

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

KIM COOK; BETHANN BROOKS; EMILY
JEFFERIS; CATHY MCCONNELL; SHAUNA
PAEDAE; JANINE PLAVAC; CATHERINE
BOEHME; ALACHUA COUNTY EDUCATION
ASSOCIATION; HERNANDO CLASSROOM
TEACHERS ASSOCIATION; and ESCAMBIA
EDUCATION ASSOCIATION;

Plaintiffs;

v.

TONY BENNETT, in his official capacity as
FLORIDA COMMISSIONER OF EDUCATION;
GARY CHARTRAND, ADA G. ARMAS,
SALLY BRADSHAW, JOHN A. COLON,
BARBARA S. FEINGOLD, JOHN R. PADGET,
and KATHLEEN SHANAHAN, in their official
capacities as MEMBERS OF THE FLORIDA
STATE BOARD OF EDUCATION; SCHOOL
BOARD OF ALACHUA COUNTY; SCHOOL
BOARD OF HERNANDO COUNTY; and
SCHOOL BOARD OF ESCAMBIA COUNTY;

Defendants.

CIVIL ACTION NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF THE ACTION

1. In this lawsuit, Plaintiffs challenge the constitutionality of Florida Senate Bill 736 (“the Act”), which was passed on March 24, 2011, and is codified throughout Chapter 1012, Florida Statutes, and the teacher evaluation policies that Defendant School Boards have adopted to comply with the Act, as implemented by the Florida State Board of Education (“FL BOE”) and Florida Department of Education (“FL DOE”). As detailed below, the Act and the District Evaluation Policies infringe on Plaintiffs’ due process and equal protection rights in violation of the Fourteenth Amendment to the United States Constitution in that they evaluate teachers based

on the test performance of students whom teachers did not teach and/or on subjects the teachers did not instruct during the school year under evaluation. Plaintiffs also challenge the implementation of one of the Evaluation Policies (that of Alachua County) as a violation of the Act.

2. Plaintiffs seek (1) a declaratory judgment that the Act and the District Evaluation Policies are unconstitutional, pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure; (2) a declaratory judgment that the Alachua County Evaluation Policy as implemented violates the Act, pursuant to Fla. Stat. § 86.011 or 28 U.S.C. § 2201; (3) an injunction against the implementation and enforcement of the Act and the District Evaluation Policies pursuant to Rule 65 of the Federal Rules of Civil Procedure and the Court's inherent equitable powers; and (4) an award of attorneys' fees, pursuant to 42 U.S.C. § 1988.

II. JURISDICTION AND VENUE

3. This Court has federal-question subject-matter jurisdiction under 28 U.S.C. § 1331, as this case arises under 42 U.S.C. § 1983 and the Constitution of the United States. This Court also has subject-matter jurisdiction under 28 U.S.C. § 1343(a)(3), because this action seeks to redress the deprivation, under color of State law, of rights secured by the Constitution and laws of the United States. This Court has supplemental jurisdiction over Plaintiffs' claim under the Florida Declaratory Judgment Act under 28 U.S.C. § 1367.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b).

5. Plaintiffs have notified the Attorney General of Florida of this action pursuant to Section 86.091, Florida Statutes, and Rule 24.1(b) of the United States District Court for the Northern District of Florida.

III. PARTIES

6. Plaintiff Kim Cook is a certified first grade teacher in the Alachua County Public Schools, who has taught at W.W. Irby Elementary School (“Irby Elementary”) in Alachua County since the 2011-12 school year and has twenty-two years of experience in teaching reading and writing to English language learners. Plaintiff Cook was selected as the 2012-13 Teacher of the Year at Irby Elementary, she holds a Master’s Degree in Multilingual and Multicultural Education, is the Chairperson of her School Advisory Council, serves as a cooperating teacher for students and pre-interns entering the teaching field, and is a passionate practitioner and advocate for research-based instructional strategies that further student achievement.

7. Plaintiff Bethann Brooks is a certified health science teacher for students in grades 10-12, who has taught at Central High School in Hernando County Florida for seven years. She was selected as the Hernando County Teacher of the Year for 2012-2013, as well as the Central High School Teacher of the Year for 2012-2013. Plaintiff Brooks also has been a registered nurse for nearly twenty-four years, and she continues to practice part time at Brooksville Regional Hospital as an on-call emergency nurse and in the operating room. She is the Chairperson of the Career & Technical Department at Central High School, on the school’s leadership team, and serves as a mentor to new teachers.

8. Plaintiff Emily Jefferis is a certified art teacher at Ransom Middle School in Escambia County. Plaintiff Jefferis has a Master’s Degree in Education Leadership, and has served as an art teacher for sixteen years, including for nine years at Ransom Middle School. She serves as a cooperating teacher, hosting student teachers as part of their college training. Plaintiff Jefferis’ art students regularly compete and win awards in art competitions, and she founded and sponsors Ransom Middle School’s art club to further engage and develop students’ artistic interests and

skills. One of the largest club projects is organizing an annual arts and craft silent auction, at which students' work is sold alongside that of local artists, to benefit the American Cancer Society.

9. Plaintiff Cathy McConnell is a certified music teacher who instructs orchestra at Ransom Middle School and Tate High School in Escambia County. She has fifteen years of teaching experience, including nine years as Orchestra Director at Ransom Middle School and Tate High School, where orchestra participation has grown each year under her leadership. This year, under Plaintiff McConnell's instruction, the string orchestras of both Ransom Middle School and Tate High School participated in, and earned superior ratings at, the Florida Orchestra Association District 3 Music Performance Assessment in Tallahassee. Plaintiff McConnell also serves as the Awards Chairperson for the Florida American String Teachers Association.

10. Plaintiff Shauna Paedae is a certified mathematics teacher in the International Baccalaureate (IB) program at Pensacola High School in Escambia County. She currently teaches Calculus primarily to seniors, IB Mathematical Studies to seniors, and Algebra 2 primarily to juniors and seniors. Plaintiff Paedae has a Master's Degree in Statistics. She has taught at Pensacola High School for six years, and she taught mathematics at Woodham High School for several years previously. Plaintiff Paedae's students consistently have high pass rates for the IB examinations, including a pass rate of over ninety percent last year. She has served as a trainer for other teachers since 2003 in Pensacola, Panama City, and Tallahassee.

11. Plaintiff Janine Plavac is a certified health sciences teacher at Gainesville High School in Alachua County. For the past eight years she has been the Director of the Academy of Health Professions, a magnet program at Gainesville High School with competitive admissions that educates students to go into the medical professions upon graduation. Plaintiff Plavac has

also served as the Chairperson of the School Advisory Council for the past four years and has taught at the Academy for the last ten years. Plaintiff Plavac was the High School Teacher of the Year for Alachua County in 2007-2008. Her students have won numerous state and national awards in Health Occupations Students of America competitions, including three students who received state-level awards in 2013 and are continuing on to compete in the national competition. In addition to her teaching career, Plaintiff Plavac has been a registered nurse for the last thirty-six years with extensive experience in critical care nursing and third world medical mission trips.

