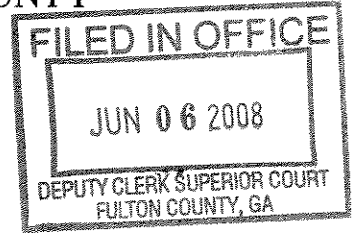


COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



CONSORTIUM FOR ADEQUATE)
SCHOOL FUNDING IN GEORGIA,)
INC., et al.)
)
Plaintiffs,)
)
v.)
)
STATE OF GEORGIA, et al.,)
)
Defendants.)

CIVIL ACTION NO.
2004-CV-91004

DEFENDANTS' CORRECTED RULE 6.5 STATEMENT

The Defendants submit this statement pursuant to Uniform Superior Court Rule 6.5 in support of their motion for summary judgment.

Defendants are entitled to summary judgment for three reasons: (1) the State's educational policy choices are rational and not a gross abuse of discretion; (2) the undisputed facts establish that the Plaintiff Districts and the Plaintiff Focus Districts are providing their students with the basic educational opportunities defined in State laws and regulations; and (3) no evidence establishes that any deficiencies in the Plaintiff Districts and the Plaintiff Focus Districts are caused by a lack of State funding or other factors under the State's control.

Defendants contend that the following facts are undisputed:

1. The management and control of local school districts is vested completely in local boards of education by the Georgia Constitution. Ga. Const. Art. VIII, Sec. V, Para II.

2. Districts promise to abide by State laws, rules, and regulations in exchange for funding from the State. *See* O.C.G.A. § 20-2-243; Op. Att’y Gen. 75-63 (1975).

3. No state is required to follow the No Child Left Behind Act of 2001 (“NCLB”) – unless they want to receive federal money for their educational systems. *See* Pub. L. No. 107-110; 20 U.S.C. § 6301 *et seq.*; 20 U.S.C. § 6311(g).

4. Georgia follows NCLB’s policies in exchange for federal educational funding. (*See* ’06-’07 AYP Workbook) (Ex. 6 to the Georgia Department of Education Certification of Authenticity, hereinafter “DOE Cert.,” filed contemporaneously herewith.)

5. The State Board, in conjunction with DOE, develops a State-wide curriculum, creates proficiency tests to measure student learning, sets graduation requirements, administers State funding, works with schools and districts to improve student performance, and, among other things, tracks school district finances. O.C.G.A. §§ 20-2-140; 20-2-164, 20-2-167, 20-2-11, 20-2-14, 20-2-16; 20-14-26. Ga. Comp. R. & Regs. 160-5-2-.21; 160-3-1-.07; 160-4-2-.47; 160-4-2-.48.

6. The State Superintendent of Schools (currently Defendant Kathy Cox), serves as the head of DOE and advises the State Board on matters of educational policy. <http://www.gadoe.org/sup.aspx>; Ga. Const. Art. VIII, Sec. III, Para. I.

7. Certification requirements for school district personnel are determined by the Georgia Professional Standards Commission (“PSC”) (currently headed by Kelly Henson), which is an agency wholly independent from DOE. O.C.G.A. § 20-2-200.

8. In addition to setting certification requirements, PSC tracks the teacher supply in Georgia, administers licensing exams, and, among other things, accredits teacher preparation programs at colleges and universities. Ga. Comp. R. & Regs. 505-3-.01 *et seq.*

9. The Governor’s Office of Student Achievement (“OSA”) (currently headed by Jennifer Rippner) collects and reports a large amount of K-12 school- and district-specific information on annual report cards. O.C.G.A. § 20-14-34.

10. There are 180 local boards of education, most of which serve the entire county in which they are located. O.C.G.A. § 20-2-50; *see also* <http://www.gadoe.org/ReportingFW.aspx?PageReq=211&PID=67&CTID=216&StateID=ALL&T=0&FY=2007> (showing list of all Georgia school districts).

11. Twenty-one of Georgia's 180 local boards of education serve cities rather than counties.

<http://www.gadoe.org/ReportingFW.aspx?PageReq=211&PID=61&PTID=67&CTID=216&StateId=ALL&T=0&FY=2007> (showing list of all Georgia school districts).

12. Local boards of education are elected in non-partisan elections by a vote of the residents of the school district. Ga. Const. Art. VIII, Sec. V, Para. II; O.C.G.A. § 20-2-56.

13. Each school board must hire a superintendent who serves as an officer of the school board and the chief executive of the district. Ga. Const. Art. VIII, Sec. V, Para. III.

14. Georgia has approximately 1.6 million full-time-equivalent students in its K-12 public schools. (FY '08 QBE Allotment Sheet) (DOE Cert., Ex. 5.)

15. During the '05-'06 school year, according to the National Center for Educational Statistics ("NCES"), Georgia had a higher percentage of minority students (51%) than the national average (43%). (NCES Public Elementary and Secondary School Student Enrollment, High School Completions, and Staff From the Common Core of Data (2005-2006), Table 2 *available at* http://nces.ed.gov/pubs2007/pesenroll06/tables/table_2.asp) (Ex. 1 to the Notice of

Filing Federal Public Records, hereinafter “Not. Fil. Fed. Pub. Rec.,” filed contemporaneously herewith.)

16. During the '05-'06 school year, 50% of Georgia's students were eligible to receive free or reduced price lunch pursuant to the federal definition. (OSA Report Card) (Ex. 1 to the Governor's Office of Student Achievement Certification of Authenticity, hereinafter “GOSA Cert.,” filed contemporaneously herewith.)

17. In contrast, approximately 42% of students in the nation were eligible for free or reduced price lunch. (NCES Number and Types of Public Elementary and Secondary Schools (2005-2006), Table 7 available at http://nces.ed.gov/pubs2007/pesschools06/tables/table_7.asp) (Not. Fil. Fed. Pub. Rec., Ex. 2.)

18. Eligibility for free or reduced price lunch is based on student poverty.

19. The majority of the funding for educational operations comes from the State, but a substantial portion comes from local property taxes and a smaller portion comes from the federal government. *See generally* Ga. Const. Art. VIII, Sec. VI (“Local Taxation for Education”).

20. In FY '07, \$13.49 billion was spent on operations in K-12 public schools in Georgia, which equates to \$8,428 per full-time student. (Georgia Department of Education School System Expenditure Reports, available at

http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 2.)

21. The Plaintiff Districts' and Plaintiff Focus Districts' FY '07, per-full-time-student, operational expenditures are set forth below:

DISTRICT	PER-STUDENT EXPENDITURES
Ben Hill	\$8,728
Charlton	\$8,468
Elbert	\$8,678
Murray	\$7,574
Polk	\$8,138
Wayne	\$7,700

(Georgia Department of Education School System Expenditure Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 2.)

22. In FY '07, the State provided \$7.2 billion to local boards of education to fund the operations (excluding facilities funding, school nutrition, debt service and certain other limited items) of K-12 public education.

http://app.doe.k12.ga.us/ows-bin/owa-fin_pack_revenue.display_proc (DOE Cert., Ex. 1.)

