

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.

PAMELA STEWART, in her 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. 1:13-
cv-72-MW/GRJ

FIRST AMENDED 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, facially and as implemented by the Florida State Board of Education (“FL BOE”) and Florida Department of Education (“FL DOE”). Plaintiffs also challenge the teacher evaluation policies that Defendant School Boards have adopted to comply with the Act (“District Evaluation Policies”). As detailed below, the Act and the District Evaluation Policies infringe on

Plaintiffs' substantive 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 the 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 pursuant to 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 2011-2012 school year and has twenty-five years of teaching experience. Plaintiff Cook was selected as the 2012-2013 Teacher of the Year at Irby Elementary, holds a Master’s Degree in Multilingual and Multicultural Education, was the 2012-2013 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 sciences teacher for students in grades 10-12, who has taught at Central High School in Hernando County Florida for eight 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 more than twenty-four years, and she teaches First Aid/CPR courses for school district employees county-wide. 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 seventeen years, including for ten 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 sixteen 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 to nearly 200 students this year. Last 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 served as the Awards Chairperson for the Florida American String Teachers Association for three years, but she recently had to give up the position due to the demands of the growing orchestra programs she directs.

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 for approximately twenty-eight years, including seven years at Pensacola High School and several years previously at Woodham High School. 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 ten years she has taught at, and for the past seven years

directed, 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 three years, a position to which she was just reelected, and she has served on the Council for the past five 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 four students who finished in the top ten nationwide in 2013. In addition to her teaching career, Plaintiff Plavac has been a registered nurse for the last thirty-seven 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 over thirty years of teaching experience, including twelve 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

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.

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 all grade levels (kindergarten through grade 3 and grades 11-12) and all subjects in which student learning is not tested by state standardized tests in reading and mathematics. 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 all grade levels (kindergarten through grade 3 and grades 11-12) and all subjects in which student learning is not tested by state standardized tests in reading and mathematics. 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 all grade levels (kindergarten through grade 3 and grades 11-12) and all subjects in which student learning is not tested by state standardized tests in reading and mathematics. EEA brings this action on behalf of all of these members.

16. Defendant Florida Commissioner of Education Pamela Stewart 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 Stewart is sued solely in her 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. Student learning growth is determined, under the Act, in accordance with a mathematical formula approved by the Defendant Commissioner of Education and adopted by the FL BOE.

26. The state approved formula, referred to as a value added model, estimates individual students' expected learning growth on the skills and subjects tested by the Florida Comprehensive Assessment Test ("FCAT") from historical data and other variables accounted for in the model, which include certain factors outside teachers' control, such as a student's disability status, gifted status, attendance record, or status as an English language learner.

Florida Value-Added Model Technical Report, at 3-4, *available at* <http://www.fldoe.org/committees/sg.asp>. A teacher's "value added" or student learning growth score is calculated from his or her students' average amount of learning growth above or below the expected learning growth predicted by the formula. Each teacher's 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." *Id.* at 1.

27. Despite the Act's requirement that teacher evaluations 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 instruction for Florida’s schoolchildren.

28. 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* ¶ 26, at 6.

29. The Act requires each school district to use this formula “to measure student learning growth . . . for courses associated with the FCAT.” Fla. Stat. § 1012.34(7)(b).

30. 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 multiple choice tests of reading skills administered annually in April to students in grades 3 through 10. The FCAT Math Tests are multiple choice tests of math skills administered annually in April to students in grades 3 through 8.

31. 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 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.

32. Although Florida had decided to phase out the FCATs by the end of the 2013-2014 school year in order to implement a richer assessment regime, which would have tested student mastery of a broader set of skills and learning than is tested by the FCAT, Florida recently decided to abandon that effort.

33. 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* ¶ 26, at 1.

34. Most grades and subjects are not covered by the state approved formula for measuring student growth on the FCATs. For example, because the FCAT Math Tests end 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.

35. Additionally, because the state approved formula requires at least one year of previous FCAT scores as a baseline to assess student growth, student growth on the FCAT cannot be assessed for any students prior to 4th grade since the initial 3rd grade test scores provide the necessary baseline.

36. Even in the grades in which the FCATs are 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. 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.

37. In line with the limited scope of 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 (virtually none of 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).

38. Even though the state approved formula was not designed to measure student growth in anything other than FCAT math and reading scores, *see supra* ¶¶ 31, 33, most teachers in Florida, including the majority of teachers who are employed by Defendant School Boards and represented by Plaintiff local 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.

39. 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 that 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 2014-2015 school year.

Id. § 1008.22(8). Few if any school districts, and none of the Defendant School Boards, have attempted to develop and implement assessments for non-FCAT grades and subjects. 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.

40. 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 has mandated that all teachers’ performance be evaluated on the basis of student growth since the 2011-2012 school year. *Id.* § 1012.34(3)(a)1.

41. 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 in the Act that 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).

42. 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, used the "instructional team" concept during the first two years of the Act's implementation (the 2011-2012 and 2012-2013 school years) to assign FCAT assessment data to non-FCAT teachers in order to comply with the student growth dictates of the Act.

43. For teachers of subjects other than reading and math in grades 4-10—whose students take the FCATs, albeit to measure their learning of 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 student in grades 4-10 (except her math teacher) is held individually responsible for that student's yearly FCAT Reading Test scores, without any attempt to determine the individual effects of the various teachers of different subjects who instruct that student.

44. For teachers in grades for 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 in the 2011-2012 and 2012-2013 school years usually were calculated using the FCAT Reading Test scores (and in some cases, FCAT Math Test scores) of all 4th and 5th grade students in the school who take the FCATs. Similarly, teachers of grades 11 and 12 were evaluated in the 2011-2012 and 2012-2013 school years on the basis of the yearly FCAT Reading Test scores of all 9th and 10th grade students in their high school.

45. For example, the Evaluation Policy adopted by Defendant Alachua School Board in 2011, approved by the FL DOE and used in the 2011-2012 and 2012-2013 school years, 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 were 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 were 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 were 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.*

46. The Alachua County Evaluation Policy further provides that “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 were 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.*

47. Additionally, the Alachua County Evaluation Policy, in contravention of the mandates of the Act, *see supra* ¶ 42 & Fla. Stat. § 1012.34(3), required that teachers be evaluated based on the performance of students at other schools altogether in which the teachers do not work. 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 first grade teacher Plaintiff Cook and more than twenty additional kindergarten through grade 2 teachers represented by Plaintiff Alachua County Education Association, Defendant Alachua School Board assigned to those teachers the test scores of all 4th and 5th grade students in another school altogether (Alachua County Elementary School) using the state approved formula. As a result, forty percent² of the evaluation of Plaintiff Cook and of the evaluations of the other

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.

teachers at Irby Elementary School was based in the 2011-2012 and 2012-2013 school years on the student learning of students they do not teach who are enrolled in another school altogether.

48. 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.

49. The other two Defendant School Districts have similar evaluation policies. The website of Defendant Escambia School Board explains as follows:

The state has adopted a value-added model for the purpose of using student-level FCAT growth scores to differentiate teacher performance in the area of student learning. **The current model only incorporates FCAT reading and math data.** Districts are required to use the state’s value-added data in their teacher evaluation systems. For these reasons, until additional assessment data becomes available, ALL teachers’ student growth scores will come from FCAT reading and math results.

See Empowering Effective Educators: Student Growth, *at*

<http://www.escambia.k12.fl.us/e3/StudentGrowth.aspx> (emphasis in the original).

50. Under both the Hernando County Evaluation Policy and the Escambia County Evaluation Policy that were approved by the FL DOE and used in the 2011-2012 and 2012-2013 school years, all teachers of grade levels in which an FCAT value added score cannot be calculated (kindergarten through grade 3 and grades 11 and 12) were evaluated on the basis of

the school-wide average FCAT score gains in reading (and in some cases math) 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 were evaluated on the basis of the FCAT test score improvement in reading (and in some cases math) 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* HCS D 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>; <http://www.escambia.k12.fl.us/e3/StudentGrowth.aspx> (updated percentages for 2012-2013). 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 FCAT data the school principal selects. *See* Student Growth Calculation Formula for Escambia County, *available at* <http://www.escambia.k12.fl.us/staffdev/StudentGrowth.pdf>; <http://www.escambia.k12.fl.us/e3/StudentGrowth.aspx> (updated percentages).