12. Plaintiff Catherine Boehme is a certified Biology teacher at West Florida High School of Advanced Technology in Escambia County. She has nearly thirty years of teaching experience including eleven at West Florida High, and has been a National Board Certified Teacher in Adolescent and Young Adult Science since 2000, which she renewed in 2010. Plaintiff Boehme was a recipient of a 2013 California Casualty Award for Teaching Excellence. She serves on the FL DOE's Teacher and Leader Preparation Implementation Committee, which provides recommendations to the state on teacher and school leadership preparation programs, and she has served on the teacher certification examination committee for Biology since 1987.

13. Alachua County Education Association ("ACEA") is a voluntary membership organization certified as the exclusive representative for all instructional employees¹ of the School Board of Alachua County, Florida, on matters related to such employees' wages, hours and terms and conditions of employment. ACEA's members include certified teachers of grade levels (kindergarten through grade 3 and grades 11-12) and subjects in which student learning is not tested by a state standardized test, including Art, Biology, Chemistry, Computer Science,

¹ The terms "instructional employee," "instructor," and "teacher" are used interchangeably herein. Under the Act, and as used in this Complaint, "classroom teachers" and "other instructional personnel [or employees] who are not classroom teachers" are subsets of this broader group.

Earth-Space Science, ESOL (English to Speakers of Other Languages), French, German, Latin, Spanish, General Science, Health Sciences, Humanities, Journalism, Marketing, Music, Physics, Social Science and Speech. ACEA brings this action on behalf of all of these members.

14. Plaintiff Hernando Classroom Teachers Association (“HCTA”) is a voluntary membership organization certified as the exclusive representative for all instructional employees of the School Board of Hernando County, Florida, on matters related to such employees’ wages, hours and terms and conditions of employment. HCTA’s members include certified teachers of grade levels (kindergarten through grade 3 and grades 11-12) and subjects in which student learning is not tested by a state standardized test, including Art, Biology, Chemistry, Computer Science, Earth-Space Science, ESOL, Foreign Languages, General Science, Health Sciences, Humanities, Journalism, Marketing, Music, Physics, Social Science and Speech. HCTA brings this action on behalf of all of these members.

15. Plaintiff Escambia Education Association (“EEA”) is a voluntary membership organization certified as the exclusive representative for all instructional employees of the School Board of Escambia County, Florida, on matters related to such employees’ wages, hours and terms and conditions of employment. EEA’s members include certified teachers of grade levels (kindergarten through grade 3 and grades 11-12) and subjects in which student learning is not tested by a state standardized test, including Art, Biology, Chemistry, Computer Science, Earth-Space Science, ESOL, Foreign Languages, General Science, Health Sciences, Humanities, Journalism, Marketing, Music, Physics, Social Science and Speech. EEA brings this action on behalf of all of these members.

16. Defendant Florida Commissioner of Education Tony Bennett is the chief educational officer of the state and head of the Florida Department of Education, which, *inter alia*, is responsible for approving the formula that school districts must use to measure student growth in

certain subjects under the Act and the evaluation policies that Florida school districts adopt to comply with the Act. Fla. Stat. §§ 1001.10-11, 1012.34(1)(b), (7). Florida Education Commissioner Bennett is sued solely in his official capacity.

17. Defendants Gary Chartrand, Ada G. Armas, Sally Bradshaw, John A. Colon, Barbara S. Feingold, John R. Padget, and Kathleen Shanahan are the members of the Florida State Board of Education. The FL BOE is responsible for adopting comprehensive educational objectives for public education in Florida and enforcing system-wide education goals and policies. These responsibilities include adopting the formula that school districts must use to measure student growth under the Act and approving the District Evaluation Policies that Florida school districts adopt to comply with the Act. Fla. Stat. §§ 1001.02(2), 1012.34(7)(a), (8). The Florida State School Board Members are sued solely in their official capacities.

18. Defendant School Board of Alachua County, Florida (“Defendant Alachua School Board”) administers and manages the public schools within Alachua County. As required by the Act, and subject to the dictates and required approval of the FL BOE and the FL DOE, Defendant Alachua School Board adopted the Alachua County Evaluation Policy and is responsible for implementing and enforcing the Act and the Alachua County Evaluation Policy. The Alachua School Board Members are sued solely in their official capacities.

19. Defendant School Board of Hernando County, Florida (“Defendant Hernando School Board”) administers and manages the public schools within Hernando County. As required by the Act, and subject to the dictates and required approval of the FL BOE and the FL DOE, Defendant Hernando School Board adopted the Hernando County Evaluation Policy and is responsible for implementing and enforcing the Act and the Hernando County Evaluation Policy. The Hernando School Board Members are sued solely in their official capacities.

20. Defendant School Board of Escambia County, Florida (“Defendant Escambia School Board”) administers and manages the public schools within Escambia County. As required by the Act, and subject to the dictates of the FL BOE and the FL DOE, Defendant Escambia School Board adopted the Escambia County Evaluation Policy and is responsible for implementing and enforcing the Act and the Escambia County Evaluation Policy. The Escambia School Board Members are sued solely in their official capacities.

IV. THE ACT’S EVALUATION MANDATES AND THEIR IMPLEMENTATION

21. On March 24, 2011, Governor Rick Scott signed the Act, which its sponsor labeled the “Student Success Act,” into law. *See* Senate Bill 736, now codified throughout Chapter 1012, Florida Statutes.

22. The Act requires school districts to conduct performance evaluations of all instructional employees (as well as administrative and supervisory personnel) at least once per year. Fla. Stat. § 1012.34(3)(a). Instructional employees include both classroom teachers and other employees who provide instructional services to students outside a regular classroom (“other instructional employees”). *Id.* § 1012.01(2). Performance is to be classified as highly effective; effective; needs improvement (or “developing” during the first three years of employment); or unsatisfactory. *Id.* § 1012.34(2)(e).

23. Under the Act, “at least fifty percent of the performance evaluation must be based upon data and indicators of student learning growth assessed annually by statewide assessments or, for subjects and grade levels not measured by statewide assessments, by school district assessments.” *Id.* § 1012.34(3)(a)1.

24. For classroom teachers, if less than three years of student growth data are available, no less than forty percent of the performance evaluation of a classroom teacher must be based upon such student learning growth data. *Id.* § 1012.34(3)(a)1-a.

