3, 4650:1–4654:25 (Test. of M. Tappen).

[244] Tr. Vol. 31 at 4640:2–4642:3 (Test. of M. Tappen).

[245] Ex.188.

| | Prior to 1998 | 1998 | 1999 | 2008 | 2011 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|
| Mathematics | 3 credits | 3 credits including Algebra I | 3 credits including Algebra I | 4 credits including Algebra I | 4 credits including Algebra I, Geometry | 4 credits including Algebra I, Geometry | 4 credits including Algebra I, Geometry |
| English Language Arts | 4 credits | 4 credits | 4 credits | 4 credits | 4 credits | 4 credits | 4 credits |
| Science | 3 credits | 3 credits | 3 credits | 3 credits | 3 credits including Biology | 3 credits including Biology | 3 credits including Biology |
| Social Studies | 3 credits | 3 credits | 3 credits | 3 credits | 3 credits | 3 credits | 3 credits |
| Physical Education | ½ credit | ½ credit | 1 credit | 1 credit with the integration of health | 1 credit with the integration of health | 1 credit with the integration of health | 1 credit with the integration of health |
| Practical or Performing Arts | 1 credit | 1 credit | 1 credit | 1 credit | 1 credit | 1 credit | 1 credit |
| Life Management | ½ credit | ½ credit | ½ credit | | | | |
| Electives | 9 credits | 9 credits | 8½ credits | 8 credits | 8 credits | 8 credits | 8 credits |
| Assessments | 11th grade HSCT in Communi-cations and Math | 10th grade FCAT Reading and Math | 10th grade FCAT Reading and Math | 10th grade FCAT Reading and Math | 10th grade FCAT Reading and Math | 10th grade FCAT Reading and Algebra I EOC | 10th grade English Language Arts FSA, Algebra I EOC |

148. In addition to the credit requirements, the assessment requirements also have increased in rigor. Beginning with the class entering 9th grade in 1998, Florida moved from a minimum-competency graduation test to requiring high school graduates to earn a Level 3 on the

state assessments in reading and math, and the state-wide standards and assessments have increased in rigor with the FCAT, FCAT 2.0, and now the FSA.[246]

149. Students have multiple opportunities to retake the exams before they are scheduled to graduate. The current graduation assessments are a 10th grade assessment in English language arts and an Algebra I assessment that is typically taken by students in 9th grade. Students have up to five opportunities to pass the grade 10 English language arts assessment before their scheduled graduation. The Algebra I EOC is offered four times a year; thus, depending on how early a student takes the assessment, he or she will have multiple opportunities to retake the assessment if needed.[247]

150. Students also have alternative means by which to meet the assessment requirements for graduation. For example, a student may earn a concordant score on the ACT or SAT for English language arts and/or a comparative score on the PERT for Algebra I in order to satisfy the assessment requirements.[248] For the group of Florida students scheduled to graduate in 2013, 20% of those who took the SAT or ACT scored a Level 1 or 2 on the FCAT 2.0.[249]

151. Assessments play an important role in ensuring that students have mastered the required content, and, with multiple avenues to meet that requirement, assessments are not a barrier to graduation, but rather an assurance that students have learned what is expected.[250]

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[246] Tr. Vol. 31 at 4640:2–4642:3 (Test. of M. Tappen); Tr. Vol. 30 at 4482:7–4483:7 (Test. of J. Copa); Ex. 188.

[247] Tr. Vol. 26 at 3990:24–3991:3 (Test. of P. Stewart); Tr. Vol. 30 at 4482:7–4483:7 (Test. of J. Copa).

[248] Tr. Vol. 26 at 4025:20–25 (Test. of P. Stewart); Tr. Vol. 31 at 4699:24–4700:4 (Test. of M. Tappen); Tr. Vol. 30 at 4482:7–4483:7 (Test. of J. Copa).

[249] Tr. Vol. 30 at 4484:7–20 (Test. of J. Copa).

[250] Tr. Vol. 26 at 3968:17–25 (Test. of P. Stewart); Tr. Vol. 29 at 4333:23–4334:10 (Test. of J. Copa).

152. Florida's implementation of more rigorous standards and required courses for graduation is based on the needs of career-readiness in addition to college-readiness. For example, students interested in military service must sit for the Armed Services Vocational Aptitude Battery, which includes subtests in areas such as general science, word knowledge, paragraph comprehension, mathematics knowledge, and mechanical comprehension.[251]

153. Students in Florida continue to graduate at higher rates than ever before with fewer students opting for less rigorous diploma alternatives.[252] (*See* Section IV.E below for details on improvements in Florida's graduation rates over time.)

154. The rationality of Florida's high-school graduation requirements also is supported by evidence that over half of the states in the nation require students to attain certain scores on high school assessments in order to receive a high school diploma.[253] Florida's high-school graduation requirements represent reasonable policy choices based on research and a desire to continue Florida's improved student performance.[254]

### F. Teacher Quality and Educator Policies

155. Florida has implemented many statewide programs to ensure that high-quality teachers are available in Florida's school districts.[255] Florida's approach to educator quality is designed so that all teachers and school leaders are well-selected, prepared, supported, respected, and accountable for their students' achievement.[256] Florida's framework for implementation of

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[251] Tr. Vol. 31 at 4640:2–4643.10 (Test. of M. Tappen).

[252] Tr. Vol. 31 at 4644:13–4647:12 (Test. of M. Tappen); Exs. 190, 4050, 5328, 5329.

[253] Tr. Vol. 29 at 4445:17–20 (Test. of J. Copa).

[254] *See* Tr. Vol. 31 at 4644:13–4647:12 (Test. of M. Tappen); Exs. 190, 4050, 5328, 5329.

[255] Tr. Vol. 31 at 4710:24–4712:14 (Test. K. Hebda).

[256] Tr. Vol. 31 at 4712:15–4713:24 (Test. K. Hebda).

educator quality appropriately places the state in the role of setting standards, providing technical assistance, and monitoring and reporting results, while decisions about employment, assignment, evaluation, and specific compensation of individuals who meet those standards are appropriately assigned to local school districts.[257] This design, the policies enacted to implement it, and the results yielded, support Florida's policies as being rational and research-based.[258]

156. Florida's teacher quality policies have been rated the best in the nation for multiple years by the National Council for Teacher Quality, which further supports Florida's policy choices as well-founded and rationally-based.[259] Florida's teacher quality policies are also supported by the results on the quality and effectiveness of Florida teachers. In 2012–13, nearly 98% of Florida teachers were rated "effective" or "highly effective" by their school districts.[260] And in 2013–14, over 94% of classes were taught by teachers rated as "highly qualified" under federal law.[261]

157. Florida has aligned its teacher quality policies to effective classroom instruction and student learning results, beginning with the Florida Educator Accomplished Practices, which provide the expectations for all Florida educators.[262] These practices were developed in conjunction with Florida teachers, compiled from research and practical evidence, and adopted by the State Board of Education. Florida law requires that Florida teachers are trained, certified,

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[257]Ex. 199; Tr. Vol. 31 at 4712:15–4717:7 (Test. of K. Hebda); Tr. Vol. 26 at 3970:9–16, 3973:7–21, 3975:8–13 (Test. of P. Stewart); Tr. Vol. 30 at 4608:24–4609:24 (Test. of M. Tappen).

[258] Tr. Vol. 31 at 4717:8–4718:13 (Test. of K. Hebda).

[259] Tr. Vol. 31 at 4734:8–4736:15 (Test. of K. Hebda).

[260] Ex. 1883; *see also* Ex. 1884.

[261] Ex. 3368; Tr. Vol. 31 at 4736:16–4737:15 (Test. of K. Hebda).

[262] Ex. 3371; Tr. Vol. 31 at 4721:12–4726:1 (Test. of K. Hebda).

and evaluated based on these standards, which provides clear and uniform expectations. Programs to train and evaluate teachers in colleges of education and in school districts are approved based in part on alignment with the practices.[263]

*Teacher Preparation and Certification*

158. Supported by national research, Florida has designed teacher preparation programs and certification processes that hold teachers to high standards while affording them a choice of delivery mechanisms to become qualified. Florida provides a number of pathways to teacher certification, including directly to a Professional Certificate, or through a Temporary Certificate to a Professional Certificate, but each pathway requires that teachers meet the same standards of subject-matter knowledge and hands-on experience, as well as submit to a background check.[264] The U.S. Department of Education has accepted both Florida's Temporary and Professional Certificates as evidence that a teacher has earned "full" certification to meet "highly qualified" status under NCLB.[265] The Florida Teacher Certification Examinations have received national recognition from the National Center for Teacher Quality for their rigor and alignment to student content standards.[266] Florida also provides pathways for teachers certified in other states to become certified in Florida by demonstrating that they meet Florida's requirements through their state's approved preparation program or valid Professional Certificate.[267] Unlike several other states, Florida's certificate is not "permanent" but must be

[263] Tr. Vol. 26 at 3970:9–16 (Test. of P. Stewart); Tr. Vol. 31 at 4721:12–4726:1, 4737:24–4740:16 (Test. of K. Hebda) ; Exs. 3370, 3371, 4022.

[264] Ex. 4021; Tr. Vol. 31 at 4727:4–4728:2, 4729:12–4734:7 (Test. of K. Hebda).

[265] Tr. Vol. 31 at 4728:3–17 (Test. of K. Hebda).

[266] Tr. Vol. 31 at 4734:8–4736:15 (Test. of K. Hebda); Ex. 4022.

[267] Tr. Vol. 31 at 4727:4–4728:2, 4729:12–4734:7 (Test. of K. Hebda); Ex. 4021.

renewed every five years through continuing education or passing a subject-area examination.[268] Florida also offers several options for teacher preparation programs and has been recognized as a leader in accountability for teacher preparation programs in the nation, ensuring that the teacher preparation programs are aligned with the student content standards used in Florida schools.[269]

*Teacher Evaluation and Professional Development*

159. Florida's teacher evaluation and professional development system was created through collaboration with educators and experts and is designed to focus educators on college and career readiness for all the students they teach and to provide timely and meaningful feedback to continually improve teaching practice.[270] It is a local school district responsibility to design and deliver its own professional development and evaluation systems in accordance with state law.[271]

160. Teacher professional development is provided at the district level, although the Department provides support to districts in the delivery of their professional development systems through a number of initiatives.[272] The Department also has responsibility under state law to review and approve each district's professional development system, which is guided by Florida's Professional Development System Evaluation Protocol, based on Florida's Professional Development Standards. [273]

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[268] Tr. Vol. 31 at 4737:16–23 (Test. of K. Hebda).

[269] Tr. Vol. 31 at 4737:24–4740:16 (Test. of K. Hebda).

[270] Tr. Vol. 31 at 4737:24–4748:4 (Test. of K. Hebda); Ex. 1887.

[271] Tr. Vol. 31 at 4748:6–4750:2, 4751:15–4753:1 (Test. of K. Hebda); Tr. Vol. 26 at 3975:24–3976:6 (Test. of P. Stewart); Exs. 1887, 1885.

[272] Tr. Vol. 30 at 4620:5–4621:17 (Test. of M. Tappen).

[273] Tr. Vol. 32 at 4783:3–4786:1 (Test. of K. Hebda); Ex. 3981.

161. As part of its accountability system, Florida requires that, while local school districts develop and adopt their own teacher-evaluation systems, a certain percentage of a teacher's evaluation must incorporate a student-performance component.[274] While Florida law connects each teacher's and principal's evaluation to increased compensation and contract renewal, Florida maintains a system of local control in that performance standards for the final performance evaluation rating are set by the local school district, and amounts and terms for compensation and contracts are locally negotiated between each school district and the local teachers' union.[275]

162. While Florida has a history of including student performance in teacher evaluation, its current teacher-evaluation system is supported by, and indeed was required by, federal law and policy.[276] Florida was one of 19 states to be awarded a federal Race to the Top ("RTT") grant, and it was one of 43 states to be granted a flexibility waiver under the Elementary and Secondary Education Act ("ESEA").[277] A requirement of both federal programs focused on linking student performance and growth to teacher evaluations. Florida used part of its RTT grant to revise its teacher evaluation system to meet these requirements, which were incorporated in Florida law in the Student Success Act.[278] The value-added model and other aspects of the revised teacher-evaluation system were included in Florida's RTT application and the

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[274] § 1012.34, Fla. Stat.; Tr. Vol. 31 at 4740:17–4748.4 (Test. of K. Hebda); Ex. 1887.

[275] Tr. Vol. 31 at 4740:17–4750:2 (Test. of K. Hebda); Tr. Vol. 32 at 4791:19–4795:19 (Test. of K. Hebda); Ex. 1887.

[276] Tr. Vol. 32 at 4763:22–4764:7 (Test. of K. Hebda).

[277] Exs. 1413, 1440, 1442, 3363, 3774, 3973.

[278] Ch. 2011-1, Fla. Laws.

Memorandum of Understanding agreed to by the vast majority of Florida school districts (69 of 72 districts, including lab schools), 49 of these with teachers' union support.[279]

163. For teachers teaching courses and grade levels covered by the statewide assessments, the student-performance component must be based on a "value-added measure," or "VAM" score, which is calculated according to a state-developed formula for measuring student learning growth.[280] For all other teachers, districts are given flexibility in the ways in which student performance is taken into account for the particular course, including using district-developed assessments or other student performance measures. Many districts have opted to use the VAM scores in various ways for teachers who do not teach FSA-tested subjects, but this is not a state requirement.[281]

164. While Florida law requires that teachers be given performance ratings of either highly effective, effective, needs improvement, developing, or unsatisfactory, the standards and cut points for earning each of these ratings are decided locally by each school district.[282] The Department provides support for local districts in implementing these decisions, including development of state model evaluation systems in conjunction with national experts and Florida educators, as well as providing training with national experts to school districts.[283]

165. Florida's value-added model is meant to measure the impact of a teacher on student learning by controlling for other factors that may impact the learning process. In other words, it is designed to mitigate the influence of differences among the entering class of students

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[279] Exs. 3781, 3367; Tr. Vol. 32 at 4763:22–4764:7 (Test. of K. Hebda).

[280] Tr. Vol. 32 at 4763:22–4764:7 (Test. of K. Hebda).

[281] Tr. Vol. 32 at 4764:8–4765:18 (Test. of K. Hebda); Ex. 1849.

[282] Tr. Vol. 31 at 4740:17–4748:4 (Test. of K. Hebda); Tr. Vol. 32 at 4767:22–4768:15 (Test. of K. Hebda); Ex. 1887.

[283] Tr. Vol. 31 at 4751:15–4753:1 (Test. of K. Hebda); Ex. 1885.

so that schools and teachers do not have advantages or disadvantages simply as a result of the students who attend a school or are assigned a class.[284]

166. Florida's model is research-based and was the product of an extensive and inclusive process of stakeholder input to identify the type of model that should be used and the factors that should be accounted for in the model. The State formed a Student Growth Implementation Committee ("SGIC"), composed of 27 members from across the State, including teachers, school administrators, district-level administrators, postsecondary education teachers, representatives from the business community, and parents, for questions, in-depth discussions, and perspectives from different points of view. The SGIC's recommendation was adopted in full by the Commissioner in June 2011.[285]

167. The model adopted by Florida takes into account a number of student factors—including prior years' achievement scores, attendance, mobility, and ELL or disability status—as well as a school component, which recognizes that there are aspects of the school for which the teacher should not be held directly accountable.[286]

168. Each year that VAM scores are calculated, the Department conducts "impact analyses" to ensure that the VAM its meeting its goal of leveling the playing field.[287] This impact data indicates that there is no discernible relationship between a teacher's VAM score and the makeup of the teacher's class—specifically, the percentage of students that are economically disadvantaged, the percentage of students with disabilities, the percentage of ELLs, the percentage of gifted students, the percentage of minority students, and the mean prior academic

[284] Tr. Vol. 32 at 4759:6–4763:21 (Test. of K. Hebda); Exs. 1887, 1877, 3982.

[285] Tr. Vol. 32 at 4759:6–4763:21 (Test. of K. Hebda); Exs. 1877, 1889, 1887, 3980.

[286] Tr. Vol. 30 at 4489:12–4492:2 (Test. of J. Copa); Exs. 1887, 3980, 119.

[287] Tr. Vol. 30 at 4496:1–12 (Test. of J. Copa); Exs. 3982, 3983, 120, 121.

performance of the class. This means that all teachers have the same opportunity to earn a high VAM score regardless of the makeup of their assigned classes.[288]

169. Several of Plaintiffs' witnesses complain about the student-performance component of teacher evaluation, specifically VAM. These complaints consist almost entirely of individual teachers lamenting the "fairness" of VAM to teachers, but there is no evidence that VAM has negatively impacted the quality of education provided to Florida students.[289] Indeed, each of these teachers affirmed that VAM has not negatively impacted the quality of education or instruction that they provide to their students.[290] Moreover, Plaintiffs' own witnesses do not agree on what part, if any, of the teacher evaluation system they think is unfair to teachers—some do not think student performance has any place in teacher evaluations and want to get rid of the entire system,[291] while others think it should be considered but complain about how it applies to them under their district's chosen system,[292] and still others have no objection to VAM[293] or even think it is a good policy.[294] These complaints do not support the allegation that Florida's teacher evaluation system is not a rationally-based policy for improving educational quality.

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[288] Tr. Vol. 32 at 4775:2–4777:8 (Test. of K. Hebda); Tr. Vol. 30 at 4496:13–4498:7 (Test. of J. Copa); Exs. 1850, 3982, 120, 121.

[289] Tr. Vol. 23 at 3532:3–17, 3499:4–24 (Dep. Test. of J. Hiltz); Tr. Vol. 21 at 3155:22–3156:7 (Test. of L. Flynt); Tr. Vol. 13 at 1919:1–19 (Test. of K. Cook); Ex. 5353 (Dep. of B. Cavallero) at 17:20–18:1.

[290] Tr. Vol. 23 at 3499:20–24 (Dep. Test. of J. Hiltz); Tr. Vol. 21 at 3187:10–3188:11 (Test. of L. Flynt); Tr. Vol. 13 at 1951:7–15 (Test. of K. Cook); Ex. 5353 (Dep. of B. Cavallero) at 106:11–19.

[291] *E.g.*, Tr. Vol. 21 at 3118:17–21 (Test. of K. Oropeza).

[292] *E.g.*, Tr. Vol. 23 at 3532:3–17 (Dep. Test. of J. Hiltz).

[293] *E.g.*, Tr. Vol. 20 at 2957:25–2958:3 (Test. of M. McGriff).

[294] *E.g.*, Tr. Vol. 5 at 686:2–16 (Test. of N. Vitti).

170. As further basis for the nature of this as a policy debate, in response to stakeholder concerns about VAM, the Legislature amended the relevant laws in 2015 to reduce the student-performance component from being at least 50% of the teacher evaluation to at least 33%, as well as to clarify other aspects of the requirement that would reduce reliance on student assessment.[295] Even with this amendment, some districts, in negotiation with their teachers' unions, have opted to maintain the student-performance component at 50% of teacher evaluations.[296]

171. Florida's teacher-evaluation system and VAM have been challenged by teachers in both state and federal court and have been upheld by every court that has reviewed them. Both the First District Court of Appeal and the U.S. Court of Appeals for the Eleventh Circuit have rejected constitutional challenges to VAM and the Student Success Act.[297]

*Teacher Recruitment, Assignment, and Compensation*

172. The Department provides support to local districts in their teacher recruitment efforts. Teacher assignment is a district responsibility, and it is often negotiated between the district and the local union. State law, in compliance with the ESEA, requires that schools with high percentages of poor or minority students may not have lower percentages of effective teachers than the district average.[298] State law also provides each school principal with the right to refuse the assignment of a low performing teacher to his or her school if he or she determines

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[295] Ch. 2015-6 , Fla. Laws; Tr. Vol. 31 at 4740:17–4748:4 (Test. of K. Hebda);

[296] Tr. Vol. 21 at 3177:7–3179:21 (Test. of L. Flynt); Tr. Vol. 32 at 4740:17–4748:4, 4766:22–4767:21 (Test. of K. Hebda); Ex. 1767.

[297] *See Robinson v. Stewart*, 161 So. 3d 589 (Fla. 1st DCA 2015) (en banc), *pet. for review denied*, No. SC15-323 (Fla. Sept. 8, 2015); *Cook v. Bennett*, 792 F.3d 1294 (11th Cir. 2015).

[298] Tr. Vol. 26 at 3973:7–17 (Test. of P. Stewart); Tr. Vol. 31 at 4726:2–4727:3 (Test. of K. Hebda); Tr. Vol. 32 at 4786:2–14 (Test. of K. Hebda); § 1012.2315, Fla. Stat.

it is not in the best interest of the students.[299] The Department monitors this and other requirements through the school improvement system.[300]

173. Teacher compensation also is determined locally by the school district through negotiation with the local teachers' union.[301] Florida has, however, led the way in providing for performance pay for teachers based on their district-assigned performance rating.[302] Teachers can also earn additional compensation each year they are assigned to a high-needs school, are teaching in a hard-to-staff grade or subject, or complete additional academic responsibilities.[303] These policies provide the alignment of teacher compensation with students who need excellent teachers the most and to the learning outcomes the State is seeking for all students.[304]

174. Florida's educator quality policies, including its teacher evaluation system, are research-based and well-considered.[305]

### G. School Improvement and Differentiated Accountability

175. Much of Plaintiffs' trial presentation focused on the State's Differentiated Accountability program ("DA"), which aims at directing school-improvement strategies toward schools identified as lower-performing under the State's school grading system. The Court understands the purpose and structure of DA, the complex system of resources and the supports

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[299] Tr. Vol. 31 at 4726:2–4727:3 (Test. of K. Hebda); Tr. Vol. 32 at 4786:2–14 (Test. of K. Hebda).

[300] *Id*.

[301] Tr. Vol. 26 at 3975:20–23 (Test. of P. Stewart); Art. I, § 6, Fla. Const.; §§ 447.201, .447.203, Fla. Stat.

[302] Tr. Vol. 32 at 4791:19–4795:19 (Test. of K. Hebda); § 1012.22, Fla. Stat.

[303] *Id*.

[304] Tr. Vol. 32 at 4795:21–4797:16 (Test. of K. Hebda).

[305] Tr. Vol. 28 at 4218:21–4222:22 (Test. of E. Hanushek); Tr. Vol. 32 at 4795:21–4797:16 (Test. of K. Hebda).

available to districts in educating students in these schools. However, a school should not be allowed to remain indefinitely in the DA program without there being some concern that the "state" is tolerating or being complacent about the inability of the local district to improve that school's performance. This is especially true since the Defendant's own evidence suggest that improvements can be made without additional resources.

176. Florida law, § 1008.33, Fla. Stat., provides the State Board of Education with authority to hold schools and districts accountable for student improvement by, among other things, implementing a state system of school improvement. As part of this system of school improvement, Florida's current DA program was developed in 2008–09 as a pilot program and enhanced as part of the RTT program and the ESEA flexibility waiver.[306] The program employs staff in five regions of the state to provide district and school administrators with research-based school-improvement strategies focused on changes in leadership and school culture, not the infusion of additional resources. Staff provides districts with school improvement planning, leadership quality improvement, educator quality improvement, professional development, curriculum alignment and pacing, and use of continuous improvement and monitoring plans to identify barriers and strategies for school improvement. Schools assigned a "D" or "F" grade under the State's school-grading system receive more intense intervention, which has included research-based turnaround option plans with demonstrated records of effectiveness.[307]

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[306] Tr. Vol. 10 at 1395:5–7, 1449:18–1452:5 (Test. of S. Houston); Exs. 3781, 3973.

[307] Exs. 1261, 1948, 1949; Tr. Vol. 26 at 4039:20–4041:18 (Test. of P. Stewart); Tr. Vol. 30 at 4586:25–4588:1, 4591:7–4600:9, 4601:11–4602:1 (Test. of M. Tappen). *See generally* Tr. Vol. 10 at 1393:2–1466:14 (Test. of S. Houston); Tr. Vol. 12 at 1827:20–1874:7 (Test. of G. Sitter); Tr. Vol. 14 at 2180:10–2199:13 (Test. of W. Green); Tr. Vol. 15 at 2209:22–2279:13 (Test. of E. Thompson); Tr. Vol. 19 at 2829:2–2905:11 (Test. of J. Browder); Tr. Vol. 20 at 2911:14–2927:6 (Test. of J. Browder).

177. DA regional support staff does not implement reforms or dictate what reforms schools or districts must make. The State uniformly applies its school-grading criteria to identify problem areas in districts and then provides support to districts in identifying research-based solutions to be implemented by the local school district for long-term, systemic changes.[308]

178. Plaintiffs have asserted that there have been reductions in funding for the DA program. This is true, however, the evidence indicates the RTT funds used to enhance the DA program were intended to be capacity-building, with the goal of teaching local school district personnel how to implement school improvement strategies in their own districts, in part to support the ESEA flexibility waiver.[309] The ESEA has now been amended with the Every Student Succeeds Act, changing the applicable federal requirements, and the Court finds that it is reasonable that the state program would change as well.[310] The Court also finds that, overall, implementation of the DA program and subsequent changes to the program are rationally-based decisions in light of the State's overall system of school improvement and accountability.

179. Section 1008.33, Fla. Stat., requires that the school improvement and accountability system established by the State Board of Education "institutes appropriate measures for enforcing improvement."[311] The Court finds that Plaintiffs have not made a claim under this section, nor could they. Section 1008.32, Fla. Stat., which grants the State Board of Education authority for oversight enforcement of local school districts, makes clear that any

[308] Tr. Vol. 10 at 1411:7–23, 1463:2–22 (Test. of S. Houston).

[309] Tr. Vol. 10 at 1452:6–1454:2 (Test. of S. Houston).

[310] Ex. 4048; Tr. Vol. 10 at 1439:7–1442:14 (Test. of S. Houston).

[311] § 1008.33(2)(a)., Fla. Stat.

grant of enforcement authority does not "create a private cause of action or create any rights for individuals or entities."[312]

180. Plaintiffs have not pleaded any claim regarding a failure by the State Board to "enforce public school improvement." Instead, the complaint says nothing about "differentiated accountability" or "school improvement" and, on the contrary, alleges that the standardized assessments upon which the entire accountability system is based are "misuse[d]" and that the system "fails to recognize the many other factors that affect student achievement."[313] During her trial testimony, the Plaintiffs Fund Education Now's ("FEN") representative specifically disclaimed asking the Court to require the State to do more to enforce school turnaround[314] and confirmed that, on the contrary, FEN wants the Court to strike down all of the State's accountability statutes.[315] And, when pressed by the Court to identify precisely what relief they are seeking, Plaintiffs' counsel asked for "a declaration that the State has failed to adequately fund the education system in a way that's allowing all students to obtain a high-quality education,"[316] not a declaration that the State Board of Education is violating § 1008.33.