51. Two weeks after Plaintiffs filed this lawsuit challenging the evaluation of teachers based substantially on the test scores of students and/or subjects the teachers do not teach, the Florida Legislature amended the Act to provide that, as of July 1, 2013, and thereafter, annual teacher evaluations “shall be based upon learning growth or achievement of the teacher’s students.” *See* Senate Bill 1664 § 3, at 15 (“2013 Amendment”), codified at Fla. Stat. § 1012.3401. The amendment does not alter, or in any way address, the evaluations that teachers in Florida were given in the 2011-2012 and 2012-2013 school year based substantially on the test scores of students and/or subjects the teachers did not teach.

52. To date, the limited guidance that the FL DOE has provided to school districts on the 2013 Amendment indicates that school districts may use student learning targets or objectives, state assessments where student growth is not necessarily measured using the state-approved formula, or district level assessments to evaluate classroom teachers who teach non-FCAT courses. *See* FL DOE, SB 1664 Changes to Personnel Evaluations (June 19, 2013), at 12-14, available at <http://www.fsfoa.org/documents/DOE-SB1664andTeacherSalaryIncrease.pdf>. The FL DOE has not yet addressed how school districts that choose this option may also comply with the 2011 Act's requirement that student growth be calculated with an "equally appropriate" formula.

53. School districts are still in the process of revising their evaluation systems to comply with the 2013 Amendment. Some school districts, including Defendant School Boards, have interpreted the 2013 Amendment to not require any change to the evaluations of teachers of non-FCAT subjects, such as art and music, in FCAT-tested grades. In such school districts, teachers in grades 4-10 who do not teach reading or mathematics will be evaluated in 2013-2014 on the basis of the FCAT test score improvement of the students they teach even though the subjects that they teach are not assessed by the FCATs. Additionally, upon information and belief, Defendants Escambia School Board and Hernando School Board have not adopted revised evaluation policies to ensure that teachers of kindergarten through grade 3 and grades 11-12 are not evaluated on the basis of students they do not teach in violation of the 2013 Amendments.

V. THE ARBITRARY AND IRRATIONAL APPLICATION OF THE ACT TO PLAINTIFFS

54. 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 2011-2012 and 2012-2013 school years.

55. Similarly, none of the teachers at Irby Elementary, represented by Plaintiff ACEA, were evaluated in the 2011-2012 or 2012-2013 school years on the basis of the test scores of students that they actually taught or who even attended the same school at which they work.

56. Alachua Elementary School's 4th and 5th graders' 2012 FCAT Reading Test scores did not improve as much as predicted by the state approved student growth formula, resulting in low student growth scores calculated under the state approved formula. Those low student growth scores were attributed to Irby Elementary School teachers 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 2011-2012 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.)

57. Because of the Alachua Elementary School reading scores, Plaintiff Cook, who was named the "Teacher of the Year" in her school in 2012-13, initially received a performance rating of "unsatisfactory" for the 2011-2012 school year. Her "unsatisfactory" rating was due to the student learning growth scores attributed to her from students she had never taught attending a school she does not work in. If those growth scores had not been included in her evaluation,

Ms. Cook would have been rated “highly effective” based on the remaining components of her evaluation.

58. 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.

59. After ACEA educated the school district about the stress and anxiety these evaluations based on arbitrarily assigned student growth scores were causing many good teachers, in December 2012 Defendant Alachua School Board adjusted their cut-off scores. *See* Letter from W. Daniel Boyd to Kathy Hebda with modifications to the Alachua County Student Growth Measures, December 10, 2012 (attached as Exhibit B). As a result, all Irby Elementary teachers who had been rated as needs improvement/developing or unsatisfactory, including Ms. Cook, 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>.

60. 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.

61. 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, the large majority 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' evaluation was completed in the same manner during the 2012-2013 school year, but the results of that evaluation have not been shared with her.

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

63. Upon information and belief, for the 2011-2012 school year, half of Plaintiff Jefferis' student growth score, worth twenty-five percent of her entire evaluation, was calculated on the basis of her art students' FCAT Reading Test score gains. An additional fifteen percent of her evaluation was calculated on the basis of school-wide and district-wide FCAT score gains, and Plaintiff Jefferis and her principal each selected from available FCAT data for five additional percent each of her evaluation. For the 2012-2013 school year, her evaluation was calculated in a similar manner, except that her students' FCAT Reading Test score gains comprised forty percent of her total evaluation, and the teacher and principal selections of FCAT data comprised

five percent each. As a result, fifty percent of Plaintiff Jefferis' performance evaluation for 2011-2012 and 2012-2013 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.

64. 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 Tests and her students in grades 6-8 also take the FCAT Math Tests. 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.

65. Upon information and belief, for the 2011-2012 school year, twenty-five percent of Plaintiff McConnell's evaluation was calculated on the basis of her orchestra students' FCAT Reading and Math Test score gains. An additional fifteen percent of her evaluation was calculated on the basis of school-wide and district-wide FCAT score gains, and Plaintiff McConnell and her principal each selected from available FCAT data for an additional five percent each of her evaluation. For the 2012-2013 school year, her evaluation was calculated in a similar manner, except that her students' FCAT score gains comprised forty percent of her total evaluation, and the teacher and principal selections of FCAT data comprised five percent each. As a result, fifty percent of Plaintiff McConnell's performance evaluations for 2011-2012 and 2012-2013 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.

66. 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 a few students in grade 10. Her students in grades 11 and 12 do not take the FCATs, while her few grade 10 students (just two in 2012-13) 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.

67. Upon information and belief, for the 2011-2012 school year, thirty-five percent of Plaintiff Paedae's evaluation was calculated on the basis of school-wide FCAT Reading Test score gains from students in grades 9 and 10 at Pensacola High School. An additional five percent of her evaluation was calculated on the basis of district-wide FCAT score gains, and Plaintiff Paedae and her principal each selected from available FCAT data for five additional percent each of her evaluation. For the 2012-2013 school year, her evaluation was calculated in a similar manner, except that school-wide FCAT Reading Test scores comprised forty percent of her evaluation, and the teacher and principal selections of FCAT data comprised five percent each. As a result, fifty percent of Plaintiff Paedae's performance evaluations for 2011-2012 and 2012-2013 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.

68. 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.

69. 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 2011-2012 school year. Plaintiff Plavac understands that her evaluation for the 2012-2013 school year was calculated in the same manner, but the results of that evaluation have not been shared with her.

70. Plaintiff Cathy Boehme is a Biology teacher for students in grades 9-10 at West Florida High 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.

71. Upon information and belief, for the 2011-2012 school year, twenty-five percent of Plaintiff Boehme's evaluation was calculated on the basis of her Biology students' FCAT Reading Test score gains. An additional fifteen percent of her evaluation was calculated on the basis of school-wide and district-wide FCAT score gains, and Plaintiff Boehme and her principal each selected from available FCAT data for an additional five percent each of her evaluation. For the 2012-2013 school year, her evaluation was calculated in a similar manner, except that her students' FCAT score gains comprised forty percent of her total evaluation, and the teacher and principal selections of FCAT data comprised five percent each. As a result, fifty percent of

Plaintiff Boehme's performance evaluations for 2011-2012 and 2012-2013 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.

72. Calculating individual teachers' student growth scores using school-wide scores that are identical for all teachers in the school receiving that score conflicts with the state approved formula's purpose of differentiating teacher performance by measuring student growth, controlling for factors outside teachers' control, and attributing that student growth to specific teachers. *See supra* ¶ 26.

73. Calculating individual teachers' student growth scores using test scores from a subject the evaluated teacher does not teach, such that numerous teachers are held entirely responsible for the same student growth in reading (and sometimes math) conflicts with the state approved formula's purpose of differentiating teacher performance by measuring student growth, controlling for factors' outside teachers' control, and attributing that student growth to specific teachers. *See supra* ¶ 26.

VI. INJURY RESULTING FROM THE EVALUATIONS MANDATED BY THE ACT

74. Plaintiff teachers, and members of Plaintiff local associations, have suffered emotional distress, anxiety, and harm to employee morale due to the implementation of the Act in the 2011-2012 and 2012-2013 school years, which has resulted in each of them being required as a condition of their employment to be evaluated on the basis of the student test scores over which they have no control, specifically the test scores of students and/or subject matters they do not teach. For example, over the past two years Plaintiffs Cook and Plavac have both suffered severe emotional distress that has resulted in insomnia on multiple occasions and has reduced

both of them to tears. As a result of the stress and demoralization that the Act's implementation over the past two years has caused, Plaintiff Cook has moved up considerably her plans to retire and already has taken steps (including meeting with a financial advisor) to plan for retirement from her school district much earlier than she had originally intended.