25. For other instructional employees (*e.g.*, guidance counselors, librarians, athletic directors and speech/language pathologists), “other measurable student outcomes” may be combined with student growth data, provided that “student learning growth data account[] for not less than thirty percent of the evaluation.” *Id.* § 1012.34(3)(a)1-b. If less than three years of student growth data are available, no less than twenty percent of the evaluation must be based on such data. *Id.*

26. Student learning growth is determined, under the Act, in accordance with a mathematical formula recommended by the Florida’s Student Growth Implementation Committee, approved by the Defendant Commissioner of Education and adopted by the FL BOE. The state approved formula is a covariate adjustment model that estimates individual students’ expected learning growth in a particular year from historical data and other characteristics. A teacher’s “value added” score is then calculated from his or her students’ average amount of learning growth above or below the expected learning growth predicted by the formula, using the variables accounted for in the model. Value Added Model Recommendation to the Commissioner of Education from the Student Growth Implementation Committee (June 8, 2011), *available at* <http://www.fldoe.org/committees/pdf/SummaryFinalRecommendation.pdf>.

27. The value added score is intended “to differentiate teacher performance by using statistical models to measure student learning growth and attribute this growth to specific teachers.” Florida Value-Added Model Technical Report, at 1, *available at* <http://www.fldoe.org/committees/sg.asp>.

28. The state approved formula used to calculate teachers’ value added scores is adjusted to account for certain factors outside teachers’ control, such as a student’s disability status, attendance record, or status as an English language learner. However, the Act prohibits

adjustments in value added scores to control for effects of socioeconomic status, race, ethnicity, or gender, Fla. Stat. § 1012.34(7)(a), even though the student achievement goals set in the State strategic plan for education account for all of those variables except gender (Fla. State. Bd. of Educ., Strategic Plan for the Public School System and the Florida College System, 2012-2018, available at http://www.fldoe.org/board/meetings/2012_10_09/strategicv3.pdf, at 11) as does Florida’s annual assessment of its public schools’ success in achieving student growth (Fla. Dep’t of Ed., 2011 Guide to Calculating Adequate Yearly Progress (AYP) Technical Assistance Paper, available at <http://schoolgrades.fldoe.org/pdf/1011/AYPTAP2011.pdf>, at 1).

29. Despite the Act’s requirement that “evaluation systems for instructional personnel and school administrators must . . . [p]rovide appropriate instruments, procedures, and criteria for continuous quality improvement of the professional skills of instructional personnel and school administrators, and performance evaluation results must be used when identifying professional development,” Fla. Stat. § 1012.34(2), the value added formula is exceedingly complex, difficult for anyone but an expert to understand, and provides instructors little or no useful information to allow them to identify means of further professional development or improve their professional skills or their instruction for Florida’s schoolchildren.

30. Expressed mathematically, the value added formula is:

$$y_{ti} = \mathbf{X}_i \boldsymbol{\beta} + \sum_{r=1}^L y_{t-r,i} \gamma_{t-r} + \sum_{q=1}^Q \mathbf{Z}_{qi} \boldsymbol{\theta}_q + e_i$$

where y_{ti} is the observed score at time t for student i , \mathbf{X}_i is the model matrix for the student and school level demographic variables, $\boldsymbol{\beta}$ is a vector of coefficients capturing the effect of any demographics included in the model, $y_{t-r,i}$ is the observed lag score at time $t-r$ ($r \in \{1, 2, \dots, L\}$), $\boldsymbol{\gamma}$ is the coefficient vector capturing the effects of lagged scores, and \mathbf{Z}_{qi} is a design matrix with

one column for each unit in q ($q \in \{1,2, \dots, Q\}$) and one row for each student record in the database. Florida Value-Added Model Technical Report, *supra* ¶ 27, at 6.

31. The Act requires each school district to use this formula, which has been approved by Defendant Commissioner of Education and the FL BOE, “to measure student learning growth . . . for courses associated with the FCAT” (Florida Comprehensive Assessment Test). Fla. Stat. § 1012.34(7)(b).

32. The FCATs currently used by Florida are the FCAT 2.0 Reading and FCAT 2.0 Math Assessments (referred to jointly as the “FCATs” or separately as the “FCAT Reading Tests” or “FCAT Math Tests”). The FCAT Reading Tests are 140 minute multiple choice tests of reading skills, which are administered annually in April to students in grades 3 through 10. The FCAT Math Tests are 140 minute multiple choice tests of math skills, which are administered annually in April to students in grades 3 through 8.

33. The FCAT Reading Tests are not designed to test student learning on any subjects other than student mastery of the English & Language Arts Next Generation Sunshine State Standards for students in in grades 3 through 10. The FCAT Math Tests are not designed to test student learning on any subjects other than student mastery of the Math Next Generation Sunshine State Standards for students in grades 3 through 8.

34. Florida, recognizing that the FCATs provide limited snapshots of student learning even on the subjects that they assess, is phasing out the FCATs by the end of the 2013-14 school year. Thereafter, student mastery of the state’s standards for English/Language Arts and Mathematics will be measured with new assessments that are currently under development.

35. The state approved formula for measuring student growth was developed, designed and tested only to measure student growth on the FCAT Reading and Math Tests. The Technical Report on the formula expressly recognizes that measures of student growth in other subjects

would need to be developed separately. Florida Value-Added Model Technical Report, *supra* ¶ 27, at 1.

36. Most grades and subjects currently are not covered by the state approved formula for measuring student growth on the FCATs. For example, because the FCAT Math Test ends at 8th grade, student growth on the FCAT Math Test cannot be measured for students after the 8th grade. Similarly, because the FCAT Reading Test ends at 10th grade, student growth on the FCAT Reading Test cannot be measured for students after the 10th grade.

37. Additionally, the value added formula requires at least one year of previous FCAT scores as a baseline to assess student growth. Therefore, student growth on the FCAT cannot be assessed for any students prior to 4th grade since the initial 3rd grade test scores only serve to provide the necessary baseline.

38. Even in the grades in which the FCAT is given, a relatively small proportion of teachers teach subjects that are tested by the Reading and Math FCATs – namely, grades 4-10 English & Language Arts and grades 4-8 Mathematics. To be promoted from middle school, students must successfully complete thirteen courses, just six of which are English and Math courses that are tested by the FCATs. Fla. Stat. § 1003.4156. *See also id.* § 1003.42 (mandating that school districts provide instruction in multiple subjects including “reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education and the arts”). To graduate from high school, students must earn at least twenty-four academic credits, only two of which must be from English courses that are tested by the FCAT (9th and 10th grade English). *Id.* § 1003.428. Because the FCAT Reading Test is not given in grades 11 or 12, and the FCAT Math Test is not given in high school at all, none of the other required courses to graduate from high school are tested on the FCATs.

39. In line with the course curriculum that school districts must offer and the limited scope of current FCAT testing, the majority of teachers in Florida including the teachers employed by the Defendant School Boards, instruct students in grades and/or subjects not tested by the FCATs – such as the instruction provided by kindergarten through third grade teachers like Plaintiff Cook (whose students do not take the FCATs); the mathematics instruction provided by high school mathematics teachers like Plaintiff Paedae (whose students do not take the FCAT Math Tests); and the health, physical education, art, music, foreign languages, social studies and science instruction provided by teachers like Plaintiff Brooks, Plaintiff Jefferis, Plaintiff McConnell, Plaintiff Plavac, Plaintiff Boehme and others at all different grade levels (whose subject matter of instruction is not tested by the FCATs).