181. Nevertheless, the Court finds that the accountability statutes have, overall, been reasonably complied with, including the requirement that schools with consecutive "F" grades implement turnaround option plans. Section 1008.33(2)(a) requires that the DA system be read

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[312] § 1008.32(5), Fla. Stat.

[313] 2d Am. Compl. ¶¶ 119, 120.

[314] Tr. Vol. 21 at 3118:22–3119:15, 3120:12–21 (Test. of K. Oropeza).

[315] Tr. Vol. 21 at 3117:18–22 (Test. of K. Oropeza).

[316] Tr. Vol. 26 at 3905:19–22; *see also* Tr. Vol. 26 at 3899:14–21 ("And so it's not that you have to have, you know, an exact dollar amount, but you have to figure out what is it that is required for us to have a high-quality education, and the State has never done a cost analysis as to what are the conditions we need to make sure all children are achieving on our standards and how much does that actually cost?").

in conjunction with § 1008.34, Fla. Stat., which allows for a transition year for the 2014–15 school grades due to the first administration of the new Florida Standards Assessment.[317] In response to the Court's questions about two elementary schools in Pinellas County with multiple years of "F" grades, Commissioner Pam Stewart testified that, in accordance with §§ 1008.33 and 1008.34, these schools must improve their grade for the current (2015–16) school year or be required to select a different turnaround option and different implementation plan.[318] Moreover, § 1008.33 and related statutes place responsibility on the local school districts to implement school improvement and turnaround option plans.[319] Even if a claim could be brought under the statute, any claim as to the schools in Pinellas County would require that the school district be a party.

182. Plaintiffs' assertion that schools with high levels of low-income and minority students are not being given additional resources also is not supported by evidence. In fact, additional resources are directed to schools with "D" and "F" grades and to schools with higher levels of poverty, as these schools spend substantially more per pupil than schools with higher levels of performance and socioeconomic status.[320] School improvement plans for two schools in Pinellas County with four consecutive "F" grades, Maximo Elementary School and Melrose Elementary School, show that the district has placed many additional resources in these

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[317] § 1008.34(7)(a), Fla. Stat. ("A school may not be required to select and implement a turnaround option pursuant to s. 1008.33 in the 2015–2016 school year based on the school's 2014–2015 grade or school improvement rating under s. 1008.341, as applicable.").

[318] Tr. Vol. 26 at 4048:13–4050:3 (Test. of P. Stewart).

[319] *See, e.g.*, §§ 1008.33(1)(c), (4)(a), 1008.385(1)(b), (2)(b), 1001.42(18), Fla. Stat.

[320] Ex. 262; Tr. Vol. 32 at 4856:15–4860:5 (Test. of L. Champion). These funding differences are described in more detail in Section IV.B.

schools,[321] and another low-performing school in the district, Fairmont Park Elementary School, received a $2.8 million school improvement grant but maintained an "F" grade.[322] The evidence shows that low performance in certain schools is due in large part to local implementation issues—many schools (61 and 30, respectively) with the same or higher percentages of low-income and minority students as Maximo and Melrose have had four consecutive years of "A" and "B" grades.[323] And an analysis of traditional schools with a majority of minority and a majority of low-income students shows that, in 2013–14, 37% of these schools were graded "A" or "B" and 37% were graded "C," while only 17% were graded "D" and only 9% were graded "F." Over twice as many schools earned an "A" than received an "F."[324]

183. While the Court is concerned about schools that may have "F" grades for consecutive years, the evidence shows that this has occurred in only a small fraction of schools statewide. For the 2013–14 school year, only 5% of traditional schools in the state had an "F" grade, only 1.37% had been graded "F" for two or more consecutive years, and only 0.07% (two schools, Maximo and Melrose) had received an "F" for four consecutive years.[325] From its inception in the late 1990s, the evidence shows the State's accountability system has been generally effective in turning schools around, increasing schools from "D" or "F" grades to grades of "C" or above.[326] Although there often is seen an increase in "D" and "F" schools when changes to the assessments or school grading formula are made, this is part of the system of

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[321] Exs. 1899, 1901.

[322] Tr. Vol. 20 at 2921:13–21 (Test. of J. Browder).

[323] Ex. 5345.

[324] Ex. 5346.

[325] Ex. 5345.

[326] Exs. 1261, 1940.

continuous improvement, as these schools generally improve in response to the changes.[327] These improvements, in combination with the increased performance on state and national assessments and increased graduation rates over time,[328] show that the State's system of school improvement and differentiated accountability is rationally related to the goal of increasing student achievement. However, the weakest part of the Defendants presentation was in their handling of local School Districts failure to address the problem of long term 'F" schools at the local level. At some point in time the State Board should do more if the local School District will not, especially if Defendants main argument, that "better teacher effectiveness, not more resources," is all that is needed. While recognizing that the State Board can only do what the Legislature authorizes, and also recognizing that there are factors that have to be taken into consideration in dealing with local school districts, the Defendants response to long term "F" schools, while found to be reasonable by this Court in the overall context of this lawsuit was the weakest point in the State's Educational policy that was presented at trial.

**H. Discipline Policies**

184. Plaintiffs' contentions regarding suspensions and expulsions in Florida are unsupported by the weight of the evidence.[329] Florida has been successful in decreasing incidents of student discipline over the past several years. In 2007, the state-wide rate of in-school suspension was 9.96%, and the state-wide rate of out-of-school suspension was 8.79%. By 2013, these rates had decreased to 7.31% for in-school suspension and 6.34% for out-of-school suspension.[330]

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[327] Exs. 1829, 1830; Tr. Vol. 29 at 4382:2–4389:24 (Test. of J. Copa).

[328] *See* Sections III.A, C, and E, below.

[329] 2d Am Compl. ¶¶ 194–95.

[330] Tr. Vol. 31 at 4671:15–25 (Test. of M. Tappen); Ex. 187.

185. Student discipline decisions are made at the local district—indeed the classroom—level. Although Florida law appropriately tasks local school boards with responsibility and control over student health, safety, and welfare,[331] the Florida Department of Education's Office of Safe Schools provides technical assistance and guidance to school districts in these areas.[332]

186. In 2009, the Legislature amended § 1006.13, Fla. Stat., which deals with "zero tolerance" policies, to ensure implementation of equitable and reasonable discipline policies; to promote a safe and supportive learning environment in schools; to protect students and staff from conduct that poses a serious threat to school safety; and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citations, teen courts, neighborhood restorative justice, or similar programs. It also requires that zero-tolerance policies must apply equally to all students regardless of their economic status, race or disability.[333]

187. With the more recent recognition of inappropriate hazing practices as well as bullying and harassment, additional legislation and policies have been implemented to increase student safety.[334]

## IV. Findings Related to Student Performance and Outcomes

188. Since the implementation of statewide assessment and accountability reforms beginning in the 1990s, Florida has seen a dramatic increase in student achievement on a variety

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[331] §§ 1006.07–.12, Fla. Stat.

[332] Tr. Vol. 26 at 3977:4–9 (Test. of P. Stewart); Tr. Vol. 31 at 4672:10–4673:12 (Test. of M. Tappen).

[333] Tr. Vol. 31 at 4673:13–4676:19 (Test. of M. Tappen).

[334] *See, e.g.*, §§ 1006.135 and 1006.147, Fla. Stat.

of measures, including national and international assessments, state assessments, graduation rates, and Advanced Placement participation and performance.[335] Florida has also seen a closing of "achievement gaps" among low-income and minority students at a rate faster than that of the rest of the nation.[336]

### A. National Assessment of Educational Progress ("NAEP")

189. Florida has seen continual increases in performance on the National Assessment of Educational Progress ("NAEP"), known as the "Nation's Report Card," outperforming the nation in several areas.[337] NAEP is an assessment directed by the U.S. Department of Education's National Center for Education Statistics ("NCES") to a representative sample of students across the nation, allowing for state-to-state and state-to-national comparisons over time.[338]

190. All states are required by federal law to participate in the grade 4 and grade 8 NAEP assessments in reading and mathematics,[339] and Florida law also requires participation.[340] Scores are reported in terms of each state's average scale score as well as the percentage of students meeting specified achievement levels: Basic (defined as "partial mastery"); Proficient ("solid academic performance"); and Advanced ("superior performance"); as well as Below Basic. Since 2003, NAEP has been administered every other year, with 2015 being the most

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[335] Tr. Vol. 26 at 3988:20–24, 3997:14–21, 3998:19–3999:4, 4000:7–13 (Test. of P. Stewart).

[336] Tr. Vol. 26 at 3998:10–3999:4; 3999:18–25 (Test. of P. Stewart).

[337] Tr. Vol. 26 at 3997:14–4006:18 (Test. of P. Stewart); Tr. Vol. 28 at 4193:12–15 (Test. of E. Hanushek); Tr. Vol. 27 at 4176:9–4183:3 (Test. of E. Hanushek).

[338] Tr. Vol. 28 at 4273:3–19 (Test. of E. Hanushek); Tr. Vol. 26 at 3995:23–3996:2 (Test. of P. Stewart).

[339] 20 U.S.C. § 6311(a)(1)(b), (g)(2)(D); Exs. 1358, 1390, 1391; Tr. Vol. 26 at 3996:3–6 (Test. of P. Stewart); Tr. Vol. 29 at 4455:4–4456:1 (Test. of J. Copa).

[340] § 1008.22(2), Fla. Stat.

recent administration. Because NAEP has been administered for a long time period, it allows for longitudinal comparisons of performance.[341]

191. The Court also notes that, while comparing rates of scoring Proficient among states may be useful, looking at a state's rate in isolation does not give a full picture of that state's performance. Proficient on NAEP is a high bar, and even in the state with the highest overall rates of scoring Proficient, Massachusetts, only 50% of all 4th graders—and 17% of its Hispanic/Latino 8th graders—scored at or above Proficient in reading on the 2015 NAEP. (By comparison, 26% of Florida's Hispanic/Latino 8th graders scored at or above Proficient in reading that year.) [342]

192. Florida's improvement on NAEP followed the implementation of the reforms begun in the late 1990s. In 1998, Florida underperformed the nation in the average scale score achieved by students in grade 4 reading—over 7 points below the national public and ranking higher than only 5 other states and the District of Columbia. In 2015, the most recent NAEP administration, Florida's average scale score was almost 6 points higher than the national public and ranked higher than all but 9 other states.[343]

193. Similar improvement has been seen in grade 4 mathematics. In 2003 (the first year Florida participated in the NAEP mathematics assessment), Florida's average scale score was slightly below the national public and ranked higher than only 18 other states and the

[341] Tr. Vol. 26 at 3996:3–6, 4004:4–6, 4006:15–18 (Test. of P. Stewart); Tr. Vol. 28 at 4273:3–19 (Test. of E. Hanushek).

[342] Tr. Vol. 26 at 4010:23–4012:1 (Test. of P. Stewart); Exs. 1371, 1364.

[343] Tr. Vol. 26 at 3996:12–18, 3997:6–10 (Test. of P. Stewart); Exs. 4053, 5336, 5337.

District of Columbia. In 2015, Florida's average scale score was almost 3 points higher than the national public and ranked higher than all but 17 other states.[344]

194. It is well-established—as admitted by several of Plaintiffs' expert and fact witnesses—that "achievement gaps" exist throughout the country with respect to student performance of certain minority and low-income subgroups. For example, NCES has released statistical analysis reports—"Achievement Gaps: How Black and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress" (2009) and "Achievement Gaps: How Hispanic and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress" (2011)—detailing the disparities in all states and nationally in the performance of Black/African-American students and Hispanic/Latino students as compared with White students on NAEP. It also is well-recognized that there is a similar pattern when comparing the NAEP performance of students eligible for free-and-reduced-price lunch (low-income students) and non-eligible students.[345]

195. Though these gaps also exist in Florida, the NCES reports, as well as more recent NAEP data, show that Florida's gaps are smaller than the national gaps, and Florida has outpaced the nation in closing these gaps.[346] For example, on NAEP grade 4 reading, between 1998 and 2015,

a. The average scale score for the nation's Black/African-American students increased by 14 points, while the average scale score for Florida's Black/African-American students increased by 27 points. The gap between

[344] Tr. Vol. 26 at 4000:24–4001:9 (Test. of P. Stewart); Exs. 4056, 5331, 5332.

[345] Exs. 1418, 1419.

[346] Exs. 1418, 1419.

the nation's Black/African-American students and its White students decreased by 6 points, while Florida's gap decreased by 9 points.[347]

b. The average scale score for the nation's Hispanic/Latino students increased by 16 points, while the average scale score for Florida's Hispanic/Latino students increased by 26 points. The gap between the nation's Hispanic/Latino students and its White students decreased by 7 points, while Florida's gap decreased by 8 points.[348]

c. The average scale score for the nation's free-and-reduced-price-lunch-eligible students increased by 14 points, while the average scale score for Florida's free-and-reduced-price-lunch-eligible students increased by 30 points. The gap between the nation's free-and-reduced-price-lunch-eligible students and its non-eligible students decreased by 3 points, while Florida's gap decreased by 11 points.[349]

196. And on NAEP grade 4 mathematics, between 2003 and 2015,

a. The average scale score for the nation's Black/African-American students increased by 8 points, while the average scale score for Florida's Black/African-American students increased by 13 points. The gap between the nation's Black/African-American students and its White students decreased by 3 points, while Florida's gap decreased by 5 points.[350]

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[347] Tr. Vol. 26 at 3998:19–3999:12 (Test. of P. Stewart); Exs. 4052, 5339.

[348] Tr. Vol. 26 at 3999:13–4000:13 (Test. of P. Stewart); Exs. 4054, 5340.

[349] Tr. Vol. 26 at 3997:14–3999:12 (Test. of P. Stewart); Exs. 4056, 5338.

[350] Tr. Vol. 26 at 4001:24–4002:14 (Test. of P. Stewart); Exs. 4055, 5334.

b. The average scale score for Florida's Hispanic/Latino students increased by 8 percentage points, and the gap between Florida's Hispanic/Latino students and its White students remained less than two thirds the size of the nation's gap.[351]

c. The average scale score for the nation's free-and-reduced-price-lunch-eligible students increased by 8 percentage points, while the average scale score for Florida's free-and-reduced-price-lunch-eligible students increased by 13 percentage points. The gap between the nation's free-and-reduced-price-lunch-eligible students and its non-eligible students actually increased by 1 point, while Florida's gap decreased by 4 points.[352]

197. Florida was the only state in the nation between 2011 and 2013 to narrow the achievement gap between both White students and Black/African-American students and White students and Hispanic/Latino students in grade 4 and grade 8 in both reading and mathematics.[353]

198. The following data from the 2015 NAEP also provide evidence of the success of Florida's minority students, low-income students, and students with disabilities:[354]

a. Florida's grade 4 Hispanic/Latino students continued to have the nation's highest percentage of students performing at or above Basic and at or above Proficient in reading.[355] Florida's Hispanic/Latino 4th graders also earned the

[351] Tr. Vol. 26 at 3999:13–4000:13 (Test. of P. Stewart); Exs. 4057, 5335.

[352] Tr. Vol. 26 at 4001:10–23 (Test. of P. Stewart); Exs. 4053, 5333.

[353] Ex. 1813 at DOE03184; Tr. Vol. 26 at 4009:3–8 (Test. of P. Stewart).

[354] Tr. Vol. 26 at 4003:13–4005:22 (Test. of P. Stewart); Exs. 3337.

[355] Exs. 3337, 1366.

nation's highest average scale score in reading and the highest percentage at or above Proficient in mathematics.[356]

b. Florida's grade 4 free-and-reduced-price-lunch-eligible students had the nation's highest percentage of students performing at or above Basic in reading and the highest average scale score in reading.[357]

c. On grade 8 reading, no states scored significantly higher than Florida's Black/African-American[358] and Hispanic/Latino students.[359] Florida's free-and-reduced-price-lunch-eligible students[360] and students with disabilities[361] outperformed the nation at or above Basic in grade 8 reading. Florida's Hispanic/Latino students outperformed their national peers in both grade 4[362] and grade 8[363] reading at or above Basic and at or above Proficient.

d. On grade 4 reading, nearly all Florida subgroups performed better than their national counterparts in the percentage of students scoring at or above Basic.[364] No states scored significantly higher than Florida's Black/African-American and Hispanic/Latino students, and only three states scored significantly higher overall. With an average scale score of 224, Florida's

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[356] Exs. 3337, 1362, 1366.

[357] Exs. 3337, 1365.

[358] Exs. 3337,1372.

[359] Exs. 3337, 1371.

[360] Exs. 3337, 1369.

[361] Exs. 3337, 1368.

[362] Exs. 3337, 1366.

[363] Exs. 3337, 1371.

[364] Exs. 3337, 1365, 1366, 1367.

Hispanic/Latino fourth graders significantly outscored the nation. Florida's Hispanic/Latino grade 4 students led the nation with 71 percent scoring at or above Basic and 34 percent of Hispanic/Latino 4th graders scored at or above Proficient.[365]

e. On grade 4 mathematics, most subgroups in Florida performed better than their national peers scoring at or above Basic.[366] Hispanic/Latino students, free-and-reduced-price-lunch-eligible students, and students with disabilities outperformed the nation scoring at or above Proficient.[367] Florida's Hispanic/Latino students and students with disabilities had the nation's second highest average scale score in grade 4 mathematics.[368]

f. For both grade 4 and grade 8 Black/African-American and Hispanic/Latino students, no state had a significantly higher scale score than Florida.[369]

199. Plaintiffs' suggestion that Florida's gains on NAEP 4th grade reading are skewed by Florida's third-grade retention policy is not supported by the evidence.[370] Eventually, these students go on to 4th grade and are included in the NAEP sampling.[371] Moreover, Florida's improvement in fourth grade reading performance began before the retention policy was implemented in the 2003–04 school year, so the policy cannot explain the increase in

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[365] Exs. 3337,1366.

[366] Exs. 3337, 1360, 1361, 1362, 1363.

[367] Exs. 3337, 1362, 1361, 1360.

[368] Exs. 3337, 1362, 1360.

[369] Ex. 3337.

[370] 2d Am. Compl. ¶¶ 192–93.

[371] Tr. Vol. 28 at 4307:5–15 (Test. of E. Hanushek).

performance from 1998 to 2003.[372] And Florida has continued to outgain the nation since 2003, even though the number of students retained in third grade has decreased since that time.[373] (*See* Section IV.F.) The evidence also shows that other states also have third-grade retention policies, and Plaintiffs have presented no study or analysis to show the magnitude of Florida's third-grade retention policy as compared to other states, or how it might affect Florida's scores as compared with other states and the national average.[374]

200. Both Miami-Dade and Hillsborough Counties were recognized as among the top five performing urban districts in the nation on NAEP in 2013. Miami-Dade was the top performing urban district in 4th grade reading, while Hillsborough was third-highest. For 8th grade reading, Hillsborough was again third-highest, with Miami-Dade ranked fifth.[375] For 2015, Miami-Dade was ranked the top performing urban district in the nation on NAEP.[376]

201. Florida's performance on NAEP provides support for the education policies implemented by the State and indicate that all Florida students are being provided the opportunity to obtain a high-quality education.

**B. International Assessments**

202. The NCES also coordinates U.S. participation in international assessments, including the Progress in International Reading Literacy Study ("PIRLS") and Trends in International Mathematics and Science Study ("TIMSS"). PIRLS is an international comparative study of the reading literacy of students in the equivalent of U.S. grade 4, and TIMSS provides

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[372] Exs. 1358, 1356; Tr. Vol. 30 at 4511:11–17 (Test. of J. Copa).

[373] Ex. 1836; Tr. Vol. 30 at 4511:11–17 (Test. of J. Copa).

[374] Tr. Vol. 30 at 4512:7–13 (Test. of J. Copa); Tr. Vol. 28 at 4307:16–21 (Test. of E. Hanushek).

[375] Ex. 1813 at DOE03179.

[376] Tr. Vol. 24 at 3601:21–23, 3665:1–13 (Dep. Test. of J. Marte).

data on the mathematics and science achievement of U.S. students compared to that of students in other countries. The results are reported by the NCES. In 2011, 53 national and state education systems participated in the PIRLS, and more than 60 national and state systems participated in the TIMSS.[377]

203. On the 2011 PIRLS, Florida scored second in the world (below only Hong Kong) and above the U.S. score.[378]

204. On the 2011 TIMSS, Florida scored 9th in the world and above the U.S. score in grade 4 mathematics, and 7th in the world and above the U.S. score in grade 4 science. For grade 8, Florida scored above the U.S. score in both mathematics and in science.[379] In both grade 4 and grade 8 mathematics.[380] Florida students did not score measurably different from students in Finland, generally considered among the highest performing nations in the world.[381]

### C. State Assessments

205. In looking at student performance in reading based on state assessments, Florida students have made improvement. During the time span of FCAT administration (1999 to 2010), a consistent upward trajectory is seen. In 2001, the first year FCAT was administered in all grades between third and tenth, less than half (47%) of all assessed students were reading at or above achievement Level 3. By 2010, the final year the FCAT was administered, nearly two-

[377] Tr. Vol. 27 at 4012:11–16, 4016:25–4017:2 (Test. of P. Stewart); Exs. 4018, 4016, 4017.

[378] Tr. Vol. 27 at 4018:23–4019:5 (Test. of P. Stewart); Ex. 4018.

[379] Exs. 4016, 4017.

[380] Exs. 4019, 4020.

[381] Tr. Vol. 27 at 4182:22–24 (Test. of E. Hanushek).

thirds (62%) were reading at or above Level 3, an increase of 15 percentage points over that time period.[382]

206. Following the adoption of more rigorous content standards (the Next Generation Sunshine State Standards), more rigorous assessments (FCAT 2.0), and more rigorous student expectations (new performance-level cut scores), a new trend line was begun in 2011 through 2014.[383]

207. Because of the changes in the standards and assessment, it is not particularly useful to directly compare year-over-year student performance on FCAT to that on the FCAT 2.0.[384] Although student performance on the more rigorous standards and FCAT 2.0 assessments was overall lower than it was in the final year of the former assessment (FCAT), it generally improved over the four years of administration.[385]

208. In 2014, 58% of students across grades 3 through 10 scored at or above Level 3 in reading on FCAT 2.0, a two percentage point improvement over 2011. Even though more rigorous standards and assessments were put into place with FCAT 2.0 in 2011, the percent of students in grades 3 through 10, scoring at or above Level 3 on the FCAT 2.0 Reading assessment was 11 percentage points higher than in 2001 under the previous assessment.[386]

209. The same basic pattern is observed for mathematics. Between 2001 and 2010, the percent of students in grades 3 through 10 scoring at or above Level 3 on the FCAT Mathematics

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[382] Tr. Vol. 26 at 4026:21–4027:5 (Test. of P. Stewart); Tr. Vol. 29 at 4447:9–4448:1 (Test. of J. Copa); Exs. 1807, 1831.

[383] Tr. Vol. 26 at 4027:6–13 (Test. of P. Stewart); Tr. Vol. 29 at 4448:2–4448:17 (Test. of J. Copa;) Exs. 1807, 1831.

[384] Tr. Vol. 29 at 4447:9–4448:17 (Test. of J. Copa).

[385] Exs. 1807, 1831.

[386] Tr. Vol. 26 at 4027:22–4028:2 (Test. of P. Stewart); Tr. Vol. 29 at 4447:9–4448:17 (Test. of J. Copa); Exs. 1807, 1831.

assessment increased 18 percentage points, from 50% in 2001 to 68% in 2010.[387] Though more rigorous standards and assessments were put into place with FCAT 2.0 in 2011, the percent of students scoring at or above Level 3 in grades 3 through 8 (Florida replaced comprehensive grade-level mathematics assessments in grades 9 and 10 with End-of-Course assessments ("EOCs") in Algebra I and Geometry in 2011) on the FCAT 2.0 Mathematics assessment was 56%, which is 6 percentage points higher than in 2001 under the previous assessment.[388]

210. Although the percentage of students scoring a Level 3 or above on the FCAT 2.0 mathematics assessment did not increase overall between 2011 and 2014, this can be accounted for by a change in the population of students taking the assessment. In 2013, grade 8 students taking upper-level mathematics courses were no longer required to take the FCAT 2.0 mathematics assessment and instead took only the applicable mathematics EOC assessment, generally the Algebra I EOC, so that the highest-performing students were no longer included in the students taking the FCAT 2.0 mathematics assessment.[389] Accordingly, the number of students scoring a Level 3 or above on the Algebra I EOC increased from 55% in 2011 to 65% in 2014.[390] Black and Hispanic student performance increased at a greater rate, with the percentage of Black students scoring a Level 3 or above going from 36% in 2011 to 50% in 2014, and the percentage of Hispanic students scoring at Level 3 or above increasing from 50% to 63%.[391]

211. Trend data on Florida's statewide, standardized assessments in reading and mathematics also demonstrate improvement in the performance of Florida's free-and-reduced-

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[387] Tr. Vol. 29 at 4448:18–4449:7 (Test. of J. Copa); Exs. 1810, 1832.

[388] Tr. Vol. 26 at 4031:2–10 (Test. of P. Stewart); Tr. Vol. 29 at 4448:18–4449:7 (Test. of J. Copa); Exs. 1810, 1832.

[389] Tr. Vol. 29at 4448:25–4449:24 (Test. of J. Copa).

[390] Tr. Vol. 29at 4449:25–4451:5 (Test. of J. Copa); Ex. 138.

[391] Tr. Vol. 29at 4451:6–4451:23 (Test. of J. Copa).

price-lunch-eligible students, a proxy for economically disadvantaged students. In 2001, a higher percentage of Florida's economically disadvantaged students scored at achievement Level l than scored Level 3 and above on the statewide, standardized assessment in reading. By 2004, those lines crossed, culminating in a 20 percentage point improvement from 2001 to 2010 in the percentage of economically disadvantaged students scoring Level 3 and above in reading.[392]

212. As was the case with all students in Florida, though more rigorous standards and assessments were put into place with FCAT 2.0 in 2011, the percent of economically disadvantaged students scoring at or above grade level on the FCAT 2.0 reading assessment in 2014, the last year of FCAT 2.0, was higher than it was in 2001 under the previous assessment. In fact, it was 15 percentage points higher in 2014 than in 2001 under the previous assessment.[393]

213. The same pattern of improvement occurred in mathematics for Florida's economically disadvantaged students. In 2001, a higher percentage of free-reduced-priced-lunch-eligible students scored Level l rather than Level 3 and above on the statewide, standardized assessment in mathematics. By 2010, 58% of Florida's economically disadvantaged students scored Level 3 and above, a 25-percentage-point increase over 2001. In 2014, on the FCAT 2.0 administered for the first time in 2011, 46% of Florida's economically disadvantaged students scored Level 3 and above, which is 13 percentage points higher than in 2001 under the previous assessment.[394]

214. The same pattern is also seen in the performance of racial subgroups on the statewide assessments in reading and mathematics, with the gaps between racial subgroups

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[392] Tr. Vol. 26 at 4030:2–14, 4031:24–4032:10 (Test. of P. Stewart); Tr. Vol. 29 at 4451:24–4453:1 (Test. of J. Copa); Exs. 1809, 1812, 1833.