75. Plaintiff teachers, and members of Plaintiff local associations, have suffered reputational harm as a result of being evaluated substantially based on student test scores over which they have no control, specifically the test scores of students and/or subjects they do not teach.

76. Plaintiff teachers, and members of Plaintiff local associations, are injured directly by being required as a condition of their employment to be evaluated on the basis of student test scores over which they have no control, specifically the test scores of students and/or subject matters they do not teach, pursuant to the Act. For example, Plaintiffs Jefferis, McConnell, Plavac, and Boehme must choose between focusing their teaching efforts on reading (and for Plaintiff McConnell, also math) skills, risking punishment or other negative consequences for deviating from the teaching curricula they are employed and required to teach, or teaching the art, orchestra, health sciences, and biology curricula they are employed and required to teach, risking punishment and other injuries pursuant to the Act if their students' reading test scores do not improve adequately. Similarly, Plaintiffs Cook, Brooks, and Paedae would have to spend significant time tutoring 4th and 5th graders (for Cook), or 9th and 10th graders (for Brooks and Paedae) in reading, diverting time and focus from their assigned teaching duties, to have any hope of actually effecting the student growth scores that make up forty to fifty percent of their evaluations. This places teachers in an irrational and unfair "Catch-22."

77. Plaintiff local associations have suffered injury as organizations due to the implementation of the Act in the 2011-2012 and 2012-2013 school years. The Act has forced Plaintiff local associations to divert resources to educate members on the challenged Act, including how student growth is being calculated in members' evaluations; to answer member questions about the Act, including its student growth mandates; to counsel and assist members affected by the Act and its student growth mandates; and to negotiate with Defendant School Districts regarding the consequences and application of the Act. For example, when 2011-2012 teacher evaluations were released, Plaintiff ACEA spent extensive time answering member questions, counseling members harmed by the arbitrary and irrational assignment to them of test scores from students and/or subjects they did not teach, and negotiating with Defendant Alachua School Board to revise the rating cut off scores. The President of Plaintiff ACEA continues to work substantial additional hours due to the irrational evaluation system implemented pursuant to the Act.

78. Additionally, members of each Plaintiff local association have suffered emotional distress, reputational harm, and other injuries that give Plaintiff local associations standing to represent their members in this litigation. For example, at least one member of Plaintiff ACEA has sought medical treatment for anxiety caused at least in part from the arbitrary and irrational assignment of student growth scores to her evaluation pursuant to the Act. Additionally, at least one member of Plaintiff ACEA has retired from teaching earlier than previously intended at least in part because of the arbitrary and irrational assignment of student growth scores to her evaluation pursuant to the Act.

79. Each of the Plaintiff teachers, and members of Plaintiff local associations, are injured and/or placed at imminent risk of injury to the terms and conditions of their employment as a

result of their evaluations under the Act as implemented to date. The Act requires a range of employment decisions to be made on the basis of teachers' evaluations, which are now determined, in large part, on the basis of student test scores over which Plaintiff teachers and members of Plaintiff local associations have no control because they do not instruct the students at all or instruct them on subjects not evaluated on the FCAT.

80. As noted above, the Act mandates that evaluations classify all instructional employees into four performance categories—highly effective; effective; needs improvement (or “developing” during the first three years of employment); or unsatisfactory. Fla. Stat. § 1012.34(2)(e). For classroom teachers, at least forty percent of their evaluations are based on student growth scores and, when three years of data are available, at least fifty percent of their evaluations are based on such scores.

81. 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. Performance-based salary increases may be provided only to instructional employees rated highly effective or effective, and highly effective employees must receive the largest increases, with employees who receive only an effective rating receiving smaller increases, and all other employees receiving no performance increase at all.

82. It is certain that some of the instructional employees represented by the three Plaintiff local education associations will not be rated highly effective in the 2013-2014 school year due to the impact on their overall evaluation rating of the test scores of students the employees do not teach in the subjects tested. As a result those employees will not be eligible for the performance based pay increases that will be available under the Act as of July of 2014, and will be injured by the loss of pay resulting from the unfair and arbitrary method in which

they are being evaluated. Plaintiff local education associations have standing now to seek redress on behalf of those members and prevent that certain injury from being inflicted upon them.

83. Under the Act, employees with professional services contracts (teachers hired before July 1, 2011, who have been employed for three years' time with a district) 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. *Id.* § 1012.34(4).

84. The Act *prohibits* the renewal for the next school year of any teacher with an annual or probationary contract who 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. The same performance ratings are *per se* "just cause" for termination of any teacher. *Id.* § 1012.33(1)(a).

85. The Act requires school district superintendents to annually make recommendations to the district school board for the renewal or nonrenewal of teachers' annual or probationary contracts based upon the individual's performance rating, *id.* § 1012.335(2)(c)2, and schools may base non-renewal decisions on any performance level they choose.

86. 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).

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

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

89. 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).

90. The multiple respects in which performance ratings are tied to, and determine employment rights and status, have and will continue to cause injury to individual Plaintiffs and members of Plaintiff local associations, who receive lower ratings than they otherwise would have due to the arbitrary and irrational manner in which they are being evaluated under the Act. To date, three of the individual Plaintiffs and additional members of Plaintiff local associations have received evaluations lower than they otherwise would have due to the implementation of the Act, *see supra* at ¶¶ 57, 61, 69, and these evaluations have reduced their employment rights and placed them at greater risk right now for a range of adverse employment actions, including denials of transfers and promotions and increased risk of layoffs, in addition to demoralizing them and causing them emotional harm. Moreover, because school districts are not obligated to provide any reason for employment actions such as terminating a probationary teacher or non-renewing a teacher on an annual contract, *see supra* at ¶ 85, many members of Plaintiff local associations remain at imminent risk of severe injury to the terms and conditions of their employment.

Counts One Through Five: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

91. 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.” The Due Process clause provides both substantive and procedural protections. Plaintiffs in this case invoke only the substantive due process protections that the Due Process Clause provides.

92. Consistent with the individual fundamental liberty interests protected by the substantive component of 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.

93. The substantive component of the Due Process Clause also protects individuals from arbitrary, capricious or irrational state action.

Count One – Substantive Due Process Challenge to the 2011 Act Against the FL DOE and FL BOE

94. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

95. The Act, from 2011 through July 2013, mandated that individual teachers’ performance be evaluated on the basis of student growth formulas regardless of whether there was data available for the students that an individual teacher actually instructed, and regardless of whether any data that was available for an individual teacher’s students bore any relationship to the subject matter the instructor teaches.

96. Because there is no such student data available for most teachers, the majority of teachers including the individual Plaintiffs and many of the members of Plaintiff local associations, were evaluated in the 2011-2012 and 2012-2013 school years, and subjected to

harm to their emotional well-being, 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 subjects they teach.

97. The evaluation of individual teachers on the basis of students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

98. The evaluation of individual teachers on the basis of students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system in violation of their substantive due process rights, causing them emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights.

99. For the foregoing reasons, the 2011 Act, on its face and as applied by the FL BOE and FL DOE to all Plaintiffs, violates Plaintiffs' rights under the Due Process Clause. More specifically, by requiring that teachers be evaluated substantially on the basis of student learning growth, which must be measured by the state approved formula or an "equally appropriate formula," regardless of whether student learning growth data that can be incorporated into such a formula is available, and attaching employment consequences to such evaluations, the following sections of the Act on their face violate Plaintiffs' rights under the Due Process Clause: Fla. Stat. §§ 1012.22(1)(c)4-5 (pay adjustments tied to evaluations), 1012.22(1)(e) (requiring evaluation ratings to be the primary consideration in all school employee promotions), 1012.2315(5)(b) (requiring parents to be notified if students are assigned to teachers with certain

evaluation ratings), 1012.28(6) (permitting school principals to refuse the placement or transfer of any teacher who was not rated effective or highly effective), 1012.33(1)(a) (providing that certain evaluation ratings are just cause for terminating any teacher), 1012.33(5) (requiring reductions in force to be conducted in order of evaluation ratings), 1012.335(2)(c)2 (requiring school districts to make renewal and nonrenewal decisions based on evaluation ratings), 1012.335(2)(c)3 (prohibiting the renewal of probationary and annual teachers with certain evaluation ratings), 1012.34 (personnel evaluations and criteria), and 1012.3401 (2013 Amendments). Moreover, because the unconstitutional provisions of the Act are inseparable from the rest of the Act, and striking those provisions renders the Act incomplete such that it cannot be said the Legislature would have passed the Act absent the unconstitutional provisions, the unconstitutional provisions of the Act should be determined to be inseverable from the remainder of the Act and the entire Act should be declared void.