40. The state approved formula for measuring student growth on the FCATs (described *supra* at ¶¶ 26, 28, 30, & 31), is being stretched far beyond the limited purposes for which it was designed. Even though the state approved formula was not designed to measure student growth in anything other than FCAT math and reading scores, most teachers in Florida, including the teachers who are employed by Defendant School Boards and represented by Plaintiff Education Associations, are being evaluated on the basis of the FCAT score improvement of students they do not teach and/or in subjects they do not teach.

41. Although the Act permits school districts to develop and implement school district assessments for subjects and grade levels not “associated with the FCAT,” provided districts also develop and implement an accompanying value added formula, which is “equally appropriate” to the state approved formula to measure student growth on those new assessments, *id.* § 1012.34(3)(a)1, it does not require school districts to do so until the 2014-15 school year. *Id.* § 1008.22(8). By that time, Florida is slated to roll out new standardized statewide end of course exams in several subjects not now tested along with mandatory state formulas for measuring

student growth on those exams, which districts must adopt as both the assessment and the required growth formula for those subjects. *Id.* § 1012.34(7)(b). In the interim period, school districts have neither the funds nor expertise to develop new district level assessments to validly evaluate student learning in dozens of different courses and grade levels, develop the required accompanying value added formulas, determine what adjustments should be made in those formulas to account for various factors outside teachers' control, determine how those adjustments should be made, calculate students' predicted level of growth using these formulas on each of these assessments, and calculate individual teachers' value added scores using these formulas.

42. Despite the fact that most teachers in the Florida public school system do not have FCAT or other data available to measure the growth of their students in the manner required by the Act, the Act's mandate that all teachers' performance be evaluated on the basis of student growth is already in effect.

43. Since it is not feasible for most districts to develop district level assessments along with the required value added formulas, many school districts including Defendant School Boards are complying with the mandates of the Act, with the approval of FL DOE, by utilizing the option provided by section 1012.34(7)(e) of the statute, which permits superintendents to "assign to instructional personnel in an instructional team the student learning growth of the instructional team's students on statewide assessments." *Id.* § 1012.34(7)(e).

44. The Act does not define the term "instructional team," limit the size of such teams, or require that teams be structured in a way that actually allows teachers to work together on the instruction of a particular cadre of students. Moreover, the Act only limits "instructional team" attributions to "the performance of students assigned to their classrooms or schools." *Id.* § 1012.34(3). Because of this, school districts, with FL DOE approval, are using the "instructional

team” concept flexibly to allow districts to assign FCAT assessment data to teachers so that districts can comply with the student growth dictates of the Act.

45. For teachers of subjects other than reading and math in grades 4-10 – whose students were tested on the FCAT albeit in a different subject – teachers’ individual value added scores typically are being calculated using the FCAT Reading Test scores of students assigned to their classes, regardless of whether the curricula in those classes bear any relationship to students’ reading skills measured by the FCAT. For such teachers, their “instructional team” as designated by their school district is every teacher who instructs any of their students. To illustrate, 4th grade art teachers, 6th grade history teachers, 8th grade physical education teachers, and 10th grade French teachers are all typically evaluated on the basis of their students’ growth on the FCAT Reading Test. Moreover, every teacher of an individual 8th grade student (except her math teacher) is held individually responsible for that student’s yearly FCAT Reading Test score improvement relative to the improvement predicted by the formula, without any attempt to determine the individual effects of the various teachers of different subjects who instruct that student.

46. For teachers in grades in which there are no FCAT scores available to calculate the student growth of the students they teach – teachers in grades kindergarten through 3rd grade and grades 11 and 12 – school districts typically have designated all instructors at the school as the “instructional team.” Thus, for teachers of non-FCAT tested grades and grade 3 baseline testing, teachers’ individual value added scores typically are being calculated using the FCAT Reading Test scores of all children in the school who take the FCAT Reading Test (except teachers classified as math teachers who are evaluated using FCAT Math Test scores). This method also is being applied to grade 4-10 teachers of subjects other than reading and math in some counties. To illustrate, kindergarten and first grade teachers are evaluated on the basis of the yearly FCAT

Reading Test score improvement relative to the predicted improvement of all 4th and 5th grade students in their elementary school. Likewise, senior-year physics, government, or calculus teachers are evaluated on the basis of the yearly FCAT Reading Test score improvement relative to the predicted improvement of all 9th and 10th grade students in their high school.

47. For example, the Evaluation Policy adopted by the School Board of Alachua County in 2011, and approved by the FL DOE, recognizes that “a substantial number of teachers at all levels are responsible for [the] instruction of students not assessed by the FCAT or, if assessed by the FCAT, no prior score is available for predicting students’ test scores [and, hence, student learning growth].” *See* ACPS Evaluation Policy, Student Growth Measures at 3 (attached as Exhibit A). Those teachers include all “Kindergarten through third grade classroom teachers” as well as “[a]ll 11th and 12th grade classroom teachers.” *Id.* Under the Alachua County Evaluation Policy, “[t]eachers in these categories will be evaluated based on the school component estimate of the VAM [value added measure] for reading.” *Id.* As a result, all such teachers are evaluated on the basis of the test score improvement of students they did not teach during the year in which the students’ progress and teachers’ performance is being assessed. More specifically, kindergarten through third grade teachers are being evaluated on the basis of the test score improvement relative to the predicted improvement of all 4th and 5th grade students in a particular elementary school who take the FCAT Reading Tests, while 11th and 12th grade teachers are being evaluated on the basis of the test score improvement relative to the predicted improvement of all 9th and 10th grade students in a particular high school who take the FCAT Reading Tests. *Id.*

48. The Alachua County Evaluation Policy further provides that for “teachers who teach students in disciplines other than reading and math in grade levels that are tested on the FCAT will have their evaluation based on the scores of the students they teach using the reading

associated teacher value added estimate.” *Id.* at 2. Such teachers include science, social studies, foreign language, health and physical education teachers. *Id.* Thus, under the Alachua County Evaluation Policy all such teachers are evaluated on the basis of their students’ performance on the FCAT Reading Tests, which do not measure student learning of the subjects those teachers teach. *Id.*

49. In some cases, the Alachua County Evaluation Policy, in contravention of the mandates of the Act, *see supra* ¶ 44 & Fla. Stat. § 1012.34(3), goes so far as to require that teachers be evaluated based on the performance of students at other schools altogether in which the teachers do not work. For example, Plaintiff Cook, a first grade teacher who started teaching at Irby Elementary in 2011, does not instruct any students who take the FCATs. Indeed, Irby Elementary only enrolls students in preschool through 2nd grade, none of whom take the FCATs. In order to assign a value added score to such teachers, including Plaintiff Cook, the School Board of Alachua County assigned to those teachers the test scores of all 4th and 5th grade students in another school altogether (Alachua County Elementary School) in the value added formula. As a result, forty percent² of the evaluation of Plaintiff Cook and of the evaluations of the other teachers at Irby Elementary School was based on the student learning of students they do not teach enrolled in another school.