[393] Tr. Vol. 29 at 4451:24–4453:1 (Test. of J. Copa); Exs. 1809, 1833.

[394] Tr. Vol. 26 at 4030:2–14, 4031:24–4032:10 (Test. of P. Stewart); Tr. Vol. 29 at 4453:2–24 (Test. of J. Copa); Exs. 1812, 1834.

narrowing over time. On the reading assessment, the gap between the performance of Black students and White students decreased from 33 percentage points in 2001 to 28 percentage points in 2010, the last administration of the FCAT, and the gap also narrowed in the four years of the administration of the FCAT 2.0. The gap between the performance of Hispanic and White students decreased from 24 percentage points in 2001 to 14 percentage points in 2010 during the administration of the FCAT, and it also narrowed during the four years of FCAT 2.0.[395]

215. Similarly, on the mathematics assessment, the gap between the performance of Black students and White students decreased from 36 percentage points in 2001 to 28 percentage points in 2010. The gap between the performance of Hispanic and White students decreased from 21 percentage points in 2001 to 13 percentage points in 2010 during the administration of the FCAT. And, although FCAT 2.0 performance was relatively stable, the percentage of Black and Hispanic students scoring Level 3 or above on the Algebra I EOC also increased between 2011 and 2014.[396]

216. The achievement levels on Florida's statewide assessments correlate to levels of mastery of Florida's rigorous content standards, not to external conceptions of literacy and educational attainment or to other assessments such as NAEP. So that, while earning a Level 1 or 2 in reading on the Florida state assessment is not an indication of illiteracy,[397] earning a Level 3 on Florida's state assessment is not the same as Proficient on NAEP.[398] NAEP has four

[395] Tr. Vol. 29 at 4453:25–4454:11 (Test. of J. Copa); Ex. 1808.

[396] Tr. Vol. 29 at 4454:12–19 (Test. of J. Copa); Ex. 1811.

[397] Tr. Vol. 26 at 4054:21–4055:11 (Test. of P .Stewart); Tr. Vol. 29 at 4360:24–4361:21 (Test. of J. Copa); Ex. 4047 at 0122088.

[398] Tr. Vol. 29 at 4456:2–4457:18 (Test. of J. Copa); Ex. 4047 at 00122105.

scoring categories and Florida has five levels. A level three on Florida's state assessment is not same as Proficient on NAEP; it's a little lower from a scoring perspective.

### D. Advanced Placement

217. One aspect of student achievement that Florida has focused on in recent years is incentivizing more access to college-level coursework for high school students, such as Advanced Placement ("AP") courses.[399] Florida has seen an increase in both participation and performance on AP examinations and is now a national leader in both participation and performance on AP examinations.[400]

218. In 2013, 80,175 Florida graduating high school seniors had taken at least one AP exam. Students scored a 3 or higher (score needed to earn college credit) on 41,149 exams. By comparison, in 2003, only 32,566 Florida high school seniors took at least one AP exam, with only 19,452 scoring a 3 or higher. More graduates succeeded on AP exams in 2013 than took them in 2003. Participation and success continued to increase in 2015, with approximately 86,000 students taking at least one AP exam and approximately 46,000 scoring a 3 or higher.[401]

219. Florida was ranked fifth in the nation for the percentage of 2013 public high school graduates who took an AP course and scored a 3 or higher (succeeded) on an AP exam. The percentage of 2013 graduates who took AP courses and succeeded was higher in Florida (27.3%) than the national average (20.1%). And in 2015, Florida increased to third.[402]

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[399] Tr. Vol. 26 at 4023:10–19 (Test. of P. Stewart).

[400] Tr. Vol. 26 at 4020:24–4021:8 (Test. of P. Stewart); Tr. Vol. 28 at 4203:13–4204:7 (Test. of E. Hanushek); Ex. 1813.

[401] Exs. 123, 3998; Tr. Vol. 30 at 4473:22–4475:24 (Test. of J. Copa).

[402] Tr. Vol. 30 at 4478:25–4479:15 (Test. of J. Copa); Tr. Vol. 26 at 4020:24–4021:8 (Test. of P. Stewart); Tr. Vol. 28 at 4203:13–4204:7 (Test. of E. Hanushek); Exs. 123, 128, 1813.

220. Florida ranked second in the nation for the increase from 2003 to 2013 in the percentage of graduates scoring 3 or higher on the AP exam during high school. Florida's percentage increased by 12 points from 15.3% in 2003 to 27.3% in 2013.[403]

221. Florida has achieved significant increases in the number of Black/African-American and Hispanic/Latino high school graduates participating and succeeding in AP. For example, the number of Black/African-American graduates participating in AP nearly quadrupled between 2003 and 2013, and the number succeeding in AP (earning a 3 or higher) nearly tripled. The number of Hispanic/Latino graduates participating in AP more than tripled between 2003 and 2013, and the number succeeding in AP more than doubled. These numbers continued to increase in 2015.[404]

222. Florida has eliminated the AP participation and success gap for its Hispanic/Latino students. Hispanic/Latino students made up 25.1% of the 2013 graduating class in Florida, yet they accounted for 27.9% of AP exam takers and 31% of AP exam takers who scored a 3 or higher.[405]

223. Florida also has made progress in narrowing the participation and success gap for Black/African-American students. In 2003, Black/African-American graduates made up 20.3% of students in the graduating class but only 9.7% of AP exam takers and 5.7% of AP exam takers scoring a 3 or higher. In 2013, although making up around the same percentage of the graduating class (20.6%), Black/African-American students comprised 14.6% of AP exam takers

[403] Tr. Vol. 28 at 4203:13–4204:7 (Test. of E. Hanushek); Ex. 123, 129.

[404] Exs. 126, 127, 1813, 3998; Tr. Vol. 26 at 4021:19–4022:18 (Test. of P. Stewart); Tr. Vol. 30 at 4475:25–4477:11 (Test. of J. Copa).

[405] Exs. 1813, 3997 at 00118679; Tr. Vol. 26 at 4021:19–4022:1 (Test. of P. Stewart).

and 7.3% of AP exam takers scoring a 3 or higher. These numbers continued to increase in 2015.[406]

224. Florida has also increased AP exam participation and success among low-income graduates. In 2003, only 7.5% of graduates who had taken AP exams were low-income. By 2013 that percentage had risen to 35.2%. Success among graduates who had taken an AP exam and who were low-income has also increased significantly. In 2003, only 7.2% of low-income graduates scored a 3 or higher on an AP exam, compared to 31% in 2013. These numbers continued to increase in 2015.[407]

225. These percentages translate to large increases in the number of Black/African-American, Hispanic/Latino, and low-income high school graduates participating and succeeding in AP. For example, the number of Black/African-American graduates participating in AP nearly quadrupled between 2003 and 2013, and the number earning a 3 or higher nearly tripled. The number of Hispanic/Latino graduates participating in AP more than tripled between 2003 and 2013, and the number succeeding in AP more than doubled. The number of low-income students participating in AP increased by a factor of over 11 between 2003 and 2013, and the number of low-income students scoring a 3 or higher increased more than ten-fold.[408]

### E. Graduation and Drop-Out Rates

226. Florida's graduation rate is a four-year cohort graduation rate. A cohort is defined as a group of students on the same schedule to graduate. The graduation rate, which follows the federally mandated calculation methodology, measures the percentage of students who graduate

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[406] Exs. 124, 125, 1813; Tr. Vol. 26 at 4022:9–18 (Test. of P. Stewart); Tr. Vol. 30 at 4475:25–4477:11 (Test. of J. Copa).

[407] Exs. 3998, 1813; Tr. Vol. 26 at 4022:19–24, 4023:2–7 (Test. of P. Stewart); Tr. Vol. 30 at 4475:25–4477:11 (Test. of J. Copa).

[408] Exs. 123, 124, 125, 126, 127, 3998.

within four years of their first enrollment in ninth grade. Subsequent to their enrollment in ninth grade, students who transfer to another school outside the Florida K–12 public school system and deceased students are removed from the calculation, while entering transfer students are included in the graduation rate for the class with which they are scheduled to graduate, based on their date of enrollment.[409]

227. Florida's federally-compliant graduation rates show continuous improvement over time, including improvement among Black/African-American and Hispanic/Latino students.[410]

228. In 2014–15, the most recent year for which data is available, Florida's high school graduation rate increased to 77.8%, an increase of 1.7 percentage points over the previous year, and a rise of over 25 percentage points since 1998–99, the first year for which comparable data is available.[411]

229. While all states show an "achievement gap" in graduation rates among certain subgroups, including Black/African-American students and Hispanic/Latino students as compared with White students,[412] Florida has made significant progress in closing these gaps. Graduation rates for Florida's Black/African-American and Hispanic/Latino students have risen at faster rates than those for Florida's White students.[413]

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[409] Ex. 4050; Tr. Vol. 29 at 4443:14–4444:13 (Test. of J. Copa).

[410] Exs. 4050, 5328, 5329; Tr. Vol. 26 at 3988:20–24 (Test. of P. Stewart).

[411] Exs. 4050, 5329; Tr. Vol. 26 at 3988:20–24 (Test. of P. Stewart); Tr. Vol. 29 at 4444:14–4445:5 (Test. of J. Copa).

[412] Ex. 4289.

[413] Ex. 5328; Tr. Vol. 26 at 3992:9–22 (Test. of P. Stewart); Tr. Vol. 29 at 4445:21–4447:2 (Test. of J. Copa).

230. In 2014–15, the graduation rates for Florida's Black/African-American students increased to 67.9%, an increase of 3.2 percentage points over the previous year, and a rise of over 22 percentage points since 2003–04, the first year for which subgroup data is available.[414]

231. In 2014–15, the graduation rates for Florida's Hispanic/Latino students increased to 76.7%, an increase of 1.7 percentage points over the previous year, and a rise of over 21 percentage points since 2003–04, the first year for which subgroup data is available.[415]

232. Between 2003–04 and 2014–15, the graduation rate for Florida's White students increased at a rate of 25%, the graduation rate for Florida's Hispanic/Latino students increased at a rate of 40%, and the graduation rate for Florida's Black/African-American student's increased at a rate of 49%.[416]

233. Between 2003–04 and 2014–15, the gap between the graduation rate for Florida's White students and its Hispanic/Latino students has almost been cut in half, decreasing from 11.5 percentage points to 6.0 percentage points. In that same time, the gap between the graduation rate for Florida's White students and its Black/African-American students decreased from 20.4 percentage points to 14.8 percentage points.[417]

234. Due to the differences in graduation requirements for each state, as well as the unique demographic composition of each state's student population, comparisons of graduation rates across states are not probative. Though the federal regulations have introduced uniformity into the method of calculating graduation rates, there remains much variability in the way states define "graduates," and, for this reason, the United States Department of Education specifically

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[414] Ex. 5328.

[415] Ex. 5328.

[416] Ex. 5341; Tr. Vol. 26 at 3993:3–12 (Test. of P. Stewart).

[417] Ex. 5328; Tr. Vol. 26 at 3992:9–22 (Test. of P. Stewart).

warns against comparing graduation rates among states.[418] Florida has consistently implemented higher standards for graduation since 1999, while other states vary in their requirements for a diploma. For example, many other states do not require students to take Algebra I before graduating high school.[419] Therefore, comparing graduation rates across states is less useful than comparing a given state's graduation rate trends over time using a consistent method for calculating the rates. In Florida's case, improvement in graduation rates over time is even more telling because the standards for graduation have increased while the rates have gone up.[420]

235. Similarly, state-to-state comparisons of scores on college-admissions exams like the SAT and ACT are not probative because of states' varying participation rates and student populations. The College Board "strongly discourages" making such comparisons, noting that they are "not valid."[421] In Florida, a relatively higher percentage of students take the SAT and ACT than in many other states. In addition, as discussed in Section III.E above, Florida allows concordant scores on the SAT and ACT as alternatives for the passing the grade 10 English language arts statewide, standardized assessment. For the most recent year available, approximately 20% of Florida students who took the SAT or ACT also scored a Level 1 or 2 on the grade 10 English language arts assessment.[422] For that reason, Florida's population of SAT and ACT test-takers is likely to include more of the state's lower-performing students, who may never take these exams in other states without such a policy.[423]

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[418] Ex. 1407 at 00045402; Tr. Vol. 30 at 4558:14–4559:18 (Test. of J. Copa).

[419] Tr. Vol. 26 at 3994:4–17 (Test. of. P. Stewart).

[420] Exs. 4050, 5328, 5329; Tr. Vol. 26 at 3994:4–17, 3991:19–3992:3 (Test. of P. Stewart).

[421] Ex. 4307 at 00123355.

[422] Tr. Vol. 30 at 4484:3–20 (Test. of J. Copa).

[423] Tr. Vol. 26 at 4025:1–4026:3 (Test. of P. Stewart).

236. While the graduation rate has increased over the past decade, Florida's drop-out rate has declined. The 9th–12th grade single-year drop-out rate decreased from 3.0% in 2004–05 to 1.9% in 2013–14. The rate for Black/African-American students decreased from 3.9% in 2004–05 to 3.0% in 2013–14, and the rate for Hispanic/Latino students decreased from to 3.6% in 2004–05 to 2.0% in 2013–14.[424]

**F. Non-Promotion/Retention Rates**

237. Plaintiffs' various complaints about Florida's retention policies and rates of student retention[425]—and specifically the allegation that "Florida started retaining increased numbers of students to repeat grade 3 beginning in the 2003–04 school year"[426]—are not supported by the weight of the evidence.

238. The number of students retained in Florida schools has decreased since the 2003–04 school year, the year in which the State's third-grade reading policy was implemented. Between 2003–04 and 2013–14, the number of students retained in 3rd grade actually decreased by almost a third. During this same period, the number of students retained in 4th grade was cut almost in half, and the number retained in 5th grade decreased by almost two thirds.[427]

239. At the end of the 2003–04 school year, 201,684 students were not promoted to the next grade level, a rate of over 8% of the total public school student population. By 2013–14, though the total number of students in Florida schools had increased, the number of students

[424] Exs. 2893, 2897, 3194.

[425] *E.g.*, 2d Am. Compl. ¶¶ 176–77.

[426] 2d Am. Compl. ¶ 192.

[427] Exs. 1816, 1817; Tr. Vol. 31 at 4637:3–4638:14 (Test. of M. Tappen).

retained in-grade had decreased to a ten-year low. The percent of students retained in Florida after the 2013–14 school year was less than 4% of Florida's student population.[428]

240. There also has been a significant decrease in the number and rate of students retained in 9th grade over the past ten years. (Grade 9 promotion policies are school district decisions, and there are no state-level promotion requirements for 9th grade.[429]) In the 2003–04 school year, school districts were retaining almost one out of four 9th grade students. Between 2003–04 and 2013–14, the number of students retained in ninth grade decreased by over three quarters.[430]

241. As detailed above, Florida's policies, including its third-grade retention policy, have resulted in a greater number of students graduating high school, fewer students dropping out, and fewer students being retained, all of which supports the finding that Florida students are being provided the opportunity to obtain a high quality education.

## V. Findings Related to Florida's School Funding System

### A. Overview

242. Funding for Florida's K–12 public schools is comprised of state, local and federal dollars.[431] In the 2015–16 school year, over $19.7 billion in state and local funding is available to operate public schools, plus over $2.9 billion for capital outlay.[432]

243. The amount of operating funds available to Florida school districts in 2015–16 was the highest level of funding in Florida history. The level of per pupil funding, $7,105 per

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[428] Exs. 1805, 1816, 1817, 1853, 1854.

[429] *See* Section II.D, above.

[430] Ex. 1816; Tr. Vol. 31 at 4630:1–4631:17 (Test. of. M. Tappen).

[431] Tr. Vol. 26 at 4057:3–14 (Test. of P. Stewart); § 1001.01(4), Fla. Stat.

[432] Ex. 3683 at 00103646; Ex.3445;Tr. Vol. 26 at 4058:8–14 (Test. of P. Stewart); Tr. Vol. 32 at 4855:3–7, 4899:18–4900:10 (Test. of L. Champion).

student, was the second highest in Florida history, only slightly below the 2007–08 level at the height of the pre-recession economy.[433]

244. Funding for education (pre-K–12 and colleges and universities) constitutes the single largest component of the state's general revenue budget. Since 1997–98, 52.2% of the general revenue budget has, on average, been dedicated to education. During this same period, the next largest share of the general revenue budget was for human services (including the Medicaid program) (26.9%); followed by the criminal justice and corrections system (13.7%); general government (4.4%); natural resources, environment and transportation (1.7%); and the judicial branch (1.1%).[434]

245. The Florida Education Finance Program ("FEFP"), described in detail below, consistently comprises over 35% of the general revenue budget.[435]

**B. The Florida Education Finance Program ("FEFP")**

246. The primary mechanism for funding the operating costs of Florida K–12 schools is the Florida Education Finance Program ("FEFP"), a complex funding formula that includes state and local funds.[436] Originally enacted in 1973, the key principles of the FEFP are as follows:

> [T]o guarantee to each student in the Florida public education system the availability of programs and services appropriate to his educational needs that are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.[437]

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[433] Ex. 3683 at 00103647; Tr. Vol. 26 at 4058:21–4059:1 (Test. of P. Stewart); Tr. Vol. 33 at 4947:11–25 (Test. of L. Champion); Tr. Vol. 32 at 4870:13–24 (Test. of L. Champion).

[434] Ex. 230; Tr. Vol. 34 at 5043:12–5046:17 (Test. of A. Baker).

[435] Ex. 230.

[436] Tr. Vol. 26 at 4057:3–14 (Test. of P. Stewart); Tr. Vol. 32 at 4806:14–22 (Test. of L. Champion).

[437] Ex. 3680 at 00103463.

247. The FEFP has been amended over time, but the key principles noted above have remained in place.[438] To equalize educational opportunities, the FEFP formula recognizes: (1) varying local property tax bases; (2) varying education program costs; (3) varying costs of living; and (4) varying costs for equivalent educational costs due to sparsity and dispersion of the student population.[439]

248. The FEFP is generally recognized as one of the most equalizing school funding formulas in the nation.[440] The FEFP considers and provides funding on the basis of the actual cost of providing educational services in various settings, and in different parts of the state.[441]

249. The Court is not persuaded by Plaintiffs' assertions that FEFP does not contain an express weighting for poverty.[442] Plaintiffs' own expert witness testified that many other states do not provide an express weighting for poverty, while many others, as Florida, provide additional funding for lower performing students or schools.[443] As discussed below, the FEFP directs funds to districts and schools with higher percentages of low-income students as well as to lower-performing schools.

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[438] Tr. Vol. 32 at 4806:14–4807:22 (Test. of L. Champion).

[439] Ex. 3680 at 00103463; Tr. Vol. 26 at 4057:3–23 (Test. of P. Stewart); Tr. Vol. 32 at 4806:14–4807:22, 4841:14–4842:19, 4813:13–4814:22, 4820:20–4822:6, 4826:11–4828:9 (Test. of L. Champion).

[440] Tr. Vol. 16 at 2361:15–2362:7 (Test. of J. Hall); Tr. Vol. 32 at 4807:3–6 (Test. of L. Champion).

[441] Tr. Vol. 32 at 4807:7–22 (Test. of L. Champion).

[442] *See* 2d Am. Compl. ¶ 31.

[443] Tr. Vol. 2 at 153:18–154:21, 155:15–158:1 (Test. of M. Rebell) (discussing Verstegen, Deborah A., *Public Education Finance Systems in the United States and Funding Policies for Populations with Special Educational Needs*, Education Policy Analysis Archives, Vol. 19 No. 21, at 17–18 (2011), *available at* http://epaa.asu.edu/ojs/article/view/769/923)).

250. The FEFP, through its highly equalizing components, provides additional state funding to school districts with low property wealth, which is an indication of relative poverty in the state. As of the 2014–15 school year, 50 out of the 67 local school districts received a majority of their FEFP funds from the state, with Union County receiving the highest percentage at 91.06% and Monroe County receiving the lowest percentage at 19.54%.[444] Overall, the state provided approximately 56% of operating funds to school districts in the 2014–15 school year.[445]

251. In addition, as discussed in more detail below, various components of the formula provide funds targeted to address low student performance through supplemental academic instruction and the state's reading program.[446]

252. The FEFP provides local school districts with flexibility to direct funds to schools with a high percentage of students in poverty. Program funds in excess of expenditure requirements under the formula may be directed to any school or program at the discretion of the district.[447]

253. Upon analysis of the actual expenditure of FEFP funds across the state, more funds are available to and spent in schools with the highest percentage of students in poverty. In the 2013–14 school year, schools with the highest percentage of students in poverty spent $785, or over 11% more per FTE student, in state and local funds, than schools with the lowest

[444] Ex. 3417; Tr. Vol. 32 at 4855:12–4856:14 (Test. of L. Champion).

[445] Ex. 3441; Tr. Vol. 32 at 4874:19–4876:24 (Test. of L. Champion).

[446] Tr. Vol. 32 at 4833:1–4834:11, 4832:2–25 (Test. of L. Champion).

[447] Ex. 3424; Tr. Vol. 33 at 4961:11–16 (Test. of L. Champion); Tr. Vol. 32 at 4895:6–4896:13 (Test. of L. Champion).

percentage of students in poverty. When federal funds are included, $1,579 or nearly 22% more per FTE student, was spent in high poverty schools.[448]

254. Similarly, more funds are available to and spent in lower-performing schools than in higher-performing schools. According to the most recent analysis, schools graded "D" or "F" expend approximately $1,200 more per student on average than "A" and "B" schools.[449]

255. The FEFP also results in a K–12 education system that has been recognized as one of the most efficient in the nation. Over the past two decades, Florida has achieved the second greatest achievement gains on NAEP tests while expenditure increases during this period have been lower than in other states.[450]

256. The Court therefore finds that Plaintiffs' assertions that the FEFP is deficient because it does not consider the cost of educating students, does not appropriately provide funding for students in poverty, or does not generate adequate funding to provide students with an opportunity to receive a high quality education is not supported by the evidence.

257. FEFP funds are generated primarily by multiplying the number of full time equivalent students ("FTE") in each of the funded education programs by cost factors to obtain weighted FTE students. Weighted FTE students are then multiplied by a base student allocation and by a district cost differential to determine the base funding from state and local funds. Program cost factors are established by the Legislature and represent relative cost differences among the FEFP programs. These costs factors are computed annually based on the actual cost experience in schools.[451]

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[448] Ex. 262; Tr. Vol. 32 at 4856:15–4859:13 (Test. of L. Champion).

[449] Tr. Vol. 32 at 4859:14–4860:5 (Test. of L. Champion).

[450] Ex. 197; Tr. Vol. 28 at 4200:2–4202:19 (Test. of E. Hanushek).

[451] Ex. 3680 at 00103463; Tr. Vol. 32 at 4809:6–4825:19 (Test. of L. Champion).

258. The specific components of the FEFP formula are:[452]

a. Full Time Equivalent Student. An FTE student for FEFP funding purposes is one student in membership in one or more FEFP programs for a school year or its equivalent. Student membership surveys are conducted according to a schedule provided by the Commissioner of Education, typically in July, October, February and June, and reported by school districts to the Department of Education.[453] Districts with material numbers of students coming in or out of the district at certain times of the year may request an alternative survey week from the Department to more accurately reflect their student membership.[454]

b. Program Cost Factors. The FEFP recognizes the different costs of educating students in various school programs through the program cost factor calculation. Program cost factors are derived from actual school district expenditures on the programs within the FEFP. School districts report all of their direct and indirect costs to the Department of Education through a program cost report. The total aggregate costs of an educational program are divided by the FTE students for the program to derive an index of relative

[452] Ex. 3437, a detailed flowchart that illustrates the calculation of FEFP funding for the 2015–16 school year.

[453] Ex. 3680 at 00103471–74; Tr. Vol. 32 at 4809:6–4813:12 (Test. of L. Champion).

[454] Tr. Vol. 32 at 4811:20–4812:9 (Test. of L. Champion). Additionally, contrary to the belief of one of Plaintiffs' district witnesses, Tr. Vol. 18 at 2686:11–25 (Test. of K. Ferree), students educated by the district in non-school settings, such as juvenile justice facilities, residential treatment facilities, or hospitals, are eligible to be counted in the districts' FTE, Tr. Vol. 32 at 4812:10–4813:12 (Test. of L. Champion).

costs, with the cost per FTE of "Basic, Grades 4–8," established as the 1.000 base. The program cost factors for the 2014–15 school year are as follows:[455]

| Basic Programs | Grade Levels | Cost Factor |
|---|---|---|
| 101 | K–3 | 1.126 |
| 102 | 4–8 | 1.000 |
| 103 | 9–12 | 1.004 |

| Exceptional Student Education Programs | Grade Levels | Cost Factor |
|---|---|---|
| 111 | K–3 | 1.126 |
| 112 | 4–8 | 1.000 |
| 113 | 9–12 | 1.004 |
| 254 | K–12 | 3.548 |
| 255 | K–12 | 5.104 |

| English for Speakers of Other Languages Programs | Grade Levels | Cost Factor |
|---|---|---|
| 130 | K–12 | 1.147 |

| Career Education | Grade Levels | Cost Factor |
|---|---|---|
| 300 | 9–12 | 1.004 |

c. Weighted FTE. The multiplication of the FTE students for an FEFP program by its respective cost factor produces "weighted FTE." This calculation weights the FTE to reflect the relative costs of the programs as represented by the program cost factors. To provide for the planned use of FEFP funds, the Legislature has established the following combination of programs during the 180-day regular school year and summer school: "Group 1" (basic education program) and "Group 2" (Exceptional Student Education for support levels

[455] Ex. 3414; Ex. 3680 at 00103474–75; Tr. Vol. 32 at 4813:13–4814:22 (Test. of L. Champion).