23. The largest component of the State portion of K-12 funding is distributed pursuant to the Quality Basic Education Act (“QBE”). *See* O.C.G.A. § 20-2-160 *et seq.*

24. QBE is a spending authorization act, which is expressly subject to the appropriations process. *See* O.C.G.A. § 20-2-161(a) (“In the event that . . . this Code section requires funds in excess of the appropriation for the Quality Basic Education Formula grants, the funds which are appropriated for the Quality Basic Education Formula shall be prorated. . . .”).

25. QBE authorizes the DOE to disperse money to local boards of education based on student participation in 19 specifically defined programs. O.C.G.A. § 20-2-161.

26. Local school districts “earn” an amount of QBE funding equal to the amount of full-time-equivalent students who participate in each of the 19 programs multiplied by a “program weight” set each year in the appropriations process.

27. The 19 QBE programs are as follows: (1) kindergarten program; (2) kindergarten early intervention program; (3) primary grades program; (4) primary grades early intervention program; (5) upper elementary grades program; (6) upper elementary grades early intervention program; (7) middle grades program; (8) middle school program; (9) high school general education program; (10) vocational laboratory program; (11) program for persons with disabilities:

category I; (12) program for persons with disabilities: category II; (13) program for persons with disabilities: category III; (14) program for persons with disabilities: category IV; (15) program for persons with disabilities: category V; (16) gifted program; (17) remedial education program; (18) alternative education program; and (19) English for speakers of other languages (ESOL).

28. An annual “weight sheet” shows a detailed break down of the components of each QBE program, showing “earnings” for items such as instructional supplies, media centers, and teachers. (FY 2008 Weight Sheet, *available at* http://app.doe.k12.ga.us/ows-bin/owa/qbe_reports.public_menu?p_fy=2000) (DOE Cert., Ex. 3.)

29. The total amount of a district’s QBE “earnings” is reduced by each district’s “five-mill share,” which is an amount equal to what would be raised by a five mill property tax in the district. *See* O.C.G.A. § 20-2-164.

30. One “mill” equals one-tenth of one percent. The actual property tax assessed in a district is equal to the millage rate multiplied by 40% of the assessed value of all non-exempt property in the district.

31. For FY ’08, there are four QBE expenditure controls: (1) funds earned for “direct instructional costs” (*i.e.*, teachers, textbooks, etc.) must be spent on costs for one or more of the 19 QBE programs; (2) funds earned for media centers must be spent on media centers; (3) funds earned for professional development

must be spent for professional development; and (4) money earned pursuant to the “20 Days of Additional Instruction” line item must be used for additional instructional time or transportation for such programs. (See FY ’08 QBE Allotment Sheet) (DOE Cert., Ex. 5.)

32. Aside from the four expenditure controls noted above, QBE money does not need to be spent in the program or for the line item for which it is “earned.”

33. Low-performing school districts are required to spend at least 65% of their total operating budgets on direct instructional costs. See O.C.G.A. § 20-2-171.

34. The State provides equalization grants to low-property-wealth districts. See O.C.G.A. § 20-2-165.

35. Districts with property wealth below the 75th percentile of property wealth statewide receive grants based on their local millage rate and the number of pupils in the district. *Id.*

36. The higher a district’s millage rate, the more money it receives in equalization grants. *Id.*

37. In FY ’07, the average district’s per-FTE equalization grant was \$272.43. (FY ’07 QBE Allotment Sheets, *available at*

http://app.doe.k12.ga.us/ows-bin/owa/qbe_reports.public_menu?p_fy=2000) (DOE Cert., Ex.5.)

38. The following table depicts the amount of per-FTE equalization grants received by the Plaintiff and Plaintiff Focus Districts in FY '07:

DISTRICT	PER-FTE EQUALIZATION GRANT
Ben Hill	\$924.02
Charlton	\$570.96
Elbert	\$737.02
Murray	\$589.83
Polk	\$622.77
Wayne	\$544.20

Id.

39. Georgia also has a State-level facility funding program.

40. Districts “earn” facility funds each year based on student enrollment.

See O.C.G.A. § 20-2-260 et seq.

41. The General Assembly can authorize up to \$200 million per year for the State’s capital outlay program, up from the \$100 million annual appropriations

cap in effect until FY 2003. (*Id.*; Affidavit of Lynn Jackson, hereinafter “Jackson Aff.,” filed contemporaneously herewith, at ¶ 3.)

42. The General Assembly has authorized the maximum amount of capital outlay funding for all but three years of the program’s 25 year history. (Jackson Aff., *id.*)

43. When a school district decides to construct a new facility or to renovate an existing facility, the district draws down the facility grant funds that it has earned over time. *See* O.C.G.A. § 20-2-260.

44. The State also provides money to local districts for school nutrition, transportation, and a plethora of targeted academic programs. *See, e.g.*, O.C.G.A. § 20-2-66; O.C.G.A. § 20-2-188; O.C.G.A. § 20-2-319.1.

45. The primary source of local funding for K-12 education is the local property tax.

46. Local boards of education are constitutionally required to levy a property tax, up to 20 mills, for the support and maintenance of public schools. Ga. Const. Art. VIII, Sec. VI, Para. I(a).

47. In FY ‘07, approximately 40% of operational expenditures for K-12 public education were raised by local taxes. (Georgia Department of Education School System Revenue Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 1.)

48. Each year, local school boards create a budget for their district. Ga. Comp. R. & Regs. 160-5-2-.21.

49. Generally, the superintendent and other administrators draft the budget and make recommendations to the board regarding items they wish to have funded. (*See, e.g.*, Deposition of John Key, hereinafter “Key Dep.,” filed contemporaneously herewith, at 118-19.)

50. The board then approves a final budget that governs the district’s spending during the school year. *Id.*

51. School district fiscal years run from July 1st through June 30th.

52. As part of the budgeting process, the board sets the district’s property tax millage rate for the year.

53. Local boards of education are constitutionally authorized to set their millage rates at any rate up to 20 mills, but they can exceed the 20 mill cap with approval of their voters.

54. The following table displays the millage rates set by the local boards of education in the Plaintiff Districts and Plaintiff Focus Districts during the course of this litigation:

DISTRICT	'04	'05	'06	'07
Ben Hill	17.27	16.09	15.48	15.48

Charlton	15.643	16.416	16.652	14.19
Elbert	16.651	16.651	16.233	16.5
Murray	15.5	15.5	15.5	15.5
Polk	15.28	15.28	15.28	15.28
Wayne	18	20	20	20

(Georgia Department of Revenue Millage Rate Reports, *available at* <http://www.etax.dor.ga.gov/PTD/cds/csheets/millrate.aspx>) (Supplemental Department of Revenue Certificate of Authenticity, hereinafter “Supplemental DOR Cert.,” filed contemporaneously herewith.)

55. The Atlanta Public Schools set a millage rate of 22.64 mills in 2007.

Id.