50. On information and belief, the Alachua County Evaluation Policy remains in effect and teacher evaluations in the school district in the 2012-13 school year will be performed in accordance with the same policy. As a consequence, a majority of the teachers in the school district will be evaluated in 2012-13, as they were in 2011-12, in significant part on the basis of

² The weight of the student growth score was reduced from 50 percent to 40 percent because three years of data were not available, pursuant to Fla. Stat. § 1012.34(3)(a)1-a.

test performance of students that the teachers did not teach and/or that do not measure student learning of the subjects that the teachers teach.

51. Other Defendant School Districts have similar evaluation policies. Under both the Hernando County Evaluation Policy and the Escambia County Evaluation Policy, all teachers of grade levels in which an FCAT value added score cannot be calculated (kindergarten through grade 3 and grades 11 and 12) are evaluated on the basis of the school-wide average FCAT score gains of those grade 4-10 students in their school who took the FCAT. Teachers in grades 4-10 who do not teach reading or mathematics are evaluated on the basis of the FCAT test score improvement of the students they teach when such data is available regardless of the subject they teach, or the school-wide or district-wide average scores when such data is not available. *See* HCSD Teacher Evaluation Business Rules 2011-2012, *available at* <http://hernandoschools.org/images/stories/PDFs/EmployeeEvaluation/BusinessRules.PDF>; Student Growth Calculation Formula for Escambia County, *available at* <http://www.escambia.k12.fl.us/staffdev/StudentGrowth.pdf>; News and Updates for 2012 – 2013, *available at* <http://www.escambia.k12.fl.us/E3/Index.aspx> (updated percentages). In Escambia County, teachers receive two additional value added scores each worth five percent of their evaluations, one derived from FCAT data they select and the other derived from data the school principal selects. *See* Student Growth Calculation Formula for Escambia County, *available at* <http://www.escambia.k12.fl.us/staffdev/StudentGrowth.pdf>; News and Updates for 2012 – 2013, *available at* <http://www.escambia.k12.fl.us/E3/Index.aspx> (updated percentages).

V. THE EMPLOYMENT CONSEQUENCES OF THE EVALUATIONS

MANDATED BY THE ACT

52. As noted above, the Act mandates that evaluations classify all instructional employees into performance categories of highly effective; effective; needs improvement (or

“developing” during the first three years of employment); or unsatisfactory. Fla. Stat. § 1012.34(2)(e).

53. These performance classifications or ratings directly impact the pay and conditions of employment of instructional employees. The Act requires school districts to base employment decisions and compensation directly on these performance ratings, which are based significantly on student growth scores on the FCATs. For classroom teachers, at least forty percent of their evaluations are based on such scores, and when three years of data are available at least fifty percent of their evaluations are based on such scores.

54. The Act creates a two-track system of employment protections for instructional employees. Employees hired prior to the Act’s enactment (July 1, 2011) retain professional services contracts, meaning that after they have been employed for three years’ time, they are granted a professional services contract and a school district must have a reason for terminating that contract, which the teacher may contest. Employees hired after July 1, 2011, are awarded a probationary contract for their first year of employment in a particular school district, regardless of prior experience, meaning that the employees may be removed at any time with or without cause, and that decision may not be challenged. In subsequent years, the employee may be awarded an annual contract for a period of no longer than one school year. The decision to award or not award an annual contract may be made with or without cause and may not be challenged. *Id.* § 1012.335.

55. Under the Act, employees with professional services contracts who receive an unsatisfactory performance rating must be placed on probation for 90 days. After that period, the school district superintendent must recommend to the district school board whether to continue or terminate the employee. Teachers recommended for termination may request a hearing to contest that determination. *Id.* § 1012.34(4).

56. The Act further directs that teachers' professional services contracts may not be renewed from year to year if they receive any of the following combinations of performance ratings: two consecutive annual ratings of unsatisfactory; two annual ratings of unsatisfactory within a three-year period; and three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. *Id.* § 1012.33(3)(b).

57. All teachers may be terminated for "just cause." Under the Act, the following performance ratings are *per se* considered just cause for termination: two consecutive annual ratings of unsatisfactory; two annual ratings of unsatisfactory within a three-year period; and three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. *Id.* § 1012.33(1)(a).

58. The Act requires school district superintendents to annually make recommendations to the district school board for the renewal or nonrenewal of teachers' annual contracts based upon the individual's performance rating. *Id.* § 1012.335(2)(c)2.

59. The Act prohibits the renewal of a teacher's annual contract if the teacher receives any of the following combinations of performance ratings: two consecutive annual ratings of unsatisfactory; two annual ratings of unsatisfactory within a three-year period; and three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. *Id.* § 1012.335(2)(c)3.

60. The Act eliminates the consideration of seniority in any reduction in force. Within program areas requiring reduction, employees must be removed in order of their performance ratings. *Id.* § 1012.33(5)

61. Under the Act, starting July 1, 2014, all instructional employees' compensation must be based in part on the performance ratings mandated by the Act. *Id.* § 1012.22(1)(c)4-5.

62. Starting July 1, 2014, all teachers on annual contracts will be included in a “performance salary” schedule. The Act mandates that, under this schedule, no employee who receives a rating of needs improvement or unsatisfactory may receive a raise (except for any across the board cost of living adjustment). An employee who receives a rating of effective may receive a raise of fifty to seventy-five percent of the raise provided to those rated highly effective. Additionally, cost of living increases are limited to half of the salary adjustment provided to “effective” teachers. *Id.* § 1012.22(1)(c)2, 4-5.

63. By July 1, 2014, teachers with professional services contracts will be placed on a “grandfathered” salary schedule. The Act requires that a portion of each employee’s compensation on the grandfathered salary scale also be based on the performance evaluation carried out under the Act. Any teacher with a professional services contract who wishes to participate in the “performance salary” schedule must irrevocably relinquish her professional services contract and convert to an annual contract. *Id.* § 1012.22(1)(c)(4).

64. The Act requires performance ratings to be the primary consideration in all school employee promotions. *Id.* § 1012.22(1)(e).

65. School principals may refuse the placement or transfer of any teacher who was not rated effective or highly effective. *Id.* § 1012.28(6).

66. The Act requires school districts to notify parents annually of any students assigned to a classroom teacher with any of the following combinations of performance ratings: two consecutive annual ratings of unsatisfactory; two annual ratings of unsatisfactory within a three-year period; and three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. *Id.* § 1012.2315(5)(b).