254 and 255, English for Speakers of Other Languages, and Grades 9–12 Career Education programs).[456]

d. Recalibrated FTE. All FTE enrollment is capped at 1.0 FTE, except for FTE reported for Department of Juvenile Justice (DJJ) students beyond the 180-day school year.[457]

e. Weighted FTE Cap. Program Group 2 has an enrollment ceiling (cap) that is established based on each district's estimate of FTE in each FEFP program. The appropriated FTE in each program is multiplied by the program's cost factor. The resulting weighted FTE, aggregated by group, establishes the group cap. After actual FTE is reported, districts with Group 2 FTE in excess of the cap receive basic funding.[458]

f. Additional Weighted FTE. Students may generate FTE in addition to FTE generated through course enrollment. The additional FTE is generated by small districts to offset the expenditures of high-cost programs that serve a small number of students. In addition, in order to promote the offering of rigorous and accelerated course work, additional FTE is generated for successful performance in Advanced Placement courses, International Baccalaureate courses, and Advanced International Certificate of Education courses, and for earning industry certifications and early graduation.[459]

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[456] Ex. 3680 at 00103474–75; Tr. Vol. 32 at 4814:23–4816:1 Tr. Vol. 33 at 4960:9–24 (Test. of L. Champion).

[457] Ex. 3680 at 00103473–74.

[458] Ex. 3680 at 00103475; Tr. Vol. 33 at 4960:9–24 (Test. of L. Champion).

[459] Ex. 3680 at 00103475–77; Tr. Vol. 32 at 4816:2–4819:3 (Test. of L. Champion).

g. Base Student Allocation ("BSA"). The base student allocation is determined annually by the Legislature in the context of the overall state budget and is a component in the calculation of base funding. For the 2015–16 school year, the BSA was $4,154.45 (second calculation), which is the highest BSA in the history of the FEFP.[460]

h. District Cost Differential ("DCD"). The FEFP recognizes differences in cost of living throughout the state through the district cost differential calculation. The Commissioner of Education is required to annually compute DCDs by adding each district's Florida Price Level Index for the most recent three years and dividing the sum by three. The result is multiplied by .8 and divided by 100 and .2 is added to the product. This serves to limit the factor's adjustment to 80% of the index, which is the approximate percentage of district salary costs to total operating costs. The three-year averaging reduces the immediate impact on districts of sudden changes in the index. Since 2000, the Florida Price Level Index has been calculated by the Bureau of Economic and Business Research at the University of Florida. For the 2014–15 school year, Madison County had the lowest DCD (.9261) and Palm Beach County had the highest (1.0290).[461]

i. Base Funding. Base Funding is calculated by multiplying the weighted FTE students by the BSA and the DCD.[462]

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[460] Ex. 3680 at 00103477; Tr. Vol. 32 at 4819:4–4820:13 (Test. of L. Champion).

[461] Ex. 3680 at 00103477–78; Tr. Vol. 32 at Trial Tr. 4820:14–4822:17 (Test. of L. Champion).

[462] Ex. 3680 at 00103478; Tr. Vol. 32 at 4822:18–4825:19 (Test. of L. Champion).

j. Supplemental Allocation for DJJ Programs. The total weighted FTE student membership in juvenile justice education programs in each school district is multiplied by the amount of the state average class size reduction factor multiplied by the district's DCD.[463]

k. Declining Enrollment Supplement. Districts that experience enrollment decline receive supplemental funding that is determined by comparing the unweighted FTE for the current year to the unweighted FTE of the prior year. Twenty-five percent of the decline is multiplied by the prior year base funding per unweighted FTE.[464]

l. Sparsity Supplement. The FEFP recognizes the relatively higher operating costs of smaller districts due to sparse student population through a detailed statutory formula.[465]

m. State-Funded Discretionary Contribution. Developmental research schools (lab schools) and the Florida Virtual School are established as separate school districts for purposes of FEFP funding. Those schools are allocated state funds in lieu of discretionary local tax revenue that is generated for district students by the tax base of the district where the school is located.[466]

n. .748 Mills Discretionary Compression. If any school district levies the full .748 mill levy and generates an amount of funds per unweighted FTE student that is less than the state average amount per unweighted FTE student, the

[463] Ex. 3680 at 00103478; Tr. Vol. 32 at 4825:21–4826:19 (Test. of L. Champion).

[464] Ex. 3680 at 00103478; Tr. Vol. 32 at 4826:20–4827:10 (Test. of L. Champion).

[465] Ex. 3680 at 00103478–79; Tr. Vol. 32 at 4827:11–4828:9 (Test. of L. Champion).

[466] Ex. 3680 at 00103479; Tr. Vol. 32 at 4828:10–4829:2 (Test. of L. Champion).

school district receives a discretionary millage compression supplement that, when added to the funds generated by the district's .748 mill levy, is equal to the state average.[467]

o. Safe Schools. State funds are provided to school districts for various safe schools activities, including after school programs for middle school students, middle and high school programs for correction of specific discipline problems, implementation of conflict resolution strategies, anger and aggression management strategies, alternative school programs, suicide prevention programs, bullying prevention and intervention, school resource officers, and detection dogs. All school districts receive a minimum allocation. Additional funds are allocated to districts based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement and on each district's share of the state's total unweighted student enrollment.[468]

p. Reading Program. State funds are provided for a comprehensive, district-wide system of research-based reading instruction. A portion of the funds is to be used to provide an additional hour of intensive reading instruction for students in the 300 lowest performing elementary schools in the state. All districts receive a minimum allocation of funds plus additional funds based on each district's proportion of the total K–12 base funding.[469]

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[467] Ex. 3680 at 00103479; Tr. Vol. 32 at 4829:3–4830:16 (Test. of L. Champion).

[468] Ex. 3680 at 00103479; Tr. Vol. 32 at 4830:18–4832:1 (Test. of L. Champion).

[469] Ex. 3680 at 00103479–80; Tr. Vol. 32 at 4832:2–25 (Test. of L. Champion).

q. Supplemental Academic Instruction. State funds are provided to supplement academic instruction, with a portion of these funds to be used to provide an additional hour of intensive reading instruction for students in the 300 lowest-performing elementary schools in the state.[470]

r. ESE Guaranteed Allocation. Additional state funds are provided for services related to the special needs of students where level of service is less than support Levels 4 and 5.[471]

s. Instructional Materials. State funds are provided for the purchase of instructional materials and instructional content, as well as electronic devices and technology equipment and infrastructure. This funding also provides dollars for library/media materials, science lab material and supplies, dual enrollment instructional material and digital instructional materials for students with disabilities.[472]

t. Florida Teachers Classroom Supply Assistance Program. This program provides approximately $250 for each classroom teacher for the purchase of classroom instructional materials and supplies for use in teaching students. State funds are allocated to districts based on the prorated total of each school district's share of the total unweighted FTE student allotment.[473]

u. Student Transportation. State funds are provided for the safe and efficient transportation services in school districts in support of student learning. A

[470] Ex. 3680 at 00103480; Tr. Vol. 32 at 4833:1–4834:20 (Test. of L. Champion).

[471] Ex. 3680 at 00103480; Tr. Vol. 32 at 4834:21–4837:17 (Test. of L. Champion).

[472] Ex. 3680 at 00103480; Tr. Vol. 32 at 4837:18–4838:13 (Test. of L. Champion).

[473] Ex. 3680 at 00103481; Tr. Vol. 32 at 4838:14–4839:10 (Test. of L. Champion).

detailed statutory formula allocates these funds to school districts and includes indices to reward efficient bus utilization, compensate for rural population density and adjust funding based on cost of living.[474]

v. Virtual Education Contribution. State funds are provided for virtual education programs when certain FEFP components do not generate at least $5,230 per FTE (as of the 2014–15 school year).[475]

w. Digital Classrooms Allocation. State funds are provided to school districts to support school and district efforts and strategies to improve student performance outcomes by integrating technology in classroom teaching and learning.[476]

x. Required Local Effort ("RLE"). In order to participate in the FEFP, school districts are required to tax at a minimum level in support of their schools. The amount of RLE is set annually and the RLE millage rate is calculated by the Commissioner of Education on the basis of the certified tax roll from the Department of Revenue. Adjustments are made to offset variations among school districts in levels of property assessment. Millage rates are adjusted to ensure that RLE does not exceed 90% of a district's total FEFP entitlement.[477]

y. Adjustments. When the enrollment projected as determined by FTE student membership surveys exceeds the appropriated or projected FTE, FEFP

[474] Ex. 3680 at 00103481; Tr. Vol. 32 at 4839:11–4840:3 (Test. of L. Champion).

[475] Ex. 3680 at 00103481; Tr. Vol. 32 at 4840:4–11 (Test. of L. Champion).

[476] Ex. 3680 at 00103470; Tr. Vol. 32 at 4840:12–4841:2 (Test. of L. Champion).

[477] Ex. 3680 at 00103481–82; Tr. Vol. 32 at 4841:14–4843:8 (Test. of L. Champion).

amounts are prorated to preserve equity in the distribution of the appropriation of FEFP funds.[478]

### C. State Categorical Funding

259. In addition to the formula components of the FEFP, certain categorical state funding is also provided to school districts as part of the Florida school funding system. These include the class size reduction appropriation and district lottery and school recognition program funds.[479]

a. Class Size Reduction. Pursuant to the voter-approved amendment to Article IX, Section 1 of the Florida Constitution in 2002, additional operating and capital outlay funds have been appropriated to school districts since the 2003–04 school year. Beginning with the 2010–11 school year, Florida classrooms could have no more than 18 students in grades pre-K through grade 3, 22 students in grades 4–8, and 25 students in grades 9–12. The class size reduction appropriation for the 2015–16 school year was in excess of $3 billion in state funds and is used primarily to hire teachers to meet class size requirements.[480]

b. District Lottery and School Recognition Program Funds. These funds provide an incentive to school districts to maintain or improve their letter grade under the state's accountability system. In particular, schools that maintain an "A" letter grade, improve a letter grade or improve more than one letter grade and maintain the improvement in the following year, receive additional funds per

[478] Ex. 3680 at 00103482; Tr. Vol. 32 at 4843:9–4844:2 (Test. of L. Champion).

[479] Ex. 3680 at 00103482.

[480] Exs. 132, 131, 3680 at 00103482; Tr. Vol. 32 at 4844:21–4851:1 (Test. of L. Champion).

FTE student in that school. The funds are used at the discretion of each school's staff and the School Advisory Council.[481]

260. With respect to the class size reduction amendment, the Court finds that the State has provided sufficient funding to school districts to meet the requirements of the amendment. From the 2003–04 school year to the 2010–11 school year, the State provided school districts with $18.7 billion in capital and operating funds. The cost of implementing the class size reduction requirements, as determined by the Office of Demographic and Economic Research, was estimated to be approximately $18.4 billion during this time frame. Thus, funding exceeded estimated costs by over $300 million.[482]

261. In addition to the provision of adequate funding for districts to achieve the specified class size reduction, the Court finds that the various school district witnesses called by Plaintiffs confirm that their respective districts meet class size requirements.[483]

**D. Non-FEFP State Funding**

262. Another component of the Florida school funding system includes an annual appropriation category called "Non-FEFP." The Non-FEFP appropriation provides funds for student mentoring programs, assistance to low performing schools, support for exceptional education programs, regional education consortium services, teacher professional development,

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[481] Ex. 3680 at 00103482–83; Tr. Vol. 32 at 4851:2–22 (Test. of L. Champion).

[482] Exs. 131, 132, 3680; Tr. Vol. 32 at 4844:21–4851:1 (Test. of L. Champion).

[483] Tr. Vol. 5 at 677:15–21 (Test. of N. Vitti); Tr. Vol. 6 at 840:18–841:7 (Test. of O. Roberts); Tr. Vol. 7 at 1030:25–1031:2 (Test. of G. Littleton); Tr. Vol. 8 at 1086:15–1087:9 (Test. of N. Marks); Tr. Vol. 9 at 1331:10–17 (Test. of E. Roy); Tr. Vol. 11 at 1553:21–1554:3 (Dep. Test. of M. Burke); Tr. Vol. 14 at 2057:13–23 (Test. of L. Romano); Tr. Vol. 18 at 2648:4–20 (Test. of K. Ferree); Tr. Vol. 22 at 3281:17–3282:1 (Test. of D. Robinson); Tr. Vol. 23 at 3466:15–18 (Dep. Test. of R. Collins); Tr. Vol. 24 at 3629:23–3630:1 (Dep. Test. of J. Marte); Tr. Vol. 25at 3749:19–22 (Dep. Test. of A. Weidner); Tr. Vol. 36 at 5480:12–19 (Dep. Test. of K. Blocker); Ex. 5364 (Dep. of C. Morrison) at 94:14–21; Ex. 5366 (Dep. of J. Preston) at 35:4–23.

after school programs and other initiatives. In 2014–15, the amount provided for these programs totaled over $304 million.[484]

263. In 2015–16, overall State funding for K–12 is at its highest level ever, with the highest portion from the State on a per-pupil basis.[485]

264. In addition to funding within the K–12 system, there are numerous portions of the state budget that address the needs of school-aged children and families, including healthcare, mental health and social worker services, counseling and family support, the Department of Juvenile Justice, the Department of Children and Families, community health, and early childhood education.[486]

**E. Capital Outlay Funding**

265. In addition to the FEFP, categorical and Non-FEFP funds described above, the Florida school funding system includes significant expenditures for capital outlay (at both the state and local levels), as well as additional operating funds from local sources as determined by local boards of education.[487]

266. According to a 2016 national report, Florida ranked among the top three states in the nation, exceeding the target for adequate building maintenance and construction funding.[488] And in a 2010 report from the National Clearinghouse for Educational Facilities, Florida ranked

[484] Ex. 3416; Tr. Vol. 32 at 4860:9–4868:2 (Test. of L. Champion).

[485] Ex. 3683 at 00103646–47; Tr. Vol. 32 at 4855:3–11 (Test. of L. Champion).

[486] Ex. 230; Tr. Vol. 34 at 5043:15–5046:7 (Test. of A. Baker); Tr. Vol. 16 at 2372:2–2375:22(Test. of J. Hall).

[487] Tr. Vol. 32 at 4898:1–4915:14 (Test. of L. Champion).

[488] Tr. Vol. 36 at 5406:7–20 (Test. of J. Ratliff).

among the top five states in average per-student capital outlay and first in the nation in states with over one million students.[489]

267. In Florida, as in most other states, capital outlay funding has historically been provided primarily from local sources.[490]

268. The primary state source for capital outlay in Florida is the Public Education Capital Outlay ("PECO") program. PECO funds are dedicated to funding capital projects and related debt service for all levels of public education (K–12 public schools and colleges and universities). The PECO program is established by Article XII, Section 9 of the Florida Constitution, and is funded by gross receipts taxes on electricity, gas fuels, and telecommunications and television services.[491]

269. Because the fund source of gross receipt taxes has generally been declining, there has been fluctuation in the amounts available for capital outlay. Additionally, the funding stream had been bondable in past years, but there has not been a bonding of PECO dollars since 2010–11. These factors combined have caused a decrease in the amount of PECO dollars available for capital outlay in the past several years. [492]

270. In 2014–15, K–12 public schools received $128 million in PECO appropriations for maintenance, repair, and renovation, and almost $60 million for special facilities, discussed further below.[493]

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[489] Ex. 4027 at 00121409; Tr. Vol. 32 at 4905:3–10 (Test. of L. Champion).

[490] Ex. 4027 at 00121393; Tr. Vol. 32 at 4905:14–4906:3 (Test. of L. Champion).

[491] Ex. 3680 at 00103485; Tr. Vol. 32 at 4898:5–15 (Test. of L. Champion).

[492] Tr. Vol. 32 at 4907:2–25 (Test. of L. Champion).

[493] Ex. 3680 at 00103485–86; Tr. Vol. 32 at 4908:8–16 (Test. of L. Champion).

271. In addition to PECO, Capital Outlay and Debt Service ("CO&DS") is a state source of school district and Florida College System capital outlay revenue, which is derived from the first proceeds of motor vehicle license tag revenue each year.[494] In 2013–14, $17.8 million was distributed to Florida public school districts and $87.8 million was paid for debt service for previously-issued bonds that benefitted public schools and Florida colleges.[495]

272. The special facility construction account is funded with PECO dollars and provides necessary construction funds to school districts that have urgent construction needs but lack sufficient resources at present and cannot reasonably anticipate sufficient resources within three years to fund such needs. Typically, small rural school districts qualify for this funding.[496] From fiscal years 1981–82 to 2015–16, the special facility construction account has funded construction projects totaling over $1 billion. Approximately 72% of the total amount was funded by the state and 28% by local school districts.[497]

273. As noted above, the State provided school districts with both operating and capital outlay funds to meet the class size reduction requirements of Article IX of the Florida Constitution. The capital outlay portion of that funding from 2003–04 to 2007–08 exceeded $2.5 billion.[498]

274. State law permits local boards of education to raise significant amounts of capital outlay funds at the local level. Historically, these funds have been the primary source of funding for support of K–12 public schools' capital expenditures. The three primary local funds sources

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[494] Ex. 3680 at 00103487, Tr. Vol. 32 at 4898:5–14 (Test. of L. Champion).

[495] Ex. 3445.

[496] Tr. Vol. 32 at 4902:13–4903:2 (Test. of L. Champion).

[497] Exs. 3440, 3728; Tr. Vol. 32 at 4913:5–25 (Test. of L. Champion).

[498] Exs. 131, 2880; Tr. Vol. 32 at 4844:21–4851:1 (Test. of L. Champion).

are discretionary capital improvement revenue levy, school capital outlay surtax (half-cent sales tax), and the local government infrastructure surtax.[499]

275. Florida school districts generate funding for capital outlay primarily from the Local Capital Improvement Revenue ("LCIR") levy, which is currently limited to 1.5 mills.[500] Prior to 2008–09, authority existed to levy up to 2.0 mills. In the midst of decreased operating revenue caused by the Great Recession, school districts determined that certain capital outlay and maintenance items could be deferred without significant impact and, therefore, advocated to the Legislature to redirect or transfer a portion of the LCIR levy to operations. The LCIR levy authority was decreased by .25 mills in 2008–09 and by .25 mills in 2009–10. The RLE operating millage in the FEFP was increased by an equivalent amount of revenue in each of the years of the LCIR decrease, thus there was no loss in revenue to school districts as a result of this change.[501]

276. The LCIR is a non-voted tax that may be used for remodeling and new construction projects that are recommended and approved in a five-year educational plant survey; to rent or lease portable buildings; for maintenance, renovation and repair; for school bus purchases; for the purchase or replacement of equipment; for the purchase, lease-purchase or lease of new and replacement equipment hardware devices necessary for gaining access to, or enhancing the use of electronic content and resources; for enterprise software applications; for the payment of premiums for property and casualty insurance; and for the purchase, lease-purchase or lease of school district vehicles.[502]

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[499] Tr. Vol. 32 at 4898:16–4899:10; 4900:20–4901:2 (Test. of L. Champion).

[500] § 1011.71(2), Fla. Stat.; Tr. Vol. 32 at 4898:16–4899:6 (Test. of L. Champion).

[501] Tr. Vol. 32 at 4888:16–4889:19 (Test. of L. Champion).

[502] Tr. Vol. 32 at 4888:8–15, 4890:2–11 (Test. of L. Champion).

277. The School Capital Outlay Surtax (Half-Cent Sales Tax) is a voted sales tax, initiated by a local board of education, not to exceed .5 percent.[503] It must be approved by a majority of electors in the county.[504] The tax proceeds must be used for fixed capital expenditures or fixed capital assets associated with construction, reconstruction, or improvement of school facilities and campuses that have a useful life or expectancy of five years or more, and any land acquisition, improvement, and design and engineering costs associated with such facilities and campuses. The funds may also be used for retrofitting and technology implementation.[505]

278. The Local Government Infrastructure Surtax is a sales tax that may be levied by the governing authority in each county after approval by majority vote of electors in the county. The sales tax may be .5 percent or 1.0 percent.[506] The proceeds of the tax are distributed to the county, municipalities within the county, and/or school districts according to an interlocal agreement. The revenue generated from this surtax must be used for construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years and any land acquisition or improvement costs.[507]

279. In the 2013–14 school year, 22 districts levied the School Capital Outlay Sales Surtax or the Local Government Infrastructure Surtax.[508]

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[503] § 212.055(6), Fla. Stat.; Tr. Vol. 32 at 4900:20–4901:2 (Test. of L. Champion).

[504] Tr. Vol. 33 at 4934:12–15 (Test. of L. Champion).

[505] Tr. Vol. 32 at 4900:20–4901:2 (Test. of L. Champion).

[506] § 212.055(2), Fla. Stat.

[507] Tr. Vol. 32 at 4900:20–4901:2 (Test. of L. Champion)

[508] Ex. 3444.

280. In addition to the LCIR, the School Capital Outlay Sales Surtax, and the Local Government Infrastructure Surtax, school districts are authorized to sell bonds for capital outlay projects to be repaid from local property taxes.[509] School districts can also obtain funding for capital purposes from impact fees assessed at the local level.[510] Finally, school districts are permitted to use up to .25 mills of their 748 discretionary operating millage for capital outlay purposes.[511] Only one school district—Miami-Dade County—currently utilizes this provision.[512]

281. For the 2013–14 school year, funding from all sources for fixed capital outlay for Florida K–12 public schools is summarized below:[513]

| | |
|---|---|
| LCIR | $2,009,792,890 |
| Voted debt service | 67,604,185 |
| Local Government Infrastructure and School Capital Outlay Surtaxes | 495,979,857 |
| Impact fees | 202,651,023 |
| Racing commission funds[514] | 14,133,061 |
| CO&DS | 88,391,715 |
| PECO-maintenance | 6,000,000 |
| PECO-charter schools | 90,604,553 |
| K–12 PECO special facility construction | 7,870,913 |

[509] §§ 200.001(3)(e), Fla. Stat.; Art. VII, § 12, Fla. Const.; Tr. Vol. 32 at 4894:13–16 (Test. of L. Champion).

[510] § 63.31801, Fla. Stat.; Tr. Vol. 32 at 4901:17–24 (Test. of L. Champion).

[511] § 1011.71(3)(a), Fla. Stat.; Tr. Vol. 32 at 4893:17–25 (Test. of L. Champion).

[512] Ex. 3418; Tr. Vol. 33 at 4922:24–4923:10 (Test. of L. Champion).

[513] Ex. 3445.

[514] Racing Commission Funds (pari-mutuel taxes) are authorized in Article VII, Section 7 of the Florida Constitution. Florida law, § 212.20(6)(d)6.a., Fla. Stat., directs the distribution of $29,915,500 to be divided equally among the counties in lieu of pari-mutuel taxes, beginning July 1, 2000. If a local or special law required that any moneys accruing to a county in fiscal year 1999–2000 under the then-existing provisions of § 550.135, Fla. Stat., be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed.

| |
|---|
| $2,983,028,197 |

282. As noted in the table above, the LCIR levy is the primary source of capital outlay funds for school districts. These funds are not required to be shared with charter schools, and only three school districts provide such funding to their respective charter schools.[515] Thus, the principal source of capital outlay for charter schools has been through state PECO funds.[516] In the 2013–14 school year, on a per student basis, charters received approximately $476 per student for capital outlay while traditional schools received approximately $1,202 per student for capital outlay.[517]

**F. Local Funding and School District Capacity - (Subject to Voter Approval)**

283. The local funding sources discussed above include the RLE millage, the .748 discretionary operating millage, the .25 millage levy for capital purposes, the LCIR levy, the School Capital Outlay Surtax and the Local Government Infrastructure Surtax, voted debt service millage and impact fees. As set forth below, subject to voter approval, school districts can raise additional revenue through discretionary levies for operating or capital outlay, for a period of time not to exceed two or four years.[518]

284. Article VII, § 9(b) of the Florida Constitution establishes a 10 mill limit for school purposes, which applies to the RLE millage, the .748 discretionary operating millage, the .25 mills levy for capital purposes, the LCIR and the discretionary levy that may not exceed four

[515] Tr. Vol. 32 at 4908:2–4909:12 (Test. of L. Champion).

[516] *Id*.

[517] Tr. Vol. 32 at 4909:13–4911:16 (Test. of L. Champion).

[518] § 1011.73, Fla. Stat.

years. The limit does not apply to capital outlay surtaxes, voted millage for debt service, or the discretionary millage levy that may not exceed two years.[519]

285. The discretionary levy that may not exceed four years may be levied for operations only and is subject to the 10 mill limit.[520] In the 2014–15 school year, 16 districts levied this millage, which generated over $274 million for operating purposes.[521]

286. The discretionary levy that may not exceed two years may be levied for operating or capital outlay purposes and is not subject to the 10 mill limit.[522] No school districts currently levy this millage.[523]

287. In 2014, ten school districts held voter referenda on either ad valorem millage levies for operating/capital outlay purposes or sales surtax proposals. Nine out of the ten proposals were approved by local voters.[524]

288. As of the 2014–15 school year, no school districts levied up to the 10 mill limit imposed by the Florida Constitution.[525] Accordingly, there is local revenue capacity available to school districts under Florida law if school districts determined a need for additional revenue.[526] However, it must be remembered that much of this funding capacity requires voter approval before it can be utilized.

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[519] Ex. 3418; Tr. Vol. 33 at 4921:22–4925:25 (Test. of L. Champion).

[520] § 1011.73(2), Fla. Stat.

[521] Ex. 3418; Tr. Vol. 33 at 4923:11–4925:4 (Test. of L. Champion).

[522] § 1011.73(1), Fla. Stat.

[523] Ex. 3418; Tr. Vol. 33 at 4925:5–7, 4925:21–25 (Test. of L. Champion).

[524] Ex. 3429; Tr. Vol. 33 at 4933:18–4934:11 (Test. of L. Champion). The voters in the one school district that rejected a referenda in 2014—Hernando County—approved a revised capital outlay surtax proposal in September 2015. Tr. Vol. 33 at 4933:18–4934:11 (Test. of L. Champion); Tr. Vol. 14 at 2102:2–2103:23 (Test. of L. Romano).

[525] Ex. 3446.

[526] Ex. 3446; Tr. Vol. 33 at 4929:23–25 (Test. of L. Champion).

289. If all school districts in the state levied to the full 10 mill limit, for the 2014–15 school year, districts could have raised an additional $3.78 billion or approximately $1,401 per FTE student. To put in context, with total FEFP revenue in 2014–15 of $18.9 billion, an additional $3.78 billion would result in approximately 20% more funding for school districts.[527]

290. Similarly, in the 2014–15 school year, 45 school districts did not levy either the School Capital Outlay Surtax or the Local Government Infrastructure Surtax.[528] If these districts were to levy a one-half cent sales tax, an additional $1.04 billion, or over $578 per capital-outlay FTE student, would be generated for these districts.[529]

291. Some school districts have decided to reduce property tax rates, resulting in lowered tax bills for homeowners.[530]

### G. Federal Funding

292. The Florida school funding system also includes the administration and allocation of significant federal funding.[531] The two primary categories of federal funds administered by the Florida Department of Education are entitlement grants and discretionary grants.

293. Entitlement grants are those for which the federal government establishes the specific purposes and requirements of each grant and which must be disbursed in accordance

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[527] Ex. 3446; Tr. Vol. 33 at 4929:23–25 (Test. of L. Champion).