56. State law allows sales tax revenue to be used for education, including allowing for a special local sales tax devoted exclusively to education. *See* O.C.G.A. §§ 48-8-140 - 48-8-166 (the “ELOST”).

57. Local school districts are permitted to use local sales tax revenue from special option local sales taxes (“SPLOST”) for education. Ga. Const. Art. VIII, Sec. VI, Para. IV; *see generally* O.C.G.A. §§ 48-8-110 to 48-8-122.

58. SPLOST revenue is specifically used to fund capital projects, including school construction, school renovation, and instructional technology, among other things.

59. The following table sets forth the estimated revenue from current SPLOST programs in the Plaintiff Districts and Plaintiff Focus Districts:

DISTRICT	SPLOST YEAR	ESTIMATED SPLOST REVENUE
Ben Hill	2005	\$12,820,000.00
Charlton	2007	\$7,500,000.00
Elbert	2006	\$15,000,000.00
Murray	2007	\$30,000,000.00
Polk	2005	\$22,500,000.00
Wayne	2005	Voted Down (1185 Yes – 1220 No)

(SPLOST Election Results, *available at* <http://sos.georgia.gov/cgi-bin/SalesTaxElectionsIndex.asp>) (Secretary of State Certification of Authenticity and Supplemental Secretary of State Certification of Authenticity, filed contemporaneously herewith.)

60. Each year, the federal government appropriates billions of dollars to support education pursuant to NCLB and other federal programs.

61. Federal funds are subject to expenditure controls, and they are earmarked for particular programs, many of which are called “Title programs.”

62. Title programs primarily serve students in poverty and other at-risk populations. 20 U.S.C. § 6301 *et seq.* (economically disadvantaged), 20 U.S.C. § 6801 *et seq.* (limited English proficient); 20 U.S.C. § 7101 (safe and drug-free schools).

63. The largest of these programs is known as “Title I,” which provides money targeted to provide additional academic assistance to students in poverty. 20 U.S.C. § 6301 *et seq.*

64. In FY '07, Georgia school districts received more than \$1 billion in federal aid. (Georgia Department of Education School System Revenue Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 1.)

65. In FY '96, operational expenditures by Georgia school districts were \$4,870 per full-time student. (Georgia Department of Education School System Expenditure Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 2.)

66. Adjusted for inflation using the United States Bureau of Labor Statistics Consumer Price Index, FY '96 operational expenditures would equal

\$6,436 in 2007 inflation-adjusted dollars. (<http://www.bls.gov/CPI/>) (Not. Fil. Fed. Pub. Rec., Ex. 6.)

67. By FY '07, actual per-student expenditures had grown to \$8,428. (Georgia Department of Education School System Expenditure Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (Not. Fil. Fed. Pub. Rec., Ex. 2.)

68. Actual per full-time-equivalent student expenditures grew in the following amounts from FY 1996 to 2007 in all Plaintiff and Plaintiff Focus Districts: Ben Hill, \$4,800 to \$8,728; Charlton, \$4,655 to \$8,468; Elbert, \$4,772 to \$8,678; Murray, \$4,268 to \$7,573; Polk, \$4,288 to \$8,137; Wayne \$4,496 to \$7,699. (Georgia Department of Education School System Expenditure Reports, available at http://app.doe.k12.ga.us/ows-bin/owa/fin_pack_revenue.entry_form) (DOE Cert., Ex. 2.)

69. Current educational expenditures in Georgia grew from \$1,625 per pupil in FY '80 to \$8,577 per pupil in FY '05. (NCES 2007 Digest of Educational Statistics, Table 175, *available at* http://nces.ed.gov/programs/digest/d07/tables/dt07_175.asp?referrer=list) (Not. Fil. Fed. Pub. Rec., Ex. 5.)

70. If Georgia's per-pupil expenditures had kept pace with the consumer price index during that time, Georgia would have been spending only \$3,851 in 2005. (<http://www.bls.gov/CPI/>) (*Id.* at Ex. 6.)

71. The State has established a uniform curriculum for kindergarten through grade 12. O.C.G.A. § 20-2-140 *et seq.*

72. Through the Georgia Performance Standards ("GPS"), currently being phased-in, as well as the older Quality Core Curriculum ("QCC"), the State Board of Education has defined and implemented a sequenced curriculum for Georgia public schools. Ga. Comp. R. and Regs. 160-4-2-.01, -.03, -.20.

73. Local boards of education are responsible for ensuring that this curriculum is "fully and effectively implemented," O.C.G.A. § 20-2-242(1), but they remain free to expand and augment this base curriculum. O.C.G.A. § 20-2-140.

74. The Plaintiff Districts and Plaintiff Focus Districts offer the curriculum, either GPS or QCC, prescribed by the State. (Deposition of Laurie Atkins, hereinafter "Atkins Dep.," filed contemporaneously herewith, at 179; *see* Key Dep. at 194-95; Deposition of Kendall Keith, hereinafter "Keith Dep.," filed contemporaneously herewith, at 200; Deposition of Samuel P. Light, hereinafter "Light Dep.," filed contemporaneously herewith, at 207; Deposition of Alexander Stephens McQueen, hereinafter "McQueen Dep.," filed contemporaneously

herewith, at 193; Deposition of Vickie Reed, hereinafter “Reed Dep.,” filed contemporaneously herewith, at 212-13.)

75. The General Assembly has set forth particularized curricula for special education, remedial education, alternative education, and the education of limited-English-proficient students. O.C.G.A. §§ 20-2-152 (special education), 20-2-153 (early intervention program), 20-2-154 (remedial education), 20-2-154.1 (alternative education); and 20-2-156 (limited-English-proficient students).

76. The State Board of Education has promulgated regulations that set out the content and services that must be offered to special education, remedial education, alternative education and limited-English-proficient students. Ga. Comp. R. & Regs. 160-4-7-.06 (individualized education program), 160-4-2-.17 (early intervention), 160-4-5.01 (remedial), 160-4-8-.12 (alternative), 160-4-5-.02 (limited English proficient).

77. All Plaintiff Districts and Plaintiff Focus Districts offer the State-required curriculum and services to special education, remedial education, alternative education and limited-English-proficient students as well as comply with the laws and regulations governing related federal programs such as IDEA (special education) and Title III-A (limited English proficient). (Atkins Dep. at 76-77, 185-86, 189, 209; Key Dep. at 56-57, 217; Keith Dep. at 211, 244-45, 277-78; Light Dep. at 115, 201-02, 212-13, 217; McQueen Dep. at 19, 21-22, 101; Reed

Dep. at 228-29, 232; *see also* 2008 Consolidated Applications, Program Assurances, electronically signed by each superintendent in connection with the application for and receipt of federal funding under this program (“Each program will be administered in accordance with all applicable federal and state statutes, regulations, program plans, and applications.”), and Atkins Dep., Ex. 13; Key Dep., Ex. 19; Keith Dep., Ex. 18; Light Dep., Ex. 14; McQueen Dep., Ex. 15; and Reed Dep., Ex. 21; *see also* FY ‘08 allotment sheets, showing state funds allocated for programs on basis of district-reported student enrollment) (DOE Cert., Exs. 5, 8.)