67. Teachers receiving lower performance ratings than their peers will suffer harm to their professional reputations, even if such rating is calculated on the basis of students and/or subject matter the teacher did not teach during the school year under evaluation.

VI. THE ARBITRARY CONSEQUENCES OF THE EVALUATION MANDATES IMPOSED BY THE ACT AND ITS IMPLEMENTATION

68. Although the State Board of Education has not done so to date, the Act charges the State Board with adopting rules to establish specific standards for each performance level. *Id.* § 1012.34(8). These standards—or cut off scores—must establish student learning growth scores required to receive ratings of highly effective and effective, as well as a score under which a rating of unsatisfactory will be given. *Id.* § 1012.34(8).

69. In the absence of rules by the FL DOE, school districts have been left to decide for themselves (albeit subject to the required FL DOE approval), through their duly elected school boards, the specific standards, or cutoff scores, for each mandated performance rating.

70. As a result of the varying cutoff scores arrived at by school districts, the 2011-12 evaluations produced extreme and inexplicable variations in outcomes between counties and individual schools. According to data provided by the FL DOE, the percentage of classroom teachers rated as highly effective in a particular county ranged from zero to more than ninety percent of those evaluated, while the percentage rated as needs improvement or unsatisfactory ranged from zero to 64.6%. The percentage of non-classroom instructional personnel rated as highly effective in a particular county ranged from zero to 94.6% of those evaluated, while the percentage rated as needs improvement or unsatisfactory ranged from zero to 83.3%. Fla. Dep't of Ed., Personnel Evaluation Data as of January 18, 2013, at 1-4, *available at* <http://www.fldoe.org/profdev/pdf/StatewideResults.pdf>.

71. In some school districts, such as Alachua County, the county school board substantially changed how it calculated teachers' performance ratings for the previous school year after the ratings had been calculated so as to significantly alter the performance ratings provided to teachers.

72. As noted above, under the Alachua County Evaluation Policy teachers at the Irby Elementary School, which serves students in preschool through 2nd grade, are evaluated on the basis of the collective performance on the FCAT Reading Test of students in 4th and 5th grade enrolled at Alachua Elementary School.

73. Irby Elementary School and Alachua Elementary School are separate schools within the Alachua County School District. A "school" is defined under Florida law as "an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education." *Id.* § 1003.01. Irby Elementary School and Alachua Elementary School serve distinct student populations; employ different principals, teachers, counselors, and behavior resource and curriculum resource professionals; the FL DOE reported their employee evaluation data separately; and they have separate campuses, Parent Teacher Associations, School Advisory Councils, websites, and mascots.

74. Plaintiff Cook, a first grade teacher who started teaching at Irby Elementary in 2011, has never taught any of the Alachua Elementary School students whose test scores comprised forty percent of her evaluation for the 2011-12 school year. Likewise, she has never taught any of the Alachua Elementary School students whose test scores will provide forty percent of her overall performance evaluation for the 2012-13 school year.

75. Similarly, none of the teachers at Irby Elementary are being evaluated on the basis of the test scores of students that they actually teach or who even attend the same school at which

they work. At best, the theoretical link that could be made between some of the teachers at Irby Elementary and the students at Alachua Elementary is that some of the students of the Irby Elementary teachers will in future years attend Alachua Elementary. That theoretical connection is not sufficient to render rational the decision to evaluate Irby Elementary teachers in 2011-12 and thereafter on the basis of student test score improvement during the school year under evaluation of Alachua Elementary School students on the theory that several years previously some of the students in that school were instructed in different subjects by some of the Irby Elementary teachers.

76. Alachua Elementary School's 4th and 5th graders' 2012 FCAT Reading Test scores did not improve as much as predicted by the student growth formula, resulting in low value added scores calculated under the state mandated formula. Those scores were attributed to Irby Elementary School teachers and, as a consequence, all Irby Elementary School teachers received very low value added scores in their evaluations. Because those scores counted for a full forty percent of their final evaluations, ninety-five percent of Irby Elementary School teachers initially received 2011-12 performance ratings of unsatisfactory or needs improvement/developing. (Five percent received ratings of highly effective, but it appears that value added scores were not included in these teachers' evaluations for reasons that are unclear.)

77. Because of the Alachua Elementary School reading scores, Plaintiff Cook initially received a performance rating of "unsatisfactory" the very same school year she was named the Teacher of the Year at Irby Elementary School.

78. Because of the public outcry over the results of teacher evaluations in many counties, the FL DOE granted school districts permission to retroactively adjust their cut off scores to generate different performance ratings. In December 2012 the School Board of Alachua County did so.

79. Specifically, the School Board of Alachua County revised the Alachua County Evaluation Policy so that teachers' valued added scores were calculated using a range of 55-100 instead of 10-100, and the overall cutoff for a highly effective rating was lowered. *See* Letter from W. Daniel Boyd to Kathy Hebda with modifications to the Alachua County Student Growth Measures, December 10, 2012, attached hereto as Exhibit B. As a result, all Irby Elementary teachers rated as needs improvement/developing or unsatisfactory were reclassified as effective. County-wide, as a result of the new cut-off scores, the percentage of classroom teachers rated as highly effective jumped from 16.6 percent to 62.5 percent, and the percentage rated as needs improvement/developing or unsatisfactory dropped from 21.5 percent to less than one percent. *Compare* Fla. Dep't of Ed., Personnel Evaluation Data as of November 30, 2012, at 5-6, available at <http://www.fldoe.org/profdev/pdf/12swer.pdf> with Fla. Dep't of Ed., Personnel Evaluation Data as of January 18, 2013, at 1-4, available at <http://www.fldoe.org/profdev/pdf/StatewideResults.pdf>.

80. Plaintiff Bethann Brooks is a Health Sciences teacher at Central High School in Hernando County, Florida, who teaches students in grades 10-12 courses designed to prepare them to work as nursing assistants, medical administrative assistants, or in similar fields upon graduation. Her students in grades 11 and 12 do not take the FCATs, while her students in grade 10 take the FCAT Reading Test. Her Health Sciences courses do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading Test.

81. Upon information and belief, for the 2011-2012 school year, fifty-one percent of Plaintiff Brooks' evaluation was calculated on the basis of Central High School's school-wide average FCAT Reading Tests score gains. In other words, more than half of her evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of students' FCAT score gains in subjects she does not teach, earned by students, most of whom, she does not

teach. The value added score attributed to Plaintiff Brooks reduced her overall evaluation from highly effective to effective. Plaintiff Brooks believes her evaluation will be conducted in the same manner during the 2012-2013 school year.

82. Plaintiff Emily Jefferis teaches Art to students in grades 6 and 7 at Ransom Middle School in Escambia County. Her instruction includes art history and artistic technique with media including graphite, various types of paint, charcoal, chalk, and others. Her art courses do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading Test.