[528] Ex. 3444.

[529] Ex. 3444; Tr. Vol. 33 at 4932:13–4933:1 (Test. of L. Champion).

[530] *E.g.*, Tr. Vol. 6 at 832:3–12 (Test. of O. Roberts); Tr. Vol.24 at 3636:4–9, 3651:5–10, 3657:16–3658:13 (Dep. Test. of J. Marte); Exs. 1771, 1743, 1746; Tr. Vol. 11 at 1567:10–1570:10 (Dep. Test. of M. Burke).

[531] Ex. 3433; Tr. Vol. 26 at 3957:3–9 (Test. of P. Stewart).

with a specified formula or procedure. In 2014–15, total elementary and secondary federal entitlement grant funds totaled $1.8 billion.[532]

294. Discretionary grants are grants for which the U.S. Department of Education has discretion regarding how much to award, to which recipients, and for what purpose. These grants are generally awarded on a competitive basis.[533] Race to the Top ("RTT") is an example of a federal competitive grant. That grant was awarded to the state of Florida beginning in the 2010–11 school year, as discussed in more detail below.[534]

295. The largest federal entitlement grant is Title I, Part A of the ESEA (approximately $777 million in 2014–15), which provides assistance to schools with high numbers or percentages of children from low income families to help ensure that children meet challenging state academic standards.[535]

296. The next largest federal entitlement grant is the Grants to State programs (approximately $634 million in 2014–15), which provides formula grants to assist states in meeting the excess costs of providing special education services to children with disabilities between the ages of 3 and 21.[536]

297. Other significant federal entitlement grants include funding for the improvement of teacher quality (approximately $103 million in 2014–15), 21st Century Community Learning Centers (approximately $59 million in 2014–15), and English language learners education

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[532] Ex. 3433.

[533] Tr. Vol. 33 at 4985:21–4986:8 (Test. of L. Champion).

[534] Ex. 3774.

[535] Ex. 3433; Tr. Vol. 26 at 3971:2–3972:6 (Test. of P. Stewart); Tr. Vol. 33 at 4934:25–4935:10 (Test. of L. Champion).

[536] Ex. 3433; Tr. Vol. 33 at 4938:2–11 (Test. of L. Champion).

(approximately $43 million in 2014–15).[537] A federal entitlement grant is also provided for homeless children and youth education (approximately $3 million in 2014–15).[538]

298. There are many requirements associated with the receipt of federal entitlement grants.[539] Generally, a state must submit for approval an extensive plan for administration of the funds.[540] Discretionary grants generally require the submission of an application or proposal, which may or may not be selected for funding at the amount the state requests.[541]

299. The Florida Department of Education has several offices and staff with the responsibility for the administration of federal funds.[542] These include the Budget Office; the Comptroller's Office; and the Bureau of Contracts, Grants and Procurement.[543]

300. The U.S. Department of Education monitors the State's compliance with various federal grant programs and laws, including those under ESEA Title I, the McKinney-Vento Homeless Assistance Act, and the Individuals with Disabilities Education Act.[544]

301. In 2010, the U.S. Department of Education awarded the state of Florida a $700 million RTT grant.[545]

302. The RTT was a competitive grant program that was part of the American Recovery and Reinvestment Act of 2009 ("ARRA").[546] The RTT grant program recognized

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[537] Ex. 3433; Tr. Vol. 33 at 4936:24–4937:15 (Test. of L. Champion).

[538] Ex. 3433; Tr. Vol. 33 at 4937:16–18 (Test. of L. Champion).

[539] Tr. Vol. 26 at 3957:3–9 (Test. of P. Stewart).

[540] Tr. Vol. 33 at 4938:24–4939:10 (Test. of L. Champion); *e.g.*, Exs. 3973, 3395, 3405.

[541] *E.g.*, Exs. 3782, 3366, 3781.

[542] Tr. Vol. 33 at 4934:20–24 (Test. of L. Champion).

[543] Tr. Vol. 32 at 4802:16–21 (Test. of L. Champion).

[544] Exs. 1406, 1409, 1410, 1411, 1412, 1471, 1472; Tr. Vol. 8 at 1220:25–1221:8, 1233:4–1235:4 (Test. of L. Allen); Tr. Vol. 31 at 4657:23–4658:3, 4687:2–3 (Test. of M. Tappen).

[545] Ex. 3774.

states with a demonstrated record of and commitment to internationally-benchmarked education standards, high quality assessments aligned to rigorous education standards, data systems to analyze student performance for the purpose of continuous improvement, improving the quality of school leaders and teachers, support for struggling schools, and an emphasis on STEM education.[547]

303. The U.S. Department of Education ranked Florida fourth out of 35 states that applied for funding in phase II of the RTT competition, and awarded the state $700 million over a five-year grant period.[548]

304. Of the $700 million RTT grant award, $350 million was utilized for state-level projects and $350 million was allocated to school districts for identified projects in areas such as improvement in low performing schools, professional development, STEM education, and technology.[549] Palm Beach County, a district from which Plaintiffs presented two witnesses testifying about an alleged lack of funding, did not participate in the grant,[550] voluntarily forgoing around $37 million.[551]

### H. The State Budget Process

305. In Florida, state budgeting is a year-round process involving professional staff of the various agencies of state government, legislative staff, the Governor's office as well as

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[546]Tr. Vol. 20 at 3013:1–3 (Test. of H. Edenfield)

[547] Exs. 1413, 3782, 3366, 3781, 3774; Tr. Vol. 20 at 3043:4–3044:4 (Test. of H. Edenfield).

[548] Exs. 1413, 3774; Tr. Vol. 20 at 3013:12–20 (Test. of H. Edenfield).

[549] Ex. 3434; Tr. Vol. 33 at 4941:11–19 (Test. of L. Champion); Tr. Vol. 20 at 3014:18–3015:1 (Test. of H. Edenfield).

[550] Tr. Vol. 10 at 1507:1–19 (Dep. Test. of M. Burke); Tr. Vol. 22 at 3268:11–22 (Test. of D. Robinson).

[551] Ex. 3434; Tr. Vol. 33 at 4942:4–21 (Test. of L. Champion).

elected officials.[552] The process is public and includes extensive opportunities for input and comment by interested stakeholders.[553]

306. The state budgeting process is largely prescribed by the Florida Constitution and, of course, impacted by general economic conditions in the state and nation.[554]

307. The Florida Constitution requires the Legislature to prepare a balanced budget each year,[555] and also requires that the state budget be developed in reference to a long range financial outlook, which is to be based on major workload and revenue estimates.[556] The Constitution also places limits on the amount and types of revenues that can be raised.[557]

308. Florida relies on consensus estimating conferences to develop official economic, demographic, resource-demand, and revenue forecasts for use in developing the state budget. The four principals for each conference are designated professional staff representing the Governor's office, the Senate, the House of Representatives, and the Legislative Office of Economic and Demographic Research.[558]

309. The Education Estimating Conferences develop forecasts as to public school enrollment, public schools capital outlay, FTE student enrollment, Florida College System enrollment, and postsecondary financial aid. [559]

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[552] Ex. 3683 at 00103643; Ex. 3436; Tr. Vol. 26 at 4059:11–4060:1 (Test. of P. Stewart); Tr. Vol. 33 at 4945:12–4947:6 (Test. of L. Champion).

[553] Tr. Vol. 26 at 4060:18–25 (Test. of P. Stewart); Tr. Vol. 33 at 4945:12–4947:6 (Test. of L. Champion).

[554] Ex. 219; Tr. Vol. 33 at 5015:15–5016:21 (Test. of A. Baker).

[555] Art. III, § 19(a), Art. VII, § 1(c), (d), Fla. Const.

[556] Art. III, § 19(c), Fla. Const.

[557] *See, e.g.,* Art. VII, § 5, Fla. Const.

[558] Ex. 3436 at 42-6; Tr. Vol. 33 at 4998:1–4999:5 (Test. of A. Baker).

[559] Ex. 3436 at 42-6; Tr. Vol. 33 at 5016:22–5018:7 (Test. of A. Baker).

310. The estimating conferences hold public meetings and provide the executive and legislative branches with professionally-developed projections upon which policy judgments and budget decisions can be based.[560]

311. The education budget process includes the development of a Legislative Budget Request ("LBR") by the Department of Education. The LBR is based on input from professionals within the Department, as well as educators and finance officers from school districts throughout the state, and reflects educational priorities and programs for which funding is requested. The LBR is reviewed and adopted by the State Board of Education and submitted to the Governor and Legislature.[561]

312. The Governor prepares a budget based on estimating conference data and includes his or her policy and budget priorities. The budget is provided to the Legislature.[562]

313. The legislative phase of the budget process involves hearings before the appropriation committees which publicly review the State Board's LBR and the Governor's recommended budget. Many organizations interested in education, such as the Florida School Boards Association, the Florida Education Association, and the Florida Association of District School Superintendents, provide the legislative committees and staff with position statements and advocacy for their various education policy and budget priorities and preferences.[563]

314. The Legislature, after consideration of the agency budget requests, the Governor's recommended budget, information from the estimating conferences, and extensive public input, adopts a budget and an appropriations act, which is then submitted to the Governor for signature

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[560] Tr. Vol. 33 at 4998:1–4999:5 (Test. of A. Baker).

[561] Ex. 3436 at 42-2, 42-3, 42-5; Tr. Vol. 33 at 4945:9–4947:6 (Test. of L. Champion).

[562] Ex. 3436 at 42-2; Tr. Vol. 33 at 4946:7–11 (Test. of L. Champion).

[563] Ex. 3436 at 42-2, 42-3; Tr. Vol. 33 at 4945:14–4946:21 (Test. of L. Champion).

or veto of specific policy or budget items that he or she determines are not in the best interest of the state.[564]

## I. Florida's Commitment to Funding Education

315. As discussed in detail below, the State has consistently prioritized funding education in the budgeting and appropriations process, despite fluctuations in the amount of available revenue due to economic conditions.

316. The first sections of every appropriations act start with appropriations for education,[565] and the Legislature has enacted laws seeking to protect or minimize the disruption to education funding when the State is in a deficit scenario. For example, when the State budget must be reduced due to overstatement of general-revenue projections, Florida law sets forth a process to ensure that education is impacted less than other areas of the budget funded by general revenues.[566]

317. Since 1997–98, funding for education has been the single largest component of the general revenue budget, and funding for K–12 schools, primarily through the FEFP, has been the largest component of the education portion of the state budget.[567]

318. During the early to mid-2000s, the state experienced extraordinary economic upheaval due to the effect of the housing/real estate boom, its subsequent collapse and the Great Recession.[568] Based on gross domestic product ("GDP") and personal income measures, Florida was one of the fastest growing states from 2000 to 2006, but the state experienced much more

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[564] Ex. 3436 at 42-2, 42-3.

[565] Tr. Vol. 34 at 5089:22–5090:4 (Test. of A. Baker).

[566] §§ 216.221(5)(c)(1.), 215.16, Fla. Stat.

[567] Exs. 230, 254, 255; Tr. Vol. 34 at 5043:12–5049:20 (Test. of A. Baker).

[568] Tr. Vol. 33 at 5005:8–5007:15 (Test. of A. Baker).

severe impacts than the nation as a whole as a result of the housing/real estate collapse. From 2008 to 2011, the state experienced four years of negative GDP.[569] In 2009, the state experienced negative personal income growth.[570] The state's unemployment rate was only 3.3% in 2006 and soared to 11.4% in 2009–10.[571] Home foreclosure filings went from a low of 57,288 in 2005–06 to a high of 403,473 in 2008–09.[572]

319. The economic conditions described above resulted in record state revenues in the years leading up to the housing/real estate collapse. General revenue collections reached peak levels in fiscal year 2005–06. However, the state experienced three consecutive years of year-over-year decline in general revenue as the housing market collapsed: 2006–07 (-2.5%); 2007–08 (-8.7%); and 2008–09 (-12.8 %). Prior to this period, there had not been a single year of loss over the prior year during Florida's modern period of state budgeting.[573]

320. Although the Great Recession technically ended in June 2009, the extreme financial and economic stress experienced in Florida during these years did not reach bottom until the spring of 2010, followed by two years of extremely fragile growth.[574]

321. Despite the historic downturn in the economy and projected shortfall in state revenues, the Legislature took steps to preserve education funding.[575] In total, the appropriated general revenue budget shrank more than $8 billion from 2007–08 to 2009–10. Although

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[569] Ex. 214; Tr. Vol. 33 at 5011:12–5012:15 (Test. of A. Baker).

[570] Ex. 215; Tr. Vol. 33 at 5012:16–5013:7 (Test. of A. Baker).

[571] Ex. 217; Tr. Vol. 33 at 5013:8–5014:5 (Test. of A. Baker).

[572] Ex. 213; Tr. Vol. 33 at 5010:17–5011:11 (Test. of A. Baker).

[573] Ex. 224; Tr. Vol. 33 at 5014:6–5015:14 (Test. of A. Baker).

[574] Tr. Vol. 33 at 5005:5–5007:15 (Test. of A. Baker).

[575] Ex. 220; Tr. Vol. 33 at 5018:16–5023:4 (Test. of A. Baker).

general revenue funding for the FEFP was also reduced, the reductions were proportionally less than the budget as a whole.[576]

322. The Legislature also took extraordinary steps to shore up the general revenue budget by redirecting available trust fund balances and spending down the state's reserves by reducing unallocated general revenue balances and taking loans from the Budget Stabilization Fund and Lawton Chiles Endowment Fund. These steps provided hundreds of millions of dollars to the general revenue budget during the economic downturn.[577]

323. Another factor that mitigated the effects of the Great Recession on Florida's K–12 schools is that the FEFP is based on a combination of state and local revenues, primarily ad valorem property taxes. Losses in real property taxable value and tax collections lagged the losses in state general revenue sources.[578] The effects of the housing collapse on the ability to raise property taxes for school districts did not significantly impact the FEFP until the 2009–10 school year. The loss of real property taxable value and state general revenue was partially offset by the federal stimulus funding provided as part of the American Recovery and Reinvestment Act of 2009. These federal dollars were intended to stabilize state and local fiscal conditions.[579]

324. Florida received $1.78 billion in ARRA stabilization funds in fiscal years 2009–10 and 2010–11. By agreement with the federal government, Florida committed to maintain the funding level for education at all levels (K–12 and higher education) at or above the percentage of the overall state budget spent on education in the 2008–09 fiscal year. Florida exceeded this

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[576] Exs. 229, 254, 255, 257; Tr. Vol. 34 at 5043:12–5054:13 (Test. of A. Baker).

[577] Ex. 225; Tr. Vol. 33 at 5033:10–5037:21 (Test. of A. Baker).

[578] Ex. 260; Tr. Vol. 34 at 5054:14–5057:2 (Test. of A. Baker).

[579] *Id.*

requirement by funding K–12 education, alone, in 2009–10 and 2010–11 at a higher percentage of the overall state budget than was spent on all education sectors in 2008–09.[580]

325. As Florida entered into economic recovery, however, funding for the FEFP has increased each year since fiscal year 2012–13.[581] Gains in FEFP appropriations since fiscal year 2011–12 have outpaced gains to general revenue appropriations as a whole.[582]

326. Because of the extraordinary and historic economic fluctuations from fiscal years 2002–03 through 2011–12, no time series or trend analysis using any one of these years, or the period collectively, provides a valid or meaningful benchmark for analyzing education funding in Florida. In this regard, Plaintiffs' focus on budgeted funding levels in the 2007–08 school year as a benchmark against which to measure the adequacy of funding for Florida schools, is misplaced.[583] Indeed, according to one of Plaintiffs' expert witnesses, many states have not returned education spending to pre-recession levels.[584] Nevertheless, Florida's state portion of the FEFP is the highest ever on a per-student basis.[585]

327. A more appropriate analysis of Florida's support of K–12 education is to examine longer periods of time that extend back to the pre-economic boom and bust cycle discussed above.[586]

328. When analyzed over an extended period, it is evident that funding per FTE student under the FEFP has steadily increased over time:[587]

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[580] Ex. 3422; Tr. Vol. 32 at 4871:18–4873:18 (Test. of L. Champion).

[581] Ex. 3439.

[582] Exs. 234, 255, 257; Tr. Vol. 34 at 5046:18–5052:5 (Test. of A. Baker).

[583] Tr. Vol. 34 at 5057:3–5058:10 (Test. of A. Baker).

[584] Tr. Vol. 17 at 2751:16–2572:4 (Test. of D. Farrie).

[585] Ex. 3439.

[586] Tr. Vol. 34 at 5057:3–5060:19 (Test. of A. Baker).

a. From 1990–91 through 1999–2000 (pre-housing/real estate boom), FTE student funding increased an average of 1.98% per year.

b. From 2000–01 through 2007–08 (housing/real estate boom years), per FTE student funding increased an average of 5.1% per year. However, these funding increases were skewed based on inflated real estate values that were unsustainable.

c. From 2008–09 through 2012–13 (Great Recession and period of declining real estate values), per FTE funding decreased an average of 2.1% per year.

d. When combining the economic boom and bust years of 2000 to 2013, per FTE funding increased by 2.3%, which is a higher rate of increase than the annual rate of increase during the 1990s.

From 2013–14 to 2015–16, per student FTE increased an average of 3.69% per year.[588]

329. In 15 of the 17 years during the period from 1998–99 to 2014–15, FEFP funding per student outpaced the Consumer Price Index ("CPI").[589]

330. By fiscal year 2014–15, actual appropriations for the FEFP were above what the funding level would have been if the Legislature had relied solely on CPI increases and FTE student growth to determine FEFP funding levels since 1997–98.[590]

331. Thus, despite the volatility of the overall economy and severe impact of the Great Recession on the state of Florida, funding for education has been remarkably stable, has

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[587] Ex. 3439; Tr. Vol. 32 at 4868:9–4869:5 (Test. of L. Champion).

[588] *Id*.

[589] Ex. 249; Tr. Vol. 34 at 5058:22–5060:19 (Test. of A. Baker).

[590] Ex. 249; Tr. Vol. 34 at 5059:14–5060:19 (Test. of A. Baker).

increased over time, and has been prioritized by state and locally elected officials and policymakers.[591]

332. Although the FEFP does not set any particular mix or balance of state and local revenues, in only two out of the twenty-five years from 1990–91 to 2014–15, have local funds comprised a majority of FEFP funding. That occurred in fiscal years 2008–09 and 2009–10, when the reduction in real property taxable values lagged the reduction in state general revenues.[592]

333. In the period 1990–91 to 2014–15, the state-local mix of FEFP funds has ranged from a high of 62% state (1997–98) to a low of 45% state (2009–10). As of the 2014–15 fiscal year, state funds comprised 56% of total FEFP funds.[593]

334. During the Great Recession and in its aftermath, the state and local school districts reasonably managed budgets while maintaining instructional services to the classroom. In this regard, the evidence shows that school districts maintained healthy financial reserves as measured by the percentage of assigned and unassigned fund balance in the general fund as a percentage of revenue in the general fund.[594] This ratio is defined as the "financial condition ratio."[595]

335. The Department of Education monitors the financial condition ratio and considers a ratio of between 3% and 5% to be acceptable in most instances. As of February 1, 2009,

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[591] Ex. 3439; Tr. Vol. 33 at 4968:9–4969:7 (Test. of L. Champion); Exs. 230, 254, 255, 257; Tr. Vol. 34 at 5043:12–5054:13, 5063:17–5064:13 (Test. of A. Baker).

[592] Ex. 3683; Tr. Vol. 32 at 4875:5–19 (Test. of L. Champion); Ex. 260; Tr. Vol. 34 at 5054:14–5057:2 (Test. of A. Baker).

[593] Ex. 3683; Tr. Vol. 32 at 4875:5–19 (Test. of L. Champion).

[594] Ex. 3442; Tr. Vol. 32 at 4880:22–4882:3 (Test of L. Champion).

[595] Ex. 3442; Tr. Vol. 32 at 4878:23–4879:5 (Test of L. Champion).

school districts were required to notify the Commissioner of Education if the financial condition ratio was projected to fall below 3%, and to submit a fiscal recovery plan if the ratio was projected to fall below 2%.[596]

336. As shown below, during the economic downturn, the statewide financial condition ratio for all school districts combined increased, and has remained strong:[597]

| Fiscal Year | Financial Condition Ratio |
|---|---|
| 2007–08 | 7.73% |
| 2008–09 | 8.37% |
| 2009–10 | 10.01% |
| 2010–11 | 12.97% |
| 2011–12 | 12.06% |
| 2012–13 | 10.49% |
| 2013–14 | 9.46% |

337. At the same time, sufficient funding was provided by the State to meet class size requirements (as discussed in Section V.C). In addition, during the period 2004–05 to 2013–14, the ratio of students per instructional staff improved from 14.9 to 14.0, indicating that more instructional staff were available in schools throughout the state.[598] Finally, the quality of teaching staff has remained strong—as of the 2012–13 school year, nearly 98% of teachers were rated "highly effective" or "effective" by their supervisors.[599] And in the 2013–14 school year, some 94% of classrooms were taught by teachers designated as "highly qualified" under state and federal law.[600]

338. With respect to Plaintiffs' allegation that Florida's funding for education should be evaluated and compared to funding systems and levels in other states, the Court finds that

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[596] Ex. 3442; Tr. Vol. 32 at 4878:23–4879:15 (Test of L. Champion).

[597] *Id*.

[598] Ex. 3412; Tr. Vol. 32 at 4874:2–18 (Test of L. Champion).

[599] Exs. 1883, 1884.

[600] Ex. 3368.

such comparisons, while probative, are not always helpful as a meaningful comparisons. For, example, Plaintiffs' focus is on various methodologies which compare Florida's educational spending with other states, all of which seem to show Florida at or near the bottom.[601] On the other hand Defendants want to focus on student success on national test scores, especially, when compared to other states who spend more money on education than Florida. So, while this Court will utilize State to State comparisons, it must be treated with the same caution that should always accompany the examination of statistical data. In other words, while helpful, statistical comparisons are not always capable of exact and accurate comparisons. What follows, in paragraphs 349-342, are comparative data analyses by the Defendants which the Court did find to be helpful in trying to understand why Plaintiffs multi-state comparison of Florida's "inadequate funding"[602]are not the whole story. Spending standing alone, is not the full measure of the matter under review.

339. The largest expenditure in Florida school districts (over 80%) is attributable to staff salaries and benefits.[603] Yet, as detailed in Section VI below, the evidence indicates that sufficient funding has been provided to hire sufficient numbers of teachers to meet class size requirements, to continue to lower students to instructional staff ratios, to hire and retain teachers rated "highly effective" or "effective" by their supervisors, and to staff classrooms with "highly qualified" teachers. At the same time, school districts have, overall, maintained healthy and stable financial condition ratios.

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[601] Ex. 1704. 4314, 4035; Tr. Vol. 15 at 2341:17-2342:17 (Test of J. Hall); 17 at 2514:3-2516:16 (Test of D. Farrie)

[602] Id.

[603] Tr. Vol. 32 at 4822:7–13 (Test of L. Champion).

340. The evidence also indicates that teacher salaries in Florida, which are set at the local school district level through collective bargaining, are competitive compared to salaries in comparable professions in the state. Based on recent U.S. Department of Labor data, elementary school teachers in Florida make an average of 110% of the average salary of comparable occupations, middle school teachers in Florida make 93% of the average salary in comparable occupations, and high school teachers in Florida make 106% of the average salary in comparable professions.[604] The weight of the evidence does indicate that the level of teacher pay in Florida is sufficient to retain a qualified and competent teacher workforce. However, to attract teachers to enter into and continue in the teaching profession, Florida's educational policy will need to continue to address their needs. This is especially true because teachers are the most valuable resource in the classroom, and students with poor social skills and developmental issues present a challenge to even the most experienced, dedicated and skilled teachers.

341. Furthermore, national rankings of education spending relied on by Plaintiffs do not take account of or control for important differences that impact such rankings, such as cost of living (Florida has a relatively lower cost of living compared to high-spending northeastern states); sources and level of personal income (Florida has a relatively high percentage of income from Social Security and retirement plans); and the share of school age population of the total population in a state (Florida has a relatively lower proportion of school-age residents to total residents). Without controlling for these differences, cross-state funding rankings do not provide an apples-to-apples comparison.[605]

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[604] Exs. 200, 201, 202; Tr. Vol. 34 at 5068:10–5069:18, 5072:18–5074:22 (Test. of A. Baker).

[605] Ex. 240; Tr. Vol. 34 at 5064:15–5067:22, 5070:1– 5072:17 (Test. of A. Baker).

342. In addition, national rankings presented by Plaintiffs that purport to rank the "fairness" of school funding systems are not connected in any way to student performance outcomes.[606] These rankings also fail as a reasonable measure because they are not based on current spending of schools.[607] According to Dr. Hanusheks's testimony, the extent these rankings are based on simply spending more money without a demonstrated connection to achievement results, they are meaningless.[608]

**J. "Cost Studies"**

343. Plaintiffs assert that the State should conduct a "cost analysis" to determine the amount of funding to "institute a high quality education system" and request that the Court order Defendants to "conduct studies to determine what resources and standards are necessary to provide a high quality education."[609]

344. Even if there were no constitutional concerns regarding such a request, the weight of the evidence shows that cost studies are neither a superior method to Florida's processes for budgeting and appropriating public funds to schools, nor have such studies been shown to be a valid or reliable method for determining the sufficiency of public-education funding.[610]

345. As discussed in Section V.H above, the Florida budgeting and appropriations process is a constitutionally prescribed process that requires a balanced budget, requires budgets to be prepared in accordance with a long-range financial outlook, and limits revenues that can be

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[606] Tr. Vol. 17 at 2552:16–2552:12 (Test. of D. Farrie).

[607] Tr. Vol. 17 at 2541:4–9 (Test. of D. Farrie).

[608] Exs. 175, 176, 177, 178, 179, 180, 181, 182, 286, 287, 288, 289; Tr. Vol. 28 at 4235:7–4243:17 (Test. of E. Hanushek).

[609] 2d Am. Compl. ¶ 28, Prayer for Relief ¶ c(2).

[610] Ex. 283; Tr. Vol. 28 at 4223:1–4236:8 (Test. of E. Hanushek).

raised.[611] The process also includes substantive input from the Department of Education and State Board of Education, reflecting education policy priorities and objectives in a legislative budget request, input from the Governor's office, the Legislature, educational stakeholders and interest groups, and the public at large. The state budgeting process considers the cost and effectiveness of particular programmatic initiatives, and it considers growth in student enrollment (a major driver of cost) as well as actual school-district experience in providing various education programs.[612]

346. In addition, the FEFP has numerous cost-based elements, including the number of students to be educated ("FTE"), program cost factors, the District Cost Differential, sparsity and declining enrollment supplements, transportation, and the class-size-reduction categorical.[613] Thus, Plaintiffs' assertion that the state education-funding system does not consider costs is incorrect and is without evidentiary support.