78. The curriculum established by the State Board of Education provides all Georgia students the opportunity to obtain a high school diploma. Ga. Comp. R. and Regs. 160-4-2-.47 to 160-4-2-.48.

79. All Plaintiff Districts and Plaintiff Focus Districts offer the programs of study necessary to obtain a high school diploma. (Atkins Dep. at 178; Key Dep. at 194-95; Keith Dep. at 199-200; Light Dep. at 186-87; McQueen Dep. at 190-92; Reed Dep. at 212.)

80. Georgia has 113,055 public school teachers in grades pre-kindergarten through twelve. (2007 OSA Report Card) (GOSA Cert., Ex. 2.)

81. In 2005, the pupil-teacher ratio in Georgia was 14.7:1, which compared with a national ratio of 15.7:1. (NCES Digest of Education Statistics

(2007), Table 63, available at

http://nces.ed.gov/programs/digest/d07/tables/dt07_063.asp?referrer=list (Not. Fil.

Fed. Pub. Rec., Ex. 3.)

82. The following table shows pupil-teacher ratios in the Plaintiff Districts and Plaintiff Focus Districts for 2005:

DISTRICT	PUPIL-TEACHER RATIO
Ben Hill	14:1
Charlton	15:1
Elbert	14:1
Murray	16:1
Polk	14:1
Wayne	16:1

(OSA Report Cards) (GOSA Cert., Ex. 3.)

83. The State has established a minimum salary schedule for the professional staff employed by Georgia public schools, which is based upon the educator's years of experience and certification level. O.C.G.A. § 20-2-212 *et seq.*; Ga. Comp. R. & Regs. 160-5-2-.05.

84. The starting salary for a rookie teacher with a Bachelor's Degree is \$30,816.00. (State Salary Schedule, *available at* www.gadoe.org/pea_infosys_data.aspx?PageReg=PEA1SDCPI08) (DOE Cert., Ex. 7.)

85. All Plaintiff Districts and Plaintiff Focus Districts not only pay their teachers the State minimum salary, but also provide local supplements to that salary. (*See Atkins Dep. at 201; Key Dep. at 146-47, 246-47; Keith Dep. at 159-60; Light Dep. at 262-63; McQueen Dep. at 162; Reed Dep. at 350-54.*)

86. In FY '06, Georgia's average teacher salary was \$48,300, which was slightly below the national average of \$49,109. (NCES Digest of Education Statistics (2007), Table 76, *available at* http://nces.ed.gov/programs/digest/d07/tables/dt07_076.asp?referrer=list) (Not. Fil. Fed. Pub. Rec., Ex. 4.)

87. That same year, Georgia's average teacher salary was at least \$4,000 higher than the average in any of its neighboring states. *See id.* (showing average salaries of \$40,347 in Alabama; \$43,302 in Florida; \$43,922 in North Carolina; \$43,242 in South Carolina; and \$42,537 in Tennessee.)

88. The following table shows average FY '06 teacher salaries in the Plaintiff Districts and Plaintiff Focus Districts:

DISTRICT	AVERAGE TEACHER SALARY
Ben Hill	\$49,153.74
Charlton	\$48,116.49
Elbert	\$45,892.06
Murray	\$47,908.27
Polk	\$49,641.43
Wayne	\$45,937.19

(OSA Report Cards) (GOSA Cert., Ex. 4.)

89. The State has created a procedure for the certification or classification of all personnel employed by Georgia public schools. O.C.G.A. § 20-2-200 *et seq.*

90. The PSC establishes routes to and requirements for various levels of certification. Ga. Comp. R. & Regs. 505-2-.001 *et seq.*

91. All Plaintiff and Plaintiff Focus District teachers, principals, and superintendents are in compliance with State certification requirements. (Atkins Dep. at 40, 192, 196; Key Dep. at 26, 249-50; Keith Dep. at 9, 38, 43, 212-13; Light Dep. at 9, 240-41; McQueen Dep. at 87, 194-98; Reed Dep. at 271-72, 345; Deposition of Marvin Bernard Williams, hereinafter “M. Williams Dep.,” filed

contemporaneously herewith, at 6, 192, 194; Affidavit of Phil Blackwell, filed contemporaneously herewith, at ¶¶ 2, 3.)

92. The Georgia Implementation Guidelines for NCLB, Title II, Part A, as established by PSC, define a “Highly Qualified” teacher as one who is professionally certified to teach by PSC and is teaching in the field or fields of certification. (Georgia Implementation Guidelines) (Ex. 1 to the Georgia Professional Standards Commission Certification of Authenticity, hereinafter “PSC Cert.,” filed contemporaneously herewith, at 9.)

93. Local boards of education are responsible for ensuring that teachers are teaching in their field of certification, and are required to formulate and submit annual plans for achieving this federal goal. *Id.* at 8, 38.

94. All Plaintiff and Plaintiff Focus District teachers are Highly Qualified within the meaning of federal law and the State Guidelines, or have a plan to obtain Highly Qualified status. (Atkins Dep. at 196; Key Dep. at 249-50; Keith Dep. at 38, 43; Light Dep. at 240-41; McQueen Dep. at 197-98; Reed Dep. at 271-72.)

95. Educator quality is annually evaluated at the local level. O.C.G.A. § 20-2-210.

96. All Plaintiff Districts and Plaintiff Focus Districts have performed annual evaluations of their teachers.

97. More than 95% of Plaintiff and Plaintiff Focus District teachers have been rated as “satisfactory” by their supervisors in the most recent annual teacher evaluations. (Ex. 5 to the Deposition of John Murphy, Vol. I, hereinafter “Murphy Dep.,” at DEXP001786-87.)

98. All Plaintiff and Plaintiff Focus District principals are rated as “satisfactory” by their respective superintendents. (Key Dep. at 37-41; Keith Dep. at 48; Light Dep., Ex. 18; McQueen Dep. at 138-39, 141-45; Reed Dep. at 346; M. Williams Dep. at 8-9.)

99. The State has established maximum class sizes for State-funded subjects and courses. O.C.G.A. § 20-2-182(i).

100. The class size rule, promulgated by the State Board of Education, builds in a high degree of flexibility and autonomy for local school systems. Ga. Comp. R. & Regs. 160-5-1-.08 (*e.g.*, local boards of education are empowered to establish their own maximum class sizes for high school general education courses, maximum class sizes are set in reference to system averages, and waivers are available for “educationally justified” needs. (*Id.* at (2)(d, f)).

101. All Plaintiff Districts and Plaintiff Focus Districts are in compliance with the class size rule, or have obtained waivers from the State Board of Education for classroom populations in excess of the rule. (Atkins Dep. at 143-45;

Key Dep. at 252-53; Keith Dep. at 163-64; Light Dep. at 264-65; McQueen Dep. at 18; Reed Dep. at 270.)