Count Two – Substantive Due Process Challenge to the 2011 Act as Amended Effective July 2013 Against the FL BOE and FL DOE

100. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

101. The 2011 Act as amended by the 2013 Amendment effective July 2013 has not eliminated the evaluation of teachers based on the test scores of students on tests (the FCAT Reading and Math Tests) that do not assess students on the subject the evaluated teacher teaches. Florida school districts, including, upon information and belief, Defendant School Districts, with the approval of the FL DOE, plan to continue evaluating non-FCAT teachers in grades 4 through 10 substantially on the basis of their students' scores on the FCAT Reading or Math Tests, which do not measure the instruction the non-FCAT teachers are employed to provide.

102. The evaluation of individual teachers on the basis of student test scores from subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

103. The evaluation of individual teachers on the basis of student test scores from subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights, in violation of their substantive due process rights.

104. For the foregoing reasons, the 2011 Act as amended effective July 1, 2013, on its face and as applied by the FL BOE and FL DOE to all Plaintiffs, violates Plaintiffs' rights under the Due Process Clause. More specifically, by requiring that teachers be evaluated substantially on the basis of student learning growth, which must be measured by the state approved formula or an "equally appropriate formula," regardless of whether student learning growth data that can be incorporated into such a formula is available, and attaching employment consequences to such evaluations, the following sections of the Act on their face violate Plaintiffs' rights under the Due Process Clause: Fla. Stat. §§ 1012.22(1)(c)4-5 (pay adjustments tied to evaluations), 1012.22(1)(e) (requiring evaluation ratings to be the primary consideration in all school employee promotions), 1012.2315(5)(b) (requiring parents to be notified if students are assigned to teachers with certain evaluation ratings), 1012.28(6) (permitting school principals to refuse the placement or transfer of any teacher who was not rated effective or highly effective), 1012.33(1)(a) (providing that certain evaluation ratings are just cause for terminating any

teacher), 1012.33(5) (requiring reductions in force to be conducted in order of evaluation ratings), 1012.335(2)(c)2 (requiring school districts to make renewal and nonrenewal decisions based on evaluation ratings), 1012.335(2)(c)3 (prohibiting the renewal of probationary and annual teachers with certain evaluation ratings), 1012.34 (personnel evaluations and criteria), and 1012.3401 (2013 Amendments). Moreover, because the unconstitutional provisions of the Act are inseparable from the rest of the Act, and striking those provisions renders the Act incomplete such that it cannot be said the Legislature would have passed the Act absent the unconstitutional provisions, the unconstitutional provisions of the Act should be determined to be inseverable from the remainder of the Act and the entire Act should be declared void.

Count Three – The Implementation of the Act in Violation of Substantive Due Process by Defendant Alachua School Board

105. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

106. Under the Act as implemented by Defendant Alachua School Board in the 2011-2012 and 2012-2013 school years, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all 11th and 12th grade teachers, were evaluated substantially on the basis of the “school component estimate of the VAM” for the FCAT Reading Test. As a result, all such teachers, including Plaintiff Cook and other members of Plaintiff ACEA, were evaluated substantially on the basis of the test score improvement of students they did not teach in the year in which the students’ progress and the teachers’ performance is being assessed.

107. Under the Act as implemented by Defendant Alachua School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades

4-10 of non-FCAT subjects, including Plaintiff Plavac and other members of Plaintiff ACEA, were and are evaluated substantially on the basis of their students' FCAT Reading Test scores, which measures student mastery of a subject they do not teach.

108. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

109. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights, in violation of their substantive due process rights.

110. For the foregoing reasons, the 2011 Act as implemented by Defendant Alachua County School Board, violates the rights of Plaintiffs Cook, Plavac, and members of Plaintiff ACEA under the substantive component of the Due Process Clause.

Count Four – The Implementation of the Act in Violation of Substantive Due Process by Defendant Hernando School Board

111. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

112. Under the Act as implemented by Defendant Hernando School Board in the 2011-2012 and 2012-2013 school years, and on information and belief continuing to date, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all

11th and 12th grade teachers, were and are evaluated substantially on the basis of the school-wide average FCAT score gains in reading (and in some cases math). As a result, all such teachers, including Plaintiff Brooks and other members of Plaintiff HCTA, were and are evaluated substantially on the basis of the test score improvement of students they did not teach in the year in which the students' progress and the teachers' performance is being assessed.

113. Under the Act as implemented by Defendant Hernando School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades 4-10 of non-FCAT subjects, including members of Plaintiff HCTA, were and are evaluated substantially on the basis of their students' FCAT Reading (and in some cases Math) Test scores, which measures student mastery of a subject they do not teach.

114. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

115. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights, in violation of their substantive due process rights.

116. For the foregoing reasons, the 2011 Act as implemented by Defendant Hernando County School Board, violates the rights of Plaintiffs Brooks and members of Plaintiff HCTA under the substantive component of the Due Process Clause.

Count Five – The Implementation of the Act in Violation of Substantive Due Process by Defendant Escambia School Board

117. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

118. Under the Act as implemented by Defendant Escambia School Board in the 2011-2012 and 2012-2013 school years, and on information and belief continuing to date, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all 11th and 12th grade teachers, were and are evaluated substantially on the basis of the school-wide average FCAT score gains in reading (and in some cases math). As a result, all such teachers, including Plaintiff Paedae and other members of Plaintiff EEA, were and are evaluated substantially on the basis of the test score improvement of students they did not teach in the year in which the students' progress and the teachers' performance is being assessed.

119. Under the Act as implemented by Defendant Escambia School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades 4-10 of non-FCAT subjects, including Plaintiffs Jefferis, McConnell, and Boehme and other members of Plaintiff EEA, were and are evaluated substantially on the basis of their students' FCAT Reading (and in some cases Math) Test scores, which measures student mastery of a subject they do not teach.

120. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

121. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights, in violation of their substantive due process rights.

122. For the foregoing reasons, the 2011 Act as implemented by Defendant Escambia County School Board, violates the rights of Plaintiffs Jefferis, McConnell, Paedae, Boehme, and members of Plaintiff EEA under the substantive component of the Due Process Clause.

Counts Six through Ten: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

123. 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.”

124. 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 in the subjects taught by the teacher, and those whose evaluations are based on student growth data for students and/or subjects they do not teach.

125. The Equal Protection Clause protects individuals from state-imposed classifications that violate their fundamental liberty interest in not being punished or subject to legal burdens for actions over which they had no responsibility or ability to control.

126. The Equal Protection clause also protects individuals from irrational state-imposed classifications.

Count Six – Equal Protection Clause Challenge to the 2011 Act Against FL DOE and FL BOE

127. Plaintiffs reallege the foregoing paragraphs 1-93 and 123-126 and incorporate them herein as if fully set forth.

128. The Act, from 2011 through July 2013, mandated that individual teachers' performance be evaluated on the basis of student growth formulas regardless of whether there was data available for the students that an individual teacher actually instructed, and regardless of whether any data that was available for an individual teacher's students bore any relationship to the subject matter the instructor teaches.

129. Teachers without such student data were treated less favorably under the Act than teachers whose students take the FCATs in subjects the evaluated teacher teaches. More specifically, most teachers, including the individual Plaintiffs and the majority of members of Plaintiff local associations, were evaluated in the 2011-2012 and 2012-2013 school years on the basis of the test scores of students they do not teach and/or the test scores of their students on subjects unrelated to the subjects they teach, while teachers of FCAT-tested grades and subjects were evaluated on the basis of their own students' test scores in the subject they teach.

130. The class of teachers evaluated on the basis of students and/or subjects they do not teach was punished for conduct over which they have no control by being subjected to emotional and reputational harms, as well as being placed at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

131. There is also no rational justification for evaluating individual teachers' performance for an academic year on the basis of the test scores 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.

132. The class of teachers evaluated on the basis of students and/or subjects they do not teach has imposed upon them, as a condition of their public employment, an irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights.