347. The weight of the evidence demonstrates that Florida's funding system directs more funds to schools with high numbers of economically disadvantaged students and to schools with low student performance.[614] With respect to Plaintiffs' criticism that the FEFP does not weigh expressly for poverty, Plaintiffs' own expert witnesses admitted that many states do not do so or even allocate additional funds, as Florida does, for students with English-language-learning or special-education needs.[615] As detailed above, Florida's funding system also results in

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[611] Art. III, § 19(a), (c), Art. VII, § 1(c), (d), Fla. Const.

[612] Tr. Vol. 33 at 4945:12–4947:2 (Test. of L. Champion).

[613] Ex. 3680; Tr. Vol. 32 at 4807:7–22 (Test. of L. Champion).

[614] Ex. 262; Tr. Vol. 32 at 4856:15–4860:5 (Test. of L. Champion).

[615] Tr. Vol. 2 at 153:18–154:21, 155:15–157:20 (Test. of M. Rebell) (discussing Verstegen, Deborah A., *Public Education Finance Systems in the United States and Funding Policies for Populations with Special Educational Needs*, Education Policy Analysis Archives, Vol. 19 No.

adequate funding for school districts to hire and retain adequate numbers of well-qualified teachers and to meet class-size requirements. (*See also* Section VI, discussing the availability of resources in school districts throughout Florida.)

348. There is insufficient evidentiary support for Plaintiffs' allegations that a lack of resources has adversely affected student performance. To the contrary, as discussed in Sections IV and IX of these findings, student performance in Florida has steadily improved during periods of school budget increases and school budget cuts, and Florida has outperformed many states that spend considerably more per student. As discussed in Section IX, statistical analyses demonstrate a lack of connection between the level of resources available to Florida schools and student outcomes. The sufficiency of the funding available to Florida schools is also demonstrated by the growing charter-school market, in which charter-school operators continue to voluntarily operate schools on fewer dollars per student than are available to traditional public schools.[616] Plaintiffs' assertion that the state funding system does not result in sufficient funding for Florida's public schools is not supported by the weight of the evidence.

349. The evidence indicates that when districts have had more funds in the past, they have spent the funds in ways that have not been demonstrated to improve student performance outcomes, such as across-the-board pay raises.[617] Therefore, testimony about the desire for additional funds from Plaintiffs' school-district witnesses does not provide persuasive support for Plaintiffs' assertions that more funding is needed to improve student performance.

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21, at 17–18 (2011), *available at* http://epaa.asu.edu/ojs/article/view/769/923); Tr. Vol. 17 at 2555:20–2557:19 (Test. of D. Farrie).

[616] Tr. Vol. 36 at 5351:4–5352:9 (Test. of A. Miller).

[617] *See, e.g.*, Tr. Vol. 8 at 1115:12–1117:2 (Test. of N. Marks); Tr. Vol. 9 at 1345:8–1346:11 (Test. of E. Roy); Tr. Vol. 22 at 3278:7–3279:2 (Test. of D. Robinson); Tr. Vol. 24 at 3642:6–3643:6, 3563:24–3564:12 (Dep. Test. of J. Marte).

350. This type of testimony also illustrates the problem with cost studies: specifically, such studies purport to calculate costs based on inefficiencies built into current school operations. All of the various cost study approaches (*i.e.*, "professional judgment," "evidence-based," "successful schools," "cost function"), assume the general structure of teacher salaries and that the only policy to be considered is a general pay increase for existing staff—both effective and ineffective staff. Existing programs—both effective and ineffective—are retained in estimating costs.**[618]**

351. The various cost study approaches lack scientifically sound methodologies and have been shown to produce estimates of funding levels that are not connected to actual student outcomes.[619] For example, a professional judgment study conducted in the state of North Dakota produced recommended spending patterns that could be compared with student achievement. The schools that were furthest below the amount recommended by the professional-judgment study produced the highest achievement, while those schools with supposedly sufficient funds, produced the lowest achievement.**[620]**

352. Systematic analyses of the results of costs studies also indicate a huge variation in the level of spending that is recommended by such studies. Even after controlling for regional cost differences, and expressing spending in constant dollars, cost studies have produced estimates ranging from $5,000 per student to over $15,000 per student.[621] In the cost studies that were conducted in the New York adequacy litigation, for example, the estimated additional funding "needed" ranged from slightly over $1.9 billion to over $5.6 billion, or almost a 300%

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[618] Tr. Vol. 28 at 4227:24–4233:23 (Test. of E. Hanushek).

[619] Tr. Vol. 28 at 4227:24–4232:8 (Test. of E. Hanushek).

[620] Tr. Vol. 28 at 4228:18–4229:19 (Test. of E. Hanushek).

[621] Ex. 283; Tr. Vol. 28 at 4232:15–4234:16 (Test. of E. Hanushek).

difference.[622] And in adequacy litigation in Texas, cost studies were presented recommending additional state spending ranging from $563 million on the low end to $6.171 billion on the high end.[623] These wide variations undercut the validity and reliability of cost studies.

353. Moreover, cost studies and subsequent funding based thereon in New York have not led to the projected levels of student performance.[624] The weight of the evidence indicates that such studies are not a reasonable or desirable alternative to the Florida school budgeting and funding processes.

## VI. Findings Related to Resources in Florida Schools and School Districts

### A. Budgets and Expenditures

354. Florida law provides local school districts with adequate funding to allow students the opportunity to obtain a high-quality education. The evidence shows that Florida school districts generally have healthy fund balances, strong financial ratings from outside firms such as Moody's and Fitch, and the capacity to raise additional funding if the local school board and/or the local communities desire to do so.[625] And in recent years, districts statewide have annually rolled over around $350 million in state and federal funding.[626] For these reasons, the Court finds, that overall, complaints from local school district officials about a lack of funding not

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[622] Tr. Vol. 2 at 136:10–23 (Test. of M. Rebell).

[623] *See Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist*., 176 S.W.3d 746, 769–70 (Tex. 2005).

[624] Exs. 166, 197; Tr. Vol. 28 at 4200:2–4201:5, 4218:21–4222:14 (Test. of E. Hanushek); Tr. Vol. 2 at 142:1–145:7 (Test of M. Rebell).

[625] Exs. 3442, 3446; Tr. Vol. 32 at 4880:22–4881:9 (Test. of L. Champion); Tr. Vol. 33 at 4929:23–25 (Test. of L. Champion); Tr. Vol. 22 at 3259:8–10 (Test. of D. Robinson); Tr. Vol. 11 at 1564:24–1565:9 (Dep. Test. of M. Burke); Tr. Vol. 36 at 5477:6–11 (Dep. Test. of K. Blocker).

[626] Tr. Vol. 33 at 4939:17–4941:10 (Test. of L. Champion).

persuasive—any lack of resources is more the result of local school board and district budgeting and resource-allocation choices, than a lack of funding made available by the State.

355. The vast majority of school districts have healthy reserve funds, which they were able to maintain throughout the recession.[627] These funds are available for use by local school boards to purchase additional resources, services, programs, or staff that the board feels is necessary or desirable to educate the students in its district. State policy requires that districts maintain a certain "financial condition ratio," equivalent to roughly 3% of the district's general fund revenues.[628] Many school districts have board policies to maintain balances in excess of the required minimum, such as 5% of revenues. Most of the school districts focused on by Plaintiffs have balances well over this minimum, some over 10% of revenues, while at the same time witnesses from these districts complain of a lack of resources.[629]

356. For the few districts whose reserves have fallen below the state minimum, the State sent staff into the districts to assist the district administrators with accounting and budgeting as well as identifying inefficiencies or other costs-saving and revenue-generating opportunities.[630] Many other districts with similar student enrollment and similar taxable values have not had these issues and have been able to maintain healthy fund balances.[631] Evidence shows that, in districts with reserves that fell below the state minimum, the financial situation

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[627] Ex. 3442; Trial Tr. Vol. 32 at 4880:22–4881:9 (Test. of L. Champion)

[628] Tr. Vol. 33 at 4978:23–4979:17 (Test. of L. Champion).

[629] Tr. Vol. 5 at 664:5–665:12 (Test. of N. Vitti); Tr. Vol. 6 at 834:6–22 (Test. of O. Roberts); Tr. Vol. 11 at 1562:13–1564:23 (Dep. Test. of M. Burke); Tr. Vol. 22 at 3258:9–3260:15 (Test. of D. Robinson); Tr. Vol. 24 at 3687:1–12 (Dep. Test. of J. Marte); Ex. 5364 (Dep. of. C. Morrison) at 50:9–25.

[630] Tr. Vol. 32 at 4884:17–4885:10 (Test. of L. Champion); Tr. Vol. 7 at 1051:3–20 (Test. of N. Marks); Tr. Vol. 17 at 2599:20–2600:20, 2613:5–6 (Test. of K. Ferree).

[631] Tr. Vol. 32 at 4885:11–4886:17 (Test. of L. Champion); Tr. Vol. 18 at 2672:24–2678:12 (Test. of K. Ferree); Exs. 3419, 3442.

was the result of ineffective local choices, such as a failure to reduce staff or consider school consolidation in response to shifting populations and/or lower student enrollment, and that these fund balances have returned to healthy levels.[632]

357. Although many districts implemented cost-saving measures during the recession beginning in 2008, witnesses testified that any cuts were kept away from the classroom—for example, by reorganization of staff at the district administration level.[633] And any programs that were cut have been restored during the economic recovery. Testimony from district witnesses about a supposed need for additional funding is complicated due to local political tolerances related to property taxes. Although all of the school districts in Florida have excess capacity for generating revenue through local property taxes or sales surtaxes, many of the district witnesses testified that they had not considered any voter referenda to increase local taxes, analyzed how much additional revenue would be raised, or studied voter support for such measures.[634] Many cited the "political heat" on locally elected board members and superintendents involved in raising additional revenue, while at the same time bemoaning a lack of additional revenue from the State.[635] This all strongly suggests that these are political issues about local tax policy versus legislative request for more state funding.

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[632] Tr. Vol. 32 at 4884:17–4885:10 (Test. of L. Champion).

[633] *E.g.*, Tr. Vol. 5 at 669:9– 670:15 (Test. of N. Vitti); Tr. Vol. 24 at 3650:1–13 (Dep. Test. of J. Marte); Ex. 5364 (Dep. of. C. Morrison) at 119:8–120:4; Tr. Vol. 36 at 5460:3–16, 5466:7–20, 5467:23–5468:3 (Dep. Test. of K. Blocker); Tr. Vol. 7 at 994:4–7 (Test. of G. Littleton).

[634] Ex. 3446; Tr. Vol. 33 at 4929:23–25 (Test. of L. Champion).

[635] *E.g.*, Tr. Vol. 22 at 3301:22–3302:25 (Test. of D. Robinson); Tr. Vol. 6 at 847:25–848:21 (Test. of O. Roberts); Tr. Vol. 25 at 3739:10–20 (Dep. Test. of A. Weidner).

358. Many school districts have had successful referenda to raise additional millage or sales tax revenue.[636] Others, such as Citrus County, have had referenda that failed, but testimony shows that the district was still able to maintain a high-quality education provided to students.[637] Another example of the impact of local choices on revenue is Hernando County, which is just south of Citrus County and has a similar student population. After several years of receiving additional capital outlay funds through a half-penny sales tax, rather than asking voters to renew the expiring half-penny sales tax, the district decided to partner with the county and city governments on a referendum for an additional full penny, half of which would be used by the school district in part to provide an iPad to each student. The referendum failed, but another referendum a year later was put to the voters, this time asking only for the half-penny sales tax to fund school facilities improvements, which passed by a wide margin.[638]

359. School district witnesses also reported that some local boards of education voluntarily forgo additional revenue that could be raised at the sole discretion of the school board, *i.e.*, without voter approval. For example, the school board of Indian River County chose not to assess an additional .25 "critical millage" authorized by the Legislature in 2009–10 because, according to the school district's finance officer, the board did not feel that the administration had explained why the money was needed.[639] And Palm Beach County chose not to participate in the Race to the Top grant,[640] forgoing an additional $37 million that could have

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[636] Ex. 3429; Tr. Vol. 33 at 4933:22–4934:8 (Test. of L. Champion).

[637] Tr. Vol. 36 at 5458:5– 5483:25 (Dep. Test. of K. Blocker).

[638] Tr. Vol. 33 at 4933:22–4934:8 (Test. of L. Champion); Tr. Vol. 14 at 2102:2–2103:23 (Test. of L. Romano).

[639] Ex. 5364 (Dep. of C. Morrison) at 131:15–132:12, 132:19–133:3.

[640] Tr. Vol. 10 at 1507:1–19 (Dep. Test. of M. Burke); Tr. Vol. 22 at 3268:11–22 (Test. of D. Robinson).

been spent on improving achievement in low performing schools, professional development for teachers, and other projects.[641]

360. As another example of the impact of district choices, the superintendent from Alachua County, which levies an additional voted mill for operating expenses, complained of a lack of funding to implement a seven-period day in high schools.[642] At the same time, Duval County, which does not have any voted millage or sales surtax, has been able to fund an eight-period day.[643]

361. Not only does the evidence show the important effect of policy choices among districts, but it also shows the impact of policy choices made by different superintendents in the same district. Superintendents and administrators from Duval, Miami-Dade, Hernando, and Alachua counties all testified about initiatives implemented when a new superintendent was brought into the district.[644] Some of these related to programs that the new superintendent felt would be more effective, while others dealt with greater efficiencies in district administration, or in consolidating schools to save costs and better focus resources. For example, the incoming superintendent in Duval County redirected millions of dollars from the central office to the classrooms.[645] The Miami-Dade finance officer testified about budget mismanagement under the previous superintendent, which was corrected by the current administration.[646] In each case,

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[641] Tr. Vol. 33 at 4942:4–21(Test. of L. Champion).

[642] Tr. Vol. 6 at 797:23–798:8 (Test. of O. Roberts).

[643] Tr. Vol. 5 at 694:2–14 (Test. of N. Vitti).

[644] *E.g.*, Tr. Vol. 5 at 688:7– 706:18 (Test. of N. Vitti); Tr. Vol. 24 at 3564:2– 3602:9 (Dep. Test. of J. Marte); Tr. Vol. 6 at 869:12–870:10 (Test. of O. Roberts).

[645] Tr. Vol. 5 at 669:9– 670:15 (Test. of N. Vitti).

[646] Tr. Vol. 24 at 3625:18–3626:2 (Dep. Test. of J. Marte).

there is no reason that these policies could not have been implemented earlier, using resources more efficiently and effectively.[647]

362. In Alachua County, the incoming superintendent commissioned an external review by the Florida Association of District School Superintendents, which made several recommendations for more effective and efficient operation of the district, many of which have been or are being adopted.[648] Additionally, before his arrival, an audit by the Auditor General found major concerns regarding the transportation department, including large numbers of students improperly being counted as riding district buses.[649] A study was also done in Sarasota County by an outside consulting firm, MGT of America, which made numerous recommendations for more efficient and effective use of district funds.[650]

363. The State has limited responsibility or control over the choices made by local school boards when it comes to local taxation, budgeting, expenditures, and management practices, all of which are properly the role of local boards under the Constitution.[651]

**B. School District Programs and Accomplishments**

364. Defendants introduced into evidence business records from 25 school districts—comprising over two million of the State's approximately 2.7 million K–12 public school students—describing their "high quality" educational offerings, resources, and accomplishments. These districts include all of those on which Plaintiffs have focused in this case, including

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[647] *See, e.g.*, Tr. Vol. 5 at 688:7– 706:18 (Test. of N. Vitti); Tr. Vol. 6 at 874:23–875:3 (Test. of O. Roberts).

[648] Ex. 1722; Tr. Vol. 6 at 850:19– 859:10 (Test. of O. Roberts).

[649] Ex. 3734; Tr. Vol. 6 at 859:11–861:2 (Test. of O. Roberts).

[650] Ex. 1119; Tr. Vol. 25 at 3738:15–3774:18 (Dep. Test. of A. Weidner).

[651] Art. IX, § 4, Fla. Const.

schools attended by the children of Plaintiffs.[652] While these documents admittedly are putting each district's "best foot forward," they set forth a detailed array of educational offerings and accomplishments of the districts and their students. As such, the documentary evidence presented by Defendants undercuts the credibility of complaints from Plaintiffs' school district witnesses about school resources.

365. Among other things, the evidence shows that these school districts offer a variety of choice and magnet programs and schools; STEM, STEAM, and robotics programs; college and career enhancement programs such as Advanced Placement, International Baccalaureate, Cambridge, and career and technical education with industry certification; dual enrollment; and arts, music, and many other elective and extracurricular programs. Moreover, district materials indicate that these programs have been increasing in availability and participation through the recession, not decreasing.[653]

366. Districts across the State also have received many national recognitions and awards. A large number of Florida high schools are recognized among the best in the nation by

[652] Exs. 311–18 (Alachua); Exs. 344–47 (Bay); Exs. 352–53, 367–71 (Brevard); Exs. 373–76 (Broward); Exs. 384–88 (Citrus); Exs. 69, 563–65, 585 (Miami-Dade); Exs. 624–29 (Dixie); Exs. 784–87, 814 (Duval); Exs. 70, 835–40 (Flagler); Ex. 842 (Franklin); Exs. 873–81 (Gadsden); Exs. 71, 72, 906–11 (Hernando); Exs. 73, 74, 927–32 (Hillsborough); Exs. 75, 76, 938–41 (Indian River); Exs. 1000–06 (Leon); Exs. 77, 1019–26, 1029, 1032, 1035 (Orange); Exs. 1038–44 (Osceola); Exs. 1046–49, 1053 (Palm Beach); Exs. 1070–74 (Pasco); Exs. 1098, 1077 (Polk); Exs. 1103–07, 78–81 (Santa Rosa); Exs. 1111–16, 1122, 1129, 1132 (Sarasota); Exs. 1135–41 (Seminole); Exs. 1148–51 (St. Lucie); Exs. 1190–99 (Volusia).

[653] *Id*. *See generally* Tr. Vol. 5 at 660:23–734:6 (Test. of N. Vitti); Tr. Vol. 6 at 824:7–915:12 (Test. of O. Roberts); Tr. Vol. 9 at 1300:19–1351:2 (Test. of E. Roy); Tr. Vol. 14 at 2025:14–2117:10 (Test. of L. Romano); Tr. Vol. 16 at 2456:13–2478:9 (Test. of D. Boyd); Tr. Vol. 22 at 3249:23–3315:2 (Test. of D. Robinson); Tr. Vol. 24 at 3551:9–3665:13 (Dep. Test. of J. Marte).

*Newsweek, U.S. News & World Report*, and the *Washington Post*.[654] (*See also* Section VI.C below.)

367. Two Florida school districts—Miami-Dade in 2012 and Orange in 2014—have been recipients of the prestigious Broad Prize, a national award given each year to the urban school district most successful in increasing student performance and closing achievement gaps.[655] Palm Beach was a finalist for the prize in 2012, losing out to Miami-Dade.[656] Miami-Dade's superintendent was named National Superintendent of the Year in 2014, and Hillsborough's superintendent was one of four finalists for the award in 2015.[657]

### C. Accreditation of Districts and Schools

368. All Florida school districts have achieved accreditation through AdvancED, formerly known as the Southern Association of Colleges and Schools ("SACS"), for at least all of their high schools, and in many districts, all schools are accredited through either school- or district-level accreditation.[658] AdvancED is an outside, non-profit, non-partisan organization that conducts rigorous, on-site external reviews of pre-K–12 schools and school systems across the United States and in 70 other countries.[659]

369. Testimony from AdvancEd's representative confirms that AdvancED's process and standards are thorough, rigorous, and based on decades of research and experience in school accreditation. Before accrediting a school or district, or renewing accreditation as required every

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[654] *Id*.

[655] Exs. 564, 3341, 2892; Tr. Vol. 24 at 3602:2–4, 3630:11–3632:4 (Dep. Test. of J. Marte); Tr. Vol. 23 at 3470:3–22 (Dep. Test. of R. Collins).

[656] Exs.1048, 88 at 9; Tr. Vol. 22 at 3305:6–19, 3311:22–3312:18 (Test. of D. Robinson).

[657] Ex. 2891.

[658] Exs. 11, 12.

[659] Tr. Vol. 34 at 5097:15–5098:19 (Dep. Test. of A. Bohling); Exs. 1, 2, 3, 5, 6, 7.

five years, AdvancED requires the school or district to submit a self-assessment report supported by evidence certifying that it meets AdvancED's Standards for Quality. AdvancED then sends a team of independent reviewers, comprised of educators, administrators, and educational experts, into the district and/or schools. The review team not only visits the school district's physical facilities, but the reviewers conduct multiple stakeholder interviews, getting input from teachers, administrators, and parents. The review team produces an external review report, detailing the evidence of meeting the standards, including the resources and programs available.[660]

370. Among the five accreditation standards for quality schools are "Standard 3: Teaching and Assessing for Learning," which ensures that "The school's curriculum, instructional design, and assessment practices guide and ensure teacher effectiveness and student learning."[661] Further, "Standard 4: Resources and Support Systems," requires that "The school has resources and provides services that support its purpose and direction to ensure success for all students."[662] (Standards 3 and 4 for school districts similarly require that "The system's curriculum, instructional design, and assessment practices guide and ensure teacher effectiveness and student learning across all grades and courses," and that "The system has resources and provides services in all schools that support its purpose and direction to ensure success for all students.")[663] The following indicators are used to evaluate whether a school meets Standard 4:[664]

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[660] Tr. Vol. 34 at 5097:1–14, 5099:9–5100:1, 5120:15– 5125:10 (Dep. Test. of A. Bohling).

[661] Ex. 2 at 00000014.

[662] *Id*.

[663] Ex. 3 at 00000023.

[664] Ex. 2 at 00000019–20.

- 4.1 "Qualified professional and support staff are sufficient in number to fulfill their roles and responsibilities necessary to support the school's purpose, direction, and the educational program."
- 4.2 "Instructional time, material resources, and fiscal resources are sufficient to support the purpose and direction of the school."
- 4.3 "The school maintains facilities, services, and equipment to provide a safe, clean, and healthy environment for all students and staff."
- 4.4 "Students and school personnel use a range of media and information resources to support the school's educational programs.
- 4.5 "The technology infrastructure supports the school's teaching, learning, and operational needs."
- 4.6 "The school provides support services to meet the physical, social, and emotional needs of the student population being served."
- 4.7 "The school provides services that support the counseling, assessment, referral, educational, and career planning needs of all students."

371. In order to be accredited, schools must meet all of the accreditation standards as determined by AdvancED.[665] In addition, all accredited districts and schools certify that they meet these standards and also that they will notify AdvancED of any changes to their ability to meet the standards.[666] Plaintiffs' assertion that some of the thousands of accredited schools in Florida have "D" and "F" grades is interesting.[667] However, as explained by AdvancED's

[665] Tr. Vol. 34 at 5112:4–14, 5116:7–16 (Dep. Test. of A. Bohling)

[666] Ex. 10; *see, e.g.*, Ex. 14 at 246–47.

[667] Tr. Vol. 34 at 5147:10–14 (Dep. Test. of A. Bohling).

representative as well as one of Plaintiffs' superintendent witnesses, the accreditation process looks at inputs—whether schools have the resources, systems, and policies in place to meet their mission—not only at student performance.[668] The statements made by schools and districts in the accreditation and public documents confirming all of the resources and programs they have available are at somewhat at variance with their testimony at trial about a need for more resources.[669]

372. The accreditation of Florida schools and districts provides further support that the resources available are adequate to provide students with a high-quality educational opportunity.

### D. Availability of Effective Teachers

373. Plaintiffs have presented no evidence showing that Florida schools are not able to hire and retain high-quality educators. For the 2012–13 school year, nearly 98% of teachers were rated "effective" or "highly effective" by their school districts under the district's chosen evaluation protocol.[670] Moreover, for the 2013–14 school year, over 94% of courses were taught by teachers meeting the "highly qualified" standard under the No Child Left Behind Act.[671]

374. The comprehensive annual financial reports of many of the school districts upon which Plaintiffs focus show that, over the past decade and through the recession, student-to-teacher ratios remained constant, and in many cases, decreased (*i.e.*, fewer students per teacher). These reports also show that teacher salaries were either maintained or increased.[672] Indeed,

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[668] Tr. Vol. 34 at 5144:16–5145:12 (Dep. Test. of A. Bohling); Tr. Vol. 6 at 753:1–754:14 (Test. of O. Roberts).

[669] *See, e.g.*, Exs. 14, 30, 71, 82, 84, 87, 88, 89, 94, 95.

[670] Exs. 1883, 1884.

[671] Ex. 3368.

[672] Ex. 367 at 00180–81; Ex. 373 at 00009432–33; Ex. 563 at 149–51; Ex. 787 at 00015868, 00015882; Ex. 906 at 00017732–34; Ex. 932 at 00018452–53; Ex. 939 at 00018893–94; Ex.

testimony and documents from Duval and Miami-Dade counties, for example, highlight their record increases in teacher salary and their focus on protecting teachers and teacher pay during the recession, and the years since.[673]

375. It also is important to note that teacher recruitment, hiring, assignment, training, evaluation, and compensation-setting are responsibility of the local school districts, not of the State.[674] The role of local teachers' unions as to these matters also cannot be ignored. Teachers are guaranteed the right to collectively bargain under the Florida Constitution and statute.[675] School districts must negotiate and reach agreement with the local unions on almost all aspects of teacher employment, including discipline and removal of ineffective teachers.[676] Many school districts go beyond what is required to be negotiated and include the entire teacher evaluation instrument as part of their collective bargaining agreement, including the standards for a rating of "effective" or "highly effective."[677]

376. There is no evidence that any State teacher quality or funding policies has resulted in a lack of effective teachers to educate Florida's public school students. The State has implemented numerous policies and laws to assist and support districts in identifying, retaining, and appropriately placing effective teachers (and identifying and dealing with non-effective

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1035 at 00021525–26; Ex. 1038 at 00021767–69; Ex. 1053 at 00022938, 00022941; Ex. 1070 at 00023843–45; Ex. 1098 at 00025335–36; Ex. 1122 at 00026986, 00026988; Ex. 1190 at 00028622–23.

[673] Exs. 1740, 1753, 1754; Tr. Vol. 5 at 673:3–674:22 (Test. of N. Vitti); Tr. Vol. 24 at 3642:15–3643:6.

[674] Ex. 199; Tr. Vol. 31 at 4712:15–4717:7 (Test. of K. Hebda); Tr. Vol. 26 at 3970:9–16, 3973:7–21, 3975:8–13 (Test. of P. Stewart); Tr. Vol. 30 at 4608:24–4609:24 (Test. of M. Tappen).