102. The State provides capital outlay funds for the construction of public school facilities. O.C.G.A. § 20-2-260(a).

103. The State Board of Education requires local boards of education to develop and submit a five-year facilities plan that inventories existing school facilities and prioritizes needed construction projects. Ga. Comp. R. & Regs. 160-5-4-.01(2)(b).

104. All Plaintiff Districts and Plaintiff Focus Districts have submitted five-year facilities plans to the State Board of Education. (Jackson Aff. at ¶ 2.)

105. All Plaintiff and Plaintiff Focus Districts have built new school facilities in the past ten years using a combination of capital outlay and SPLOST revenues. (Atkins Dep. at 62-63; Key Dep. at 176; Keith Dep. at 33-34; Light Dep. at 122-23; McQueen Dep. at 168-70; Reed Dep. at 69-70.)

106. Plans are underway for the construction of additional schools in some of the Plaintiff Districts and Plaintiff Focus Districts: Ben Hill, new elementary school, \$12-15 million (Key Dep. at 74, 78); Charlton County, new elementary school, \$9 million (McQueen Dep. at 163-65); Elbert County, renovations and improvements to high school, middle schools, and elementary schools, \$5.5 million (Light Dep. at 93-94, Ex. 3); Murray County, new high school \$40-45

million (Deposition of Steve Loughridge, hereinafter “Loughridge Dep.,” filed contemporaneously herewith, at 75); Polk County, new elementary school, as well as renovations to existing schools, \$11 million (M. Williams Dep. at 25).

107. Local boards of education are authorized to establish disciplinary proceedings to handle student disruptions to the school environment. O.C.G.A. § 20-2-752 *et seq.*

108. For those situations in which students are repeatedly exposed to serious violations of school rules, the State Board of Education has created the category of “persistently dangerous schools.” Ga. Comp. R. & Regs. 160-4-8-.16.

109. No Plaintiff or Plaintiff Focus District school is categorized as a persistently dangerous or unsafe school. (Atkins Dep. at 207-08; Key Dep. at 265; Keith Dep. at 252; Light Dep. at 269; McQueen Dep. at 214; Reed Dep. at 320.)

110. Transportation is provided by law for all Georgia public school students living beyond one and one-half miles of their assigned school, and is also furnished to disabled and special needs students according to their needs. O.C.G.A. § 20-2-188(d); Ga. Comp. R. & Regs. 160-5-3-.10.

111. All Plaintiff Districts and Plaintiff Focus Districts are in compliance with State requirements for pupil transportation, and many offer transportation services to all students, even to those who live within one and one-half miles of

their schools. (Atkins Dep. at 206-07; Key Dep. at 277-78; Keith Dep. at 250; Light Dep. at 274-75; McQueen Dep. at 213; Reed Dep. at 327.)

112. In a 2007 report published in *Education Week*, Georgia was rated first in the nation on a composite measure of access to educational technology, use of educational technology and capacity to use educational technology. (*Education Week*, Technology Counts 2007) (Deposition of Christopher Swanson, hereinafter “Swanson Dep.,” filed contemporaneously herewith, at 159-60, Exs. 16, 17.)

113. In 2008, Georgia was third in the nation on a similar ranking. (*Education Week*, Technology Counts 2008) (*Id.* at 161-62, Exs. 18, 19.)

114. Statewide, there were 3.34 students per modern instructional computer connected to the internet as of December 2006. (State Technology Inventory, *available at* http://public.doe.k12.ga.us/DMGetDocument.aspx/TS07_State_Report.pdf?p=6CC6799F8C1371F6B21AE62BC26F886DAE5C986011D4C4BB279806DFB8250E1B&Type=D) (DOE Cert., Ex. 4.)

115. In addition to computers, there are many other technologies available to Georgia’s students, such as televisions, DVD players, interactive whiteboards, printers, and cameras. *Id.*

116. The following table shows the ratios of students per modern instructional computer connected to the internet in the Plaintiff and Plaintiff Focus Districts as of that same time:

DISTRICT	STUDENT – COMPUTER RATIO
Ben Hill	2.42
Charlton	2.07
Elbert	7.23
Murray	4.94
Polk	4.35
Wayne	2.95

(DOE Technology Inventory Surveys, *available at* http://public.doe.k12.ga.us/DMGetDocument.aspx/TS07_District_Reports.pdf?p=6CC6799F8C1371F6DF6723F10920793EC9ACE4BAE3FC0FC9DCC1D05872FE979F&Type=D) (DOE Cert., Ex. 4.)

117. Elbert County recently had a computer lab destroyed by water. (Light Dep. at 272.)

118. Elbert County plans to reduce its student-computer ratio to 2:1 using SPLOST revenue to purchase 1,550 new computers, at a cost of \$2 million. (Light Dep. at 285, Ex. 3 at ECSD 003891.)

119. The State recommends textbooks and learning resources to local boards of education for State-funded subjects and courses, but local systems are not limited to these State recommendations in developing and implementing their textbook adoption plan. O.C.G.A. § 20-2-1010; Ga. Comp. R. & Regs. 160-4-4-.10, 160-4-4-.20.

120. All Plaintiff Districts and Plaintiff Focus Districts are up-to-date in implementing the State-recommended textbooks and learning materials. (Atkins Dep. at 206; Key Dep. at 308; Keith Dep. at 248; Deposition of Janet Wiley, hereinafter “Wiley Dep.,” filed contemporaneously herewith, at 42; McQueen Dep. at 210; Reed Dep. at 125-26.)

121. The State Superintendent of Schools has articulated the following goal for education: “We will lead the nation in improving student achievement.” (Deposition of Kathy Cox, hereinafter “Cox Dep.,” at 20-22.)

122. Since 2002, the State has implemented a comprehensive school improvement system designed to assess the current levels of educational attainment in Georgia’s public schools and, using the resulting data and information, to provide targeted assistance to local boards of education to help them improve student achievement. (Cox Dep. at 19-20; Deposition of Martha Reichrath at 21-24.)

123. During this period of time, the State's graduation rates have risen more than 10%. (OSA Report Card) (GOSA Cert., Ex. 5.)

124. The National Assessment of Education Progress ("NAEP") is a nationally administered assessment of student learning. (Deposition of Stephen Klein, hereinafter "Klein Dep.," filed contemporaneously herewith, at 34.)

125. Georgia students, in each category of disaggregation, have outpaced the nation in improvement on the nationally administered NAEP test over the last several years. (Klein Dep., Ex. 3 at ERH001292.004 - .005.)

126. The Superintendent and Chair of the State Board have indicated that they are not satisfied with current levels of student achievement, and the DOE and the State Board are committed to promoting initiatives that improve student achievement. (Cox Dep. at 281; Deposition of Wanda Barrs at 34.)