133. For the foregoing reasons, the 2011 Act, facially and as applied by the FL BOE and FL DOE to all Plaintiffs, violates Plaintiffs' rights under the Equal Protection Clause. More specifically, by requiring that teachers be evaluated substantially on the basis of student learning growth, which must be measured by the state approved formula or an "equally appropriate formula," regardless of whether student learning growth data that can be incorporated into such a formula is available, and attaching employment consequences to such evaluations, the following sections of the Act on their face violate Plaintiffs' rights under the Equal Protection Clause: Fla. Stat. §§ 1012.22(1)(c)4-5 (pay adjustments tied to evaluations), 1012.22(1)(e) (requiring evaluation ratings to be the primary consideration in all school employee promotions), 1012.2315(5)(b) (requiring parents to be notified if students are assigned to teachers with certain evaluation ratings), 1012.28(6) (permitting school principals to refuse the placement or transfer of any teacher who was not rated effective or highly effective), 1012.33(1)(a) (providing that certain evaluation ratings are just cause for terminating any teacher), 1012.33(5) (requiring reductions in force to be conducted in order of evaluation ratings), 1012.335(2)(c)2 (requiring school districts to make renewal and nonrenewal decisions based on evaluation ratings), 1012.335(2)(c)3 (prohibiting the renewal of probationary and annual teachers with certain

evaluation ratings), 1012.34 (personnel evaluations and criteria), and 1012.3401 (2013 Amendments). Moreover, because the unconstitutional provisions of the Act are inseparable from the rest of the Act, and striking those provisions renders the Act incomplete such that it cannot be said the Legislature would have passed the Act absent the unconstitutional provisions, the unconstitutional provisions of the Act should be determined to be inseverable from the remainder of the Act and the entire Act should be declared void.

Count Seven – Equal Protection Challenge to the 2011 Act as Amended Effective July 2013 Against the FL BOE and FL DOE

134. Plaintiffs reallege the foregoing paragraphs 1-93 and 123-126 and incorporate them herein as if fully set forth.

135. The 2011 Act as amended by the 2013 Amendment effective July 2013 has not eliminated the evaluation of teachers based on the test scores of students on tests (the FCAT Reading and Math Tests) that do not assess students on the subject the evaluated teacher teaches. Thus, the Act continues to create separate classes of teachers in Florida: those whose evaluations are based on student growth data for students assigned to the teacher in the subjects taught by the teacher, and those whose evaluations are based on student growth data for their students in subjects they do not teach.

136. Teachers whose evaluations are based on student growth data in subjects they do not teach are treated less favorably under the Act as amended than teachers evaluated on the basis of student growth data for students assigned to the teacher in the subjects taught by the teacher. More specifically, such teachers, upon information and belief including Plaintiffs Brooks, Jefferis, McConnell, Plavac, Boehme, and many of the members of each of the Plaintiff local associations, will be evaluated in the 2013-2014 school year on the basis of the test scores

of students on subjects unrelated to the subjects they teach, while teachers of FCAT-tested grades and subjects will be evaluated on the basis of their own students' test scores in the subject they teach.

137. The class of teachers evaluated on the basis of subjects they do not teach will be punished for conduct over which they have no control by being subjected to emotional and reputational harms, as well as being placed at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

138. There is also 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.

139. The class of teachers evaluated on the basis of subjects they do not teach has imposed upon them, as a condition of their public employment, an irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights.

140. For the foregoing reasons, the 2011 Act as amended effective July 1, 2013, on its face and as applied by the FL BOE and FL DOE to all Plaintiffs, violates Plaintiffs' rights under the Equal Protection Clause. More specifically, by requiring that teachers be evaluated substantially on the basis of student learning growth, which must be measured by the state approved formula or an "equally appropriate formula," regardless of whether student learning growth data that can be incorporated into such a formula is available, and attaching employment consequences to such evaluations, the following sections of the Act on their face violate Plaintiffs' rights under the Equal Protection Clause: Fla. Stat. §§ 1012.22(1)(c)4-5 (pay adjustments tied to evaluations), 1012.22(1)(e) (requiring evaluation ratings to be the primary

consideration in all school employee promotions), 1012.2315(5)(b) (requiring parents to be notified if students are assigned to teachers with certain evaluation ratings), 1012.28(6) (permitting school principals to refuse the placement or transfer of any teacher who was not rated effective or highly effective), 1012.33(1)(a) (providing that certain evaluation ratings are just cause for terminating any teacher), 1012.33(5) (requiring reductions in force to be conducted in order of evaluation ratings), 1012.335(2)(c)2 (requiring school districts to make renewal and nonrenewal decisions based on evaluation ratings), 1012.335(2)(c)3 (prohibiting the renewal of probationary and annual teachers with certain evaluation ratings), 1012.34 (personnel evaluations and criteria), and 1012.3401 (2013 Amendments). Moreover, because the unconstitutional provisions of the Act are inseparable from the rest of the Act, and striking those provisions renders the Act incomplete such that it cannot be said the Legislature would have passed the Act absent the unconstitutional provisions, the unconstitutional provisions of the Act should be determined to be inseparable from the remainder of the Act and the entire Act should be declared void.

Count Eight – The Implementation of the Act in Violation of Equal Protection by Defendant Alachua School Board

141. Plaintiffs reallege the foregoing paragraphs 1-93 and 123-126 and incorporate them herein as if fully set forth.

142. Under the Act as implemented by Defendant Alachua School Board in the 2011-2012 and 2012-2013 school years, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all 11th and 12th grade teachers, were evaluated substantially on the basis of the “school component estimate of the VAM” for the FCAT Reading Test. As a result, this class of teachers, including Plaintiff Cook and other members of

Plaintiff ACEA, were evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of the test score improvement of students they did not teach in the year in which the students’ progress and the teachers’ performance is being assessed.

143. Under the Act as implemented by Defendant Alachua School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades 4-10 of non-FCAT subjects, including Plaintiff Plavac and other members of Plaintiff ACEA, were and are evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of their students’ FCAT Reading Test scores, which measures student mastery of a subject they do not teach.

144. The evaluation of this class of teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

145. The evaluation of this class of teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon such teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights.

146. For the foregoing reasons, the 2011 Act as implemented by Defendant Alachua County School Board, violates the rights of Plaintiffs Cook, Plavac, and members of Plaintiff ACEA under the Equal Protection Clause.

Count Nine – The Implementation of the Act in Violation of Equal Protection by Defendant Hernando School Board

147. Plaintiffs reallege the foregoing paragraphs 1-93 and 123-126 and incorporate them herein as if fully set forth.

148. Under the Act as implemented by Defendant Hernando School Board in the 2011-2012 and 2012-2013 school years, and on information and belief continuing to date, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all 11th and 12th grade teachers, were and are evaluated substantially on the basis of the school-wide average FCAT score gains in reading (and in some cases math). As a result, all such teachers, including Plaintiff Brooks and other members of Plaintiff HCTA, were and are evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of the test score improvement of students they did not teach in the year in which the students' progress and the teachers' performance is being assessed.

149. Under the Act as implemented by Defendant Hernando School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades 4-10 of non-FCAT subjects, including members of Plaintiff HCTA, were and are evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of their students' FCAT Reading (and in some cases Math) Test scores, which measures student mastery of a subject they do not teach.

150. The evaluation of this class of teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at

imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

151. The evaluation of this class of teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights.

152. For the foregoing reasons, the 2011 Act as implemented by Defendant Hernando County School Board, violates the rights of Plaintiff Brooks and members of Plaintiff HCTA under the Equal Protection Clause.

Count Ten – The Implementation of the Act in Violation of Equal Protection by Defendant Escambia School Board

153. Plaintiffs reallege the foregoing paragraphs 1-93 and 123-126 and incorporate them herein as if fully set forth.

154. Under the Act as implemented by Defendant Escambia School Board in the 2011-2012 and 2012-2013 school years, and on information and belief continuing to date, with the approval of the FL DOE, all kindergarten through 3rd grade teachers in the district, as well as all 11th and 12th grade teachers, were and are evaluated substantially on the basis of the school-wide average FCAT score gains in reading (and in some cases math). As a result, all such teachers, including Plaintiff Paedae and other members of Plaintiff EEA, were and are evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of the test score improvement of students they did not teach in the year in which the students' progress and the teachers' performance is being assessed.

155. Under the Act as implemented by Defendant Escambia School Board in the 2011-2012 school year, and continuing to date, with the approval of the FL DOE, all teachers in grades 4-10 of non-FCAT subjects, including Plaintiffs Jefferis, McConnell, and Boehme and other members of Plaintiff EEA, were and are evaluated in a manner less favorable than teachers of FCAT-tested grades and subjects—namely, on the basis of their students’ FCAT Reading (and in some cases Math) Test scores, which measures student mastery of a subject they do not teach.

156. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach punishes teachers for conduct over which they have no control by subjecting them to emotional and reputational harms, as well as placing them at imminent risk of harm to their employment rights, which they otherwise would have enjoyed if they were not evaluated in this manner.

157. The evaluation of individual teachers on the basis of student test scores from students and/or subjects they do not teach also imposes upon teachers, as a condition of their public employment, an arbitrary and irrational evaluation system, causing them emotional and reputational harms and placing them at imminent risk of harm to their employment rights.

158. For the foregoing reasons, the 2011 Act as implemented by Defendant Escambia County School Board, violates the rights of Plaintiffs Jefferis, McConnell, Paedae, Boehme, and members of Plaintiff EEA under the Equal Protection Clause.

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

159. Plaintiffs reallege the foregoing paragraphs 1-93 and incorporate them herein as if fully set forth.

160. 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.”

161. 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.”

162. 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).

163. The Defendant Alachua School Board’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.

164. Plaintiffs Cook and all teachers at Irby Elementary represented by Plaintiff 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 21st day of October, 2013.

/s/ Lisa M. Powell

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Counsel for Plaintiffs

NOTICE OF ELECTRONIC FILING

I HEREBY CERTIFY that on this 21st day of October, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which constitutes electronic service pursuant to Fed. R. Civ. P 5(b)(2)(D) and N.D. Fla. Loc. R. 5.1(A)(6).

/s/Lisa M. Powell

Lisa M. Powell

ACPS Student Growth Measures

Assessments used for Determining Growth:

For the 2011-12 school year, the state value added model (VAM) based on FCAT reading and math will form the basis of the student performance section of the annual teacher evaluation. In grade levels 4-10, teachers directly responsible for instruction in reading and math will be evaluated using joint value added components that measure school effects and teacher effects; for teachers not directly responsible for instruction in reading or math in grade levels where FCAT tests are administered, value added components that measure the school effects and teacher effects on students assigned to the teacher using the reading associated VAM estimate will be used. For teachers teaching students who do not take FCAT, a value added measure for school effect in reading will be used. The Florida Department of Education (FLDOE) Value Added Model files will provide values for calculating all student growth data applied to teacher evaluation.

Methods used for Determining Growth:

Teachers assigned FCAT-tested students

With 3 years of data – 50% of the teacher’s final performance evaluation will be determined using state data and the state growth formula for students assigned to the teacher

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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Without 3 years of data – 40% of the evaluation of the teacher’s final performance evaluation will be determined using state data and the state growth formula for students assigned to the teacher.

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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Teachers of reading and math in grades 4 – 10

The teacher value-added model estimate (Teacher VAM Estimate) will provide the basis of the student growth evaluation component of the teacher evaluation for teachers at FCAT tested grade levels. This estimate is an aggregate of the unique effect a teacher has on a student’s growth (teacher effect) and the effect all the teachers in the school combined have on student growth at the school (school effect). Teacher VAM estimates provided by the DOE will be used in the calculations.

In cases where the teacher is responsible for instruction in both reading and math, primarily at the elementary level, a weighted average of the reading and math Teacher VAM estimates will be applied.

Where a teacher is responsible for only a single discipline, primarily at the secondary level and at departmentalized elementary programs, discipline specific teacher VAM estimates will be used for the teacher.

Where a teacher serves multiple grade levels, the weighted composite VAM value will be applied to calculate the teacher component. Aggregation across reading and math will also be

applied, as appropriate. Similar weighting will be applied to the school component by grade level.

Teachers of subjects other than reading or math, grades 4-10

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 VAM estimate. This may include teachers in the fields of science, social studies, foreign languages, and electives .

Each teacher value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

Calculation of Teacher Confidence Interval	Related Confidence Interval
VAM Estimate \pm Quarter Standard Error (0.25 * VAM SE)	19.7% CI
VAM Estimate \pm Half Standard Error (0.50 * VAM SE)	38.3% CI
VAM Estimate \pm Three Quarter Standard Error (0.75 * VAM SE)	54.7% CI
VAM Estimate \pm One Standard Error (1.00 * VAM SE)	68.3% CI

The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

VAM estimate plus 1.00 * VAM SE
 VAM estimate plus 0.75 * VAM SE
 VAM estimate plus 0.50 * VAM SE
 VAM estimate plus 0.25 * VAM SE
 VAM estimate
 VAM estimate minus 0.25 * VAM SE
 VAM estimate minus 0.50 * VAM SE
 VAM estimate minus 0.75 * VAM SE
 VAM estimate minus 1.00 * VAM SE

Teachers will receive 10 points for each data point that falls above zero, including the original teacher VAM estimate. Points will be assigned for the student data component of teacher evaluation based on the following criteria.

# Elements Above 0	Points to Final VAM Calculation	Teacher Classification
9	100	Highly Effective

8	90	Highly Effective
7	80	Effective
6	70	Effective
5	60	Effective
4	50	Effective
3	40	Needs Improvement/Developing
2	30	Needs Improvement/Developing
1	20	Unsatisfactory
0	10	Unsatisfactory

Teachers assigned students not assessed by FCAT

The superintendent will assign these teachers to instructional teams. When 3 years of data are available, 50% of the teacher's final performance evaluation will be determined using state data and the state growth formula for the team's students.

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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The superintendent will assign these teachers to instructional teams. When 3 years of data are not available, 40% of the teacher's final performance evaluation will be determined using state data and the state growth formula for the team's students

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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Teachers of students in non-FCAT tested grades

A substantial number of teachers at all levels are responsible for instruction of students not assessed by the FCAT or, if assessed by the FCAT, no prior score is available for predicting students' test scores. The group includes, but is not limited to:

- Kindergarten through third grade classroom teachers
- All 11th and 12th grade classroom teachers.

Teachers in these categories will be evaluated based on the school component estimate of the VAM for reading.

The school component value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

Calculation of School Component Confidence Interval	Related Confidence Interval
School Component \pm Quarter Standard Error (0.25 * School Component SE)	19.7% CI
School Component \pm Half Standard Error (0.50 * School Component SE)	38.3% CI
School Component \pm Three Quarter Standard Error	54.7% CI

(0.75 * School Component SE)	
School Component \pm One Standard Error (1.00 * School Component SE)	68.3% CI

The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

School Component plus 1.00 * School Component SE
 School Component plus 0.75 * School Component SE
 School Component plus 0.50 * School Component SE
 School Component plus 0.25 * School Component SE
 School Component VAM estimate minus 0.25 * VAM SE
 School Component minus 0.50 * School Component SE
 School Component minus 0.75 * School Component SE
 School Component minus 1.00 * School Component SE

The calculations will result in eight unique data points for each teacher, in addition to their School Component (nine total). Teachers will receive 10 points for each data point that falls above zero, including the original School Component. Points will be assigned for the student data component of teacher evaluation based on the following criteria.

# Elements Above 0	Points to Final VAM Calculation	Teacher Classification
9	100	Highly Effective
8	90	Highly Effective
7	80	Effective
6	70	Effective
5	60	Effective
4	50	Effective
3	40	Needs Improvement/Developing
2	30	Needs Improvement/Developing
1	20	Unsatisfactory
0	10	Unsatisfactory

Instructional personnel who are not classroom teachers

When 3 years of data are available, 50% of the teacher's final performance evaluation will be determined using either state or district data for the students assigned to them.

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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When 3 years of data is not available, 40% of the teacher's final performance evaluation will be determined using either state or district data for the students assigned to them.

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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NOTE: The superintendent will determine whether school data or district data is to be used for determining student growth for each category of teachers in this group (see list below).

The deputy superintendent, assistant superintendent for personnel, and district directors will review job descriptions for instructional personnel who are not classroom teachers and make recommendations to the superintendent as to whether school or district data is most appropriate for each category of teachers. In some cases, specific teacher data and/or specific grade/subject area data may be recommended.

Process for Identifying Fields in Need of Special Procedures:

Instructional personnel who are not classroom teachers

Currently, a number of personnel in instructional-staff positions throughout the district perform duties supporting classroom teachers. These instructional staff members play a valuable role in the success of students and must have student performance scores applied to their evaluations. The following table lists the currently identified staff as well as the student data that will be applied to their evaluations.