83. Upon information and belief, for the 2011-2012 school year, Plaintiff Jefferis' student growth score for her evaluation was calculated primarily on the basis of her art students' FCAT Reading score gains. Under the Evaluation Policy in effect at the time, part of her value added score were calculated on the basis of school-wide and district-wide FCAT score gains. As a result, fifty percent of Plaintiff Jefferis' performance evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of students' FCAT score gains in subjects she does not teach, including the portion calculated using school and district-wide scores primarily derived from students she does not teach.

84. Upon information and belief, for the 2012-2013 school year, forty percent of Plaintiff Jefferis' evaluation will be calculated on the basis of her art students' FCAT Reading score gains, and an additional ten percent will be calculated on the basis of the data she and her principal select (each selecting FCAT data worth five percent of final evaluation). As a result, fifty percent of Plaintiff Jefferis' evaluation for 2012-2013 will consist of a value added score that was calculated entirely on the basis of students' FCAT score gains in a subject she does not teach.

85. Plaintiff Cathy McConnell is an orchestra teacher at Ransom Middle School and Tate High School in Escambia County. Her students in grades 11 and 12 do not take the FCATs, while her students in grades 6-10 take the FCAT Reading Test and her students in grades 6-8 take the FCAT Math Test. Her music classes do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading or Math Tests.

86. Upon information and belief, for the 2011-2012 school year, Plaintiff McConnell's evaluation was calculated primarily on the basis of her orchestra students' FCAT Reading and Math Test score gains. Under the Evaluation Policy in effect at the time, part of her value added score was also calculated on the basis of school-wide and district-wide FCAT score gains. As a result, fifty percent of Plaintiff McConnell's performance evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of students' FCAT score gains in subjects she does not teach, including the portion calculated using school and district-wide scores primarily derived from students she does not teach.

87. Upon information and belief, for the 2012-2013 school year, forty percent of Plaintiff McConnell's evaluation will be calculated on the basis of her orchestra students' FCAT Reading and Math Test score gains, and an additional ten percent will be calculated on the basis of the data she and her principal select (each selecting FCAT data worth five percent of her final evaluation). As a result, fifty percent of Plaintiff McConnell's performance evaluation for 2012-2013 will consist of a value added score that was calculated entirely on the basis of students' FCAT score gains in a subject she does not teach.

88. Plaintiff Shauna Paedae is a mathematics teacher at Pensacola High School in Escambia County, teaching IB Mathematical Studies to seniors, Calculus primarily to seniors, and Algebra 2 primarily to juniors and seniors as well as two students in grade 10. Her students in grades 11 and 12 do not take the FCATs, while her two grade 10 students take the FCAT

Reading Test. Her mathematics classes do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading Test.

89. Upon information and belief, for the 2011-2012 school year, Plaintiff Paedae's evaluation was calculated primarily on the basis of school-wide FCAT Reading Test score gains from students in grades 9 and 10 at Pensacola High School. Under the Evaluation Policy in effect at the time, part of her value added score was calculated on the basis of school-wide and district-wide FCAT score gains. As a result, fifty percent of Plaintiff Paedae's performance evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of students' FCAT score gains in a subject she does not teach and almost entirely on the basis of FCAT score gains from students she does not teach.

90. Upon information and belief, for the 2012-2013 school year, forty percent of Plaintiff Paedae's evaluation will be calculated on the basis of FCAT Reading Test score gains of students at Pensacola High School, and an additional ten percent will be calculated on the basis of the data she and her principal select (each selecting FCAT data worth five percent of her final evaluation). As a result, fifty percent of Plaintiff Paedae's performance evaluation for 2012-2013 will consist of a value added score calculated nearly or entirely on the basis of FCAT score gains from students she does not teach on a subject she does not teach.

91. Plaintiff Janine Plavac is a Health Sciences teacher and Director of the Academy of Health Professions at Gainesville High School in Alachua County, Florida. She teaches students in grades 9-12 courses designed to prepare them to work as rehabilitation aides, electrocardiograph (EKG) aides, emergency medical technicians, nursing assistants, pharmacy technicians or to pursue further college study in health care fields. She currently teaches Medical Skills and Services for students in grade 9, a required advanced course for students in the

Academy. Her Health Sciences courses do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading Test.

92. Upon information and belief, for the 2011-2012 school year, forty percent of Plaintiff Plavac's evaluation was calculated on the basis of her Medical Skills and Service's students' FCAT Reading Test score gains. In other words, a large portion of her evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of FCAT score gains in subjects she does not teach. The value added score attributed to Plaintiff Plavac reduced her overall evaluation from highly effective to effective for the 2011-12 school year. Plaintiff Plavac believes her evaluation will be conducted in the same manner during the 2012-2013 school year.

93. Plaintiff Cathy Boehme is a Biology teacher for students in grades 9-10 at West Florida High School of School of Advanced Technology in Escambia County. Her students take the FCAT Reading Test. Her Biology classes do not, and are not designed to, teach the skills necessary to improve students' performance on the FCAT Reading Test.

94. Upon information and belief, for the 2011-2012 school year, Plaintiff Boehme's evaluation was calculated primarily on the basis of her Biology students' FCAT Reading Test score gains. Under the Evaluation Policy in effect at the time, part of her value added score was calculated on the basis of school-wide and district-wide FCAT score gains. As a result, fifty percent of Plaintiff Boehme's performance evaluation for 2011-2012 consisted of a value added score that was calculated entirely on the basis of students' FCAT score gains in subjects she does not teach, including the portion that was calculated using school and district-wide scores primarily derived from students she does not teach.

95. Upon information and belief, for the 2012-2013 school year, forty percent of Plaintiff Boehme's evaluation will be calculated on the basis of her Biology students' FCAT Reading Test score gains, and an additional ten percent will be calculated on the basis of the data she and

her principal select (each selecting FCAT data worth five percent of her final evaluation). As a result, fifty percent of Plaintiff Boehme's performance evaluation for 2012-2013 will consist of a value added score that was calculated entirely on the basis of students' FCAT score gains in a subject she does not teach.

96. The Act's mandate requiring school districts to evaluate classroom teachers and other instructional employees in significant part on the basis of student learning growth data, even though such growth data is not available for most classroom teachers and other instructional employees, is arbitrary and unlawful.

97. Under the Act's mandate as implemented by Defendants FL DOE, FL BOE, and School Boards, classroom teachers who instruct students in grades not tested on the FCATs are evaluated on the basis of the collective, school-wide scores of students in other grades (and, in the case of Irby Elementary, in another school) taught by other teachers on a test that is designed to measure student learning of a different subject. The use of a school-wide student growth score by definition does not differentiate the performance of individual teachers. The best and worst teacher in a school will have precisely the same "student growth" score when the score is calculated on the basis of school-wide data.