127. With respect to the assessment of student achievement, the State requires both criterion-referenced competency tests ("CRCTs") and nationally-normed assessments, all Plaintiff Districts and Plaintiff Focus Districts assess their students on the State-required tests. (Affidavit of Christopher Domaleski, filed contemporaneously herewith, at ¶ 2.)

128. The State evaluates student achievement through its Single Statewide Accountability System ("SSAS"), a condition of receiving funding under NCLB. 20 U.S.C. § 6301 *et seq.*; O.C.G.A. §§ 20-14-25, 20-14-26.

129. A school or school district's accountability profile indicates whether the school has made Adequate Yearly Progress ("AYP") toward the NCLB goal of 100% student proficiency on State assessments in reading/language arts and mathematics by the end of the 2014 school year. ('06-'07 AYP Workbook) (DOE Cert., Ex. 6, at 18.)

130. To make AYP, a district must (1) have 95% participation in State assessments, (2) meet or exceed measurable objectives on the State assessments, and (3) show progress on an additional academic indicator such as graduation rates or attendance. *Id.* at 19; Ga. Comp. R. & Regs. 160-7-1-.03.

131. AYP is measured on a disaggregated basis: Georgia's AYP subgroups are American Indian/Alaskan Native, Asian/Pacific Islander, Black, Hispanic, White, Multi-racial, students with disabilities, limited-English-proficient students, and economically disadvantaged students. Ga. Comp. R. & Regs. 160-7-1-.03(3)(c).

132. The SSAS provides awards and sanctions for local boards of education based upon the results of the accountability profiles.

133. For schools that "make" AYP, the State provides incentives such as recognition, increased flexibility with respect to state and federal requirements, or financial awards. Ga. Comp. R. & Regs. 160-7-1-.04.

134. For schools that are identified as “Needs Improvement” on their accountability profile, defined as not “making” AYP for two or more consecutive years, the State will provide additional, intensive supports to enable the local educational authorities to develop and implement a corrective action plan. *Id.*

135. More intensive supports are provided by the State to the local educational authorities with each additional year of “Needs Improvement” status. *Id.*

136. All Plaintiff and Plaintiff Focus District schools either “made” AYP or have a plan in place to improve school performance pursuant to Georgia’s Consolidated State Accountability Workbook, 2006-2007. (Atkins Dep. at 22-24; Key Dep. at 249-50; Keith Dep. at 120-25; Light Dep. at 227-28; McQueen Dep. at 107-09; Reed Dep. at 105-08.)

137. Many of Plaintiff and Plaintiff Focus District schools have received award recognition from the State for successfully “making” AYP. (Elbert–Beaverdam, Blackwell, and Doves Creek; Murray–Coker; Polk–Euharlee; Wayne–Bacon and Odum.) (’05-’07 Report Cards) (GOSA Cert., Ex. 6.)

138. Each Plaintiff and Plaintiff Focus District provides to its students a host of academic and extracurricular enrichment programs above and beyond the basic subjects and studies enumerated in State laws and regulations.

139. Plaintiff Districts and Plaintiff Focus Districts pay tens of thousands of dollars in supplemental pay to their athletic coaches and other staff for various extracurricular activities and programs not required by State law or rules.

140. Ben Hill budgets \$150,000 for athletics personnel. (Key Dep., Ex. 6 at BHCSD 007445.)

141. Charlton pays a \$27,000 supplement to its head football coach, and \$59,000 in total supplements for its high school football coaching staff. (McQueen Dep., Ex. 5 at CHCSD005947.)

142. Charlton's Superintendent testified the district was forced to cut its reading recovery program due to lack of funds. (McQueen Dep. at 40-41.)

143. The reading recovery program cost the district \$60,000 annually. (*Id.* at 222-23.)

144. Elbert provides between \$7,200 and \$11,600 in supplemental salaries for its middle school football coaches and between \$23,400 and \$57,400 for its high school football coaches. (Light Dep., Ex. 24 at ECSD 001800-01.)

145. Murray provides \$5,900 in supplements for its band directors and \$3,200 in supplements for its choral directors. (Reed Dep., Ex. 26 at MCSD 003015.)

146. Polk spends \$10,000 on salary supplements for high school band directors, \$600 for debate team coaches, and \$46,000 on high school football coaches. (M. Williams Dep. Ex. 4 at PCSD 007674, 007681-82.)

147. Wayne provides a \$12,000 supplement to its athletic director, \$10,000 to varsity basketball head coaches, and a \$2,000 supplement to its swimming coach. (Keith Dep., Ex. 17 at WCSD 003684-85.)

148. Plaintiff Districts and Plaintiff Focus Districts provide numerous course offerings outside of the programs of study necessary for a high school diploma.

149. Ben Hill offers aquaculture, mythology, and aerobic dance. (Key Dep., Ex. 18 at 1-2, 6.)

150. Elbert offers Advanced Placement Studio Art, Body Sculpting, and drivers' education (Light Dep., Ex. 13 at ECSD 001080, 001083, 001090.)

151. Murray courses include housing, guitar, and crafts. (Reed Dep., Ex. 20 at MCSD 001645-46.)

152. Polk offers students Advanced Placement History, and T.V. Broadcasting. (Atkins Dep., Ex. 2 at PCSD 001309, 1311.)

153. Wayne courses include forensics, personal fitness, and web page design. (Keith Dep., Ex. 14 at WCSD 001413-14, 001420.)

154. Plaintiff Districts and Plaintiff Focus Districts have also used hundreds of thousands of dollars, including SPLOST dollars, for items not directly related to State-required academic programs.

155. Items funded by Plaintiff and Plaintiff Focus Districts that are not directly related to state-required academic programs include, but are not limited to, the following: a middle school track in Ben Hill (Key Dep. at 66); parking lots, a baseball field, and a track in Charlton (McQueen Dep. at 171, Ex. 8 at CHCSD 008336-37); a courtyard dome, tennis courts, and softball and football fields in Elbert (Light Dep., Ex. 3 at ECSD003988-89); and bleachers in Polk (Atkins Dep. at 67, Ex. 1 at PCSD 005036).

156. All schools in Plaintiff Districts and Plaintiff Focus Districts are accredited by either the Southern Association of Colleges and Schools (“SACS”) or the Georgia Accrediting Commission (“GAC”). (Atkins Dep. at 122, 161; Key Dep. at 178, 305; Keith Dep. at 195-96; Light Dep. at 168-69; McQueen Dep. at 115, 187-88; Reed Dep. at 179, 181, 209.)

157. All Plaintiff and Plaintiff Focus District high schools are SACS-accredited. *Id.*

158. Both the GAC and SACS accreditation processes require that member schools or districts apply for accreditation, including the payment of application or membership fees. (*See, e.g.,* Keith Dep. at 195-98.)

159. Plaintiffs and Plaintiff Focus Districts confirm annually to SACS and GAC that their schools comply with the organizations' respective standards. (*See, e.g.,* Reed Dep., Exs. 16, 19.)