[675] Art. I, § 6, Fla. Const.; §§ 447.201, .447.203, Fla. Stat.

[676] Tr. Vol. 31 at 4720:2–4721:6 (Test. of K. Hebda).

[677] Tr. Vol. 32 at 4765:19–4767:21 (Test. of K. Hebda); Ex. 1768.

teachers), including aligning teacher evaluations to student performance, allowing for increased pay for teachers in hard-to-staff schools, and ending teacher tenure.

377. Many districts employ reading and math "coaches" who assist teachers in improving the delivery of education to students. Districts also employ many other professional staff such as counselors, psychologists, social workers, behavioral specialists, media specialists, and IT professionals, who also support teachers and student learning.[678]

**E. Compliance with Class Size**

378. As detailed in Section V.C above, the State has consistently provided additional funding for school districts to meet the class-size requirements of the Florida Constitution.[679]

379. There is no credible evidence that lack of funding has caused districts to be out of compliance with class-size requirements. School district witnesses—from Duval, Alachua, Bay, Franklin, Palm Beach, Hernando, Gadsden, Orange, Miami-Dade, Sarasota, Citrus, Indian River, and Brevard—all testified that their districts have met and are meeting class-size requirements.[680] Evidence shows that any issues with class-size compliance were quickly remedied and, in any event, were the result of district management decisions, not a lack of state funding.[681]

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[678] Exs. 3478, 3479, 3480, 3481, 3482, 3483.

[679] Exs. 131, 132, 2880, 3680 at 00103482; Tr. Vol. 32 at 4844:21–4851:1 (Test. of L. Champion); *see also* Exs. 2875, 2876, 2877. 2878, 2879.

[680] Tr. Vol. 5 at 677:15–21 (Test. of N. Vitti); Tr. Vol. 6 at 840:18–841:7 (Test. of O. Roberts); Tr. Vol. 7 at 1030:25–1031:2 (Test. of G. Littleton); Tr. Vol. 8 at 1086:15–1087:9 (Test. of N. Marks); Tr. Vol. 9 at 1331:10–17 (Test. of E. Roy); Tr. Vol. 11 at 1553:21–1554:3 (Dep. Test. of M. Burke); Tr. Vol. 14 at 2057:13–23 (Test. of L. Romano); Tr. Vol. 18 at 2648:4–20 (Test. of K. Ferree); Tr. Vol. 22 at 3281:17–3282:1 (Test. of D. Robinson); Tr. Vol. 23 at 3466:15–18 (Dep. Test. of R. Collins); Tr. Vol. 24 at 3629:23–3630:1 (Dep. Test. of J. Marte); Tr. Vol. 25at 3749:19–22 (Dep. Test. of A. Weidner); Tr. Vol. 36 at 5480:12–19 (Dep. Test. of K. Blocker); Ex. 5364 (Dep. of C. Morrison) at 94:14–21; Ex. 5366 (Dep. of J. Preston) at 35:4–23.

[681] Tr. Vol. 14 at 2058:1–20 (Test. of L. Romano); Tr. Vol. 18 at 2648:4–20 (Test. of K. Ferree).

### F. District and School Improvement Plans

380. As described in Section III.G above, the State's school improvement and differentiated accountability ("DA") systems require that districts and schools develop and maintain district and school improvement plans to increase student achievement at lower-performing schools.[682]

381. These plans, which are developed by schools and districts with the support of the Department's office of school improvement and DA staff, identify barriers to student performance based on the needs of that individual school or district, strategies to overcome those barriers, and resources available to implement these strategies.[683] These plans provide districts and schools with the opportunity to identify resources to help their lower-performing students and to prepare district and school budgets to ensure that these resources are available.[684]

### G. Facilities

382. In paragraph 42 of the Second Amended Complaint, Plaintiffs alleged that the State "has not provided sufficient funding to meet school districts' school repair and maintenance needs" and that "[m]any districts have school facilities that are in need of serious repair, including roofs that have collapsed and moldy, 'sick' buildings." On Defendants' motion,

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[682] Exs. 1261, 1948, 1949; Tr. Vol. 26 at 4039:20–4041:18 (Test. of P. Stewart); Tr. Vol. 30 at 4586:25–4588:1, 4591:7–4600:9, 4601:11–4602:1 (Test. of M. Tappen).

[683] *See, e.g.*, Exs. 305, 306, 309, 342, 351, 372, 378, 379, 382, 393, 394, 397, 308, 350, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 586, 587, 588, 589, 590, 591, 630, 632, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 831, 833, 841, 898, 901, 902, 903, 904, 905, 925, 926, 933, 935, 936, 937, 968, 969, 971, 972, 973, 974, 975, 976, 1007, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1036, 1037, 1045, 1067, 1068, 1069, 1075, 1076, 1101, 1102, 1109, 1134, 1146, 1147, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1200, 1201, 1927, 1959, 1963, 1964, 1965.

[684] Tr. Vol. 10 at 1418:16–1419:9, 1450:3–1451:5 (Test. of S. Houston); Tr. Vol. 12 at 1864:15–1865:16, 1873:11– 1874:7 (Test. of G. Sitter); Tr. Vol. 30 at 4586:25–4588:1, 4591:7–4600:9, 4601:11–4602:1 (Test. of M. Tappen).

the Court required Plaintiffs to specifically identify any such facility conditions. In response to the conditions then identified by Plaintiffs, one of Defendants' expert witnesses, John S. Ratliff, a certified Florida building-code inspector and former Florida facilities director for the Santa Rosa County School District, with over 30 years of experience working with and managing that district's facilities program,[685] conducted an in-depth study of the facilities and districts identified by Plaintiffs. In addition to reviewing the school districts' financial reports, work plans, five-year facility surveys, and other documents, Mr. Ratliff interviewed facilities personnel in each school district with alleged facilities problems identified by Plaintiffs and personally inspected every school with alleged facilities problems in two districts.[686]

383. Based on his experience and his study of the specific facilities that Plaintiffs identified, Mr. Ratliff testified that all of the districts identified by Plaintiffs—as well as Florida's school districts in general—have access to sufficient resources to provide safe, secure, and well-maintained facilities.[687]

384. Furthermore, with respect to the specific facilities issues that Plaintiffs identified, Mr. Ratliff concluded that none of them posed any safety or security concerns, would detrimentally affect the delivery of educational services, or constituted a critical facilities issue that would require the removal of students from the site.[688]

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[685] Tr. Vol. 36 at 5377:11–5378:4, 5379:3–25 (Test. of J. Ratliff).

[686] Tr. Vol. 36 at 5412:24–5416:25 (Test. of J. Ratliff).

[687] Tr. Vol. 36 at 5406:21–5407:17, 5428:19–5429:7 (Test. of J. Ratliff).

[688] Ex. 303; Tr. Vol. 36 at 5418:5421:6 (Test. of J. Ratliff).

385. In fact, some of the maintenance issues identified by Plaintiffs had already been addressed and repaired—or related solely to schools that had been closed or facilities that were not being used to educate students.[689]

386. It should be noted that building and maintaining educational facilities are quintessentially local responsibilities. Local school districts typically own Florida's school facilities, and district personnel make myriad decisions about school location, utilization, student assignment, contractor and material selection, repair, maintenance, cleaning, and other issues that greatly affect the efficiency and effectiveness of the facilities program and the resources available in any given year.[690]

387. Furthermore, local school boards make important decisions about the level of taxation to support district capital plans. As discussed in Section V.E above, state law provides school districts with several mechanisms to raise funds for capital outlay. The amount of capital funding available in Florida is considerable—over $2.9 billion in the 2013–14 school year.[691] And according to the evidence in the record, no school district has taken full advantage of all the capital funding sources available in Florida.[692]

388. The weight of the evidence also shows that given available sources of capital funding, the key to a successful school-facilities program is effective management practices. For example, a report commissioned by the Alachua County School District showed that it had budgeted almost twice as much for facilities maintenance as the similarly sized Santa Rosa

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[689] Tr. Vol. 36 at 5421:9–24, 5426:5–5428:18 (Test. of J. Ratliff).

[690] *See, e.g.*, Tr. Vol. 36 at 5388:7–5391:21 (Test. of J. Ratliff).

[691] Ex. 4345; Tr. Vol. 32 at 4899:25–4900:10 (Test. of L. Champion).

[692] Tr. Vol. 36 at 5405:18–23 (Test. of. J. Ratliff).

County School District.[693] Mr. Ratliff testified that after his visits to schools in Alachua County, it was hard for him to see where and how the additional money in Alachua County had been spent.[694]

389. There is no persuasive evidence that Florida's school facilities are not safe, secure, and in compliance with applicable codes and standards; that any maintenance issues have not been or cannot be addressed as prioritized by individual school districts; or that there are any facilities problems that negatively impact the education of students.

390. Based on witness testimony, school-district documents, and the expert testimony of Mr. Ratliff, the Court finds that school districts in Florida have access to sufficient resources to provide safe, secure, and well-maintained facilities. The Court also finds no credible evidence of "collapsed roofs" or "sick" or "moldy" buildings as alleged by Plaintiffs.[695]

### H. Instructional Resources

391. Witnesses testified that their schools and classrooms are equipped with suitable textbooks and instructional materials, and they have appropriate technology, including computers, laptops, and smart boards, for use by their students and teachers.[696] Under the State's

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[693] Ex. 1722 at 00049701.

[694] Tr. Vol. 36 at 5431:14–5434:18 (Test. of J. Ratliff); *cf.* Tr. Vol. 36 at 5478:17–5479:22 (Dep. Test. of K. Blocker) (testifying that all facilities projects in the Citrus County School District had an identified source of funding).

[695] Plaintiffs themselves stated before trial that any collapsed roofs and sick or moldy buildings had been repaired. Pls.' Resp. to Order Compelling Additional Information (May 22, 2015).

[696] *See generally* Tr. Vol. 5 at 660:23–734:6 (Test. of N. Vitti); Tr. Vol. 6 at 824:7–915:12 (Test. of O. Roberts); Tr. Vol. 7 at 986:19–1032:13 (Test. of L. Romano); Tr. Vol. 14 at 2025:14–2117:10 (Test. of L. Romano); Tr. Vol. 16 at 2456:13–2478:9 (Test. of D. Boyd); Tr. Vol. 22 at 3249:23–3315:2 (Test. of D. Robinson); Tr. Vol. 24 at 3551:9–3665:13 (Dep. Test. of J. Marte); Tr. Vol. 23 at 3489:14–3541:18 (Dep. Test. of J. Hiltz); Ex. 5353 (Dep. of B. Cavallero) at 34:22–35:4, 35:8–22.

Digital Classrooms Plan, all districts have developed detailed technology plans and are working toward the goal of having a one-to-one student-to-device ratio in their districts.[697]

392. The sufficiency and adequacy of instructional resources also is confirmed by the certifications made by schools and districts in their submissions to AdvancED in the accreditation process.[698]

## VII. Findings Related to Special Programs and Populations

393. The Court finds that Florida's education policies and funding system are providing adequate resources for students to access to a variety of choice and enrichment programs and to support the education of all students.

### A. Career and Technical Education

394. Florida has developed a leading career and technical education ("CTE") system to prepare students to be college and career ready by equipping them with core academic skills and with relevant technical skills validated by industry in a specific career pathway. Rather than "vocational education," CTE focuses on meeting the needs of Florida's economy by preparing students for today's high-skill, high-demand careers.[699] The State has partnered with employers to define the career pathways and skills critical to Florida's economy.[700] Section 1003.491, Fla. Stat., requires articulated programs of study that align high school programs with postsecondary certificates and degrees offered through technical centers and state colleges. The State also

[697] Exs. 3475, 3476.

[698] *E.g.*, Exs. 14, 30, 71, 82, 84, 87, 88, 89, 94, 95.

[699] Tr. Vol. 31 at 4650:1–25 (Test. of M. Tappen).

[700] *Id.*; Tr. Vol. 26 at 3951:7–3952:2 (Test. of P. Stewart).

provides Gold Standard Career Pathways articulation agreements, through which high school students can earn a guaranteed number of college credits toward their AAS or AS degree.[701]

395. Florida's focus on CTE has allowed increasing numbers of Florida students the ability to earn industry certifications through postsecondary institutions while still in middle or high school.[702] The number of students earning industry certifications increased from 803 students in 2008 to 63,328 students in 2014.[703]

**B. Virtual Education**

396. Florida has been a national leader in ensuring by law that all students have full- and part-time virtual school options, with funding following each student down to the course level. In addition to many district virtual education programs and fully online schools, Florida Virtual School is the largest state school in the country, with over 2 million course completions since opening in 1997.[704]

397. Since that time, the number of Florida students enrolled either full- or part-time in virtual courses increased from 307 during the 1998–99 school year to 241,299 during the 2013–14 school year.[705] Florida's virtual course catalog includes almost 9,000 different course offerings, in subject areas ranging from AP Calculus to "Art in World Cultures."[706]

398. Through virtual education, a student in one district who does not have access to a particular course at his home school can enroll in the course virtually. This breaks down barriers

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[701] Exs. 3381, 3382, 3383, 3384, 3385, 3396; Tr. Vol. 31 at 4649:3–16 (Test. of M. Tappen).

[702] Tr. Vol. 26 at 3951:7–3952:2 (Test. of P. Stewart); Tr. Vol. 31 at 4651:17–4652:14, 4653:22–4654:13 (Test. of M. Tappen).

[703] Ex. 290 at 00005382; Tr. Vol. 31 at 4651:12–4652:14 (Test. of M. Tappen).

[704] Exs. 195, 3389; Tr. Vol. at 4679:18–4680:9 (Test. of M. Tappen).

[705] Ex. 195; Tr. Vol. at 4680:24–4681:22 (Test. of M. Tappen).

[706] Ex. 3389; Tr. Vol. 26 at 3952:3–3953:7 (Test. of P. Stewart).

to access, particularly for students in rural areas, who are now open to a wider range of course offerings. It also allows students who want to catch up, be remediated, or accelerate access to do so throughout the school year.[707]

399. As described above, the evidence shows that Florida's high-quality virtual education programs offer families and students a greater variety of options to meet their individual learning needs and goals.

### C. Enhancement Programs and Dual Enrollment

400. Through its accountability system, incentive funding, and other policies, the State has encouraged school districts to offer more access to college-level coursework for high school students.[708] Students in Florida schools have access to a wide variety of nationally recognized enrichment programs, including Advanced Placement ("AP"), International Baccalaureate ("IB"), and Cambridge Advanced International Certificate of Education ("AICE"), offering more options for increased educational rigor for Florida students, as well as the opportunity to earn free college credit.[709]

401. For example, as detailed above in Section IV.D, Florida has seen an increase in both participation and performance on AP examinations over the past decade. This evidence indicates that Florida is now a national leader in both participation and performance on AP examinations, including among low-income students and traditionally underrepresented minorities.[710]

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[707] Tr. Vol. 26 at 3952:3–3953:7 (Test. of P. Stewart); Tr. Vol. 31 at 4680:10–23 (Test. of M. Tappen).

[708] Tr. Vol. 26 at 4023:10–19 (Test. of P. Stewart).

[709] Tr. Vol. 26 at 3949:20–3951:6 (Test. of P. Stewart); Tr. Vol. 31 at 4648:8–4649:25 (Test. of M. Tappen).

[710] Exs. 3997, 3998, 123, 124, 125, 126, 127.

402. *Newsweek* magazine annually ranks the top schools in the nation based on graduation rates; college acceptance rates; AP rates; AP or honors courses taken per student; average SAT, ACT, and AP scores; and the percent of students enrolled in at least one AP course. The school districts on which Plaintiffs focus—*e.g.*, Alachua, Orange, Miami-Dade, Palm Beach, Duval—also have confirmed their AP, IB, and AICE offerings, as well as their national rankings in *Newsweek, U.S. News & World Report*, and the *Washington Post*.[711]

403. Florida students also have the opportunity to earn free college credit through a variety of dual-enrollment courses offered through Florida high schools.[712] This allows students the opportunity to obtain an AA degree while still in high school.[713]

**D. English Language Learners**

404. In addition to weighted student funding through FEFP, Florida's English language learners ("ELLs") benefit from additional funding through federal ESEA Title III dollars, based on the number of ELLs in the school district.[714]

405. Although school districts determine how to instruct their ELLs—through bilingual, inclusion, sheltered or dual language programs—all instructional programs for ELLs must be staffed with certified teachers, and a paraprofessional who speaks the ELLs' home

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[711] *See generally* Tr. Vol. 5 at 660:23–734:6 (Test. of N. Vitti); Tr. Vol. 6 at 824:7–915:12 (Test. of O. Roberts); Tr. Vol. 9 at 1300:19–1351:2 (Test. of E. Roy); Tr. Vol. 16 at 2456:13–2478:9 (Test. of D. Boyd); Tr. Vol. 22 at 3249:23–3315:2 (Test. of D. Robinson); Tr. Vol. 24 at 3551:9–3665:13 (Dep. Test. of J. Marte); Tr. Vol. 23 at 3406:11–3487:14 (Dep. Test. of R. Collins).

[712] Exs. 3387, 3388, 3391, 3392; Tr. Vol. 31 at 4649:3–25 (Test. of M. Tappen).

[713] Tr. Vol. 31 at 4649:3–16 (Test. of M. Tappen).

[714] Tr. Vol. 31 at 4658:4–16 (Test. of M. Tappen); Tr. Vol. 33 at 4937:13–15 (Test. of L. Champion).

language must be available in the classroom to support instruction if there are fifteen or more students who speak that same home language.[715]

406. Much of the education of ELLs in Florida is dictated by a 1990 consent decree issued in *LULAC v. State Board of Education*. The consent decree serves as the framework for Florida's compliance with state and federal laws regarding the education of ELLs and ensuring that these students have equal access to all educational programs. The consent decree dictates, among other things, the certification and professional development required of teachers who teach ELLs, including in their core academic courses as well as their English for Speakers of Other Languages ("ESOL") courses.[716] There also are requirements for bilingual aides or teachers when fifteen or more students speaking the same language are in the same school or classroom.[717]

407. The consent decree also requires that students entering the public schools be immediately given a home language survey, and if the child reports that their primary home language is not English, they are further assessed for eligibility to be immediately served in an ESOL program. At that point in time, there are services that must be provided by teachers who are ESOL endorsed or certified.[718] These students also received an ELL plan that defines the services and the type of educational program that will be provided for that student.[719]

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[715] Tr. Vol. 31 at 4655:2–4659:14 (Test. of M. Tappen); Exs. 3398, 3399.

[716] Exs. 3510, 3364; Tr. Vol. 31 at 4655:2–4657:22 (Test. of M. Tappen).

[717] Tr. Vol. 31 at 4659:7–14 (Test. of M. Tappen).

[718] Tr. Vol. 31 at 4655:12–4656:6 (Test. of M. Tappen).

[719] Tr. Vol. 31 at 4658:17–4659:3 (Test. of M. Tappen).

408. In addition to federal funding for ELL students under Title III, weighted state funding is provided to support the instruction of these students.[720] Districts are required to submit a Title III plan to show their compliance with these requirements and plans for spending the additional funding. Districts also must provide an ESOL plan to show that they are meeting the requirements of the consent decree and other applicable laws.[721] District witnesses all testified that they have ESOL plans and comply with all laws related to education of ELL students.[722]

409. In accordance with federal law, ELL students are given access to the Florida Standards, including standards in English language acquisition and they are assessed on the Comprehensive English Language Learning Assessment ("CELLA").[723] Federal law also requires that ELLs are tested on the statewide standards assessment—FCAT, FCAT 2.0, and now the FSA—and that their scores are included in the state's accountability system.[724]

410. Once ELL students exit the ESOL program, they are no longer counted as ELLs. To exit from ESOL, Florida requires that students pass each subtest of the CELLA and also earn a Level 3 or above on the Florida statewide standards assessment in reading.[725] Because students who earn a Level 3 or above on the statewide assessment are no longer counted as ELLs, it is not

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[720] Ex. 3680 at 00103474; Tr. Vol. 32 at 4813:13–4814:22 (Test. of L. Champion).

[721] Tr. Vol. 31 at 4658:4–16 (Test. of M. Tappen); *e.g.*, Ex. 337.

[722] Ex. 338; Tr. Vol. 5 at 719:7–12 (Test. of N. Vitti); Tr. Vol. 6 at 906:11–907:4 (Test. of O. Roberts); Tr. Vol. 7 at 1015:6–1017:19 (Test. of G. Littleton).

[723] Exs. 3540; Tr. Vol. 31 at 4659:19–4660:25 (Test. of M. Tappen).

[724] 20 U.S.C. § 6311(b)(3)(B)(vii)(III).

[725] Fla. Admin. Code R. 6A-6.0903(2)(a); Tr. Vol. 31 at 4665:20–22 (Test. of M. Tappen).

appropriate to look at performance of ELLs on the statewide assessment as an indicator of educational quality.[726]

411. A review of the performance of former ELLs who have exited the ESOL program shows that these students passed the state assessment at the same rate as the total student population on the 2014 FCAT 2.0 in reading, and at a higher rate than the total student population on the 2014 FCAT 2.0 in mathematics.[727]

412. Another indicator of the quality of the education provided to ELLs in Florida is the length of time students spend in the ESOL program. Less than a quarter of Florida's ELLs spend three or more years receiving ESOL services, which research shows to be an indicator for on-time graduation.[728]

413. The Court finds that the evidence reflects that the State has adequately provided for a system of schools to provide ELLs with the opportunity to obtain a high-quality education**.**

**E. Students with Disabilities**

414. Federal law—the Individuals with Disabilities Education Act ("IDEA")—provides a complex regulatory framework for assuring that students with disabilities are provided with a free and appropriate public education ("FAPE"). The IDEA places obligations on local school districts (specifically termed local educational agencies or "LEAs") to provide students with disabilities with FAPE. The State's role is to provide technical support to districts and to adopt laws and rules in compliance with the IDEA.[729]

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[726] Tr. Vol. 31 at 4663:3–4665:2 (Test. of M. Tappen).

[727] Ex. 193; Tr. Vol. 31 at 4666:4–19 (Test. of M. Tappen).

[728] Ex. 194; Tr. Vol. 31 at 4666:20–4668:2 (Test. of M. Tappen).

[729] 20 U.S.C. §§ 1412, 1413, 1416; Exs. 3393, 3395, 3396, 3397.

415. In accordance with the IDEA, state law requires that LEAs identify students with disabilities and provide all identified students with an individual educational plan ("IEP") that provides additional services or accommodations based on the student's individual needs.[730] As detailed in Section V.B above, the State's weighted funding formula provides additional funding to districts for the education of students with disabilities, and these districts also receive federal funding under the IDEA.[731]

416. There is no evidence that the state of Florida or any school districts in the state are not providing FAPE in compliance with the IDEA. The U.S. Department of Education monitors compliance with federal law and has rated Florida as meeting requirements for the support of students with disabilities and the use of IDEA funds.[732] Moreover, none of the school district witnesses called by Plaintiffs testified that they had any reason to believe that their schools or districts were not providing FAPE or otherwise out of compliance with the IDEA.[733]

417. As described in Section III.A above, Florida also complies with federal law in providing that students with disabilities be given access to the same content standards as all students.[734] Students with significant cognitive disabilities are provided instruction in the content of the Florida Standards appropriate to their abilities through access points. Performance in the access points is measured through the Florida Standards Alternate Assessment.[735]

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[730] Tr. Vol. 31 at 4668:3–25 (Test. of M. Tappen).

[731] Exs. 3424, 3433; Ex. 3680 at 00103474–75, 00103480.

[732] Exs. 1409, 1410, 1411.

[733] Tr. Vol. 5 at 719:13–16 (Test. of N. Vitti); Tr. Vol. 6 at 902:21–903:22 (Test. of O. Roberts); Tr. Vol. 7 at 1015:7–11 (Test. of L. Littleton); Tr. Vol. 10 at 1513:5–13 (Dep. Test. of M. Burke); Tr. Vol. 22 at 3280:19–3281:14 (Test. of D. Robinson); Tr. Vol. 23 at 3505:24–3506:2 (Dep. Test. of J. Hiltz); Tr. Vol. 24 at 3640:3–10, 3563:2–8 (Dep. Test. of J. Marte).

[734] Tr. Vol. 31 at 4668:3–4670:14 (Test. of M. Tappen).

[735] Tr. Vol. 20 at 2987:18–25, 2980:2–12 (Test. of C. Guerrieri); Exs. 1827, 2110, 2117.

Students with significant cognitive disabilities work towards the same diploma as all other students, with the opportunity for alternate means to meet the requirements.[736]

418. In addition to federal accountability for education of students with disabilities, in 2005, Florida began including the progress of students with disabilities in its school-grading formula, with the purpose of ensuring that schools and districts would be held accountable for providing these students with the services and accommodations necessary for them to reach their potential.[737] Florida's inclusion of students with disabilities in its accountability system is supported by national research finding that schools accountable for the students-with-disabilities subgroup were more likely than schools without accountability to move students with disabilities from self-contained classrooms to the regular classrooms.[738] Placement in the least restrictive environment is a goal of exceptional student education under the IDEA,[739] and Florida's policies have resulted in an increase in the percentage of students with disabilities placed in the regular classroom setting, from 53% in 2005–06 to 71.3% in 2013–14. In 2012–13, Florida had the highest percentage of students with disabilities in regular classrooms of the seven largest states in the nation, and also was higher than the national average.[740]

419. Contrary to Plaintiffs' allegations regarding education of students with disabilities, the fact that students with disabilities succeed at a lower rate than their non-disabled peers on statewide assessments is not determinative of whether the State is providing for a system in which these students may obtain a high-quality education. Nationwide results on

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[736] Tr. Vol. 31 at 4644:13–4647:17, 4668:3–18 (Test. of M. Tappen); Ex. 190.

[737] Tr. Vol. 29 at 4370:4–4371:8 (Test. of J. Copa).

[738] Tr. Vol. 31 at 4669:3–4670:14 (Test. of M. Tappen).

[739] 20 U.S.C. § 1412(a)(5).

[740] Exs. 191, 192; Tr. Vol. 31 at 4668:3–4670:14 (Test. of M. Tappen).

NAEP show that students with disabilities succeed at a lower rate than their non-disabled peers throughout the nation, and Florida's students with disabilities perform at a higher level than students nationally in several areas on NAEP.[741]

420. Based on the weight of this evidence, the Court finds that Florida has made strides in serving its students with disabilities, as evidenced by a greater percentage of students with disabilities earning a standard high school diploma and a greater percentage of students with disabilities being educated in the least restrictive environment—the regular classroom, with their peers, having access to the same quality standards and instructional materials.