98. "Measures of collective performance [such as school-wide student growth scores] mask high and low performers in the group and give little information about how individual teachers are doing with their classrooms." U.S. Dep't of Education, Reform Support Network, Measuring Student Growth for Teachers in Non-Tested Grades and Subjects, at 4 *available at* <http://www2.ed.gov/about/inits/ed/implementation-support-unit/tech-assist/measuring-student-growth-teachers.pdf>.

99. Attribution of students' test score improvement during a particular school year across subjects, grades and schools is arbitrary, irrational, and unfair.

100. Under the Act's mandate as implemented by Defendants FL DOE, FL BOE, and School Boards, classroom teachers who instruct students in subjects not tested on the FCATs are evaluated on the basis of their students' scores on the FCAT Reading Tests. Such an attribution of student learning across subjects, and without accounting for the contributions of other teachers, is arbitrary, irrational, and unfair.

101. Under the Act's mandate as implemented by Defendants FL DOE, FL BOE, and School Boards, other instructional employees are evaluated on the basis of students' FCAT Reading Tests, regardless of whether the instructors' work bear any relationship to student growth in reading. Such an attribution of student learning across subjects and areas of professional expertise is arbitrary, irrational, and unfair.

102. When instructional employees are evaluated on the basis of student test score improvement associated with instruction provided by other teachers and/or instructing students on other subjects, the resulting evaluations are arbitrary, irrational, and unfair.

Count One: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

103. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

104. The Due Process Clause of the Fourteenth Amendment provides that "No state shall . . . deprive any person of life, liberty, or property, without due process of law."

105. Consistent with the individual fundamental liberty interests protected by the Due Process Clause a state may not impose punishments and other legal burdens on individuals for actions over which they had no responsibility or ability to control.

106. The Act requires that decisions related to pay, the renewal of contracts, terminations, reductions in force, and other employment decisions be made on the basis of teachers' performance evaluations.

107. The Act mandates that individual teachers' performance be evaluated on the basis of student growth formulas regardless of whether there is data available for the students that an individual teacher actually instructs, and regardless of whether any data that is available for an individual teacher's students bears any relationship to the subject matter the instructor teaches. Because there is no such student data available for most teachers, most teachers are being evaluated and subjected to harm to their pay, job security, and professional reputations on the basis of the test score improvement of students they do not teach, as well as on the basis of the test score improvement of their students on subjects unrelated to the subject matter they teach.

108. Each Defendant School District Evaluation Policy mandates that the performance of all individual teachers of kindergarten and grades 1-3 be evaluated on the basis of the improvement in FCAT test scores of older children, none of whom the evaluated teachers taught during the year in which the students' progress and teachers' performance is being assessed, and only a small subset of which they taught during a previous school year. Because of this, these teachers are subject to a range of harm to their pay, job security, and professional reputations as a result of the test score improvement of students they did not teach during the year under evaluation, which the kindergarten through grade 3 teachers have no responsibility for or ability to control.

109. Each Defendant School District Evaluation Policy mandates that the performance of all individual teachers of grades 11 and 12 be evaluated on the basis of the improvement in FCAT test scores of students in earlier grades whom they have never taught. Because of this, these teachers are subject to a range of harm to their pay, job security, and professional reputations as a result of test scores they had no responsibility for or ability to control.

110. Each Defendant School District Evaluation Policy mandates that the performance of all individual teachers of subjects other than reading and mathematics, such as science, foreign

languages, and art, be evaluated on the basis of the improvement in their students' or the entire school's FCAT test score improvement. Because of this, these teachers are subject to a range of harm to their pay, job security, and professional reputations as a result of test scores they had no responsibility for or ability to control.

111. The Act and the District Evaluation Policies therefore violate Plaintiffs' rights under the Due Process Clause.

Count Two: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

112. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

113. The Equal Protection Clause of the Fourteenth Amendment provides that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

114. The Act and the Defendant School District Evaluation Policies create separate classes of teachers in Florida: those whose evaluations are based on student growth data for students assigned to the teacher and subjects taught by the teacher, and those whose evaluations are based on student growth data for students and/or subjects they do not teach.

115. There is no rational justification for evaluating individual teachers' performance for an academic year on the basis of the test score improvement of students they did not teach during the academic year for which the students' progress is being assessed. Likewise, there is no rational justification for evaluating individual teachers' performance on the basis of the test score improvement of their students in subjects that may be wholly unrelated to the classes the evaluated instructors are employed to teach.

116. The Act and the District Evaluation Policies therefore violate Plaintiffs' rights under the Equal Protection Clause.

Count Three: Declaratory Judgment that the Alachua County Evaluation Policy as Implemented Violates the Requirements of the Act

117. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

118. The Florida Declaratory Judgment Act, Fla. Stat. § 86.011, provides that the Court may “render declaratory judgments on the existence, or nonexistence of any. . . right or of any fact upon which the existence or nonexistence of such . . . right does or may depend on whether such . . . right now exists or will arise in the future.”

119. Further, under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, “in the case of actual controversy within its jurisdiction, . . . any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested parties seeking such declaration, whether or not further relief is or could be sought.”

120. The Act requires all teachers’ performance evaluations to “be based upon the performance of students assigned to their classrooms or schools, as provided in this section.” Fla. Stat. § 1012.34(3).

121. The School Board of Alachua County’s decision to calculate Irby Elementary School teachers’ evaluations on the basis of the improvement in test scores of students at Alachua Elementary School violates the Act’s requirement that evaluations be based on the performance of students in the evaluated teachers’ school.

122. Plaintiffs Cook and other teachers at Irby Elementary represented by Alachua County Education Association face imminent harm as a result of being evaluated on the basis of the test scores of students they do not teach, and they have a right to be evaluated in accordance with the requirements of the Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

a. Declare that the Act and the District Evaluation Policies violate the due process and equal protection rights of Plaintiffs under the Fourteenth Amendment of the United States Constitution;

b. Declare that the Alachua County School District's policy of calculating Irby Elementary School teachers' evaluations using Alachua Elementary students' test scores violates the Act;

c. Permanently enjoin Defendant Bennett and Defendant FL BOE members, their successors, and all those acting in concert with them or at their direction from implementing or enforcing the Act;

d. Permanently enjoin Defendants School Board of Alachua County, School Board of Hernando County, and School Board of Escambia County, their successors, and all those acting in concert with them or at their direction from implementing or enforcing the District Evaluation Policies;

e. Permanently enjoin defendant School Board of Alachua County, its successors, and all those acting in concert with the Board or at its direction from implementing or enforcing the unwritten policy of calculating Irby Elementary School teachers' evaluations using Alachua Elementary School students' test scores;

f. Award Plaintiffs attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and such other statutory and common law provisions as may be applicable; and

g. Grant such other and further relief as may be necessary and proper to restore the *status quo ante*.

Respectfully submitted this 16th day of April, 2013.

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