160. As part of SACS accreditation, schools are required to confirm that they are in compliance with local, state, and federal laws, and have the necessary resources to "support [their] educational programs and to implement [their] plans for improvement." SACS District Standards 2.3, 5.6 (Reed Dep., Ex. 6 at SACS 002599, 002604.)

161. GAC requires member schools to confirm that all teaching staff are credentialed, that the local board of education delegates school management to the superintendent, and that graduating students receive sufficient academic credits before receiving a diploma. (Reed Dep., Ex. 18, at 030668-69.)

162. Accredited schools must submit to periodic on-site reviews by outside evaluators from the accrediting agencies. (*See, e.g.,* Reed Dep., Ex. 6 at SACS 002593.)

163. Sanctions may be applied to member schools or districts for failure to comply with the accrediting agency's standards or rules. (*See, e.g.,* Deposition of Harold Wingfield, hereinafter "Wingfield Dep.," filed contemporaneously herewith, Ex. 3 at PCSD003882.)

164. Plaintiffs' expert, Terry Peterson, testified that a school district's "compliance with state laws and rules regarding education . . . doesn't mean it's adequate". (Deposition of Terry Peterson, hereinafter "Peterson Dep.," filed contemporaneously herewith, at 88.)

165. None of Plaintiffs' experts relied on this Court's order or the "sovereign legislative actions of the General Assembly and the regulations of the State Board of Education" when forming their opinions in this case. (Peterson Dep. at 91-92; Deposition of Hobart Harmon, hereinafter "Harmon Dep.," filed contemporaneously herewith, at 69-70; Deposition of Scott Beck, hereinafter "Beck Dep.," filed contemporaneously herewith, at 83; Deposition of Jeffrey D. Williams, hereinafter "J. Williams Dep.," filed contemporaneously herewith, at 231, 239-40; Deposition of Daniel J. Reschly, hereinafter "Reschly Dep.," filed contemporaneously herewith, at 24; Deposition of Toni S. Strieker, Vol. I, hereinafter "Strieker Dep.," filed concurrently herewith at 41, 69-70; Deposition of Henry M. Levin, hereinafter "Levin Dep.," filed concurrently herewith, at 182-83; *see also* Light Dep. at 135; Key Dep. at 96; Keith Dep. at 266-67; Reed Dep. at 117-18; McQueen Dep. at 120; M. Williams Dep. at 58-59.)

166. Plaintiffs seek additional funding for an increased "local supplement to teachers' salaries . . .in order to attract qualified teachers." *Deriso*, 246 Ga. at

543. (Key Dep. at 139-40; Light Dep. at 259-60; Keith Dep. at 215-16; Reed Dep. at 140; McQueen Dep. at 13; M. Williams Dep. at 53).

167. Plaintiffs seek funding for more and different course offerings. (Key Dep. at 187-88; Light Dep. at 39; Keith Dep. at 204-05; Reed Dep. at 308-09; McQueen Dep. at 72; M. Williams Dep. at 74); *see Deriso*, 246 Ga. at 543 (courts should not decide “how many levels of English or math should be taught”).

168. School district personnel almost always opine that they need more money and resources in order to meet the “needs” of their students. (Peterson Dep. at 285.)

169. The breadth, scope, depth, and expenditures on education in Georgia have vastly increased since 1981 when Georgia’s educational system and funding were upheld against an adequacy challenge in the *McDaniel* case. (NCES 2007 Digest of Educational Statistics, Table 175, *available at* http://nces.ed.gov/programs/digest/d07/tables/dt07_175.asp?referrer=list) (Not. Fil. Fed. Pub. Rec., Ex. 5.)

170. None of the Plaintiff Districts and Plaintiff Focus Districts has studied or analyzed whether there is a relationship (let alone a positive, *causal* relationship) between educational expenditures and student performance, even within their own districts. (Key Dep. at 304-05; McQueen Dep. at 224; Wiley Dep. at 90, 92; Reed Dep. at 373; M. Williams Dep. at 65; Keith Dep. at 190.)

171. None of the Plaintiffs' experts demonstrated a causal relationship between educational funding and student performance, either generally or in Georgia.

172. The only expert to attempt to demonstrate a causal relationship between education funding and student performance, Jeffrey Williams, admitted during his deposition that none of his more than 800 pages of exhibits, graphs, and charts even analyzes the relationship between per-pupil educational expenditures and student performance. (J. Williams Dep. at 140, 141-42 ("Q. [N]one of the exhibits that you've prepared analyze [the relationship between spending and achievement]? A. These exhibits don't analyze that issue.").)

173. The Executive Director of the Consortium, Joseph Martin, testified that despite repeated attempts, he was unable to show a correlation between educational expenditures and student performance. (Deposition of Joseph Martin, hereinafter "Martin Dep.," filed contemporaneously herewith, at 143-46.)

174. As noted in correspondence with the former president of the Consortium, Mr. Martin believed it would be "possible to take existing data on expenditures per student and academic achievement . . . and show a close correlation through a regression analysis." (Martin Dep., Ex. 7 at BHCSD003972.)

175. Mr. Martin "expect[ed] a high coefficient" when he performed such an analysis. (*Id.*)

176. Mr. Martin undertook that analysis because he “hoped . . . that [the Consortium] can make this case statistically.” (Martin Dep., Ex. 8 at BHCS003975.)

177. “Contrary to [his] initial expectations, [however, Mr. Martin has] not been able . . . to demonstrate a close correlation between the existing data on expenditures per student and academic achievement.” (*Id.*)

178. Mr. Martin concluded that the Consortium “may have to use other approaches” to “make this case.” (Martin Dep., Ex. 8 at BHCS003975.)

179. When asked at his deposition about his analyses, Mr. Martin stated that he didn’t “think anyone can honestly point to a one-to-one relationship” between spending and achievement once some unidentified expenditure “floor” is exceeded. (Martin Dep. at 149-50.)

180. Plaintiffs’ expert, Jeffrey Williams, produced (after his deposition) a number of documents showing his analysis of correlation coefficients and the statistical significance of the relationships depicted in his tables and graphs.

181. Dr. Williams analyzed the relationship between general fund expenditures and one measure of student achievement – graduation rates, but he did not find a statistically significant relationship between the two. (Ex. 1 to the Affidavit of Cynthia Garrett, filed contemporaneously herewith, at ERH001573.012.) Plaintiffs’ inability to show a relationship between educational

expenditures and student performance, let alone a *causal* relationship, is consistent with decades of empirical research. *See, e.g.*, Eric A. Hanushek, *The Failure of Input-Based Schooling Policies*, 113 *Econ. J.* 485, F64-F98 (February 2003).