Group	Data to be Applied
Behavioral Resource Teachers	School-specific reading school component
Curriculum Resource Teachers	School-specific reading school component
Curriculum Division Teacher Specialists	Weighted assigned school specific reading, math, or reading and math components as appropriate
Deans	School specific reading school component
District Mentor Coaches	Weighted assigned school specific reading, math, or reading and math components as appropriate
District Reading Coaches	Weighted assigned school-specific reading component as appropriate
District Technology Coaches	Weighted assigned school-specific reading component.
Guidance Counselors	School-specific reading component.
Media Specialists	School-specific reading component
Other Teacher Specialists	Weighted assigned school specific reading, math, or reading and math components as appropriate

Teachers in these positions will be evaluated based on a component of the VAM appropriate to their assignment (as determined by the superintendent). Where the personnel have primary responsibility in either reading or math, the appropriate value will be applied. Where no specific discipline responsibility can be identified, the reading value will be applied.

Where personnel in these positions can be associated with specific schools the weighted school component for that school will be applied. Where the personnel provide services to multiple schools, the weighted composite component of the VAM appropriate to their assignment (as determined by the superintendent) will be applied.

The weighted school component value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has

successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

Calculation of School Component Confidence Interval	Related Confidence Interval
School Component \pm Quarter Standard Error (0.25 * School Component SE)	19.7% CI
School Component \pm Half Standard Error (0.50 * School Component SE)	38.3% CI
School Component \pm Three Quarter Standard Error (0.75 * School Component SE)	54.7% CI
School Component \pm One Standard Error (1.00 * School Component SE)	68.3% CI

The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

School Component plus 1.00 * School Component SE
 School Component plus 0.75 * School Component SE
 School Component plus 0.50 * School Component SE
 School Component plus 0.25 * School Component SE
 School Component VAM estimate minus 0.25 * VAM SE
 School Component minus 0.50 * School Component SE
 School Component minus 0.75 * School Component SE
 School Component minus 1.00 * School Component SE

The calculations will result in eight unique data points for each teacher, in addition to their VAM estimate (nine total). Teachers will receive 10 points for each data point that falls above zero, including the original VAM estimate. Points will be assigned for the student data component of teacher evaluation based on the following criteria.

# Elements Above 0	Points to Final VAM Calculation	Teacher Classification
9	100	Highly Effective
8	90	Highly Effective
7	80	Effective
6	70	Effective
5	60	Effective
4	50	Effective
3	40	Needs Improvement/Developing
2	30	Needs Improvement/Developing
1	20	Unsatisfactory
0	10	Unsatisfactory

Timeline for development/selection of student assessments for each subject/grade:

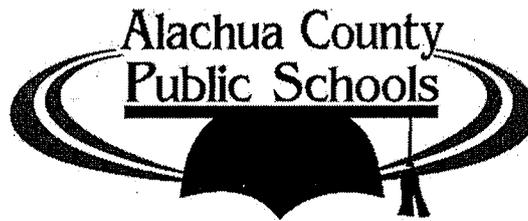
- 2011 – 2012: identify specific courses for which assessments will be needed; begin researching appropriate assessments, especially those developed or in development by Florida districts; select assessments for pilot
- 2012 – 2013: pilot use of assessments to verify validity and reliability of results
- 2013 – 2014: administer assessments and collect baseline data for all courses

Timeline for developing/selecting growth measures for additional grades/subjects:

- 2011 – 2012 identify specific courses for which assessments will be needed; begin researching appropriate assessments, especially those developed or in development by Florida districts; select assessments for pilot
- 2012 – 2013: pilot use of assessments to verify validity and reliability of results
- 2013 – 2014: administer assessments and collect baseline data for all courses

BOARD MEMBERS

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SUPERINTENDENT OF SCHOOLS

W. Daniel Boyd, Jr., Ed.D.

December 10, 2012

Kathy Hebda,
Deputy Chancellor, Educator Quality
Florida Department of Education
325 West Gaines Street
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Tallahassee, Florida 32399-0400

Dear Ms. Hebda,

Please find attached modifications to the Alachua County Public School system's instructional evaluation plan. Changes were made to two components of the plan, as follows, and are shown in red in the documents:

"ACPS Student Growth Measures," pp. 2, 3, 4, and 6
"ACPS Teacher Final Rating Weighting Formula," p. 2

Please review these changes and contact me directly if you have any questions. We are requesting approval of these changes by Wednesday, December 12th, as we need to re run our data files and provide updated data to our teachers and the Department of Education before the Winter Holidays.

Sincerely,

A handwritten signature in black ink that reads "W. Daniel Boyd, Jr." in a cursive style.

W. Daniel Boyd, Jr., Ed.D
Superintendent of Schools

cc: Dr. John Moore
Everett Caudle

ACPS Student Growth Measures

Assessments used for Determining Growth:

For the 2011-12 school year, the state value added model (VAM) based on FCAT reading and math will form the basis of the student performance section of the annual teacher evaluation. In grade levels 4-10, teachers directly responsible for instruction in reading and math will be evaluated using joint value added components that measure school effects and teacher effects; for teachers not directly responsible for instruction in reading or math in grade levels where FCAT tests are administered, value added components that measure the school effects and teacher effects on students assigned to the teacher using the reading associated VAM estimate will be used. For teachers teaching students who do not take FCAT, a value added measure for school effect in reading will be used. The Florida Department of Education (FLDOE) Value Added Model files will provide values for calculating all student growth data applied to teacher evaluation.

Methods used for Determining Growth:

Teachers assigned FCAT-tested students

With 3 years of data – 50% of the teacher’s final performance evaluation will be determined using state data and the state growth formula for students assigned to the teacher

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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Without 3 years of data – 40% of the evaluation of the teacher’s final performance evaluation will be determined using state data and the state growth formula for students assigned to the teacher.

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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Teachers of reading and math in grades 4 – 10

The teacher value-added model estimate (Teacher VAM Estimate) will provide the basis of the student growth evaluation component of the teacher evaluation for teachers at FCAT tested grade levels. This estimate is an aggregate of the unique effect a teacher has on a student’s growth (teacher effect) and the effect all the teachers in the school combined have on student growth at the school (school effect). Teacher VAM estimates provided by the DOE will be used in the calculations.

In cases where the teacher is responsible for instruction in both reading and math, primarily at the elementary level, a weighted average of the reading and math Teacher VAM estimates will be applied.

Where a teacher is responsible for only a single discipline, primarily at the secondary level and at departmentalized elementary programs, discipline specific teacher VAM estimates will be used for the teacher.

Where a teacher serves multiple grade levels, the weighted composite VAM value will be applied to calculate the teacher component. Aggregation across reading and math will also be

applied, as appropriate. Similar weighting will be applied to the school component by grade level.

Teachers of subjects other than reading or math, grades 4-10

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 VAM estimate. This may include teachers in the fields of science, social studies, foreign languages, and electives.

Each teacher value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

Calculation of Teacher Confidence Interval	Related Confidence Interval
VAM Estimate \pm Half Standard Error (0.5 * VAM SE)	38.3% CI
VAM Estimate \pm One Standard Error (1.00 * VAM SE)	68.3% CI
VAM Estimate \pm One and one half Standard Error (1.50 * VAM SE)	86.6 % CI
VAM Estimate \pm Two Standard Errors (2.00 * VAM SE)	95% CI

The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

VAM estimate plus 2.00 * VAM SE
 VAM estimate plus 1.50 * VAM SE
 VAM estimate plus 1.00 * VAM SE
 VAM estimate plus 0.50 * VAM SE
 VAM estimate
 VAM estimate minus 0.50 * VAM SE
 VAM estimate minus 1.00 * VAM SE
 VAM estimate minus 1.50 * VAM SE
 VAM estimate minus 2.00 * VAM SE

The calculations will result in eight unique data points for each teacher, in addition to their VAM estimate (nine total). Teachers will receive 5 points for each data point that falls above zero, including the original VAM estimate, beginning with 55 points. Points will be assigned for the student data component of teacher evaluation based on the following criteria.

# Elements Above 0	Points to Final VAM Calculation	Teacher Classification
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9	100	Highly Effective
8	95	Highly Effective
7	90	Highly Effective
6	85	Effective
5	80	Effective
4	75	Effective
3	70	Effective
2	65	Needs Improvement/Developing
1	60	Needs Improvement/Developing
0	55	Unsatisfactory

Teachers assigned students not assessed by FCAT

The superintendent will assign these teachers to instructional teams. When 3 years of data are available, 50% of the teacher's final performance evaluation will be determined using state data and the state growth formula for the team's students.