### F. Students Eligible for Free-and-Reduced-Price Lunch

421. Students in poverty also benefit from ESEA Title I dollars, which support school improvement efforts in Title I schools. The local districts and schools may choose to allocate these funds in a variety of ways, including providing additional teachers, professional development, extra time for teaching, parent involvement activities, and other activities designed to raise student achievement.[742]

422. The Court finds that Florida's policies and funding mechanisms are adequate to provide a system that allows low-income students to obtain a high-quality education. As described in Section IV.A above, Florida's low-income students (identified as students eligible for free-and-reduced-price lunch) continually outperform low-income students in other states on NAEP. For example, Florida's low-income grade 4 students performed at higher levels than students in all other states in reading in 2013 and 2015 (the most recent two administrations),[743]

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[741] Exs. 3337, 1360, 1370; Tr. Vol. 26 at 4044:15–19, 4006:18–22 (Test. of P. Stewart).

[742] Tr. Vol. 26 at 3971:7–3972:8 (Test. of P. Stewart); Tr. Vol. 33 at 4935:7–4936:11 (Test. of L. Champion); Ex. 3394; 20 U.S.C. §§ 6311–6339.

[743] Exs. 139, 158, 1345, 1346, 1365.

and they made more gains than low-income students in any other state between 1998 and 2013.[744]

### G. Students Experiencing Homelessness

423. Plaintiffs also assert that the lower performance on state assessments of Florida's students experiencing homelessness is evidence that the State is not meeting its obligations under Article IX. The weight of the evidence, discussed below, does not indicate that the State's accountability or funding policies are denying homeless students the opportunity to obtain a high quality education.

424. The Court specifically rejects Plaintiffs' contentions that the lower performance on state assessments by homeless students as compared with non-homeless students is evidence that Florida is not providing for a high-quality school system. Evidence shows that there are many non-school factors that lead to lower performance by homeless students than their stably-housed peers, and that this pattern is prevalent throughout the country.[745]

425. Federal law, the McKinney-Vento Homeless Assistance Act ("McKinney-Vento"), requires school districts to make sure homeless students have the same access to education as non-homeless students.[746] The Department has an office responsible for providing districts with technical support in complying with McKinney-Vento and with administering federal grants through McKinney-Vento.[747] The U.S. Department of Education monitors states

[744] Exs. 160, 162.

[745] Tr. Vol. 2 at 229:2–6; 284:5–11 (Test. of K. Tobin).

[746] 42 U.S.C. §§ 11431, 11432.

[747] Tr. Vol. 8 at 1152:18–1153:6 (Test. of L. Allen); Exs.3402, 3403, 3404, 3405.

for compliance with McKinney-Vento, and has found in multiple years that the state of Florida is meeting the requirements of federal law.[748]

426. Plaintiffs' focus on the State's administration of federal McKinney-Vento sub-grants, which make up a fraction of 1% of district budgets, also is misplaced. The fact that there are no other funding sources specifically allocated to the education of homeless students is not the sole determinant. The State has reasonable and well-considered accountability and education policies to ensure that all students, including homeless students, are given access to the same high-quality education. Districts are funded through the FEFP, which provides funding for each student, including homeless students,[749] and additional weighted or categorical funding is provided for students, including homeless students, with greater needs, such as students with disabilities, ELL students, and low-performing students.[750] Districts are responsible for allocating resources based on the needs of the students in their district, including their homeless students. The State is not required to dictate specific funding streams and resources to be used for each subgroup of possibly at-risk students. This is appropriately a job for the local districts that are responsible for educating the individual students, and district witnesses confirmed that their districts are providing appropriate services to their students experiencing homelessness.[751]

427. Additionally, many of Plaintiffs' contentions pertaining to homeless students—and low-income students in general—appear to address the students' needs for social services,

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[748] Exs. 1471, 1472; Tr. Vol. 8 at 1233:4–1235:4 (Test. of L. Allen).

[749] Tr. Vol. 8 at 1184:7–1185:21 (Test. of L. Allen); Tr. Vol. 6 at 719:21–24 (Test. of N. Vitti).

[750] Exs. 3414, 3680 at 00103474–80; Tr. Vol. 32 at 4813:18–4816:19 (Test. of L. Champion); Tr. Vol. 8 at 1184:7–1185:21 (Test. of L. Allen).

[751] Tr. Vol. 5 at 719:17–20 (Test. of N. Vitti); Tr. Vol. 6 at 903:24–904:6 (Test. of O. Roberts); Tr. Vol. 7 at 1015:7–11 (Test. of G. Littleton); Tr. Vol. 24 at 3639:14–3640:2 (Dep. Test. of J. Marte).

not specifically their educational needs. The Legislature provides for the needs of homeless and low-income students and their families through a variety of other, non-education social-services programs.[752]

## VIII. Findings Related to Choice Programs

### A. Charter Schools

428. Under Florida law, charter schools are "part of the state's program of public education," and "[a]ll charter schools in Florida are public schools."[753] Plaintiffs allege that charter schools "create[] an inefficient duplication of expenditures" and "suffer financial mismanagement or other financial problems."[754]

429. Charter schools have existed in Florida since 1996[755] and are subject to the same major requirements as traditional public schools, including requirements related to academic standards, state assessments, school grading, teacher certification, teacher evaluation, public meetings, public records, and background screening.[756] Charter schools are also required to admit students via a random selection process if the schools are oversubscribed.[757]

430. Charter schools are subject to the supervision and oversight of local school boards, including oversight related to academic and financial performance. With the limited exception of three developmental laboratory charter schools under § 1002.32, Fla. Stat., all

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[752] Ex. 230; Tr. Vol. 34 at 5043:15–5046:7 (Test. of A. Baker); Tr. Vol. 16 at 2372:2–2375:22(Test. of J. Hall).

[753] § 1002.33(1), Fla. Stat.

[754] 2d Am. Compl. ¶¶ 144, 145.

[755] Ex. 2859; Tr. Vol. 36 at 5305:15–5306:15 (Test. of A. Miller).

[756] § 1002.33(9)(a)–(f), (9)(k)(1), (16)(a)–(b), Fla. Stat.; Tr. Vol. 36 at 5304:4–14, 5310:6–5311:24 (Test. of A. Miller).

[757] § 1002.33(10)(b), Fla. Stat.; Tr. Vol. 36 at 5326:15–5327:1 (Test. of A. Miller).

charter schools in Florida are authorized by local school boards, which are responsible for reviewing and approving (or denying) applications for new charter schools.[758]

431. Although an applicant whose charter-school application is denied by a local school board may appeal that decision to the Florida State Board of Education, successful appeals (*i.e.*, those in which the State Board overturns a local board's denial of the application) are rare. From 2005 through 2013, the annual percentage of total charter-school applications that the State Board approved after a local board's denial ranged from 0% to a high of only 4.2%.[759]

432. Local school boards also have the authority to close local charter schools for poor academic or financial performance, violations of the law, or other good cause.[760]

433. Funding for students in charter schools is provided in the same manner as for students in traditional public schools, which results in approximately equal operational funding, though charter schools generally do not have access to local capital funding. Additionally, a portion of the charter schools' FTE funding is held back by the local school district for administrative costs.[761]

434. Charter schools may elect to contract with management companies to provide services to the school, but they must disclose their intent to do so in their charter-school applications. If a local school board approves such an application, the management company is

[758] § 1002.33(5), (6)(a)–(b), Fla. Stat.; Tr. Vol. 36 at 5313:10–5316:13 (Test. of A. Miller).

[759] § 1002.33(6)(c), Fla. Stat.; Ex. 205; Tr. Vol. 36 at 5317:6–5320:15 (Test. of A. Miller).

[760] § 1002.33(8)(a), Fla. Stat.; Tr. Vol. 36 at 5321:17–5322:10 (Test. of A, Miller).

[761] § 1002.33(17), (19), 20(a), Fla. Stat.; Tr. Vol. 32 at 4908:8–4913:4 (Test. of L. Champion); Tr. Vol. 36 at 5329:10–5334:3 (Test. of A. Miller); Ex. 210.

responsible to the charter school's governing board, which in turn is ultimately responsible to its students and the local school district.[762]

435. Plaintiffs did not present specific, credible evidence of "financial mismanagement or other financial problems" at charter schools, nor did they establish that charter schools have any negative impact or in any way interfere with the quality of education being provided in traditional public schools. Florida's charter schools serve similar student populations as traditional public schools,[763] and students enrolled in these schools are generally performing better on average than similar students enrolled in Florida's traditional public schools.[764] Research both in Florida and nationally supports the finding that charter schools can lead to better student outcomes and contribute to the overall quality of the public school system.[765]

436. The State can rationally conclude that charter schools are an appropriate part of Florida's system of free public schools and do not undermine the uniformity, efficiency, safety, security, or quality of that system.[766]

**B. Florida Tax Credit Scholarship Program**

437. The Court granted Defendant's Motion for Summary Judgment as to the Florida Tax Credit Scholarship Program (the "FTC Program") on December 17, 2015. However, the Court did permit Plaintiff the opportunity to present evidence as to the overall impact to local School District budgets because of the lack of funds due to the FTC Program.

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[762] Fla. Admin. Code R. 6A-7.0786 (incorporating Model Florida Charter School Application by reference); Ex. 2860 at 00071221; Tr. Vol. 36 at 5314:10–5316:13 (Test. of A. Miller).

[763] Ex. 2873 at 00071390; Tr. Vol. 36 at 5325:6–5326:14 (Test. of A. Miller).

[764] Exs. 2873, 2829, 2861, 2902, 2903, 2904, 2905, 2906; Tr. Vol. 36 at 5335:15–5339:23 (Test. of A. Miller).

[765] Exs. 130, 204; Tr. Vol. 35 at 5217:15–5227:1 (Test. of J. Greene).

[766] *See* Tr. Vol. 35 at 5217:15–21 (Test. of J. Greene).

438. The Florida Tax Credit Scholarship Program (the "FTC Program") allows Florida taxpayers to apply for tax credits "to make private, voluntary contributions" to fund scholarships for children attending eligible K–12 private schools.[767] Plaintiffs allege that the FTC Program violates the uniformity and efficiency requirements of Article IX, Section 1(a) by diverting public funds to private schools that are not subject to the same requirements as schools within the State's system of free public schools.

439. The Court has previously found that the FTC Program, which allows third parties to obtain tax credits for making private donations, does not involve public funds, legislative appropriations, or the State's "provision" for a "system of free public schools" under Article IX. Because the private donations that fund the FTC Program are not legislative appropriations, the Court has previously determined that Plaintiffs lack taxpayer standing to assert a challenge to this program under Florida law.[768]

440. Plaintiffs have also failed to prove any special injury that would allow them to challenge the FTC Program.[769]

441. Despite Plaintiffs' assertion "that the State may be fairly treated as itself engaging in the funding of private school vouchers,"[770] any connection between the FTC Program and appropriations to support Florida's system of free public schools—not to mention the overall

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[767] § 1002.395(1)(b)(1), Fla. Stat.

[768] Order Granting in Part and Denying in Part Intervenors–Defendants Mot. Partial J. on Pleadings for Failure to State Claim on Which Relief Can Be Granted (Dec. 17, 2015); Order Granting Motions to Dismiss with Prejudice, *McCall v. Scott*, No. 2014 CA 002282, 2015 WL 3945409, at ¶ 5 (Fla. 2d Cir. Ct. May 18, 2015).

[769] Order Granting in Part and Denying in Part Intervenors–Defendants Mot. Partial J. on Pleadings for Failure to State Claim on Which Relief Can Be Granted (Dec. 17, 2015); Order Granting Motions to Dismiss with Prejudice, *McCall v. Scott*, No. 2014 CA 002282, 2015 WL 3945409, at ¶ 6 (Fla. 2d Cir. Ct. May 18, 2015).

[770] 2d Am. Compl. ¶ 78.

quality of that system—is purely speculative. There was no persuasive evidence presented that the FTC Program has any direct or indirect impact on public-school funding or on the uniformity, efficiency, safety, security, or quality of Florida's public schools.[771]

442. Although Plaintiffs have not shown that the FTC Program involves legislative appropriations or the diversion of public money that otherwise would have been used to fund public schools, any such diversion, even if proved, would not have a material negative impact on Florida's system of free public schools.[772] Even if tax credits resulted in a decrease in the number of students attending the public schools, local school districts are not responsible for educating students who attend private schools.[773]

### C. McKay Scholarship for Students with Disabilities

443. The John M. McKay Scholarships for Students with Disabilities Program (the "McKay Program") is designed for "Students with Disabilities"—who have specific needs identified through an "individual educational plan" or "504 accommodation plan"—and primarily allows them to apply for scholarships to attend eligible private schools.[774] The McKay Program also allows students with disabilities to transfer from one public school to another.[775] Plaintiffs allege that the McKay Program, like the FTC Program (but which is funded through legislative appropriations), diverts public funds to private schools.[776]

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[771] Order Granting in Part and Denying in Part Intervenors–Defendants Mot. Partial J. on Pleadings for Failure to State Claim on Which Relief Can Be Granted (Dec. 17, 2015); Order Granting Motions to Dismiss with Prejudice, *McCall v. Scott*, No. 2014 CA 002282, 2015 WL 3945409, at ¶¶ 6–7 (Fla. 2d Cir. Ct. May 18, 2015).

[772] Tr. Vol. 36 at 5340:9–12 (Test. of A. Miller); Ex. 3154.

[773] Tr. Vol. 36 at 5340:17–5341:6, 5344:9–19 (Test. of A. Miller).

[774] § 1002.39(1), Fla. Stat.; Ex. 3151; Tr. Vol. 36 at 5344:20–5345:5 (Test. of A. Miller).

[775] § 1002.39(1), Fla. Stat.; Ex. 3151; Tr. Vol. 36 at 5344:20–5345:5 (Test. of A. Miller).

[776] 2d Am. Compl. ¶ 110.

444. "Students with Disabilities" for the purposes of McKay Program eligibility "include K–12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; and other health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder."[777]

445. The McKay Program allows children with disabilities and their families to choose a public or private school that best meets the student's individualized, special needs.[778] Parents' decisions to send individual children with special needs to private school do not implicate the uniformity of the broader public school system—regardless of whether some of those parents accept scholarship funds from the State.[779]

446. The evidence does not show that the McKay Program has a material, negative impact on public-school funding or on the uniformity, efficiency, safety, security, or quality of Florida's public schools. There are approximately 30,000 students who participate in the McKay Program (compared to roughly 2.7 million students in Florida's public schools), and the total funding for the McKay Program amounts to a very small fraction of school district budgets statewide.[780] As with the FTC Program, local school districts are not responsible for educating

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[777] § 1002.39(1), Fla. Stat.

[778] Ex. 3151.

[779] *See Bush v. Holmes*, 919 So. 2d 392, 412 (Fla. 2006) ("Other educational programs, such as the program for exceptional students at issue in *Scavella*, are structurally different from the [Opportunity Scholarship Program struck down in *Holmes*], which provides a *systematic* private school alternative to the public school system mandated by our constitution." (emphasis added)).

[780] Exs. 209, 3151; Tr. Vol. 36 at 5347:14–18, 5349:7–14 (Test. of A. Miller).

students who attend private schools,[781] and Plaintiffs have not shown that the McKay Program causes any material financial losses that would impair school districts' ability to provide opportunities for a high-quality education in accordance with Florida law.

447. Similarly, research has shown that the McKay Program has a positive effect on the public schools, both in terms of lessening the incentive to over-identify students and by increasing the quality of services of the students with disabilities in the public schools.[782]

448. The Court therefore finds that the McKay Program is rationally related to the goal of increasing the quality and efficiency of the Florida public school system.[783]

## IX. Findings Related to Causation

449. Plaintiffs allege that the overall level of funding in Florida is not sufficient to provide a uniform, efficient, safe, secure and high quality system of public education.[784] Plaintiffs assert that the performance outcomes for certain groups of students indicate that school funding is insufficient.[785]

450. Plaintiffs, however, have not met their burden of proving a causal relationship between the level of resources available to schools in Florida and student outcomes. Indeed, as described below, the weight of the evidence presented on that issue establishes a *lack* of any causal relationship between additional financial resources and improved student outcomes.

451. Defendants presented the findings of Dr. Eric Hanushek, a professor of education and economics at Stanford University. Dr. Hanushek presented both national research findings

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[781] Tr. Vol. 36 at 5345:6–11 (Test. of A. Miller).

[782] Tr. Vol. 35 at 5230:12–5321:6 (Test. of J. Greene).

[783] *See* Tr. Vol. 35 at 5231:7–17 (Test. of J. Greene).

[784] 2d Am. Compl. ¶ 30.

[785] *See, e.g., id.* ¶¶ 32, 45, 152, 154–55.

as well as those focused on Florida. Dr. Hanushek's analyses indicate that despite a large infusion of additional resources into U.S. public schools over the past 50 years, including a quadrupling of spending between 1960 and 2010 (after adjusting for inflation), math and reading performance of students on the National Assessment of Educational Progress ("NAEP")[786] has shown virtually no change since 1970.[787]

452. Econometric evidence presented by Dr. Hanushek indicates that the manner in which schools historically spend additional resources, *i.e.*, increasing teacher pay, lowering pupil-teacher ratios, or increasing the percentage of teachers with advanced degrees and experience, has not systematically led to higher levels of student performance.[788]

453. Dr. Hanushek analyzed student performance and spending in Florida compared to the rest of the nation. Dr. Hanushek's analysis indicates that on grade 4 NAEP reading tests Florida had impressive results overall compared to other states, the second largest performance increases from 1992 to 2013, and accomplished this improvement with the lowest per pupil expenditure increases in the nation. In this regard, Florida is among the most efficient education systems in the nation.[789]

454. Dr. Hanushek also found that the gains in grade 4 NAEP reading scores for students eligible for free and reduced price lunch were larger in Florida than in any other state between 1998 and 2013. As of 2013, Florida students eligible for free and reduced price lunch

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[786] *See* Section IV.A for an explanation of NAEP.

[787] Exs. 278, 164, 165; Tr. Vol. 27 at 4152:8–4156:9 (Test. of E. Hanushek).

[788] Exs. 280, 185, 198; Tr. Vol. 27 at 4158:8–22, 4162:3–4172:15 (Test. of E. Hanushek); Tr. Vol. 28 at 4205:5–4206:5 (Test. of E. Hanushek).

[789] Exs. 154, 155 ,156, 157, 158, 159, 197; Tr. Vol. 27 at 4176:9–4183:3 (Test. of E. Hanushek); Tr. Vol. 28 at 4193:12–4195:1, 4199:22–4202:3 (Test. of E. Hanushek); *see also* Exs. 140, 141, 142, 143, 144.

outperformed similarly disadvantaged students in all other states.[790] (*See also* Section IV.A above.)

455. Dr. Hanushek presented analyses showing that over time, Florida has narrowed achievement gaps—by race, ethnicity and economic position—at a greater pace than other states. Although achievement gaps exist in all states, and have over an extended period of time, achievement gaps in Florida are consistently lower than achievement gaps in the rest of the nation.[791] (*See also* Section III.A above.)

456. Florida has also emphasized college readiness. Dr. Hanushek presented analyses showing that between 2003 and 2013, Florida had the second highest gains among all states of students scoring a 3 or above on Advanced Placement exams.[792] (*See also* Section IV.D above.)

457. Another analysis presented by Dr. Hanushek compared the performance and spending in Florida compared to New York, a demographically similar state that experienced large increases in education spending as the result of an adequacy lawsuit in the early 2000s.[793] In particular, Dr. Hanushek's analysis showed that in 2002, Florida grade 4 NAEP reading scores were well below New York's scores, and that from 2002 and 2013, New York per pupil spending increased by several thousand dollars per pupil to nearly $20,000 per pupil. In Florida, by contrast, per pupil spending remained relatively stable from 2002 and 2013 but, by 2013, Florida students surpassed New York students on the grade 4 NAEP reading test.[794]

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[790] Exs. 160, 158; Tr. Vol. 28 at 4195:3–15 (Test. of E. Hanushek).

[791] Exs. 161, 162, 196; Tr. Vol. 28 at 4195:17–4199:21 (Test. of E. Hanushek); *see also* Exs. 145, 146, 147, 148, 149, 150, 151, 152, 153.

[792] Exs. 128, 129; Tr. Vol. 28 at 4202:20–4204:7 (Test. of E. Hanushek).

[793] Ex. 282; Tr. Vol. 28 at 4218:21–4220:10 (Test. of E. Hanushek).

[794] Ex. 166; Tr. Vol. 28 at 4220:11–4222:22 (Test. of E. Hanushek).

458. The Court accepts Dr. Hanushek's conclusions and finds that his analyses corroborate other evidence refuting Plaintiffs' assertions that Florida's system of public schools is not efficient and that the level of resources in Florida has negatively impacted student outcomes.[795]

459. In addition to Dr. Hanushek, Defendants presented findings of Dr. Jay Greene, a professor of education and head of the Department of Education Reform at the University of Arkansas. Dr. Greene statistically analyzed school district-level variables throughout the state of Florida, including per-pupil spending, teacher characteristics, and discipline rates, and found no relationship between these variables and student outcomes.[796]

460. Specifically, Dr. Greene examined school district per-pupil expenditures and percentages of students proficient on the Florida Comprehensive Assessment Test ("FCAT")[797] for grades 3 through 10 in reading and math; grades 5, 8, and 11 in science; as well as high-school graduation rates, for school years 2007–08 to 2012–13. The analysis revealed no connection between higher amounts of funding available in school districts and better student performance.[798]

461. Dr. Greene also conducted regression analyses of spending and performance data, controlling for student demographic differences and prior levels of achievement across school districts. The demographic characteristics that were controlled included the proportion of minority students, proportion of students receiving free or reduced price lunch, the proportion of

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[795] *See* Tr. Vol. 28 at 4204:8–22 (Test. of E. Hanushek).

[796] Tr. Vol. 35 at 5176:25–5177:15, 5209:3–15 (Test. of J. Greene).

[797] *See* Section II.B for an explanation of the FCAT and subsequent statewide, standardized assessments.

[798] Exs. 265, 266, 267, 268; Tr. Vol. 35 at 5177:16–5183:9 (Test. of J. Greene).

students classified as English language learners ("ELL"), and the proportion of students with a disability who had an individual educational plan ("IEP"), as well as academic outcomes in the prior year. The purpose of these analyses was to examine whether school districts would have better student outcomes if they had more resources, assuming school districts had the same demographic composition and prior year's academic outcomes. Dr. Greene's regression analyses revealed that there is no pattern between the level of spending in Florida school districts and student performance on the FCAT or high school graduation rates.[799]

462. In addition, Dr. Greene evaluated the assertion by Plaintiffs that teacher qualifications and experience characteristics impact student performance, and that districts with high-minority and low-income student populations have a lower percentage of qualified, experienced teachers. Consistent with his other findings, Dr. Greene found no statistical relationship between the proportion of novice (first-year teachers) or "highly qualified" teachers, as defined by the Florida Department of Education, and student performance on the FCAT or high school graduation rates. Likewise, Dr. Greene found no statistical relationship between the percentage of minority and low-income students in a district and the proportion of novice or highly qualified teachers.[800]

463. Dr. Greene also addressed Plaintiffs' assertion that high suspension rates are attributable to a lack of school district resources and lead to lower student performance outcomes. As above, Dr. Greene conducted regression analyses that controlled for student demographic characteristics and prior student outcomes. Dr. Greene found no relationship

[799] Exs. 271, 272; Tr. Vol. 35 at 5183:10–5190:19, 5192:18–5196:20 (Test. of J. Greene).

[800] Exs. 273, 274, 275, 276; Tr. Vol. 35 at 5196:22–5200:4, 5201:22–5205:4 (Test. of J. Greene).

between the rate at which students are given out-of-school suspensions in Florida school districts and FCAT reading, math, or science proficiency, or graduation rates.[801]

464. Finally, Dr. Greene concluded that, based on the continued improvement in student performance over time, sufficient funding is available to Florida school districts. Dr. Greene explained that the decrease in the percent of students performing at or above Level 3 after the change to the FCAT 2.0 does not indicate a change in the quality of the system but instead is the product of a policy judgment made by the State about where to set performance standards.[802]

465. The Court accepts Dr. Greene's conclusions and finds that they corroborate other evidence in the case showing the lack of causal relationship between the level of resources available in Florida schools and student outcomes, as well as evidence showing that the level of resources available is sufficient for a high quality system.[803]

466. Although Plaintiffs bear the burden of proof in this case, neither Plaintiffs' expert witnesses nor their school-district witnesses presented analyses or studies rebutting the work of Drs. Hanushek and Greene. In fact, the weight of the evidence shows that despite budget cutbacks associated with the Great Recession, student performance continued to improve in the period 2007–08 to 2014–15.[804]

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[801] Exs. 277, 279; Tr. Vol. 35 at 5206:20–5209:2 (Test. of J. Greene).

[802] Tr. Vol. 35 at 5190:20–5192:7, 5211:–17–5213:6, 5273:3–5274:14 (Test. of J. Greene); Ex. 269.

[803] *See* Tr. Vol. 35 at 5209:3–15, 5213:7–5215:4 (Test. of J. Greene).

[804] *See, e.g.*, Ex. 785; Tr. Vol. 5 at 686:24–699:18 (Test. of N. Vitti); Ex. 1048; Tr. Vol. 22 at 3291:23–3292:9, 3305:6–3306:6 (Test. of D. Robinson); Ex. 564; Tr. Vol. 24 at 3600:24–3602:9, 3630:2–3632:4 (Dep. Test. of J. Marte); Ex. 390 at 00010443; Tr. Vol. 36 at 5474:9–5475:19 (Dep. Test. of K. Blocker).

467. As discussed in Section IV and the discussion of Dr. Hanushek's testimony above, the Florida high school graduation rate is at an all-time high and has increased by over 25 points since 1998–99 and 17 points since 2007–08;[805] NAEP scores continue to rise; achievement gaps have narrowed; and more students are taking and succeeding in rigorous Advanced Placement, International Baccalaureate, and other advanced high-school course work than ever before. The State as a whole is performing at a higher level and has improved on multiple measures of student performance at a faster pace than many other states in the nation. All of this has been achieved notwithstanding the economic downturn and its impact on school-district budgets.

468. Plaintiffs have failed to address causation as it relates to differences in student performance across schools and school districts in Florida. Under the Florida Constitution, local school boards, not the State, are primarily responsible for the operation, control, and supervision of schools.[806] Dr. Greene's testimony and other evidence shows that some school districts in Florida are better managed and more effective at improving student performance than other districts, notwithstanding similar student demographics and funding levels.

469. The Court therefore finds that Plaintiffs have failed to satisfy their burden of proof on the causation issue.

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[805] Ex. 4050.

[806] *See generally* Art. IX, § 4(b), Fla. Const.