182. Superintendents in five of the six Plaintiff and Plaintiff Focus Districts admittedly have not even asked their respective boards of education to fund the items they claim are “needed.” (*See, e.g.*, Key Dep. at 109, 123, 130-31, 172-73, 203-04, 208-09, 220, 230-33, 235, 237-38, 240-44, 246-48, 252, 254, 261, 263, 266, 268, 272-74, 280, 286, 297, 300, 302-03, 309, 311; McQueen Dep. at 128, 136, 223; Reed Dep. at 53-55, 121-22, 137, 141, 149-52, 221, 225, 254, 256-57, 259, 261-64, 266, 278, 280, 285-91, 294-95, 304-05, 307, 310, 313, 320, 322, 345, 354-55, 358-59, 367, 378; M. Williams Dep. at 17, 18-19, 20; Keith Dep. at 15, 61-62, 113, 238-239, 243.)

183. In Elbert County, the board of education rejected a number of recommendations from the superintendent along with a proposed millage rate increase that would have funded the recommended items. (*See, e.g.*, Light Dep. at 60, 125, 136, 148-50, 153, 212, 268.)

184. All of the Plaintiff Districts and Plaintiff Focus Districts have additional local or State funding available to them of which they have not taken advantage.

185. If the Plaintiff Districts and Plaintiff Focus Districts raised their millage rates, they would realize increases in both property tax revenue and State equalization grants. O.C.G.A. § 20-2-165; (*see* Key Dep. at 124, 152-53, 191; McQueen Dep. at 52, 65; Light Dep. at 60-62; Reed Dep. at 57, 152; Wingfield Dep. at 39).

186. Wayne has a large, increasing general fund balance. (Keith Dep. at 176, Ex. 10.)

187. Wayne has added roughly \$1 million per year to its fund balance during the past four years. (*Id.*, Ex. 10)

188. Several of the Plaintiff Districts and Plaintiff Focus Districts reduced their millage rates during the pendency of this lawsuit. (*See* Supplemental DOR Cert., *supra*, ¶ 54.)

189. The Executive Director of the Consortium has indicated that “additional moneys from the State can permit reductions in property taxes included as a trade-off between state money and local money.” (Martin Dep. at 174; *see also id.* at 175 (“[I]f the State provides moneys to eliminate those deficits, that would reduce the burden on local school systems, which would . . . permit property tax reductions.”), *id.* at 181 (“And to the extent that that would allow a school system not to have to tax as much as it might otherwise do, one of the consequences is lower property taxes.”), *id.* at 199 (“And I’ve tried to always make

the point that if the State shouldered its responsibility . . . there would be some big property tax reductions at the local level.”.)

190. Mr. Martin also stated that “if the State did do more, it would allow local systems to do less.” (Martin Dep. at 186.)

191. As the State recovered from the recession that followed the terrorist attacks of September 11, 2001, it increased the amount of State funding for education; but those increases were accompanied by a decrease in the average millage rates levied by local boards of education. (*See* State QBE Allotment Sheets 2000-2007) (DOE Cert., Ex. 5); (DOR Millage Rate Reports) (Supplemental DOR Cert., *supra*, ¶ 54.)

192. A number of factors outside the State’s control influence student performance.

193. Family background, poverty, motivation, native language, substance abuse, teen pregnancy, disability status – all these non-school factors (and more) undisputedly affect whether individual students succeed academically. (*See, e.g.*, Strieker Dep. (Vol. 1) at 182-83, Ex. 7 at RH001425.0020-.0021.)

194. A student who attended school 180 days per year, 6 hours per day, from pre-K to grade 12, would spend less than 10% of his first eighteen years in school.

195. Local boards decide which certified teachers to hire, where to assign

them, and what they will teach. *See* O.C.G.A. §§ 20-2-211, -943(b) (2005).

196. They are also responsible for evaluating teacher performance, for training teachers, and for firing incompetent teachers. *Id.* §§ 20-2-210, -940, -942.

197. In this case, the evidence shows that the Plaintiff Districts and Plaintiff Focus Districts have rated nearly all of their teachers as satisfactory during the last two school years. (Murphy Dep., Ex. 5 at DEXP 001786-87.)

198. Local boards hire district superintendents and principals. O.C.G.A. § 20-2-211(a).

199. Local boards determine what courses to offer beyond the minimum required curriculum. *Id.* § 20-2-242(2).

200. Local boards and their employees decide the instructional methods to be used in the classroom.

201. Local boards and their employees supervise the teachers who provide classroom instruction. *Id.* §§ 20-2-210, -940, -942.

202. Local boards determine how local money will be spent and set the local millage rate. Ga. Const. Art. VIII, Sec. VI, Para. I.

203. Local boards and their employees prepare students or fail to prepare students to pass tests.

204. Local boards determine how many schools to build, where to build them, and what grades they will contain. Ga. Const. Art. VIII, Sec. V, Para. I;

O.C.G.A. §§ 20-2-60, -182(i)(4) (2005).

205. Elbert County plans to use the revenue from its most recent SPLOST in part as follows: \$500,000 for a dome over a high-school courtyard (for the stated purpose of increasing lunch periods from 30 to 45 minutes); between \$200,000 and \$400,000 for renovations to the district's football stadium; between \$100,000 and \$250,000 for middle-school football and softball fields; between \$150,000 and \$300,000 for middle-school field houses; between \$50,000 and \$100,000 for tennis courts at the middle school; between \$40,000 and \$75,000 for a middle-school weight room; and between \$250,000 and \$750,000 for a "new wing" at the central office. (Light Dep. at 101-02.)

206. Elbert has an alternative school that one of the Plaintiffs' experts characterized as being "in extremely poor condition." (Reschly Dep. at 218.)

207. The site for the alternative school was selected over the superintendent's objection because of "a political move to make sure something else didn't go in" "directly across the street from" a local board member's house. (Light Dep. at 118.)

208. The district does not plan to spend any of its SPLOST revenue renovating the alternative school. (Light Dep., Ex. 3.)

209. None of Plaintiffs' witnesses have analyzed the wisdom or impact of local board decisions on student performance. (*See, e.g.*, J. Williams Dep. at 232-

233; Strieker Dep. at 66-67; Reschly Dep. at 31; Peterson Dep. at 92-92; Harmon Dep. at 130.)

This 6TH day of June, 2008.

Respectfully submitted,

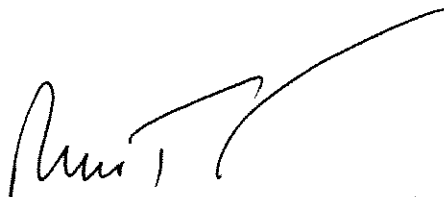
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing **DEFENDANTS' CORRECTED RULE 6.5 STATEMENT** upon counsel for Plaintiffs by electronic mail and by depositing same in the United States mail with adequate postage affixed thereon to assure proper delivery, addressed as follows:

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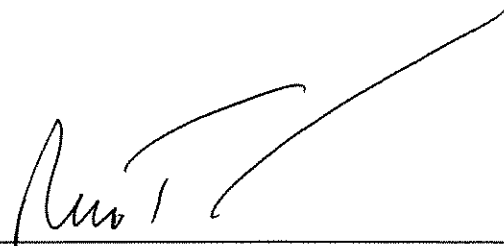
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