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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The superintendent will assign these teachers to instructional teams. When 3 years of data are not available, 40% of the teacher's final performance evaluation will be determined using state data and the state growth formula for the team's students

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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Teachers of students in non-FCAT tested grades

A substantial number of teachers at all levels are responsible for instruction of students not assessed by the FCAT or, if assessed by the FCAT, no prior score is available for predicting students' test scores. The group includes, but is not limited to:

- Kindergarten through third grade classroom teachers
- All 11th and 12th grade classroom teachers.

Teachers in these categories will be evaluated based on the school component estimate of the VAM for reading.

The school component value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

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VAM Estimate \pm One Standard Error (1.00 * VAM SE)	68.3% CI
VAM Estimate \pm One and one half Standard	86.6 % CI

Error (1.50 * VAM SE)	
VAM Estimate \pm Two Standard Errors (2.00 * VAM SE)	95% CI

The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

VAM estimate plus 2.00 * VAM SE
 VAM estimate plus 1.50 * VAM SE
 VAM estimate plus 1.00 * VAM SE
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 VAM estimate
 VAM estimate minus 0.50 * VAM SE
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 VAM estimate minus 1.50 * VAM SE
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9	100	Highly Effective
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4	75	Effective
3	70	Effective
2	65	Needs Improvement/Developing
1	60	Needs Improvement/Developing
0	55	Unsatisfactory

Instructional personnel who are not classroom teachers

When 3 years of data are available, 50% of the teacher's final performance evaluation will be determined using either state or district data for the students assigned to them.

Data = 50%	Principal Appraisal = 35%	Peer Metric = 15%
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When 3 years of data is not available, 40% of the teacher's final performance evaluation will be determined using either state or district data for the students assigned to them.

Data = 40%	Principal Appraisal = 40%	Peer Metric = 20%
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NOTE: The superintendent will determine whether school data or district data is to be used for determining student growth for each category of teachers in this group (see list below).

The deputy superintendent, assistant superintendent for personnel, and district directors will review job descriptions for instructional personnel who are not classroom teachers and make recommendations to the superintendent as to whether school or district data is most appropriate for each category of teachers. In some cases, specific teacher data and/or specific grade/subject area data may be recommended.

Process for Identifying Fields in Need of Special Procedures:

Instructional personnel who are not classroom teachers

Currently, a number of personnel in instructional-staff positions throughout the district perform duties supporting classroom teachers. These instructional staff members play a valuable role in the success of students and must have student performance scores applied to their evaluations. The following table lists the currently identified staff as well as the student data that will be applied to their evaluations.

Group	Data to be Applied
Behavioral Resource Teachers	School-specific reading school component
Curriculum Resource Teachers	School-specific reading school component
Curriculum Division Teacher Specialists	Weighted assigned school specific reading, math, or reading and math components as appropriate
Deans	School specific reading school component
District Mentor Coaches	Weighted assigned school specific reading, math, or reading and math components as appropriate
District Reading Coaches	Weighted assigned school-specific reading component as appropriate
District Technology Coaches	Weighted assigned school-specific reading component.
Guidance Counselors	School-specific reading component.
Media Specialists	School-specific reading component
Other Teacher Specialists	Weighted assigned school specific reading, math, or reading and math components as appropriate

Teachers in these positions will be evaluated based on a component of the VAM appropriate to their assignment (as determined by the superintendent). Where the personnel have primary responsibility in either reading or math, the appropriate value will be applied. Where no specific discipline responsibility can be identified, the reading value will be applied.

Where personnel in these positions can be associated with specific schools the weighted school component for that school will be applied. Where the personnel provide services to multiple schools, the weighted composite component of the VAM appropriate to their assignment (as determined by the superintendent) will be applied.

The weighted school component value-added estimate calculated by the FLDOE is associated with some level of error. In order to more confidently determine whether a teacher has

successfully achieved growth for his or her students (a value added score greater than zero), we will be using the standard error to test different confidence levels at which the teachers estimate is above zero. The following fractional parts and related confidence intervals will be produced for each unique teacher grouping.

Calculation of Teacher Confidence Interval	Related Confidence Interval
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The calculations will result in eight unique data points for each teacher in addition to the teacher VAM estimate (nine total). The nine data points are calculated as follows:

VAM estimate plus 2.00 * VAM SE
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 VAM estimate plus 0.50 * VAM SE
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 VAM estimate minus 1.00 * VAM SE
 VAM estimate minus 1.50 * VAM SE
 VAM estimate minus 2.00 * VAM SE

The calculations will result in eight unique data points for each teacher, in addition to their VAM estimate (nine total). Teachers will receive 5 points for each data point that falls above zero, including the original VAM estimate, beginning with 55 points. Points will be assigned for the student data component of teacher evaluation based on the following criteria.

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5	80	Effective
4	75	Effective
3	70	Effective
2	65	Needs Improvement/Developing
1	60	Needs Improvement/Developing
0	55	Unsatisfactory

Timeline for development/selection of student assessments for each subject/grade:

- 2011 – 2012: identify specific courses for which assessments will be needed; begin researching appropriate assessments, especially those developed or in development by Florida districts; select assessments for pilot
- 2012 – 2013: pilot use of assessments to verify validity and reliability of results
- 2013 – 2014: administer assessments and collect baseline data for all courses

Timeline for developing/selecting growth measures for additional grades/subjects:

- 2011 – 2012 identify specific courses for which assessments will be needed; begin researching appropriate assessments, especially those developed or in development by Florida districts; select assessments for pilot
- 2012 – 2013: pilot use of assessments to verify validity and reliability of results
- 2013 – 2014: administer assessments and collect baseline data for all courses

ACPS Teacher Final Evaluation Rating Weighting Formula

With 3 years of data available ↓	Less than 3 years of data available ↓
Metric 1: Annual Appraisal = 35%	Metric 1: Annual Appraisal = 40%
Metric 2: Student Data = 50%	Metric 2: Student Data = 40%
Metric 3: Peer Metric = 15%	Metric 3: Peer Metric = 20%

Metric 1: Annual Teacher Appraisal Instrument (Principal Appraisal): Data gathered from formal & informal observations = 35% or 40% of the total to equate to 35 or 40 possible points.

The Teacher Appraisal Instrument component will be calculated as follows: Appraisal is comprised of 20 evaluative component statements = from 1 to 5 possible points per statement. Ratings on each statement are Unsatisfactory, Needs Improvement, Developing, Effective, and Highly Effective. Points are assigned as follows:

- U = 1 point
- NI = 2 points
- D = 3 points
- E = 4 points
- HE = 5 points

Up to 100 total points on Annual Teacher Appraisal Instrument (Principal Appraisal) equated to 35% (or 40%) of final by multiplying. (Total Principal Appraisal points X .35 or .40 = Principal Appraisal points total for final calculation.)

Metric 2: Data from state VAM growth model = 50% when at least 3 years available; 40% when less than 3 years to equate to 50 or 40 points maximum, respectively, in final calculation. Up to 100 total points are available on the student data portion of evaluation for all instructional personnel. This element is equated to 50% (or 40%) of final by multiplying. (Given the lack of VAM data prior to 2011, during the first three years of implementation (2011-2012, 2012-2013, 2013-2014) the data component shall be reduced to 40% for all teachers.)

Metric 3: "Peer" Metric: The second component to evaluation is based on a Lesson Study model. "Peer Input," through a designed "Lesson Study" protocol, shall be included as a component of all teachers' final evaluations. Teachers will participate in a formal professional learning community/lesson study cohort group and receive peer evaluation input and evaluation points at the conclusion of the school year. Points shall be awarded based on an established rubric, which is tied to participation. This metric shall be included in all instructional personnel final evaluations at 15 percent of final value (20 percent when less than three years of Student Data are available).

Data from metric 3, Lesson Study, is scored to total a maximum of 100 points equated to 15% or 20% by multiplying.

Final Evaluation Score: Final evaluation for all instructional personnel shall be reported to the Department of Education (as required by statute) as *Highly Effective*, *Effective*, *Needs Improvement* (or *Developing*), and *Unsatisfactory*. Rating shall be determined as follows:

- Total points for each metric shall be determined and multiplied by the appropriate percentage factor for the metric (as indicated above).
- Results of percentage multiplication shall be added together to derive a single evaluation score.
- Total points for evaluation shall be equated to one of four categories: *Highly Effective*, *Effective*, *Needs Improvement* (*Developing* in the case of teachers with less than three years experience) or *Unsatisfactory*.

Teacher classification will be based on the following chart of total points:

Teacher Classification	Total Point Range
Highly Effective	≥ 86
Effective	≥ 70 but < 86
Needs Improvement (Developing, < 3years teaching)	≥ 60 but < 70
Unsatisfactory	< 60